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Friday
January 9, 1981

Highlights

2313 **Interagency Employee Benefit Council** Executive order

2315 **Tin Stockpile Contributions** Executive order delegating authority

2343 **Passports** State eliminates practice under which American citizen under age 13 may be included in U.S. passport issued to parent or sibling; effective 1-1-81

2329 **School Breakfast and Lunch Programs** USDA/FNS excludes Job Corps centers from participation in School Nutrition Programs; effective 1-1-81

2331 **School Breakfast and Lunch Programs** USDA/FNS amends Food Distribution Program regulations; effective 1-1-81

2332 **Food Stamps** USDA/FNS provides new procedures for States to report on reconciliation of Authorization to Participate (ATP) cards and issuance and participation data; effective 2-1-81

2390 **Indians—Claims** Interior/BIA announces extinguishment of all land and related claims of the Maine Indians

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

Highlights

2366 **Indians** Interior/BIA proposes to establish non-discriminatory criteria for determining "head of family" eligibility for Sioux benefits; comments by 2–9–81

2374, 2375 **Grant Programs—Minority Business** Commerce/MBDA solicits applications by 2–11–81, to operate three San Francisco Region projects

2566 **Juvenile Delinquency** Justice/OJARS issues policy and criteria for compliance with de minimus exceptions to the deinstitutionalization requirement under Formula Grants Program (Part VII of this issue)

2572 **Grant Programs—Juvenile Delinquency** Justice/OJARS issues draft Guidelines for Application for Planning and Coordination Grants to Develop and Support Model Comprehensive Programs for High-Risk Youth; comments by 2–9–81 (Part VIII of this issue)

2556 **Radioactive Materials** EPA proposes standards for disposal of residual materials from inactive uranium processing sites; comments by 5–11–81 (Part VI of this issue)

2546 **Animal Feeds** HHS/FDA proposes to revise conditions of approval for manufacture of feeds containing new drugs; comments by 4–9–81 (Part II of this issue)

2390 **Marine Mammals** Interior/FWS announces availability of annual report

2522 **Energy Conservation** DOE/SOLAR proposes Federal Standby Plan for States without approved or adequately implemented Residential Conservation Service Plans; comments by 2–24–81 (Part IV of this issue)

2450 **Treasury Notes** Treasury/Sec'y announces interest rate of 12¾ percent for Series C–1988

2349 **National Defense** FEMA issues standards and procedures for voluntary agreements; effective 1–9–81

2369 **Improving Government Regulations** CEQ issues semiannual agenda of proposed regulations

2452 **Sunshine Act Meetings**

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Presidential Documents

Title 3—

The President

Executive Order 12262 of January 7, 1981

Interagency Employee Benefit Council

By the authority vested in me as President by the Constitution of the United States of America, and in order to improve the administration of the Employee Retirement Income Security Act (ERISA) and to continue the improvements made by Reorganization Plan No. 4 of 1978, it is hereby ordered as follows:

1-1. *Establishment of the Council.*

1-101. There is established the Interagency Employee Benefit Council.

1-102. The Council shall be composed of the following, or their representatives:

(a) The Secretary of the Treasury.

(b) The Attorney General.

(c) The Secretary of Commerce.

(d) The Secretary of Labor.

(e) The Secretary of Health and Human Services.

(f) The Director of the Office of Management and Budget.

(g) The Administrator of the Small Business Administration.

(h) The Chairman of the Equal Employment Opportunity Commission.

(i) The Executive Director of the President's Commission on Pension Policy.

1-103. The following, or their designated representatives, are invited to participate in the activities of the Council:

(a) The Federal Trade Commission.

(b) The Securities and Exchange Commission.

(c) The National Labor Relations Board.

(d) Any other Executive agencies the Council invites.

1-104. The Secretary of Labor shall be the Chairman of the Council.

1-2. *Functions of the Council.*

1-201. The Council shall assist in interagency coordination of proposals affecting employee benefits under ERISA. It shall identify the potential economic consequences of those proposals for ERISA participants.

1-202. The Council shall develop comprehensive long-term and short-term policies applicable to the plans covered by ERISA. The Council shall identify and coordinate research into employee benefit issues affecting ERISA-covered employees, into the economic effects of private pensions, and into the effectiveness of ERISA.

1-203. The Council shall develop effective policy approaches to a comprehensive information-sharing program among ERISA agencies, including development of a common or coordinated data base, data use, and publications. The Council shall develop a program for the use of common facilities and a common information system.

1–204. The Council shall identify inconsistencies in the operation of programs under ERISA. It shall recommend to the President ways to reduce or eliminate those inconsistencies.

1–205. Where feasible, the Council should coordinate public participation through public hearings on government-wide ERISA-related programs.

1–206. The Council shall establish and maintain a mechanism to evaluate the effectiveness of the overall ERISA program.

1–207. The Council shall submit annually to the President a summary report of significant ERISA-related achievements of the member agencies.

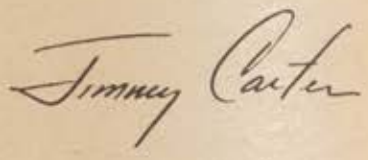
1–3. *Administrative Provisions.*

1–301. The Council shall meet at least once each quarter.

1–302. Each member agency with respect to matters within the jurisdiction of the agency shall cooperate with and assist the Council in performing its functions.

1–303. The Secretary of Labor shall be responsible for providing the Council with such administrative services and support as may be necessary.

1–304. The Council may establish such working groups or subcommittees as may be appropriate for the conduct of the Council's functions.



THE WHITE HOUSE,
January 7, 1981.

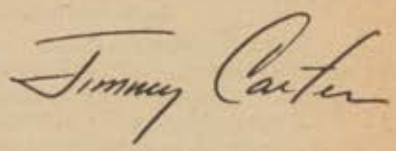
[FR Doc. 81–980
Filed 1–7–81; 3:44 pm]
Billing code 3195–01–M

Presidential Documents

Executive Order 12263 of January 8, 1981

Strategic and Critical Materials Transaction Authority

By the authority vested in me as President by the Constitution and the Statutes of the United States of America, including the Strategic and Critical Materials Transaction Authorization Act of 1979 (93 Stat. 1289; Public Law 96–175) (hereinafter referred to as "the Act") and Section 301 of Title 3 of the United States Code, and in order to provide for the contribution of tin to the Tin Buffer Stock established under the Fifth International Tin Agreement, the functions vested in the President by Section 5 of the Act are hereby delegated to the United States Trade Representative.



THE WHITE HOUSE,
January 8, 1981.

[FR Doc. 81–1058
Filed 1–8–81; 11:42 am]
Billing code 3195–01–M

Rules and Regulations

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

Pay Under the General Schedule

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: These regulations revise the current procedures and standards for withholding within-grade increases and granting quality step increases in accordance with the intent of the Civil Service Reform Act of 1978, and clarify and simplify the current within-grade increase regulations.

EFFECTIVE DATE: February 9, 1981.

FOR FURTHER INFORMATION CONTACT: Jan Karicher, 202-632-4634.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management is publishing regulations to supplement and implement the Civil Service Reform Act of 1978 (Pub. L. 95-454) and to update existing provisions. Proposed regulations were published in the Federal Register on July 29, 1980 (45 FR 50336-50341). Certain changes have been made in the proposed regulations in order to clarify them, and a number of substantive changes have also been made.

Analysis of Comments. The proposed regulations provided a 60-day period for public comment which ended on September 29, 1980. The Office of Personnel Management received comments from 22 agencies, three labor organizations, and one individual. These comments, for the most part, pointed out specific provisions which need clarification. As a result of the comments, the Office has made or considered making the following changes.

Sections 531.413–531.420—Subpart E—Salary Retention is being redesignated as Subpart F. Subpart E will now be entitled "Quality Step Increases" and proposed §§ 531.413 through 531.420 can now be found under Subpart E.

2. Section 531.430—The definition of "acceptable level of competence" has been expanded in order to unify the provision relevant to the level of performance required to meet an acceptable level of competence. There is no substantive change from the proposed regulations. In response to comments about the equivalency of "fully satisfactory", to terms used in agency performance appraisal plans, two changes have been made. The term "fully acceptable" is substituted for the term "fully satisfactory", and a specific statement is added that these are equivalent to "fully successful" or other such terms in an agency appraisal system.

The definition of "equivalent increase" has been expanded in order to clarify that an equivalent increase is the amount of the increase from the step of the grade the employee holds before the increase to the next higher step of that grade.

3. Section 531.404(b)—This paragraph has been deleted since § 531.404(a) contains the eligibility requirements.

Section 531.404(c)—This paragraph has been revised in order to specify that another subordinate official may be delegated authority to establish the requirements for performance to be at an acceptable level of competence.

4. Section 531.405(b)(1)—It was suggested that this paragraph be revised to read, "on an initial appointment to a permanent position . . ." We believe that the inclusion of the word "permanent" may confuse individuals since the term "permanent position" has been redefined in § 531.403 of this subpart. We have changed the term "initial" to "the first" in order to clarify this paragraph, but have not added the term "permanent position."

5. Section 531.406(a)(2)—It was suggested that the term "military service" be changed to "uniformed service" since the Public Health Service (PHS) is considered to be a uniformed service. However, 5 U.S.C. 8331(13), the reference contained in this section, includes service with the PHS in the definition of "military service". Although this paragarph has now been renumbered as § 531.405(b)(1) because of editorial changes, no change in terminology has been made.

Section 531.406(b)—Due to editorial changes, this paragarph is now numbered § 531.406(c). It was suggested that "Otherwise creditable service during . . . " be deleted from the beginning of this paragraph, and that it begin, "A leave of absence . . . " Since not all periods of absence are creditable service, no revision has been made to the proposed terminology.

6. Section 531.407(b)(2)—This paragraph has been revised in order to clarify determinations of whether an employee has actually received an equivalent increase.

Section 531.407(c)(6)—Several comments pointed out that the guidance contained in FPM Chapter 315, which states that, when an employee is promoted into a managerial or supervisory position and during the probationary period is returned to a position at the same grade and step held prior to the promotion because of unsuccessful performance, the promotion will be considered an equivalent increase, is not in conformance with these regulations. The information provided in the FPM reflects previous policy. However, experience has shown that the previous policy resulted in inequitable treatment among affected individuals. This change more effectively carries out the "no fault" return rights by requiring return to the salary which would have been received had the promotion not occurred. It both precludes an unintended benefit under the highest previous rate rule and guarantees no financial penalty by loss of creditable service toward completion of a waiting period. The guidance contained in FPM Chapter 315 will be amended to reflect this change. Additionally, we will amend the provisions contained in 5 CFR 531.203(d), pertaining to the highest previous rate rule, to prohibit use of the rule in this situation.

Section 531.407(c)(7)—This paragraph conflicts with several long standing Comptroller General decisions. Based on a negative comment referencing these decisions, the paragraph has been deleted. We are currently reviewing the cited decisions, and if warranted, we will consult further with the Comptroller General.

7. Section 531.408—This section has been revised and reorganized as two sections. Section 531.408 is now entitled "Communication of performance requirements" and contains the provisions of proposed paragraph 531.408(b). The remainder of proposed § 531.408 "Acceptable level of competence determinations" is renumbered as § 531.409 under the final regulations.

Section 531.408(a)—This paragraph is now § 531.409(a) and it has been revised in order to clarify that the authority to determine what constitutes an acceptable level of competence may be delegated to subordinate agency officials. This incorporates into regulation a long-established practice on determinations.

Section 531.408(b)(2)—This paragraph is now § 531.408(c). We have revised it in order to specify that the agency head shall establish the most suitable procedure with which to advise employees who are not covered by an appraisal system under 5 CFR Part 430 of the specific requirements for performance at an acceptable level of competence. This paragraph covers employees under Part 430 who have not been informed of performance standards under that Part, as well as individuals occupying positions which are excluded from Part 430.

Section 531.408(c)(3)—This paragraph is now § 531.409(b)(2). It was suggested that this section be deleted from the final regulations since many agencies doubt that an employee who has been demoted for cause will perform at an acceptable level of competence immediately after placement into a new position. Section 5335 of title 5, United States Code, provides that an employee is entitled to consideration for a within-grade increase if he or she has not received an equivalent increase during the appropriate waiting period. Therefore, consideration is required by statute. Additionally, this section allows the employee to commence performance of the duties of his or her new position without being adversely affected by performance in the prior position. Therefore, this paragraph has not been deleted.

Paragraphs (1) and (2) of § 531.408(d) "Justification for determination" have been combined under paragraph (4) of § 531.409(b) "Basis for determination" and, as recommended by several comments, specific time frames for notice have been added. We have also specified that the agency will designate the appropriate official to reconsider a negative determination. However, we have not adopted suggestions that we retain the current requirement that the reconsideration decision be made by a higher level official. A decision by a higher level official is unwarranted in view of the absence of such a requirement in an adverse action.

Section 531.408(e)—This paragraph is now § 531.409(d). It was suggested that an employee who has not been in a duty status for at least 60 days prior to completion of the waiting period be required to perform for a complete 60-day period, regardless of the within-grade increase eligibility date, in order to receive a determination. This suggestion was not adopted because the employee may not return to duty for a sufficient period to make a determination based on performance. This provision was proposed to resolve a problem with current regulations when an employee has been in a duty status for such a small part of the waiting period that the agency has an insufficient basis on which to make a decision to grant or deny the within-grade increase. This section should assist agencies to avoid finding themselves in the position of making an unwarranted acceptable level of competence determination or trying to deny a within-grade increase without a sufficient basis. Additionally, this paragraph specifies that the absence must be considered creditable service. Absence which is considered creditable service should not be the result of unsatisfactory performance, and we do not believe that an employee whose absence is the result of a legitimate extended illness or whose absence benefits the Government should have his or her increase delayed. The remaining provisions are reenacted from current regulations. Therefore, this paragraph has not been revised.

8. Section 531.409—This section has now become paragraph (e), "Notice of determination," under § 531.409 "Acceptable level of competence determinations".

9. Section 531.410(b)(2)(i)—This paragraph has now become § 531.410(a)(3). As recommended by one comment it has been revised to indicate that an employee must be in a duty status in order to be allowed a reasonable amount of official time to prepare a response to a negative determination.

Section 531.410(b) (4) and (5)—These paragraphs have been combined and revised as § 531.410(d). It was suggested that the reconsideration procedures specified in 5 U.S.C. 5335(c) be made optional for a member of an exclusively recognized bargaining unit. The provisions of 5 U.S.C. 5335(c) are mandatory by law, and therefore, this paragraph has not been revised.

Section 531.410(c)—As proposed, this paragraph stated that, when the agency neglected to make a negative determination within the sixty days after completion of the waiting period, the employee would receive the within-grade increase, effective the first day of the first pay period beginning 60 days after the due date. However, many agencies and the General Accounting Office objected strongly to this proposed change because of the requirement in 5 U.S.C. 5335(a)(3)(B), which states that an employee's performance must be at an acceptable level of competence in order to receive a within-grade increase. Although the intent of the proposed provision was to develop an equitable solution when a current determination is not made, based on the strong opposition to the concept, this paragraph has been deleted from the final regulations.

Section 531.410(d)—Comments suggested that it is not necessary to establish a separate file for a negative determination when the employee does not request reconsideration. Due to the sensitivity of the documentation which may accompany a negative determination, we believe that such information should be placed in a file to which only individuals involved in the determination have access. However, at this time we have not determined the most appropriate method of record keeping to be used. Therefore, the information contained in § 531.407(d)(4), of the current regulations, has been placed under paragraph 531.410(a)(1). At such time as we have developed a new system of records keeping, we will further amend this provision. In the interim agencies are reminded that such records are considered part of OPM's Manual Personnel Records (OPM/GOVT–1, 45 FR 78415, November 25, 1980) Privacy Act System of records.

10. Section 531.411(b)(2)—This paragraph is now § 531.412(b) and has been revised to clarify that, when a within-grade increase has been denied and subsequently approved because the employee has improved performance to an acceptable level of competence, the effective date of the increase is the first day of the first pay period after approval. Paragraph (a) of this section covers the situations when (1) a negative determination is reversed on reconsideration or appeal and the increase is retroactive to the date it was originally due, or (2) for any other reason the increase is to be retroactive to the date it was originally due.

11. Section 531.415(a)(1)—This paragraph is now contained in § 531.504(a)(1) of Subpart E, Part 531. It

was suggested that performance of critical elements of a position be the basis for determining the appropriateness of granting a quality step increase. Quality step increases must be based on overall high quality performance including both critical and non-critical elements of the job. However, redesignated § 531.506(c) does specifically require that performance of all critical elements be fully satisfactory.

Section 531.415(b)—Several comments indicated that it is an agency's responsibility to establish the specific criteria which must be met in order to receive a quality step increase. Therefore this paragraph has been deleted.

12. Section 531.416(a)—This paragraph has been placed under § 531.505 of Subpart E. It has been revised in order to permit the awarding of a quality step increase on the basis of either the most recent appraisal or a written statement setting forth the reasons for the award. However, because of concern expressed about unwarranted quality step increases based on old performance appraisals, we have added a requirement that if an appraisal is more than 60 days old, it must be supplemented by a written statement setting forth the reasons for the award.

13. Section 531.417(c)—This paragraph is now § 531.506(c) of Subpart E. It has been revised to indicate that, while the decision to award a quality step increase must be based on overall performance, a quality step increase shall not be granted when performance in any critical element is less than fully satisfactory.

14. Section 531.419(d)—This paragraph is now § 531.508(d) of Subpart E. Several comments were received requesting this section be deleted from the final regulations. Agencies believe that furnishing statistical information to each employee will be administratively infeasible. We believe that publicizing the performance which merits a quality step increase will act as an incentive to agency employees. Therefore, the provision remains unchanged.

15. It was suggested that a section be added which would permit an employee covered by a collective bargaining agreement, which contains an exclusive grievance procedure, to use that procedure when the employee feels his or her level of performance warrants a quality step increase. It is inappropriate for OPM to regulate the content of a negotiated agreement.

For non-bargaining unit employees, § 771.206(c)(ix) excludes from grievable matters the receipt of or failure to receive a quality step increase under section 5336 of title 5, United States Code. Therefore, this provision has not been added.

The Office of Personnel Management has carefully examined and considered all comments made during the public comment period. The Office has attempted to address the major points organizations have made both in letters and orally. Certain other comments and suggestions were made concerning matters more properly handled in guidance and information material which OPM will be issuing at a later date.

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

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, OPM is amending 5 CFR Part 531 as follows:

Subpart E is redesignated as Subpart F, and the Table of Sections is revised, Subpart D is revised, and a new Subpart E is added to read as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

* * * * *

Subpart D—Within-Grade Increases

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531.402 Employee coverage.
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531.404 Entitlement to within-grade increase.
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531.406 Creditable service.
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Sec.

531.601 Purpose.
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531.611 Work performance.
531.612 Formula for computing retained rate.
531.613 Rate determination.
531.614 Retention period—reassignment.
531.615 Within-grade increases.
531.616 Pay adjustment.
531.617 Appeals to Merit Systems Protection Board.

Authority: 5 U.S.C. 5335, and 5338, E.O. 11721, as amended, § 402.

Subpart D—Within-Grade Increases

§ 531.401 Applicability.

This subpart contains regulations of the Office of Personnel Management to carry out section 5335 of title 5, United States Code, which authorizes agencies to grant within-grade increases, and to carry out section 402 of Executive Order 11721, as amended, which requires the Office to issue regulations and standards to ensure that only those employees whose performance is at an acceptable level of competence receive within-grade increases. This subpart should be read together with these sections of law and Executive order.

§ 531.402 Employee coverage.

(a) Except as provided in paragraph (b) of this section, this subpart applies to employees who occupy permanent positions classified and paid under the General Schedule and who are paid at less than the maximum step of their grades.

(b) This subpart does not apply to:

(1) Employees who are covered by the Merit Pay System established under chapter 54 of title 5, United States Code;

(2) Members of the Senior Executive Service established under subchapter II of chapter 31 of title 5, United States Code;

(3) Individuals appointed by the President, by and with the advice and consent of the Senate; and

(4) Employees of the government of the District of Columbia.

§ 531.403 Definitions.

In this subpart:

"Acceptable level of competence" means a level of performance identified by an employing agency at which the performance by an employee of the duties and responsibilities of his or her assigned position is fully acceptable (or

equivalent terms such as fully satisfactory or fully successful used in the agency's performance appraisal plan) and, in addition to the requirement of § 531.404 of this subpart, warrants advancement of the employee's rate of basic pay to the next higher step of the grade of his or her position. An employee whose current performance with respect to any critical element is unacceptable, as defined in § 430.101(a)(3), is not performing at an acceptable level of competence. Further, absent unusual circumstances, an employee whose overall performance during the waiting period is at the minimum level required for retention in the position but below a fully acceptable level is not performing at an acceptable level of competence.

"Agency" means an agency defined in section 5102 of title 5, United States Code.

"Callendar week" means a period of any seven consecutive calendar days.

"Critical element" has the meaning given that term in § 430.202(e) of this chapter.

"Employee" means an employee of an agency who is covered under § 531.402(a) of this subpart.

"Equivalent increase" means an increase or increases in an employee's rate of basic pay equal to or greater than the amount of a within-grade increase from the specific step of the grade of the position occupied by the employee before the increase to the next step of the grade of that position.

"Permanent position" means a position filled by an employee whose appointment is not designated as temporary by law and does not have a definite time limitation of one year or less. "Permanent position" includes a position to which an employee is promoted on a temporary or term basis for at least one year.

"Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

"Scheduled tour of duty" means any work schedule established for an employee in accordance with the regular procedures for the establishment of workweeks in § 610.111 of this chapter. For a full-time employee this includes the basic 40-hour workweek. For a part-time employee this is any regularly scheduled work of less than 40-hours during the administrative workweek.

"Waiting period" means the minimum time requirement of creditable service to become eligible for consideration for a within-grade increase.

"Within-grade increase" means a periodic increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step of that grade in accordance with section 5335 of title 5, United States Code, and this subpart. The term "within-grade increase" is synonymous with the term "step-increase" used in section 5335 of title 5, United States Code.

§ 531.404 Entitlement to within-grade increase.

An employee paid at less than step 10 of the grade of his or her position shall be advanced in pay to the next higher step of that grade upon meeting the three requirements established by law:

(a) The employee must have completed the required waiting period for advancement to the next higher step of the grade of his or her position;

(b) The employee must not have received an equivalent increase during the waiting period; and

(c) The employee's performance must be at an acceptable level of competence, as determined by the head of the agency or by another agency official to whom this authority has been delegated.

§ 531.405 Waiting periods for within-grade increase.

(a) Length of waiting period. (1) For an employee with a scheduled tour of duty the waiting periods for advancement to the following steps in all General Schedule grades are:

(i) Steps 2, 3, and 4—52 calendar weeks of creditable service;

(ii) Steps 5, 6 and 7—104 calendar weeks of creditable service; and

(iii) Steps 8, 9, and 10—156 calendar weeks of creditable service.

(2) For an employee without a scheduled tour of duty, the waiting periods for advancement to the following steps in all General Schedule grades are:

(i) Steps 2, 3 and 4—260 days of creditable service in a pay status over a period of not less than 52 calendar weeks;

(ii) Steps 5, 6 and 7—520 days of creditable service in a pay status over a period of not less than 104 calendar weeks; and

(iii) Steps 8, 9, and 10—780 days of creditable service in a pay status over a period of not less than 156 calendar weeks.

(b) Commencement of a waiting period. A waiting period begins:

(1) On the first appointment as an employee of the Federal Government, regardless of tenure;

(2) On receiving an equivalent increase; or

(3) After a period of nonpay status or a break in service (alone or in combination) in excess of 52 calendar weeks, unless the nonpay status or break in service is creditable service under § 531.406 of this subpart.

(c) A waiting period is not interrupted by non-workdays intervening between an employee's last scheduled workday in one position and his or her first scheduled workday in a new position.

§ 531.406 Creditable service.

(a) *General.* Depending on the specific provision of law or regulation, service may be creditable for the completion of one waiting period or for the completion of successive waiting periods. Paragraph (b) of this section identifies service which is creditable in the computation of a single waiting period. Paragraph (c) identifies service which is creditable in the computation of successive waiting periods.

(b) *Service creditable for one waiting period.* (1) Military service as defined in section 8331(13) of title 5, United States Code, is creditable service in the computation of a waiting period when an employee is reemployed with the Federal Government after expiration of the restoration or reemployment period granted by law, Executive order, or regulation, but not later than 52 calendar weeks after separation from such service or hospitalization, continuing thereafter for a period of not more than one year, which is a direct result of such service.

(2) Time in a nonpay status is creditable service in the computation of a waiting period for an employee with a scheduled tour of duty when it does not exceed an aggregate of:

(i) Two workweeks in the waiting period for steps 2, 3, and 4;

(ii) Four workweeks in the waiting period for steps 5, 6, and 7; and

(iii) Six workweeks in the waiting period for steps 8, 9, and 10.

Except as provided in paragraph (c) of this section, time in a nonpay status in excess of the allowable amount shall extend a waiting period by the excess amount.

(c) *Service creditable for successive within-grade increases.* (1) Otherwise creditable service during a leave of absence from a position in which an employee is covered by this subpart, whether the employee is on leave without pay or is considered to be on furlough, is creditable service in the computation of waiting periods for successive within-grade increases when:

(i) The employee is engaged in military service as defined in section 8331(13) of title 5, United States Code and returns to Federal employment within the restoration period granted by law, Executive order, or regulation;

(ii) The employee is receiving continuation of pay or injury compensation under subchapter I of chapter 81 of title 5, United States Code;

(iii) The employee performs service that is creditable under section 8332(b)(5) of (7) or title 5, United States Code;

(iv) The employee is temporarily employed by another agency in a position covered by this subpart; or

(v) The employee is assigned to a State or local government or institution of higher education under sections 3371–3376 of title 5, United States Code.

(2) The period from the date of an employee's separation from Federal service with a restoration or reemployment right granted by law, Executive order, or regulation to the date of restoration or reemployment with the Federal Government through the exercise of that right is creditable service in the computation of waiting periods for successive within-grade increases.

(3) The period during which a separated employee is in receipt of injury compensation under subchapter I of chapter 81 of title 5, United States Code, as a result of an injury incurred by the employee in the performance of duty is creditable service in the computation of waiting periods for successive within-grade increases when the employee is reemployed with the Federal Government.

§ 531.407 Equivalent increase determinations.

(a) *Multiple increases.* When an employee receives more than one increase in his or her rate of basic pay during a waiting period, no one of which is an equivalent increase, the first and subsequent increases during the waiting period shall be added together until they amount to an equivalent increase, at which time the employee shall be deemed to have received an equivalent increase.

(b) *Position change.* When an employee changes positions without receiving an equivalent increase, or when an individual not covered by this subpart moves to a position in which he or she is covered by this subpart without receiving an equivalent increase, he or she shall be deemed to have received his or her last equivalent increase—

(1) At the time of the last equivalent increase in the prior position; or

(2) At the time he or she was deemed to have received an equivalent increase in the prior position under paragraph (a) of this section, if that is later.

(c) *Increases in pay not considered equivalent increases.* An increase in an employee's rate of basic pay shall not be considered an equivalent increase when it results from the following:

(1) A statutory pay adjustment, including an adjustment required by section 5402(c)(3) of title 5, United States Code;

(2) The periodic adjustment of a wage schedule or the application of a new pay or evaluation plan under the Federal Wage System;

(3) The establishment of higher minimum rates under section 5303 of title 5, United States Code, or an increase in such rates;

(4) A quality step increase under section 5336 of title 5, United States Code, and Subpart E of this part;

(5) A temporary or term promotion when returned to the permanent grade and step; and

(6) An increase resulting from placement of an employee in a supervisory or managerial position who does not satisfactorily complete a probationary period established under section 3321(a)(2) of title 5, United States Code, and is returned to a position at the same grade and step held by the employee before such placement.

§ 531.408 Communication of performance requirements.

(a) The head of the agency or other designated agency official shall determine the specific requirements for performance at an acceptable level of competence.

(b) Employees covered by an appraisal system established under § 430.203 of this chapter shall be informed of the specific performance requirements that constitutes an acceptable level of competence within the time frame and by the means of communication of performance standards established under § 430.203 of this chapter.

(c) Employees not covered by an appraisal system established under § 430.203 of this chapter shall be informed, under procedures established by the head of the agency, of the specific requirements for performance at an acceptable level of competence within a reasonable time after initial appointment or permanent change in position.

§ 531.409 Acceptable level of competence determinations.

(a) *Responsibility.* The head of the agency or other agency official to whom such authority is delegated shall determine which employees are performing at an acceptable level of competence.

(b) *Basis for determination.* An acceptable level of competence determination shall be based on an employee's performance of the duties and responsibilities of his or her assigned position or positions during the waiting period except when:

(1) An employee has not been informed of the specific requirements for performance at an acceptable level of competence at least 30 days before the end of a waiting period; or

(2) An employee is reduced in grade because of unacceptable performance to a position in which he or she is or will within 60 days become eligible for consideration for a within-grade increase.

Under these circumstances, the employee shall be informed that his or her determination is postponed and of the specific requirements for performance at an acceptable level of competence. The determination shall be based on a period during which the employee has had a reasonable opportunity (no more than the minimum period designated in the agency performance appraisal plan or 90 days if no minimum is established) to demonstrate performance at an acceptable level of competence.

(c) *Documentation.* The decision to grant or withhold a within-grade increase to an employee must be supported by the employee's most recent appraisal made pursuant to § 430.203 of this chapter. If the most recent appraisal does not support the decision, there must be a written statement setting forth the reasons for granting or withholding the within-grade increase.

(d) *Waiver of requirement for determination.* An employee shall receive a within-grade increase when he or she has been in a duty status for less than 60 days during the final 52 calendar weeks of the waiting period because of absences that are creditable service in the computation of a waiting period or periods under § 531.406 of this subpart, because of paid leave, or because the employee received service credit under the back pay provisions of Subpart H of Part 550 of this chapter. In such a situation there shall be a presumption that the employee would have performed at an acceptable levewl of competence during the waiting period had he or she been in a duty status sufficient time for a determination based on performance.

(e) *Notice of determination.* (1) A level of competence determination shall be communicated to an employee in writing as soon as possible after completion of the waiting period or other period upon which it was based.

(2) When the head of an agency or his or her designee determines that an

employee's performance is not at an acceptable level of competence, the negative determination shall be communicated to the employee in writing and shall:

(i) Set forth the reasons for the negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase under section 531.411(b) of this subpart;

(ii) Inform the employee of his or her right to request that the appropriately designated agency official reconsider the determination.

§ 531.410 Reconsideration of a negative determination.

(a) When an agency head, or his or her designee, issues a negative determination the following procedures are established in accordance with section 5335(c) of title 5, United States Code for reconsideration of the negative determination:

(1) An employee or an employee's personal representative may request reconsideration of a negative determination by filing, not more than 15 days after receiving notice of determination, a written response to the negative determination setting forth the reasons the agency shall reconsider the determination;

(2) When an employee files a request for reconsideration, the agency shall establish an employee reconsideration file which shall contain all pertinent documents relating to the negative determination and the request for reconsideration, including copies of the following:

(i) the written negative determination and the basis therefore;

(ii) the employee's written request for reconsideration;

(iii) the report of investigation when an investigation is made;

(iv) the written summary or transcript of any personal presentation made; and

(v) the agency's decision on the request for reconsideration.

The file shall not contain any document that has not been made available to the employee or his or her personal representative with an opportunity to submit a written exception to any summary of the employee's personal presentation;

(3) An employee in a duty status shall be granted a reasonable amount of official time to review the material relied upon to support the negative determination and to prepare a response to the determination; and

(4) The agency shall provide the employee with a prompt written final decision.

(b) The time limit to request a reconsideration may be extended when the employee shows he or she was not notified of the time limit and was not otherwise aware of it, or that the employee was prevented by circumstances beyond his or her control from requesting reconsideration within the time limit.

(c) An agency may disallow as an employee's personal representative an individual whose activities as a representative would cause a conflict of interest of position, an employee whose release from his or her official duties and responsibilities would give rise to unreasonable costs to the Government, or an employee whose priority work assignment precludes his or her release from official duties and responsibilities. Section 7114 of title 5, United States Code, and the terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit.

(d) When a negative determination is sustained after reconsideration, an employee shall be informed in writing of the reasons for the decision and of his or her right to appeal the decision to the Merit Systems Protection Board. However, for an employee covered by a collective bargaining agreement a reconsideration decision that sustains a negative determination is only reviewable in accordance with the terms of the agreement.

§ 531.411 Withholding a within-grade increase.

Continuing evaluation following withholding. After a within-grade increase has been withheld, an agency may grant the within-grade increase at any time after it determines that the employee has demonstrated sustained performance at an acceptable level of competence. After withholding a within-grade increase, the agency, at a minimum, shall determine whether the employee's performance is at an acceptable level of competence after each 52 weeks following the original due date for the within-grade increase.

§ 531.412 Effective date of within-grade increase.

(a) Except as provided in paragraph (b) of this section, a within-grade increase shall be effective on the first day of the first pay period following completion of the required waiting period and in compliance with the conditions of eligibility. When, due to administrative error, oversight, or delay, a positive determination is made after the waiting period is completed, the effective date of the within-grade increase shall be retroactive to the original due date.

(b) When an acceptable level of competence is achieved at some time after a negative determination, the effective date is the first day of the first pay period after the acceptable determination has been made.

§ 531.413 Reports and evaluation of within-grade increase authority.

(a) *Reports.* The Office of Personnel Management may require agencies to maintain records and report on the use of the authority to grant or withhold within-grade increases.

(b) *Evaluation.* The Office of Personnel Management may evaluate an agency's use of the authority to grant or withhold within-grade increases. An agency shall take any corrective action required by the Office.

Subpart E—Quality Step Increases

§ 530.501 Applicability.

This subpart contains regulations of the Office of Personnel Management to carry out section 5336 of title 5, United States Code, which authorizes the head of an agency, or another official to whom such authority is delegated, to grant quality step increases, and to carry out section 403 of Executive Order 11721, as amended, which requires the Office to issue regulations and assist agencies in establishing plans for the administration of this section of law.

§ 531.502 Definitions.

"Agency" means an agency defined in section 5102 of title 5, United States Code.

"Employee" means an employee of an agency who is covered by subpart D of this part.

"Quality step increase" means an increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step of the grade in accordance with section 5336 of title 5, United States Code, and this subpart. The term "quality step increase" is synonymous with the term "step increase" used in section 5336 of title 5, United States Code.

§ 531.503 Purpose of quality step increase.

The purpose of the authority to grant quality step increases is to provide an agency with the flexibility to recognize sustained high quality performance at a level that substantially exceeds an acceptable level of competence as defined by § 531.403 of this part by authorizing faster that normal step increases.

§ 531.504 Level of performance required for quality step increase.

(a) To be considered for a quality step increase, an employee must:

(1) Perform the duties and responsibilities of his or her assigned position at a level that substantially exceeds an acceptable level of competence so that, when viewed as a whole, the employee's performance is at a high level of quality; and

(2) Sustain performance at that level for a period of time sufficient to conclude that such a level is characteristic of his or her performance and is expected to continue in the future.

§ 531.505 Justification and documentation for quality step increase.

The decision to grant a quality step increase to an employee must be supported by the employee's most recent appraisal made pursuant to § 430.203 of this chapter or, when the appraisal is more than 60 days old, by a supplemental written statement setting forth the reasons for granting the quality step increase. This documentation shall be filed in the employee's Official Personnel Folder.

§ 531.506 Restrictions on granting quality step increases.

(a) As provided by 5 U.S.C. 5336, a quality step increase may not be granted to an employeee who has received a quality step increase within the preceding 52 consecutive calendar weeks.

(b) A quality step increase may not be granted to an employee unless, at the time it becomes effective, he or she is expected to remain for at least 60 days in the same position or in a similar position at the same grade level in which his or her performance can be expected to continue at the same level of effectiveness.

(c) While overall performance must be judged, as provided in § 531.504(a)(1) of this subpart, a quality step increase may not be granted to an employee covered by an appraisal system established under § 430.203 of this chapter whose current performance with respect to any critical element is less than fully satisfactory.

§ 531.507 Effective date of quality step increase.

A quality step increase shall be effective on the first day of the first pay period following the approval date.

§ 531.508 Agency plans for granting quality step increases.

Each agency shall establish a plan for granting quality step increases. The plan shall:

(a) Be as simple as practicable;

(b) Provide for delegation of authority to grant quality step increases to the lowest practicable level of management;

(c) Include criteria and procedures to provide for the granting of quality step increases with reasonable consistency throughout the agency and with fairness to all employees;

(d) Establish a method by which employees in the agency will be informed, at least annually, of the number of quality step increases granted in the agency by grade level; and

(e) Provide for appropriate instruction, guidelines, and training for supervisors and managers on the use of the authority to recommend or grant quality step increases.

§ 531.509 Reports and evaluation of quality step increase authority.

(a) *Reports.* The Office of Personnel Management shall require agencies to maintain records and reports on the use of the authority to grant quality step increases, in accordance with established procedures.

(b) *Evaluation.* The Office of Personnel Management may evaluate an agency's use of the authority to grant quality step increases. The agency shall take any corrective action required by the Office.

Subpart F—Salary Retention

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[FR Doc. 81-815 Filed 1-8-81; 8:45 am]
BILLING CODE 6325-01-M

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5 CFR Part 550

Pay Administration (General)

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This regulation liberalizes and simplifies current allotment regulations to allow for greater flexibility and discretion at the agency level in determining appropriate types of allotments which Federal employees may make from their pay. The regulations more closely reflect the original intent of the legislation governing allotment of pay by civilian employees.

EFFECTIVE DATE: These regulations are effective on February 9, 1981.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, 202-632-4634.

SUPPLEMENTARY INFORMATION: On May 13, 1980, the Office of Personnel Management published proposed rules in the **Federal Register** (45 FR 31379-31382) with a request for comments from interested parties before publication as final regulations. Twenty-two formal responses and numerous phone calls from agencies, credit union associations, employee organizations, State welfare and insurance organizations were received, eighteen favorable and supportive of the liberalization of allotment procedures and four unfavorable.

The most frequently mentioned comment concerned allotments for child support. Six agencies and State welfare organizations recommended that agencies be required to permit allotments for child support payments if requested by the employee. The Social Services Amendments of 1974 (Pub. L. 93-647), provide, among other things, for prevention or remedy of neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families . . ." to this end, the Child Support Enforcement Program was established by Congress. In view of the above two legislative actions, we believe that there is sufficient legal authority to warrant that alimony and child support allotments be mandatory, rather than discretionary, on the part of the agency, where an employee voluntarily requests an allotment to be made. We have, accordingly, included the provision in the section of the regulations pertaining to mandatory allotments. It should be noted that this provision pertains only to voluntary alimony and child support payments. Court-ordered payments for child support are covered under 5 CFR Part 581, Processing Garnishment Orders for Child Support and/or Alimony.

Two comments from credit union associations were received requesting that OPM clarify its regulations to enable an allotment to a credit union to be directed to the payments of loans, life insurance premium payments, family members' savings accounts, etc., prior to its being sent to a share account. OPM has always taken the position that the agency is not responsible for determining the disposition of the savings once an allotment has been made. Pub. L. 90-365, approved June 29, 1968, governs allotments to financial institutions, and implementing regulations have been published by the Department of the Treasury at 31 CFR Part 209. Since the suggested procedure of permitting distribution of funds prior to deposit in a share account is not within the purview of OPM, we have taken the liberty of referring the letters received in this regard to the Department of the Treasury for response.

Two suggestions were made requesting that retirees be permitted to have allotments for union dues withheld from their annuities. Since these regulations pertain to current employees and not to annuitants, we are unable to include the recommendation in the regulations.

One request was received suggesting that the agency be responsible for terminating dues allotments to a labor organization when the allotter is placed in a supervisory or management position excluded from the bargaining unit. OPM maintains that it is the primary responsiblity of an agency to cancel allotments of union dues when an employee is no longer in the bargaining unit, but that it is the employee's duty to advise the agency promptly if allotments are being improperly withheld. This view is supported by Comptroller General Decision B–180095 dated September 8, 1980. Any disagreement or improper payment of dues to a labor organization should more appropriately be resolved by the employee and the organization in question. Accordingly, the suggestion has not been incorporated in the regulations.

One written and one oral comment were received concerning service fees for withholding dues for members of associations of management officials and/or supervisors. Since 1964, OPM regulations have contained a discretionary fee-for-service provision for organizations of management officials and/or supervisors. This provision has been deleted in the new regulations because a service fee may now be charged at the discretion of each agency for any allotment unless there are specific instructions in law, Executive order, or regulation which provide for determination or waiver of fees. For example, Part 209.8 of Title 31, CFR, states that a service charge for allotments to savings institutions shall be collected by each agency, while section 7115 of title 5, U.S.C., provides that no service charge shall be made on allotments to labor organizations. Since a discretionary fee-for-service provision for associations of supervisors and/or management officials was previously contained in the regulation for a number of years with no apparent financial burden to the associations, and in view of the fact that the actual cost of the service is the maximum amount the agency may charge, we do not foresee any problems caused by the continuation of this authority.

One written comment was received suggesting that the granting of a request for allotment for dues to an association of management officials and supervisors be voluntary on the part of the agency rather than mandatory. Dues withholding privileges for associations of managers and/or supervisors were first authorized by Executive Order 11491, as amended on October 29, 1969. Section 21(b) of this Order provided that an agency "may" deduct the dues of such an association from the pay of members of the association who make a voluntary allotment for this purpose. However, section 21(b) was revoked in 1975 by Executive Order 11838.

The reason for this revocation was explained in the Federal Labor Relations Council report explaining the amendments made. The report stated that "the implementation of agency systems for intramanagement communication and consultation with supervisors and associations of supervisors had reached the stage where they would be dealt with more appropriately" outside the Executive order system through agency regulations and the Federal Personnel Manual. The FLRC report further stated that the Civil Service Commission "should and will" continue to provide in its regulations for voluntary allotments for the dues of associations of management officials and supervisors in order to assure that the deletion of 21(b) from the Order will have no "detrimental effect" on members of such associations. Thus, it seems that the deletion of section 21(b) from Executive Order 11491 was based on an assumption that the former CSC would retain a provision in its regulations for the withholding of dues for these manager/supervisor associations.

Our original intent was to retain specific references to only those types of allotments which an agency is required by law or Executive order to permit. However, we concluded that allotments for dues to associations of managers and/or supervisors should also be mandatory based on the history of this provision. Furthermore, even if the history of this provision were different, we believe that in OPM's role as a management agency we should facilitate organizations of management officials. Elimination of this provision could also be construed as lack of OPM support of participation in such organizations. Accordingly, no change has been made in the regulations.

One oral and one written comment were received questioning the necessity of promulgating revised regulations. It is argued that existing legal and regulatory requirements provide each agency with the authority which OPM wants to delegate. While it is true that the agencies had the authority to permit allotments not inconsistent with Subchapter III, Chapter 55, title 5, United States Code, existing regulations do not offer Federal employees the variety of allotments which will be offered under new regulations in view of the previous regulatory requirement barring allotments of pay for any purpose not specifically permitted by law or Executive order. For this reason, OPM believes that a change in the regulations is appropriate.

Several questions were received concerning forms to be used for allotments for which no applicable form currently exists. OPM is in the process of devising a multi-purpose form which may be used for making allotments. This form will be provided to the agencies; however, it may not be available for some time. In the interim, a letter from the employee to the payroll office which contains the pertinent information and which has been signed by the prospective allottee will suffice.

In the final regulations, we have elaborated on the authority of the agency to permit up to two allotments for savings under Department of Treasury regulations to stress that OPM does not regulate these types of savings allotments. The head of the agency carries out such allotments in accordance with the regulations of the Department of the Treasury at 31 CFR Part 209, with the exception of those employees in Alaska and Hawaii and other employees outside the continental United States, who will continue to be covered under 5 CFR Part 550. OPM continues to defer to the Department of the Treasury's authority to regulate allotments for savings even though there is a limitation of two allotments for savings permitted under those regulations, because it is unclear how regulating additional allotments to savings under 5 CFR Part 550 would affect employees presently making allotments under Title 31. OPM's action is not intended to be a permanent solution to the problem, but is necessary until the matter is studied in more detail.

Employees assigned to duty outside the continental United States have previously been covered under 5 CFR Part 550 because they are excluded from coverage under 31 CFR Part 209. We have included a provision making it mandatory for an agency to accept requests for allotments for savings made by these employees to ensure that they do not lose any existing rights under the new regulations.

In addition to the above changes, OPM has added two paragraphs to § 550.312 "General Limitations" to protect the agencies from adverse consequences resulting from disputes

which may arise between the allottee and the allotter.

A number of questions were received concerning procedural matters, such as: the order of precedent for allotments, allotments for items such as subway passes and bus farecards, the cost of which will automatically increase each year, years with 27 pay periods, etc. Resolution of procedural matters such as these will more appropriately be left to the authority of the agencies. Consequently, we have made no changes to the regulations to accommodate them.

In addition to the changes discussed in this supplementary information, several minor changes have been made to the regulations for clarity.

The Office of Personnel Management will supplement the regulations with guidance issued through the Federal Personnel Manual System.

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 the table of contents and revising Subpart C of Part 550 of Title 5, Code of Federal Regulations, to read as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart C—Allotments and Assignments From Federal Employees

Definitions

Sec.

550.301 Definitions.

General Provisions

550.311 Authority of agency.
550.312 General limitations.

Labor Organization

550.321 Authority.
550.322 Savings provision.

Association of Management Officials and/or Supervisors

550.331 Scope.

Combined Federal Campaign

550.341 Scope.
550.342 Limitation of allotment.

Income Tax Withholding

550.351 Scope.

Allotments for Savings

550.361 Scope.

Alimony and/or Child Support

550.371 Scope.

Foreign Affairs Agency Organizations

§ 550.381 Scope.

Authority: 5 U.S.C. 5527, E.O. 10082, 3 CFR 1959–1963 Comp., p. 502.

Subpart C—Allotments and Assignments From Federal Employees

Definitions

§ 550.301 Definitions.

In this subpart:

"Agency" means an Executive agency as defined by section 105 of Title 5, United States Code.

"Allotment" means a recurring specified deduction for a legal purpose from pay authorized by an employee to be paid to an allottee.

"Allottee" means the person or institution to whom an allotment is made payable.

"Allotter" means the employee from whose pay an allotment is made.

"Association of management officials and/or supervisors" means an association composed of either management officials and/or supervisors with which the agency has established official relationships.

"Combined Federal Campaign" means an organization of voluntary health and welfare agencies authorized to solicit charitable contributions in a local area in accordance with arrangements prescribed by the Director of the Office of Personnel Management under Executive Order 10927.

"Continental United States" means the several States and the District of Columbia, but excluding Alaska and Hawaii.

"Dues" means the regular periodic amount specified by an allotter to be withheld from his or her pay which is required to maintain the allotter as a member in good standing in a labor organization or association of management officials and/or supervisors or other organization.

"Employee" means an employee of an agency, unless otherwise provided.

"Foreign affairs agency" means the Department of State, the International Communications Agency, the Agency for International Development and its successor agency or agencies.

"Labor organization" means a labor organization as defined by section 7103(a)(4) of Title 5, United States Code, unless specified otherwise.

"Pay" means the net pay due an employee after all deductions authorized by law (such as retirement or social security deductions, Federal withholding tax, and others, when applicable) have been made.

General Provisions

§ 550.311 Authority of agency.

(a) An agency shall permit an employee to make:

(1) An allotment for dues to a labor organization under section 7115 of Title 5, United States Code;

(2) An allotment for dues to an association of management officials and/or supervisors under § 550.331;

(3) An allotment for charitable contributions to a Combined Federal Campaign under §§ 550.341 and 550.342;

(4) An allotment for income tax withholding under § 550.351;

(5) Up to two allotments for savings under Department of Treasury regulations as codified at Part 209 of Title 31, Code of Federal Regulations;

(6) An allotment for savings for an employee assigned to a post of duty outside the continental United States under § 550.361;

(7) An allotment for child support and/or alimony payments under § 550.371.

(b) In addition to those allotments provided for in paragraph (b) of this ection, an agency may permit an employee to make an allotment for any legal purpose deemed appropriate by the head of the agency.

(c) The head of an agency may prescribe such additional regulations governing allotments as appropriate which are consistent with subchapter III of chapter 55 of Title 5, United States Code, and this subpart. Discretionary allotments under this subpart may be limited in number as determined appropriate by the head of the agency.

§ 550.312 General limitations.

(a) The allotter shall specifically designate the allottee and the amount of the allotment in writing in an allotment authorization.

(b) The total amount of allotments may not exceed the pay due the allotter for a particular period.

(c) An employee shall request in writing a change in or the revocation of an allotment.

(d) Allotters shall agree that the agency shall be held harmless for any authorized allotment disbursed by the agency in accordance with the employee's request for an allotment from pay.

(e) Allotters shall agree that disputes regarding any authorized allotment shall be a matter between the allotter and the allottee.

Labor Organization

§ 550.321 Authority.

Section 7115, Title 5, United States Code, authorizes an employee to make an allotment for dues to a labor organization as defined in subchapter 1 of chapter 71 of Title 5, United States Code. Such an allotment shall be effected in accordance with such rules

and regulations as may be prescribed by the Federal Labor Relations Authority.

§ 550.322 Saving provision.

An agency shall permit a supervisor who so desires, to continue an allotment of dues to a labor organization as defined by section 2(e) of Executive Order 11491, as amended, which was permissible when the supervisor was excluded from a formal or exclusive unit by reason of the requirements of former section 24(d) of this Order.

Association of Management Officials and/or Supervisors

§ 550.331 Scope.

An agency shall permit an employee to make an allotment for dues to an association of management officials and/or supervisors when the employee is a supervisor or management official, and the employee is a member of an association of management officials and/or supervisors with which the agency has agreed in writing to deduct allotments for the payment of dues to the association.

Combined Federal Campaign

§ 550.341 Scope.

An agency shall permit an employee to make an allotment for charitable contributions to a Combined Federal Campaign. Allotments for contributions to the Department of Defense Overseas Combined Federal Campaign shall be permitted in accordance with a special agreement between the Office of Personnel Management and the Department of Defense which may contain any necessary exceptions to these regulations.

§ 550.342. Limitation of allotment.

(a) An agency shall permit an employee to make an allotment for a charitable contribution to a Combined Federal Campaign only when the employee is employed in an area in which a Combined Federal Campaign authorized by the Office of Personnel Management is established.

(b) An allotment to a Combined Federal Campaign shall be:

(1) For a term of 1 year beginning with the first pay period which begins in January and ending with the last pay period which begins in December, and

(2) An equal amount deducted each pay period. Minimum deductions will be established by agreement between OPM and officials of the Combined Federal Campaign.

(c) The allotter may not change the amount deducted each pay period during the term of an allotment to a Combined Federal Campaign. The allotter shall be informed of this restriction before the allotment is requested.

(d) The allotter may voluntarily discontinue the allotment at any time, but a discontinued allotment may not be reinstated.

Income Tax Withholding

§ 550.351 Scope.

When an employee has a legal obligation to pay, but the agency has no legal obligation to withhold, State, District of Columbia, or local income or employment taxes, an agency shall permit an employee to make an allotment for payment of the taxes.

Allotments For Savings

§ 550.361 Scope.

An agency shall permit an employee within the continental United States to make up to two allotments of pay to a financial organization of his/her choice, for credit to his/her savings account as authorized under Department of Treasury regulations codified at Part 209 of Title 31, Code of Federal Regulations. Additional allotments to savings for these employees will not be permitted under this Part.

An employee assigned to a post of duty outside the continental United States who is not covered under Department of Treasury regulations at 31 CFR Part 209 shall be permitted to make allotments of pay to a financial organization of his/her choice for credit to his/her savings account.

Alimony and/or Child Support

§ 550.371 Scope.

An agency shall permit an employee to make an allotment for alimony and/or child support when he or she voluntarily elects to do so. However, this provision does not apply to garnishment orders issued to enforce child support and/or alimony obligations which are codified at Part 581 of this title.

Foreign Affairs Agency Organizations

§ 550.381 Scope.

If an agency permits an employee to make an allotment for dues to a foreign affairs agency organization, the agency must also provide, in accordance with Section 15 of Executive Order 11636:

(a) that the employee be allowed to revoke the authorization at least every six months; and

(b) that the allotment terminates when the dues withholding agreement between a foreign affairs agency and the organization is terminated or ceases to be applicable to the employee.

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1203

[Public Comment No. 1]

Hearing Procedures for Original Jurisdiction Cases

AGENCY: Merit Systems Protection Board.

ACTION: Interim regulations.

SUMMARY: These regulations establish interim procedures for the Board's review of the regulations of the Office of Personnel Management (OPM). The Board is authorized by statute to review OPM regulations, and to order Federal agencies to cease compliance with regulations it finds invalid or to cease implementing them in an invalid manner. Additionally, the Board seeks comments on these regulations with the intent to issue final regulations at a later date.

EFFECTIVE DATE: January 9, 1981. Comments should be submitted no later than February 13, 1981.

ADDRESS: Comments should be submitted in writing indicating the above-referenced public comment number to the Office of the Secretary, Merit Systems Protection Board, Room 220, 1717 H Street, N.W., Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT: Deborah M. House, Executive Assistant to the Chairwoman (202) 653-7111.

SUPPLEMENTARY INFORMATION: These regulations are published pursuant to the statutory authority conferred on the Merit Systems Protection Board by the Civil Service Reform Act of 1978, authorizing the Board to review the regulations of OPM on their face and as implemented by any agency to determine whether they require any Federal employee to commit a prohibited personnel practice. This statutory provision further authorizes the Board to order Federal agencies to cease compliance with such regulations or to cease implementing them in a certain manner if a finding of invalidity is made by the Board. The Board is also authorized to take appropriate corrective action to provide relief to parties affected by the implementation of an invalid regulation or an invalidly implemented regulation (5 U.S.C. 1205(e)).

The statutory authority to conduct such a review became effective on January 11, 1979. The Board has already completed one such review in the case of *Wells, et al.* v. *Patricia Roberts Harris, et al.*, (Docket No. HQ120500017, Opinion issued December 17, 1979) and has several others under consideration. Therefore, the Board has determined that good cause has been established for publishing these regulations for immediate effect. However, because of the far-reaching impact of these regulations upon Federal agencies and their employees, the Board is also requesting comment on these interim regulations and will issue final regulations under this Part after all comments have been received and considered.

Part 1203 is added to read as follows:

PART 1203—HEARING PROCEDURES FOR ORIGINAL JURISDICTION CASES

Subpart A—Review of the Rules and Regulations of the Office of Personnel Management

General

Sec.
1203.1 Application.
1203.2 Definitions.

Procedures for Review

1203.11 Request for regulation review.
1203.12 Board determination on the request for regulation review.
1203.13 Filings.
1203.14 Service.
1203.15 Review of regulations on the Board's own motion.
1203.16 Proceedings.

Order of the Board

1203.17 Final order of the Board.
1203.18 Enforcement of order.

Authority: 5 U.S.C. 1205 (a)(4), (e) and (g).

Subpart A—Review of Rules and Regulations of the Office of Personnel Management

General

§ 1203.1 Application.

(a) *General.* This Subpart applies to the Board's review of any rule or regulation ("regulations") issued by the Office of Personnel Management (OPM), on its face or as implemented by any agency, pursuant to the Board's authority under 5 U.S.C. 1205 (a)(4) and (e).

(b) *Application of Part 1201.*

(1) Except as otherwise provided, where appropriate the Board may, on its own motion or that of a party, apply the provisions of 5 CFR Part 1201, Subpart B, to proceedings under this Subpart.

(2) The following provisions of 5 CFR Part 1201, Subpart B are specifically not applicable to proceedings under this Subpart.

(i) Sections 1201.21–1201.26 Petitions for Review of Agency Actions; and

(ii) Sections 1201.111–1201.118 Final decisions.

§ 1203.2 Definitions.

(a) *Invalid regulation.* A regulation issued by OPM which, on its face, would require an employee to commit a prohibited personnel practice if that regulation were implemented by any agency.

(b) *Invalidly implemented regulation.* A regulation issued by OPM which is implemented by an agency in such a manner that it has required, or will require, an employee to commit a prohibited personnel practice. A regulation which is valid on its face may be invalidly implemented.

(c) *Merit System principles.* Those principles set forth at 5 U.S.C. 2301(b) (1)–(9).

(d) *Pleadings.* Briefs, motions, requests for regulation review, responses and attachments.

(e) *Prohibited personnel practices.* Those impermissible actions set forth at 5 U.S.C. 2302(b) (1)–(11).

(f) *Regulation review.* The procedure whereby the Board, pursuant to 5 U.S.C. 1205(e), reviews the regulations issued by OPM on their face and/or as implemented for the purpose of determining whether they require any employee to commit a prohibited personnel practice. No regulation shall be reviewed prior to its effective date.

(g) *Request for regulation review.* A request for the Board to initiate a regulation review. Requests may be submitted by an interested person or upon the written complaint of the Special Counsel. A request for regulation review by an interested person may be denied or granted at the sole discretion of the Board. A request for regulation review by the Special Counsel shall be granted.

Procedures for Review

§ 1203.11 Request for regulation review.

(a) *Contents.* A request for regulation review shall contain the following:

(1) The name and address of the requestor or representative, if any;

(2) Identification by citation of the regulations being challenged;

(3) A statement (attaching any relevant documents) setting forth with particularity the reasons why the regulation and/or the implementation of the regulation has required, or will require the commission of, a prohibited personnel practice by any employee, including specific identification of the prohibited personnel practice at issue;

(4) In the event that the prohibited personnel practice complained of is one prohibited by 5 U.S.C. 2302(b)(11) the following additional information must be supplied:

(i) Identification of the law or regulation alleged to be violated and the basis of that violation;

(ii) Identification of the merit principles involved and an explanation of how the law or regulation in question implements or directly concerns that merit system principle(s);

(5) A statement of the action the requestor would like the Board to take; and

(6) The name, address and signature of the requestor's representative (or the requestor if there is no representative).

§ 1203.12 Board determination on the request for regulation review.

(a) *Order.* After considering the initial request for regulation review, the Board shall issue an order determining whether the request shall be granted or denied in whole or in part. Requests for regulation review submitted by the Special Counsel shall be granted.

(b) *Publication.* All Board orders granting or denying a request for regulation review shall be published in the **Federal Register.** Orders which grant the review, in whole or in part, shall set forth the following:

(1) Identification by citation of the regulations being challenged;

(2) Where appropriate, identification of the agency (agencies) involved;

(3) A statement of the issues to be addressed;

(4) The docket number assigned to the proceeding; and

(5) Appropriate directives for further adjudication, including the time period for filing responses in support of, or in opposition to, the petition for review.

§ 1203.13 Filings.

(a) *Place for each pleading and number of filings.* All pleadings shall be filed with the Secretary of the Merit Systems Protection Board, 1717 H Street, N.W., Washington, D.C. 20419. One original and three copies must be filed. All pleadings shall be made available in the Secretary's Office for review by the public.

(b) *Time for filing.* Under this Part, pleadings shall be filed in accordance with the following:

(1) *Request for regulation review.* May be filed at any time after the effective date of the regulation.

(2) *Responses to requests for regulation review.* A response in support of or in opposition to the request for review shall be filed within the time period provided in the Board's order

published in the **Federal Register** granting the request for regulation review in whole or in part.

(3) *Replies.* A reply may be filed to the response(s) within 10 days after it is filed. The reply shall address only those matters raised in the response which were not addressed in the original request.

(4) *Motions.* Motions may be filed at any time. The filing of a motion shall not delay the action of the Board on any matter unless it so orders. Motions requesting extensions of time or continuances may be ruled on immediately if time does not permit consideration of the views of the other parties.

(5) *Oppositions.* Oppositions to motions shall be filed within five days of receipt of the motion.

(6) *Additional pleadings.* May be filed only if requested by the Board or it provides leave to do so. Pleadings filed without authorization shall not be considered.

(c) *Method and date of filing.* Filing may be made either by mail addressed to the Office of the Secretary or by personal delivery to that office. The date of filing shall be determined by the date of mailing indicated on the certified mail. If the filing is made by regular mail, the date of filing shall, in the absence of any evidence to the contrary, be presumed to be the date five days prior to the receipt of the mail by the Board. If the filing is by personal delivery, it shall be considered filed on the date it is received in the Office of the Secretary.

(d) *Extensions of time.* Requests for extensions of time will be granted only for good cause shown.

§ 1203.14 Service.

(a) *Method.* Service shall be made by the parties by mail or by personal delivery. Service by mail is accomplished by mailing to all parties or their representatives, at the last known address, a copy of the pleading and a certificate of service. Service by personal delivery is accomplished by delivering the pleading to the business office or home of the person to whom it is addressed and leaving it with that person, or with a responsible person at that address. Proof of service in the form of a certificate of service must be submitted to the Board.

(b) *Parties.* The request for review of regulations shall be served on the Director of OPM in all instances and the chief executive officer of the implementing agency when the implementation of a regulation is being challenged. All other pleadings shall be served on the party requesting the regulation review and any other parties as designated by order of the Board.

§ 1203.15 Review of regulations on the Board's own motion.

Order for regulation review. The Board may, from time to time, initiate a regulation review on its own motion pursuant to 5 U.S.C. 1205(e)(1)(A). Notice of this review will be published in the **Federal Register.**

§ 1203.16 Proceedings.

The Board has substantial discretion in conducting a regulation review under this Subpart. The review may be undertaken on the basis of the pleadings alone or on one or more of the following:

(a) Submission of additional written comments;

(b) Presentation of oral argument;

(c) Evidentiary hearing; or

(d) Any other procedures in accordance with law and as deemed appropriate by the Board.

Order of the Board

§ 1203.17 Final order of the Board.

(a) *Invalid regulation.* In the event that the Board determines that a regulation is invalid on its face in whole or in part, it shall require any agency to cease compliance with such provision and may order such other remedial action as necessary.

(b) *Invalidly implemented regulation.* In the event that the Board determines that a regulation has been invalidly implemented in whole or in part, it shall require the agency (agencies) to terminate the invalid implementation.

(c) *Corrective action.* The Board may order such corrective action as is necessary to ensure compliance with its order, including but not limited to:

(1) The implementation of the necessary remedial measures to reverse the effets of any prohibited personnel practice;

(2) Cancellation of any personnel action related to the prohibited personnel practice;

(3) Award of back pay and benefits;

(4) Award of attorney fees;

(5) Rescission of any action related to the cancelled personnel action;

(6) Removal of any reference, record or document within an employee's personnel folder related to the prohibited personnel practice; and

(7) Requiring submission by the agency of a verified report setting forth its compliance with the order.

§ 1203.18 Enforcement of order.

(a) *Petition.* Any party may petition the Board for enforcement of a final order issued under this Subpart. This petition shall be filed with the Office of the Secretary of the Board, and shall be served upon all parties to the original review. The petition shall specifically set forth the reasons why the petitioning party believes there has been a failure to comply with the order of the Board.

(b) *Compliance.* The Board shall take all necessary action to ascertain whether there has been compliance with the final decision of the Board. Where compliance has not been made, the Board shall undertake such actions as are necessary to obtain compliance.

(c) *Enforcement.* Where appropriate, the Board may institute enforcement procedures as set forth at 5 CFR 1201.184.

Dated: January 5, 1981.

Merit Systems Protection Board.

Ruth T. Prokop,

Chairwoman.

[FR Doc. 81-919 Filed 1-8-81; 8:45 am]

BILLING CODE 6325-20-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Subtitle A

Voluntary Agreements Under Section 708 of the Defense Production Act of 1950, as Amended

Cross Reference: For a document that promulgates standards and procedures for these voluntary agreements, see FR Doc. 81-332, appearing under Title 44 in the Rules and Regulations section of this **Federal Register.** This document has been issued by the Federal Emergency Management Agency and concurred in by the Departments of Defense, Interior, Agriculture, Commerce, and Transportation. Refer to the listing for the Federal Emergency Management Agency in the table of contents at the front of this issue to determine the appropriate page number.

BILLING CODE 4210-23-M

Agricultural Marketing Service

7 CFR Part 180

Plant Variety Protection; Limits of Reciprocity

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Plant Variety Protection Office, Livestock, Poultry, Grain, and Seed Division, offers statutory protection for 17 years to developers of new varieties of plants that reproduce through seeds (sexually). In order for

foreign nationals to apply for protection in the United States, reciprocity limitations must first be determined consistent with the plant variety protection laws of each country, and then set forth in the regulations after appropriate rulemaking proceedings. The change in regulations will maintain protection currently afforded to foreign nationals, however, it will eliminate the need for amending the regulations to establish reciprocity limits for each interested country or to take into account changes in the law of countries already referred to in the regulation. The change will also make it easier for U.S. nationals to obtain protection in foreign countries.

EFFECTIVE DATE: January 9, 1981.

FOR FURTHER INFORMATION CONTACT: Bernard M. Leese, Commissioner, Plant Variety Protection Office, Livestock, Poultry, Grain, and Seed Division, AMS, National Agricultural Library Building, Beltsville, Maryland 20705, (301) 344–2518. The Impact Analysis describing the options considered in developing the proposed rule and the impact of implementing each option is available on request from the above named individual.

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

July, 8, 1980, notice was published in the Federal Register (45 FR 45914) inviting written comments not later than August 7, 1980, on proposed amendments of § 180.5 of the Regulations and Rules of Practice (7 CFR 180.5(a)) under the Plant Variety Protection Act to set forth the limits of reciprocity in order that all foreign applicants may receive protection equal to that afforded U.S. nationals in their country for plant variety protection on sexually reproduced plants in the United States.

The previous procedure for establishing reciprocity required an amendment to the rules of practice in § 180.5(a) to set the specific limits on protection for each country that indicated that a foreign national was interested in applying for plant variety protection in the U.S.A. This procedure required unnecessary and time-consuming rulemaking each time a new country requested reciprocity. In addition, for countries already covered by the rules of practice, amendment proceedings were required to take into account any changes in the laws of such countries that affect the limits on reciprocity previously set forth in the rules of practice. Previous rules covered the United Kingdom, Federal Republic of Germany, Republic of South Africa, Israel, and the Netherlands. Several other countries have passed or have proposed plant variety protection legislation and would likely have requested reciprocity agreements in the future, which would have required USDA to amend the reciprocity regulations to permit applications from the requesting nations and to establish the appropriate limits. Such amendments required a thorough review of the current laws of each foreign country at the time of the original request, in addition, USDA must keep continuously informed of changes in foreign plant variety protection laws so that reciprocity agreements and the regulations could be changed to maintain the limits on protection for foreign nations equal to that which the foreign countries grant U.S. nationals.

The rule modification eliminates the need to amend the regulations to establish or update the reciprocity limits each time a foreign national seeks protection by establishing a general procedure to require foreign applicants to furnish a copy of their current national law and an English translation. Based on a review of these materials, the eligibility of the applicant and the limits on the protection to be granted will be determined so as to give the foreign applicant the amount of the protection that is afforded a U.S. national in that foreign country. However, the regulation does not affect the rights of any foreign national whose application has been accepted in accordance with § 180.5(a), since the reciprocity limits on any pending applications already have been established at the time of filing of the applications based on the previous regulations.

Comments were received from five persons, all members of the Plant Variety Protection Board. The comments received did not suggest alternative solutions and all were in favor of adopting the proposed amendments.

After consideration of all relevant matters presented, including the proposal in the notice, the proposal, with no substantive change from the proposed rule, is adopted as follows:

Section 180.5(a) is removed including subparagraph (1) through (4) and replaced with new language. As revised, paragraph (a) reads as follows:

§ 18.5 General Requirements.

(a) Protection under this Act shall be limited to nationals of the United States except where this limitation would violate a treaty, and except that nationals of a foreign State:

(1) Shall be entitled to only so much of the protection afforded under this Act as is afforded by said foreign State to nationals of the United States for the same genus and species under the laws of said foreign State in effect at the time that the application for protection under this Act is filed.

(2) Shall, at the time of filing an application for plant variety protection in the United States, furnish the Plant Variety Protection Office, for use in determining the extent of protection to be provided in accordance with subparagraph (a)(1) above, with a copy of the current plant variety protection laws, and the regulations, thereunder, for the country of which the applicant is a national and an accurate English translation of such laws and regulations.

* * * * *

[7 U.S.C. 2326 and 2403; 84 Stat. 1542 and 1547, section 8 and 43]

Done at Washington, D.C., on December 30, 1980.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-829 Filed 1-8-81; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 230, and 235

Exclusion of Job Corp Centers

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency final rule.

SUMMARY: These final regulations amend Parts 210, 215, 220, 230 and 235, to exclude Job Corps centers funded by the Department of Labor from participation in the School Nutrition Programs. This emergency final rule implements the mandate of Public Law 96–499 and will save $15.2 million yearly in Child Nutrition Program Funds.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Chief, Policy and Program Development Branch, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–9065. The Impact Analysis Statement is available on request from the above named individual.

SUPPLEMENTARY INFORMATION:

Administrative Procedures

This final action has been reviewed under USDA procedures established in the Secretary's Memorandum 1955 to implement Executive Order 12044, and

has been classified as "not significant". Robert Greenstein, Administrator of the Food and Nutrition Service has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action because the provisions of this rule are mandated by Public Law 96–499 and are thus nondiscretionary. Solicitation of public comments is unnecessary. Further, the change made by the provisions of this rule is effective January 1, 1981. Good cause therefore, exists both for dispensing with the solicitation of public comments and for making this rule effective earlier than 30 days after publication.

Background

Public Law 94–105, enacted on October 7, 1975, expanded the definition of "school" in an effort to increase the number of children reached by the benefits of the school nutrition programs. The definition of "school" in section 12(d)(6) of the National School Lunch Act and section 15(c) of the Child Nutrition Act of 1966 was expanded by Public Law 94–105 to include "any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded)". Though the legislative history of the provision does not indicate that Congress specifically addressed whether Job Corps centers should be included under this expanded definition of "school", the broad language of the amendment indicates that Congress intended to include all institutions in which children are cared for on a residential basis. On May 4, 1976, final regulations to redefine "school" to include residential child care institutions as required by Public Law 94–105 were published in the **Federal Register** at 41 FR 18426. Under this regulation, only those Job Corps centers which met the basic eligibility requirements and which offered a residential child care program could participate; and only those meals served by participating Job Corps centers to children under 21 years of age who were enrolled on a residential basis were eligible for program reimbursement. Prior to Public Law 94–105, Job Corps centers received food service funds from the Department of Labor.

Public Law 96–499, the "Omnibus Reconciliation Act of 1980", enacted on December 5, 1980, amended section 12(d)(6) of the National School Lunch Act and Section 15(c) of the Child Nutrition Act to require that " 'school' means (A) any public or nonprofit private residential child care institution (including, but not limited to), orphanages and homes for the mentally retarded, but excluding Job Corps centers funded by the Department of Labor".

In response to the mandate of Public Law 96–499, Job Corps centers beginning January 1, 1981 will not be eligible for school nutrition program funds. It is estimated that the passage of Public Law 96–499, will save $15.2 million in budget authority under the Programs. Therefore, these final regulations amend all School Nutrition Program regulations to exclude Job Corp centers funded by the Department of Labor from participation in the Child Nutrition Programs. The Department is issuing this rulemaking as a final rule because it is nondiscretionary and mandated by Public Law 96–499.

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Accordingly, Part 210, National School Lunch Program, is amended as follows: In § 210.2, paragraph (o)(2) is revised to read as follows:

§ 210.2 Definitions.

* * * * *

(o) * * *

(2) with the exception of residential summer camps which participate in Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes, any public or nonprofit private child care institution, or distinct part of such institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institutions" includes, but is not limited to: homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children, long-term care facilities for chronically ill children; and juvenile detention centers.

* * * * *

PART 215—SPECIAL MILK PROGRAM

Accordingly, Part 215—Special Milk Program is amended as follows: in § 215.2, paragraph (v)(2) is revised to read as follows:

§ 215.2 Definitions.

* * * * *

(v) * * *

(2) with the exception of residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes, any public or nonprofit private child care institution, or distinct part of such institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institutions" includes, but is not limited to: homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children, long-term care facilities for chronically ill children; and juvenile detention centers.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

Accordingly, Part 220—School Breakfast Program is amended as follows: in § 220.2, paragraph (c)(2) is revised to read as follows:

§ 220.2 Definitions.

* * * * *

(c) * * *

(2) with the exception of residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes, any public or nonprofit private child care institution, or distinct part of such institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institutions" includes, but is not limited to: homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children, long-term care facilities for chronically ill children; and juvenile detention centers.

* * * * *

PART 230—FOOD SERVICE EQUIPMENT ASSISTANCE PROGRAM

Accordingly, Part 230—Food Service Equipment Assistance Program is amended as follows: in § 230.2,

paragraph (aa)(2) is revised to read as follows:

§ 230.2 Definitions.

* * * * *

(aa) * * *

(2) with the exception of residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes, any public or nonprofit private child care institution, or distinct part of such institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institutions" includes, but is not limited to: homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children, long-term care facilities for chronically ill children; and juvenile-detention centers.

* * * * *

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

Accordingly, Part 235—State Administrative Expense Funds is amended as follows: in § 235.2, paragraph (o)(2) is revised to read as follows:

§ 235.2 Definitions.

* * * * *

(o) * * *

(2) with the exception of residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes, any public or nonprofit private child care institution, or distinct part of such institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institutions" includes, but is not limited to: homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children, long-term care facilities for chronically ill children; and juvenile detention centers.

(Catalogue of Federal Domestic Assistance Numbers 10.555, 10.556, 10.553, 10.554)

(Section 205, Public Law 96-499, "The Omnibus Reconciliation Act of 1980", 94 Stat. 2599)

Dated: December 31, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 81-827 Filed 1-8-81; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Part 250

[Admt. 1]

Food Distribution Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency final rule.

SUMMARY: This rule amends the regulations governing the Food Distribution Program to: (1) Update the quoted provisions of the National School Lunch Act, as amended by the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499), (2) reduce the national average value of donated foods or cash in lieu of foods which the Secretary is required to make available to States for distribution to schools and institutions conducting non-profit food service programs under the National School Lunch Act, and (3) specify that schools which participate in the School Breakfast Program will not receive donated-food assistance based on the number of breakfasts served under that program. These changes implement the Omnibus Reconciliation Act.

EFFECTIVE DATE: Effective January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Gwena Kay Tibbits, Chief, Program Monitoring and Policy Development Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-8386.

The Impact Analysis Statement is available upon request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA Procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified not significant. Robert Greenstein, Administrator of the Food and Nutrition Service, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action because the provisions of this rule are mandated by Pub. L. 96-499 and are thus nondiscretionary. Solicitation of public comments is unnecessary. Further, the changes made by the provisions of this rule are effective January 1, 1981. Good cause therefore exists both for dispensing with the solicitation of public comments and for making this rule effective earlier than 30 days after publication.

Section 6 of the National School Lunch Act, as amended, requires the Secretary of Agriculture to make available to States for distribution to schools conducting nonprofit lunch programs under that Act, a national average value of donated foods, or—where applicable—cash in lieu thereof, of not less than 10 cents for each lunch served. This amount is subject to adjustment each school year to reflect changes in the Price Index for Food Used in Schools and Institutions, which is computed using five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products, meat, poultry, and fish, dairy products, processed fruits and vegetables, and fats and oils). Section 202(a) of Pub. L. 96-499, enacted December 5, 1980, provides that for the fiscal year ending September 30, 1981, the mandated level of commodity assistance under section 6(e) of the Act shall be reduced by 2 cents after the required adjustment per Index changes has been made. However, owing to late enactment of Pub. L. 96-499, this amendment provides that the reduction shall become effective on January 1, 1981. This is consistent with congressional action on the conference report to the Agriculture, Rural Development and Other Related Agencies Appropriations, fiscal year 1981. This report provides for a rescission of $285 million in funds appropriated for Child Nutrition Programs for fiscal year 1981. The $285 million rescission is based on January 1, 1981 implementation date for all provisions of the omnibus Reconciliation Act of 1980 that alter commodity or cash reimbursement rates in Child Nutrition Programs.

In a further action, section 202(b) of Pub. L. 96-499 amended section 6 of the National School Lunch Act to add a new subsection (f) which prohibits the Secretary from offering, beginning with the school year ending June 30, 1981, commodity assistance based upon the number of breakfasts served to children under section 4 of the Child Nutrition Act of 1966. This provision eliminates any legislative commodity entitlement for School Breakfast Programs. It does not eliminate the authority given the Secretary under section 8 of the Child

Nutrition Act of 1966 to donate foods acquired under price-support and surplus-removal activities for use in breakfast programs. Further, commodities earned under the National School Lunch Program (NSLP) do not have to be restricted to usage in the NSLP as long as they are utilized within a school food authority's nonprofit food service.

In another action, section 202(c) of Pub. L. 96-499 amended section 14(a) of the National School Lunch Act to extend the commodity provisions of that section through fiscal year 1984. Implementing changes for the above actions are made by these amendments.

Accordingly, the food distribution regulations are amended as follows:

1. In § 250.1, paragraph (b)(17) is amended by striking out "September 30, 1982" and inserting in lieu thereof "September 30, 1984," paragraph (b)(6), which contains the quoted provisions of section 6 of the National School Lunch Act, is amended by adding to the end thereof a new section 6(f), and a new paragraph (b)(19) is added as follows:

§ 250.1 General purpose and scope.

* * * * *

(b) *Legislation.* * * *

(6) * * * (f) Beginning with the school year ending June 30, 1981, the Secretary shall not offer commodity assistance based upon the number of breakfasts served to children under section 4 of the Child Nutrition Act of 1966.

* * * * *

(19) Section 202(a) of the Omnibus Reconciliation Act of 1980, which reads as follows:

For the fiscal year ending September 30, 1981, the national average value of donated foods, or cash payments in lieu thereof, as determined under section 6(e) of the National School Lunch Act, shall be reduced by 2 cents.

2. In § 250.4, paragraph (b)(5)(i) is revised as follows:

§ 250.4 Availability of donated foods.

* * * * *

(b) *Quantities.* * * *

(5)(i) The value of donated foods to be distributed for lunches in schools and for lunches and suppers in nonresidential child care institutions or, where applicable, the amount of cash payments to be made in lieu of donated foods for such meals, shall be adjusted on an annual basis to reflect changes in the Price Index for Food Used in Schools and Institutions prescribed by section 6(e)(2) of the National School Lunch Act, as amended. For the period beginning January 1, 1981 and ending September 30, 1981, the national average value of donated foods or cash payments in lieu thereof, as adjusted in accordance with this paragraph (b)(5)(i), shall be reduced by 2 cents.

* * * * *

3. In § 250.8, paragraph (a) is amended by removing the first sentence and inserting its place the following two sentences:

§ 250.8 Eligible recipient agencies.

(a) *Schools and school food authorities.* Schools or school food authorities which participate in the National School Lunch Program under part 210 of this chapter are eligible to receive donated foods under section 416, section 32, section 709, section 6 and section 14. Schools or school food authorities which participate in the School Breakfast Program under part 220 of this chapter shall not, beginning January 1, 1980, receive donated-food assistance based upon the number of breakfasts served under that program, except that those schools or school food authorities may continue to receive donated foods under section 8 of the Child Nutrition Act of 1966.* * *

* * * * *

(Sec. 202, Pub. L. 96-499, 95 Stat. 2599)

Dated: December 31, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 81-402 Filed 1-8-81; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Parts 272 and 273

[Amendment No. 171]

Food Stamp Issuance and Participation Reporting System; Reconciliation Report

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Stamp Act of 1977 (Public Law 95-113, 91 Stat. 958, September 29, 1977) specifies that State agencies shall, among other things, be responsible to the Secretary for any financial losses involved in the issuance of coupons. Additionally the 1979 Amendments to the Food Stamp Act of 1977 (Pub. L. 96-58, 93 Stat. 389, Aug. 14, 1979) require that the Secretary report monthly to Congress on the status of program funds obligated and whether or not such obligations will exceed appropriations. If so, the Secretary is required, within 60 days of such a report, to take steps to reduce or terminate program benefits to keep obligations within amounts appropriated.

This final rule provides new procedures for States to report on the reconciliation of Authorization to Participate (ATP) cards to enable State agencies and the Department to identify unauthorized issuance of benefits in order to establish liabilities for overissuance of coupons; and changes the procedures for States' reporting of food stamp issuance and participation data to provide program managers with more up-to-date information on the expenditure of food stamp appropriations for reporting to the Congress.

To carry out these new reporting procedures, two new forms are being established—Form FNS-46, *Food Stamp Reconciliation Report*, and Form FNS-388, *State Coupon Issuance and Participation Estimates*. Additionally, Form FNS-256, *Project Area Participation and Coupon Issuance*, is being revised.

EFFECTIVE DATE: This rule is effective February 1, 1981.

FOR FURTHER INFORMATION CONTACT: Larry Carnes, Chief, Policy and Regulations Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Room 678, 500 12th Street, S.W., Washington, D.C. 20250, 202-447-9075. The Final Impact Statement describing the options considered in developing this final rule and assessing the impact of implementing each option is available on request from Mr. Carnes.

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".

Introduction

This final rule addresses certain provisions contained in the proposed rule of November 9, 1979 (44 FR 65318) and all the provisions contained in the proposed rule of May 27, 1980 (45 FR 35335).

44 FR 65318: One of several proposed rules issued by the Department on November 9, 1979, provided for a reconciliation report for the use of States to identify unauthorized issuances of benefits. The comment analysis and changes to that portion of the November 9, 1979 proposed rules are being incorporated into this final rulemaking.

The Department received 14 comments, all from program administrators, on the reconciliation report. Based on those comments, the due date for submission of form FNS-46

report was changed from 45 days to 90 days following the end of the report month. The preamble to this rulemaking explains other suggested changes made to the proposed form.

Other provisions of the November 9 rule will be addressed in later final rulemaking packages.

45 FR 35335: On May 27, 1980, the Department published proposed rules to revise its present systems for States to report food stamp issuance and program participation. The revisions are being made to improve the timeliness and accuracy of issuance and participation data used in: (1) measuring the use and availability of food stamp bonus funds; (2) making decisions regarding benefit reductions which may be required to avoid expenditure of benefits in excess of appropriations; and (3) reporting nationwide program expenditures and participation to Congress and the general public.

The Secretary's decision on whether program benefits must be reduced to keep program spending within the amount appropriated is based upon a comparison of issuance at a given time in a fiscal year to funds available for the remainder of the fiscal year. Section 18 of the Food Stamp Act of 1977 (as amended, P.L. 96-58, 93 Stat. 389, August 14, 1979) requires the Department to submit to the House and Senate Agriculture Committee by the 15th of each month a report of program benefit expenditures for the fiscal year through the end of the second month preceding the reporting month. The Department must also report whether there is reason to believe that reductions in benefits during the year will be necessary. The new reporting system set out in § 274.8(a)(5) will provide the Department with an accurate basis for reporting food stamp expenditures and for assessing the need to reduce benefits. Also, this system will permit any necessary reduction in food stamp benefits to be tailored as closely as possible to available funds.

Prior to preparing the May 27, 1980 proposed rule, the Department established a task force consisting of State program officials; FNS National and Regional personnel; and representatives of the Department's Office of Budget, Planning and Evaluation. The task force solicited comments from State agencies and members of the American Public Welfare Association. Additionally, ten State welfare agencies participated in a pilot test of the proposed reporting system. Later all States voluntarily participated in an expanded test of the new system. The task force's analysis and recommendations and pilot test results served as the foundation for the proposed rules.

During the comment period, the Department received 21 comment letters and one telephone comment. Thirteen State welfare agencies, one local welfare agency and six FNS Regional Offices commented.

In light of the comments received, the final rules are only slightly modified from the proposed rules. This preamble addresses the changes made to the proposed regulations and a few areas of concern where changes were not made. Because the explanation of many of this rule's provisions is set forth in the proposed rule of May 27, 1980, it may be necessary to refer to that publication for a full understanding of these reporting procedures.

FNS-46 Reconciliation Report

Eight State agencies, one local agency, one Federal agency, and 4 FNS Regional offices, commented on this portion of the November 9, 1979 proposed rule. Some commenters felt the FNS-46 was unnecessary. The Department continues to believe that a report which identifies and distinguishes authorized from unauthorized issuances is of major importance and will be of considerable value in tightening program accountability. The Department also believes that existing forms cannot be revised to solicit the information to be reported on FNS-46 without adding greatly to the complexity of these forms. Also, FNS-46 is a report of specialized information and because of its due date, could not be made compatible with existing forms.

The most frequent comment on FNS-46 concerned the due date. Many commenters stated that an accurate report could not be prepared within the proposed 45-day timeframe provided in 274.8(a)(5), of the proposed rule. Therefore the due date has been changed to 90 days from the end of the report month.

Several other recommendations for changes to the form were adopted. The form was revised to provide space for reporting the total number and value of all ATP's transacted, and total replacements for ATP's. Also, the form was reorganized to include a section for reporting unmatched ATP's for which State agencies are liable (blank, lost or stolen, expired, out-of-State, or duplicate ATP's transacted erroneously by the State Agency) and a section for other unmatched ATP's (duplicates in which both original and replacement ATP's were redeemed, counterfeit, altered, and others). Unmatched ATP's are those that cannot be matched to the State agency's master record.

FNS-388 Reporting System

Thirteen State welfare agencies, one local welfare agency and six FNS Regional Offices commented on this action of the May 27, 1980 proposed rule. The majority of the comments dealt with four issues: (1) the effectiveness of the FNS-388 report form, (2) the estimation procedures used by the States in determining the level of participation, (3) the timeframe for submission of the form, and (4) the accuracy standards.

Thirteen commenters (7 State welfare agencies, 1 local agency, and 5 FNS Regional offices) favored the system. Some commenters stated they liked the rules as proposed. They stated they believed the system would reduce the reporting burden; they found the form to be working satisfactorily under the pilot test; and they had no problem meeting accuracy standards under the pilot test.

Three States expressed some disfavor with the reporting timeframe and/or the accuracy standards. California stated that during the pilot test they were able to meet the accuracy standards consistently when they submitted the FNS-388 on the twenty-fifth instead of nineteenth of the month. Maryland also reported trouble meeting the accuracy standards continually. Nebraska was concerned that they would have difficulty meeting the four percent accuracy standard due to unemployment changes and the seasonal participation of migrants.

Reporting Timeframe and Accuracy Standards

The final rule retains the 19-day reporting timeframe and the accuracy standards as specified in 274.8(a)(6) (i) and (ii), respectively, of the proposed rules. As stated earlier, the majority of State agencies commenting indicated they had no significant problem meeting the reporting timeframe and the accuracy standards for the FNS-388.

The pilot test of the system showed that very few States were not meeting the requirement that the data on the FNS-388 be telephoned to the Regional Office on the 19th of each month.

Additionally, the latest test month (May 1980) for which all data required by the form were reported showed that the majority of States are meeting the accuracy standards (±4% for current month estimates and ±2% for previous month estimates).

For May 1980, FNS-250/256 actual data were available to perform an accuracy test on issuance estimates for 36 out of the 54 States, and an accuracy test on participation (persons and households) for 52 out of the 54 States. Of the 36 States for which an accuracy

test was done on issuance estimates, 30 met the ±4% standard and 32 met the ±2% standard. For the 52 States for which an accuracy test was done on the estimated number of persons, 45 met the ±4% standard and 43 met the ±2% standard. For the 52 States for which an accuracy test was done on the estimated number of households, 43 met the ±4% standard and 37 met the ±2% standard.

Estimation Procedures

The proposed rule provided that States could develop their own estimation procedures. The Department did not receive any negative comments on this provision. Two commenters asked that this provision be retained in the final rule. The provision has been adopted in the final rule.

Submission of Actual Data on the FNS–388

One State agency suggested that the rules be changed to allow a State to provide actual figures when available for the preceding month rather than revised estimates. The Department has adopted this change in § 274.8(a)(6)(i) of the final rule.

Relationship Between the FNS–388 and FNS–360

One State asked if the FNS–388 would replace the FNS–360, Federal Outlay Report. The FNS–388 does not replace the FNS–360. The FNS–388 contains Statewide estimates of issuance and participation. The FNS–360 contains Federal outlays by counties and cities with populations over 25,000.

Revisions to FNS–388 Estimates and Remeasurement of Accuracy

One commenter suggested that FNS add a provision to clarify that a State need not submit a revised FNS–388 when the State submits a revised FNS–250 or FNS–256. The commenter also suggested that FNS not remeasure the accuracy of the FNS–388 estimate when a State submits a revised FNS–250 or FNS–256.

The Department agrees that there is no need for a State to submit a revised FNS–388 with a revised FNS–250 or FNS–256; however, the Department does not see the need to add such a provision to the regulations.

With regard to the remeasurement of accuracy of estimates when revised FNS–250's and FNS–256's are submitted, FNS will use the latest data available at a particular point in time for which accuracy standards are evaluated to determine if a State can switch from monthly to quarterly reporting for the FNS–256. Any revised data available at the time the determination is made would be included. The latest available data will also be used at the time a determination is made to require a State to reinstate monthly reporting of the FNS–256.

Explanation of Significant Changes in FNS–388 Estimates

One commenter suggested that the final rule mandate that a State explain significant changes in FNS–388 estimates of participation. The commenter said that if there were no requirement to explain significant changes, there should be no follow up when they occur.

The Department does not believe it is necessary to mandate that significant changes be explained. However, each month FNS will check the accuracy of past estimates and also analyze those currently reported. In this analysis, FNS may find significant changes in the estimates. These changes could be the first indication that a State needs to adjust its estimation procedures, or the change could indicate that something unusual happened; e.g., high unemployment in the State. In either case, FNS would like to know the reason for the significant changes. Therefore, the Department has retained the option to follow-up on significant changes and will contact States when it determines that such information is needed.

Submission of the FNS–388

One commenter stated that the instructions for submitting the FNS–388 form to FNS were not clear. The Department has revised the instructions to indicate that the States send the completed form to the FNS Regional Offices. The States are not required to send a copy to the National office.

FNS–256 Reporting System

Fifteen commenters raised questions or concerns about the FNS–256 reporting system described in the May 27, 1980 proposed regulations (11 State welfare agencies and 4 FNS Regional offices). The main issues addressed in the comment letters related to elimination of the monthly submission of the FNS–256 or information required on the report.

Monthly Reporting of the FNS–256

Several States requested that the Department retain the requirement to continue monthly reporting of the FNS–256. Implementation of the new reporting system is intended to reduce the States' Federal reporting burden and the Department has an obligation to carry out that intent. Therefore, the Department has retained the provision in § 274.8(a)(6)(iii) which requires States to submit the FNS–256 monthly until FNS accuracy standards for the FNS–388 are met. States meeting those accuracy standards will be given approval to submit the FNS–256 only for the months of January, April, July and October each year.

Reporting PA and NPA Participation

Several States requested that the Department retain the requirement to continue reporting both PA and NPA participation. Since the 1977 Food Stamp Act eliminated the categorical eligibility provision, the Department no longer needs separate PA and NPA participation data on the FNS–256. Should the need arise, the Department can obtain this information through other data collection means. However, if States want to continue to have the PA and NPA data broken down separately for internal use, they are free to do so.

Reporting on the Form FNS–256

The Department is eliminating the requirement that participation and issuance data be submitted only on the FNS–256. The Department does not want to interfere with a State's system for collecting program data the State needs. With approval from FNS, a State may submit a State-designed form or other type of document (e.g., computer printout) in lieu of the FNS–256 forms. However, the State's document must contain all of the data required on the FNS–256 form.

Elimination of the FNS–256 Report

One State suggested that the Department eliminate the FNS–256 reporting requirement for those States that can provide actual issuance and participation data for the previous month on the FNS–388. The FNS–388 and FNS–256 provide data at different levels of detail. The FNS–388 provides data at a Statewide level while the FNS–256 provides data at the project area level. The Department needs project level data reported on the FNS–256 for the months of January, April, July, and October. Therefore, the Department will retain the requirement for the FNS–256 report.

Responsibility for Determining When a State can Change FNS–256 Reporting Frequency

Commenters indicated that the rule was not clear as to who has the responsibility to determine when a State is to change the FNS–256 reporting frequency. The Department has revised § 274.8(a)(6)(iii) of the rule to indicate that the FNS National Office will make that determination.

Effective Date for Discontinuing Monthly FNS–256 Reporting

Commenters indicated that the rule was not clear as to the effective date on which a State may discontinue monthly FNS–256 reporting. FNS will notify a State to switch to submitting the FNS–256 one month each quarter if its FNS–388 estimates meet accuracy standards for any three consecutive months.

The Department has checked the accuracy of the estimates on FNS–388's submitted during the pilot test of the new reporting system. Based on the test results the Department believes that the States have been providing FNS–388 reports that are reliable for determining whether a State should reduce its FNS–256 reporting. The Department, therefore, wants to provide an opportunity for those States now meeting the accuracy standards to switch to submitting the FNS–256 one month each quarter effective with the publication of these final rules.

Although States may begin submitting the FNS–256 for one-month each quarter following three consecutive months for which their estimates on the FNS–388 meet accuracy standards, FNS must wait until the third month's report is received before the accuracy check can be completed. That report is not due until 45 days after the end of the report month. FNS will make a determination on whether a State has met the accuracy standard and notify the States as soon as practicable after the submission of the third report if the State is no longer required to submit FNS–256's monthly.

For example, it would be mid-December, at the earliest, before FNS would have the August, September, and October reports on hand to conduct an accuracy test. If these months did meet accuracy standards, it would be late December before the State would be notified that they could switch to reporting one month each quarter. The notice to the State would explain that the State need not send a report for November or December and that the next report due would be for January. A State notified at this point might have a November FNS–256 report in preparation or may have already submitted that monthly report. However, the State would not be held accountable for the November or December reports.

On the other hand, if the October, November, and December reports were the three consecutive FNS–388 reports meeting the accuracy standards, the first month for which an FNS–256 report would not be required would be the following February, since January is a required quarterly report month. The State would be required to submit the January report.

Resumption of FNS–256 Monthly Reporting

The Department did not receive any comments on the proposed provision regarding resumption of monthly FNS–256 reporting. However, the provision is slightly modified in the final rule.

The proposed rule provided that FNS may require resumption of monthly reporting on the FNS–256 if a State refuses to improve its estimation procedures or fails to meet the tolerances in reporting estimates for bonus dollar amounts for three consecutive months.

The primary purpose of the FNS–256 is to report participation data. Therefore, § 274.8(a)(b)(ii) has been changed in the final rule to reflect that resumption of monthly reporting would be based on refusal to improve estimation procedures or failure to meet accuracy standards for reporting participation data for two consecutive quarters on the FNS–388.

Completing the Form FNS–256

In light of questions raised by commenters, the following are further clarifications of needed information to be reported on the FNS–256:

(1) *Altered ATP's.* The State shall count the altered amount not the original amount for reporting on the FNS–256.

(2) *Supplemental, Duplicate, or Expired ATP's.* The State shall count households and associated persons only once for reporting on the FNS–256 even though the household may have been erroneously issued and may have transacted more than one ATP in the month. These may have been supplemental, duplicate or expired ATP's. However, the State shall report the total value of all ATP's transacted by a household.

(3) *ATP's Issued After the Twenty-fifth.* The State shall count all ATP's transacted in the month regardless of when they were issued.

(4) *Out-of-Project ATP's.* The State shall count ATP's transacted in a project area whether they were issued within or outside of the project area.

(5) *Dollar Amount of Coupons.* States are to include all issuances made on which documentation exists (even though that documentation may be erroneous, i.e., expired, counterfeit, duplicate, etc.) Cashier errors would not be included on the FNS–256 since documentation for cashier errors would not exist. Cashier errors are accounted for on the FNS–250.

Omitting the Total Value of Coupons Issued

One commenter suggested that the Department not require reporting of the total value of coupons issued on the FNS–256. The commenter stated that the FNS–250 is due at the time as the FNS–256.

The FNS–256 contains data by project area, and the FNS–250 contains data by reporting point. In most instances project areas and reporting points are not the same. The Department needs issuance data from both of these. Therefore, the Department will retain the requirement to report issuance data on the FNS–256.

Accordingly, 7 CFR Parts 272 and 274 are being amended by this final action.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

7 CFR Part 272 is amended as follows:

In § 272.1, a new paragraph (23) is added to paragraph (g) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

* * * * *

(23) Amendment No. *171.* (i) All States operating an ATP issuance system shall submit the first Form FNS–46, Food Stamp Reconciliation Report, in accordance with Amendment No. 171, for the month of February 1981. This report shall be submitted to the FNS Regional Office within 90 days from the end of the report month.

(ii) All States shall submit the Form FNS–388, State Coupon Issuance and Particpation Estimates, for February 1981 and each month thereafter. Those States that have not submitted procedures for estimating program participation, shall submit them to the FNS Regional Office on or before February 9, 1981.

* * * * *

PART 274—ISSUANCE AND USE OF FOOD COUPONS

7 CFR Part 274 is amended as follows:

In § 274.8, a new paragraph (5) is added (previously reserved) and paragraph (6) is revised.

The addition and revision read as follows:

§ 274.8 State agency reporting and destruction of unusable coupons.

(a) *State agency reporting.* * * *

* * * * *

(5) Each State agency operating an ATP issuance system shall report monthly to FNS on the reconciliation of

the transacted ATP's against the HIR Master File. This report shall be made by completing Form FNS–46, Food Stamp Reconciliation Report. The report shall be prepared at the level of the State agency where the actual reconciliation of the transacted ATP's to the HIR Master File takes place. This report shall be submitted to FNS no later than 90 days following the end of the report month. The first report shall be due for the month of February 1981.

(6) The State agency shall report on coupon issuance and participation on the Food Stamp Program as follows:

(i) The State agency shall mail the FNS–388, State Coupon Issuance and Participation Estimates, to the FNS Regional Office by no later than the 19th of each month. The FNS–388 shall contain statewide estimates of the dollar value of coupons issued, and estimates of the number of households and persons who have participated based on the State's estimating procedures evaluated by FNS as required in paragraph (a)(6)(ii) of this section. The FNS–388 shall contain estimates for the current month and revised estimates for the preceding month. If a State agency has the ability to report actual figures for the preceding month rather than revised estimates, it may use the actual figures on the FNS–388. The FNS–388 shall be signed by a designated State agency official (preferably the person responsible for completing the report). The State agency shall telephone the FNS–388 data to the appropriate FNS Regional Office on the 19th of each month prior to mailing the report to that office. When the 19th falls on a weekend or holiday, the FNS–388 data shall be reported by telephone and mailed on the first working day after the 19th.

(ii) The State agency shall submit the estimation procedures to be used in producing the FNS–388 to the FNS Regional Office for review and comment. The estimation procedures shall be documented by the State agency in a manner prescribed by FNS. FNS shall monitor on a monthly basis the accuracy of the estimated dollar value of coupons issued as reported on the FNS–388 against the total dollar value of coupons issued as reported by the State agency for all issuance agents on the FNS–250 for the corresponding month. FNS shall monitor periodically the accuracy of the estimated numbers of households and persons participating as reported on the FNS–388 against the actual total participation for all project areas as reported on the FNS–256 for the corresponding month. Current month's estimates shall be within ±4 percent and previous month's estimates shall be within ±2 percent of actual amounts. If the degree of accuracy falls outside of these tolerances, FNS shall notify the State agency and assist the State agency in revising its estimation procedures to improve the degree of accuracy. In no event shall the failure to meet these tolerances result in an administrative or fiscal sanction against the State agency. FNS may require resumption of monthly project area reporting on the FNS–256 by withdrawing its approval in paragraph (a)(6)(iii) of this section under two conditions: (A) the State agency refuses to improve its estimating procedures, or (B) the current and previous months, estimates on the FNS–388 for persons participating exceeds accuracy standards for two consecutive quarters.

(iii) The State agency shall mail to the FNS Regional Office the Form FNS–256, Project Area Participation and Coupon Issuance, for each project area by the 45th day following the end of the report month. The FNS–256 shall contain each project area's actual participation by the number of households and persons and the dollar value of coupons actually issued. With prior approval of FNS, the State agency may substitute their own form or other reporting document provided that the alternative reporting format contains all the information required by the FNS–256. The State agency shall submit an FNS–256 monthly for each project area until approval is received from FNS to discontinue monthly reporting.

If the State agency achieves the degree of accuracy on the FNS–388 specified in paragraph (a)(6)(ii) of this section for at least three consecutive months for "current" and "previous" months and for all three categories of dollars, persons, and households, FNS shall notify the State agency to discontinue the FNS–256 as a monthly report starting with the next report month. Thereafter, the State agency shall submit the FNS–256 for the months of January, April, July, and October each year.

* * * * *

Notes.—The reporting and/or recording keeping requirements in this amendment have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942. Additionally, **Federal Register** policy does not permit the final forms to be reprinted in the **Federal Register**. However, supplies will be available.

(91 Stat. 958 (7 U.S.C. 2011–2027))

(Catalog of Federal Domestic Assistance Programs No. 10.551 Food Stamps)

Dated: December 31, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 81–401 Filed 1–6–81; 8:45 am]

BILLING CODE 3410–30–M

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7 CFR Part 277

[Amdt. No. 188]

Payment of Certain Administrative Costs of State Agencies

Correction

In FR Doc. 80–40407 appearing at page 85699 in the issue for Tuesday, December 30, 1980, make the following correction:

On page 85702, in the first column, in the fourth line, the number "275" should have read "277".

BILLING CODE 1505–01–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 287; Lemon Regulation 286, Amendment 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period January 11–17, 1981, and increases the quantity of such lemons that may be so shipped during the period January 4–10. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective January 11, 1981, and the amendment is effective for the period January 4–10, 1981.

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

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

other available information. It is hereby found that this action will tend to effectuate the declared 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 July 8, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on January 6, 1981 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is similar to last week.

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

1. Section 910.587 is added as follows:

§ 910.587 Lemon Regulation 287.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period January 11, 1981, through January 17, 1981, is established at 225,000 cartons.

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

2. Paragraph (a) of § 910.586 Lemon Regulation 286 (46 FR 5) is amended to read as follows:

§ 910.586 Lemon Regulation 286.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period January 4, 1981, through January 10, 1981 is established at 235,000 cartons.

* * * * *

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

Dated: January 8, 1981.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 81–1057 Filed 1–8–81; 11:32 am]

BILLING CODE 3410-2-M

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7 CFR Part 982

Filberts Grown in Oregon and Washington; Free and Restricted Percentages for the 1980–81 Marketing Policy Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes marketing percentages for inshell filberts for the marketing policy year beginning August 1, 1980. The action is taken under the marketing order for filberts grown in Oregon and Washington to promote orderly marketing conditions.

EFFECTIVE DATES: August 1, 1980 through July 31, 1981.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447–5053. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from J. S. Miller.

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

On December 2, 1980, notice was published in the **Federal Register** (45 FR 79818) inviting written comments on the proposed establishment of free and restricted percentages of 29 percent and 71 percent, respectively. One comment was received.

It is found that good cause exists for not postponing the effective time of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The order requires that free and restricted percentages for a particular marketing policy year shall apply to all inshell filberts handled during that year. The marketing policy year began August 1, 1980, and these percentages apply automatically to all such filberts beginning at that time.

The percentages were recommended by the Filbert Control Board, hereinafter referred to as the "Board". The Board is established under the marketing agreement and Order No. 982, both as amended (7 CFR Part 982), and hereinafter referred to as the "order", regulating the handling of filberts grown in Oregon and Washington. The amended marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The percentages are based upon the following estimates by the Board for the 1980–81 marketing policy year:

	Tons
Inshell supply:	
(1) Total production	14,500
(2) Less substandard, farm use, etc.	435
(3) Merchantable production	14,065
(4) Plus carryover August 1, 1980 subject to regulation	133
(5) Supply subject to regulation (item 3 plus item 4)	14,198
Inshell requirements:	
(6) Trade demand	4,500
(7) Plus carryover July 31, 1981 for needs early next season	700
(8) Total	5,200
(9) Less carryover August 1, 1980 not subject to regulation	1,128
(10) Inshell requirements	4,072
Percentages:	
(11) Free percentage (item 10 divided by item 5)	29
(12) Restricted percentage (100 percent minus 29 percent)	71

The free percentage prescribes that portion of the total merchantable supply subject to regulation which may be handled as inshell filberts. The restricted percentage prescribes that portion which must be withheld from such handling. Restricted filberts may be shelled (for domestic or foreign consumption), exported, or disposed of in outlets determined by the Board to be noncompetitive with normal market outlets for inshell filberts.

The commentator stated that to establish free and restricted percentages this late in the marketing policy year is an after the fact action, as 80 percent of inshell filbert shipments are made during the months of October and November. However, § 982.41 provides that the free and restricted percentages for a particular marketing policy year shall apply to all inshell filberts handled during that year. Thus, while final percentages may not be established until after most inshell filberts have been marketed, handlers have anticipated their restricted obligations for the marketing policy year and generally governed their operations accordingly.

Secondly, the commentator stated that the Board's 1980–81 estimated trade

demand of 4,500 tons is substantially below the 5,302 ton average of merchantable sales for inshell filberts in the United States for the past 10 years. The commentator stated that reductions in the portion of filberts available for domestic inshell consumption have caused consumption to fall. Under § 982.40 of the order, the Board estimates trade demand for inshell filberts for each marketing policy year and uses this estimate to arrive at the free and restricted percentages for that year. Both estimated trade demand and merchantable sales of inshell filberts fluctuate from year to year. Nevertheless, for the past 10 years beginning with the 1970–71 marketing policy year, the Board's estimated trade demand for any particular year has remained above actual trade acquisitions for that year. In the 1979–80 marketing policy year, for instance, the supply of inshell filberts available under the free percentage was 42 percent higher than actual trade acquisitions, with the result that the carryover on August 1, 1980, of inshell filberts totaled 1,261 tons. The 10-year average supply for the marketing policy years 1970–71 through 1979–80 was 24 percent higher than acquisitions. Thus, available supplies of inshell filberts for domestic consumption during this 10-year period exceeded demand as measured in actual sales.

After consideration of all relevant matter presented, including that in the notice, the comment submitted, the information and recommendation submitted by the Board, and other available information, it is further found that to establish this rule will tend to effectuate the declared policy of the act.

Therefore, § 982.230 is added to establish free and restricted percentages for the 1980–81 marketing policy year as follows:

§ 982.230 Free and restricted percentages—1980–81 marketing policy year.

The free and restricted percentages for merchantable filberts for the 1980–81 marketing policy year shall be 29 percent and 71 percent, respectively.

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

Dated: January 5, 1981.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 81-694 Filed 1-8-81; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Quality Service

9 CFR Part 331

Designation of the State of Maine Under the Federal Meat Inspection Act for Special Purposes

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: Representatives of the Governor of Maine have advised this Department that Maine is no longer in a position to administer a meat inspection program concerning certain businesses and transactions in the State of Maine. The Secretary of Agriculture is therefore required by section 205 of the Federal Meat Inspection Act to assume the responsibility of administering this program.

DATES: Effective date of this document: January 9, 1981.

Effective date of application of regulation: February 9, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Gonter, Director, Evaluation and Enforcement Division, Compliance Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–5643.

SUPPLEMENTARY INFORMATION:

Background

Sections 202, 203, and 204 of the Federal Meat Inspection Act (21 U.S.C. 642, 643, 644) provide for recordkeeping, access, and related requirements; registration requirements; and regulation of transactions involving dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules or parts of the carcasses of such aminals that died otherwise than by slaughter, with respect to operators engaged in specified kinds of businesses in or for "commerce" as defined in the Act.

Section 205 of the Federal Meat Inspection Act (21 U.S.C. 645) authorizes the Secretary of Agriculture to exercise authorities under the aforesaid section with respect to persons, firms, and corporations engaged in the specified kinds of businesses but not in or for "commerce" in any State or organized Territory when he determines, after consultation with an appropriate advisory committee, that the State or Territory does not have at least equal authority under its laws or is not exercising such authority in a manner to effectuate the purposes of the Acts.

Representatives of the Governor of the State of Maine have advised this Department that the State of Maine is no longer in a position to continue administering authorities under the aforesaid sections with respect to persons, firms and corporations engaged in the specified kinds of businesses in Maine, but not in or for "commerce".

The Secretary, after consultation with the appropriate advisory committee, has now determined that the State of Maine is not exercising, in a manner to effectuate the purposes of the said Act, with respect to businesses, operating wholly within the State of Maine, authorities at least equal to those under sections 202, 203, and 204 of the Federal Meat Inspection Act including the Secretary or his representatives being afforded access to such places of business and the facilities, inventories, and records thereof. Therefore, the State of Maine is hereby designated under section 205 of the Federal Meat Inspection Act for the exercise of the specified authorities with respect to businesses, operating wholly within the State of Maine, and hereafter sections 202, 203 and 204 of the Federal Meat Inspection Act shall apply as hereinafter provided, to persons, firms, and corporations engaged in the kinds of businesses specified in said sections, but not in or for commerce, to the same extent and in the same manner as if they were engaged in such businesses in or for commerce and the transactions involved were in commerce.

§ 331.6 [Amended]

Accordingly, the table in § 331.6 of the Federal meat inspection regulations (9 CFR 331.6) is amended as follows:

1. In the "State" column, "Maine" is added in alphabetical order in all three places.

2. In the "Effective date of designation" column, is added on the line with "Maine" in all three places.

(Secs. 21 and 205, 34 Stat. 1260, as amended; 81 State. 584, 21 U.S.C. 621, 645; 42 FR 35625–35632)

After consulting with the appropriate advisory committee, Donald L. Houston, Administrator, Food Safety and Quality Service, has determined that it is necessary to designate the State of Maine immediately in accordance with section 205 of the Federal Meat Inspection Act, in order to carry out the Secretary's responsibilities under the Act. Therefore, it does not appear that any additional relevant information would be made available to the Secretary by an impact statement or by public participation in this rulemaking proceeding. Accordingly, under the administrative procedures provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures are impracticable and contrary to public interest.

Done at Washington, D.C., on January 1, 1981.

Thomas P. Grumbly,

Acting Administrator.

[FR Doc. 81-687 Filed 1-8-81; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Subtitle A

Voluntary Agreements Under Section 708 of the Defense Production Act of 1950, as Amended

Cross Reference: For a document that promulgates standards and procedures for these voluntary agreements, see FR Doc. 81-332, appearing under Title 44 in the Rules and Regulations section of this Federal Register. This document has been issued by the Federal Emergency Management Agency and concurred in by the Departments of Defense, Interior, Agriculture, Commerce, and Transportation. Refer to the listing for the Federal Emergency Management Agency in the table of contents at the front of this issue to determine the appropriate page number.

BILLING CODE 4210-23-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34-17383]

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

Correction

In FR Doc. 80-40087 appearing on page 84992 in the issue of Wednesday, December 24, 1980, the Release Number in the heading reading "**Release No. 34-17388**" should have read "**Release No. 34-17383**".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 145

[Docket No. 79N-0231]

Canned Fruits, Canned Berries; Amendment of Standard of Identity

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the United States (U.S.) standard of identity for canned berries. This amendment is based on the identity provisions of the Codex Alimentarius Commission's "Recommended International Standard for Canned Raspberries" and the "Recommended International Standard for Canned Strawberries." This action is taken to promote honesty and fair dealing in the interest of consumers and facilitate international trade.

DATES: Effective July 1, 1983, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may begin February 10, 1981. Objections by February 9, 1981.

ADDRESS: Written objections to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION: The standard amended by this final rule will, among other things, (1) permit the use, within specified limits, of safe and suitable calcium salts as firming agents for all berries; (2) permit the use of safe and suitable organic acids for all berries; (3) permit the addition of specified nutritive carbohydrate sweeteners to all berries; (4) provide for strawberry varieties of the genus *Fragaria*; and (5) recodify the format to reflect other recently promulgated standards of identity.

A proposal to amend the U.S. standard of identity for canned berries was published in the **Federal Register** of September 25, 1979 (44 FR 55191). The proposal invited interested persons to submit comments. Comments were received from a government agency and a trade association.

The United States Department of Agriculture (USDA) stated that the USDA voluntary grade standards for berries (Title 7, Code of Federal Regulations) would reference the product descriptions established in the U.S. standard for canned berries.

The trade association stated that it concurs with FDA's proposal to retain the provision for the optional use of safe and suitable nutritive carbohydrate sweeteners.

It has been FDA's past policy to allow the use of safe and suitable nutritive carbohydrate sweeteners as optional ingredients of the packing media as provided for in the existing standard of identity for canned berries (21 CFR 145.120) as well as for other canned fruits. However, as a result of a series of public hearings held between August 1978 and October 1978, it became apparent that consumers desire a specific listing, by name, in food standards of those ingredients which characterize the food rather than simply a general provision for the use of "safe and suitable" ingredients. A notice requesting public comment on a tentative proposed revision of the agency's policy regarding the use of "safe and suitable" provisions in food standards was published in the **Federal Register** of December 21, 1979 (44 FR 75990). Consistent with consumer desire, FDA is listing in § 145.120(a)(3)(i) set out below the individual nutritive carbohydrate sweeteners that may be used.

The agency requests comments concerning the completeness of the list. If any commonly used nutritive carbohydrate sweeteners have been omitted, they will be included in the regulation at the time a notice confirming the effective date of the final regulation is published. Comments should be submitted to the Dockets Management Branch, Food and Drug Administration (address above), during the period for objections.

Because FDA is not aware of the use of honey or brown sugar in canned berries, the regulation set out below does not provide for their use. Further, the sweeteners listed in § 145.120 (a) (4) (iv) function only as sweeteners and do not impart a taste, flavor, or other characteristic to the finished food in addition to sweetness. Therefore, the present labeling requirement which was retained in the proposed § 145.120(a)(5)(ii) is unnecessary and is deleted.

After consideration of the comments received and other relevant information in the record, FDA concludes it will promote honesty and fair dealing in the interest of consumers to revise the standard of identity for canned berries as set out below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 145 is amended by revising § 145.120, to read as follows:

§ 145.120 Canned berries.

(a) *Identity*—(1) *Ingredients.* Canned berries is the food prepared from any suitable variety of one of the optional

berry ingredients specified in paragraph (a)(2) of this section, which may be packed in one of the optional packing media specified in paragraph (a)(3) of this section, and may contain one or any combination of two or more of the safe and suitable optional ingredients specified in paragraph (a)(4) of this section. Such food is sealed in a container and before or after sealing is so processed by heat to prevent spoilage.

(2) *Varietal types.* The optional berry ingredients referred to in paragraph (a)(1) of this section are prepared from stemmed fruit of the following optional varietal types of berry ingredient: namely:

(i) Raspberry varieties conforming to the characteristics of *Rubus idaeus* L. or *Rubus occidentalis* L.

(ii) Blackberries.

(iii) Blueberries.

(iv) Boysenberries.

(v) Dewberries.

(vi) Gooseberries.

(vii) Huckleberries.

(viii) Loganberries.

(ix) Strawberry varieties conforming to the characteristics of *Fragaria.*

(x) Youngberries.

(3) *Packing media.* (i) The optional packing media referred to in paragraph (a)(1) of this section, as defined in § 145.3 are:

(a) Water.

(b) Fruit juice(s) and water.

(c) Fruit juice(s).

Such packing media may be used as such or may be sweetened with sweeteners referred to in paragraph (a)(4)(iv) of this section.

(ii) When a sweetener is added as a part of any such liquid packing medium, the four density ranges of the resulting packing media hereinafter specified for each berry ingredient, expressed as percent by weight of sucrose (degrees Brix) as determined by the procedure described in § 145.3(m), shall be designated by the appropriate name for each of the respective density ranges for each berry ingredient as:

(a) "Slightly sweetened water"; or "extra light sirup"; "slightly sweetened fruit juice(s) and water"; or "slightly sweetened fruit juice(s)", as the case may be.

(b) "Light sirup", when the liquid used is water, "lightly sweetened fruit juice(s) and water"; or "lightly sweetened fruit juice(s)", as the case may be.

(c) "Heavy sirup", when the liquid used is water; or "heavily sweetened fruit juice(s) and water"; or "heavily sweetened fruit juice(s)", as the case may be.

(d) "Extra heavy sirup", when the liquid used is water; or "extra heavily sweetened fruit juice(s) and water"; or "extra heavily sweetened fruit juice(s)", as the case may be.

The density ranges referred to herein are:

Optional berry ingredient	Density ranges							
	(a)		(b)		(c)		(d)	
	Minimum	Maximum less than	Minimum	Maximum less than	Minimum	Maximum less than	Minimum	Maximum not more than
Blackberries		14	14	19	19	24	24	35
Blueberries		15	15	20	20	25	25	35
Boysenberries		14	14	19	19	24	24	35
Dewberries		14	14	19	19	24	24	35
Gooseberries		14	14	20	20	25	25	35
Huckleberries		15	15	20	20	25	25	35
Loganberries		14	14	19	19	24	24	35
Raspberries	11	18	15	20	20	27	27	35
Strawberries	10	14	14	19	19	27	27	35
Youngberries		14	14	19	19	24	24	35

(a) "Slightly sweetened water." (b) "Light sirup." (c) "Heavy sirup." (d) "Extra heavy sirup."

(4) *Optional ingredients.* The optional ingredients referred to in paragraph (a)(1) of this section are:

(i) Natural and artificial flavors.

(ii) Calcium salts as firming agents provided that the calcium added is no more than 0.035 percent, calculated as calcium, of the weight of the finished canned berries.

(iii) Organic acids.

(iv) One or any combination of two or more of the dry or liquid forms of sugar, invert sugar sirup, dextrose, glucose sirup, and fructose. Such sweeteners, if defined in § 145–3, shall be as defined therein, except that such sweeteners for which a standard of identity has been established in Part 168 of this chapter shall comply with such standard in lieu of any definition that may appear in § 145–3.

(5) *Labeling requirements.* (i) The name of the food is the appropriate name of the berry ingredient specified in paragraph (a)(2) of this section.

(ii) The name of the packing medium, as used in paragraph (a)(3)(i) of this section preceded by "In" or "Packed in," as provided in paragraph (a)(3) of this section and, in the case of raspberries other than red raspberries provided for in paragraph (a)(2) of this section, the name of such packing medium and the color of such raspberry shall be included as part of the name or in close proximity to the name of the food. When the liquid portion of the packing media provided for in paragraph (a)(3) (i) and (ii) of this section consists of fruit juice(s), such juice(s) shall be designated in the name of the packing medium as:

(*a*) In the cases of a single fruit juice, the name of the juice shall be used in lieu of the word "fruit";

(*b*) In the case of a combination of two or more fruit juices, the names of the juices in the order of predominance by weight shall either be used in lieu of the word "fruit" in the name of the packing medium, or be declared on the label as specified in paragraph (a)(3) of this section; and

(*c*) In the case of a single fruit juice or a combination of two or more fruit juices any of which are made from concentrate(s), the words "from concentrate(s)" shall follow the word "juice(s)" in the name of the packing medium and in the name(s) of such juice(s) when declared as specified in paragraph (a)(5)(iii) of this section.

(iii) Whenever the names of the fruit juices used do not appear in the name of the packing medium as provided in paragraph (a)(5)(ii)(*b*) of this section, such names and the words "from concentrate", as specified in paragraph (a)(5)(ii)(*c*) of this section, shall appear in an ingredient statement pursuant to the requirements of § 101.3(d) of this chapter.

(iv) Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

(b) [Reserved]

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 9, 1981, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with

particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. Except as to any provisions that may be stayed by the filing of proper objections, compliance with this final regulation, including any required labeling changes, may begin February 10, 1981, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1983, shall fully comply. Notice of the filing of objections or lack thereof will be published in the **Federal Register.**

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

Dated: December 29, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-282 Filed 1-6-81; 8:45 am]

BILLING CODE 4110-03-M

Food and Drug Administration

21 CFR Part 178

[Docket No. 79F-0318]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Hydrogen Peroxide

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the food additive regulations to provide for the safe use of hydrogen peroxide as a sterilizing agent for polyethylene used in contact with food. This action responds to a food additive petition filed by Brik Pak, Inc.

DATES: Effective January 9, 1981; objections by February 9, 1981.

ADDRESS: Written objections to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Falci, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 21, 1979 (44 FR 54778), FDA announced that a food additive petition (FAP 8H3404) had been filed by Brik Pak, Inc., 2775 Villa Creek Drive, Dallas, TX 75234, to provide for the safe use of hydrogen peroxide as a sterilizing agent for polyethylene used in contact with food.

Hydrogen peroxide is an oxidizing agent with extensive applications. It is generally recognized as safe (GRAS) for use under § 182.1366 *Hydrogen peroxide* as a multiple purpose bleaching agent and under § 182.70 *Substances migrating from cotton and cotton fabrics used in dry food packaging.* Hydrogen peroxide is also regulated as a food additive under § 172.814 *Hydroxylated lecithin,* under § 172.892 *Food starch-modified,* and under § 175.105 *Adhesives.* The standards of identity provide for the use of hydrogen peroxide under Part 133—Cheese and related cheese products and Part 160—Eggs and egg products. FDA has proposed to affirm the GRAS status of hydrogen peroxide as an antimicrobial agent in whey processing. In addition, hydrogen peroxide has been considered effective as an antiseptic agent. In response to FDA's request to evaluate ingredients in drug products without prescription for cleaning and healing of mouth injuries, an expert advisory committee on antimicrobial agents found that hydrogen peroxide was the only substance that could safely and effectively be used for cleaning mouth injuries. A proposed rule based on the recommendations of the Advisory Review Panel on Over-The-Counter Dentrifrice and Dental Care Day Products was published in the **Federal Register** of November 2, 1979 (44 FR 63270).

Hydrogen peroxide has been used outside of the United States in food and on food-packaging materials for the purpose of controlling the growth of microorganisms. In addition to prolonging the shelf-life of dairy products, hydrogen peroxide has been used successfully in the aseptic packaging of shelf-stable food such as milk, fruit juice, soft drinks, and other products.

In February 1980, FDA received a prepublication manuscript from Japan (Ito, Watanabe, and Naito, Department of Cancer Research, Research Institute for Nuclear Medicine and Biology, Hiroshima University, Kasumi 1-2-3, Hiroshima 734, Japan) describing a bioassay of hydrogen peroxide performed using C57B1 mice. The study suggests that hydrogen peroxide may cause cancer in the duodenum after it is administered in the drinking water at 0.1 percent and 0.4 percent in a lifetime mouse feeding study.

In response to the study from Japan, FDA initiated a review of all available safety data on hydrogen peroxide, including the Japanese study and subsequent clarification obtained from the Japanese authors. FDA concludes after this review that there is insufficient evidence from the Japanese study and elsewhere to conclude that hydrogen peroxide is a duodenal carcinogen. The manuscripts of the Japanese study and memoranda of FDA's Cancer Assessment Committee meetings are on public file and may be seen in the Dockets Management Branch, Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

In addition, FDA has considered the issue of exposure to hydrogen peroxide. Under conditions of use approved in this regulation, the level of hydrogen peroxide that will be present in milk packaged in materials sterilized by hydrogen peroxide will be no greater than 100 parts per billion (ppb) at the time of packaging and fall to approximately 1 ppb within 24 hours. FDA has concluded that the proposed use of hydrogen peroxide in sterilizing food packaging will not measurably increase hydrogen peroxide exposure.

In response to the notice of filing, FDA has received four comments. These comments and FDA's responses are summarized below.

1. One comment questioned whether FDA is using or developing reproducible methodology for hydrogen peroxide determination because although many methods are available to measure low levels of hydrogen peroxide, accuracy at high sensitivity varies considerably.

The literature reports a number of assays for hydrogen peroxide with detection limits between 0.1 and 5.0 parts per million (ppm). However, the variability of these methods is difficult to assess at these low detection limits. The petitioner has submitted a method

with validation data that indicates the method can be used to monitor hydrogen peroxide at the 0.1 ppm level in distilled water when it is used to sterilize packaging materials under simulated use conditions. The agency is investigating a number of methods to develop better reliability and sensitivity. At the present time, however, FDA has determined that in view of the fact that hydrogen peroxide is unstable and decomposes in food matrices, the submitted method is sufficient to allow food processors to determine whether their products are in compliance with the 0.1 ppm tolerance.

2. One comment stated that the petitioned additive may result in the contamination of food products by hydrogen peroxide.

FDA has determined that under good manufacturing practices, the minute amount of hydrogen peroxide that might become a component of food as the result of sterilizing the polyethylene food-contact surface would not present a hazard to the public health.

3. One comment stated that in normal usage hydrogen peroxide could be deposited on the outside surface of the packaging material, and that the handling of hydrogen peroxide could be hazardous to employees.

FDA finds that in the use of the petitioned additive, only the food-contact inner surface is exposed to the hydrogen peroxide solution and, therefore, contamination of the outside surface of the packaging material would be limited to edges. FDA also determines that although the sterilization bath containing hydrogen peroxide in the petitioned use is not enclosed, the accompanying exhaust system and subsequent packaging in hot sterile air should minimize hydrogen peroxide contamination in the processing facilities.

In any case, FDA considers the potential exposure to hazardous chemicals in workplaces to be under the jurisdiction of the Occupational Safety and Health Administration (OSHA), Department of Labor. Under the recommendation of the American Conference of Governmental and Industrial Hygienists, OSHA has adopted 1 ppm, or 1.4 milligrams per cubic meter of air, as the permissible exposure to 90 percent hydrogen peroxide in workroom air. The amount of hydrogen peroxide that can escape in the sterilization bath from the petitioned use is below this permissible exposure.

4. One comment inquired whether FDA intends to establish a tolerance for residual hydrogen peroxide on the packaging material.

FDA finds that the potential level of migration of hydrogen peroxide under the condition of use set forth below would not be considered harmful to the public health. However, because the use of hydrogen peroxide in sterilizing packaging material could result in the migration of residues to food, a tolerance is being imposed for hydrogen peroxide when it is used for the packaging of food.

After evaluation of comments, data in the petition, and other relevant material, FDA concludes that Part 178 should be amended as set forth below to include the petitioned additive.

The Director, Bureau of Foods, has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Director's finding of no significant impact and the evidence supporting this finding, contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979; 44 FR 71742) may be seen in the Dockets Management Branch, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner (21 CFR 5.1), Part 178 is amended in Subpart B by adding new § 178.1005, to read as follows:

§ 178.1005 Hydrogen peroxide solution.

Hydrogen peroxide solution identified in this section may be safely used as a sterilizing agent for polyethylene food-contact surfaces.

(a) *Identity.* For the purpose of this section, hydrogen peroxide solution is an aqueous solution containing 30 to 35 percent hydrogen peroxide (CAS Reg. No. 7722–84–1) by volume.

(b) *Optional adjuvant substances.* Hydrogen peroxide solution identified in paragraph (a) of this section may contain substances generally recognized as safe in or on food, substances generally recognized for their intended use in food packaging, substances used in accordance with a prior sanction or approval, and substances permitted by applicable regulations in Parts 174 through 179 of this chapter.

(c) *Specifications.* Hydrogen peroxide solution shall meet the specifications of the Food Chemicals Codex, 2d Ed. (1972)[1] which is incorporated by reference, and the United States Pharmacopeia, except that hydrogen peroxide may exceed the concentration specified therein.

(d) *Limitation.* No use of hydrogen peroxide solution for sterilizing food packaging material shall be considered to be in compliance if more than 0.1 parts per million of hydrogen peroxide can be determined in distilled water packaged under production conditions (assay to be performed immediately after packaging).

(e) *Conditions of use.* (1) Hydrogen peroxide solution identified in and complying with the specifications in this section may be used to treat polyethylene food-contact surfaces complying with § 177.1520 of this chapter, to the extent indicated for and at least equivalent to attaining commercial sterility through thermal process for metal containers as provided in Part 113 of this chapter.

(2) The polyethylene shall be used in articles for packaging commercially sterile foods only of the types identified in § 176.170(c) of this chapter, table 1, under categories I, II, III, IV–B, V, and VI–B.

(3) Processed food packaged with a hydrogen peroxide treated polyethylene article shall conform with Parts 108, 110, 113, and 114 of this chapter, as applicable.

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 9, 1981, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be

[1] Copies may be obtained from the National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20037, or examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective January 9, 1981.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: December 31, 1980.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-893 Filed 1-8-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF STATE

22 CFR Part 51

[Docket No. SD-165]

Person Who May Be Included in One Passport

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department amends its regulations to eliminate the current practice under which the name and photograph of an American citizen child under the age of 13 years may be included in the United States passport issued to the child's parent or sibling. As amended, the regulations require that any citizen needing passport documentation to depart from or enter the United States must be in possession of a valid passport issued in his or her own name. The amendment will not affect the validity of passports issued prior to the effective date of this amendment. The amendment is made as a result of the declining use of family-type passports and the Department's new Travel Document Issuing System which was designed on the concept of one person—one passport.

EFFECTIVE DATE: The rule will become effective on January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Elliott B. Light, Department of State, Office of Citizenship Appeals and Legal Assistance (PPT/C), 2201 C Street, N.W., Washington, D.C. 20520, telephone (202) 632-0896.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking to revise Part 51 was published in the **Federal Register** on November 25, 1980 (45 FR 78163). Interested persons were invited to submit comments concerning the revision by December 26, 1980. No unfavorable comments were received; therefore, the proposed revision is adopted without change, as set forth below.

Part 51 of Title 22 Code of Federal Regulations is amended as follows:

1. Revise § 51.2 to read as follows:

§ 51.2 Passport issued to nationals only.

(a) A United States passport shall be issued only to a national of the United States (22 U.S.C. 212).

(b) Unless authorized by the Department no person shall bear more than one valid or potentially valid U.S. passport at any one time.

§ 51.5 [Deleted]

2. Delete § 51.5.

§ 51.21 [Amended]

3. Delete the current § 51.21(c)(2) including the semi-colon and the word "and", add the word "and" after the semi-colon in § 51.21(c)(1), and renumber the current § 51.21(c)(3) as § 51.21(c)(2).

4. Delete the current § 51.21(d)(2) including the semi-colon and the word "and", add the word "and" after the semi-colon in § 51.21(d)(1), and renumber the current § 51.21(d)(3) as § 51.21(d)(2).

5. Delete the current § 51.21(e) and renumber the current § 51.21(f) as § 51.21(e).

§ 51.22 [Deleted]

6. Delete § 51.22.

7. Revise § 51.23 to be entitled, "Name of applicant to be used in passport" and to read as follows:

§ 51.23 Name of applicant to be used in passport.

The passport application shall contain the full name of the applicant. The applicant shall explain any material discrepancies between the name to be placed in the passport and the name recited in the evidence of citizenship and identity submitted. The passport issuing office may require documentary evidence or affidavits of persons having knowledge of the facts to support the explanation of the discrepancies.

§ 51.25 [Amended]

8. Delete the final sentence of § 51.25(a).

9. Delete the current § 51.25(b) and renumber the current § 51.25(c) as § 51.25(b). Renumber the current § 51.25(d) as § 51.25(c).

§ 51.28 [Amended]

10. Delete the words "or any person to be included" from § 51.28(a).

11. Revise § 51.32 to read as follows:

§ 51.32 Amendment of passports.

Applicants for amendment of a passport shall be made on forms prescribed by the Department.

(Sec. 1, 44 Stat. 887; Sec. 4, 63 Stat. 111, as amended (22 U.S.C. 211a, 2658); E.O. 11295, 36 FR 10603; 3 CFR 1966–70 Comp. p. 507)

Dated: December 29, 1980.

Diego C. Asencio,

Assistant Secretary for Consular Affairs.

[FR Doc. 81-734 Filed 1-8-81; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-80-888]

Project Selection Criteria

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This rule updates 24 CFR Part 200, Subpart N, relating to HUD's evaluation of applications for various assisted housing programs. As of October 1, 1980, the applicable requirements for all programs under the United States Housing Act of 1937 are set forth in the applicable program regulations. Accordingly, 24 CFR Part 200, subpart N, is being amended to delete all references to the United States Housing Act of 1937 and its programs.

EFFECTIVE DATE: January 9, 1981, retroactive to October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Raymond W. Hamilton, Director, Public Housing Development Division, Office of Public Housing, Office of the Deputy Assistant Secretary for Public Housing and Indian Programs, Department of Housing and Urban Development, Washington, D.C. 20410 (202–755–5846). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Part 200, Subpart N, Project Selection Criteria, was published for effect January 7, 1972. This rule amends 24 CFR 200, Subpart N, relating to HUD's evaluation of applications for various assisted housing programs, by deleting all references to the United States Housing Act of 1937 and its programs.

The Public Housing Development regulation 24 CFR 841, published last year for public comment, was revised effective October 1, 1980, and incorporates the requirements for project site selection which are similar to those under the Section 8 Housing Assistance Payments Programs. The

Indian Housing Program was specifically excluded from 24 CFR 200, Subpart N, and the Section 8 programs, which were developed later, were never made subject to it. Therefore, as of October 1, 1980, each program regulation implementing the United States Housing Act of 1937 states the appropriate program site selection requirements. Accordingly, the conforming amendment is being made retroactively effective October 1, 1980 to coincide with the effective date of the Part 841 rule. In addition, because of this retroactivity, the Secretary has requested and obtained waiver of the thirty-day deferral of effective date required by Section 7(o)(3) of the Department of HUD Act.

A finding of inapplicability respecting the National Environmental Policy Act of 1969 was made in accordance with HUD procedures for the revised 24 CFR 841, Public Housing Development regulation. No further finding is necessary since this final rule is merely a conforming amendment.

The rule is not listed in the Department's semi-annual agenda of significant rules; published pursuant to Executive Orders 12044 and 12221.

(Sec. 7(d) Department of HUD Act, 42 U.S.C. 3535(d); U.S. Housing Act of 1937, 42 U.S.C. 1437 et seq.)

Accordingly, 24 CFR 200, Subpart N, is amended to remove all reference to the United States Housing Act of 1937 and its programs as follows:

1. In the listing of "authorities"at the head of Subpart N, the phrase, ", and the U.S. Housing Act of 1937 (42 U.S.C. 1401 et seq.)" is removed.

§ 200.700 [Amended]

2. In Section 200.700, the phrase "; and (d) applications for low-rent housing assistance under the U.S. Housing Act of 1937" is removed.

§ 200.705 [Amended]

3. In § 200.705, in the first sentence, the phrase "; and the U.S. Housing Act of 1937 (42 U.S.C. 1401 et seq.)" is removed.

§ 200.710 [Amended]

4. In § 200.710, in the title, the phrase "and evaulation of applications for low-rent public housing" is removed. In the first sentence of that Section, the phrase "and applications for low-rent public housing" is removed.

5. In § 200.710, in the first sentence of the Evaulation of Requests, the phrase, "*or* evaluation of application for low-rent public housing" is deleted; and the three check points, "[ ] low-rent public housing", "[ ] Public" (under Sponsorship), and "[ ] App. public housing" are removed.

6. Also in § 200.710 in the first paragraph of "General Instructions", the parenthetical phrase in the first sentence, "(25 or more in the case of public housing acquisition or leasing)" is removed. In the next succeeding paragraph, in the second sentence, the following phrases are deleted: "Indian Reservation Housing," and "public housing acquisition or leasing of existing housing of fewer than 25 units not requiring rehabilitation,".

7. Also in § 200.710, under Criterion 6. "Ability to perform", in the last sentence of paragraph (B), the phrase, "or an LHA with no units under management" is removed.

8. Also in § 200.710, under Criterion 8. "Provision for sound housing management":

(a) Subparagraph (A)(2) is removed and subparagraph (A)(1) is revised by removing the "(1)" at the beginning, and by removing the "; or," at the end of the subparagraph.

(b) Subparagraphs (B)(2) and (B)(3) are removed and subparagraph (B)(1) is revised by removing the "(1)" at the beginning, and by removing the "; or," at the end of the subparagraph.

9. In the "Summary of Ratings", the phrase "or low-rent public housing" is removed from the heading of the second column.

Issued at Washington, D.C., November 6, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 81-879 Filed 1-6-81; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Chapter I

Voluntary Agreements Under Section 708 of the Defense Production Act of 1950, as Amended

Cross Reference: For a document that promulgates standards and procedures for these voluntary agreements, see FR Doc. 81-332, appearing under Title 44 in the Rules and Regulations section of this **Federal Register**. This document has been issued by the Federal Emergency Management Agency and concurred in by the Departments of Defense, Interior, Agriculture, Commerce, and Transportation. Refer to the listing for the Federal Emergency Management Agency in the table of contents at the front of this issue to determine the appropriate page number.

BILLING CODE 4210-23-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 260

[SWH-FRL 1721-5]

Hazardous Waste Management System; General and EPA Administered Permit Programs; the Hazardous Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Interim final amendment to rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is today making a number of changes to its May 19, 1980, hazardous waste regulations. First, it is amending the definition of "existing hazardous waste management facility" in §§ 122.3 and 260.10(20) to make it conform to the recently enacted Solid Waste Disposal Act Amendments of 1980 and to clarify the term "construction". Second, EPA is adding a definition of the term "Federal, State or local . . . approvals or permits" to §§ 122.3 and 260.10(20). The absence of such a definition has apparently caused considerable confusion. Finally, it is amending the requirement for a permit prior to construction found in § 122.22(b) to allow new hazardous waste management facilities (other than land disposal facilities and surface impoundments) to commence construction before receiving a permit.

DATES: Effective Date: January 9, 1981. Comment Date: This amendment is promulgated as an interim final rule. The Agency will accept comments on it until March 10, 1981.

ADDRESS: Comments on the amendment should be sent to Docket Clerk [Docket No. 3005], Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For general information contact John H. Skinner, Director, State Programs and Resource Recovery Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755-9107. For further information on implementation contact:

Region I, Dennis Hueber, Chief, Radiation, Waste Management Branch, John F. Kennedy Building,

Boston, Massachusetts 02203 (617) 223-5777
Region II, Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, N.Y. 10007 (212) 264-0504/5
Region III, Robert L. Allen, Chief, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106 (215) 597-0980
Region IV, James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365 (404) 881-3016
Region V, Karl J. Klepitsch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6148
Region VI, R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas Texas 75270 (214) 787-2645
Region VII, Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106 (816) 347-3307
Region VIII, Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203 (303) 837-2221
Region IX, Arnold R. Den, Chief, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105 (415) 556-4606
Region X, Kenneth D. Feigner, Chief, Waste Management Branch, 1200 Sixth Avenue, Seattle, Washington 98101 (206) 442-1260.

SUPPLEMENTARY INFORMATION:

I. Authority

These amendments are issued under the authority of Sections 1006, 2002(a) and 3005 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. §§ 6906, 6912(a) and 6925.

II. Amendments to and Clarification of Definition of "Existing Hazardous Waste Management Facility"

A. Date by Which a Facility Must Have Been in Operation or Commenced Construction

Section 3005(e) of RCRA provides that a hazardous waste management facility will be treated as having been issued a permit (commonly referred to as "interim status") until final action is taken on its permit application if, among other things, it was "in existence" on a date set forth in the statute. In its May 19, 1980, hazardous waste regulations, EPA used the term "existing hazardous waste management facility" to identify those facilities which met this requirement and defined the term to include a facility which was in operation, or for which construction had commenced, "on or before October 21, 1976", the then-controlling statutory date. *See* §§ 122.3 and 260.10, 45 FR 33074 and 33421.

On October 21, 1980, RCRA was amended to extend interim status to facilities in existence "on November 19, 1980." See Section 10 of the Solid Waste Disposal Act Amendments of 1980 (Pub. L. 96-482). See also 45 FR 67756 (October 14, 1980). EPA is today amending its regulatory definition of "existing hazardous waste management facility" to conform to this amendment.

B. Clarification of the Definition of "Commenced Construction"

As noted above, EPA's May 19, 1980, definition of "existing hazardous waste management facility" included facilities for which "construction had commenced" by October 21, 1976 (now November 19, 1980). The definition further provided that EPA would consider construction of a facility to have commenced if:

(a) The owner or operator had obtained all necessary Federal, State and local preconstruction approvals or permits; and

(b)(1) A continuous physical, on-site construction program had begun, or

(2) The owner or operator had entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for construction of the facility to be completed within a reasonable time.

The term "physical construction" was in turn defined as "excavation, movement of earth, erection of forms or structures or similar activity to prepare a [hazardous waste management] facility to accept hazardous waste". *See* § 122.3.

Since their promulgation, EPA has been asked three major questions about these two requirements:

(1) Does the term "contractual obligations . . . for construction" in paragraph (b)(2) refer to contractual obligations for physical construction or something less than physical construction (e.g., design and engineering studies)?

(2) In determining whether he will incur a "substantial loss" within the meaning of paragraph (b)(2), does the owner or operator of a facility measure his potential loss against the total cost of physical construction of the facility or against all costs associated with building the facility (e.g., physical construction costs, engineering and design studies, permit application and processing fees)?

(3) Does the term "necessary Federal, State and local preconstruction approvals or permits" in paragraph (a) include building, zoning and similar permits and approvals required under laws and ordinances other than hazardous waste laws or statutes? The answers to these and two related questions are presented below.

1. *"Contractual Obligations . . . for Construction".* The word "construction" in the phrase "contractual obligations . . . for construction" in paragraph (b)(2) has apparently confused some readers because of the absence of the qualifying adjective "physical" (as in paragraph (c)(1)). We think it is clear from the preamble to EPA's May 19 regulations that this term was intended to cover only *physical* construction. First, the preamble noted that the definition of "commenced construction" was derived largely from EPA's Prevention of Significant Deterioration (PSD) regulations issued under the Clean Air Act. Those regulations define the term "construction" in the counterpart to paragraph (b) as "fabrication, erection, installation or modification of a source". 40 CFR 52.21(b)(7). Second, the May 19 preamble expressly stated that options to purchase or contracts for feasibility, engineering or design studies would not constitute contractual obligations within the meaning of paragraph (b)(2). 45 FR 33324.

To avoid any future confusion on this point and to clarify in the regulatory language the intent explained in the preamble, the definition of "hazardous waste management facility" is being amended so that the term "physical construction" is used throughout.

2. *"Substantial loss".* In the preamble to its May 19 regulation, EPA stated that, in general, if the amount an owner or operator must pay to cancel construction agreements exceeded 10% of the "total project cost", the loss would be deemed "substantial" within the meaning of paragraph (b)(2). 45 FR 33324. By "total project cost", EPA meant the total cost incurred for physical construction of the project, not all costs that might be associated with the project. The consistent use of the term "physical construction" in the definition of "commenced construction" should make this clear.

3. *"All Necessary Federal, State and Local Preconstruction Approvals or Permits".* In its May 19, 1980, regulations, EPA did not define the term "all necessary Federal, State or local preconstruction approvals or permits" in paragraph (a) of the definition of "commenced construction." The absence of such a definition has apparently caused considerable confusion. Some readers of the May 19 regulations, focusing on the adjective "all", have construed the term as

encompassing all Federal, State or local permits necessary to break ground at a hazardous waste management facility, including building and zoning permits. Other readers, relying on the statement in the May 19 preamble that the definition of "commenced construction" was derived from EPA's PSD regulations, have construed the term as applying only to permits and approvals required under Federal, State or local hazardous waste statutes and regulations (just as the PSD regulations apply only to Federal or State air quality control laws and regulations). This confusion has been further compounded by the fact that EPA has given conflicting advice on exactly what permits and approvals are required.

EPA is today adding a definition of "Federal, State or local . . . approvals or permits" to make it clear that, similar to EPA's PSD regulations, the permits and approvals required under paragraph (a) of the definition of "commenced construction" are those required under Federal, State or local "hazardous waste control laws or regulations." This latter phrase is intended to cover permits required under any Federal, State, or local law which is intended to control the management of hazardous waste as defined under RCRA, including not only State and local hazardous waste legislation and ordinances but also other environmental statutes, if those laws are designed to regulate the treatment, storage or disposal of hazardous wastes,[1] or the siting of hazardous waste management facilities.

Even though a facility may not be required to obtain State or local building or zoning permits prior to November 19, 1980, in order to be deemed to have "commenced construction" under EPA's regulations, this in no way relieves the facility from having to obtain whatever approvals or permits are necessary under Federal, State or local laws to actually commence construction. In some situations, failing to obtain these permits may prevent a facility from meeting the requirements of paragraph (b) of the definition of "commenced construction"—e.g., the facility may be unable to begin a continuous on-site physical construction program prior to November 19, 1980. If this is the case, the facility cannot qualify for interim status.

Some facilities which obtained necessary State or local hazardous waste or solid waste preconstruction permits but not local zoning or building permits, before November 19, 1980, may not have notified under Section 3010 (if applicable) or filed Part A of their permit application, believing that they were not eligible for interim status. Consistent with EPA's November 19, 1980, policy statement concerning "late" interim status (see 45 FR 76633), such facilities may qualify for interim status if (1) they meet the requirements of paragraph (b) in the definition of "commenced construction" and (2) they file a complete Part A permit application by July 9, 1981 or before they commence operations, whichever first occurs.

4. *Other Issues.*—a. A number of persons have asked whether a facility which obtained all necessary Federal, State and local preconstruction permits and *completed* construction (but did not commence operations) prior to November 19, 1980, has "commenced construction". Although the May 19, 1980, regulations do not expressly address this issue, we think that any reasonable reading of the definition of "commenced construction" would compel this result. In order to have completed construction by November 19, 1980, a facility clearly must have "begun a continuous program of physical on-site construction" before that date.

This interpretation of the definition of "existing hazardous waste management facility" will no doubt allow a number of product storage and non-hazardous waste management facilities which, prior to November 19, 1980, were being converted into hazardous waste management facilities, to qualify for interim status. We see no reason not to permit these converted facilities to continue to operate if they have obtained any necessary preconstruction permits required for modification of the facility and have otherwise demonstrated an intent to handle hazardous waste prior to November 19, 1980. See 45 FR 78633–76634 (November 19, 1980).

b. Many manufacturing and production plants have facilities for treating, storing or disposing of hazardous waste on the plant's premises. Because the definition of hazardous waste management facility includes not only treatment, storage and disposal operational units, but also "all contiguous land structures, other appurtenances and improvements on the land used for treating, storing or disposing of waste" (se § 122.3), a number of persons have questioned whether the requirements of paragraphs (a) and (b) in the definition of "existing hazardous waste management facility" apply to the manufacturing or production plant as well as the hazardous waste operational unit.

The answer is no. Paragraphs (a) and (b) apply only to those parts of a manufacturing plant directly used for "treating, storing or disposing of hazardous waste." They do not apply to production facilities, product storage areas, non-hazardous waste treatment, storage or disposal units or other parts of the plant not used for managing hazardous waste.[2]

III. Amendment to Requirement for a Permit Prior to Construction

Section 122.22(b) of the May 19, 1980, regulations prohibited any person from beginning physical construction of a new hazardous waste management facility without having received a final RCRA permit. The rationale for this prohibition was that a permit writer would be in a better position to incorporate location, design and construction requirements (see Section 3004(4)) in a new facility permit if permit decisions were made before the owner or operator made a substantial and irrevocable commitment to the location, design and construction of a facility. See 45 FR 33322 (May 19, 1980). As Congress has recently noted, there may be "practical and technical limitations in modifying or retrofitting" a facility once construction has commenced. See H.R. Rep. No. 96–1444, 96th Cong., 2d Sess. 33–34 (1980).

At the time EPA published § 122.22(b), the Agency intended to promulgate its Part 264 facility-specific technical permitting regulations ("Phase II standards") on or before November 19, 1980, the effective date of its May 19, 1980, regulations. Thus, the § 122.22(b) ban on the construction for new facilities would last for at most six months.

It is now clear, however, that some of the Phase II standards will not be promulgated even by the end of 1980. Regulations for hazardous waste incinerators are not scheduled to be issued until mid-January 1981; the standards for land disposal facilities are not scheduled to be published until January, and they also may be reproposed in whole or in part. The effect of these delays is to prevent any new hazardous waste management facility from commencing construction

[1] For example, some States regulate waste pesticides under agricultural statutes, wastewater treatment sludges under water pollution control statutes and hazardous waste incinerators under air pollution control laws.

[2] Readers should note that areas at the site of generation used for the short-term storage of hazardous waste are not required to obtain permits and therefore are not subject to the requirements of paragraphs (a) and (b). See § 262.34, as amended by 45 FR 76624 (November 19, 1980).

until mid-July 1981 at the earliest.[3] Depending on the speed with which EPA and the States can issue permits, some facilities may not be able to begin construction until much later.

This situation may have adverse environmental consequences. New hazardous waste management facilities that are constructed in anticipation of RCRA requirements will probably provide better safeguards for human health and the environment than many existing facilities. In fact, EPA expects that a number of existing facilities will not be able to meet the Phase II standards and eventually will be denied a permit and forced to terminate operation. New facilities will be needed to replace the capacity shortfall caused by the closure of such existing facilities. In the absence of replacement capacity, generators will have difficulty finding a place to treat, store or dispose of hazardous wastes.

For these reasons, while EPA believes that the prohibition on construction in § 122.22(b) serves an important environmental objective, it recognizes that this requirement needs to be adjusted during the period that EPA cannot issue permits because its Phase II regulations have not become effective. Therefore, EPA is today amending § 122.22(b) so that, after November 19, 1980, and until the effective date of the Phase II standards applicable to his operations, a person may begin physical construction of a hazardous waste management facility (other than a land disposal facility or surface impoundment) *at his own risk* before being issued an RCRA permit, provided that he obtains any other Federal, State or local permits or approvals necessary to begin physical construction and submits Part A of his permit application prior to beginning physical construction. Section 122.22(b) is being further modified to allow construction to continue after the effective date of the Phase II regulations if the facility has submitted Part B of the permit application on or before such effective date (or on a later date specified by the Administrator).

These amendments to § 122.22(b) apply only to persons who make a commitment to completion of physical construction of a facility within a reasonable time. The purpose here is to limit this provision to those persons who begin "legitimate" physical construction in the period from November 19, 1980, until the effective date of Phase II. Such a commitment could be demonstrated through a continuous on-site, physical construction program or through the establishment of contractual obligations for completion of physical construction. Thus persons who simply make a "token" effort towards physical construction (such as ground breaking with no firm commitment to completion within a reasonable time period) would not be exempted from the requirement to obtain an RCRA permit prior to completing physical construction of the facility. By imposing these restrictions, EPA intends to avoid delaying legitimate construction activities without providing a major loophole to the important requirement of obtaining a permit before initiating physical construction.

Readers should note that the terms and words used in this amendment are identical to the terms and words used in the amended definition of "existing hazardous waste management facility" and should be interpreted in a similar manner.

The new provisions apply to all new hazardous waste management facilities except landfills, surface impoundments, injection wells, or land treatment facilities. These facilities will still be required to obtain a RCRA permit before beginning physical construction. The adverse health and environmental impacts of facilities that treat, store or dispose of hazardous waste in or on the land are strongly dependent on the hydrogeology of the site and the proximity to surface waters and ground waters. Certain locations may be totally unacceptable for such facilities no matter how well designed, constructed or operated. Therefore EPA believes that commitment to particular locations, or to particular designs in particular locations must not be made until there is a thorough evaluation of the design and location through the permitting process.

At some hazardous waste management disposal facilities, wastes are stored or treated (through chemical or physical fixation or stabilization or through other processes) prior to disposal. Under this amendment, physical construction of such storage or treatment process could begin before issuance of a permit. Only those parts of the facility that directly involve the placement of hazardous waste in or on the land would require an effective permit before beginning physical construction.

It should be noted that for those facilities for which physical construction may begin prior to the effective date of Phase II, actual operation must not begin until a permit is issued and becomes effective. Furthermore, owners and operators of such facilities are starting physical construction *at their own risk*. EPA (or the State) may ultimately determine that a partially constructed facility (even one constructed using the Phase II standards as guidance) must be modified or relocated to meet those standards. If the facility is unable or unwilling to make these changes, the Agency (or State) will deny its permit. EPA does not intend to allow financial commitments made during this period to deter RCRA's objective of assuring protection of human health and the environment.

[3] Although EPA is prepared to begin processing permit applications as soon as its Phase II regulations are published, those permits cannot become effective until the regulations on which they are based become effective.

IV. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after the promulgation date. The purpose of Section 3010(b) is to allow persons handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements.

The amendments to the definition of "existing hazardous waste management facility" in §§ 260.10(20) and 122.3 are designed to bring EPA's regulations into conformance with new legislation or with the intent expressed in the preamble to the Agency's May 19, 1980, regulations. They impose no new regulatory requirements. For these reasons, EPA thinks a delayed effective date for these regulations is unnecessary and is making them effective immediately.

For the amendments to § 122.22(b), the Agency believes that an effective date six months after promulgation would frustrate the objective of the amendment, which is to allow certain types of hazardous waste management facilities to commence construction immediately and thereby reduce the potential for a capacity shortfall caused by the closure of existing facilities and a construction moratorium on new ones. In addition, these amendments impose no new regulatory requirements on new facilities; indeed, they relax existing ones.

V. Interim Final Promulgation

Although EPA would prefer to go through formal rulemaking before publishing the amendments to § 122.22(b), the Agency believes there is good cause for not providing notice and opportunity for comment on them prior to promulgation. (See Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B)). As noted above, a significant delay in promulgating these amendments is likely to have adverse consequences for human health and the environment.

VI. Regulatory Impacts

EPA believes that the effect of the amendments to § 122.22(b) will be to reduce the overall cost and economic impact of EPA's hazardous waste management regulations. This is achieved by allowing many facilities to proceed with construction now and thus avoid potentially higher construction costs in the future. The Agency is unable to estimate the cost and impact reduction because it does not have an estimate of the number of facilities that will be affected by these amendments; nor does it know if any of these savings will be offset by the higher costs of retrofitting these facilities in the event that they are not properly designed or constructed.

Dated: December 31, 1980.

Douglas M. Costle,

Administrator.

Title 40 of the Code of Federal Regulations is amended to read as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; THE HAZARDOUS WASTE PERMIT PROGRAM; AND THE UNDERGROUND CONTROL PROGRAM

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The definitions of "Existing hazardous waste management facility" in § 260.10 and "Existing HWM facility" in § 122.3 are revised to read as follows:

§§ 260.10 and 122.3 [Amended]

"Existing hazardous waste management (HWM) facility" or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(b)(1) A continuous on-site, physical construction program has begun; or

(2) The owner or operator has entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for physical construction of the facility to be completed within a reasonable time.

2. The following definition is added to §§ 260.10 and 122.3: "Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

3. section 122.22(b) is revised to read as follows:

§ 122.22 [Amended]

* * * * *

(b) *New HWM facilities* (1) Except as provided in paragraph (b)(3) of this section, no person shall begin physical construction of a new HWM facility without having submitted Part A and Part B of the permit application and received a finally effective RCRA permit.

(2) An application for a permit for a new HWM facility (including both Part A and Part B) may be filed any time after promulgation of those standards in Part 264, Subpart I et seq. applicable to such facility. The application shall be filed with the Regional Administrator if at the time of application the State in which the new HWM facility is proposed to be located has not recieved Phase II interim authorization for permitting such facility or final authorization; otherwise it shall be filed with the State Director. Except as provided in paragraph (b)(3) of this section, all applications must be submitted at least 180 days before physical construction is expected to commence.

(3) After November 19, 1980, but prior to the effective date those of those standards in Part 264, Subpart I et seq., which are applicable to his facility, a person may begin physical construction of a new HWM facility, except for landfills, injection wells, land treatment facilities or surface impoundments (as defined in 40 CFR 260.10), without having received a finally effective RCRA permit, if prior to beginning physical construction, such person has:

(i) Obtained the Federal, State and local approvals or permits necessary to begin physical construction,

(ii) Submitted Part A of the permit application, and

(iii) Made a commitment to complete physical construction of the facility within a reasonable time.

Such person may continue physical construction of the new HWM facility after the effective date of the permitting standards in Part 264, Subpart I et seq. applicable to his facility if he submits Part B of the permit application on or before the effective date of such standards (or on some later date specified by the Administrator). Such person must not operate the new HWM facility without having received a finally effective RCRA permit.

[FR Doc. 81-831 Filed 1-8-81; 8:45 am]

BILLING CODE 6560-30-M

DEPARTMENT OF THE INTERIOR

43 CFR Subtitle A

Voluntary Agreements Under Section 708 of the Defense Production Act of 1950, as Amended

Cross Reference: For a document that promulgates standards and procedures for these voluntary agreements, see FR Doc. 81-332, appearing under Title 44 in the Rules and Regulations section of this **Federal Register.** This document has been issued by the Federal Emergency Management Agency and concurred in by the Departments of Defense, Interior, Agriculture, Commerce, and Transportation. Refer to the listing for the Federal Emergency Management Agency in the table of contents at the front of this issue to determine the appropriate page number.

BILLING CODE 4210-23-M

Bureau of Land Management

43 CFR Public Land Order No. 5806

[NM-18881]

New Mexico; Revocation of Public Land Order 4863

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes Public Land Order No. 4863 in its entirety which withdrew land for the Navajo Indian Irrigation Project.

EFFECTIVE DATE: February 5, 1981.

FOR FURTHER INFORMATION CONTACT: Stella Gonzales, New Mexico State Office, 505-988-6211.

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. Public Land Order No. 4863 of July 6, 1970, which withdrew the following described public land for the Navajo Indian Irrigation Project is hereby revoked in its entirety:

New Mexico Principal Meridian

T. 29 N., R. 9 W.,
Sec. 36, SE¼SE¼.

The area described contains 40 acres in San Juan County.

2. At 10 a.m., on February 5, 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 February 5, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m., on February 5, 1981, the land will be open to location under the U.S. mining laws, and to applications and offers under the mineral leasing laws for all minerals except oil and gas and other hydrocarbon substances, helium and carbon dioxide.

Oil and gas and other hydrocarbon substances, helium and carbon dioxide with the right to prospect for, mine and remove same were retained by the State of New Mexico when the land was reconveyed to the United States.

Inquiries concerning the land should be addressed to the Chief, Division of Technical Services, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501.

Guy R. Martin,

Assistant Secretary of the Interior.

December 31, 1980.

[FR Doc. 81-810 Filed 1-8-81; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 332

[Docket No. FEMA PP-44-332]

Voluntary Agreements: Standards and Procedures

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency with the concurrence of the United States Department of Agriculture, Department of Defense, Department of the Interior, Department of Commerce and Department of Transportation is issuing standards and procedures relating to the voluntary agreements under section 708 of the Defense Production Act of 1950, as amended. The Attorney General, after consultation with the Chairman of the Federal Trade Commission, has granted his approval. The regulation sets out standards and procedures for developing these agreements, carrying them out, including the conduct of meetings, terminating or modifying the agreements and public access to records and meetings. Antitrust immunity may be given to representatives of industry or other interests who, under prescribed conditions and with appropriate governmental approval, enter into these voluntary agreements to help provide for the defense of the United States.

EFFECTIVE DATE: January 9, 1981.

ADDRESS: Resources Preparedness Office, Office of Plans and Preparedness, Federal Emergency Management Agency, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Messrs. M. Arnold Marvin or Clair Blong, Resources Management Division, FEMA (202-566-1324).

SUPPLEMENTARY INFORMATION: Proposed regulations were published in the **Federal Register** on December 12, 1979, and comments were due by February 11, 1980. The regulation was proposed to be codified at 32A CFR Part 166. However, as of July 1, all FEMA regulations in Title 32A of CFR were transferred to Title 44 CFR. This regulation therefore has been redesignated as 44 CFR Part 332.

No comments were received from the public. The Assistant Attorney General, Antitrust Division, required clarifying amendments to § 332.2(e)(1) and (3) which have been made.

Subsection 708(c)(1) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2158), hereinafter referred to as DPA, provides that:

> * * * Upon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President may consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements to help provide for the defense of the United States through the development of preparedness programs and expansion of productive capacity and supply beyond levels needed to meet essential civilian demand in the United States.

The authority of the President delegated to the Administrator of General Services by Section 501 of Executive Order 10480, as amended by Executive Order 11956, and pursuant to Section 1 of Executive Order 12148, has been transferred to the Director of the Federal Emergency Management Agency. This authority, subject to the direction and control of the Director of FEMA, has also been delegated to the Secretaries of Defense, the Interior, Agriculture, Commerce, and Transportation, except that for the purpose of carrying out the objectives of Title I of the DPA concerning priority performance of contracts and orders and allocations of materials and facilities, the authority may be exercised only by the Director of the Federal Emergency Management Agency.

Under subsection 708(e) of the DPA, the director of FEMA has authority to promulgate rules by which these voluntary agreements may be developed and carried out. The following rules, establishing the basic framework for the development and carrying out of voluntary agreements, have been concurred in by the action agencies for voluntary agreements. These are the United States Department of Agriculture, Department of Defense, Department of the Interior, Department of Commerce, and the Department of Transportation. The Attorney General, pursuant to Section 708(e)(1), has approved the regulation. These rules are arranged in a chronological manner from initiation of events to development of a voluntary agreement to the carrying out of an approved voluntary agreement. It should be noted that these rules apply only to the development and carrying out of voluntary agreements to effectuate the purposes of the DPA and do not apply to the development or carrying out of voluntary agreements under the Energy Policy and Conservation Act.

In addition to the requirements of these rules, once adopted, certain other requirements may pertain to the development or carrying out of voluntary agreements to effectuate the purposes of the DPA. Section 708(i) of the DPA directs the Attorney General and the Chairman of the Federal Trade Commission to promulgate such rules as each deems necessary or appropriate to carry out his responsibility under Section 708 of the DPA.

It is necessary to continue in effect certain existing voluntary agreements which expire in the near future. Hence, for good cause, this rule is made effective immediately upon publication.

A finding of Inapplicability of Section 102(2)(c) of the National Environmental Policy Act of 1969 has been made in accordance with 44 CFR Part 10. Interested parties may obtain and inspect copies of this Finding of Inapplicability at the Office of the Rules Docket Clerk of the Federal Emergency Management Agency in Washington, D.C. 20472.

The regulation is in consonance with the provision of the Executive Order 12044 dated March 23, 1978, and does not impose an unnecessary burden on the small business sector of the economy.

This regulation essentially is administrative in nature. It does not impact, adversely, on the central cities, suburban communities, nor non-metropolitan communities. As provided in Executive Order 12044, March 23, 1978, this regulation does not have any significant economic consequence on the general economy, individual industries, geographic regions or levels of government.

Accordingly, subchapter E of Chapter 1, Title 44 Code of Federal Regulations is amended by adding a new Part 332 as follows:

PART 332—VOLUNTARY AGREEMENTS UNDER SECTION 708 OF THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED

Sec.

332.1 General provisions.
332.2 Developing voluntary agreements.
332.3 Carrying out voluntary agreements.
332.4 Termination or modifying voluntary agreements.
332.5 Public access to records and meetings.

Authority: Sec. 708, Defense Production Act of 1950, as amended (50 U.S.C. App. 2158); E.O. 10480, 3 CFR 1949–1953 Comp. p. 961, as amended; E.O. 12148, 44 FR 43239.

§ 332.1 General provisions.

(a) Pursuant to Section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2158), the President may consult with representatives of industry, business, financing, agriculture, labor, or other interests, and may approve the making of voluntary agreements to help provide for the defense of the United States by developing preparedness programs and expanding productive capacity and supply beyond levels needed to meet essential civilian demand.

(b) *Sponsor.* (1) As used in this Part, "sponsor" of a voluntary agreement is an officer of the Government who, pursuant to a delegation or redelegation of the functions given to the President by Section 708 of the Defense Production Act (DPA) of 1950, as amended, proposes or otherwise provides for the development or carrying out of a voluntary agreement.

(2) The use of voluntary agreements, as authorized by Section 708 of the DPA to help provide for the defense of the United States through the development of preparedness programs, is an activity coordinated by the Director of the Federal Emergency Management Agency, as provided by Sections 101 and 501(a) of Executive Order 10480, as amended.

(3) The sponsor of a voluntary agreement shall carry out sponsorship functions subject to the direction and control of the Director of the Federal Emergency Management Agency.

(c) This Part applies to the development and carrying out under Section 708 of the DPA, as amended, of all voluntary agreements, and the carrying out of any voluntary agreement which was entered into under former Section 708 of the DPA and in effect immediately prior to April 14, 1976, and which is in a period of extension as authorized by subsection 708(f)(2) of the DPA.

(d) The rules in the Part void any provision of a voluntary agreement to which they apply, if that provision is contrary to or inconsistent with them. Each voluntary agreement shall be construed as containing every substantive provision that these rules require, whether or not a particular provision is included in the agreement.

(e) Pursuant to subsection 708(d) of the DPA, the sponsor may establish such advisory committees as he deems to be necessary for developing or carrying out voluntary agreements. Such advisory committees shall comply with this Part as well as with the requirements and procedures of the Federal Advisory Committee Act (Pub. L. 92–463, as amended).

§ 332.2 Developing voluntary agreements.

(a) *Purpose and scope.* This section establishes the standards and procedures by which voluntary agreements may be developed through consultation, pursuant to subsection 708(c) of the DPA.

(b) *Proposal to develop an agreement.* (1) A sponsor who wishes to develop a voluntary agreement shall submit to the Attorney General and the Director of the Federal Emergency Management Agency a document proposing the agreement. The proposal will include statements as to: the purpose of the agreement; the factual basis for making the finding required in subsection 708(c)(1) of the DPA; the proposed participants in the agreement; and any coordination with other Federal agencies accomplished in connection with the proposal.

(2) If the Attorney General, after consultation with the Chairman of the Federal Trade Commission, approves this proposal, the sponsor shall then initiate one or more meetings of interested persons to develop the agreement.

(c) *Conduct of meetings held to develop the agreement.* (1) The sponsor shall give to the Attorney General, the Chairman of the Federal Trade Commission, and the Director of the Federal Emergency Management Agency adequate written notice of each meeting to develop a voluntary agreement. The sponsor shall also publish in the **Federal Register** notice of the time, place, and nature of each meeting at least seven days prior to the meeting.

(2) The sponsor shall chair each meeting held to develop a voluntary agreement. Both the Attorney General and the Chairman of the Federal Trade Commission, or their delegates, shall attend each of these meetings.

(3) Any interested person may attend a meeting held to develop a voluntary agreement, unless the sponsor of the agreement limits attendance pursuant to Section 5 of this Part.

(4) Any interested person may, as set out in the **Federal Register** meeting notice, submit written data and views concerning the proposed voluntary agreement, and at the discretion of the Chairman of the meeting, may be given the opportunity for oral presentation.

(d) *Maintenance of records.* (1) The sponsor is responsible for the making of a full and verbatim transcript of each meeting. The Chairman shall send this transcript, and any voluntary agreement resulting from the meeting, to the Attorney General, the Chairman of the Federal Trade Commission, the Director of the Federal Emergency Management Agency, and any other party or repository required by law.

(2) The sponsor of a voluntary agreement shall maintain each meeting transcript and voluntary agreement, and make them available for public inspection and copying the extent required by Section 5 of this Part.

(e) *Effectiveness of agreements.* The following steps must occur before a new voluntary agreement or an extension of an existing agreement may become effective:

(1) The sponsor must approve the agreement and certify in writing that it is necessary to carry out the purposes of subsection 708(c)(1) of the DPA;

(2) The Director of the Federal Emergency Management Agency must approve this certification, and submit it to the Attorney General with a request for a written finding; and

(3) The Attorney General, after consulting with the Chairman of the Federal Trade Commission, must issue a written finding that the purposes of subsection 708(c)(1) can not reasonably be achieved through a voluntary agreement having less anti-competitive effects or without any voluntary agreement.

§ 332.3 Carrying out voluntary agreements.

(a) *Purpose and scope.* This section establishes the standards and procedures by which the participants in each approved voluntary agreement shall carry out the agreement.

(b) *Participants.* The participants in each voluntary agreement shall be reasonably representative of the appropriate industry or segment of that industry.

(c) *Conduct of meetings held to carry out an agreement.* (1) The sponsor of a

voluntary agreement shall initiate, or approve in advance, each meeting of the participants in the agreement held to discuss problems, determine policies, recommend actions, and make decisions necessary to carry out the agreement.

(2) The sponsor shall provide to the Attorney General, the Chairman of the Federal Trade Commission, and the Director of the Federal Emergency Management Agency adequate prior notice of the time, place, and nature of each meeting, and a proposed agenda of each meeting. The sponsor shall also publish in the **Federal Register**, reasonably in advance of each meeting, a notice of time, place, and nature of the meeting. If the sponsor has determined, pursuant to Section 5 of this Part, to limit attendance at the meeting, the sponsor shall publish this **Federal Register** notice within ten days of the meeting.

(3) Any interested person may attend a meeting held to carry out a voluntary agreement unless the sponsor has restricted attendance pursuant to Section 5 of this Part. A person attending a meeting under this section may present oral or written data, views, and arguments to any limitations on the manner of presentation that the sponsor may impose.

(4) No meeting shall be held to carry out any voluntary agreement unless a Federal employee, other than an individual employed pursuant to 5 U.S.C. 3109, is in attendance. Any meeting to carry out a voluntary agreement may be attended by the sponsor of the agreement, the Attorney General, the Chairman of the Federal Trade Commission, the Director of the Federal Emergency Management Agency, or their delegates.

(5) Notwithstanding any other provision of this section, a meeting between a single participant and the sponsor solely to deliver or exchange information is not subject to the requirements and procedures of this section, provided that a copy of the information is promptly delivered to the Attorney General, the Chairman of the Federal Trade Commission, and the Director of the Federal Emergency Management Agency.

(d) *Maintenance of records.* (1) The participants in any voluntary agreement shall maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications among themselves or with any other member of their industry, related to the carrying out of the voluntary agreement. The participants shall agree, in writing, to make available to the sponsor, the Attorney General, the Chairman of the Federal Trade Commission and the Director of the Federal Emergency Management Agency for inspection and copying at reasonable times and upon reasonable notice any item that this section requires them to maintain.

(2) Any person required by this paragraph to maintain records shall indicate specific portions, if any, that such person believes should not be disclosed to the public pursuant to Section 5 of this Part, and the reasons therefor. Any item made available to a Government official named in this paragraph shall be available from that official for public inspection and copying to the extent set forth in Section 166.5 of this Part.

§ 332.4 Termination or modifying voluntary agreements.

The Attorney General may terminate or modify a voluntary agreement, in writing, after consultation with the Chairman of the Federal Trade Commission and the sponsor of the agreement. The sponsor of the agreement, with the concurrence of or at the direction of the Director of the Federal Emergency Management Agency, may terminate or modify a voluntary agreement, in writing, after consultation with the Attorney General and the Chairman of the Federal Trade Commission. Any person who is a party to a voluntary agreement may terminate his participation in the agreement upon written notice to the sponsor. Any antitrust immunity conferred upon the participants in that agreement by subsection 708(j) of the DPA shall not apply to any act or omission occurring after the termination of the voluntary agreement. Immediately upon modification of a voluntary agreement, no antitrust immunity shall apply to any subsequent act or omission that is beyond the scope of the modified agreement.

§ 332.5 Public access to records and meetings.

(a) Interested persons may, pursuant to 5 U.S.C. 552, inspect or copy any voluntary agreement, minutes of meetings, transcripts, records, or other data maintained pursuant to these rules.

(b) Except as provided by paragraph (c) of this section, interested persons may attend any part of a meeting held to develop or carry out a voluntary agreement pursuant to these rules.

(c) The sponsor of a voluntary agreement may withhold material described in this section from disclosure and restrict attendance at meetings only on the grounds specified in:

(1) Section 552(b)(1) of 5 U.S.C., which applies to matter specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy. This section shall be interpreted to included matter protected under Executive Order 12065, dated June 28, 1978 (3 CFR 1979–1975 Comp. p. 678), establishing categories and criteria for classification; and

(2) Section 552(b)(3) of 5 U.S.C., which applies to matter specifically exempted from disclosure by statute; and

(3) Section 552(b)(4) of 5 U.S.C., which applies to trade secrets and commercial or financial information obtained from a person as privileged and confidential.

Dated: October 20, 1980.

John W. Macy, Jr.,

Director.

Department of Transportation, Office of the Secretary

For the United States Department of Transportation, I concur in the attached regulations of the Federal Emergency Management Agency (FEMA) implementing section 708 of the Defense Production Act of 1950, as amended, entitled "Voluntary Agreements: Standards and Procedures" (Docket No. FEMA PP–44–332) to be codified as 44 CFR Part 332.

Issued in Washington, D.C. on November 21, 1980.

Neil Goldschmidt,

Secretary of Transportation.

Department of the Interior

The Department of Interior has concurred in the regulations on Voluntary Agreements in 44 CFR Part 332.

Dated: December 22, 1980.

Joseph W. Gorrell,

Acting Assistant Secretary, Energy and Minerals.

Department of Defense

The Department of Defense has concurred in the regulations on Voluntary Agreements in 44 CFR Part 332.

Dated: November 18, 1980.

Walter La Berge

Under Secretary of Defense for Research and Engineering.

Department of Commerce

The Department of Commerce has concurred in the regulations on Voluntary Agreements in 44 CFR Part 332.

Dated: November 14, 1980.

Phillip W. Klutznick.

Department of Agriculture

The Department of Agriculture has concurred in the regulations on

Voluntary Agreements in 44 CFR Part 332.

Dated: December 5, 1980.

Jim Williams,

Acting Secretary.

[FR Doc. 81-332 Filed 1-8-81; 8:45 am]

BILLING CODE 4210-23-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

Correction

In FR Doc. 80-40278 appearing at page 85027 in the issue for Wednesday, December 24, 1980, make the following corrections:

(1) In the "For Further Information Contact" paragraph, Norman B. Blumenthal's telephone number should have read "(202) 632-6990".

(2) On page 85027, in the third column, the last eight lines of the column should have appeared at the bottom of the middle column immediately above footnote 1.

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Subtitle A

Voluntary Agreements Under Section 708 of the Defense Production Act of 1950, as Amended

Cross Reference: For a document that promulgates standards and procedures for these voluntay agreements, see FR Doc. 81-332, appearing under Title 44 in the Rules and Regulations section of this **Federal Register**. This document has been issued by the Federal Emergency Management Agency and concurred in by the Departments of Defense, Interior, Agriculture, Commerce, and Transportation. Refer to the listing for the Federal Emergency Management Agency in the table of contents at the front of this issue to determine the appropriate page number.

BILLING CODE 4210-23-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 33

Sport Fishing; National Wildlife Refuges in Florida, Georgia, and South Carolina

AGENCY: Fish and Wildlife Service.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to sport fishing of certain National Wildlife Refuges in Florida and Georgia 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 condition under which sport fishing will be permitted on these areas during the 1981 fishing season.

DATES: Effective on date of publication through calendar year 1981.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

Donald J. Hankla, Area Manager, U.S. Fish and Wildlife Service, 15 N. Laura Street, Jacksonville, Florida 32202. Telephone: 904-701-2267.

John P. Davis, Refuge Manager, Savannah (and Blackbeard Island) National Wildlife Refuge, P.O. Box 8487, Savannah, Georgia 31412. Telephone: 912-944-4415.

Del Pierce, Refuge Manager, J. N. "Ding" Darling National Wildlife Refuge, P.O. Drawer B, Sanibel, Florida 33957. Telephone: 813-472-1100.

Bruce Blihovde, Refuge Manager, Lake Woodruff National Wildlife Refuge, P.O. Box 488, DeLeon Springs, Florida 32028. Telephone: 904-985-4673.

Refuge Manager, Loxahatchee National Wildlife Refuge, Route 1, Box 278 Boynton Beach, Florida 33437. Telephone: 305-732-3684.

Stephen Vehrs, Refuge Manager, Merritt Island National Wildlife Refuge, P.O. Box 6504, Titusville, Florida 32780. Telephone: 305-867-4820.

John R. Eadie, Refuge Manager, Okefenokee National Wildlife Refuge, P.O. Box 117, Waycross, Georgia 31501. Telephone: 912-283-2580.

Ronnie L. Shell, Refuge Manager, Piedmont National Wildlife Refuge, Round Oak, Georgia 31080. Telephone: 912-988-5441.

Joe D. White, Refuge Manager, St. Marks National Wildlife Refuge, P.O. Box 68, St. Marks, Florida 32355. Telephone: 904-925-8121.

Martin Perry, Refuge Manager, St. Vincent National Wildlife Refuge, P.O. Box 447, Apalachicola, Florida 32320. Telephone: 904-653-8806.

SUPPLEMENTARY INFORMATION: John C. Oberheu is the primary author of these special regulations.

General Conditions

1. Fishing is permitted on national wildlife refuges indicated below in accordance with 50 CFR Part 33, all applicable State regulations, the general conditions, and the following special regulations:

The Refuge Recreation Act of 1962 (16 U.S.C. 460K) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (a) That any recreational use permitted will not interfere with the primary purpose for which the area was established, and (b) 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 refuges were established. The determination is based upon consideration of among other things, the Service's Final Environmental Statement in 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.

2. A list of conditions applying to the individual refuge and a map of the sport fishing area(s) are available at refuge headquarters. Portions of refuges which are closed to fishing are designated by signs and/or delineated on maps.

3. Access points on certain refuges are limited to designated roads or other specific areas. Vehicle use on all refuge areas is restricted to designated roads and lanes.

4. Sport fishing on portions of the following refuges shall be in accordance with all applicable State and Federal regulations and conditions as indicated.

§ 33.5 Special regulations; sport fishing for individual wildlife refuge areas.

Florida

J. N. "Ding" Darling National Wildlife Refuge

Sport and commercial fishing is permitted in 1,050 acres of tidal waters

of the J. N. "Ding" Darling National Wildlife Refuge, Sanibel, Florida. Sport fishing only is permitted in 800 acres of freshwater impoundments on the Darling Tract and from the fishing pier located on Lighthouse Point. A valid Florida state fishing license is required for catching freshwater species from the Darling Tract impoundments. Boats are prohibited in the Darling Tract impoundments. The taking of live shellfish other than clams and oysters is prohibited in refuge waters. The following special regulations apply to the public fishing pier: Cast nets are limited to bait nets with a stretched mesh of ¾ inch or less; boats will not be allowed to tie up at the pier except during emergency situations; and fishermen will be limited to no more than two fishing poles, rods or lines.

Lake Woodruff National Wildlife Refuge

Sport fishing on the Lake Woodruff National Wildlife Refuge, DeLeon Springs, Florida is permitted on approximately 650 acres. The sport fishing season is open year-round on delineated refuge waters west of Norris Dead River, Lake Woodruff, Spring Garden Creek, Highland Park Canal, and the Canal bordering the east side of Norris Dead River. Refuge waters east of Norris Dead River Canal, Lake Woodruff and Spring Garden Creek will be open to fishing and access March 15 to October 15, 1981. Fishing and access on refuge waters are permitted during daylight hours only. Air thrust boats are prohibited.

Loxahatchee National Wildlife Refuge

Sport fishing is permitted in all waters (61,352 acres) of the Loxahatchee National Wildlife Refuge, Boynton Beach, Florida except the headquarters management area and those areas marked by signs as being closed. All public entry onto the refuge for any purpose is limited to the following points: (a) S–5A (Twenty-Mile Bend) boat ramp; (b) Headquarters area; (c) Loxahatchee Recreation Area. Sport fishing is permitted year-round. Fishing is restricted to 1½ hours before sunrise until 1 hour after sunset. Boats must enter or leave the refuge through the three public ramps: (a) S–5A (Twenty-Mile Bend) boat ramp; (b) Headquarters boat ramp; (c) S–39 (Loxahatchee Recreation Area) boat ramps. Method of fishing allowed is with attended rod and reel and/or pole and line. Air thrust boat use is authorized only by special permit issued by the refuge manager. Speed boats and racing craft are prohibited.

Merritt Island National Wildlife Refuge

Sport fishing is permitted in the open waters of the Indian River, Banana River, Mosquito Lagoon, Mosquito control impoundments and interior lakes except for the Kennedy Space Center security areas. No more than 20 total fish daily per person may be taken from the K.A.R.S. marina in the Banana River or Eddy Creek "trout hole" in Mosquito Lagoon during the period November 15–March 31 annually, by any individual sport fisherman. Sport fishing is permitted during daylight hours only. Night sport fishing from boats in the open waters on the Indian River, Banana River, and Mosquito Lagoon is permitted by fishermen with a refuge special use permit. The permit is free and can be obtained from the refuge headquarters. Fishing in close proximity to manatees is prohibited. Fishing lines must be attended at all times and discarding of tangled line into the waters of the refuge is prohibited.

St. Marks National Wildlife Refuge

Sport fishing is permitted in all waters of the St. Marks National Wildlife Refuge (approximately 2,205 acres), St. Marks, Florida except those marked by signs as being closed. The sport fishing season on the refuge extends from March 15 through October 15, 1981, with the exception of Otter Lake which is open year-round. Travel is restricted to established, designated roads only. Fishing is permitted ½ hour before sunrise until ½ hour after sunset during the open season. Boats with electric motors and gasoline engines up to and including 4 horsepower are permitted. Trotlines shall be taken up daily prior to closing hours of fishing. The taking of saltwater species in Apalachee Bay and tidal creeks is subject to State regulations. Year-round launching of saltwater fishing boats from the Lighthouse launch ramp is regulated. The launching of commercial boats and sport net boats is prohibited.

St. Vincent National Wildlife Refuge

Sport fishing on the St. Vincent National Wildlife Refuge, Franklin County, Apalachicola, Florida is permitted on 245 acres from March 15 through October 15, 1981. Fishermen are permitted on the refuge from ½ hour before sunrise to ½ hour after sunset. Boats with electric motors permitted; all other motors prohibited. Private boats may not be left on the refuge overnight. Use of live minnows as bait is prohibited.

Georgia

Blackbeard Island National Wildlife Refuge

Fresh water sport fishing on the Blackbeard Island National Wildlife Refuge, McIntosh County, Townsend, Georgia is permitted on only two areas totaling 350 acres. The sport fishing season extends from March 15 through October 25, 1981. No one will be allowed on the refuge before sunrise and all persons must be off the refuge no later than ½ hour after sunset. Boats with electric motors permitted. Gasoline powered motors prohibited. Use of live minnows as bait prohibited. Private boats may not be left on the refuge overnight.

Okefenokee National Wildlife Refuge

Sport fishing is permitted on the Okefenokee National Wildlife Refuge, Waycross, Georgia in the designated open water areas connected by established boat runs. Fishing permitted during posted hours only. Boats with motors not larger than 10 horsepower, canoes, and row boats permitted. Use of live minnows as bait prohibited. Trotlines, limblines, nets and other set tackle prohibited. Persons entering refuge from main access points must register with the respective concessioner. Persons using the Sill access ramp on the Pocket and Kingfisher Landing access ramp are required to sign the respective registers when they enter the swamp and again when they leave. The Banks Lake Unit of Okefenokee is opened to sport fishing in Banks Lake and other designated refuge water areas. Persons fishing at night must possess a refuge special use permit or register with the refuge concessioner. Trotlines, limblines, nets, traps, and other set tackle are prohibited. Boat speed in Banks Lake will not exceed that of a 14 ft. aluminum boat powered by a (10) horsepower outboard engine.

Piedmont National Wildlife Refuge

Sport fishing on the Piedmont National Wildlife Refuge, Round Oak, Georgia, is permitted on approximately 115 acres during daylight hours. Fishing is allowed on the following areas in accordance with all applicable State regulations subject to the following restrictions: Refuge creeks open daily May 11 through September 12, 1981. Ponds 2A, 6A, 7A, 9A, 11A, 11B open daily May 11 through June 13, 1981. Pond

21A open daily May 11 through September 12, 1981, for youths 12 years of age or younger only. Pond 22A and Allison Lake open daily May 11 through September 12, 1981. Boats allowed on pond 2A and Allison Lake only. Electric motors permitted; all other motors prohibited. Boats may not be left on refuge overnight. No minnows allowed for bait. Fishing shall be with rod and reel and/or pole and line only. Bass creel limit is 5.

Georgia and South Carolina

Savannah National Wildlife Refuge

Sport fishing on the Savannah National Wildlife Refuge, portion of Jasper County, South Carolina, and Chatham and Effingham Counties, Georgia is permitted only on designated impounded waters, tidal creeks, ditches and canals in an area comprising 26,000 acres. The sport fishing season extends from March 15 through October 25, 1981, for all impounded waters. No one will be allowed on the refuge before sunrise and all persons must be off the refuge no later than ½ hour after sunset. Only electric motors are permitted on impounded waters. Tidal creeks may be fished from boats only from February 1 through October 25. Rod and reel, pole and line, artificial and live baits are permitted. All areas posted with "closed area" sign are closed to all activities including fishing. Private boats may not be left on the refuge overnight.

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

The provisions of these special regulations supplement the regulations which generally govern fishing on wildlife refuge areas and which are set forth in Title 50, Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at anytime.

Dated: December 22, 1980.

Larry E. Goldman,

Acting Area Manager.

[FR Doc. 81-526 Filed 1-8-81; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 46, No. 6
Friday, January 9, 1981

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.

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No.762 3131]

Standard Brands, Inc., and Ted Bates &, Company, Inc.; Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, these consent orders, accepted subject to final Commission approval, would require, among other things, a New York City manufacturer of various products, including "Fleischmann's Margarine" products, and a New York City advertising agency to cease referring to any test or survey when making representations regarding the performance, benefit, choice or superiority of a product, unless the referenced test or survey has been scientifically designed, executed and analyzed by "experts," and provides substantiation for the representations. The firms would be further barred from representing, by reference to a test or survey, that survey respondents recommend or use a particular brand of product more often than a competitive brand, unless they disclose the fact that an equal or greater percentage of such respondents have no brand preference. The order would additionally require that the firms maintain, for a period of three years, records substantiating advertising claims.

DATE: Comments must be received on or before March 9, 1981.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

FTC/P, Albert H. Kramer, Washington, D.C. 20580. (202) 523–3727.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with§ 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

In the Matter of Standard Brands, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Standard Brands, Inc., a corporation, sometimes hereinafter referred to as respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated:

It is hereby agreed by and between Standard Brands, Inc., by its duly authorized officer and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Standard Brands, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive office and principal place of business located at 625 Madison Avenue, New York, New York 10022.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated or that any of the facts are true as alleged in the draft of the complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty as

provided by law for each violation of the order after it becomes final.

Part I

It is ordered that respondent Standard Brands, Inc., a corporation (hereinafter referred to as respondent), and its successors, assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any product (hereinafter "Product") in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Making representations, directly or by implication, by reference to a survey or test, or the results thereof, concerning the performance or any characteristic, benefit, recommendation, usage or choice of or other preference for such Product, unless:

(a) Such survey or test is designed, executed and analyzed in a competent and reliable scientific manner; and

(b) Such survey or test substantiates the claim(s) represented by providing a reasonable basis therefor; and

(c) In regard to any claims of superiority based thereon, such survey or test establishes that such Product is superior to each compared product in respect to which the specific representation is made to a degree that will be discernible to or of benefit to consumers or potential consumers to whom the representation is directed.

2. Representing, directly or by implication, that survey respondents:

(a) Recommend such Product more often than any competing product when, in fact, an equal or greater percentage of such respondents do not recommend a specific brand of the product, without disclosing such fact(s); or

(b) Use such Product more often than any competing product when, in fact, an equal or greater percentage of such respondents do not use a specific brand of the product, without disclosing such fact(s); or

(c) Use such Product more often than any competing product when, in fact, an equal or greater percentage of such respondents are not aware of the specific brand of the product which they do use, without disclosing such fact(s).

3. Representing, directly or by implication, by reference to a survey or test of experts, that experts recommend, use, choose, or otherwise prefer such Product in any respect unless:

(a) Such experts in fact possess the expertise to evaluate such Product with respect to such representations; and

(b) Such experts actually exercised their expertise by evaluating or testing such Product, and based their stated preferences, findings, or opinions on such exercise of their expertise; and

(c) Such representation, to the extent it expresses or implies a product comparison, is supported by an actual comparative evaluation or test by such experts; and

(d) Such representation, to the extent it expresses or implies that such Product is superior to competing products, is supported by an actual comparative evaluation or test by such experts and by a conclusion therefrom that such Product is superior in fact to the competing products with respect to the feature(s) so represented as compared.

4. Representing, directly or by implication, that such product is recommended, used, chosen, or otherwise preferred in any respect more often than any or all competing products unless and only to the extent that respondent possessed and relied upon a reasonable basis for such representation at the time of its initial and each subsequent dissemination. A reasonable basis shall consist of competent and reliable evidence which substantiates a statement or representation.

5. Failing to maintain records:

(a) Which provided the basis upon which respondent relied at the time of the initial and each subsequent dissemination of the claim; and

(b) Which shall be maintained by respondent for a period of three years from the date such advertising or sales promotional material was last disseminated by respondent or any division or subsidiary of respondent.

Part II

For purposes of this Order, each of the terms listed below is defined as follows:

1. The term "experts" shall be deemed to be an individual(s), group(s) or institution(s), possessing, as a result of experience, study or training, knowledge of a particular subject, which knowledge is superior to that generally acquired by ordinary individuals.

2. An advertising claim which is a personal endorsement of a product reflecting solely the subjective opinion of the endorser shall not be deemed to be a test.

Part III

It is further ordered that respondent shall, within 60 days after service upon it of this Order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

It is further ordered that respondent shall forthwith distribute a copy of this Order to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertisements.

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

In the matter of Ted Bates & Company, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Ted Bates & Company, Inc., a corporation, sometimes hereinafter referred to as respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing; an order to cease and desist from the use of the acts and practices being investigated;

It is hereby agreed by and between Ted Bates & Company, Inc., by its duly authorized officer and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Ted Bates & Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive office and principal place of business located at 1515 Broadway, New York, New York 10036. Ted Bates/New York Division is the sole operating division of Ted Bates & Company, Inc.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated or that any of the facts are true as alleged in the draft of the complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty as provided by law for each violation of the order after it becomes final.

Part I

It is ordered that respondent Ted Bates & Company, Inc., a corporation (hereinafter referred to as respondent) and its successors, assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, of any product whose advertising account is: (1) currently or in the future assigned to Ted Bates/New York Division; or (2) currently or in the future assigned to Ted Bates/New York Division and is transferred from Ted Bates/New York Division of any subsidiary of Ted Bates & Company, Inc., do forthwith cease and desist from:

1. Making representations, directly or by implication, by reference to a survey or test of "experts" or "consumers" (as hereinafter defined in Part II of this Order), or the results thereof, concerning the performance or any characteristic, benefit, recommendation, usage or choice of or other preference for such Product, unless:

(a) Such survey or test of experts or consumers is designed, executed and analyzed in a competent and reliable scientific manner; and

(b) Such survey or test of experts or consumers substantiates the claim(s) represented by providing a reasonable basis therefor; and

(c) In regard to any claims of superiority based thereon, such survey or test of experts or consumers establishes that such Product is superior to each compared product in respect to which the specific representation is made to a degree that will be discernable to or of benefit to consumers or potential consumers to whom the representation is directed.

2. Representing, directly or by implication, by reference to a survey or test that experts or consumers surveyed or tested:

(a) Recommend such Product more often than any competing product when, in fact, an equal or greater percentage of such respondents do not recommend a specific brand of the product, without disclosing such fact(s); or

(b) Use such Product more often than any competing product when, in fact, an equal or greater percentage of such respondents do not use a specific brand of the product, without disclosing such fact(s); or

(c) Use such Product more often than any competing product when, in fact, an equal or greater percentage of such respondents are not aware of the specific brand of the product which they do use, without disclosing such fact(s).

3. Representing, directly or by implication, by reference to a survey or test of experts, that experts recommend, use, choose, or otherwise prefer such Product in any respect unless:

(a) Such experts in fact possess the expertise to evaluate such Product with respect to such representation; and

(b) Such experts actually exercised their expertise by evaluating or testing such Product, and based their stated preferences, findings, or opinions on such exercise of their expertise; and

(c) Such representation, to the extent it expresses or implies a product comparison, is supported by an actual comparative evaluation or test by such experts; and

(d) Such representation, to the extent it expresses or implies that such Product is superior to competing products, is supported by an actual comnparative evaluation or test by such experts and by a conclusion therefrom that such Product is superior in fact to the competing products with respect to the feature(s) so represented as compared.

4. Representing, directly or by implication, by reference to a survey or test of consumers that consumers recommend, use, choose, or otherwise prefer such Product in any respect unless and only to the extent that respondent has a reasonable basis for such representation. A reasonable basis shall consist of any competent and reliable evidence which substantiates a statement or representation.

5. Failing to maintain records

(a) Which provided the basis upon which respondent relied at the time of the initial and each subsequent dissemination of the claim; and

(b) Which shall be maintained by respondent for a period of three years from the date such advertising or sales promotional material was last disseminated by respondent or any division or subsidiary of respondent.

Part II

For purposes of this Order, each of the terms listed below is defined as follows:

1. The term "experts" shall be deemed to be an individual(s), group(s) or institution(s), possessing, as a result of experience, study or training, knowledge of a particular subject, which knowledge is superior to that generally acquired by ordinary individuals.

2. The term "consumers" shall be deemed to be any person(s) who is a user or potential user of the product.

3. An advertising claim which is a personal endorsement of a product reflecting solely the subjective opinion of the endorser shall not be deemed to be a test.

Part III

It shall be an affirmative defense to any compliance action brought pursuant to this Order alleging that an advertisement was, in whole or in part, unsubstantiated, or not supported by a reasonable basis, for respondent to show that, prior to disseminating an advertisement containing a statement or representation challenged in such compliance action, respondent submitted to its client in writing all the claims which it reasonably believed were contained in the advertising prepared by it and exercised due care to assure itself that the advertiser possessed

and relied upon a reasonable basis for those claims.

It shall be an affirmative defense to any compliance action brought pursuant to this Order alleging that an advertisement was, in whole or in part, false, misleading or deceptive, for respondent to show that, prior to disseminating an advertisement containing a statement or representation challenged in such compliance action, respondent submitted to its client in writing all the claims which it reasonably believed were contained in the advertising prepared by it and exercised due care to assure itself that those claims were neither false, misleading nor deceptive when placed respondent.

Provided, however, that nothing in this Order shall be deemed to deny or limit respondent with respect to any other right, defense, or other affirmative defense to which respondent may otherwise be entitled by law in such compliance action or any other action; nor shall any inference adverse to respondent be drawn in any case from its failure to invoke this paragraph or to rely on the procedures provided herein.

It is further ordered that respondent shall, within 60 days after service upon it of this Order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the Order.

It is further ordered that respondent shall forthwith distribute a copy of this Order to the senior executive officer of each account assigned to respondent's Ted Bates/New York Division and the executive in charge of research for such Division.

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

Standard Brands, Inc., Ted Bates & Company, Inc., File No. 762 3131, Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has provisionally accepted agreements to proposed consent orders from Standard Brands, Inc. and Ted Bates & Company, Inc.

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

This matter concerns print advertisements for Fleischmann's margarine. The complaint challenges claims regarding doctors' preference and usage of Fleischmann's margarine. For example, the challenged ads represented, "When a doctor chooses margarine, chances are it's Fleischmann's," "Fleischmann's is the margarine most recommended by doctors," and "Twice as many doctors personally use Fleischmann's." The ads claimed that these statements were based on a national survey of doctors.

The complaint charges that the survey does not support the representations made because only 15.5% of the doctors surveyed recommended Fleischmann's. Most doctors (84.5%) did not state that they recommend Fleischmann's. In fact, at least 67.5% of the surveyed doctors did not recommend a specific name brand of margarine, according to the complaint. In addition, the complaint charges that the ads imply that the doctors surveyed possessed and applied medical expertise in choosing Fleischmann's margarine and that the companies had no reasonable basis for such claims.

The provisionally accepted consent orders contain the following provisions designed to remedy the advertising violations charged as well as to prevent respondents from engaging in similar alleged illegal acts and practices.

Both consent orders extend to all products. The Ted Bates order covers all product accounts currently or in the future assigned to the Ted Bates/New York Division or those accounts which originated there and were transferred to any subsidiary.

These orders require (Part I, Paragraph 1) that representations which refer to surveys or tests (surveys or tests of experts or consumers in the case of Ted Bates), be designed, executed and analyzed in a competent and reliable scientific manner. Also, claims made must be substantiated by the featured research. Further, the survey or test referred to must establish any superiority claims made.

In regard to brand recommendations (Part I, Paragraph 2), the orders require the disclosure of material facts which explain, in the ad representations, any limitations about the surveys or tests. In particular, material percentages of survey respondents not mentioned in usage or recommendation claims must be disclosed in certain situations.

Further, the orders establish (Part I, Paragraph 3) certain requirements for advertising surveys based on expert preferences. Such requirements are drawn from the Commission's guides concerning Use of Endorsements and Testimonials in Advertising. (16 CFR Part 225).

Finally, both orders contain provisions requiring a reasonable basis for future claims. (Part I, Paragraph 4). The Ted Bates order requires a reasonable basis for future claims that consumers recommend, use, choose or prefer any product when such claim refers to a survey or test. The Standard Brands order requires a reasonable basis for any recommendation or usage claim for any product. To monitor compliance with the orders, three-year recordkeeping provisions are contained therein. (Part I, Paragraph 5).

The Ted Bates order contains an affirmative defense which requires the ad agency, should it elect to assert the defense in a compliance action, to submit in writing to its client prior to the dissemination of advertisements, all the claims which it reasonably believes are contained in proposed advertising and then exercise due care to assure itself that the claims are substantiated or not false, misleading or deceptive.

This is only the second time that the Commission has accepted an order containing such an affirmative defense provision. See also *J. Walter Thompson Company*, 94 F.T.C. 331 (1979). The conduct that an ad agency must undertake in order to exercise the affirmative defense has the potential to improve the quality and frequency of communications between ad agencies and their client-advertisers concerning the existence, meaning, and substantiation of advertising claims. It is hoped that better communication will, in turn, reduce the risk of deceptive claims.

However, due to lack of experience with the affirmative defense, its benefits are still speculative. The two orders containing the defense offer an opportunity to better understand how the claims listing provision operates and whether it has any unintended, undesirable effects. In accepting the provision, the Commission emphasizes that it is not standard policy to include this defense in ad agency orders and that its staff should continue to explore a variety of other means to encourage greater focus on implied claims.

The purpose of this analysis is to facilitate public comment on the proposed orders and is not intended to constitute an official interpretation of

the agreements and proposed orders or to modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 81-688 Filed 1-8-81; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[File No. 9131]

Teledyne, Inc., et al.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, a Los Angeles, Calif. manufacturer of oral irrigating devices and other consumer products, to cease misrepresenting the content, results or conclusions of any survey or opinion research; failing to base preventive or therapeutic claims about devices upon other than competent and reliable scientific tests or other evidence; and claiming that the American Dental Association recommends the Water Pik unless such claim is in fact authorized by the ADA. Further, the order requires that claims regarding the ability of a device to prevent, mitigate or treat periodontal disease be based upon clinical tests which are well-controlled using acceptable testing procedures and that the firm maintain records substantiating its claims for three years after disseminating advertisements affected by this order.

DATE: Comments must be received on or before March 9, 1981.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/P, Albert H. Kramer, Washington, D.C. 20580. (202) 523-3727.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

In the Matter of Teledyne, Inc., a corporation, and Teledyne Industries, Inc., a corporation.

Agreement Containing Consent Order To Cease and Desist

The Agreement herein, by and between Teledyne, Inc., a corporation, and Teledyne Industries, Inc., a corporation, respondents in the above proceeding initiated by the Federal Trade Commission, is entered into by their duly authorized officers and their attorneys, and counsel for the Federal Trade Commission, in accordance with the Commission's Rule governing consent order procedure. In accordance herewith, the parties hereby agree that:

1. Respondent Teledyne, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware with its executive office and principal place of business located at 1901 Avenue of the Stars, Los Angeles, California 90067.

Respondent Teledyne Industries, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California with its executive office and principal place of business located at 1901 Avenue of the Stars, Los Angeles, California 90067.

2. Respondents have been served with the Commission's Complaint charging it with a violation of Sections 5 and 12 of the Federal Trade Commission Act, together with a form of order the Commission believes warranted in the circumstances.

3. Respondents admit all jurisdictional facts set forth in the said copy of the Complaint.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement.

5. This Agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the Complaint, will be placed on the public record for a periods of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may withdraw its acceptance of this Agreement and so notify respondents, in which event it will take such action as it may consider appropriate.

6. No agreement, understanding or representation not contained in the Order or the aforementioned Agreement may be used to vary or to contradict the terms of the Order. However, the Complaint in Docket No. 9131 may be used in construing the terms of the Order.

7. This Agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the said Complaint of the Commission issued in this proceeding.

8. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondents (1) issue its decision containing the following Order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and shall become final and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service, except that, up to and including October 15, 1980 or the effective date of this Order, whichever is later, respondents may use oral irrigating device packaging and instruction booklets which may not conform to the terms of this Order to the extent that, by that date, such packaging and instruction booklets have become part of final packaging already containing oral irrigating devices. Mailing of the Complaint and decision containing the agreed-to Order to respondents' address as stated in this Agreement shall constitute service. Respondents waive any other right they may have to any other form of service.

9. Respondents have read the Complaint and Order contemplated hereby, and understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order and that they may be liable for a civil penalty in the amount provided by law for each violation of the Order after it becomes final.

10. Nothing in this Order shall be deemed to deny or limit respondents with respect to any right, defense, or affirmative defense to which

respondents may otherwise be entitled by law in a compliance action or any other action.

11. If the Federal Trade Commission hereafter promulgates any trade regulation rule or guide governing the advertising or offering for sale of any Product subject to this Order, and such rule or guide concerns practices covered by this Order, and said rule or guide is less restrictive than the corresponding provision(s) of this Order, and respondents file a motion with the Commission to modify this Order to correspond to such less restrictive rule or guide, the Commission shall rule upon said motion within one hundred twenty (120) days after said motion is filed, or if respondents' motion to modify is filed at least sixty (60) days prior to the effective date of such rule or guide, then the Federal Trade Commission shall rule upon respondents' motion to modify within such time periods, then such rule or guide shall automatically be deemed to modify and replace the corresponding provision(s) of this Order.

Part I

It is ordered that respondents, their successors and assigns, and their officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other entity, in connection with the consumer advertising, offering for sale, sale or distribution of any consumer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the content, results or conclusions of any survey or opinion research.

B. Employing, in any advertisement for any product, the word "survey" (or any comparable term), or basing any claim upon one or more surveys in whole or in part which states, either expressly or by implication, the beliefs, opinions, practices, recommendations, or endorsements of any group, unless:

(1) A representative, unbiased and fair sampling from the population referred to in the advertisement is questioned;

(2) A projectable sample was used and the sample size of and the response rate to the survey were sufficiently large so as to allow meaningful projections to the population referred to in the advertisement with a reasonable degree of confidence, unless there is a clear and conspicuous disclosure in the advertisement that the survey may not be representative of the population referred to in the advertisement;

(3) The survey was completed within three (3) years prior to the date of the representation, unless there is other appropriate data which establish a reasonable basis for concluding that the beliefs, opinion, practices, recommendations or endorsements of the members of the group referred to in the advertisement have not materially changed since the completion of the survey; and

(4) The survey was designed, executed and analyzed in a competent and reliable manner.

(C) Representing, directly or by implication, that the beliefs, opinions, practices, recommendations or endorsements of members of any group have been surveyed or sampled unless the survey or sample directly solicits the beliefs, opinions, practices, recommendations, or endorsements of the members of that group.

D. Representing, directly or by implication, that a professional body or any portion thereof has some belief, opinion, recommendation, endorsement or follows some typical course of conduct unless and only to the extent such representation is true.

Part II

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

A. (1) Making any statements or representations, directly or by implication, concerning the preventative or therapeutic abilities of such devices unless at the time the statements or representations are made, respondents possess and rely on a reasonable basis for such statements or representations, which shall consist of competent and reliable scientific tests as defined in Paragraph A(2) hereafter, or other competent and reliable evidence that substantiates such representation.

(2) For the purposes of this Order, a scientific test is one in which a person with skill and expertise in the field, conducts the test and evaluates its results in a disinterested manner using these testing procedures generally accepted in the profession which best ensure accurate and reliable results.

B. (1) Making any statements or representations, directly or by implication, concerning the ability of such devices to prevent, mitigate, or treat periodontal disease unless, at the time the statements or representations are made, respondents possess and rely on a reasonable basis for such statements or representations, which shall include a competent and reliable clinical test and may also include other competent and reliable evidence including competent and reliable opinions of experts who are qualified by professional training, education, and experience to render competent and reliable judgments in such matters.

(2) For purposes of this Order, a "clinical test" is one in which a person with skill and expertise in the field conducts a well-controlled test on human subjects, using those testing procedures generally accepted in the profession which ensure accurate and reliable results, and evaluates its results in a disinterested manner. The results of the test must be clinically significant, which requires that the test be, among other things, of sufficient duration to ensure that the results are not materially distorted by any unusual short term practices or temporary physical conditions of the test subjects (as such practices or conditions related to the test conditions).

Part III

It is further ordered that respondents, their successors and assigns, and their officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other entity in connection with the advertising, offering for sale, distribution or sale of the Water Pik oral irrigating device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication that the Water Pik oral irrigation device is accepted, approved or endorsed by the American Dental Association unless (1) such claim is expressly authorized in writing, and unless (2) there is good reason to believe that at the time of such claims the American Dental Association subscribes to the facts or opinion therein contained.

Part IV

It is further ordered that respondents, for the period of three years after respondents last disseminated the advertisements of the products covered by this Order, shall retain all test results, data, and other documents or information on which it relied for their advertisements or any documentation which contradicts, qualifies or calls into serious question any claim included in such advertisements which were in their possession during either their creation

or dissemination. Such records may be inspected by the staff of the commission upon reasonable notice.

It is further ordered that respondents notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondents such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

It is further ordered that the respondents shall forthwith distribute a copy of this Order to each of their operating divisions, and to each of their officers, agents, representatives or employees who are engaged in the preparation and placement of advertisements.

It is further ordered that the respondents shall, within sixty (60) days after this Order becomes final and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by a responsible officer for respondents, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Teledyne Inc. and Teledyne Industries, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint charged the respondents with disseminating advertisements containing several false, misleading, or unsubstantiated representations regarding the "Water Pik" oral irrigating device. The complaint alleged that the Water Pik advertisements claimed without a reasonable basis that (1) four out of five dentists recommend Water Pik to their patients; (2) four out of five dentists recommend the Water Pik because, in their medical judgment, the Water Pik plays a significant role in the prevention of gum disease; (3) the Water Pik when used with other methods of dental care plays a significant incremental role in the prevention of gum disease; and (4) the use of the Water Pik will significantly diminish the chances of getting gum disease.

Additionally, the complaint alleged that the Water Pik advertisements falsely represented that an appropriately designed survey proves that the Water Pik is recommended by four out of five dentists and that the American Dental Association recommends the Water Pik.

The consent order contains various provisions designed to remedy the alleged advertising violations.

Part I of the order prohibits the misrepresentation of the contents, results or conclusions of any survey. In addition this Part requires that any survey used in respondents' advertising must be designed, executed and analyzed in a competent and reliable manner. The survey sampling must be representative and unbiased. The survey must be projectable unless respondents clearly and conspicuously disclose that the survey may not be representative of the population referred to in the advertisement. Finally, the survey may not be more than three years old unless there is other data which establishes that the survey results are still valid.

Part I also prohibits respondents from making claims regarding the opinions or recommendations of any group unless that group is actually asked about their opinions or recommendations.

Part II(A) of the order requires that any preventative or therapeutic claims about a device must be based upon competent and reliable scientific tests or other reliable evidence.

Part II(B) of the order requires that any claim regarding the ability of a device to prevent, mitigate or treat periodontal disease must be based upon clinical tests. The clinical test must be well-controlled using accepted testing procedures. The results of the test must be clinically significant. The clinical test must be of sufficient duration to ensure that the test results are not distorted by any unusual conditions.

Part III of the order prohibits respondents from claiming that the American Dental Association recommends the Water Pik unless such a claim is authorized by the American Dental Association.

Part IV of the order requires respondents to maintain records of its substantiation for its claims for a period of three (3) years after the dissemination of any advertisement subject to this order. The order also requests respondents to retain any documents which contradict or call into question any of their advertising claims. Such records may be inspected by the Commission's staff. The order requires that respondents distribute a copy of the order to each of their operating corporate divisions and to notify the Commission of any change in their corporate structure which might affect compliance obligations. Respondents must within sixty (60) days of the effective date of this order, and annually thereafter for three (3) years, file a report with the Commission regarding their compliance with this order.

The purpose of this analysis is to facilitate public comment on the proposed order and this is not intended to constitute an official interpretation of the complaint, agreement and proposed order or to modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 81-688 Filed 1-8-81; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 9131]

J. Walter Thompson Company; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, a New York City advertising agency to cease making survey claims unless the surveys are designed, executed and analyzed in a competent and reliabe manner. Further, the firm is prohibited from making claims regarding the opinions or recommendations of any professional group unless that professional group is actually asked about their opinions or recommendations.

DATE: Comments must be received on or before March 9, 1981.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/P, Albert H. Kramer, Washington, D.C. 20580. (202) 523-3727.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an

explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

Agreement Containing Consent Order To Cease and Desist

In the matter of J. Walter Thompson Company, a corporation.

The Agreement herein, by and between J. Walter Thompson Company, a corporation, respondent in the above proceeding initiated by the Federal Trade Commission, is entered into by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission, in accordance with the Commission's Rule governing consent order procedure.

1. Respondent J. Walter Thompson Company ("JWT") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal offices and place of business located at 420 Lexington Avenue, New York, New York 10017.

2. Respondent has been served with the Commission's Complaint charging it with a violation of Section 5 of the Federal Trade Commission Act, together with a form of order the Commission believes warranted in the circumstances.

3. Respondent admits all jurisdictional facts set forth in the said copy of the Complaint of the Commission to the extent they relate to J. Walter Thompson Company.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement.

5. This Agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the Complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may withdraw its acceptance of this Agreement and so notify JWT, in which event it will take such action as it may consider appropriate.

6. No agreement, understanding or representation not contained in the Order or the aforementioned Agreement may be used to vary or to contradict the terms of the Order. However, the Complaint in Docket No. 9131 may be used in construing the terms of the Order.

7. This Agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said Complaint of the Commission issued in this proceeding.

8. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(d) of the Commission's Rules, the Commission may, without further notice to respondent, (1) issue its decision containing the following Order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and shall become final and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Mailing of the Complaint and decision containing the agreed to Order to respondent's address as stated in this Agreement shall constitute service.

9. All parts and provisions of this Order, except Part II, shall be binding on JWT upon service in accordance with Paragraph 8 above. Part II of this Order shall become binding upon the effective date of a final order in this proceeding against Teledyne, Inc., or Teledyne Industries, Inc., or any division thereof, which requires those respondents to cease and desist from disseminating claims for the prevention, mitigation or treatment of periodontal disease without a reasonable basis. In the event that the Complaint against Teledyne, Inc., or Teledyne Industries, Inc., in this proceeding (Docket No. 9131) is dismissed, then the Commission shall, upon the application of JWT, set aside this Order.

10. Respondent has read the Complaint and Order contemplated hereby, and it understands that once the Order has been issued, it will be required to file one of more compliance reports showing that it has fully complied with the Order and that it may be liable for a civil penalty of up to $10,000 for each violation of the Order after it becomes final.

11. Nothing in this Order shall be deemed to deny or limit JWT with respect to any right, defense, or affirmative defense to which JWT may otherwise be entitled by law in a compliance action or any other action.

12. If the Federal Trade Commission hereafter promulgates any trade regulation rule or guide govering the advertising or offering for sale of any Product subject to this Order, and such rule or guide concerns practices covered by this Order, and said rule or guide is less restrictive than the corresponding provision(s) of this Order, and JWT files a motion with the Commission to modify this Order to correspond to such less restrictive rule or guide, the Commission shall rule upon said motion within 120 days after said motion is filed, or if JWT's motion to modify is filed at least sixty (60) days prior to the effective date of such rule or guide, then the Federal Trade Commission shall rule upon respondent's motion within sixty (60) days after effective date of such rule or guide. Should the Federal Trade Commission fail to rule upon JWT's motion to modify within such time periods, then such rule or guide shall automatically be deemed to modify and replace the corresponding provision(s) of this Order.

Part I

It is ordered that respondent J. Walter Thompson Company ("JWT"), its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other entity, in connection with the advertising, offering for sale, sale or distribution of any "drug" or "device" (as those terms are defined by Section 15 of the Federal Trade Commission Act); aids to decrease use of cigarettes, cigars or pipes; smoke alarms; water purifiers; baby food preparation kits; shower head attachments; and water foot massagers (hereinafter referred to in Part I as "Product" or "Products"), in or affecting commerce, as "commerce" is fefined in the Federal Trade Commission Act, do forethwith cease and desist from:

A. Employing, in any advertisement for any product, the word "survey" (or any comparable term), or basing any claim upon one or more surveys in whole or in part which states, either expressly or by implication, the beliefs, opinions, practices, recommendations, or endorsements of any professional group (or portion thereof) with expertise relative to the product, unless:

(1) A projectable sample was used and the sample size of and response rate to the survey were sufficiently large so as to allow meaningful projections to the

population referred to in the advertisement with a reasonable degree of confidence unless there is a clear and conspicuous disclosure in the advertisement that the survey may not be representative of the population referred to in the advertisement;

(2) The survey was completed within three years prior to the date of the representation, unless there is other appropriate data which establishes a reasonable basis for concluding that the beliefs, opinions, practices, recommendations or endorsements of the members of the relevant professional population surveyed have not materially changed since the completion of the survey; and

(3) The survey was designed, executed and analyzed in a competent and reliable manner.

B. Representing, directly or by implication, that the beliefs, opinions, practices, recommendations or endorsements of members of any professional group with expertise relative to the advertised product have been surveyed or sampled unless the survey or sample directly solicits the beliefs, opinions, practices, recommendations, or endorsements of members of that group.

Provided, however, in circumstances where the survey or sample was conducted by an independent third party and was not, directly or indirectly, conducted or controlled by JWT or its client, it shall be an affirmative defense to an alleged violation of this Part for JWT to prove that it had a reasonable basis for believing that the survey or sample was conducted in accordance with the provisions of Part I of this Order. For purposes of this affirmative defense, JWT may demonstrate that it had a reasonable basis by showing (i) that the document reflecting the survey or sample had sufficient information for JWT to conclude that the survey(s) or sample(s) was conducted in accordance with this Part, or (ii) where there is insufficient information in such document that JWT made an appropriate inquiry and either (1) received a letter or memorandum from the third party containing adequate information regarding those aspect(s) of the sample(s) or survey(s) as to which there was insufficient information so that JWT had a reasonable basis for concluding that the sample(s) or survey(s) was conducted in accordance with this Part, or (2) sent a letter or memorandum to the third party confirming the third party's oral communication of adequate information regarding those aspect(s) of the sample(s) or survey(s) as to which there was insufficient information so that JWT had a reasonable basis for concluding that the sample(s) or survey(s) was conducted in accordance with this Part. In lieu of the letter or memorandum required by (1) or (2) above, JWT may rely on other written confirmation regarding the aspect(s) of the sample(s) or survey(s) as to which there was insufficient information only if JWT has a reasonable explanation for so doing.

Part II

It is further ordered that respondent J. Walter Thompson Company ("JWT"), its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other entity, in connection with the advertising, offering for sale, sale or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Making any statements or representations, directly or by implication, concerning the ability of the advertised product to prevent, mitigate, or treat periodontal disease unless, at the time the statements or representations are made, JWT possesses and relies on a reasonable basis for such statements or representations, which shall include a competent and reliable clinical test and may also include other competent and reliable evidence including competent and reliable opinions of experts who are qualified by professional training, education, and experience to render competent and reliable judgments in such matters.

For purposes of this Order, a "clinical test" is one in which a person with skill and expertise in the field conducts a well-controlled test on human subjects, using those testing procedures generally accepted in the profession which ensure accurate and reliable results, and evaluates its results in a disinterested manner. The clinical test must be of sufficient duration to ensure that the results (a) were not materially distorted by any unusual short-term practices or temporary physical conditions of the test subjects (as such practices or conditions related to the test conditions), and (b) were clinically significant.

Provided, however, in circumstances where the clinical test or other evidence was not directly or indirectly conducted or controlled by JWT, it shall be an affirmative defense to an alleged violation of this Part for JWT to prove that it reasonably relied on the expert judgment of its client or of an independent third party in concluding that it had a reasonable basis in accordance with Part II of this Order. Such expert judgment shall be in writing signed by a person qualified by education or experience to render the opinion. Such opinion shall describe the contents of such test or other evidence upon which the opinion is based.

Provided further, however, in the event the Commission enters a final order to cease and desist against Teledyne, Inc., or Teledyne Industries, Inc., or any division thereof, in this proceeding which prohibits the dissemination, without a reasonable basis, of claims for the prevention, mitigation or treatment of periodontal disease and if said order did not require that the reasonable basis for such claims include, as an essential and necessary element, a clinical test, the phrase in the second paragraph of Part II "and may also include" shall thereupon be deleted and the word "or" inserted in its place.

Part III

It is further ordered that:

For the period of three years after JWT last placed the advertisements for dissemination, JWT shall retain all test results, data, and other documents on which it relied for advertisements of Products covered by this Order which were in its possession during either creation or placement by JWT of the advertisements.

JWT shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the Order.

JWT shall forthwith distribute a copy of this Order to each of its operating divisions, and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements of the Products covered by this Order.

JWT shall, within sixty (60) days after service upon it of this Order, and at such other times as the Commission may require, file with the Commission a written report setting forth in detail the manner and form of its compliance with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from J. Walter Thompson Company.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint charged the respondent with disseminating advertisements containing several false, misleading, or unsubstantiated representations regarding the "Water Pik" oral irrigating device. The complaint alleged that the Water Pik advertisements claimed without a reasonable basis that (1) four out of five dentists recommend Water Pik to their patients; (2) four out of five dentists recommend the Water Pik because, in their medical judgment, the Water Pik plays a significant role in the prevention of gum disease; (3) the Water Pik when used with other methods of dental care plays a significant incremental role in the prevention of gum disease; and (4) the use of the Water Pik will significantly diminish the chances of getting gum disease.

Additionally, the complaint alleged that the Water Pik advertisements falsely represented that an appropriately designed survey proves that the Water Pik is recommended by four out of five dentists.

The consent order contains various provisions designed to remedy the alleged advertising violations.

Part I of the Order requires that certain survey claims made by the respondent must be based upon surveys that are designed, executed and analyzed in a competent and reliable manner. The survey must be projectable unless respondent clearly and conspicuously discloses that the survey may not be representative of the population referred to in the advertisement. Also, the survey may not be more than three years old unless there is other data which etablishes that the survey results are still valid. Part I also prohibits respondent from making claims regarding the opinions or recommendations of any professional group unless that professional group is actually asked about their opinions or recommendations.

Carol M. Thomas,

Secretary.

[FR Doc. 81-690 Filed 1-8-81; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR 20 and 803

[Docket No. 79N-0182]

Proposed Mandatory Device Experience Reporting Regulation; Hearing Change

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; notice of hearing change.

SUMMARY: The Food and Drug Administration (FDA) is rescheduling the public hearing announced for January 22, 1981, on the proposed mandatory device experience reporting regulation.

DATES: Public hearing on February 2, 1981; notices of participation by January 15, 1981.

ADDRESSES: Notices of participation to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Public hearing location: Hubert H. Humphrey Bldg. Auditorium, 200 Independence Ave., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert A. Forst, Bureau of Medical Devices (HFK-70), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7114.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 18, 1980 (45 FR 76183) FDA announced a proposed rule to require manufacturers and distributors (including importers) of medical devices to submit reports concerning medical devices that (1) may have caused a death or injury, (2) may have a deficiency that could result in a death or injury or that could give inaccurate diagnostic information and, thereby, result in improper treatment, or (3) are the subject of a remedial action. The proposed rule announced a 90-day comment period and scheduled a public hearing to be held on January 22, 1981. FDA has received a request from the Health Industry Manufacturers Association (HIMA) to postpone the date of the hearing by 2 weeks to allow participants more time to prepare and to avoid hardships for medical device industry executives who hope to participate in the hearing and who also are involved in inaugural activities or in HIMA's annual business meeting, both of which occur the same week.

Under the circumstances, FDA believes that a 2-week postponement of the hearing is reasonable, and has rescheduled the hearing for February 2, 1981. Interested persons have until January 15, 1981, to file notices of participation with the Dockets Management Branch (address above).

Dated: December 31, 1980.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-680 Filed 1-5-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 101

[Docket No. 77N-0292]

Food Labeling; Net Weight Labeling Requirements; Partial Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; partial extension of comment period.

SUMMARY: In the proposed rulemaking to amend the net weight labeling regulations, the Food and Drug Administration (FDA) is extending the period for submitting pertinent data relating to moisture loss characteristics of various foods. The period for submitting other comments closed on January 5, 1981.

DATE: Pertinent data relating to moisture loss characteristics must be submitted on or before March 6, 1981.

ADDRESS: Pertinent data relating to moisture loss characteristics to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard N. Pippin, Bureau of Foods (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3092.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 8, 1980 (45 FR 53023), FDA proposed to amend the net weight labeling regulations. These amendments would quantitatively define permissible "reasonable variations" from stated net weights for several foods subject to moisture loss. Interested persons were requested to submit by November 6, 1980, comments and pertinent data on moisture loss characteristics of various foods. In the **Federal Register** of October 28, 1980 (45 FR 71366), the agency extended the comment period to January 5, 1981, as a result of several requests to extend the comment period.

FDA now has received three requests for additional extensions of the comment period. These requests are on file with the Dockets Management Branch.

1. FDA received a request on behalf of the Task Force on European Net Weight Enforcement of the Industry Committee on Packaging and Labeling for a 90-day extension of the comment period so that FDA may include in the administrative record any relevent recommendations resulting from the January meeting of the National Conference of Weights and Measures' Select Committee on Uniformity of State Laws. These recommendations would concern the National Conference's consideration of whether individual States in the United States should adopt an enforcement approach that currently is followed by the European Economic Community (EEC) that relies on point-of-packing regulation of the net weight of prepackaged food commodities imported from other EEC countries. Although FDA has a general interest in the outcome of the National Conference's meeting, the question of whether the United States should adopt an approach similar to that of the EEC is beyond the scope of the proposed regulations and, even if such adoption were desirable, it would have to be separately proposed. If the January meeting of the National Conference results in a recommendation for a regulatory approach suitable for adoption at the Federal level, any interested person may submit a citizen's petition under § 10.30 (21 CFR 10.30) requesting FDA to propose a regulation adopting this approch. If the meeting of the National Conference or another source develops information relevent to this rulemaking, any interested person may submit a citizen's petition asking FDA to reopen the administrative record in this rulemaking to allow receipts of this information. However, it is inappropriate to extend the comment period now given the uncertainty that the meeting will yield information relevant to this rulemaking proceeding.

This request for extension also included comments about alleged legal deficiencies in the proposal that will be considered and addressed along with other comments.

2. FDA has also received requests from the Grocery Manufactures of American, Inc., (GMA) and Saluto Foods Corp. (Saluto) requesting additional time to compile and submit moisture loss data on several food classes not covered by the proposals. GMA requested 60 additional days, and Saluto requested 90 additional days.

After carefully evaluating the merits of the requests, FDA has concluded that a general extension of the comment period on the proposed rulemaking has not been justified, and is giving notice that the comment period ends on January 5, 1981.

The agency believes, however, that it is in the interest of consumers that the additional moisture loss data that are now being collected by industry for submission to FDA and that will be available in the near future be considered in the preparation of the final rule. These additional data may make it possible for FDA to act more quickly to expand the number of products or product classes of food subject to moisture loss for which FDA has quantitatively defined permissible "reasonable variations" from stated net weight.

It is in the interest of consumers and regulated industry to have as many products or product classes with specific moisture variation standards as possible, to assure fair competition and fulfillment of consumer expectations. The agency concludes that a 60-day extension is adequate for the submission of pertinent data on moisture loss characteristics and is extending the deadline for submitting such data to March 6, 1981. FDA encourages manufacturers and trade associations that hope to submit such data to discuss their data collection procedures with Bureau of Foods representatives early in this 60-day period. These discussions may be arranged by calling the contact person identified above.

With this extension, FDA has provided a total of 180 days as a part of this rulemaking for the submission of pertinent data on moisture loss characteristics. FDA advises interested persons that it will grant no further extension of the comment period beyond this 60-day period for submission of moisture loss data granted in this notice. If the relevant data are available after the date, they must be submitted as a citizen's petition in accordance with 21 CFR 10.30 to initiate a separate rulemaking.

Accordingly, interested persons may, on or before March 6, 1981, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, pertinent data on moisture loss characteristics of food. Four copies of all data shall be submitted, except that individuals may submit single copies. The submissions are to be indentified with the docket number found in brackets in the heading of this document. All submissions received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 2, 1981.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-582 Filed 1-5-81; 2:21 pm]

BILLING CODE 4110-03-M

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21 CFR Part 310

[Docket No. 80N-0395]

Hypophosphatemia and Hyperphosphatemia Drug Products for Over-the-Counter Human Use; Proposed Rulemaking

Correction

In FR Doc. 80-37893, published at page 81154, in the issue of Tuesday, December 9, 1980, make the following corrections:

1. On page 81154, second column, second paragraph, beginning with "should FDA accept * * *", the first word in the fifth line now reading "hyperphosphatemia" should read "hypophosphatemia". In the ninth line of that paragraph, the first word now reading "hypophosphatemia" should read "hyperphosphatemia".

2. On page 81155, first column, ninth line, the date now reading "January 8, 1971" should read "January 8, 1981".

BILLING CODE 1505-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[SD-160]

Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended

Correction

In FR Doc. 80-38022 in the issue for Monday, December 8, 1980, in the document heading, the bracketed information "[SD-160]" was left out. As corrected, the heading reads as set forth above.

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 115

Payment of Sioux Benefits; Eligibility Criteria and Application Procedures Governing Benefits

December 19, 1980.

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs proposes to add a new Part 115 to Subchapter J, Chapter I, Title 25 of the Code of Federal Regulations. The proposed rule would prescribe the eligibility criteria and application procedures governing payment of "Sioux benefits" under the 1889 Sioux Allotment Act, as amended, the 1928 Sioux Benefits Act, and section 14 of the 1934 Indian Reorganization Act (25 U.S.C. 474). Revision of the Bureau's regulations is required as a result of a suit brought against the Bureau by South Dakota Legal Services on behalf of Mrs. Josephine High Elk, a Cheyenne River Sioux. The litigation challenged the constitutionality of the Bureau's eligibility requirements governing Sioux benefits on the ground that they discriminated against plaintiff on the basis of sex and on the basis of the race or tribal affiliation of her spouse. Promulgation of the proposed regulations would resolve the pending litigation by establishing non-discriminatory criteria for determining "head of family" eligibility for Sioux benefits.

DATES: Comments on the proposed rulemaking must be received on or before February 9, 1981.

ADDRESSES: Written comments may be mailed or delivered to Barbara C. Davis, Branch of Trust Funds, Bureau of Indian Affairs, Room 4540, CODE 207, Department of the Interior, 18th & C Sts. N.W., Washington, D.C. 20240; telephone (202) 343-2963.

FOR FURTHER INFORMATION CONTACT: Sandra R. Etheridge, Division of Indian Affairs, Office of the Solicitor, Department of the Interior, Washington, D.C., 20240; telephone (202) 343-9405.

SUPPLEMENTARY INFORMATION: "Sioux benefits" are articles of farming equipment and stock, or, more commonly today, the commuted cash value of such articles, payable by the Bureau to certain Sioux Indians under the provisions of four Federal statutes—the 1889 Sioux Allotment Act (Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895), an 1896 amendment to that act (Act of June 10, 1896, c. 398, 29 Stat. 321, 334), a 1928 statute which continued those benefits (Act of May 21, 1928, c. 662, 45 Stat. 684) and section 14 of the Indian Reorganization Act (Act of June 18, 1934, c. 576, § 14, 48 Stat. 984, 987, 25 U.S.C. 474). Under each of these statutes, only Sioux Indians who are single persons over the age of eighteen *or* heads of a family are eligible. In addition, the applicant must have received an allotment of land to be eligible for benefits under the 1889 or 1928 statutes. The 1934 law continued such benefits for unallotted Indians on the Pine Ridge, Rosebud, and Cheyenne River Reservations with provision for a gradual phase-out of such benefits.

The primary change in existing Bureau policies regarding Sioux benefits made by the proposed regulations would be with respect to revising the standards for determining whether an applicant is a "head of a family" eligible for Sioux benefits. Prior to this time, the BIA has employed a rule that a Sioux woman married to a Sioux man cannot be considered the head of a family for payment of Sioux benefits, but a Sioux woman married to a non-Sioux man could receive the benefits as the head of the family. This standard was challenged as discriminating against Sioux women on the basis of sex and on the basis of the race or tribal affiliation of their husbands. Under the Federal statutes, there is no difference in the amount of benefit payments between single adults and heads of families, and it is necessary to prove "head of family" status only if an applicant is not eligible for benefits as a single adult. Therefore, the regulations provide that all unmarried persons over the age of eighteen (including persons who are single, legally separated, divorced, or widowed) may apply as "single." Only persons under eighteen and married persons would have to prove "head of family" status as a condition of receiving the benefits. With respect to married applicants, determination of whether a person is head of a family will not turn on whether that person is the husband or wife, or whether an applicant's husband is a Sioux. Instead, either spouse can be considered the head of the family if the applicant and his or her spouse so agree. If the applicant and spouse do not agree on whether the husband or wife is the head of the family, an economic contribution test is used to determine "head of family" status. This test is also used for married applicants who are physically, but not legally, separated from their spouses and for married applicants whose spouses have previously received the benefits as head of the family. *It should be noted that the proposed regulations do allow for the possibility of a husband and wife each receiving the benefits as head of the family at different points in time and do not prevent a person from receiving Sioux benefits merely because his or her spouse has previously received the benefits either before or during their marriage.* In no case, however, can a person receive more than one payment of benefits in his or her own right, either as a single person or as a head of a family. Persons who have been denied payment of Sioux benefits under prior regulations would be allowed to reapply under the new standards.

The proposed regulations cannot be promulgated as final rules until inconsistent decisions regarding payment of Sioux benefits issued by the General Accounting Office are modified or rescinded.

The primary author of this document is John L. Saxon, formerly Attorney, Division of Indian Affairs, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240.

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.

This proposed rule is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

It is proposed to amend Subchapter J of Chapter I of Title 25 of the Code of Federal Regulations by addition of a new Part as follows:

PART 115—PAYMENT OF SIOUX BENEFITS

Sec.

115.1 Scope.
115.2 Purpose.
115.3 Definitions.
115.4 Eligibility.
115.5 Application procedure.
115.6 Administration.

Authority: Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895; Act of June 10, 1896, c. 398, 29 Stat. 321, 334; Act of May 21, 1928, c. 662, 45 Stat. 984; Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474; R.S. § 463, 25 U.S.C. 2; R.S. § 465, and 25 U.S.C. 9.

§ 115.1 Scope.

The regulations in this Part govern the payment of "Sioux benefits" to allotted Sioux Indians under the Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895; the Act of June 10, 1896, c. 398, 29 Stat. 321, 334; and the Act of May 21, 1928, c. 662, 45 Stat. 984; and to unallotted Sioux Indians on the Cheyenne River Indian Reservation under the Act of June 18,

1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474.

§ 115.2 Purpose.

The purpose of these regulations is to implement the provisions of federal statutes which provide for the payment of "Sioux benefits" to Sioux Indians by setting forth the criteria governing eligibility for and entitlement to "Sioux benefits" and by establishing procedures governing application for and payment of "Sioux benefits."

§ 115.3 Definitions.

As used in this Part, the term—

(a) "Area Director" means the Area Director, Aberdeen Area Office, BIA, or his/her delegate.

(b) "Bureau" or "BIA" means the Bureau of Indian Affairs, Department of the Interior.

(c) "Commissioner" means the Commissioner of Indian Affairs, BIA, or his/her delegate.

(d) "Sioux benefits" means the allotment of stock and farming equipment plus $50.00 cash as provided for by the Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895, or its commuted cash value as provided in the Act of June 10, 1896, c. 398, 29 Stat. 321, 334.

(e) "Sioux Indian" means a member of any of the bands or tribes comprising the Sioux Nation of Indians to which the Act of March 2, 1889, c. 405, 25 Stat. 888, applied.

(f) "Single person" includes all unmarried persons (other than an unmarried person under the age of eighteen years) and any person who is legally separated, divorced, or widowed.

(g) "Head of a family" means only (1) a married person who meets the requirements of section 115.4(c)(1) or (2) (if living with his/her spouse) or section 115.4(c)(3) (if not living with his/her spouse), and (2) an unmarried person under the age of eighteen years who meets the requirements of section 115.4(c)(3).

(h) For the purpose of determining family support under sections 115.4(c)(2) and 115.4(c)(3), "family" means two or more persons (including the applicant) related by blood, through marriage, or by adoption to the applicant and who live together in the same household and are dependent upon the applicant for all or part of their support.

§ 115.4 Eligibility.

(a) Allotted Sioux Indians. The eligibility of allotted Sioux Indians for Sioux benefits is governed by the Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895; the Act of June 10, 1896, c. 398, 29 Stat. 321, 334; and the Act of May 21, 1928, c. 662, 45 Stat. 984. The Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474, is inapplicable to any Sioux Indian to whom an allotment of land has been made under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior federal statute. Under the applicable statutes, an allotted Sioux Indian is eligible for Sioux benefits if—

(1) He/she received a valid allotment of land under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior federal statute (regardless of whether such allotment is still held by the applicant);

(2) He/she is either a single person over the age of eighteen (18) years *or* a head of a family (as provided in § 115.4(c));

(3) Where his/her allotment was taken under the provisions of the Act of May 29, 1908, 35 Stat. 444, 451, he/she has duly made application for Sioux benefits, and such application has been approved during his/her lifetime (as provided in § 115.5); *and*

(4) He/she has not previously been paid Sioux benefits in his/her own right (as provided in § 115.4(d)).

(b) Unallotted Sioux Indians. The Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474, applies only to Sioux Indians who, but for the provisions of section 1 of that Act, 25 U.S.C. 461, would have been eligible for an allotment of land under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior federal statute, and have not, in fact, been allotted lands under the provisions of such federal statutes. That Act has current application only to unallotted Sioux Indians of the Cheyenne River Indian Reservation because of the proviso that the payment of Sioux benefits under that Act would continue only until such time as the lands available for allotment on each reservation as of June 18, 1934, would have been exhausted by the allotment of eighty (80) acres of land to each person receiving Sioux benefits under that Act. Under this statute, a Sioux Indian belonging to the Cheyenne River Indian Reservation is eligible for Sioux benefits if—

(1) He/she would be eligible, but for the provisions of the Act of June 18, 1934, c. 576, § 1, 48 Stat. 984, 25 U.S.C. 461, for an allotment of land under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior federal statute, and has not been allotted lands under the provisions of such federal statutes;

(2) He/she is either a single person over the age of eighteen (18) years *or* a head of a family (as provided in § 115.4(c));

(3) He/she has duly made application for Sioux benefits and such application has been approved during his/her lifetime (as provided in § 115.5);

(4) He/she has not previously been paid Sioux benefits in his/her own right (as provided in § 115.4(d)); *and*

(5) The hypothetical allotment of 80 acres of tribal land to the applicant would not exhaust the lands available for allotment on the Cheyenne River Indian Reservation as of June 18, 1934, considering the allowance of similar hypothetical allotments to other such Indians previously receiving Sioux benefits under such Act.

(c) Head of a Family. The following criteria apply in determining head of family status under both sections 115.4(a) and 115.4(b).

(1) Except as provided in section 115.4(c)(2), when an applicant for Sioux benefits is married and living with his/her spouse, the applicant will be deemed to be a head of a family if designated as such by both the applicant and his/her spouse.

(2) When an applicant for Sioux benefits is married and living with his/her spouse, but the applicant's spouse (i) does not concur in the applicant's designation as head of the family, or (ii) has previously received Sioux benefits as head of the family which includes the applicant, the applicant will be deemed to be a head of a family if the economic contribution to the support of the family attributable to the applicant exceeds the contribution by his/her spouse for the eighteen (18) months period immediately preceding the date of the application for Sioux benefits.

(3) When an applicant for Sioux benefits is (i) unmarried, or (ii) married, but not living with his/her spouse, the applicant will be deemed to be a head of a family if the primary source of economic contribution to the support of the family is attributable to the applicant. Welfare or support payments made to the applicant by the government or his/her spouse shall be deemed attributable to the applicant.

(4) The Bureau shall not presume that a husband is a head of a family for purposes of this Part solely because of his status as a husband. The Bureau shall not presume that a wife is not a head of a family for purposes of this Part solely because of her status as a wife.

(5) The Bureau shall not presume that a Sioux woman married to a non-Sioux man is a head of a family for purposes of this Part solely because of such status. The Bureau shall not presume that a Sioux woman married to a Sioux man is not a head of a family for purposes of this Part solely because of such status.

(d) Double benefits. The prohibition against multiple payment of Sioux benefits to a person in his/her own right extends to the payment of Sioux benefits under any federal statute. However, a person will not be deemed to have received payment of Sioux benefits in his/her own right due to the fact that (1) Sioux benefits were paid to such person in his/her capacity as an heir of an Indian held to have a vested right to receive such benefits as of the date of death, or (2) Sioux benefits have previously been paid to that person's spouse or former spouse. Although the prohibition against double benefits would not preclude both spouses from receiving Sioux benefits during their marriage (assuming they both were otherwise eligible) or preclude a widowed or divorced applicant from receiving Sioux benefits merely because his/her spouse had previously received Sioux benefits, an applicant would not be able to receive Sioux benefits in his/her own right first as a single adult and again as a head of a family, or vice versa.

§ 115.5 Application procedure.

(a) Agency Superintendent. Application for Sioux benefits must be submitted to the Agency Superintendent for the reservation and shall contain such information as may be prescribed by the Bureau. Applications by unallotted Sioux Indians applying pursuant to the Act of June 18, 1934, c. 576, § 14, 48 Stat. 984, 987, 25 U.S.C. 474, or by Sioux Indians whose allotments were taken under the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, must be submitted within the lifetime of the applicant. Within thirty (30) days of receipt of a completed application, the Agency Superintendent shall verify the necessary information and forward the application and relevant documentation to the Area Director along with his/her recommendation for approval or disapproval.

(b) Area Director. Within fourteen (14) days of receipt of an application from the Agency Superintendent, the Area Director shall approve or disapprove the application and notify, in writing, the applicant and the Agency Superintendent of such decision and, if denied, the reasons therefor. Failure of the Area Director to act within the specified time shall have the effect of approval of the application.

(c) Appeal. Approval of an application by the Area Director shall be final and conclusive. Disapproval of an application may be appealed to the Commissioner pursuant to the administrative review procedures of 25 CFR 2, and the Commissioner's determination shall be subject to the administrative appeal procedures of 43 CFR 4.350 *et seq.* Approval of an application on administrative appeal or pursuant to judicial review shall relate back to the date of the Area Director's decision.

(d) Prior Applications.

(1) Eligibility for Sioux Benefits will be determined by an applicant's status as of the date of application, except that where an applicant's application was disapproved prior to the promulgation of these regulations under the provisions of previous Bureau regulations or policies, the applicant may reapply and, if he/she so requests, have his/her eligibility determined based upon his/her status as of the date of such prior application, which shall be deemed to be the date of the application.

(2) Unallotted Sioux Indians of the Pine Ridge and Rosebud Reservations whose applications were submitted and disapproved prior to the termination of payment of Sioux benefits on each respective reservation may reapply for benefits under this subsection within one year of the effective date of this Part and receive payment if their eligibility under section 115.4(b) is established as of the date of such initial application.

§ 115.6 Administration.

(a) No payment of Sioux benefits may be made unless an application therefor has been made and approved as provided by federal law.

(b) Payment of Sioux benefits shall be made in accordance with a budget or plan for expenditure submitted by the applicant and approved by the Agency Superintendent.

(c) The Commissioner shall annually compute the commuted monetary value of Sioux benefits to be effective on October 1 of that year and notify the affected tribes and Bureau agencies of such determination.

(d) The Area Director shall annually notify both the Cheyenne River Sioux Tribe and the Commissioner of the number of Sioux benefits remaining available to be paid under the provisions of the Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474.

Thomas W. Fredericks,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 81-809 Filed 1-8-81; 8:45 am]

BILLING CODE 4310-02-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Public Disclosure of Comments Received From Federal Agencies on the Iowa State Program Resubmitted Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM) U.S. Department of the Interior.

ACTION: Announcement of Public Disclosure of Comments on the Iowa Program Resubmission.

SUMMARY: Before the Secretary of the Interior may approve permanent state regulatory programs submitted under Section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain federal agencies must be solicited and disclosed. The Secretary has solicited comments from these agencies, and is today announcing receipt and availability for public review of agency comments.

ADDRESSES: Copies of the comments received are available for public review during business hours at:

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Ave., Kansas City, Missouri 64106, Telephone (816) 374-3920

Department of Soil Conservation, Mines and Minerals Division, Wallace State Office Building, Des Moines, Iowa 50319, Telephone (515) 281-5774.

FOR FURTHER INFORMATION CONTACT: Richard Rieke, Assistant Regional Director, State and Federal Programs, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, Telephone (816) 374-3920.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior is evaluating the permanent regulatory program resubmittd by Iowa on December 15, 1980. For the detailed background on the Iowa submission, see the following notices published in the Federal Register: March 6, 1980 (45 FR 14598-14599), April 25, 1980 (45 FR 27953-27954), June 18, 1980 (45 FR 41164-41166), October 16, 1980 (45 FR 68673-68686) and December 15, 1980 (45 FR 82276-82278). In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1) the Iowa program may not be approved until the Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the heads

of other Federal agencies concerned with or having special expertise relevant to the program as proposed. In this regard, the following agencies were invited to comment on the Iowa program:

Department of Agriculture: State Land Use Committee
Advisory Council on Historic Preservation
Department of Labor: Mine Safety & Health Administration
Environmental Protection Agency
Water Resources Council
Department of Energy
Department of the Interior: Bureau of Indian Affairs, Bureau of Land Management, Bureau of Mines, Heritage Conservation & Recreation Service, Fish & Wildlife Service, National Park Service, Geological Survey,
Department of the Army: Corps of Engineers

Of these agencies invited to comment, OSM received comments from the Heritage Conservation and Recreation Service, which are available for review and copying during business hours, at the locations listed above under "Addresses."

Dated: January 6, 1981.

Carl C. Close,

Assistant Director, State and Federal Programs.

[FR Doc. 81-870 Filed 1-8-81; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 936

Public Disclosure of Comments Received From Federal Agencies on the Oklahoma State Permanent Program Resubmitted Under P.L. 95-87

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Disclosure of Public Comments on the Oklahoma Resubmitted Program.

SUMMARY: Before the Secretary of the Interior may approve permanent state regulatory programs submitted under Section 503(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain federal agencies must be solicited and disclosed. The Secretary has solicited comments from these agencies, and is today announcing their public disclosure.

ADDRESSES: Copies of the comments received are available for public review during business hours at:

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Ave., Kansas City, Missouri 64106, Telephone: (816) 374-3920
Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone: (203) 343-4728
Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521-3859

FOR FURTHER INFORMATION CONTACT: Richard D. Rieke, Assistant Regional Director, State and Federal programs, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, Telephone (816) 374-3920.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior is evaluating the permanent regulatory program resubmitted by Oklahoma for his review on December 8, 1980. See the December 8, 1980, **Federal Register** (45 FR 80837-80839). In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1), the Oklahoma program may not be approved until the Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other federal agencies concerned with or having special expertise relevant to the program as proposed. In this regard, the following federal agencies were invited to comment on the Oklahoma program:

Department of Agriculture: Soil Conservation Service, Forest Service, Agricultural Stabilization and Conservation Service, Science and Education Administration
Advisory Council on Historic Preservation
Department of Labor: U.S. Mine Safety and Health Administration
Environmental Protection Agency
Water Resources Council
Department of Energy
Department of the Interior: Bureau of Indian Affairs, Bureau of Land Management, Bureau of Mines, Heritage Conservation and Recreation Service, Fish and Wildlife Service, National Park Service, Geological Survey
U.S. Army Corps of Engineers

Of these agencies invited to comment, OSM received comments from the following offices: Environmental Protection Agency, Department of the Interior, Fish and Wildlife Service.

These comments are available for review and copying during business hours, at the locations listed above under "ADDRESSES."

Dated: January 6, 1981.

Carl C. Close,

Assistant Director, State and Federal Programs.

[FR Doc. 81-871 Filed 1-8-81; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 430 and 431

[WH-FRL 1650-6]

Pulp, Paper, and Paperboard Builders' Paper and Board Mills Point Source Categories; Effluent limitations Guidelines, Pretreatment Standards, and new Source Performance Standards;

Correction

In FR Doc. 81-88, appearing at page 1430 in the issue for Tuesday, January 6, 1981, the comments period is incorrect. The comment period which is shown in the **Federal Register** as "February 4, 1981", should actually be "March 9, 1981".

BILLING CODE 1505-01

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Ch. V

Improving Government Regulations; Semiannual Agenda

AGENCY: Council on Environmental Quality.

ACTION: Semiannual agenda of regulations.

SUMMARY: This semiannual agenda covers the two matters for which the Council has responsibility: The National Environmental Policy Act (NEPA) regulations and the National Oil and Hazardous Substances Pollution Contingency Plan.

ADDRESSES: Questions should be addressed to: C. Foster Knight, Acting General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: C. Foster Knight, (202) 395-5750.

SEMIANNUAL AGENDA OF REGULATIONS

A. National Environmental Policy Act Regulations

The Council's final regulations implementing the procedural requirements of the National Environmental Policy Act were published in Volume 43 FR page 55990,

on November 29, 1978. Their effective date is July 30, 1979. The Council's NEPA regulations are published in Volume 40 Code of Federal Regulations beginning with section 1500. No revisions or amendments to these final regulations are under preparation or consideration by the Council.

B. National Oil and Hazardous Substances Pollution Contingency Plan

1. *Need For Revision*—In December, 1980, the Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. 96-510 (also known as "Superfund"), which requires, in section 105, that the National Contingency Plan be revised to conform with the new legislation and to contain a new section to be called the National Hazardous Substances Response Plan.

2. *Legal Basis*—Section 311(c)(2) of the Clean Water Act (33 U.S.C. Sec. 1321) requires the President to prepare and publish a National Oil and Hazardous Substances Pollution Contingency Plan. In Executive Order 11735 (August 3, 1976), the President designated the Council on Environmental Quality to carry out this responsibility. The Comprehensive Environmental Response, Compensation and Liability Act of 1980 is also the legal basis for revising the National Contingency Plan because it expressly requires, in section 105, specified revisions to the Plan.

3. *Status of the National Contingency Plan and Proposed Revisions*—The National Contingency Plan in its current form appears in 45 FR 17832 (March 19, 1980) and will be republished in Volume 40 Code of Federal Regulations beginning with section 1510.

The forthcoming revisions to the National Contingency Plan will be published, after notice and opportunity for public comment, within 180 days following enactment of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. 96-510.

Dated: January 5, 1981.

C. Foster Knight,

Acting General Counsel.

[FR Doc. 81-828 Filed 1-8-81; 8:45 am]

BILLING CODE 3125-01-M

DEPARTMENT OF COMMERCE

Maritime Administration

46 CFR Part 381

Cargo Preference—U.S.-Flag Vessels Geographical Allocation of Preference Cargoes

AGENCY: Maritime Administration, Department of Commerce.

ACTION: Proposed rulemaking.

SUMMARY: Proposed new 46 CFR 381.8 interprets the phrase, "by geographical areas," in the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) by prescribing the geographical allocation of preference cargoes among the ports in the four coastal areas of the United States.

DATES: Written comments by interested persons must be received by February 9, 1981.

ADDRESS: Send the original and 5 copies of comments to the Secretary, Maritime Administration, Washington, D.C. 20230. All comments will be made available for inspection during normal business hours in Room 3099-B, Department of Commerce, 14th & E Streets, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Robert J. Patton, Jr., Secretary, Maritime Administration, Maritime Administration, Room 3099-B, 14th & E Streets, N.W., Washington, D.C. 20230, 202-377-2188.

SUPPLEMENTARY INFORMATION: The Cargo Preference Act of 1954, commonly known as P.L. 664, is incorporated in the Merchant Marine Act, 1936, as amended, as section 901(b) (46 U.S.C. 1241(b)). This Act requires Government agencies to take all necessary and practicable steps to assure that United States-flag commercial vessels shall transport at least 50 percent of the gross tonnage of ocean cargoes that the agencies or their programs generate, if such vessels are available at fair and reasonable rates, in such a manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes "by geographical areas." The proposed new regulation, 46 CFR 381.8, prescribes the geographical allocation of preference cargoes among the ports in the four coastal areas of the United States: Great Lakes, Atlantic Coast, Gulf Coast and Pacific Coast.

The Assistant Secretary of Commerce for Maritime Affairs has made a preliminary determination, pursuant to provision of Executive Order 12044 and implementing Department of Commerce and Maritime Administration procedures, that the preparation of a regulatory analysis is not required.

Accordingly, it is proposed that 46 CFR Part 381 be amended to add a new § 381.8, to read as follows:

§ 381.8 Geographical allocation of preference cargoes.

In order to insure a fair and reasonable participation of U.S.-flag commercial vessels "by geographical areas" in the carriage of cargoes, as required by the Cargo Preference Act of 1954 (46 U.S.C. 1241,(b)), the head of each agency or department having responsibility under that Act (listed in § 381.2(c)) shall prescribe regulations or formal staff instructions providing for the equitable allocation of its preference cargoes among the ports in the four coastal areas of the United States: Great Lakes, Atlantic Coast, Gulf Coast, and Pacific Coast. Each agency or department shall endeavor to make a proportional distribution of the types of cargoes in its allocations among the four coasts, commensurate with the various types of cargoes, i.e., liner, dry bulk and liquid bulk, which may be generated by the agency, its contractors or grantees, or through its programs. In no case, however, shall any coastal area receive less than 10 percent of the agency's or department's cargo. In addition to prescribing regulations or formal staff instruction, the head of each affected agency shall develop an Action Plan which will encompass: (a) the method of implementing the regulations or staff instructions; (b) projected annual cargo mix by coastal area; and, (c) the time required for the allocation of the cargoes and compliance with this regulation. Each agency or department having a responsibility under the Cargo Preference Act shall furnish a copy of its regulations or staff instructions to the Secretary, Maritime Administration, for approval not later than 60 days after the effective date of this rule and shall submit a copy of the Action Plan to the Secretary, Maritime Administration, for approval not later than 90 days after the effective date of this regulations.

(Secs. 204(b), 212(d), and 901(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1122(d), and 1241(b)); Reorganization Plans No. 21 of 1950 (64 Stat. 1237) and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036); and Department of Commerce Organization Order 10-8 (38 FR 19707, July 1973))

Dated: December 30, 1980.

By Order of the Assistant Secretary for Maritime Affairs, Maritime Administration.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 81-733 Filed 1-8-81; 8:45 am]

BILLING CODE 3510-15-M

Notices

Federal Register
Vol. 46, No. 6
Friday, January 9, 1981

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

Rural Electrification Administration

Northern Michigan Electric Cooperative, Inc., Boyne City, Mich.; Proposed Loan Guarantee

Under the authority of Pub. L. 93–32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $9,000,000 to Northern Michigan Electric Cooperative, Inc. (Northern), of Boyne City, Michigan. This loan guarantee will provide financing for the purchase of a 1.26 percent undivided ownership interest in the existing Campbell Unit No. 3, a coal-fired 770 MW generation unit, and a 14.44 percent undivided ownership interest in 10 miles of 345 kV transmission line constructed by Consumers Power Company.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the project, including the engineering and economic feasibility studies and proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. Clyde L. Johnson, Jr., Manager, Northern Michigan Electric Cooperative, Inc., P.O. Box 138, Boyne City, Michigan 49712.

In order to be considered, proposals must be submitted by February 9, 1981, to Mr. Johnson. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals, received, as Northern Michigan Electric Cooperative, Inc., and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 29th day of December 1980.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 81-600 Filed 1-8-81; 8:45 am]

BILLING CODE 3410-15-M

CHRYSLER CORPORATION LOAN GUARANTEE BOARD

Change of Place of Closed Board Meeting

The closed meeting of the Chrysler Corporation Loan Guarantee Board scheduled to be held on January 6, 1981 at 11:00 a.m. has been moved from Room 4426 to Room 4121, Main Treasury Building, 15th Street & Pennsylvania, N.W., Washington, D.C.

Persons desiring further information should contact Bruce D. Bolander, Secretary of the Board, at (202) 566–2278.

Dated: January 5, 1981.

Bruce D. Bolander,

Secretary of the Board.

[FR Doc. 81-698 Filed 1-8-81; 8:45 am]

BILLING CODE 4810-70-M

COMMISSION ON CIVIL RIGHTS

Florida Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 4:00 p.m., and will end at 7:00 p.m., on January 23, 1981, at the Equal Employment Opportunity Commission, 300 Biscayne Blvd., Way, 4th Floor, Suite 414, Miami, Florida. The purpose of the meeting is to plan for FY 81 and followup to the Escambia Project and Miami hearings.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Ted Nichols, University of Miami, Coral Gables, Florida 33124, (305) 284–3064 or the Southern Regional Office, Citizens Trust Bank Building, Room 362, 75 Piedmont Ave., N.E., Atlanta, Georgia 30303, (404) 242–4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 5, 1981.

Thomas Neumann,

Advisory Committee Management Officer.

[FR Doc. 81-717 Filed 1-8-81; 8:45 am]

BILLING CODE 6335-01-M

Hawaii Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that meeting of the Hawaii Advisory Committee to the Commission will convene at 2:00 p.m., and will end at 5:00 p.m., on January 17, 1981, at the Ala Moana Hotel, Board Room, 410 Atkinson Drive, Honolulu, Hawaii. The purpose of the meeting is to discuss rechartering of the Advisory Committee and plan an education project.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Ms. Patricia K. Putman, 1910 Ala Moana Boulevard, Honolulu, HI 96815, (808) 948–7355 or the Western Regional Office, 3660 Wilshire Boulevard, Suite 810, Los Angeles, California 90010, (213) 688–3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 5, 1981.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 81-718 Filed 1-8-81; 8:45 am]

BILLING CODE 6335-01-M

Hawaii Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 12:00 p.m., and will end at 2:00 p.m., on January 17, 1981, at the Ala Moana Hotel, Board Room, 410 Atkinson

Drive, Honolulu, Hawaii. The purpose of the meeting is for the Hawaiian Issues Subcommittee to plan followup of the State Advisory Committee report, *Breach of Trust? Native Hawaiian Homelands.*

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Ms. Patricia K. Putman, 1910 Ala Moana Boulevard, Honolulu, HI 96815, (808) 948–7355 or the Western Regional Office, 3660 Wilshire Boulevard, Suite 810, Los Angeles, California 90010, (213) 688–3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 5, 1981.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 81–719 Filed 1–8–81; 8:45 am]

BILLING CODE 6335–01–M

Iowa Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 7:00 p.m., and will end at 8:00 p.m., on January 19, 1981, at the Ramada Inn, 929 Third Street, Des Moines, Iowa 50309. On January 20, 1981, the meeting will convene at 9:00 a.m., and will end at 1:00 p.m., at the same location. The purpose of the meetings is orientation of the newly rechartered Committee and program planning for FY 81. Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Lee B. Furgerson, 1225 Stephenson Way, Des Moines, Iowa 50307, (515) 245–4848 or the Central States Regional Office, Old Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106, (816) 374–5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 5, 1981.

Thomas L. Neumann,

Advisory Committee Managment Officer.

[FR Doc. 81–720 Filed 1–8–81; 8:45 am]

BILLING CODE 6335–01–M

Kentucky Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 12:00 p.m., and will end at 4:00 p.m., on January 27, 1981, at the Executive Inn, 978 Phillips Lane, Crown Room, Louisville, Kentucky 40213. The purpose of the meeting is orientation of the newly rechartered Committee, and update on CDBG study.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. James M. Rosenblum, 33 Ten Broeck Way, Louisville, Kentucky 40222, (502) 426–8000 or the Southern Regional Office, Citizens Trust Bank Building, Room 362, 75 Piedmont Avenue NE., Atlanta, Georgia 30303, (404) 242–4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 5, 1981.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 81–721 Filed 1–8–81; 8:45 am]

BILLING CODE 6335–01–M

Maryland Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 6:30 p.m., and will end at 9:30 p.m., on January 21, 1981 at the Thomas Hunter Lowe Office Building, 6 Bladen Blvd., Room 212, Annapolis, Maryland. The purpose of the meeting is to discuss the Maryland Statewide Conference Report and to discuss plans for followup to the Conference. Reports of Subcommittee activity for Administration of Justice will also be discussed.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Newton I. Steers, Jr., 6601 River Road, Bethesda, Maryland 20034, (301) 320–5820 or the Mid-Atlantic Regional Office, 2120 L Street, NW., Suite 510, Washington, D.C. 20036, (202) 254–6717.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 5, 1981.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 81–722 Filed 1–8–81; 8:45 am]

BILLING CODE 6335–01–M

Massachusetts Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 2:30 p.m., and will end at 5:00 p.m., on February 3, 1981, at the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110. The purpose of the meeting is a press conference releasing the Committee's report on the status of civil rights in Massachusetts and discussion of affirmative action reports.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Dr. Bradford E. Brown, 17 Roberta Jean Circle, P.O. Box 95, E. Falmouth, Massachusetts 02536, (617) 548–5123 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 5, 1981.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 81–723 Filed 1–8–81; 8:45 am]

BILLING CODE 6335–01–M

New Mexico Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 2:00 p.m., and will end at 4:00 p.m., on January 26, 1981, at the AMFAC Hotel, 2910 Yale Blvd., Albuquerque, New Mexico 87119. The purpose of the meeting is to discuss planning for energy project.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Hon. Roberto A. Mondradon, Lt. Governor's Office, State Capitol, Room 425, Santa Fe, New Mexico 87503, (505) 827–2513 or the Southwestern Regional Office, Heritage Plaza, 418 South Main, San Antonio, Texas 78204, (512) 229.5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 5, 1981.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 81-724 Filed 1-8-81; 8:45 am]

BILLING CODE 6335-01-M

Ohio Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 7:00 p.m., and will end at 10:00 p.m., on January 28, 1981, at the Netherland Hilton Hotel, 5th and Race Streets, Cincinnati, Ohio 45201. On January 29, 1981, the meeting will convene at 10:00 a.m., and will end at 1:00 p.m., at the same location. The purpose of the meetings is Committee briefing and Press Conference to release the Police/Community Relations Report.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mrs. Henrietta H. Looman, 1222 Woodland Avenue, N.W., Canton, Ohio 44703, (216) 454-2278 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 5, 1981.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 81-723 Filed 1-8-81; 8:45 am]

BILLING CODE 6335-01-M

Tennessee Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 2:00 p.m., and will end at 5:30 p.m., on January 30, 1981, at the Ramada Inn, 160 Union Avenue, Levee Room, Memphis, Tennessee 38103. The purpose of the meeting is to report progress on the Knoxville Affirmative Action report, and discuss program planning for FY 81.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Rev. Samuel B. Kyles, 704 S. Parkway East, Memphis, Tennessee 38106, (901) 946-2529 or the Southern Regional Office, Citizens Trust Bank Building, Room 362, 75 Piedmont Avenue, N. E., Atlanta, Georgia 30303, (404) 242-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 5, 1981.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 81-726 Filed 1-8-81; 8:45 am]

BILLING CODE 6335-01-M

Utah Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 7:30 p.m., and will end at 9:30 p.m., on January 15, 1981, at Howard Johnson's Motor Lodge, Room 1311, 122 W. South Temple Street, Salt Lake City, Utah. The purpose of the meeting is to discuss the current project on Affirmative Action in the energy industry.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. John Florez, OEO, University of Utah, 207 Park Building, Salt Lake City, UT 84112, (801) 581-8365 or the Southwestern Regional Office, Heritage Plaza, 418 South Main, San Antonio, Texas, 78204, (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 5, 1981.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 81-727 Filed 1-8-81; 8:45 am]

BILLING CODE 6335-01-M

Vermont Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 7:00 p.m., and will end at 9:00 p.m., on January 28, 1981, at the Vermont Federal Savings and Loan Association, Friendship Room, 99 State Street (Rear Door), Montpelier, Vermont. The purpose of this meeting is discussion of program planning and the report on the status of civil rights in Vermont.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Philip H. Hoff, 192 College Street, Hoff, Wilson & Po, Burlington, Vermont 05401, (802) 658-4300 or the Northeastern Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 5, 1981.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 81-728 Filed 1-8-81; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Laboratory Accreditation Criteria; Committee for Freshly Mixed Field Concrete

AGENCY: Department of Commerce, Office of the Assistant Secretary for Productivity, Technology and Innovation.

ACTION: Notice of termination.

SUMMARY: The Committee has concluded its work. The results are reflected in the criteria that were established for accrediting laboratories that test freshly mixed field concrete in a **Federal Register** notice of final criteria dated January 23, 1980 (45 FR 5572-5600).

SUPPLEMENTARY INFORMATION: The National Laboratory Accreditation Criteria Committee for Freshly Mixed Field Concrete was established in 1978 under the procedures of the National Voluntary Laboratory Accreditation Program, and in accord with the Federal Advisory Committee Act. The committee developed and recommended to the Secretary of Commerce criteria for accreditation of laboratories that test freshly mixed field concrete; evaluated public comment derived from publication of proposed criteria, and recommended to the Secretary appropriate actions covering such criteria.

EFFECTIVE DATE: The effective date of termination is December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. Howard L. Forman, Deputy Assistant Secretary for Product Standards Policy, Room 3876, U.S. Department of Commerce, telephone (202) 377-3221, or the Department's Committee Management Analyst, Mrs. Yvonne Barnes, telephone (202) 377-4217.

Dated: December 31, 1980.

David Nathan,

Assistant Secretary for Administration.

[FR Doc. 81-715 Filed 1-8-81; 8:45 am]

BILLING CODE 3510-17-M

International Trade Administration

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

AGENCY: International Trade Administration.

SUMMARY: The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to electronic instrumentation, or technology, and (D) exports of the aforementioned commodities subject to unilateral and multilateral controls which the United States establishes or in which it participates including proposed revisions of any such controls.

TIME AND PLACE: February 3, 1981, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 3708, 14th Street and Constitution Ave., NW., Washington, D.C.

AGENDA: General Session:

(1) Opening remarks by the Chairman.
(2) Presentation of papers or comments by the public.
(3) Planning for the 1982 International List Review.
(4) Discussion on use of a standardized Department of Commerce specification sheet.
(5) Briefing on calibration equipment trends.
(6) Discussion on U.S. unilateral controlled items.
(7) New Business.

Executive Session.

(8) Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

PUBLIC PARTICIPATION: The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94.409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 11652 or 12065.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce telephone: 202–377–4217.

For further information or copies of the minutes contact: Mrs. Margaret Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202–377–2583.

Dated: January 2, 1981.

Saul Padwo,

Director of Licensing.

[FR Doc. 81-718 Filed 1-8-81; 8:45 am]

BILLING CODE 3510-25-M

Maritime Administration

Tanker Construction Program; Determination by Maritime Subsidy Board That Neither a New Nor a Supplemental Environmental Impact Statement for the Tanker Construction Program is Required; Application by Chestnut Shipping Company

The Maritime Subsidy Board (the Board) has received an application from Chestnut Shipping Company (Chestnut) for construction-differential subsidy (CDS) to aid in retrofitting two tankers, designated MA Hulls 316 and 317, MarAd Design T8–S–100b, to comply with requirements for pollution prevention established by the Port and Tanker Safety Act of 1978. The Board has reviewed the application and has determined that the environmental impact of constructing such vessels, which can be categorized as intermediate size vessels, has already been adequately covered in the Environmental Impact Statement for the Tanker Construction Program (EIS) which was published on May 30, 1973, and adopted by the Maritime Administration/Maritime Subsidy Board in Docket No. A–75 on August 30, 1973.

A paper discussing the basis for the Board's decision, and copies of the EIS and Docket No. A–75, are available for public inspection in the Office of the Secretary, Room 3099–B, Maritime Administration, Department of Commerce Building, 14th & E Sts., NW, Washington, DC 20230.

Catalog of the Federal Domestic Assistance Program 11.500.

Dated: December 17, 1980.

By Order of the Maritime Subsidy Board/ Maritime Administration.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 81-692 Filed 1-8-81; 8:45 am]

BILLING CODE 3510-15-M

Minority Business Development Agency

Financial Assistance Application Announcement

The Minority Business Development Agency announces that it is seeking applications under its program to operate three San Francisco Region projects for a twelve month period beginning May 1, 1981. The aggregate total cost of the projects is $687,000.

Funding Instrument: It is anticipated that the funding instruments, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be grants.

Program Description: The General Business Program (GBS) of the Minority Business Development Agency (MBDA) provides technical assistance to minority businesspersons and firms for the purpose of improving their stability by increasing their managment and marketing capabilities. MBDA offers competitive grants to consulting firms (either non-profit or commercial entities). These firms must be capable of providing such services as:

—Preparation of business plans;
—Financial packaging;
—Industrial management assistance;
—Personnel Management services;
—Marketing planning;

and a broad range of other business services excluding legal services.

Applications are invited for the following four projects:

1. One grant for management and technical assistance project to operate in the Portland, Oregon and Washington SMSA in Multnomah, Clackamas, and Washington Counties of Oregon and Clark County in Washington. The project will operate at a cost not to exceed $110,000. The Project I.D. Number is 10–10–80013–01.

2. One grant for a management and technical assistance project to operate in the Santa Barbara-Santa Maria-Lompoc and Oxnard-Simi Valley-Ventura SMSAs in Santa Barbara and Ventura counties of California. The project will operate at a cost not to exceed $220,000. The Project I.D. Number is 09–10–80014–01.

3. One grant for a management and technical assistance project to operate in the Anaheim-Santa Ana-Garden Grove SMSA in Orange County, California. The project will operate at a cost not to exceed $357,000. The Project I.D. Number is 09–10–80015–01.

Eligibility Requirements: There are no restrictions. Any profit or non-profit institution is eligible to submit an application.

Application Materials: An application kit for these projects may be requested by writing the following address: U.S. Department of Commerce, Minority Business Development Agency, Grants Administration Unit, 450 Golden Gate Avenue, Box 36014, San Francisco, California 94102.

In requesting an application kit, the applicant must specify its profit status; i.e., State or local government, Federally recognized Indian tribal units, educational institutions, hospitals, or other type of profit or non-profit institution. This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. Specific criteria by which applications will be evaluated is included in the application kit.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of February 11, 1981. Applications received after this date will not be considered.

11.800 Minority Business Development
(Catalog of Federal Domestic Assistance)
(This program is not subject to the requirements of OMB Circular A–95)

Dated: December 31, 1980.

R. V. Romero,

Regional Director.

[FR Doc. 81–824 Filed 1–8–81; 8:45 am]

BILLING CODE 3510–21–M

Financial Assistance Application Announcement

The Minority Business Development Agency, San Francisco Region, announces a correction in its announcement appearing in the **Federal Register** on November 28, 1980, Volume 45, No. 231, page 79134. Under the paragraph headed "Closing Date", the final sentence should read: Applications received after January 15, 1981 will not be considered.

Dated: December 31, 1980.

R. V. Romero,

Regional Director.

[FR Doc. 81–825 Filed 1–8–81; 8:45 am]

BILLING CODE 3510–21–M

Office of the Secretary

Definition of Aerospace Industry Materials Needs; Invitation for Expression of Public and Private Sector Materials Needs and Recommendations for Federal Action

AGENCY: Assistant Secretary of Commerce for Productivity, Technology and Innovation.

ACTION: Solicitation of written comment from the public and private sector and notice of public workshop to review these public and private sector views.

SUMMARY: In Section 5(C) of the Materials and Minerals Policy, Research and Development Act of 1980, Pub. L. 96–479, the Secretary of Commerce, in consultation with the Federal Emergency Management Agency, the Secretaries of Interior and Defense, and the Director of the Central Intelligence Agency, is directed to report to the Congress before October 21, 1981, on critical materials needs in a specific case related to national security, economic well-being and industrial production.

As used in the Act, the term "materials" means substances, including minerals, of current or potential use that will be needed to supply the military, industrial and essential civilian needs of the United States in the production of goods or services, particularly those which are primarily imported or for which there is a prospect of shortages or uncertain supply, with the exclusion of food and of energy fuels used as such.

The Department is considering the aerospace industry as a focus for the first study and has begun to examine anticipated materials used in the aerospace industry. An early goal is to select at least three to five selected materials for detailed study of industry needs, anticipated supplies, and the implications of severe shortages or supply interruptions. Using several alternative scenarios, the study will estimate the industrial demand for several selected materials. These demands will be compared with total world supply/demand estimates for the selected materials in order to support analyses of the national security, economic, and industrial production implications of anticipated supply/demand disparities.

The Department, by this Notice, is soliciting information from affected individuals and organizations supporting identification of (1) the particular materials to be examined and (2) the current or anticipated problems with these materials. Suggestions for corrective action will also be appreciated.

Written statements should be addressed to Dr. John B. Wachtman, Jr., National Bureau of Standards, Materials Building B308, Washington, D.C. 20234 for receipt by February 5, 1981.

On February 9–10, 1981, the Department of Commerce will hold a Workshop that will be conducted by John B. Wachtman, Jr., of the National Bureau of Standards, Philip Goodman of the Office of Productivity, Technology and Innovation and James Owens of the Bureau of Industrial Economics. Various Departmental activities in the critical materials area are being coordinated with Pub. L. 96–479 responsibilities through a Task Force under the Chairmanship of Jordan J. Baruch: John B. Wachtman, Jr., Vice Chairman; James Owens; Philip Goodman; Antonio Macone, Office of Commodity Policy; Leon Karadbil, Office of Industrial Mobilization; Candice Stevens, Office of Policy; and Robert B. Ellert, Office of the General Counsel. The members of this Task Force will also participate in the Workshop. This Workshop will consist of summary presentations of responses to the above questions by the institutions submitting them, followed by a general discussion. This Workshop will take place in the Green Auditorium of the National Bureau of Standards, in Gaithersburg, Maryland beginning at 9:00 a.m. both days and ending no later than 4:00 p.m. on February 10th.

SUPPLEMENTARY INFORMATION: All major critical materials needs areas of the aerospace industry will be open for discussion:

(1) Supplies of, and requirements for, raw and bulk materials;

(2) Supplies of, and requirements for, specifically engineered materials and forms, including special parts; and

(3) The development of substitute materials including advanced highly engineered materials.

Among the concerns that will be addressed are:

(1) Anticipated requirements in the foreseeable future;

(2) Current or anticipated difficulties in obtaining materials in any form;

(3) Prospects for, and implication of, fluctuations in demand, supply, and prices;

(4) Timely availability of processed materials and parts; and

(5) Other materials issues of prime concern to the aerospace industry.

The materials finally chosen for detailed study will be specific and should typify the full range of materials needs of the industry. For example, possible specific materials for close examination might include the following:

(1) Cobalt, as a raw material on which the U.S. is import dependent;

(2) Titanium forgings, as a special processing capacity need; and

(3) Rapidly-solidified alloys, as a promising route to both conservation of materials or increased performance.

Public and private sector views are also solicited on recommended actions to deal with aerospace materials problems such as:

(1) improvement in materials production base;

(2) stockpiling, both public and private;

(3) Federal emergency allocation procedures;

(4) improvement of capacity for airframes, engines, and components;

(5) expanded conservation and recycling of materials; and

(6) improved research and development of new materials both for subsitution and for higher performance.

All written comments that are furnished in response to this invitation will be available for inspection and copying prior to the workshop in the Department's Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between E Street and Constitution Avenue, NW., Washington, D.C. 20230.

Signed: January 6, 1981.

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology, and Innovation.

[FR Doc. 81-730 Filed 1-8-81; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 6, 1981.

The USAF Scientific Advisory Board Logistics Cross-Matrix Panel will meet on January 29 and 30, 1981 at the Headquarters Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio. The purpose of the meeting is to review the progress of the logistics-oriented Scientific Advisory Board Ad Hoc Committees and determine the Panel's plan of action for the next eighteen months. The Panel will meet from 8:00 a.m. to 4:00 p.m. each day.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-8845.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 81-620 Filed 1-8-81; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Strategy Sub-Panel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on January 26-27, 1981, from 8:00 a.m. to 5:00 p.m. each day, at the American Embassy, Tokyo, Japan, and Headquarters, Commander U.S. Naval Forces Japan, Yokosuka, Japan. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions on the nature of collective security in the Pacific and Indian Ocean, centering around the most sensitive intelligence information available on the military and political situation in the area. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Commander Catherine E. Becker, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 N. Beauregard Street, Room 392, Alexandria, VA 22311. Phone (703) 756-1205.

Dated: January 6, 1981.

P. B. Walker,

Captain, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 81-737 Filed 1-8-81; 8:45 am]

BILLING CODE 3810-71-M

Office of the Secretary

Defense Science Board; Advisory Committee Meeting

The Defense Science Board will meet in closed session 12-13 February 1981 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Board has been scheduled for 12-13 February 1981 to discuss interim finidngs and tentative recommendations resulting from ongoing Task Force activities associated with Strategic, Tactical, Intelligence/Command, Control and Communications, and Technology Issues. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with 5 U.S.C. App. I section 10(d) (1976), it has been determined that this Defense Science Board meeting concerns matters listed in 5 U.S.C. section 552b(c) (1) (1976), and that accordingly this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

January 6, 1981.

[FR Doc. 81-872 Filed 1-8-81; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: National Advisory Council on Women's Educational Programs.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Women's Educational Programs and its Executive, Federal Policies, Practices, and Programs, Civil Rights and WEEA Program Committees. 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. This document is intended to notify the general public of their opportunity to attend.

DATE: January 26, 1981, 8:00 a.m. to 5:00 p.m.; and January 27, 1981, 8:30 a.m. to 4:30 p.m.

ADDRESS: From 4:30 p.m. to 5:00 p.m. on January 26 and from 3:00 p.m. to 4:30 p.m. on January 27, 1981, meetings will be held in the National Institute of Education Conference Room at 1200 19th Street, N.W., Room 823 of the Brown Building. All other meetings of the Council will be held in the Council offices at 1832 M Street, N.W., Suite 821, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Dauito, Administrative Assistant, National Advisory Council on Women's Educational Programs, 1832 M Street, N.W., Suite 821, Washington, D.C. 20036 (202) 653–5846.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Public Law 95–561. The Council is mandated to (a) advise the Secretary on matters relating to equal educational opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with resepct to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The meeting of the Executive Committee will take place on January 26, 1981 from 8:00 a.m. to 9:30 a.m. The agenda will include plans for the Council meeting as well as a discussion of current activities and future plans.

The meeting of the Federal Policies, Practices, and Programs Committee, the Civil Rights Committee, and the WEEA Program Committee will take place on January 26, 1981 from 10:30 a.m. to 4:30 p.m.

The agenda for the Federal Policies, Practices, and Programs Committee will include a discussion of the Council's Congressional testimony on sex equity provisions in the Vocational Education Act, and discussion of a joint forum with the National Advisory Council on Vocational Education on implications of the sex equity report for reauthorization.

The agenda for the Civil Rights Committee will include discussion of the Council's study on alternatives to Federal assistance terminations as a sanction for certain types of Title IX violations, education initiatives relating to Title IX of the 1972 Education Amendments, and new priorities for 1981.

The agenda for the Program Committee will include a review of evaluation plan for FY '80, review of "Guidelines for Participation" in evaluation activities by Council members, review of framework for WEEAP product matrix, and a status report from the WEEAP Director.

The meeting of the National Advisory Council on Women's Educational Programs will take place from 9:30 a.m. to 10:30 p.m. on January 26 and from 8:30 a.m. to 2:45 p.m. on January 27, 1981. The agenda will include reports of the Executive Director and the Women's Educational Equity Act Program, action on recommendations from the Council's Standing Committees, and plans for future Council meetings.

At 4:30 p.m. on January 26, there will be a swearing-in ceremony for newly appointed Council members in Room 823 of the National Institute of Education's Brown Building at 1200 19th Street N.W. On January 27, from 3:00 p.m. to 4:30 p.m. a panel of community organization representatives will discuss women's equity needs and programs. This panel will also meet in Room 823 of the Brown Building.

The meetings of the Council will be open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 1832 M Street, N.W., Suite 821, Washington, D.C.

Signed at Washington, D.C., on January 6, 1981.

Joy R. Simonson,

Executive Director.

[FR Doc. 81-873 Filed 1-8-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Aluminum Company of America (Alcoa); Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces notice of filing a Petition for the Implementation of Special Refund Procedures for refunds received pursuant to a Consent Order.

DATE: Petition submitted to the Office of Hearings and Appeals: December 15, 1980.

FOR FURTHER INFORMATION CONTACT: Charles L. Croxton, Program Manager for Natural Gas Liquids, Program Operations Division, Office of Enforcement, 2000 M Street, N.W., Room 5204, Washington, D.C. 20461 (202) 653–3541.

SUPPLEMENTARY INFORMATION: On July 18, 1979, the Office of Enforcement of the ERA published notification in the **Federal Register** that it executed a proposed Consent Order with Aluminum Company of America, (ACA) of Point Comfort, Texas on June 18, 1979, which will not become effective sooner than 30 days after publication, 44 Fed. Reg. 41908 (1979). Interested persons were invited to submit comments concerning the terms, conditions, or procedural aspects of the proposed Consent Order. In addition, persons who believe they have a claim to all or a portion of the refund of overcharges paid by ACA pursuant to the proposed Consent Order were requested to submit notice of their claims to the ERA.

A second notice was published in the **Federal Register**, 44 Fed. Reg. 67210 (1979), which stated that no comments were received and therefore the proposed Consent Order was finalized.

Pursuant to the Consent Order, ACA refunded the sum of $1,100,000 by Certified check made payable to the United States Department of Energy. This sum was received by DOE and has been placed into a suitable account pending determination of its proper distribution.

The following claim was submitted to the ERA: Tenneco Oil.

Action Taken: The ERA is unable readily to identify the persons entitled to receive the $1,100,000 or to ascertain the amounts of refunds that such persons are entitled to receive. The ERA has therefore petitioned the Office of Hearings and Appeals (OHA) on December 15, 1980 to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, 10 CFR 205.280 *et seq.* to determine the identity of persons entitled to the refunds and the amounts owing to each of them. Persons who believe they are entitled to all or a

portion of the refunds should comply with the procedures of 10 CFR Part 205, Subpart V.

Issued in Washington, D.C. on the 18th day of December, 1980.

Robert Gerring,

Director, Program Operations Division.

[FR Doc. 81-709 Filed 1-8-81; 8:45 am]

BILLING CODE 6450-01-M

Kern County Refinery, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order.

DATES: Effective date: October 7, 1980.

Comments by: February 9, 1981.

ADDRESS: Send comments to: Lon W. Smith, District Manager of Enforcement, U.S. Department of Energy, 333 Market Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Lon W. Smith, District Manager of Enforcement, U.S. Department of Energy, 333 Market Street, San Francisco, California 94105, Telephone (415) 764-7038.

SUPPLEMENTARY INFORMATION: On October 7, 1980, the Office of Enforcement of the ERA executed a Consent Order with Kern County Refinery, Inc., of Bakersfield, California. Under 10 CFR 205.199 J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Kern County Refinery, Inc. ("Kern"), with its home office located in Bakersfield, California, is a firm engaged in the refining and marketing of refined petroleum products, including motor gasoline, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Kern, the Office of Enforcement, ERA, and Kern entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the audit was March and April, 1979. The audit was conducted to determine Kern's compliance with the petroleum allocation regulations, for motor gasoline.

2. Previously, ERA had alleged that Kern had violated the Mandatory Petroleum Allocation Reglations by:

(a) Failing to supply certain of its base-period customers with their adjusted base-period allocations of motor gasoline, while supplying nonbase-period customers;

(b) Failing to report proper allocation fractions to the ERA and Kern's customers;

(c) Failing to report available surplus product to the ERA prior to distributing the purportedly surplus product at its discretion; and

(d) Failing to follow normal business practices in its allocation of product.

3. Kern, without admitting that it had violated any regulations, voluntarily entered into this Consent Order as a means of settling this dispute with the DOE, thus permitting it to avoid the expense of protracted litigation.

4. In the Consent Order, Kern agreed to:

(a) Offer to deliver the product to each base-period purchaser in accordance with its normal business practices, including delivery locations;

(b) File the Prime Supplier's Monthly Report, form EIA-25, each month for each state, in accordance with 10 CFR 211.17(b) and 10 CFR 211.222;

(c) Compute its monthly allocation fraction in accordance with 10 CFR 211.10;

(d) File surplus product reports in accordance with 10 CFR 210.10(g), regardless of whether or not any of its product constitutes prime supply; and

(e) Pay $18,000 in a compromise settlement of civil penalties.

5. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Submission of Written Comments

The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments to: U.S. Department of Energy, Lon W. Smith, District Manager of Enforcement, 333 Market Street, San Francisco, CA 94105. You may obtain a free copy of this Consent Order by writing to the same address or by calling (415) 764-7038.

You should indentify your comments on the outside of your envelope and on the documents you submit with the designation, "Comments on Kern County Refining, Inc. Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on February 9, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in San Francisco on the 30th day of December 1980.

Lon W. Smith,

District Manager, Office of Enforcement, Western District, Economic Regulatory Administration.

[FR Doc. 81-710 Filed 1-8-81; 8:45 am]

BILLING CODE 6450-01-M

Sid Richardson Carbon and Gasoline Co. and Richardson Products Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces notice of filing a Petition for the Implementation of Special Refund Procedures for refunds received pursuant to a Consent Order.

DATE: Petition submitted to the Office of Hearings and Appeals: December 15, 1980.

FOR FURTHER INFORMATION CONTACT: Charles L. Croxton, Program Manager for Natural Gas Liquids, Program Operations Division, Office of Enforcement, 2000 M Street NW., Room 5204, Washington, D.C. 20461, (202) 653-3541.

SUPPLEMENTARY INFORMATION: On October 4, 1979, the Office of Enforcement of the ERA published notification in the Federal Register that it executed a proposed Consent Order with Sid Richardson Carbon and Gasoline Co. and Richardson Products Co., (SRC), of Fort Worth, Texas on August 31, 1979, which would not become effective sooner than 30 days after publication, 44 FR 57148 (1979). Interested persons were invited to submit comments concerning the terms, conditions, or procedural aspects of the proposed Consent Order. In addition, persons who believe they have a claim to all or a portion of the refund of overcharges paid by SRC pursuant to the proposed Consent Order were requested to submit notice of their claims to the ERA. Although interested persons were invited to submit comments regarding the proposed Consent Order to the DOE, no comments were received. The proposed Consent Order was therefore finalized, 44 FR 66656 (1979).

Pursuant to the Consent Order, SRC refunded the sum of $1,100,000 by certified check made payable to the United States Department of Energy on November 29, 1979. This sum has been placed into a suitable account pending determination of proper distribution.

The following persons submitted claims to the ERA:

Diamond Shamrock Corporation
McCulloch Gas Processing Corporation

Action Taken: The ERA is unable readily to identify the persons entitled to receive the $1,100,000 or to ascertain the amounts of refunds that such persons are entitled to receive. The ERA has therefore petitioned the Office of Hearings and Appeals (OHA) on December 15, 1980 to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, 10 CFR 105.280 *et seq.* to determine the identity of persons entitled to the refunds and the amounts owing to each of them. Persons who believe they are entitled to all or a portion of the refunds should comply with the procedures of 10 CFR Part 205, Subpart V.

Issued in Washington, D.C. on the day 18th day of December, 1980.

Robert Gerring,

Director, Program Operations Division.

[FR Doc. 81-711 Filed 1-8-81; 8:45 am]

BILLING CODE 6450-01-M

Westland Oil Development Corp.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces notice of filing a Petition for the Implementation of Special Refund Procedures for refunds received pursuant to a Consent Order.

DATE: Petition submitted to the Office of Hearings and Appeals: December 23, 1980.

FOR FURTHER INFORMATION CONTACT: Crude Producers Branch, Attn: John Marks, Office of Enforcement, Room 5002, 2000 M Street, N.W., Washington, D.C. 20461, Telephone Number (202) 653-3517.

SUPPLEMENTARY INFORMATION: On October 2, 1980, the Office Enforcement of the ERA published notification in the Federal Register that it executed a Consent Order with Westland Oil Development Corporation (Westland) of Houston, Texas on June 23, 1980, 45 FR 65280 (1980). Interested persons were invited to submit comments concerning the terms, conditions or procedural aspects of the Consent Order. In addition, persons who believe they have a claim to all or a portion of the refund of overcharges paid by Westland pursuant to the Consent Order were requested to submit notice of their claims to the ERA.

Although interested persons were invited to submit comments regarding the Consent Order to the DOE, no comments were received. The Consent Order, therefore, was issued as signed.

Pursuant to the Consent Order, Westland is refunding the sum of $2,634,189.09 by certified checks made payable to the United States Department of Energy in four equal installments at ninety day intervals. All such funds received by DOE have been placed into a suitable account pending determination of their proper distribution.

The ERA received no claims to the refunds.

Action Taken: The ERA is unable readily to identify the persons entitled to receive the $2,634,189.09 or to ascertain the amounts of refunds that such persons are entitled to receive. The ERA has therefore petitioned the Office of Hearings and Appeals (OHA) on December 23, 1980 to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, 10 CFR 205.280 *et seq.* to determine the identity of persons entitled to the refunds and the amounts owing to each of them. Persons who believe they are entitled to all or a portion of the refunds should comply with the procedures of 10 CFR Part 205, Subpart V.

Issued in Washington, DC on the 31th day of December, 1980.

Robert D. Gerring,

Director, Program Operations Division.

[FR Doc. 81-712 Filed 1-8-81; 8:45 am]

BILLING CODE 6450-01-M

LaGloria Oil & Gas Co., a Wholly Owned Subsidiary of Texas Eastern Transmission Corp.; Action Taken on Consent Order

Pursuant to 10 C.F.R. § 205.199(J), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of final action taken on a Consent Order. Under the terms of 10 C.F.R. § 205.199(c), no Consent Order involving sums in excess of $500,000 shall become effective until ERA publishes notice of its execution and solicits public comments with respect to its terms.

On November 18, 1980, ERA published a notice of a proposed Consent Order which was executed between LaGloria Oil and Gas Company and the DOE (45 F.R. 76224, November 18, 1980). With that notice, and in accordance with 10 C.F.R. § 205.199(J), ERA invited interested persons to comment on the proposed Consent Order. Also, in that notice, and in accordance with 10 C.F.R. Section 205.283, interested parties who believe that they have a claim to all or a portion of the refund were instructed to provide notification to ERA.

Four parties submitted written notification of claims and one of these parties submitted a comment on the terms and conditions of the Consent Order. ERA has concluded that the Consent Order as executed between the DOE and LaGloria Oil and Gas Company is an appropriate resolution of the compliance proceedings described in the Notice published November 18, 1980, and hereby gives notice that the Consent Order shall become effective as proposed, without modification, on February 9, 1981.

Issued in Dallas, Texas, this 22nd day of December, 1980.

Wayne I. Tucker,

Southwest District Manager, Economic Regulatory Administration.

[FR Doc. 81-862 Filed 1-8-81; 8:45 am]

BILLING CODE 6450-01-M

McFarland Energy, Inc.; Notice of Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces notice of filing a Petition for the Implementation of Special Refund Procedures for refunds received pursuant to a Consent Order.

DATE: Petition submitted to the Office of Hearings and Appeals: December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Crude Producers Branch, Attn: John Marks, Office of Enforcement, Room 5002, 2000 M Street NW., Washington, D.C. 20461, Telephone Number (202) 653-3517.

SUPPLEMENTARY INFORMATION: On August 13, 1979, the Office of Enforcement of the ERA published notification in the **Federal Register** that it executed a Consent Order with McFarland Energy, Inc., (MEI) of Los Angeles County, California on July 16, 1979, 44 Fed. Reg. 47397, August 13, 1979). Interested persons were invited to submit comments concerning the terms.

conditions or procedural aspects of the Consent Order. In addition, persons who believe they have a claim to all or a portion of the refund of overcharges paid by MEI pursuant to the Consent Order were requested to submit notice of their claims to the ERA.

Although interested persons were invited to submit comments regarding the Consent Order to the DOE, no comments were received. The Consent Order, therefore, was not modified.

Pursuant to the Consent Order, MEI refunded the sum of $265,000 plus interest (a total of $353,131.99) by certified checks made payable to the United States Department of Energy. All such funds received by DOE have been placed into a suitable account pending determination of their proper distribution.

The following persons submitted claims to the ERA: Mr. W. L. Theisen, Golden Eagle Refining Co., Inc.

ACTION TAKEN: The ERA is unable readily to identify the persons entitled to receive the $353,131.99 or to ascertain the amounts of refunds that such persons are entitled to receive. The ERA has therefore petitioned the Office of Hearings and Appeals (OHA) on December 19, 1980 to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, 10 CFR 205.280 *et seq.* to determine the identity of persons entitled to the refunds and the amounts owing to each of them. Persons who believe they are entitled to all or a portion of the refunds should comply with the procedures of 10 CFR Part 205, Subpart V.

Issued in Washington, D.C., on the 5th day of January, 1981.

Robert D. Gerring,

Director, Program Operations Division.

[FR Doc. 81-863 Filed 1-8-81; 8:45 am]

BILLING CODE 6450-01-M

Quintin Little Co.; Notice of Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces notice of filing a Petition for the Implementation of Special Refund Procedures for refunds received pursuant to a Consent Order.

DATE: Petition submitted to the Office of Hearings and Appeals: December 23, 1980.

FOR FURTHER INFORMATION CONTACT: Crude Producers Branch, Attn: John Marks, Office of Enforcement, Room 5002, 2000 M Street NW., Washington, D.C. 20461, Telephone Number (202) 653-3517.

SUPPELEMENTARY INFORMATION: On April 8, 1980, the Office of Enforcement of the ERA published notification in the **Federal Register** that it executed a proposed Consent Order with Quintin Little Company (QLC) of Ardmore, Oklahoma on March 7, 1980, which would not become effective sooner than 30 days after publication (45 FR 23719, April 8, 1980). Interested persons were invited to submit comments concerning the terms, conditions or procedural aspects of the Consent Order. In addition, persons who believe they have a claim to all or a portion of the refund of overcharges paid by QLC pursuant to the proposed Consent Order were requested to submit notice of their claims to the ERA.

A second notice was published in the **Federal Register** (45 FR 36112, May 29, 1980), which stated that no comments were received and therefore, the proposed Consent Order was finalized.

Pursuant to the Consent Order, QLC is refunding the sum of $1,700,000 by certified checks made payable to the United States Department of Energy in 24 monthly installments. All such funds received by DOE have been placed into a suitable account pending determination of their proper distribution.

The following persons submitted claims: Koch Industries, Defense Logistics Agency.

ACTION TAKEN: The ERA is unable readily to identify the persons entitled to receive the $1,700,000 or to ascertain the amounts of refunds that such persons are entitled to receive. The ERA has therefore petitioned the Office of Hearings and Appeals (OHA) on December 23, 1980 to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, 10 CFR 205.280 *et seq.* to determine the identity of persons entitled to the refunds and the amounts owing to each of them. Persons who believe they are entitled to all or a portion of the refunds should comply with the procedures of 10 CFR Part 205, Subpart V.

Issued in Washington on the 5th day of January, 1981.

Robert D. Gerring,

Director, Program Operations Division.

[FR Doc. 81-864 Filed 1-8-81; 8:45 am]

BILLING CODE 6450-01-M

Union Texas Petroleum Corp.; Notice of Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces notice of filing a Petition for the Implementation of Special Refund Procedures for refunds received pursuant to a Consent Order.

DATE: Petition submitted to the Office of Hearings and Appeals: December 23, 1980.

FOR FURTHER INFORMATION CONTACT: Crude Producers Branch, Attn: John Marks, Office of Enforcement, Room 5002, 2000 M Street NW., Washington, D.C. 20461, Telephone No. (202) 653-3517.

SUPPLEMENTARY INFORMATION: On April 1, 1980, the Office of Enforcement of the ERA published notification in the **Federal Register** that it executed a proposed Consent Order with Union Texas Petroleum Corporation (UTP) of Houston, Texas on March 6, 1980, which would not become effective sooner than 30 days after publication, 45 FR 21340 (1980). Interested persons were invited to submit comments concerning the terms, conditions or procedural aspects of the proposed Consent Order. In addition, persons who believe they have a claim to all or a portion of the refund of overcharges paid by UTP pursuant to the proposed Consent Order were requested to submit notice of their claims to the ERA.

A second notice was published in the **Federal Register**, 45 FR 36119 (1980), which stated that no objections to the Consent Order were received and, therefore, the proposed Consent Order was finalized.

Pursuant to the Consent Order, UTP refunded the sum of $2,100,000 by certified check made payable to the United States Department of Energy on June 14, 1980. This sum received by DOE has been placed into a suitable account pending determination of its proper distribution.

The following persons submitted claims: Cities Services Company, Defense Logistics Agency, Mobil Oil Corporation, Koch Industries.

ACTION TAKEN: The ERA is unable readily to identify the persons entitled to received the $2,100,000 or to ascertain the amounts of refunds that such persons are entitled to receive. The ERA has therefore petitioned the Office of Hearings and Appeals (OHA) on December 23, 1980 to implement Special

Refund Procedures pursuant to 10 CFR Part 205, Subpart V, 10 CFR 205.280 *et seq.* to determine the indentity of persons entitled to the refunds and the amounts owing to each of them. Persons who believe they are entitled to all or a portion of the refunds should comply with the procedures of 10 CFR Part 205, Subpart V.

Issued in Washington, DC on the 31th day of December, 1980.

Robert D. Gerring,

Director, Program Operations Division.

[FR Doc. 81-865 Filed 1-8-81; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research Conservation Panel of the Energy Research Advisory Board; Notice of Meeting

Notice is hereby given of the following meeting:

Name: Conservation Panel of the Energy Research Advisory Board (ERAB). ERAB is a Committee constituted under the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770)

Date and time: January 23, 1981, 9:00 am to 5:00 pm

Place: Department of Energy, Forrestal Building, Room 6E-069, 1000 Independence Avenue SW., Washington, D.C. 20585

Contact: Eudora M. Taylor, Staff Assistant, Energy Research Advisory Board, Department of Energy, Forrestal Building, MS 3F-032, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone: 202/252-8933

Purpose of the parent board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department

Tentative agenda:

—Receive and act on draft report from Advanced Conservation Technologies Subpanel

—Consideration of establishment of Industrial Conservation Subpanel

—Discussion and consideration of possible Conservation Panel report

Public participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Energy Research Advisory Board at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 8:00 am and 4:00 pm Monday through Friday, except Federal Holidays.

Issued at Washington, D.C. on January 5, 1981.

N. D. Pewitt,

Deputy Director, Office of Energy Research.

[FR Doc. 81-868 Filed 1-8-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP81-20-000]

U-T Offshore System; Order Accepting Proposed Tariff Sheets for Filing and Establishing Hearing Procedures

Issued December 31, 1980.

On December 1, 1980, the U-T Offshore System (U-TOS) filed revised tariff sheets[1] which contain proposed rate changes designed to decrease annual revenues from jurisdictional transportation services by $610,000. Such proposed rates are based on actual costs for the twelve months ended August 31, 1980, as adjusted for known and measurable changes expected through December 31, 1980. The pipeline proposed an effective date of January 1, 1981.

Such decrease in proposed rates is primarily due to a reduction in rate base due to an increase in depreciation reserve and a request by U-TOS for a change in its method of determining depreciation expense from a straight-line rate to a unit of production method. Offsetting the decrease in depreciation expense are proposed increases in operating costs and cost of capital. U-TOS claims an overall rate of return of 11.5% which yields a return of 17.0% on common equity capital, comprising 33.29% of its total capitalization.

U-TOS indicates that this filing is filed pursuant to Section 4 of the Natural Gas Act and in compliance with the condition in Ordering Paragraph (B) of the Commission's Order of March 7, 1978, in Docket No. CP76-118. For the reasons set forth below, we shall treat this filing as in compliance with the March 7, 1978 order.

On March 7, 1978, the Commission amended the pipeline's certificate of public convenience and necessity to provide for an interim transportation rate for the subject transportation services. The Commission further directed in its March 7, 1978, order that:

Additionally, U-TOS shall submit a cost of service study every two years to justify its then existing rates or to provide a basis for a rate change. The first such study shall be submitted on or before March 31, 1981. Any changes found to be necessary shall become effective the first day of the year in which the cost study is submitted.[2]

Since the time period covered by the instant rate filing, with a proposed effective date of January 1, 1981, would be the same time period covered by the required biennial cost study, it is appropriate to accept the proposed tariff sheets for filing as being in compliance with the Commission's March 7, 1978, order in Docket No. CP76-118, and permit them to become effective as of January 1, 1981, as provided below.

Based upon a review of U-TOS's filing the Commission finds that the proposed tariff sheets have not been justified. Accordingly, the Commission shall accept U-TOS's filing, to become effective on January 1, 1981, *Provided; however;* that pursuant to the certificate condition set forth in the March 7, 1978, order, as set forth above, any changes found to be necessary in such rates shall become effective as of January 1, 1981. Should any refunds be necessary, the amount to be refunded shall include interest at the rate prescribed in Section 154.67 of the Regulations.

The Commission Orders:

(a) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8 and 15 thereof, and the Commission's Rules and Regulations, a public hearing shall be held concerning the lawfulness of the changed rates proposed by U-TOS.

(B) Pending hearing and decision, U-TOS' proposed Tariff Sheets are accepted for filing and the sheets may become effective as of January 1, 1981. *Provided; however;* that any change found necessary pursuant to the certificate condition imposed by the Commission in Docket No. CP76-118 in the March 7, 1978, order, shall become effective as of January 1, 1981. Should any refunds be necessary, the amount to be refunded shall include interest at the rate prescribed in section 154.67 of the Regulations.

(C) The Commission Staff shall prepare and serve top sheets on all parties on or before April 1, 1981.

(D) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (18 CFR 3.5(d)), shall convene a settlement conference in this proceeding to be held within 10 days after the service of top sheets by the Staff in a hearing or conference room of the

[1] Third Revised Sheet No. 4, First Revised Sheet No. 6 and Second Revised Sheet No. 7 to its FERC Original Volume No. 1.

[2] *U-T Offshore System*, "Order Denying Rehearing and Amending Certificate of Public Convenience and Necessity," Docket No. CP76-118, (issued March 7, 1978).

Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, to establish such further procedural dates as may be necessary, and to rule upon all motions (except motions to consolidate, sever, or dismiss), as provided for in the Rules of Practice and Procedure.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-800 Filed 1-8-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-11-000 (PGA81-1, IPR81-1, LFUT81-1)]

United Gas Pipe Line Co.; Order Accepting Tariff Sheets for Filing, Subject to Conditions, Suspending Effective Date, and Consolidating Instant Docket With Proceedings in Docket No. TA80-2-11, et al.

Issued December 31, 1980.

On December 1, 1980, United Gas Pipe Line Company (United) filed a rate increase reflecting (1) a 15.5 cents per Mcf increase in the cost of purchase gas, (2) an increase of .14 cents per Mcf in the Louisiana First Use Tax surcharge and (3) an increase of 38.0 cents per Mcf in the demand portion of the deferred surcharge and an increase of 5.41 cents per Mcf in the commodity portion of the deferred surcharge.[1] United proposes an effective date of January 1, 1981.

United's filing does not provide the calculations required by § 282.602 of the Commission's Regulations, which requires that the monthly debit and credit entries to Accounts 192.1, 192.2, and 805.2 must be submitted when filing a reduced PGA rate under the incremental pricing provisions of the Natural Gas Policy Act. In addition, the filing does not provide the monthly adjustments for the Louisiana First Use Tax surcharge adjustment balance in Account 186. In order to comply with the Commission's Regulations, United must provide this information and acceptance of its filing shall be subject to the condition that the information be provided.

On May 30, 1980, United filed a PGA rate increase in Docket No. TA80-2-11 (PGA80-2, IPR80-2 and LFUT80-2) which was suspended by the Commission order issued June 30, 1980, as the Commission was unable to determine the propriety of amounts United included in its Unrecovered Purchase Gas Cost Account. Review of United's filing in the instant docket reveals that United has used the same methodology in the preparation of Account 191 as in the aforementioned suspended PGA rate filing.

Therefore, based upon review of United's filing the Commission finds that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, and unduly discriminatory, or otherwise unlawful. The Commission shall accept United's tariff sheets for filing, and suspend the effectiveness such that the rates will go into effect on January 1, 1981, subject to refund, and subject to Commission action in the proceedings in Docket No. TA80-2-11 (PGA80-2, IPR80-2 and LFUT80-2). The Commission grants waiver of the notice requirements in order to allow the rates to be effective January 1, 1981.

In a number of suspension orders,[2] the Commission has addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of the other statutory standards. It has been acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. A rate change filed is pursuant to Commission authorized tracking authority is the type of circumstance which justifies a shortened suspension period. Accordingly, we believe we should exercise our discretion to suspend the rate, but permit the rate to take effect January 1, 1981, subject to refund, and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

United's filing includes increases pursuant to area rate clauses in its contracts with producers. The Commission's acceptance of this filing shall not constitute a determination that any or all of the area rate clauses permit NGPA prices. Should it ultimately be determined—in accordance with the procedures prescribed in Order No. 23, as amended by subsequent orders in Docket No. RM79-22—that a producer is not entitled to an NGPA price under an area rate clause, the refunds made by the producer to United shall be flowed through to the ratepayers in accordance with the procedures prescribed in United's PGA clause.

The Commission Orders:

(A) United's proposed tariff sheets are accepted for filing and suspended and waiver is granted of the notice requirements such that the rates may become effective January 1, 1981, subject to refund, and subject to the outcome of the proceedings in Docket No. TA80-2-11 (PGA80-2, IPR80-2 and LFUT80-2).

(B) Acceptance of United's tariff sheets is conditioned upon the filing, within 15 days, of calculations showing the monthly debits and credits to Accounts 192.1, 192.2, and 805.2 and the monthly surcharge adjustments for the Louisiana First Use Tax surcharge adjustment in Account 186.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-807 Filed 1-8-81; 8:45 am]

BILLING CODE 6450-85-M

[1] Substitute Revised Fifty-Second Revised Sheet No. 4, Second Revised Sheets No. 4-A and 4-B and Substitute First Revised Sheet No. 4-C to FERC Gas Tariff, First Revised Volume No. 1.

[2] *E.g., Valley Gas Transmission, Inc.*, Docket No. RP80-98 (August 22, 1980) (1 day suspension); *Great Lakes Gas Transmission Co.*, Docket No. RP80-134 (September 24, 1980) (5 month suspension).

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-1722-4]

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 (EISS) which have been officially filed with the EPA and distributed to Federal agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This notice includes EIS's filed during the week of December 29, 1980 to January 2, 1981.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this notice is calculated from January 9, 1981 and will end on February 23, 1981. The 30-day review period for final EIS's as calculated from January 9, 1981 will end on February 9, 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 29, 1980 to January 2, 1981. 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, D.C. 20460 (202) 245–3006.

Dated: January 5, 1981.

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.

Draft

PANDORA MOTH MANAGEMENT PLAN, KAIBAB NATIONAL FOREST: Coconino County, Ariz., December 29: Proposed is a management plan for the suppression of the pandora moth infestation of ponderosa pine around Jacob Lake within the Kaibab National Forest, Coconino County, Ariz. The alternatives considered are: (1) Pilot project utilizing acephate, (2) pilot project utilizing permethrin, and (3) no action. (USDA–FS–DEIS–03–07–81–1) (EIS Order No. 800994).

Draft

TAOS SKI VALLEY MASTER DEVELOPMENT PLAN, CARSON NATIONAL FOREST: Taos County, N. Mex., December 29: Proposed is a master development plan for the Taos Ski Valley within the Carson National Forest, Taos County, N. Mex. The preferred alternative would involve: (1) Additional chair lifts, (2) 60 acres of new ski trails, (3) a snowmaking operation, (4) construction of the up-mountain restaurant, (5) expansion of parking facilities, (6) skier limit of 4,800 per day, and (7) expansion of the east and west boundaries. Six Phasing alternatives for up-mountain development and four for parking and transportation development are considered. (EIS Order No. 800995)

EXTENSION: The review period for the above EIS has been extended until March 9, 1981. (No. 800995).

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, (202) 272–0121.

Draft

MONROE HARBOR DIKED DISPOSAL AREA: Monroe County, Mich., December 31: Proposed is the construction of a diked disposal facility for Monroe Harbor within the Sterling State Park, Monroe County, Mich. The facility would consist of an onshore and offshore diked basin with a clay liner, a pumpout platform at Monroe Harbor, a pile supported pipeline, and an underground pipe within the park. The total storage capacity would be 4,200,000 cubic yards. (Detroit District). (EIS Order No. 800998)

Final

JOYCE CREEK FLOOD CONTROL PROJECT: Camden County, N.C., January 2: Proposed is a flood control and drainage project for the previously channeled Joyce Creek and two of its tributaries, Cyprus Run and Mill Run, Camden County, N.C., consisting of about 9.5 miles of stream channel excavation. Construction will be from one side only and include construction of sediment traps. (Wilmington District). Comments made by: EPA, HEW, DOC, DOI, USDA, State and local agencies. (EIS Order No. 810002).

Final Supplement

BIG STONE LAKE-WHETSTONE RIVER MODIFICATION (FS–1): Big Stone and Lac qui Parle Counties, Minn. and Grant County, S. Dak., December 29: Proposed is the Big Stone Lake-Whetstone River modification project located in Big Stone and Lac qui Parle Counties, Minn. and Grant County, S. Dak. This supplement has been prepared to address a significant change for the proposed diversion channel into the US–75 reservoir in the Big Stone National Wildlife Refuge. This statement supplements a final EIS, No. 710520, filed 12–18–70. (St. Paul District). Comments made by: EPA, AHP, USDA, DOC, FERC, HUD, DOT, State agencies. (EIS Order No. 800990).

Report

REPORT—WALNUT CREEK PROJECT, CITY OF CONCORD: Contra Costa County, Calif., December 29: This supplemental report provides current information concerning the Walnut Creek project in Contra Costa County, California as related to final EIS, #770911, filed 7–27–77. Specifically addressed is a change in the proposed plan along sections of Pine and Galindo Creeks in the city of Concord. (San Francisco District.) (EIS Order No. 800989.)

DEPARTMENT OF COMMERCE

Contact: Dr. Robert T. Miki, Acting Deputy Assistant Secretary, for Regulatory Policy, Room 7614, Department of Commerce, Washington, D.C. 20230.

EXTENSION: Spiney Lobster Fishery Mgmt. Plan, Pacific, published **Federal Register** November 17, 1980—review extended from January 7, 1981 (prior extension) to January 21, 1981. (#800855)

ENVIRONMENTAL PROTECTION AGENCY

Contact: RTP Library, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2777.

Draft

BENZENE EMISSIONS, STANDARDS, regulatory, December 30: Proposed are standards for the control of continuous process benzene emissions from vents in the ethylbenzene/styrene (EBIS) industry. Regulatory alternatives considered are: (1) Do not set standard, (2) 85% reduction based on use of scrubbers and condensers, (3) 94% reduction based on use of flare system coupled to scrubbers and condensers, (4) 99% reduction based on use of boiler, and (5) 100% reduction based on plant closure and substitutes for styrene. (EPA–450/3–79–79–035a.) (EIS Order No. 800997.)

Draft

Contact: Mrs. Norma Hughes (WH–548), Environmental Protection Specialist, Office of Water and Waste Management, Environmental Protection Agency, 401 M Street, S.W., (202) 472–2838.

NORTH ATLANTIC INCINERATION SITE, DESIGNATION, Atlantic, December 29: Proposed is the designation of a site for the thermal destruction of toxic organic wastes, principally organohalogens, within the Atlantic Ocean. The preferred site is located approximately 140 NMI east of Delaware Bay and 155 NMI from Ambrose Light, New York. The alternatives consider: (1) No action, and (2) use of other sites. (EIS Order No. 800993.)

Final

Contact: Office of Noise Abatement and Control, Environmental Protection Agency, Washington, D.C. 20460, (202) 557–7777.

MOTORCYCLES AND MOTORCYCLE EXHAUST SYSTEMS NOISE EMISSIONS, regulatory, January 1: Proposed are noise regulations for motorcycles and motorcycle exhaust systems. The regulations would require that all street and off-road motorcycles with an engine displacement of 170 cc and less, manufactured after 1–1–83, not emit a noise level in excess of 83 decibels. Lower levels of noise emissions are required as of 1–1–86. Comments made by: Businesses. (EIS Order No. 810000.)

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

BRIARWOOD SUBDIVISION, MORTGAGE INSURANCE, Yellowstone County, Mont., December 30: Proposed is the issuance of HUD home mortgage insurance for the Briarwood housing development in Yellowstone County, Montana. The development which would encompass 960 acres will consist of 3,455 single and multi-family dwelling units. Also included in the development would be a golf course, park, recreational and open space areas, and a shopping center. (HUD-RO8-EIS-81-IVD.) (EIS Order No. 800996.)

Section 104(h). The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104(h) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

Final

DETROIT/HAMTRAMCK CENTRAL INDUSTRIAL PARK, UDAG, Wayne County, Mich., December 29: Proposed is the awarding of a UDAG to the cities of Detroit and Hamtramck, Wayne County, Michigan, for the construction of a central industrial park. The project would initially consist of acquisition, relocation, demolition and site preparation of 465 acres. The industrial park would include water, sewer service, drainage, transportation, power, communication and other facilities. The alternatives considered include: (1) No action, (2) residential use of the site, (3) a smaller site, and (4) other sites. Comments made by: COE, EPA, DOI, State and local agencies, individuals and businesses. (EIS Order No. 800991.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environment and Safety, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, (202) 426-4357.

Federal Highway Administration

Draft

U.S. 70 IMPROVEMENTS, PORTALES-CLOVIS SECTION, Roosevelt and Curry Counties, N. Mex., January 2: Proposed is the improvement of the Portales-Clovis section of U.S. 70 in Roosevelt and Curry Counties, New Mexico. Improvement alternatives in the Portales subsection include consideration of no action and three relief routes on new location. Alternatives considered for the Clovis section include no action, widening the existing route and two relief routes southeast of the existing route. (FHWA-NM-EIS-80-03-D.) (EIS Order No. 810001.)

Report

REPORT—U.S.-7 IMPROVEMENT, 4(F) EVALUATION, Belmont County, Ohio, December 29: This supplemental report provides a 4(f) evaluation for the improvement of U.S.-7 in the city of Bellaire, Belmont County, Ohio as related to final EIS, No. 760046, filed 1-12-76. (FHWA-OHIO-4(f)-71-08-D.) (EIS Order No. 800992.)

[FR Doc. 81-731 Filed 1-8-81; 8:45 am]

BILLING CODE 6560-37-M

[WH-FRL 1722-6]

Intent To Transfer Confidential Information to a Contractor

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of intent to transfer confidential information to contractor.

SUMMARY: The Environmental Protection Agency (EPA) intends to transfer confidential information collected under Section 308 of the 1977 Clean Water Act to an EPA contractor. The transfer of this information to the contractor is necessary for summarizing the technical data base which will support effluent limitations and standards for the Organic Chemicals and Plastics/Synthetic Fibers industrial categories.

DATE: Comments on the notice of transfer are due on or before January 19, 1981. For Further Information contact: Maria M. Irizarry, Organic Chemicals Branch, Effluent Guidelines Division, (WH-552), U.S. Environmental Protection Agency, 401 M. St., S.W., Washington, D.C. 20460, (202) 426-2497.

SUPPLEMENTARY INFORMATION: The data to be transferred was obtained from a wastewater sampling program conducted within these two industries. Portions of these data have been declared confidential by the sampled facilities. The facilities affected are those involved in screening, verification and long-term self-sampling programs of the Organic Chemicals Branch. Originally this information was to be coded and analyzed statistically by Walk, Haydel and Associates, Inc., of New Orleans, La. and a notice authorizing transfer of the data to support that effort was published in the **Federal Register** of February 4, 1980. However, EPA has revised its plans and now intends to have the information coded and analyzed by SRI International of Menlo Park, California under contract No. 68-01-6062. The contract contains all provisions required by EPA regulations (40 CFR 2.302(h)(2-3)) for treatment of confidential information. In accordance with those regulations, sampled facilities have ten days from the date of this notice to comment on EPA's proposed transfer of this information.

Dated: January 2, 1981.

Merna Hurd,

Acting Assistant Administrator for Water and Waste Management.

[FR Doc. 81-807 Filed 1-8-81; 8:45 am]

BILLING CODE 6560-29-M

FEDERAL MARITIME COMMISSION

[Agreement No. 10404]

East Asiatic Co., Knutsen Joint Transpacific Service; Notice of Availability of Energy Impact Statement

Pursuant to the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6362, the Office of Energy and Environmental Impact has assessed the possible Commission actions with regard to Agreement No. 10404 published at 45 *Fed. Reg.* 71423 (October 28, 1980) and has determined that Commission approval of the agreement should promote greater energy efficiency and energy conservation than Commission disapproval or modification. The environmental impacts involved are insignificant.

This Energy Impact Statement will become final within 20 days and is available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20572, telephone (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 81-899 Filed 1-8-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Avenue Bancorporation; Formation of Bank Holding Company

Avenue Bancorporation, Chicago, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Avenue Bank and Trust Company of Oak Park, Oak Park, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 3, 1981. Any comment on an application that requests a hearing must include a

statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 5, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-833 Filed 1-8-81; 8:45 am]

BILLING CODE 6210-01-M

Boatmen's Bancshares, Inc.; Acquisition of Bank

Boatmen's Bancshares, Inc., St. Louis, Missouri, has applied for the Board's approval under sections 3(a)(3) and (5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 per cent or more of the voting shares of Plaza National Bancshares, Inc., St. Louis, Missiouri, and thereby acquire control of Plaza Bank of West Port, St. Louis, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 29, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 2, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-834 Filed 1-8-81; 8:45 am]

BILLING CODE 6210-01-M

Boelus Investment Co.; Formation of Bank Holding Company

Boelus Investment Company, Boelus, Nebraska, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(s)(1)) to become a bank holding company by acquiring 99.3 per cent or more of the voting shares of Boelus State Bank, Boelus, Nebraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 30, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidences that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 5, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-835 Filed 1-8-81; 8:45 am]

BILLING CODE 6210-01-M

Fidelcor, Inc.; Proposed Acquisition of Fidelcor Life Insurance Company

Fidelcor, Inc., Rosemont, Pennsylvania, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b) (2)), for permission to acquire voting shares of Fidelcor Life Insurance Company, Phoenix, Arizona.

Applicant states that the proposed subsidiary would engage de novo in the activities of underwriting, as reinsurer, credit life and credit accident and health insurance directly related to extensions of credit by Applicant's subsidiary bank, The Fidelity Bank. These activities would be performed from offices of Applicant's subsidiary in Phoenix, Arizona, and the geographic areas to be served are southeastern Pennsylvania, Delaware, Maryland, and New Jersey. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Philadelphia.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 29, 1981.

Board of Governors of the Federal Reserve System, December 31, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-836 Filed 1-8-81; 8:45 am]

BILLING CODE 6210-01-M

First Lincolnwood Corp.; Formation of Bank Holding Company

First Lincolnwood Corp., Lincolnwood, Illinois, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C 1842(a)(1)) to become a bank holding company by acquiring at least 80 per cent of the voting shares of The First National Bank of of Lincolnwood, Lincolnwood, Illinois. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the officers of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 2, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 2, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-837 Filed 1-8-81; 8:45 am]

BILLING CODE 6210-01-M

First Peoples Bancorp, Inc.; Formation of Bank Holding Company

First Peoples Bancrop, Inc., Jefferson City, Tennessee, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80

percent or more of the voting shares of First Peoples Bank, Jefferson City, Tennessee. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 28, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 31, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board

[FR Doc. 81-838 Filed 1-8-81; 8:45 am]

BILLING CODE 6210-01-M

Mid-South Bancorp, Inc.; Formation of Bank Holding Company

Mid-South Bancorp, Inc., Murfreesboro, Tennessee, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Murfreesboro Bank & Trust Company, Murfreesboro, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Georgia. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 28, 1981. Any comment on application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 31, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-839 Filed 1-8-81; 8:45 am]

BILLING CODE 6210-01-M

Piedmont BankGroup, Incorporated; Acquisition of Bank

Piedmont BankGroup, Incorporated, Martinsville, Virginia, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire the successor by merger to The First National Bank of Ferrum, Ferrum, Virginia. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(e)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 29, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 2, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-840 Filed 1-8-81; 8:45 am]

BILLING CODE 6210-01-M

Southern Indiana Bancorp, Inc.; Formation of Bank Holding Company

Southern Indiana Bancorp, Inc., Newburg, Indiana, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Southern Indiana Bank and Trust Company, Newburgh, Indiana. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 31, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 31, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-841 Filed 1-8-81; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Independence National Corporation is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of voting securities of I.C.H. Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 22, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b) (2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-699 Filed 1-8-81; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Reeves Communications Corporation is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of Maypal Limited. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Reeves. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3984.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-701 Filed 1-8-81; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Kennecott Corporation is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain voting securities of Curtiss-Wright Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Kennecott Corporation. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 81-700 Filed 1-8-81; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Notice of Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (5 U.S.C. Appendix I), the Alcohol, Drug Abuse, and Mental Health Administration announces the renewal by the Secretary of Health and Human Services, with the concurrence of the General Services Administration Committee Management Secretariat, of the Board of Scientific Counselors, NIMH.

Authority for this committee will expire on January 4, 1983 unless the Secretary formally determines that continuance is in the public interest.

Dated: December 30, 1980.

Robert L. Trachtenberg,

Deputy Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 81-714 Filed 1-8-81; 8:45 am]

BILLING CODE 4110-88-M

Advisory Committees; Renewals

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (5 U.S.C. Appendix I), the Alcohol, Drug Abuse, and Mental Health Administration announces the renewal by the Secretary of Health and Human Services, with the concurrence of the General Services Administration Committee Management Secretariat, of the following advisory committees:

Drug Abuse Biomedical Research Review Committee
Drug Abuse Clinical, Behavioral, and Psychosocial Research Review Committee
Drug Abuse Resource Development Review Committee

Authority for these committees will expire on December 31, 1982 unless the Secretary formally determines that continuance is in the public interest.

Dated: December 30, 1981.

Robert L. Trachtenberg,

Deputy Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 81-713 Filed 1-8-81; 8:45 am]

BILLING CODE 4110-88-M

Food and Drug Administration

[Docket No. 80P-0349]

Cranbrook Institute of Science; Approval of Variance for the Cranbrook Laser Scanning System Model 3 and Laser Light Show

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that a variance from the performance standard for laser products has been approved by the Bureau of Radiological Health for the Cranbrook Laser Scanning System Model 3 including the laser light show manufactured and produced by Cranbrook Institute of Science. The scanning system provides a laser display to produce a variety of special lighting effects. The principal use of this product is to provide entertainment to general audiences.

DATES: The variance became effective November 18, 1980, and ends November 18, 1985.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Glenn E. Conklin, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4), Cranbrook

Institute of Science, 500 Lone Pine Rd., P.O. Box 801, Bloomfield Hills, MI 48013, has been granted a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products. The variance permits the manufacturer to introduce into commerce the demonstration laser product known as the Cranbrook Laser Scanning System Model 3 and laser light show, assembled and produced by Cranbrook Institute of Science. The shows have levels of accessible laser radiation in excess of class II levels but not exceeding those required to perform the intended function of the product. Suitable means of radiation protection will be provided by constraints on the physical and optical design, by warnings in the user manual and on the product, and by procedures for Cranbrook Institute of Science personnel. The product shall bear the Variance Number 80P-0349.

By letter of November 18, 1980, the Director of the Bureau of Radiological Health approved the requested variance, which terminates on November 18, 1985.

In accordance with § 1010.4 (21 CFR 1010.4), the application and all correspondence (including the written notice of approval) on this application have been placed on public display in the Dockets Management Branch, Food and Drug Administration, and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 24, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-578 Filed 1-8-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80P-0092]

Laser Displays, Inc.; Approval of Variance for a Laser Projection System and Laser Light Show

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that a variance from the performance standard for laser products has been approved by the Bureau of Radiological Health for the Laser Projector Model LaserGraph One and laser light shows manufactured and produced by Laser Displays, Inc. The projector provides a laser display to produce a variety of special lighting effects. The principal use of this product is to provide entertainment to general audiences.

DATES: The variance became effective November 12, 1980, and ends November 12, 1982.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Glenn E. Conklin, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4), Laser Displays, Inc., 755 Boylston St., Boston, MA 02116, has been granted a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products. The variance permits the manufacturer to introduce into commerce the demonstration laser product known as the Laser Projector Model LaserGraph One and laser light shows manufactured and produced by Laser Displays, Inc. The shows have levels of accessible laser radiation in excess of class II levels but not exceeding those required to perform the intended function of the product. Suitable means of radiation protection will be provided by constraints on the physical and optical design, by warnings in the user manual and on the product, and by procedures for personnel who operate the product. The product shall bear the Variance No. 80P-0092.

By letter of November 12, 1980, the Director of the Bureau of Radiological Health approved the requested variance, which terminates on November 12, 1982.

By letter of October 15, 1980, the Director of the Bureau of Radiological Health approved the requested variance, which terminates on October 15, 1982.

In accordance with § 1010.4 (21 CFR 1010.4), the application and all correspondence (including the written notice of approval) on this application have been placed on public display in the Dockets Management Branch, Food and Drug Administration, and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 24, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-580 Filed 1-8-81; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80P-0262]

Lookinglas Laser Works; Approval of Variance for a Laser Projection System and Laser Light Show

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that a variance from the performance standard for laser products has been approval by the Bureau of Radiological Health for the laser projection system and Lookinglas Laser Works laser light show manufactured and produced by Lookinglas Laser Works. The projector provides a laser display to produce a variety of special laser lighting effects. The principal use of this product is to provide entertainment to general audiences.

DATES: The variance became effective October 15, 1980, and ends October 15, 1982.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Glenn E. Conklin, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4), Lookinglas Laser Works, 7181 21st St. #5, Westminster, CA 92683, has been granted a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products. The variance permits the manufacturer to introduce into commerce the demonstration laser product known as the Lookinglas Laser Works laser light show incorporating the Laser Systems Development Corporation Model Redeye R-2(a) laser projector assembled and produced by Lookinglas Laser Works. The shows have levels of accessible laser radiation in excess of class II levels but not exceeding those required to perform the intended function of the product. Suitable means of radiation protection will be provided by constraints on the physical and optical design, by warnings in the user manual and on the product, and by procedures for Lookinglas Laser Works personnel. The product shall bear the Variance Number 80P-0262.

In accordance with § 1010.4 (21 CFR 1010.4), the application and all correspondence (including the written notice of approval) on this application

have been placed on public display in the Docket Management Branch, Food and Drug Administration, and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 24, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-579 Filed 1-8-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-80-631]

Redelegation of Authority

AGENCY: Office of General Counsel, Department of Housing and Urban Development.

ACTION: Redelegation of Authority.

SUMMARY: The General Counsel redelegates authority to exercise power and authority with respect to (a) service of process directed to employees of the Department, and (b) approval of the legality of the issuance of subpoenas and similar matters pertaining to regulatory programs for which primary enforcement responsibility is vested in the Secretary.

SUPPLEMENTARY INFORMATION: Pursuant to the delegation of authority from the Secretary to the General Counsel on June 8, 1971, 36 FR 11052, as amended, to exercise certain power and authority and to redelegate power and authority, the General Counsel redelegates the following authority as described below.

With respect to the authority described in Section A, paragraph 4 of that delegation, the authority to accept, on behalf of the Secretary, service of all summonses, subpoenas, and other judicial, administrative or legislative processes directed to the Secretary or a Central Office employee in an official capacity is hereby redelegated to the Associate General Counsel for Litigation. Authority to accept such service of process directed to a Field Office employee in an official capacity is redelegated to the Regional Counsel with responsibility for the employee's Field Office.

With respect to the authority described in Section A, paragraph 5 of the above-referenced delegation, the authority to approve the legality of the issuance of subpoenas or interrogatories, the compelling of attendance by witnesses, and the granting of petitions to revoke or modify subpoenas or interrogatories pertaining to regulatory programs for which primary enforcement responsibility is vested in the Secretary, except with respect to those approvals pursuant to Section 811 of the Fair Housing Act (42 U.S.C. 3611), is redelegated to the Associate General Counsel for Regulatory Programs.

EFFECTIVE DATE: January 9, 1981.

FOR FURTHER INFORMATION CONTACT: Sally W. Watts, Office of General Counsel, U.S. Department of Housing and Urban Development, Room 10182, Area Code (202) 755-1704.

Authority: See 36 FR 11052.

Issued at Washington, D.C., December 31, 1980.

Jane McGrew,

General Counsel.

[FR Doc. 81-575 Filed 1-8-81; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-80-632]

Inspector General; Delegation of Authority

The Inspector General of the Department of Housing and Urban Development is hereby authorized to issue such rules and regulations as may be necessary to carry out the functions, powers and duties of the Inspector General of the Department of Housing and Urban Development. This authority may not be redelegated.

(Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Effective date: This delegation of authority shall be effective as of December 1, 1980.

Issued at Washington, D.C., December 31, 1980.

Jane McGrew,

Acting Secretary of Housing and Urban Development.

[FR Doc. 81-576 Filed 1-8-81; 8:45 am]

BILLING CODE 4210-01-M

Office of Assistant Secretary for Community Planning and Development

[Docket No. N-81-1052]

Community Development Block Grant Program

AGENCY: Department of Housing and Urban Development, Assistant Secretary for Community Planning and Development.

ACTION: Notice.

SUMMARY: HUD is issuing a Notice of the date for submission of preapplications for applicants in the State of Kentucky for the Small Cities Program; and of the availability of the criteria to be used by HUD and Kentucky for selection in the Community Development Block Grant Program for Fiscal Year 1981.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Director, Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755-6322. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given that in accordance with 24 CFR 570.422 (45 FR 57120-57122, August 27, 1980) and 24 CFR 570.420(h) (2) (45 FR 55979, August 21, 1980), the Department of Housing and Urban Development (HUD) has established the submission date for preapplications for the Small Cities Program Grants for Fiscal Year 1981 for applicants in the State of Kentucky.

For Fiscal Year 1981 HUD is implementing a demonstration that provides for a substantial State role in the Small Cities selection process, and Kentucky is one of two States selected to participate in this demonstration.

The State of Kentucky has developed selection criteria and procedures which are substituted for the selection factors for Comprehensive grants (24 CFR 570.424) and the selection factors for Single Purpose grants (24 CFR 570.428). These selection factors and additional information may be obtained by contacting the Department for Local Government for Kentucky at the address listed below. The Catalog of Federal Domestic Assistance Program number is 14.219. All applications are subjected to OMB Circular A-95 requirements.

Applicants are hereby advised to submit their preapplications for Single Purpose and for Comprehensive Grants pursuant to criteria developed for the State of Kentucky, no earlier than: January 12, 1981 and no later than January 26, 1981. Preapplications shall be submitted to: Department for Local Government, First Floor, Capitol Plaza Tower, Frankfort, Kentucky 40601, Attn: Sally J. Hamilton.

For all applicants, for both metropolitan and nonmetropolitan areas, the earliest and latest date for submission as indicated above shall apply. Preapplications for funding under the Single Purpose and Comprehensive Grant provisions of the Small Cities Program will be accepted only during the designated time period. Preapplications received after the deadline must be postmarked no later than the applicable deadline submission date. Any preapplications postmarked

after that date are unacceptable and will be returned.

Issued at Washington, D.C., December 31, 1980.

Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 81-877 Filed 1-8-81; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammal Annual Report; Availability

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability of marine mammal annual report.

SUMMARY: The Director, U.S. Fish and Wildlife Service, on September 15 signed the annual report on the Service's administration of the marine mammals under its jurisdiction, as required by section 103(f) of the Marine Mammal Protection Act of 1972. The report covers the period April 1, 1979, to March 31, 1980, and was submitted to the Congress on December 5. By this notice, the Director informs the public that the report is available and that any interested individual may secure a single copy by requesting same in writing from the Service.

ADDRESS: Write for a copy to Director (PUB), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Bardwell, Division of Wildlife Management, Branch of Wildlife Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, 202-632-2202.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service is responsible for eight species of marine mammals under the jurisdiction of the Department of the Interior, as assigned by the Marine Mammal Protection Act of 1972 (MMPA). These species are polar bears, sea and marine otters, walruses, manatees (three species), and dugongs. The report reviews the service's marine mammal-related activities during the report period and summarizes the following status information for each species: Distribution and migration, abundance and trends, general biology, ecological problems, allocation problems, regulations, and current research. Administrative actions discussed include MMPA appropriations, financial grants to states to help them develop and implement programs for protecting and managing marine mammals in their waters, marine mammals in Alaska, legal actions against the Department of the Interior, endangered and threatened marine mammal species (specifically the West Indian manatee and the sea otters in California), marine mammal care and maintenance regulations and standards, law enforcement activities, scientific research and public display permits, certificates of registration, research, Outer Continental Shelf environmental studies, ecological characterizations of U.S. coastal areas, and international activities.

This notice was prepared by Jackson E. Lewis, Marine Biologist, Division of Wildlife Management, Branch of Wildlife Assistance, 202-632-2202.

Dated: December 31, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 81-736 Filed 1-6-81; 8:45 am]

BILLING CODE 4310-55-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before January 2, 1981. Pursuant to § 1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 26, 1981.

Carol Shull,

Acting Chief, Registration Branch.

ALABAMA

Montgomery County

Montgomery, *Scott Street Firehouse*, 418 Scott St.

CALIFORNIA

Los Angeles County

Pasadena, *Colorado Street Bridge*, Colorado Blvd.

IDAHO

Shoshone County

Wallace, *Wallace Carnegie Library*, City Park

OKLAHOMA

Adair County

Westville vicinity, *Alberty Chapel Cemetery*, SE of Westville

Creek County

Drumright, *Washington School*, 214 W. Federal St.

Garfield County

Enid, *Government Springs*, 4th St. and East Pk.

Okmulgee County

Henryetta vicinity, *Wilson School*, NW of Henryetta

[FR Doc. 81-821 Filed 1-8-81; 8:45 am]

BILLING CODE 4310-03-M

Bureau of Indian Affairs

Extinguishment of Indian Claims; Maine Indian Claims Settlement Act of 1980

AGENCY: Bureau of Indian Affairs.

ACTION: Notice of extinguishment of Indian claims pursuant to the Maine Indian Claims Settlement Act of 1980, Pub. L. 96-420.

SUMMARY: Pursuant to Section 4(d) of the Maine Indian Claims Settlement Act of 1980, this notice announces the extinguishment of all land and related claims of the Maine Indians.

NOTICE: The Maine Indians covered by the Maine Indian Claims Settlement Act include the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians. Each of these Indians is described in Section 3 of the Settlement Act.

The Settlement Act was signed into law on October 10, 1980. When the President signed the 1981 Interior Department Appropriations Act on December 12, 1980, the following provisions in Section 4 of the Settlement Act became effective:

Sec. 4(a)(1) Any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Mailseet Indians, or any of their members, and any transfer of land or natural resources located anywhere within the State of Maine from, by or on behalf of any Indian, Indian nation, or tribe or band of Indians, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, including but without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch 33, Sec. 4, 1 Stat. 137, 138), and all amendments thereto and all subsequent reenactments and versions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said

transfer: *Provided, however,* That nothing in this section shall be construed to affect or eliminate the personal claim of any individual Indian (except for any federal common law fraud claim) which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(2) The United States is barred from asserting on behalf of any Indian, Indian nation, or tribe or band of Indians any claim under the laws of the State of Maine arising before the date of this Act and arising from any transfer of land or natural resources by any Indian, Indian nation, or tribe or band of Indians, located anywhere within the State of Maine, including but without limitation any transfer pursuant to any treaty, compact, or statute of any state, on the grounds that such transfer was not made in accordance with the laws of the State of Maine.

(3) The United States is barred from asserting by or on behalf of any individual Indian any claim under the laws of the State of Maine arising from any transfer of land or natural resources located anywhere within the State of Maine from, by, or on behalf of any individual Indian, which occurred prior to December 1, 1873, including but without limitation any transfer pursuant to any treaty, compact, or statute of any state.

(b) To the extent that any transfer of land or natural resources described in subsection (a)(1) of this section may involve land or natural resources to which the Passamaquoddy Tribe, the Penobscot nation, the Houlton Band of Maliseet Indians, or any of their members, or any other Indian, Indian nation, or tribe or band of Indians had aboriginal title, such subsection (a)(1) shall be regarded as an extinguishment of said aboriginal title as of the date of such transfer.

(c) By virtue of the approval and ratification of a transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, all claims against the United States, any state or subdivision thereof, or any other person or entity, by the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or any of their members or by any other Indian, Indian nation, tribe or band of Indians, or any predecessors or successors in interest thereof, arising at the time of or subsequent to the transfer and based on any interest in or right involving such land or natural resources, including but without limitation claims for trespass damages or claims for use and occupancy, shall be deemed extinguished as of the date of the transfer.

Thus, Section 4 extinguishes any claims of aboriginal title of the Maine Indians anywhere in the United States and bars all claims based on such title. The section also extinguishes any land claims in the State of Maine arising under federal law by *any* Indian tribe or individual Indian, except that any personal claim of an individual Indian which arises under a federal statute of general applicability to non-Indians as well as Indians would not be extinguished.

In return for the extinguishment of these Indian claims, the Act authorizes appropriations to establish both trust and land acquisition funds for the Maine Indians. These funds will be held in trust by the Secretary of the Interior. Before the Secretary may expend these moneys on their behalf, Section 5(f) of the Act requires that each Tribe execute relinquishments and releases acknowledging the extinguishment of their claims to the extent provided in Sections 4, 11 and 12 of the Act. Sections 11 and 12 provide for the discharge of claims for any past mismanagement of trust funds, and claims arising from any treaty or agreement the State of Maine and any Indian tribe or the United States.

In addition, as provided by Section 6(c) of the Settlement Act, as of March 10, 1981, the federal government shall no longer have criminal jurisdiction over the Maine Indian reservations under federal laws applying specially to "Indian country."

This notice is published in the exercise of authority delegated by the Assistant Secretary of the Interior pursuant to 209 DM 8.

For further information on the Settlement Act contact James Weber, Office of the Solicitor, Division of Indian Affairs, Department of the Interior, Washington, D.C. 20240, (202) 343–9331.

Dated: January 6, 1981.

Thomas W. Fredericks,

Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 81-823 Filed 1-8-81; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Arizona Strip District Multiple Use Advisory Council; Meeting; Correction

AGENCY: Bureau of Land Management.

ACTION: Notice of meeting, correction.

SUMMARY: The Arizona Strip District Multiple Use Council meeting date published in the **Federal Register** of December 9, 1980 on page 81129 is changed from January 8, 1981 to February 12, 1981. The agenda is not changed.

DATE: February 12, 1981.

ADDRESS: The Four-Seasons Convention Center, Suite 8, 747 East St. George Blvd., St. George, Utah.

FOR FURTHER INFORMATION CONTACT: Billy R. Templeton, 196 E. Tabernacle St., St. George, Utah 84770, (801) 673–3545.

Billy R. Templeton,

District Manager, Arizona Strip District.

[FR Doc. 81-811 Filed 1-8-81; 8:45 am]

BILLING CODE 4310-84-M

[Formerly PET-4]

National Petroleum Reserve—Alaska; Call for Nominations and Comments on Oil and Gas Leasing; Correction

On December 23, 1980, the call for nominations and comments on oil and gas leasing for the National Petroleum Reserve—Alaska was published on page 84879 of the **Federal Register.**

The second column, first paragraph, fourth line read:

"1980 (Pub. L. 96–516), nominations and".

The reference to the Fiscal Year 1981 Interior Department Appropriations Act dated December 12, 1980, is corrected to read: "Public Law 96–514".

James W. Curlin,

Deputy Assistant Secretary of the Interior.

January 6, 1981.

[FR Doc. 81-861 Filed 1-8-81; 8:45 am]

BILLING CODE 4310-84-M

[INT FEIS 81-1]

Proposed Grazing and Wilderness Management for the East San Diego County Planning Unit, El Centro Resource Area, Desert District, California; Availability of Final Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a final environmental impact statement concerning a proposed intensive grazing and wilderness management program for the East San Diego County Planning Unit in San Diego County, California. Management proposals are presented and analyzed for each of eleven existing and one proposed grazing allotments and five wilderness study areas. Intensive management will occur on ten of the allotments and no grazing will be allowed in two allotments. Two of the wilderness study area are proposed as suitable for wilderness designation. The planning unit covers 256,587 acres, of which 38 percent is Federal land.

Comments on the final environmental impact statement are being solicited from public agencies and interested individuals and entities. The Bureau of Land Management invites written comments on the statement to be

submitted by February 16, 1981 to the Area Manager, El Centro Resource Area, Bureau of Land Management, 333 South Waterman Avenue, El Centro, California 92243.

A limited number of copies of the final environmental impact statement are available upon request at the following offices:

California State Office, Bureau of Land Management 2800 Cottage Way, Sacramento, California 95825 Telephone (916) 484–4541

El Centro Area Office, Bureau of Land Management 333 South Waterman Avenue, El Centro, California 92243 Telephone (714) 352–5842

Copies of the final environmental impact statement will be available for public reading and review at the following locations:

Division of Rangeland Management, Bureau of Land Management Interior Building, 18th & C Streets, N.W. Washington, D.C. 20240

California State Office (911), Bureau of Land Management 2800 Cottage Way, Sacramento, California 95825 Telephone (916) 484–4541

El Centro Area Office, Bureau of Land Management 333 South Waterman Avenue, El Centro, California 92243 Telephone (714) 352–5842

Dated: December 30, 1980.

Roland A. Rush,

Acting State Director.

[FR Doc. 81-729 Filed 1-8-81; 8:45 am]

BILLING CODE 4310-84-M

[INT FEIS 81-2]

Proposed Grazing Management for the Mount Dome Planning Unit, Siskiyou Resource Area; Redding District, California; Availability of Final Environmental Impact Statement

Pursuant to Section 102(2) (C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a final environmental impact statement concerning a proposed intensive grazing management program for the Mount Dome Planning Unit in Siskiyou and Modoc Counties, California. Management proposals are presented and analyzed for each of twenty-seven (27) grazing allotments. Intensive management will occur on seven of the allotments and less intensive management will occur on twenty allotments. The planning unit covers 581,048 acres, of which six percent is Federal land.

Comments on the final environmental impact statement are being solicited from public agencies and interest individuals and entities. The Bureau of Land Management invites written comments on the statement to be submitted by February 16, 1981, to the District Manager, Redding District, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96001.

A limited number of copies of the final environmental impact statement are available upon request at the following offices:

California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484–4541

Redding District Office, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96001, Telephone (916) 246–5325

Copies of the final environmental impact statement will be available for public reading and review at the following locations:

Division of Rangeland Management, Bureau of Land Management, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240

California State Office (911), Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484–4541

Redding District Office, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96001, Telephone (916) 246–5325

Dated: December 29, 1980.

James B. Ruch,

State Director.

[FR Doc. 81-732 Filed 1-8-81; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Cuyahoga Valley National Recreation Area Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Statute 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Cuyahoga Valley National Recreation Area Advisory Commission will be held beginning 7:30 p.m. (EST), on Thursday, January 29, 1981, at Happy Days Visitor Center located on State Route 303 (Streetsboro Road), 1 mile west of State Route 8, near Peninsula, Ohio. Parking is on the north side of Route 303, and a pedestrian tunnel leads to the building on the south side of the highway.

The Commission was established by the Act of December 27, 1974, 88 Stat. 1788, 16 U.S.C. 460ff–4, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Cuyahoga Valley National Recreation Area.

The members of the Commission are as follows:

Mrs. Tommie Patty (Chairperson)
Mr. John Craig
Mr. Norman A. Godwin
Mrs. William Hutchison
Mr. James S. Jackson
Mrs. George Klein
Mr. Stanley Mottershead
Mr. John Ray
Mr. Melvin J. Rebholz
Mr. F. Eugene Smith
Ms. Robbie Stillman
Mr. Barry K. Sugden
Dr. Robert W. Teater

Matters to be discussed at this meeting include:

1. Organization of the Commission: Second Five Year Term.
2. Cuyahoga Valley National Recreation Area: Past, Present, and Future.
3. Development plans and priorities.
4. Report on Park operations.

The meeting will be open to the public. Interested persons may submit written statements. Such statements should be submitted to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from Lewis S. Albert, Superintendent, Cuyahoga Valley National Recreation Area, P.O. Box 158, Peninsula, Ohio 44264, telephone (216) 650–4414. Minutes of the meeting will be available for public inspection 3 weeks after the meeting at the office of Cuyahoga Valley National Recreation Area located at 501 West Streetsboro Road (State Route 303), 2 miles east of Peninsula, Ohio.

Dated: December 29, 1980.

Warren H. Hill,

Acting Regional Director, Midwest Region.

[FR Doc. 81-850 Filed 1-8-81; 8:45 am]

BILLING CODE 4310-70-M

Gateway National Recreation Area; Public Discusssions

Notice is hereby given that a series of public discussions concerning access improvements to Gateway National Recreation Area, will be conducted at a series of meetings, the time and location listed below.

Pub. L. 95–344, Title III, approved on August 15, 1978, authorizes the National Park Service to develop plans and projects to improve access to units of the National Park System.

The series of meetings will be scheduled to receive public comment on improving access to Gateway National Recreation Area located in New York and New Jersey. Two sets of meetings will be held in each state in accordance with the law.

The first set of meetings will be held to inform the public on the intentions of the National Park Service to formulate a plan to improve public access and give the public an opportunity to recommend plans. The schedule for the set of public discussions will take place as follows:

In the New York, the meetings will be held at 7:00 p.m., Tuesday, February 17, 1981, at Brooklyn College, Boylan Hall, Room 3139, entrance on Campus Road and East 27th Street, Brooklyn, New York, and at 7:00 p.m., Wednesday, February 18, 1981, at the Staten Island Unit, Great Kills Conference Room, Staten Island, New York.

In New Jersey, the first meeting will be held at 7:00 p.m., Wednesday, February 25, 1981, at Borough Hall, 100 1st Avenue, Atlantic Highlands, New Jersey, (four blocks off route #36 in New Jersey).

The second set of meetings will inform the public on proposed National Park Service plans with an additional chance for public involvement and response. The schedule for this set of public discussions will take place as follows:

In New York, the meetings will be held at 7:00 p.m., Tuesday, March 24, 1981, at Brooklyn College, Boyland Hall, Room 3139, entrance on Campus Road and East 27th Street, Brooklyn, New York, and 7:00 p.m., Thursday, March 26, 1981, at the Staten Island Unit, Great Kills Conference Room, Staten Island, New York.

In New Jersey, the second meeting will be held 7:00 p.m., Wednesday, March 25, 1981, at Borough Hall, 100 1st Avenue, Atlantic Highlands, New Jersey (four blocks off Route 36 in New Jersey). All interested persons are invited to attend and participate in the discussions. However, facilities and space to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis.

Individuals and/or groups who wish to speak or make a presentation, should contact the Public Information Office by telephone (212) 630-0393 or post-card, stating the date of the meeting they will attend. Persons wishing further information concerning these various meetings, or wish to submit written statements, may contact Herbert S. Cables, Jr., Superintendent, Gateway National Recreation Area, Headquarters, Bldg. #69, Floyd Bennett Field, Brooklyn, New York 11234, telephone #(212) 630-0353.

Dated: December 29, 1980.

Richard L. Stanton,

Regional Director, North Atlantic Region.

[FR Doc. 81-860 Filed 1-8-81; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Mid-Continent Resources, Inc.; Coal Basin Mines, Pitkin and Gunnison Counties, Colo.; Pending Decision To Approve Major Modification to a Coal Mining and Reclamation Plan (Federal Lease No. CO-9005, U.S. Forest Service Special Use Permit No. 4082-811)

Correction

In FR Doc. 80-38865, published at page 82728, on Tuesday, December 16, 1980, make the following changes:

(1) On page 82729, in the second column, third paragraph "(20 days from the date of publication)" should be changed to read "January 5, 1981."

(2) On page 82729, in the second column, fourth paragraph labeled "DATES", "(20 days from date of publication)" should be changed to read "January 5, 1981."

(3) On page 82730, fourth paragraph labeled "DATES", "January 5, 1981" should be changed to read "January 19, 1981."

BILLING CODE 1505-01-M

Water and Power Resources Service

Availability of Water From McKay Dam and Reservoir, Umatilla Project, Oregon; Review of Applicant List

The Department of the Interior, through the Water and Power Resources Service (Service), is initiating action that will eventually provide qualified entities and individuals with permanent rights to irrigation water from McKay Dam and Reservoir, Oregon. McKay Dam, located on McKay Creek about six miles south of Pendleton, Oregon, was constructed by the Service during the period 1923-1927. Pursuant to Title III of Public Law 92-228 enacted March 11, 1976, the dam was modified for safety purposes and the original construction costs were reallocated among the several benefitting functions. The Service is now preparing to review applications to contract for permanent rights to a share of the remaining available water supply from McKay Reservoir.

The yield from approximately 17,000 acre-feet of space remains to be marketed for irrigation use on a permanent basis. Existing contracts provide a first right to contract for part of this space to the Stanfield Irrigation District (3,690 acre-feet) and the Westland Irrigation District (7,380 acre-feet), both of Stanfield, Oregon.

During the period 1959-1960, the Service received a number of requests for a portion of the remaining available water. The applicants of record are:

Date of request	Applicant	Address
1/16/59	Roger J. Bounds	
6/8/59	Albers Ditch Co.	
7/24/59	Joseph Cunha Estate.	c/o Alfred F. Cunha, Attorney at Law, P.O. Box 1167, 410 SE Dorian Ave., Pendleton, OR 97801.
8/10/59	S. T. Carroll	
1/1/60	Fred Andrews	Route 1, Box 6, Echo, OR 97826.
4/4/60	B. W. Ellis *	
8/4/60	Jess Linebaugh	
1/5/61	Ernest R. Sires *	
9/15/61	W. E. Wall	
6/11/62	C. A. Hubbard	
7/24/62	G. W. Gaboury, Partner.	
6/10/63	George H. Corey	
7/20/63	Guy E. Knapp	
7/30/63	J. F. Riley	
7/30/63	Lee Foster	
8/5/63	Glen E. Male	
10/8/63	Spike Brothers	Route 1, Box 4, Echo, OR 97826.
4/11/64	Bob Rhea	
6/8/64	Ted A. Hendrickson	Route 2, Echo, OR 97826.
12/3/65	Alred F. Cunha	Address same as for Joseph Cunha Estate, above.
2/3/67	Pioneer Irrigation Co.	
12/12/67	Ted Edelman	
9/15/68	Clayton S. Killman	
12/5/69	Individual represented by R. E. O'Rourke.	c/o Robert E. O'Rourke, Attorney at Law, 331 SE 2nd St., P.O. Box 490, Pendleton, OR 97801.
1/8/71	Teel Irrigation District.	c/o Chester J. Prior, Star Route, Echo, OR 97826.
1/22/72	A. Blankenship	
3/5/74	Robert U. Genter	
3/22/74	Stanfield and Westland Irrigation Districts.	c/o Robert E. O'Rourke, Address above.
7/10/74	Echo Cemetery District.	
8/8/74	Marion Jack Improvement District.	c/o Keith Blanchard, 4217 SW Lake Drive, Pendleton, OR 97801.
11/9/78	Lewis Livestock Co.	c/o Kenneth E. Lewis, 4475 SW Scholls Ferry Road, Portland, OR 97225.

* The Service's records indicate that applicant's lands have since passed to other ownerships.

As indicated above, the present address of some applicants is unknow. Those applicants, or anyone knowing their whereabouts, are requested to provide an address by writing to the Regional Director, Attention Code 440, Water and Power Resources Service, Box 043-550 West Fort Street, Boise, Idaho 83724; or by telephone to Mr.

Martin Fabricius, Agricultural Economist, Repayment and Statistics Branch, at (208) 334–1162. Address corrections may be made in the same manner.

No new applications can be accepted inasmuch as pending applications considerably exceed the water supply now available for contracting.

It is the intention of the Service to contact all applicants listed above, prior to May 1, 1981, to ascertain their present interest in contracting for a permanent right to water from McKay Reservoir. At that time, criteria for determining eligibility will also be supplied. In addition, the State of Oregon will be consulted before any final allocations are approved.

Thereafter, a proposed draft contract will be provided to the prospective contractors. Concurrently, the draft contract will be made available for public review and comment, and any negotiating sessions will be open to the public. The Service will make a public announcement when these contractual processes are ready to begin. It is anticipated this will occur during the second half of 1981 with the objective of completing contractual arrangements prior to the 1982 irrigation season.

Dated: January 2, 1981.

J. D. Ellingboe,

Acting Assistant Commissioner of Water and Power Resources.

[FR Doc. 81-702 Filed 1-6-81; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Notice No. 204]

Assignment of Hearings

December 31, 1980.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropiate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 22301 (Sub-29F), Sioux Transportation Co., Inc., now assigned December 9, 1980, at Chicago, IL, is canceled and transferred to modified procedure.

MC 140094 (Sub-3F), Latin Express Service, Inc., now assigned for hearing on January 21, 1981 (3 days), at Miami, FL, in a hearing room to be later designated.

MC 146946 (Sub-1F), Linten Heavy Haulers, now assigned for hearing on December 9, 1980 (9 days), at Los Angeles, CA, is canceled and application dismissed.

MC 44783 (Sub-11F), The Mahoning Express Company, now assigned for hearing on January 26, 1981, at Columbus, OH, is transferred to Modified Procedure.

MC 111079 (Sub-3F), H. W. Jones and Son, Inc., now assigned for hearing on January 7, 1981, at Cincinnati, OH, is transferred to Modified Procedure.

MC 125433 (Sub-302F), F–B Truck Line Company, now assigned for hearing on January 20, 1981, at Chicago, IL, will be held in Room 1221, Everette Mckinley Dirksen Building, 219 South Dearborn Street.

MC 110988 (Sub-414F), Schneider Tank Lines, Inc., now assigned for hearing on January 21, 1981, at Chicago, IL, will be held in Room 1221, Everette Mckinley Dirksen Building, 219 South Dearborn Street.

MC 119656 (Sub-63F), North Express, Inc., now assigned for hearing on January 26, 1981, at Chicago, IL, will be held in Room 1221, Everette Mckinley Dirksen Building, 219 South Dearborn Street.

MC–C–10637, Overland Motor Express, Inc., d.b.a. Boulder-Denver Truck Line, Inc. v. Arkansas-Best Freight System, Inc., now assigned for hearing on January 15, 1981, at Denver, CO, will be held at the Suite 700, Securities & Exchange Commission, 410 17 Street.

MC 106398 (Sub-1073F), National Trailer Convoy, Inc., now assigned for hearing on January 7, 1981, at Denver, CO, will be held at the Suite 700, Securities & Exchange Commission, 410 17th Street.

MC 106398 (Sub-1011F), National Trailer Convoy, Inc., now assigned for hearing on January 5, 1981, at Phoenix, AR, will be held at the Court Room No. 235, Federal Building & Post Office, 522 North Central Avenue.

MC 117786 (Sub-81F), Riley Whittle, Inc., now assigned for hearing on January 7, 1981, at Phoenix, AR, will be held at the Court Room No. 235, Federal Building & Post Office, 522 North Central Avenue.

MC–C–10540, V. I. P. Limousine, Inc. v. Rudy's Limousine Service, Inc., MC 150181F, Rudy's Limousine Service, Inc., now assigned for hearing on January 20, 1981, at Stamford, CT, is postponed to January 26, 1981 (4 days), at Stamford, CT, in a hearing room to be later designated.

MC 25798 (Sub-390F), Clay Hyder Trucking Lines, Inc., MC 95540 (Sub-1141F), Watkins Motor Lines, Inc., MC 115841 (Sub-768F), Colonial Refrigerated Transportation, Inc., now assigned for hearing on February 17, 1981 (9 days), at Orlando, FL, will be held at the Holiday Inn, 6515 International Drive.

MC 29079 (Sub-168F), Brada Miller Freight System, Inc., now assigned for continued hearing on February 10, 1981 (3 days), at Birmingham, AL, in a hearing room to be later designated.

No. 37450, Central Illinois Light Company v. The Atchison Topeka and Santa Fe Railway Company, et al., now assigned for hearing on January 5, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 147391 (Sub-2F), Loyd Rudy, d.b.a. Loyd's Hot Shot Service Extension-Oilfield Service, now assigned for hearing on December 9, 1980 (9 days), at Casper, WY, is dismissed.

MC 136818 (Sub-82F), Swift Transportation Company, Inc., now assigned for hearing on January 14, 1981, at Phoenix, AZ, will be held at the Maricapa County Superior Court Building, 101 West Jefferson Street.

MC 144606 (Sub-9F), Duncan Sales & Leasing Co., Inc., now assigned for hearing on January 19, 1981, at Phoenix, AR will be held at the Maricapa County Superior Court Building, 101 West Jefferson Street.

AB–1 (Sub-102F), Chicago and North Western Transportation Company—Abandonment—Near Wisconsin Rapids and Wausau, WI, will be held at the Council Chambers, City Hall, 407 Grant Street.

MC 118838 (Sub-57F), Gabor Truckings, Inc., now assigned for hearing on January 20, 1981, at Seattle, WA, will be held in Room No. 2866, Federal Building, 915 Second Avenue.

MC 147422F, Jeffrey M. Kornacker, d.b.a. K Transport Co., now assigned for hearing on January 13, 1981 (4 days), at Chicago, IL, is canceled and application is dismissed.

MC 145359 (Sub-13F), Thermo Transport, Inc., now assigned for hearing on January 13, 1981 (1 day), at Los Angeles, CA, is canceled and application is dismissed.

MC 61016 (Sub-57F), Peter Pan Bus Lines, Inc., now assigned for hearing on January 14, 1981 (3 days), at Springfield, MA, is canceled and application is dismissed.

MC 30844 (Sub-641F), Kroblin Refrigerated Xpress, Inc., is canceled and application is dismissed.

MC 116506 (Sub-5F), Johnstown-Pittsburgh Express, Inc., now assigned for hearing on January 20, 1981 (4 days), at Pittsburgh, PA, in a hearing room to be later designated.

MC 139763 (Sub-3F), Oak Harbor Freight Lines, Inc., now assigned for hearing on January 26, 1981 (2 weeks), at Seattle, WA, will be held in Room B–006, Federal Office Building, 909 1st. Avenue.

MC 99234 (Sub-19F), Westway Motor Freight, Inc., now assigned for hearing on January 19, 1981, at Denver, CO, is canceled and application is dismissed.

MC 114211 (Sub-410F), Warren Transport, Inc., now assigned for hearing on January 19, 1981, at St. Louis, MO, is transferred to Modified Procedure.

MC 128270 (Sub-35F), Rediehs Interstate, Inc., now assigned for hearing on December 8, 1980 (1 day), at St. Louis, MO, is transferred to Modified Procedure.

MC 119789 (Sub-700F), Caravan Refrigerated Cargo, Inc., now assigned for hearing on December 11, 1980, at Fort Worth, TX, is transferred to Modified Procedure.

MC 103373 (Sub-8F), Howard Martin, Inc., now assigned for hearing on January 6, 1981, at Chicago, IL, is transferred to Modified Procedure.

MC 107496 (Sub-1244F), Ruan Transport Corporation, now assigned for hearing on January 27, 1981 (4 days), at Chicago, IL.

will be held in Room 1944C, Everette Mckinley Dirksen Building, 219 South Dearborn Street.

MC 133591 (Sub-101F), Wayne Daniel Truck, Inc., now assigned for hearing on December 12, 1980, at Fort Worth, TX, is transferred to Modified Procedure.

MC 148827 (Sub-1F), David Alger, d.b.a. D&C Transportation, now assigned for hearing on January 8, 1981, at Montpelier, VT, will be held in the Conference Room No. 216 DOT, U.S. Post Office & Federal Building & Courthouse, 87 State Street.

FF-523, Henry Ortiz, now assigned for hearing on January 12, 1981 (5 days), at Cleveland, OH, will be held in Room No. 1455, Federal Building, 1240 East Ninth Street.

MC 146742 (Sub-2F), H & F Trucking Company, Inc., now assigned for hearing on January 21, 1981, at Chicago, IL, will be held in the Kluczynski Federal Bldg., 230 South Dearborn Street.

MC-F-14171F, Columbus Retail Merchants Delivery, Inc.—Purchase—Reed Lines, Inc., MC 14251 (Sub-7F), Columbus Retail Merchants Delivery Inc., now assigned for hearing on December 15, 1980 (5 days), at Columbus, OH, is canceled and application is dismissed.

MC 35628 (Sub-410F), Interstate Motor Freight System, now assigned for hearing on December 9, 1980, at Albany, NY, is transferred to Modified Procedure.

MC 95084 (Sub-155F), Hove Truck Line, now assigned for hearing on February 19, 1981 (2 days), at 9:30 a.m., local time, at St. Paul, MN, in a hearing room to be later designated.

MC 117940 (Sub-363F), Nationwide Carriers, Inc., now assigned for hearing on February 23, 1981 (5 days), at Minneapolis, MN, in a hearing room to be later designated.

MC 25798 (Sub-390F), Clay Hyder Trucking Lines, Inc., MC 95540 (Sub-1141F), Watkins Motor Lines, Inc., MC 115841 (Sub-768F), Colonial Refrigerated Transportation, Inc., now assigned for hearing on February 17, 1980 (9 days), at 9:30 a.m., local time, at Orlando, FL, on March 3, 1981 (9 days), at Chicago, IL, on March 17, 1981 (9 days), at San Francisco, CA, in a hearing room to be later designated.

MC 109533 (Sub-128F), Overnite Transportation Company, now assigned for Prehearing Conference on January 8, 1981, at Washington, D.C., is canceled and application is dismissed.

MC 120427 (Sub-10F), Williams Transfer, Inc., now assigned for hearing on January 14, 1981, at Lincoln, NE, is canceled and application is dismissed.

MC 110380 (Sub-18F), Berschens of Madison, Inc., now assigned for hearing on January 21, 1981 (3 days), at Milwaukee, WI, is canceled and application is dismissed.

MC 114334 (Sub-57F), Builders Transportation Co., now assigned for hearing on December 15, 1980, at St. Louis, MO is transferred to Modified Procedure.

MC 61016 (Sub-57F), Peter Pan Bus Lines, Inc., now assigned for hearing on January 14, 1981 (3 days), at Springfield, MA, will be held in Room No. 205 2d Floor, Federal Building & Courthouse, 436 Dwight Street.

MC 99848 (Sub-3F), J. F. Lux Trans. Co. Inc., now assigned for hearing on January 7, 1981 (3 days), at Boston, MA will be held in Room No. 501, 150 Causeway Street.

MC 136012 (Sub-6F), United States Transportation, Inc., now assigned for hearing on December 12 1981 (3 days), at Cincinnati, OH, on December 12, and 14, 1981, will be held in Room 9017, Federal Building, 550 Main Street, on December 13, 1981, will be held in Room 8017, Federal Building, 550 Main Street.

FF 526F, United Van Lines, Inc., now assigned for hearing on January 27, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 42487 (Sub-930F), Consolidated Freightways Corporation, now assigned for hearing on March 10, 1981, at Little Rock, AR, will be held at the Camelot Inn, Markham and Broadway.

MC 68980 (Sub-20F), Checker Express Co., now assigned for hearing on February 18, 1981 (1 day), at Chicago, IL, in a hearing room to be later designated.

MC 135598 (Sub-30F), Sharkey Transportation, Inc., now assigned for hearing on February 19, 1981 (2 days), at Chicago, IL, in a hearing room to be later designated.

MC 20356 (Sub-16F), Bradger Freightways, Inc., now assigned for hearing on February 23, 1981 (4 days), at Chicago, IL, in a hearing room to be later designated.

MC 128861 (Sub-1F), OK Delivery System, Inc., now assigned for hearing on January 7, 1981, at Portland, OR, is canceled and application is dismissed.

MC 86247 (Sub-24F), ICL-International Carrier Limited, now assigned January 26, 1981, at Detroit, MI, is canceled and application is dismissed.

MC 2900 (Sub-424F), Ryder Truck Lines, Inc., now assigned for Prehearing Conference on December 17, 1980, at Washington, D.C., canceled and application is dismissed.

MC 145673 (Sub-6F), Road Rail Services, Inc., now assigned for hearing on January 7, 1981 (3 days), at Chicago, IL, will be held in Room 3883, Kluczynski Federal Building, 230 South Dearborn Street.

MC 121123 (Sub-3F), Leoni Motor Express, Inc., now assigned for hearing on January 12, 1981 (2 days), at Chicago, IL, will be held in Room 1221, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 10339, Mclean Trucking Company and Wolverine Express, Inc.—Investigation and Revocation of Certificates, now assigned for hearing on January 14, 1981 (3 days), at Chicago, IL, will be held in Room 1221, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 138875 (Sub-255F), Shoemaker Trucking Company, now assigned for hearing on January 6, 1981, at Boise, ID, will be held in Room 429, Federal Building & U.S. Courthouse, 550 West Fort Street.

MC 118318 (Sub-44F), Ida-Cal Freight Lines, Inc., now assigned for hearing on January 8, 1981, at Boise, ID, will be held in Room 429, Federal Building & U.S. Courthouse, 550 West Fort Street.

MC 108223 (Sub-31F), Century-Mercury Motor Freight, now assigned for hearing on January 12, 1981, at St. Paul, MN, will be held in Room 584, Federal Building, 316 North Robert.

MC 44606 (Sub-52F), Milne Truck Lines, Inc., now assigned for hearing on January 20, 1981, at Washington, D.C., is postponed to continued hearing on February 3, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-C-10715, Delta Lines, Inc., et al. v. Best-Way Freight Lines, of Arizona now assigned for hearing on February 25, 1981 (3 days), at Las Vegas, NV, in a hearing room to be later designated.

MC 23618 (Sub-62F), McAlister Trucking Company d.b.a. Matco, now assigned for hearing on February 17, 1981 (2 days), at Houston TX, in a hearing room to be later designated.

Ex Parte No. 371, in the Matter of Louis J. Amato, now assigned for Prehearing Conference on January 7, 1981, at Washington, D.C., is postponed to February 3, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 121568 (Sub-43F), Humboldt Express, Inc., now assigned for hearing on January 13, 1981 (4 days), at Memphis, TN, in a hearing room to be later designated.

MC 133095 (Sub-248F), Texas-Continental Express, Inc., now assigned for hearing on January 14, 1981, at Fort Worth, TX, is canceled and application is dismissed.

MC 73866 (Sub-8F), Louis J. Gardella, Inc., now assigned for hearing on February 10, 1981 (2 days), at New York, NY, in a hearing room to be later designated.

MC 152113F, Arrow Courier, Inc., now assigned for hearing on February 12, 1981 (2 days), at New York, NY, in a hearing room to be later designated.

MC 117940 (Sub-363F), Nationwide Carriers, Inc., now assigned for hearing on February 23, 1981, at Minneapolis, MN, is canceled and reassigned to February 23, 1981 (5 days), at St. Paul, MN, in a hearing room to be later designated.

MC 114211 (Sub-456F), Warren Transport, Inc., now assigned for hearing on January 29, 1981 (2 days), at Chicago, IL, will be held in Room 383, 230 South Dearborn Street.

MC 108649 (Sub-13F), Sturm Freightways, Inc., now assigned for hearing on February 2, 1981 (5 days), at Chicago, IL, will be held in Room 383, 230 South Dearborn Street on February 2, 4, 5, 1981, and on February 3, 1981, in Room 1221, Everette Mckinley Dirksen Building, 219 South Dearborn Street.

MC 32882 (Sub-124F), Mitchell Bros. Truck Lines, now assigned for hearing on January 13, 1981 (4 days), at Salt Lake City, UT, will be held in Room 3419, Federal Building, 125 South Street.

MC 124160 (Sub-38F), Savage Brothers, Incorporated, now assigned for hearing on January 19, 1981, at Salt Lake City, UT, will be held in Room 3419, Federal Building, 125 South Street.

MC 11722 (Sub-62F), Brader Hauling Service, Inc., now assigned for hearing on January 12, 1981 (2 days), at Seattle, WA, will be held held in Room B-006, 909 1st Street.

MC 145579 (Sub-8F), D. Irvin Transport, Limited, now assigned for hearing on January 7, 1981 (3 days), at Seattle, WA, will be held in Room 514, Federal Building, 915 Second Avenue.

MC 63562 (Sub-68F), BN Transport Inc., now assigned for hearing on January 14, 1981 (3 days), at Seattle, WA, will be held in Room 3086, 30th Floor, Federal Building, 915 Second Avenue.
MC 13651 (Sub-21F), People Transfer, Inc., now assigned for hearing on January 19, 1981 (1 week), at Sacramento, CA, will be held in Room 4037, EDD Building, 722 Capitol Mall (M Street).
MC 119702 (Sub-69F), Stahly Cartage Co., now assigned for hearing on January 6, 1981, at St. Louis, MO, is transferred to Modified Procedure.
MC 142941 (Sub-35F), Scarborough Truck Lines, Inc., now assigned for hearing on January 12, 1981 (1 day), at Salt Lake City, UT, will be held in Room 3233, Federal Building, 125 South State Street.
MC 143739 (Sub-34F), Shurson Trucking Co., Inc., now assigned for hearing on January 13, 1981 (1 day), at Salt Lake City, UT, will be held in Room 3233, Federal Building, 125 South State Street.
MC 112989 (Sub-127F), West Coast Truck Lines, Inc., now assigned for hearing on January 14, 1981 (1 day), at Salt Lake City, UT, will be held in Room 3233, Federal Building, 125 South State Street.
MC 139171 (Sub-4F), Controlled Delivery Service, Inc., now assigned for hearing on January 15, 1981 (2 days), at Salt Lake City, UT, will be held in Room 3233, Federal Building, 125 South State Street.
MC 90794 (Sub-7F), DI Jub Leasing Corp., now assigned for hearing on January 7, 1981, is changed to Prehearing Conference on January 7, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.
MC 8922 (Sub-6F), the Wahl Moving & Transfer Co., is transferred to Modified Procedure.
MC 14215 (Sub-41F), Smith Truck Service, Inc., now assigned for hearing on January 5, 1981, at Washington, D.C., is transferred to Modified Procedure.
MC 148079 (Sub-1F), Frye Trucking Company, Inc., now assigned for hearing on January 12, 1981, at Raleigh, NC, will be held at the Multi Purpose (Conference Room), Salvation Army Community Center, 215 South Person Street.
MC 119787 (Sub-10F), F. W. Groves Trucking Company, now assigned for hearing on January 6, 1981, at Wilmington, NC, will be held in the Conference Room, City Hall, East Main Street.
MC 136605 (Sub-135F), Davis Bros. Dist., Inc., now assigned for hearing on January 22, 1981, at Portland, OR, will be held in Room 211, State Office Building, 1400 South West 5th Avenue.
MC 148752 (Sub-2F), H & H Services, Inc., now assigned for hearing on January 12, 1981, at Casper, WY, will be held in Court Room 2, Bankruptcy Court, 111 South Wolcott.
MC 142477 (Sub-2F), Earl Pippin d.b.a. Earl Pippin Transporter, now assigned for hearing on January 14, 1981, at Raleigh, NC, will be held at the Multi Purpose (Conference Room), Salvation Army Community Center, 215 South Person Street.
MC 146892 (Sub-13F), R & L Transfer, Inc., now assigned for hearing on January 21, 1981, at Columbus, OH, will be held in Room 220, Federal Courthouse, 85 Marconi Boulevard.
MC 59856 (Sub-89F), Salt Creek Freightways, now assigned for hearing on January 5, 1981, Salt Lake City, UT, will be held in Court Room, 3rd Floor-Metropolitan Hall of Justice, 240–400 South.
MC 148438 (Sub-1F), Marchand Construction, Inc., now assigned for hearing on January 12, 1981, at Fort Worth, TX, is canceled and application is dismissed.
MC 70151 (Sub-56F), United Trucking Service, Inc., now assigned for hearing on December 8, 1980, at Detroit, MI, is dismissed.
MC 113651 (Sub-304F), Indiana Refrigerator Lines, Inc., now assigned for hearing on January 13, 1981, at New York, NY, is canceled and application is dismissed.
MC 136818 (Sub-82F), Swift Transportation Company, Inc., now assigned for hearing on January 14, 1981, at Phoenix, AZ, is transferred to Modified Procedure.
MC 10540 V.I.P. Limousine, Inc., v. Rudy's Limousine Service, Inc., MC 150181F, Rudy's Limousine Service, Inc., now assigned for hearing on January 26, 1981, at New Haven, CT, at the Civil Service, Hearings Room 200, 170 Orange Street.
MC 119787 (Sub-10F), F. W. Groves Trucking Company, now assigned for hearing on January 6, 1981, in the Conference Room, City Hall, East Main Street, Wilmington, N.C.
MC 102616 (Sub-1011F), Coastal Tank Lines, Inc., now assigned for hearing on February 10, 1981 (4 days), at Fort Worth, TX, in the ICC Hearing Room, 4th Floor, 411 W. 7th Street, Neil P. Anderson Building.
MC 143739 (Sub-34F), Shurson Trucking Co., Inc., now assigned for hearing on January 13, 1981, at Salt Lake City, UT, is canceled and application.
MC 148827 (Sub-1F), David Alger, d.b.a. D&C Transportation, now assigned for hearing on January 8, 1981 at Montpelier, VT, is canceled.
MC-C-10716, Motor Cargo, et al. v. Best-Way Freight Lines of Arizona, now assigned for hearing on January 28, 1981 (3 days), at Los Angeles, CA, in a hearing room to be later designated.
MC 145359 (Sub-13F), Thermo Transport, Inc., now assigned for hearing on January 13, 1981, is transferred to Modified Procedure.
MC 124160 (Sub-38F), Savage Brothers, Incorporated, now assigned for hearing on January 19, 1981, at Salt Lake City, UT, is transferred to Modified Procedure.
MC 45656 (Sub-26F), Anderson Truck Line, Inc., now assigned for hearing on January 26, 1981, at Charlotte, NC, is transferred to Modified Procedure.
MC 103051 (Sub-480F), Fleet Transport Company, Inc., now assigned for hearing on January 26, 1981, at Nashville, TN, is transferred to Modified Procedure.
MC 125628 (Sub-5F), S. S. Baird & Sons Limited, now assigned for hearing on January 14, 1981, at Portland, MA, is transferred to Modified Procedure.
MC 112989 (Sub-127F), West Coast Truck Lines, Inc., now assigned for hearing on January 14, 1981, at Salt Lake City, UT, is transferred to Modified Procedure.
No. 37450, Central Illinois Light Company v. the Atchison Topeka and Sante Fe Railway Company, et al., now assigned for hearing on January 5, 1981, is postponed to January 26, 1981, at the Offices of the Interstate Commerce Commission, Washington, D.C.
MC 42487 (Sub-928F), Consolidated Freightways Corporation of Delaware, now assigned for hearing on January 19, 1981, at Minneapolis, MN, is transferred to Modified Procedure.
MC 114552 (Sub-243F), Senn Trucking Company, now assigned for hearing on January 26, 1981 (1 day), at Jacksonville, FL, will be held in Room 765, Federal Office Building, 400 West Bay Street.
MC 145360 (Sub-8F), Thom's Transport Company, Inc., now assigned for hearing on January 27, 1981 (2 days), at Jacksonville, FL, will be held in Room 765, Federal Office Building, 400 West Bay Street.
MC 148020 (Sub-3F), Big "M" Transport, Inc., now assigned for hearing on January 29, 1981 (2 days), at Jacksonville, FL, will be held in Room 765, Federal Office Building, 400 West Bay Street.
MC 138882 (Sub-370F), Wiley Sanders Truck Lines, Inc., now assigned for hearing on December 18, 1980, at Fort Worth, TX, is transferred to Modified Procedure.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-705 Filed 1-8-81; 8:45 am]

BILLING CODE 7035-01-M

Assignment of Motor Carrier and Broker Docket Numbers

AGENCY: Interstate Commerce Commission.

ACTION: Notice of change of procedure for assigning motor carrier docket numbers.

SUMMARY: In the future, the Commission will only assign one MC number to a motor carrier and all applications will be docketed under that number. If a carrier currently holds more than one MC number, all future applications will be docketed under the carrier's common number. Since this change only affects internal operations and procedures of the Commission, it is being issued in final form and public comments are not being requested.

EFFECTIVE DATE: Effective January 9, 1981.

FOR FURTHER INFORMATION CONTACT: Gloris Stewart, 202–275–7091.

SUPPLEMENTARY INFORMATION: The Commission has assigned different Motor Carrier (MC) numbers to carriers who held both common carrier authority and contract carrier authority. In instances in which a carrier also held broker authority another MC number was also assigned. In the future, motor carriers will be assigned only one MC number. All applications seeking

common or contract motor carrier authority or broker authority will be docketed under that one MC number.

A carrier currently holding more than one MC number should provide all docket numbers on future OP-1 applications. It should indicate for each number whether it is a common, contract or broker number. However, all subsequent applications will be docketed under the *common carrier authority number.*

Restriction removal applications will also be docketed only under the carrier's common carrier number. They will be docketed with a docket suffix of "X" e.g. MC 12457 (Sub-10) X to distinguish cases and pleadings handled under the restriction removal procedure.

At this time we will also discontinue use of the suffix "F" on motor carrier cases since all such cases are now routinely microfilmed.

Appropriate changes will be made in the Commission's records. However, the Commission will not reissue existing permits or licenses under the common carrier number.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-709 Filed 1-8-81; 8:45 am]

BILLING CODE 7035-01-M

[Vacate Accounting Series Circular No. 171]

Bad Order Freight Train Cars

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The Commission's Bureau of Accounts is announcing that it is vacating Accounting Series Circular No. 171—Bad Order Freight Train Cars, dated August 28, 1978, in response to the Association of American Railroad's petition, dated August 25, 1980.

ADDRESS: Written comments, if any, should be sent to Mr. Bryan Brown, Jr., Chief, Section of Accounting and Reporting, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., Tel: (202) 275-7448.

SUPPLEMENTARY INFORMATION: In 1978 the Bureau of Accounts (BOA) issued Accounting Series Circular No. 171—Bad Order Freight Train Cars (Circular), dated August 28, 1978. The purpose of the Circular was to provide accounting for cars retained in a bad order status for a year or longer without the establishment of a firm plan for their repair and restoration to service or other disposition. Concurrently, there was a critical car shortage, coupled with a bad order car ratio of approximately 9 percent. Under the circumstances, we considered one year to be a reasonable time frame for carriers to determine the future disposition of bad order cars. The Circular instructed affected carriers to either perform retirement accounting for the cars or reclassify the associated investment cost from account 731, Road and Equipment Property, to account 737, Property Used in Other Than Carrier Operations, if management believed that the cars may be repaired at some future date.

The Association of American Railroads (AAR) filed a petition (Petition), dated August 25, 1980, on behalf of the railroad industry. AAR requested the Commission to vacate the Circular. The Petition cited various reasons why the Circular should be vacated, including primarily the failure to process the Circular in a public proceeding in accordance with the Administrative Procedure Act (APA).

Accounting Series Circulars are informal advisory opinions of the BOA. They are not formal rules promulgated and published by the Commission under the APA. The BOA does not have to initiate a formal proceeding to issue an accounting circular. In this instance the Circular simply prescribed the interpretative accounting procedures considered appropriate within the scope of the Commission's related accounting regulations, as prescribed in Instructions 2-5 and 2-8(b), and the texts of accounts 731 and 737. The Commission did not participate in the issue of the Circular. For the preceding reasons, the BOA will process the Petition by means of this Notice.

The national car shortage seems to have been alleviated to the extent that there are now car overages. The Commission's order served August 18, 1980, in Ex Parte No. 334 (Sub-4), *Order Granting Railroads Flexibility in Setting Per Diem Levels,* referred to the present period of worsening car surpluses and the railroads' placing many cars in storage. The car overages could cause carriers to retain surplus cars in a bad order status for over a year without establishing a repair program or being able to determine the need for their future use.

Under the foregoing circumstances, the Circular is no longer appropriate as the prescribed accounting is not practicable. Consequently, the Circular shall be vacated. This action does not (1) preclude the issue of an accounting circular in the future if necessary to provide appropriate accounting for bad order cars, or (2) relieve carriers of their responsibility to comply with the Commission's accounting regulations which would require the performance of retirement accounting for those bad order cars which are actually withdrawn from transportation service, and are subject to recovery of the associated salvage or other disposition, in accordance with Instructions 2-5 and 2-8(b).

The Circular shall be vacated on the date published in the **Federal Register.**

Dated: December 24, 1980.

Ronald S. Young,

Director.

[FR Doc. 81-707 Filed 1-8-81; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation: American Cast Iron Pipe Company.

2. Wholly-owned subsidiaries:

a. Specification Rubber Products, Inc., P.O. Drawer H, Alabaster, Alabama 35007.

b. American Valve & Hydrant Manufacturing Company, 3350 Hollywood Street, Beaumont, Texas 77704.

1. Parent Corporation and address of principal office: Chesebrough-Pond's, Inc., 33 Benedict Place, Greenwich, CT 06830.

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices:

a. Adolph's Food Products Manufacturing Company, 5355 Cartwright Avenue, North Hollywood, California 91601.

b. Adolph's, Ltd., 5355 Cartwright Avenue, North Hollywood, California 91601.

c. Benedict Sales Corporation, 1680 Lyell Avenue, Rochester, New York 14606.

d. Chesebrough-Pond's Manufacturing Company, Las Piedras, Puerto Rico 00571.

e. Erno Laszlo, Ltd., 10 E. 53rd Street, New York, New York 10022.

f. Filac Corporation, 435 Lakeside Drive, Sunnyvale, California.

g. G. H. Bass & Company, Weld Street, Wilton, Maine 04294.

h. Health-tex, Inc., 1411 Broadway, New York, New York 10018.

i. Health-tex Manufacturing Company, Inc., Cabo Rojo, Puerto Rico 00623.

j. Kidsport U.S.A., Inc., 1411 Broadway, New York, New York 10018.

k. Prince Matchabelli, Inc., 33 Benedict Place, Greenwich, Connecticut 06830.

l. Prince Matchabelli Manufacturing Company, Inc., 306 South State Street, Dover, Delaware 30828.

m. Ragu Foods, Inc., 1680 Lyell Avenue, Rochester, New York 14606.

n. Warrenton Industries Company, Inc., 306 South State Street, Dover, Delaware 30828.

1. Parent corporation—City Products Corporation, 1700 South Wolf Road, Des Plaines, Illinois 60018.

2. Wholly-owned subsidiaries of City Products Corporation which will participate in the operations and addresses of their respective principal offices:

A. Coast-to-Coast Stores (Central Organization), Incorporated, 10801 Red Circle Drive, Minnetonka, Minnesota 55343.

B. Huffman-Koos Co., Route 4 at Main Street, North Hackensack, New Jersey 07661.

C. T. D. S. Transportation, Inc., 1700 South Wolf Road, Des Plaines, Illinois 60018.

D. T. G. & Y. Stores Co., 3815 North Santa Fe, Oklahoma City, Oklahoma 73125.

E. Vons Grocery Co., 10150 Lower Azusa Road, El Monte, California 91731.

F. White Stores, Inc., 3910 Call Field Road, Wichita Falls, Texas 76308.

3. Divisions of City Products Corporation which will participate in the operations and addresses of their respective principal offices:

A. American Furniture, 105 North Oregon Street, El Paso, Texas 79901.

B. Barker Bros., 818 West Seventh Street, Los Angeles, California 90017.

C. Ben Franklin, 1700 South Wolf Road, Des Plaines, Illinois 60018.

D. Colby's Home Furnishings, 1001 Skokie Boulevard, Northbrook, Illinois 60062.

1. Parent corporation and address of principal office: Dixico, Incorporated, 1415 South Vernon, Dallas, Texas 75224.

2. Wholly-owned subsidiaries and divisions which will participate in the operations and address of their respective principal offices:

(a) Flexible Packaging Division, 1300 South Polk, Dallas, Texas 75224.

(b) Contact Products Division, 9244 Markville, Dallas, Texas 75222.

(c) Ink/Coating Division, 4525 Joseph Hardin Drive, Dallas, Texas 75236.

(d) Capitol Plastics of Ohio Division, 333 Van Camp Road, Bowling Green, Ohio 43402.

(e) Richmond Division, Colton and Opal, Redlands, California 92373.

(f) Plastic Industries Division, 12400 Industry Street, Garden Grove, California 92373.

(g) Polytube Division, 275 Welton Street, Hamden, Connecticut 06501.

(h) Stevens and Thompson Paper Company, Incorporated (subsidiary), P.O. Box 206, Greenwich, New York 12834.

1. Parent corporation: Dresser Industries, Inc., World Headquarters, 1505 Elm Street, Dallas, Texas 75201.

2. Wholly-owned subsidiaries:

A. Atlas Oilfield Services Group, Dresser Tower, 601 Jefferson, Houston, Texas 77002.

B. Compressor Group, Dresser Tower, 601 Jefferson, 28th Floor, Houston, Texas 77002.

C. Construction Equipment Group, 400 W. Wilson Bridge Road, Worthington, Ohio 43085.

D. Harbison-Walker Refractories Group, 2 Gateway Center, Pittsburgh, Pennsylvania 15222.

E. Industrial Equipment Group, Dresser Tower, 601 Jefferson, Houston, Texas 77002.

E. Industrial Equipment Group, Dresser Tower, 601 Jefferson, Houston, Texas 77002.

F. Industrial Minerals Division, Dresser Tower, 601 Jefferson, 33rd Floor, Houston, Texas 77002.

G. Industrial Specialties Group, 23rd Floor, North Wing, 3 Gateway Center, Pittsburgh, Pennsylvania 15222.

H. Magcobar Group, Dresser Tower, 601 Jefferson, Houston, Texas 77002.

I. Mining Equipment and Foundry Group, 400 W. Wilson Bridge Road, Worthington, Ohio 43085.

J. Oilfield Equipment Group, Dresser Tower, 601 Jefferson, 34th Floor, Houston, Texas 77002.

K. Petroleum Equipment Group, Dresser Tower, 601 Jefferson, 26th Floor, Houson, Texas 77002.

L. Power Systems Group, Dresser Tower, 601 Jefferson, Houston, Texas 77002.

M. Tool Group, O'Hare Plaza, 5725 N. East River Road, Chicago, Illinois 60631.

N. Dresser Industries Canada, Ltd., Mississauga Service Centre, 6688 Kitimat Road, Mississauga, Ontario L5N 1P8.

O. Dresser Services, Inc., 10201 Westheimer Road, Houston, Texas 77001.

P. DIRELOC, Inc., 1505 Elm Street, Dallas, Texas 75201.

Q. Dresser Finance Corporation, 1505 Elm Street, Dallas, Texas 75201.

R. Dresser International Sales Corporation, 1505 Elm Street, Dallas, Texas 75201.

S. Dresser Americas, Inc., 1505 Elm Street, Dallas, Texas 75201.

T. Dresser Leasing Corporation, 3 Gateway Center, Suite 300, Pittsburgh, Pennsylvania 15222.

U. Dresser Minerals International, Dresser Tower, 601 Jefferson, 34th Floor, Houston, Texas 77002.

V. Radio Magcobar, Inc., Dresser Tower, 601 Jefferson, Houston, Texas 77002.

W. Cardinal Chemical, Inc., Dresser Tower, 601 Jefferson, Houston, Texas 77002.

X. Dresser Machinery, Ltd., 1505 Elm Street, Dallas, Texas 75201.

1. Parent corporation and address of principal office: Evans Products Company, 1121 S. W. Salmon Street, Portland, Oregon 97208.

2. Wholly owned subsidiaries which will participate in the operations and addresses of their respective principal offices:

(a) Alamo Enterprises Building Supplies, Inc., 4807 West Avenue, San Antonio, Texas 78213.

(b) ATEC Industries, Inc., 7055 Herbert Road, Canfield, Ohio 44406.

(c) Capp Homes Supply Co., 3355 Hiawatha Avenue, Minneapolis, MN 55406.

(d) Evans Track-Work Leasing Co., East Tower, 2550 Golf Road, Rolling Meadows, IL 60008.

(e) Evans Transportation Co., East Tower, 2550 Golf Road, Rolling Meadows, IL 60008.

(f) Lindsley Stores, Inc., 8405 N. W. 53rd Street, Miami, Florida 33166.

(g) Louisville, New Albany & Corydon Railroad Co., P.O. Box 248, Corydon, IN 47112.

(h) Morrison Railway Supply Corp., East Tower, 2550 Golf Road, Rolling Meadows, IL 60008.

(i) P. D. L., Inc., 7055 Herbert Road, Canfield, Ohio 44406.

(j) Railway Track Work Co., 2381 Philmont Avenue, Bethayres, Pennsylvania 19006.

(k) United States Railway Leasing Co., East Tower, 2550 Golf Road, Rolling Meadows, IL 60008.

1. Parent corporation and address of principal office: Fox Grocery Company, 400 Penn Center Boulevard, Pittsburgh, Pennsylvania 15235.

2. Wholly-owned subsidiary: Foxtran, Inc., Box 29, Belle Vernon, Pennsylvania 15012.

1. Parent corporation and address of principal office: General Signal Corporation, High Ridge Park, Stamford, Connecticut 06904.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Sola Basic Industries, Inc., P.O. Box 10077, Stamford, Connecticut 06904.

(b) OZ/Gedney Company, Main Street, Terryville, Connecticut 06786.

(c) Edwards Company, Inc., 195 Farmington Avenue, Box F, Farmington, Connecticut 06032.

(d) General Signal Mfg. Corp., P.O. Box 10008, Stamford, Connecticut 06904.

(e) General Signal Industries, Inc., P.O. Box 10076, Stamford, Connecticut 06904.

1. Parent corporation and address of principal office: The Goodyear Tire & Rubber Company, 1144 East Market Street, Akron, Ohio 44316.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

A. The Kelly-Springfield Tire Company, 800 Kelly Road, Cumberland, Maryland 21502.

B. Lee Tire & Rubber Company, Hector Street, Conshohocken, PA 19428.

C. Reneer Films Corporation, Auburn, PA 17922.

D. Motor Wheel Corporation, 1600 N Larch Street, Lansing, Mich. 48914.

E. Goodyear Atomic Corporation, P.O. Box 628, Piketon, Ohio 45661.

F. Goodyear Aerospace Corporation, 1210 Massillon Road, Akron, Ohio 44315.

G. The Goodyear Rubber Plantations Company, 1144 East Market Street, Akron, Ohio 44316.

H. Goodyear Farms, P.O. Box 158, Litchfield Park, Arizona 85340.

I. Goodyear Western Hemisphere Corporation, 1144 East Market Street, Akron, Ohio 44316.

J. Litchfield Park Properties, 111 West Indian School Road, Litchfield Park, Arizona 85340.

K. Cosmoflex, Incorporated, P.O. Box 994, Hannibal, MO 63401.

L.* Motor Wheel Corporation of Canada, Ltd., P.O. Box 2011, Chatham, Ontario.

1. Parent corporation and address of principal office: The Greyhound Corporation (Arizona), Greyhound Tower, Phoenix, Arizona 85077.

2. Wholly owned subsidiaries which will participate in the operations and address of their respective principal offices: Aircraft Service, Inc., P.O. Box 592378, Miami International Airport, Miami, FL 33159; Aircraft Service International, Inc., P.O. Box 523883, AMF, Miami, FL 33159; Florida Export Tobacco Co. Inc., P.O. Box 592355 AMF, Miami, FL 33159; Florida Export Warehouse Corp., P.O. Box 592355, AMF, Miami, FL 33159; Greyhound Lines, Inc., Greyhound Tower, Phoenix, AZ 85077; Motor Coach Industries Limited, 1149 St. Matthews Avenue, Winnipeg, Manitoba, Canada R3G 0J8; Frank Fair Industries Ltd., 400 Archibald Street, Winnipeg, Manitoba, Canada R3G 0J8; Motor Coach Industries, Inc., 1149 St. Matthews Avenue, Winnipeg, Manitoba, Canada R3G 0J8; Las Vegas Convention Service Co., P.O. Box 42669, Las Vegas, Nevada 89104; Romex, Inc., Box 6631 (R.I.A.C.), Roswell, MN 88201; Transportation Manufacturing Corporation, Box 5670 (R.I.A.C.), Roswell, NM 88201; Universal Coach Parts, Inc., 7 East Lake Street, Northlake, IL 60164; Faber Tower Restaurants, Inc., 55 East Monroe Street, Chicago, IL 60603; Greyhound Food Management, Inc., Greyhound Tower, Phoenix, AZ 85077; Greyhound Support Services, Inc., Greyhound Tower, Phoenix, AZ 85077; Post Houses, Inc., Greyhound Tower, Phoenix, AZ 85077; Armour and Company, Greyhound Tower, Phoenix, AZ 85077; Armour International Sales Corporation, Greyhound Tower, Phoenix, AZ 85077; Armour-Dial, Inc., Greyhound Tower, Phoenix, AZ 85077; Armour Handcrafts, Inc., 150 Meadowland Parkway, P.O. Box 1534, Secaucus, NJ 07094; Malina International Sales Corporation, 150 Meadowland Parkway, P.O. Box 1534, Secaucus, NJ 07094; Armour International Company, Greyhound Tower, Phoenix, AZ 85077; Dispatch Services, Inc., Box 592034, AMF, Miami, FL 33159; Greyhound Exposition Services, Inc., P.O. Drawer 42669, Las Vegas, NV 89104; Shorrock, Inc., Greyhound Tower, Phoenix, AZ 85077; Greyhound Exhibitgroup, Inc., 2800 Lively Boulevard, Elk Grove, IL 60007.

1. Parent corporation: Lonza, Inc., Fair Lawn, New Jersey.

2. Wholly-owned subsidiaries:

(a) Quad Chemical, Inc.

(b) Bio Labs, Inc.

1. Parent Corporation and Principal Office: National Material Corporation, 2525 Arthur Avenue, Elk Grove Village, Illinois 60007. Other National Material Corporation locations are: 2001 Dr. Thomas Blvd., Arnold, Pennsylvania 15068; 510 Constitution Blvd., New Kensington, Pennsylvania 15068; 101 Cairns Road, Mansfield, Ohio 44903; 2410 E. Lynch Road, Evansville, Indiana 47711. Divisions of National Material Corporation: National Lamination Company, 555 Santa Rosa Drive, Des Plaines, Illinois 60018; Sherman Lamination Company, 10 Thompson Street, Stratford, Connecticut 06497; National Metal Products, 100 Leland Court, Bensenville, Illinois 60106.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices: M & M Steel Products, Inc., 4505 Euclid Ave., East Chicago, Indiana 46312; M & M Steel Products, Inc., 1302 W. 107th St., Chicago, Illinois 60643; Rolled Steel Corporation, 6101 W. Oakton St., Skokie, Illinois 60077; Taber Metals, Inc., Route 1, Airport Road, Russellville, Arkansas 72801; Tower Metals and Ore Corporation, 1965 Pratt Blvd., Elk Grove Village, Illinois 60007. Divisions of Tower Metals and Ore Corporation: Tower Metal Products, 301 N. Hill Street, P.O. Box 791, Ft. Scott, Kansas 66701; Wilmar Processing, 533½ Rathbone, P.O. Box 88, Aurora, Illinois 60507; Wilmar Processing, 555 Lawton, P.O. Box 356, Beloit, Wisconsin 53511; Wilmar Processing, P.O. Box 31, Oswego, Kansas 67356.

(1) The parent corporation is Nortek, Inc. Its principal office is located at 815 Reservoir Avenue, Cranston, Rhode Island.

(2) Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices are:

(a) Vitta Corporation, 382 Danbury Road, Wilton, Connecticut 06897

(b) Fidelity Investment Co., 815 Reservoir Avenue, Cranston, Rhode Island 02910

(c) Sanford Finishing Corp., U.S. Hwy 1 Bypass, Sanford, North Carolina 27330

(d) Stretch Yarns, Inc., 110 Chace Street, Fall River, Massachusetts 02724

(e) Gray Textile Corp., 110 Chace Street, Fall River, Massachusetts 02724

(f) Nursery Originals, 280 Rand Street, Central Falls, Rhode Island 02863

(g) Duro Finishing Co., 110 Chace Street, Fall River, Massachusetts 02724

(h) Pioneer Finishing Corp., 110 Chace Street, Fall River, MA 02724

(i) Duro Textile Printers, Inc., 110 Chace Street, Fall River, MA 02724

(j) Tooltech, Inc., 3145 Columbia Avenue, Minneapolis, MN 55418

(k) TKN, Inc., 815 Reservoir Avenue, Cranston, RI 02910

I. Parent corporation and address of principal office: Pennzoil Company, P.O. Box 2967, Pennzoil Place, 711 Milam, Houston, Texas 77001.

II. Wholly owned subsidiaries participating in operations:

Duval Sales Corporation, P.O. Box 2967, Houston, Texas 77001

Duval Corporation, 4715 East Ft. Lowell Road, Tucson, Arizona 85712

Atlas Processing Company, P.O. Box 3099, Shreveport, LA 71103.

1. Parent corporation and address of principal office: Prairie Material Sales, Inc., 7601 West 79th Street, Bridgeview, Illinois 60455.

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices:

(a) Evanston Fuel & Material Co., 1320 Simpson Street, Evanston, Illinois 60201

(b) A No. 1 Express & Cartage Co., Inc., 1320 Simpson Street, Evanston, Illinois 60201

The parent corporation is: Schnucks, Inc., 12921 Enterprise Way, Bridgeton, MO 63044.

The wholly-owned subsidiaries which will participate in the operations are:

Schnuck Markets, Inc., 12921 Enterprise Way, Bridgeton, MO 63044.
Schnuck Distributing Co., Inc., 12921 Enterprise Way, Bridgeton, MO 63044.
Schnuck Baking Co., Inc., 12921 Enterprise Way, Bridgeton, MO 63044.
Schnucks Quality Kitchen, Inc., 12921 Enterprise Way, Bridgeton, MO 63044.
Four Winds Farms, Inc., 12921 Enterprise Way, Bridgeton, MO 63044.
Hawk Point Farms Company, 12921 Enterprise Way, Bridgeton, MO 63044.
General Merchandisers, Inc., 12921 Enterprise Way, Bridgeton, MO 63044.
Creative Data Services, Inc., 12921 Enterprise Way, Bridgeton, MO 63044.
Show Case Distributors, Inc., 12921 Enterprise Way, Bridgeton, MO 63044.
Supermarket Sign Company, 12921 Enterprise Way, Bridgeton, MO 63044.
Schnucks Station Restaurant, Ltd., 12921 Enterprise Way, Bridgeton, MO 63044.
Pantry Foods, Inc., 12921 Enterprise Way, Bridgeton, MO 63044.
Schnucks-Twenty-Five, Inc., 12921 Enterprise Way, Bridgeton, MO 63044.
Bettendorf's-Rapp's Supermarkets, Inc., 12921 Enterprise Way, Bridgeton, MO 63044.
Clipper Cold Storage, Inc., 12921 Enterprise Way, Bridgeton, MO 63044.
Schnuck Supermarkets, Inc., 12921 Enterprise Way, Bridgeton, MO 63044.
Schnuck Super Centers, Inc., 12921 Enterprise Way, Bridgeton, MO 63044.

1. Parent corporation and address of principal office:

Southwest Forest Industries, P.O. Box 7548, Phoenix Arizona 85011.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Southwest Forest Gulf Coast, Incorporated, P.O. Box 2565, Panama City, Florida 32401
(b) Atlanta & Saint Andrews Bay Railway Company, P.O. Box 669, Panama City, Florida 32401
(c) Plastronic Packaging Corporation, P.O. Box 200, Stevensville, Michigan 49127
(d) Flowable Packaging Division, Southwest Forest Industries, Inc., P.O. Box 7548 Phoenix, Arizona 85011.
(e) Southwest Forest Machinery, P.O. Box 337, Sangar, California 93657
(f) The Mallery Lumber Corporation, Star Route Box 1, Emporium, Pennsylvania 15834
(g) Jordan Millwork Company, P.O. Drawer 1167, Sioux Falls, South Dakota 57101
(h) Dakota Sash & Door Company, P.O. Drawer 1167, Sioux Falls, South Dakota 57101
(i) Southwest Kenworth, Incorporated, P.O. Box 13467, Phoenix, Arizona 85002
(j) The Apache Railway Company, P.O. Drawer E, Snowflake, Arizona 85937
(k) Knox Lumber Company, 801 Transfer Road, St. Paul, Minnesota 55114.

1. Parent Corporation:

Waldbaum, Inc., Hemlock & Boulevard Ave., Central Islip, N.Y. 11722.

2. Wholly Owned Subsidiary:

Waldbaum, Inc., Hemlock & Boulevard Ave., Central Islip, N.Y. 11722.
&
Charro Trucking, Hemlock & Boulevard Ave., Central Islip, N.Y. 11722.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-708 Filed 1-8-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. Vol. 391]

Motor Carriers; Permanent Authority Decisions

Decided: December 29, 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 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.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill. Member Fortier is not participating.

Agatha L. Mergenovich,

Secretary.

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.

MC 121834 (Sub-1F), filed June 27, 1980, previously noticed in the **Federal Register** issue of August 28, 1980. Applicant: EZZELL TRUCKING, INC., P.O. Box 67, U.S. 421 N. Harrells, NC 28444. Representative: James A. Ezzell, U.S. 421 N., P.O. Box 67, Harrells, NC 28444. Transporting (1) *feed ingredients,* between Hartsville, SC, and Harrells, NC, and (2) *general commodities* (except classes A and B explosives), between points in NC. Condition: Issuance of this certificate is subject to prior or coincidental cancellation, at applicant's written request, of Certificate of Registration MC 121834.

Note.—This republication includes part (2) of the application.

MC 134645 (Sub-36F), filed June 1, 1980, previously noticed in the **Federal Register** issue of December 27, 1979 as MC 124071. (Sub-18F). Applicant: LAKE STATE TRANSPORT, INC., P.O. Box 944, St. Cloud, MN 56301. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *meat, meat products, and 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 Carrier Certificates,* 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from St. Cloud, MN, to points in the U.S. (except AK and HI), restricted to traffic originating at the facilities of Landy Packing Company, Inc., at St. Cloud, MN.

Note.—This republication indicates that the applicant is a common carrier and includes a restrictive amendment.

MC 147315 (Sub-3F), filed May 27, 1980, previously noticed in the **Federal Register** issue of July 17, 1980. Applicant: TRIWAYS, INC., 2455 East 27th St., Los Angeles, CA 90058. Representative: William Davidson, 2455 East 27th St., Vernon, CA 90058. Transporting *wearing apparel,* between Carson, CA and Salt Lake City, UT, under continuing contract(s) with K-Mart Apparel Corp., of Carson, CA.

Note.—This republication corrects, the commodity description.

[FR Doc. 81-617 Filed 1-8-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP3-130]

Motor Carriers; Permanent Authority Decisions

Decided: December 29, 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.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 within 45 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 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.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

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 141175 (Sub-6F), filed December 17, 1980. Applicant: CARLEPIED TRANSFER, INC., 319 Butterworth St., Jefferson, LA 70181. Representative: G. H. Knapp, Jr. (same address as applicant). Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons, and munitions) for the U.S. Government, between points in the U.S.

MC 153224F, filed December 16, 1980. Applicant: LOUIS L. COUSIN, 6 Robin Lane, Swampscott, MA 01907. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. To operate as a *broker* in arranging for the transportation of *general commodities* (except household goods), between points in the U.S.

[FR Doc. 81-618 Filed 1-8-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

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.g.s., 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 within 45 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 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".

Vol. No. OP3-125

Decided: December 24, 1980.

By the Commission, Review Board No. 1, Members Carleton, Joyce and Jones. (Member Joyce not participating.)

MC 15975 (Sub-42F), filed December 12, 1980. Applicant: BUSKE LINES, INC., 123 W. Tyler Ave., Litchfield, IL 62056. Representative: Howard H. Buske (same address as applicant). Transporting (1) *alcoholic liquors*, and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and sale of alcoholic liquors, between points in IL on the one hand, and, on the other, points in IA, IL, MO, MI, OH, PA, and WV.

MC 15975 (Sub-43F), filed December 12, 1980. Applicant: BUSKE LINES, INC., 123 W. Tyler Ave., Litchfield, IL 62056. Representative: Howard H. Buske (same address as applicant). Transporting (1) *household appliances*, (2) *radio and television receiving sets*, (3) *sound reproduction or recording equipment*, and (4) *materials and supplies* used in the manufacture and distribution of the commodities in (1) through (3) above, between Louisville, KY, on the one hand, and, on the other, those points in the U.S. on and east of U.S. Hwy 85.

MC 36255 (Sub-5F), filed December 15, 1980. Applicant: K & R DELIVERY, INC., 255 West Oakton St., Des Plaines, IL 60018. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in MO, MI, WI, IN, and IL.

MC 99685 (Sub-7F), filed December 10, 1980. Applicant: G. I. TRUCKING COMPANY, a corporation, 14727 Alondra Blvd., La Mirada, CA 90638. Representative: Fred H. Mackensen, c/o Murchison & Davis, 2029 Century Park East, Suite 4150, Los Angeles, CA 90067. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment, and motor vehicles), (1) between those points in CA in and south of San Luis Obispo, Kern and San Bernardino Counties, on the one hand, and, on the other, points in AZ, and (2) between points in AZ.

MC 107515 (Sub-1403F), filed December 15, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., NE, 5th Floor-Lenox Towers South, Atlanta, GA 30326. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of textile products, between points in the U.S.

MC 117415 (Sub-7F), filed December 16, 1980. Applicant: JENSEN TRUCKING CO., INC., P.O. Box 402, American Fork, UT 84003. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting (1) *lumber* and *wood products*, (2) *forest products*, (3) *pulp* and *paper products*, and (4) *building materials*, between points in WA, OR, MT, ID, UT, NM, AZ, CO, WY, NV, and CA.

MC 117765 (Sub-306F), filed December 18, 1980. Applicant: HAHN TRUCK LINE, INC., 1100 S. Mac Arthur, P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan (same address as applicant). Transporting *salt and salt products*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in AR, CO, IA, IL, IN, KS, KY, LA, MS, MO, NE, NM, OH, OK, TN, and TX.

MC 121594 (Sub-1F), filed December 15, 1980. Applicant: A. M. TRANSFER & CRANE SERVICE, INC., 239 N.W. 26th Street, Miami, FL 33127. Representative: Richard B. Austin, 320 Rochester Bldg., 8390 N.W. 53rd Street, Miami, FL 33166. Transporting *commodities* which, by reason of size or weight, require the use of special handling or equipment, between those points in FL in and south of Brevard, Orange, Polk, Hillsborough and Pinellas Counties, FL (except Dade and Broward Counties).

MC 121644 (Sub-8F), filed November 16, 1980. Applicant: S & W FREIGHT LINES, INC., 1136 Haley Road, P.O. Box 667, Murfreesboro, TN 37130. Representative: Robert L. Baker, Sixth Floor, United American Bank Bldg., Nashville, TN 37219. Over regular routes, transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives) (1) Between Bristol, VA, and Houston, TX, (a) from Bristol over Interstate Hwy 81 to junction Interstate Hwy 75, then over Interstate Hwy 75 to junction Interstate Hwy 24, then over Interstate Hwy 24 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction Interstate Hwy 30, then over Interstate Hwy 30 to junction U.S. Hwy 59, then over U.S. Hwy 59 to Houston, TX, and return over the same route, serving the intermediate points of Chattannooga, Knoxville, Memphis, Murfreesboro, and Nashville, TN, and (I) serving all other points in Hawkins, Sullivan, Cocke, Hamblen, Davidson, Jefferson, Greene, Washington, Knox, Carter, Shelby, Rutherford, and Hamilton Counties, TN, and (II) points in DeSoto County, MS, Washington County, VA, Crittenden County, AR, Harris and Galveston Counties, TX, and Dade, Walker and Catoosa Counties, GA, as off-route points; (2) Between Bristol, VA, and Houston, TX, (a) from Bristol over Interstate Hwy 81 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction Interstate Hwy 30, then over Interstate Hwy 30 to junction U.S. Hwy 59, and then over U.S. Hwy 59 to Houston, TX, and return over the same route, (I) serving the intermediate points of Knoxville, Memphis, and Nashville, TN, and (II) serving all other points in Hawkins, Sullivan, Cocke, Hamblen, Davidson, Jefferson Greene, Washington, Knox, Carter, Shelby, and Rutherford Counties, TN, DeSoto County, MS, Washington County, VA, Crittenden Copunty, AR, and Harris and Galveston Counties, TX, as off-route points.

Note.—(1) Common control may be involved, and (2) applicant intends to tack with its existing authority.

MC 126904 (Sub-40F), filed December 16, 1980. Applicant: H. C. PARRISH TRUCK SERVICE, INC., Rural Route 2, P.O. Box 264, Freeburg, IL 62243. Representative: James W. Patterson, 1200 Western Savings Bank Bldg., Philadelphia, PA 19107. Transporting *sugar and sugar products* (except in bulk), between points in CO, LA, MO, and TX, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX.

MC 134105 (Sub-554F), filed December 16, 1980. Applicant: CELERYVALE TRANSPORT, INC., 1706 Rossdille Ave., Chatanooga, TN 37408. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. Transporting (1) *tallow, lard, vegetable oil, salad oil, and margarine* (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1), (except commodities in bulk), between points in Hamilton County, TN, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, NC, SC, TX, and VA.

MC 134335 (Sub-7F), filed December 15, 1980. Applicant: ALL FREIGHT, INC., 238 Sheldon Rd., Berea, OH 44017. Representative: James Duvall, P.O. Box 97, 230 W. Bridge St., Dublin, OH 43017. Transporting *general commodities* (except classes A and B explosives and household goods) between points in the U.S., under continuing contract(s) with Ceilcote Company, Inc., of Berea, OH.

MC 136635 (Sub-45F), filed December 8, 1980. Applicant: WHITEFORD TRUCK LINE, INC., 640 W. Ireland Rd., South Bend, IN 46680. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis IN 46240. Transporting (1) *cesspools, greasetraps,* and *pipe fittings,* and (2) *materials, equipment,* and *supplies* used in the manufacture and installation of the commodities in (1) above, between Michigan City, IN, on the one hand, and, on the other, points in the U.S.

MC 145235 (Sub-9F), filed December 15, 1980. Applicant: DUTCH MAID PRODUCE, INC., RD #2, Willard, OH 44890. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. Transporting (A) *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. (except AK and HI), restricted to traffic originating at or destined to the facilities of S.C.M. Corporation; and (B) *printed matter* and *materials, equipment and supplies* used in the manufacture and distribution of printed matter (except commodities in bulk), between Willard, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: Issuance of a certificate is subject to prior or coincidental cancellation, at applicant's written request, of Permit No. 145235 and Subs 5 and 6.

MC 145624 (Sub-8F), filed December 16, 1980. Applicant: J. V. CARBONE, INC., 33 Marion Avenue, New Providence, NJ 07974. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. Transporting *hazardous waste materials,* between points in the U.S. in and east of ND, SD, NE, KS, OH, and TX.

Note.—The certificate granted in this proceeding shall expire 5 years from its date of issuance.

MC 145945 (Sub-4F), filed December 12, 1980. Applicant: WILLIS LEASING CORPORATION, 3175 Wall Ave., Ogden, UT 84401. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. 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 UT, WY, CA, CO, ID, and OR, on the one hand, and, on the other, points in IN, OH, IL, CO, MI, AR, and TX.

MC 147655 (Sub-3F), filed December 12, 1980. Applicant: PAYNE, INC., P.O. Box 112, Brandy Station, VA 22714. Representative: Gary E. Thompson, 4304 East-West Hwy, Washington, DC 20014. Transporting *commodities in bulk,* between those points in the U.S. in and east of TX, OK, KS, NE, SD, and ND, restricted to traffic originating at or destined to the facilities used by (a) National Minerals Corporation, (b) Exposaic Industries, Inc., (c) Culpepper Stone Co., Inc., (d) Owens-Corning Fiberglas Corporation, and (e) Culpepper Farmers' Cooperative, Inc.

MC 148774 (Sub-3F), filed December 16, 1980. Applicant: LTD AIR CARGO, INC., P.O. Box 30132, Memphis, TN 38130. Representative: James N. Caly, III, 222 E. Mallory Ave., Memphis, TN 38109. Transporting *surface vehicle parts,* between Memphis, TN and Atlanta, GA.

MC 149075 (Sub-7F), filed November 12, 1980. Applicant: OVER LAND, INC., 4121 Augusta Rd., Garden City, GA 31408. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226. Transporting (1) *sand and gravel,* between points in Effingham County, GA, on the one hand, and, on the other, points in the U.S., and (2) *cement,* between points in Chatham County, GA, on the one hand, and, on the other, points in SC and FL.

MC 151165 (Sub-1F), filed December 15, 1980. Applicant: CATHAY, INC., 7680 South State St., Midvale, UT 84047. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., NW, Washington, DC 20005. Transporting (1) *ice cream,* and (2) *materials and supplies* used in the manufacture and distribution of ice cream, between

Woodbridge, NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151485 (Sub-2F), filed December 16, 1980. Applicant: DOUBLE-JAY ENTERPRISES, INC., Route 1, Box 90, Kearney, MO 64060. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *foodstuffs*, in packages, from the facilities of R. B. Rice Sausage Company, at or near Kansas City, Joplin, and St. Louis, MO, to points in FL, AL, GA, KY, OH, SC, TN, OK, TX, KS, CO, and GA.

MC 151514 (Sub-1F), filed December 9, 1980. Applicant: KARL MAXWELL, N. 5521 Arden Rd., Otis Orchards, WA 99027. Representative: Donald A. Ericson, 708 Old National Bank Bldg., Spokane, WA 99201. Transporting *dry fertilizer*, between points in the U.S., under continuing contract(s) with Cargill, Inc., of Great Falls, MT.

MC 151694 (Sub-1F), filed December 8, 1980. Applicant: HOFER, INC., P.O. Box 583, Pittsburg, KS 66762. Representative: Larry E. Gregg, 641 Harrison Street, P.O. Box 1979, Topeka, KS 66601. Transporting *feed and feed ingredients*, between points in the U.S., under continuing contract(s) (a) with Eastern Mineral Inc., (b) Southeastern Mineral, Inc., (c) Marshall Minerals, Inc., and (d) Mineral Associates, Inc., all of Bainbridge, GA.

MC 152544 (Sub-5F), filed December 15, 1980. Applicant: CYPRESS TRUCK LINES, INC., 1746 East Adams St. Jacksonville, FL 32206. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Transporting (1) *furniture parts*, (2) *iron and steel articles*, and (3) *materials and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between points in the U.S. (except HI), restricted to the transportion of traffic originating at or destined to the facilities used by Leggett & Platt, Inc.

MC 152674 (Sub-3F), filed December 16, 1980. Applicant: MIDWEST EXPRESS, INC., P.O. Box 550, Miami, OK 74354. Representative: David Hunter (same address as applicant). Transporting (1) *automobile parts and accessories*, (2) *scrap iron and steel*, and (3) *machinery*, between points in OH and OK, on the one hand, and, on the other, points in the U.S. (except AK, OH, OK, and HI).

MC 153155F, filed December 12, 1980. Applicant: MANLOWE UNITED, INC., 1049 Egret St., Foster City, CA 94404. Representative: George M. Carr, 235 Montgomery St., Suite 1620, San Francisco, CA 94104. Transporting *general commodities*, between points in CA, restricted to traffic having a prior or subsequent movement by water or rail.

MC 153175F, filed December 12, 1980. Applicant: SPECIAL COMMODITIES, INC., R.F.D. 8, George Washington Hwy., Smithfield, RI 02917. Representative: A. Joseph Mega, 175 Forbes St., Riverside, RI 02915. Transporting (1) *dismantled houses and dismantled buildings*, (2) *iron and steel articles*, and (3) *materials, equipment, and supplies* used in the manufacture, distribution, installation, and erection of the commodities in (1) and (2) above, between points in the U.S., under continuing contract(s) with Acorn Structures, Inc., of Concord, MA.

Vol. No. OP3–128

Decided: December 24, 1980.

By the Commission, Review Board No. 2, Members Chandler, Liberman, and Eaton. (Member Chandler not participating.)

MC 85255 (Sub-73F), filed December 18, 1980. Applicant: PUGET SOUND TRUCK LINES, INC., 3720 Airport Way South, Seattle, WA 98134. Representative: Clyde H. MacIver, 1415 Fifth Ave., Suite 1900, Seattle, WA 98171. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in WA and OR.

MC 107515 (Sub-1405F), filed December 19, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. Transorting *plastic articles* (except commodities in bulk), and *materials, equipment, and supplies* used in the manufacture and distribution of plastic articles (except commodities in bulk), from the facilities of Eli Lilly & Co., at or near Indianapolis, Lafayette, and Clinton, IN, to points in TN, GA, and NC.

MC 109955 (Sub-1F), filed December 18, 1980. Applicant: WARD BROS. TRANSFER & STORAGE CO., INC., 801 Mayfair Ave., Madison, WI 53714. Representative: Rolfe E. Hanson, 121 West Doty St., Madison, WI 53703. Transporting *household goods* as defined by the Commission, between points in WI, IA, IL, MI, MN, IN, MO, KY, OH, and TN.

MC 111545 (Sub-305F), filed December 12, 1980. Applicant: HOME TRANSPORTATION COMPANY, INC., 1425 Franklin Rd., S.E., Marietta, GA 30067. Representative: J. Michael May (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in the U.S. (except HI but including AK).

MC 135385 (Sub-9F), filed December 18, 1980. Applicant: J. C. BANGERTER & SONS, INC., 1265 North Main St., Bountiful, UT 84010. Representative: Harry D. Pugsley, 1283 East South Temple #501, Salt Lake City, UT 84102. Transporting *such commodities* as are dealt in or used by a manufacturer of paper products, between points in the U.S. (except AK and HI), under continuing contract(s) with St. Regis Paper Company, of Tacoma, WA.

MC 138704 (Sub-7F), filed December 18, 1980. Applicant: GARY L. DUNPHY, Embden, ME 04958. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *scrap and waste paper*, between points in the U.S., under continuing contract(s) with Glove Company, Inc., of Jamaica, NY.

MC 140334 (Sub-5F), filed December 17, 1980. Applicant: AM-CAN TRANSPORT SERVICE, INC., P.O. Box 859, Anderson, SC 29621. Representative: John T. Wirth, 717-17th St., Suite 2600, Denver, CO 80202. Transporting *medical and health care products*, between points in the U.S., under continuing contract(s) with Parke Davis Co., of Greenwood, SC.

MC 140635 (Sub-31F), filed December 18, 1980. Applicant: ADAMS LINES, INC., 2619 N St., Omaha, NE 68107. Representative: John L. Hornung (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 the facilities of Morton Chemical, Division of Morton-Norwich Products, Inc., at or near Elk Grove Village and Ringwood, IL, on the one hand, and, on the other, points in CA.

MC 145605 (Sub-1F), filed December 18, 1980. Applicant: CHARLEY T. LONG, d.b.a. C & F EQUIPMENT, 12660 Central Rd., Apple Valley, CA 92307. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of machinery, between points in the U.S., under continuing contract(s) with Industrial Parts Depot, Inc., of Torrance, CA.

MC 146985 (Sub-8F), filed December 17, 1980. Applicant: MIDWEST EASTERN TRANSPORT, INC., 731

South Main St., P.O. Box 1614, Elkhart, IN 46514. Representative: Phillip A. Renz, Suite 200 Metro Bldg., Fort Wayne, IN 46802. Transporting *such commodities* as are dealt in or used by a manufacturer of household appliances, between points in the U.S., under continuing contract(s) with The Kent Company, of Elkhart, IN.

MC 146985 (Sub-10F), filed December 17, 1980. Applicant: MIDWEST EASTERN TRANSPORT, INC., 731 South Main St., P.O. Box 1614, Elkhart, IN 46514. Representative: Phillip A. Renz, Suite 200 Metro Bldg., Fort Wayne, IN 46802. Transporting *such commodities* as are dealt in or used by grocery and food business houses, between points in the U.S., under continuing contract(s) with Michigan Fruit Canners, of Coloma, MI.

MC 148564 (Sub-6F), filed December 19, 1980. Applicant: G. KAY, INC., P.O. Box 222, Geneva, NE 68361. Representative: Jack L. Shutz, P.O. Box 82028, Lincoln, NE 68501. Transporting *fertilizer and fertilizer materials*, between points in Tooele County, UT, Wood County, TX, Chafee County, CO, Tulsa, Rogers, and Mayes Counties, OK, Cherokee County, KS, Yellowstone County, MT, Jasper County, MO, and the facilities of Eagle-Picher Industries, Inc., in Adams County, NE, on the one hand, and, on the other, points in SD, MN, NE, IA, KS, MO, CO, and OK.

MC 153265F, filed December 18, 1980. Applicant: CFC TRANSPORT, INC., 339 S.W. 6th St., Des Moines, IA 50309. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting (1) *malt beverages*, between points in the U.S., under continuing contract(s) with Gore Creek Distributing Co., of Little Rock, AR, (2) *materials and equipment* used in the manufacture of fiberglass, between points in the U.S., under continuing contract(s) with Continental Fiberglass Corporation, of Des Moines, IA, and (3)(a) *paint*, and (b) *materials, equipment, and supplies* used in the manufacture of paint, between points in the U.S., under continuing contract(s) with Ameron, Inc., of Des Moines, IA.

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Decided: December 29, 1980.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones. (Member Jones not participating.)

MC 35334 (Sub-91F), filed December 19, 1980. Applicant: COOPER-JARRETT, INC., Hanover Plaza, Morristown, NJ 07960. Representative: William J. Hanlon (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in CT, DE, IL, IN, IA, KS, KY, MD, MA, MI, MO, NE, NH, NJ, NY, OH, PA, RI, TN, WV and WI.

MC 107515 (Sub-1404F), filed December 16, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., N.E., 5th Floor; Lenox Towers South, Altanta, GA 30326. Transporting *such commodities* as are dealt in or used by manufacturers of petroleum products, between points in Ramsey and Hennepin Counties, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 107905 (Sub-1F), filed December 16, 1980. Applicant: AUBURNDALE TRUCK COMPANY, a corporation, 3240 Monroe St., Toledo, OH 43606. Representative: Michael M. Briley, P.O. Box 2088, Toledo, OH 43603. Transporting (1) *such commodities* which because of size or weight requires the use of special equipment, (2) *self-propelled articles* each weighing 15,000 pounds or more; and (3) *parts* for the commodities in (1), (2), and (3) above, between points in U.S.

MC 110325 (Sub-171F), filed December 16, 1980. Applicant: TRANSCON LINES, a corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105. Over regular routes, transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), (1) Between Oklahoma City, OK, and Las Cruces, NM, from Oklahoma City over Interstate Hwy 40 to junction U.S. Hwy 54, then over U.S. Hwy 54 to junction U.S. Hwy 70, then over U.S. Hwy 70 to Las Cruces, and return over the same route, (2) Between Wichita, KS, and Tucumcari, NM, from Wichita over U.S. Hwy 54 to Tucumcari, and return over the same route, as alternate routes, serving no intermediate points, but serving Tucumcari, NM in route (1) above, for purposes of joinder only, in connection with carrier's otherwise authorized regular route operations.

MC 133324 (Sub-7F), filed December 16, 1980. Applicant: CAR CARRIERS, INC., 13101 S. Torrence Ave., Chicago, IL 60603. Representative: Daniel C. Sullivan, 10 S. LaSalle St., Chicago, IL 60603. Transporting *motor vehicles*, (1) between points in Wayne County, MI, on the one hand, and, on the other, points in IL, IN, IA, MD, MN, NE, OH, PA, VA, and DC, (2) between points in Lake and Cook Counties, IL, and Lake and Porter County, IN, on the one hand, and, on the other, points in DE, MD, MI, SD, VA, and DC, and (3) between points in IL, on the one hand, and, on the other, points in MI, MO, and WI.

MC 133494 (Sub-20F), filed December 16, 1980. Applicant: E. W. BELCHER TRUCKING, INC., Rt. 1, Box 757–M, Sanger, TX 76266. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. Transporting *soybean meal* (except in bulk in tank vehicles), from points in KS to points TX.

MC 134105 (Sub-553F), filed December 16, 1980. Applicant: CELERYVALE TRANSPORT, INC., 1706 Rossdille Ave., Chattanooga, TN 37408. Representative: Daniel O. Hands, 205 W. Touhy Ave., Suite 200, Park Ridge, IL 60068. Transporting *petroleum and petroleum products, vehicle body sealer, and sound deadener compound* (except in bulk), between Farmers Valley, PA, on the one hand, and, on the other, points in AL, AR, GA, LA, MS, MO, OK, TN, and TX, restricted to traffic originating at or destined to the facilities of Quaker State Oil Refining Corporation.

MC 141914 (Sub-95F), filed December 16, 1980. Applicant: FRANKS AND SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. Representative: Kathrena J. Franks (same address as applicant). Transporting (1) *alcoholic liquors*, and (2) *materials, supplies, and equipment* used in the manufacture, distribution and sales of alcoholic liquors (except commodities in bulk), between points in IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146885 (Sub-6F), filed December 16, 1980. Applicant: BEN CAPOBIANCO TRUCKING, INC., 5275 Talawanda Dr., Fairfield, OH 45014. Representative: Jerry B. Sellman, 50 W. Broad St., Columbus, OH 43215. 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 the facilities of Hunt Manufacturing Company, Lightning Products Division, at or near Florence, KY, to the facilities of Hunt Manufacturing Company, Lightning Products Division, at or near Fresno, CA.

MC 150425 (Sub-4F), filed December 15, 1980. Applicant: TRANS-CONTINENTAL EXPRESS, INC., P.O. Box D, Clarksville, TX 75426. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. Transporting (1) *malt beverages and materials, supplies, and equipment* used in the production and distribution of malt beverages, between Fort Worth, TX, New Orleans,

LA, and Belleville, IL, on the one hand, and, on the other, points in AR and LA. (2) *alcoholic beverages and materials, supplies, and equipment* used in the production and distribution of alcoholic beverages, between Chicago, IL, and Westfield, NY, on the one hand, and, on the other, points in Mobile County, AL, and (3) *alcoholic liquors, materials, supplies, and equipment* used in the manufacture, distribution, and sale of alcoholic liquors (a) between points in IL, on the one hand, and, on the other, those points in the U.S. in and west of WI, IN, KY, AR, and LA, (b) between Ft. Smith, AR, on the one hand, and, on the other, those points in the U.S. in and east of TX, OK, KS, NE, IA, and IL, and (c) between New Orleans, LA, on the one hand, and, on the other, points in IL, MO, AR, TN, TX, OK, MS, AL, GA, and FL.

MC 151395 (Sub-7F), filed December 16, 1980. Applicant: SNEAKER FREIGHT LINE, INC., 4215 Thurman Rd., P.O. Box 768, Conley, GA 30027. Representative: Archie B. Culbreth, 2200 Century Parkway, Suite 202, Atlanta, GA 30345. Transporting (a) *containers and pulpboard*, and (b) *materials, equipment, and supplies* used in the manufacture and distribution of containers and pulpboard, between those 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 Container Corporation of America.

MC 151475 (Sub-1F), filed December 16, 1980. Applicant: ARROW CHARTER LINES, INC., 7825 Santa Fe Ave., Huntington Park, CA 90255. Representative: James H. Lyons, 523 West 6th St., Suite 1216, Los Angeles, CA 90014. Transporting *passengers and their baggage*, in the same vehicle with passengers, in round-trip and special operations, beginning and ending at points in Los Angeles and Orange Counties, CA, and extending to points in AZ, CO, NV, and UT.

MC 151485 (Sub-1F), filed December 16, 1980. Applicant: DOUBLE-JAY ENTERPRISES, INC., Route 1, Box 90, Kearney, MO 64060. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting (1) *railway car parts, and mounted wheel sets*, and (2) *materials, and supplies* used in the manufacture, repair, and distribution of the commodities in (1) above, between the facilities used by North American Car Corporation, at or near Kansas City, KS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151845 (Sub-1F), filed December 16, 1980. Applicant: ADAMIC TRUCKING, INC., 15522 Rider Rd., Burton, OH 44021. Representative: Lewis S. Witherspoon, 88 East Broad St., Columbus, OH 43215. Transporting (1) *metal buildings*, knocked down, and (2) *parts, accessories, and supplies* used in the installation of metal buildings, between Galesburg, IL, and Annville, PA, on the one hand, and on the other, points in Cuyahoga, Geauga, Lake, Portage, and Stark Counties, OH.

MC 153184F, filed December 15, 1980. Applicant: GEORGE EDWARD MONIZE and LINDA ANN MONIZE, d.b.a. MONIZE TRUCKING, 1582 Russell Road, Merlin, OR 97532. Representative: Linda Ann Monize (same address as applicant). Transporting (1) *lumber and lumber mill products*, from points in OR to points in CA, NV and WA; (2) *block, brick, stone, sand, cement, tile, lime, stoves, steel;* and (3) *materials, equipment and supplies* used in the manufacture, production, processing, installation and distribution of the commodities in (2) above, (except commodities in bulk), from points in CA, NV, and WA to Grants Pass, OR, under continuing contract(s) with Cascade Enterprises, Inc., of Grants Pass, OR, and Caveman Lumber Company, of Merlin, OR.

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Decided: December 29, 1980.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 61825 (Sub-137F), filed December 17, 1980. Applicant: ROY STONE TRANSFER CORPORATION, P.O. Box 385, V.C. Drive, Collinsville, VA 24078. Representative: John D. Stone (same address as applicant). Transporting *salt* and *salt products*, from Painesville, OH, to points in NC, TN, and VA.

MC 85934 (Sub-127F), filed December 17, 1980. Applicant: MICHIGAN TRANSPORTATION COMPANY, a corporation, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167. Representative: Martin J. Leavitt (same address as applicant). Transporting *petroleum* and *petroleum products*, between points in Berrien and Jackson Counties, MI, on the one hand, and, on the other, points in IN.

MC 125335 (Sub-111F), filed December 15, 1980. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816. Transporting *such commodities* as are dealt in or used by food business houses, between points in CT, DE, FL, GA, IL, IN, IA, KS, KY, MD, MA, ME, MI, MN, MO, NE, NH, NJ, NY, NC, ND, OH, PA, RI, SC, SD, TN, VT, VA, WV, WI, and DC, restricted to traffic originating at or destined to the facilities of Stouffer Foods Corporation, Division of Stouffer Corporation.

MC 135385 (Sub-8F), filed December 10, 1980. Applicant: J. C. BANGERTER & SONS, INC., 1283 North Main St., Bountiful, UT 84010. Representative: Harry D. Pugsley, 1283 East South Temple No. 501, Salt Lake City, UT 84102. Transporting *such commodities* as are dealt in by grocery stores, between points in the U.S., under continuing contract(s) with Smiths Management Corporation, of Layton, UT.

MC 136635 (Sub-47F), filed December 17, 1980. Applicant: WHITEFORD TRUCK LINES, INC., 640 W. Ireland Rd., South Bend, IN 46680. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *furniture and hardware*, and (2) *materials, equipment, and supplies* used in the manufacture of furniture and hardware, between Evansville, IN, Hopkinsville, KY, and Blytheville, AR, on the one hand, and, on the other, points in the U.S. Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. § 11343-11344, or submit an affidavit indicating why such approval is unnecessary.

MC 138635 (Sub-124F), filed December 19, 1980. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton (same address as applicant). Transporting (1) *electrical appliances, electrical equipment, electrical heaters*, and *electrical stoves*, and (2) *material, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in CA and MO, on the one hand, and, on the other, points in GA, NC, SC, and VA, restricted to traffic originating at or destined to the facilities of Superior Electric Products Corporation.

MC 140364 (Sub-5F), filed December 18, 1980. Applicant: ARMOUR FOOD EXPRESS COMPANY, P.O. Box 2785, Amarillo, TX 79105. Representative: R. L. Gordon, 111 West Clarendon, Phoenix, AZ 85013. Transporting (1) *foodstuffs*, and (2) *materials and supplies* used in the manufacture of foodstuffs, between points in the U.S., under continuing contract(s) with Lamb-Weston, Inc.

MC 142205 (Sub-12F), filed December 17, 1980. Applicant: LOUDOUN TRANSFER, INC., P.O. Box 703, Leesburg, VA 22075. Representative:

Dean N. Wolfe, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. Transporting *such commodities* as are dealt in or used by manufacturers of polystyrene insulation, between points in the U.S. (except AK and HI), under continuing contract(s) with Insulated Building Systems, Inc., of McLean, VA.

MC 146055 (Sub-12F), filed December 17, 1980. Applicant: DOUBLE "S" TRUCKLINE, INC., 731 Livestock Exchange Bldg., Omaha, NE 68114. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114. Transporting *meats*, and *packinghouse products*, between points in Shelby County, IA, on the one hand, and, on the other, points in NY and LA.

MC 146985 (Sub-9F), filed December 17, 1980. Applicant: MIDWEST EASTERN TRANSPORT, INC., 731 South Main St., P.O. Box 1614, Elkhart, IN 46514. Representative: Phillip A. Renz, Suite 200, Metro Building, Fort Wayne, IN 46802. 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 The Upjohn Company, of Portgage, MI.

MC 151495 (Sub-1F), filed December 17, 1980. Applicant: PUTNAM TRANSFER & STORAGE COMPANY, a corporation, 1701 Moxahala Ave., Zanesville, OH 43701. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. 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 contracts with Williams & Company, Inc., of Pittsburgh, PA and The House of Metals, Inc., of Cambridge, OH.

MC 151595 (Sub-1F), filed December 8, 1980. Applicant: CLARK TRANSPORTATION AGENCY, INC., 28 Westwood Parkway, Barre, VT 05641. Representative: Karson E. Clark (same address as applicant). Transporting *passengers and their baggage*, in round-trip charter and special operations, limited to the transportation of not more than 18 passengers (excluding the driver) in one vehicle at one time, beginning and ending at points in VT, and extending to points in ME, NH, VT, MA, CT, RI, NY, NJ, PA, DE, MD, VA, and DC.

MC 152604 (Sub-1F), filed December 12, 1980. Applicant: SUNBELT TRANSPORT, INC., 1900 Emery St., NW., Atlanta, GA 30318. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237. Transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, and those requiring special equipment), between points in GA, restricted to traffic having a prior or subsequent movement by rail.

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Decided: December 30, 1980.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones. (Member Jones not participating.)

MC 108194 (Sub-15F), filed October 15, 1980, previously noticed in **Federal Register** on November 4, 1980. Applicant: WILLIAM B. MEYER, INCORPORATED, Long Beach Blvd., Stratford, CT 06497. Representative: Robert J. Gallagher, 1000 Connecticut Ave. NW, Suite 1112, Washington, DC 20036. Transporting *household goods*, as defined by the Commission, (1) between points in NY, CT, RI, and MA, and (2) between points named in (1) above, on the one hand, and, on the other, points in ME, NH, VT, NJ, PA, DE, MD, OH, VA, NC, SC, GA, FL, IN, IL, MI, and DC.

Note.—(1) Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation of certificate No. MC-108194, at applicant's written request, and (2) this republication corrects the territorial description.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-619 Filed 1-8-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 1]

Petitions, Applications, Alternate Route Deviations, Intrastate Applications, and Gateways, Irregular-Route Motor Common Carriers of Property—Elimination of Gateway Letter Notices

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's *Gateway Elimination Rules* (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before January 19, 1981. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will *not* operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a *common carrier*, by motor vehicles, over irregular routes.

MC 106407 (Sub-E6) (Correction), filed June 4, 1974, published in the **Federal Register** March 3, 1976, republished August 7, 1980. Applicant: T. E. MERCER TRUCKING CO, INC., P.O. Box 1809, Fort Worth, TX 76101. Representative: Richard H. Streeter, 1729 H Street, NW., Washington, DC 20006. *Pipe, pipeline material, machinery*, and *equipment* incidental to and used in connection with the construction, repairing, or dismantling of gas, gasoline or oil pipelines, restricted to traffic moving to or from pipeline rights-of-way, between points in LA, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, IL, IN, KY, ME, MD, MA, MI, MN, MS, NH, NJ, NY, NC, ND, OH, PA, RI, SC, SD, TN, VT, VA, WI, WV, and DC. (Gateway eliminated: points in MS) Purpose of republication—show entire territory.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-704 Filed 1-8-81; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-No. 39F)]

Chesapeake and Ohio Railway Company—Abandonment—in Lexington, Fayette County, Ky.; Notice of Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided January 6, 1981, 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 and discontinuance of service on the following line of railroad known as: Lexington Belt Line from Valuation Station 150+55 to Valuation Station 174+00 at end of line, a distance of 0.44 mile, in Lexington, Fayette County, KY, and further that applicant shall keep intact all of the right-of-way underlying the track, including all the bridges and culverts for a period of 120 days from the decided date of the certificate and decision 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 public convenience and necessity permitting abandonment and discontinuance of service was issued to the Chesapeake and Ohio Railway Company. Since no investigation was instituted, the requirement of Section 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, DC 20423, no later than January 19, 1981. 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. 81-1056 Filed 1-8-81; 11:19 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-No. 64F)]

Southern Pacific Transportation Company—Abandonment—in Harris County, TX; Notice of Findings

Jotica is hereby givaj pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided January 6, 1981, 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 of a line of railroad known as the Old Bayshore Line of the Galveston Branch extending from milepost 24.10 to milepost 25.09 at the end of the line, a distance of .99 miles in Harris County, TX. A certificate of public convenience and necessity permitting abandonment was issued to the Southern Pacific Transportation Company. Since no investigation was instituted, the requirement of Section 112.38(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, DC 20423, no later than January 19, 1981. 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. 81-1055 Filed 1-8-81; 11:19 am]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Redelegation of Authority No. 99.1.118]

Mission Director, Zimbabwe; Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby redelegate to the Mission Director, Zimbabwe, the authority to:

1. Sign U.S. Government contracts, grants, or amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent;

2. Sign contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent; and

3. Authorize advance payments to other than profit-making organizations.

The authority herein delegated may be redelegated in writing, in whole or in part, by the Mission Director at his discretion to the person or persons designated by the Mission Director as Contracting Officer. Such redelegation shall remain in effect until such designated person or persons cease to hold the office of Contracting Officer or until the redelegation is revoked by the Mission Director whichever shall first occur. The authority so redelegated by the Mission Director may not be further redelegated.

The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within A.I.D. and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated.

The authority herein redelegated may be exercised by duly authorized persons who are performing the functions of the Mission Director in an acting capacity.

Actions within the scope of this delegation heretofore taken by officials designated in any previous delegation or redelegation are hereby ratified and confirmed.

This redelegation of authority is effective December 3, 1980.

Dated: December 16, 1980.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 81-814 Filed 1-8-81; 8:45 am]

BILLING CODE 4710-02-M

[Redelegation of Authority No. 99.1.116]

Principal A.I.D. Representative, the Gambia; Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby redelegate to the Principal A.I.D. Representative, The Gambia, the authority to:

1. Sign U.S. Government contracts, grants, or amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent;

2. Sign contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent; and

3. Authorize advance payments to other than profit-making organizations.

The authority herein delegated may be redelegated in writing, in whole or in part, by the Principal A.I.D. Representative at his discretion to the person or persons designated by the Principal A.I.D. Representative as Contracting Officer. Such redelegation shall remain in effect until such designated person or persons cease to hold the office of Contracting Officer or until the redelegation is revoked by the Principal A.I.D. Representative whichever shall first occur. The authority so redelegated by the Principal A.I.D. Representative may not be further redelegated.

The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within A.I.D. and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated.

The authority herein redelegated may be exercised by duly authorized persons who are performing the functions of the Principal A.I.D. Representative in an acting capacity.

Actions within the scope of this delegation heretofore taken by officials designated in any previous delegation or redelegation are hereby ratified and confirmed.

This redelegation of authority is effective December 3, 1980.

Dated: December 16, 1980.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 81-812 Filed 1-8-81; 8:45 am]

BILLING CODE 4710-02-M

[Redelegation of Authority No. 99.1.117]

Principal A.I.D. Representative, Malawi; Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby redelegate to the Principal A.I.D. Representative, Malawi, the authority to:

1. Sign U.S. Government contracts, grants, or amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent;

2. Sign contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent; and

3. Authorize advance payments to other than profit-making organizations.

The authority herein delegated may be redelegated in writing, in whole or in part, by the Principal A.I.D. Representative at his discretion to the person or persons designated by the Principal A.I.D. Representative as Contracting Officer. Such redelegation shall remain in effect until such designated person or persons cease to hold the office of Contracting Officer or until the redelegation is revoked by the Principal A.I.D. Representative whichever shall first occur. The authority so redelegated by the Principal A.I.D. Representative may not be further redelegated.

The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within A.I.D. and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated.

The authority herein redelegated may be exercised by duly authorized persons who are performing the functions of the Principal A.I.D. Representative in an acting capacity.

Actions within the scope of this delegation heretofore taken by officials designated in any previous delegation or redelegation are hereby ratified and confirmed.

This redelegation of authority is effective September 19, 1979.

Dated: December 16, 1980.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 81-813 Filed 1-8-81; 8:45 am]

BILLING CODE 4710-02-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 81-4; Exemption Application No. D-2046]

Exemption From the Prohibitions for Certain Transactions Involving the Bakery Drivers Local 802 Pension Fund Located in Long Island City, N.Y.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the leasing of office space by the Bakery Drivers Local 802 Pension Fund (the Pension Fund) to the Bakery Drivers Local Union 802 (the Union), Bakery Drivers Local 802 Welfare Fund (the Welfare Fund), Bakery Drivers Local 802 Credit Union (the Credit Union), and other tenants in a building to be purchased from the Bakery Drivers Real Estate Corporation (the Corporation), which is wholly owned by the Union.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8671. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On November 7, 1980, notice was published in the **Federal Register** (45 FR 74106) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for transactions described in an application filed on behalf of the trustees of the Pension Fund.

The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was furnished by November 26, 1980, to interested persons in compliance with the requirements to notify interested persons as set forth in the notice of pendency of the proposed exemption. The Department has received one comment objecting to the purchase of the building. However, the exemption covers only the leasing of the building to the specified parties in interest. As stated in the notice of pendency, no exemptive relief was requested for the

purchase of the building and no such relief is being granted. No requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interest of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the leasing of office space by the Pension Fund to the Union, the Welfare Fund, the Credit Union, and other tenants, in the building to be purchased from the Corporation, according to the lease terms and conditions specified in the notice of proposed exemption, provided the rental payments are not less than fair market rental value.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 5th day of January 1981.

Morton Klevan,

Deputy Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-642 Filed 1-8-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-3; Exemption Application No. D-1502]

Exemption From the Prohibitions for Certain Transactions Involving the Rhodes, Kendall & Harrington, a Professional Law Corporation, Profit Sharing Plan and Trust Agreement Located in Newport Beach, California

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption would permit the sale of a partnership interest in Abbott Equities, Ltd., by the Rhodes, Kendall & Harrington, a Professional Law Corporation, Profit Sharing Plan and Trust Agreement (the Plan) to RK&H Properties. RK&H Properties is a partnership composed of Terry L. Rhodes, Robert A. Kendall and Bruce E. Harrington who are stockholders in Rhodes, Kendall & Harrington, a Professional Law Corporation, the Sponsor of the Plan, as well as being trustees of the Plan.

FOR FURTHER INFORMATION CONTACT: Dan O'Neil of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523-8368. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 7, 1980, notice was published in the **Federal Register** (45 FR 74110) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the sale of a partnership interest by the Plan to RK&H Properties. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice to interested persons has been given as set forth in the Notice of Proposed Exemption. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the

exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of a 10 percent partnership interest in Abbott Equities, Ltd., by the Plan to RK&H Properties for approximately $80,600, the exact amount to be determined at the date of sale, the terms to be cash, provided that the selling price is at least the fair market value of the interest at the time of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 31st day of December 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-652 Filed 1-8-81; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-2, Exemption Application No. D-2103]

Exemption From the Prohibitions for Certain Transactions Involving The Citizens Bank and Trust Company Revised Retirement Plan Located in Jeffersonville, Ind.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption exempts the cash sale of certain real property by the Citizens Bank and Trust Company Revised Retirement Plan (the Plan) to the Citizens Bank and Trust Company (the Employer), a party in interest with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. Jan Broady of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 7, 1980, notice was published in the Federal Register (45 FR 74108) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed on behalf of the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice and an accompanying statement have been provided to all interested persons in order to comply with the notification requirements set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplement to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the

Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan to the Employer of certain real property located at 438, 440, and 442 Spring Street in Jeffersonville, Indiana for $58,000, provided this amount is not less than the fair market value on the date of the sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 31st day of December, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-844 Filed 1-8-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2105]

Proposed Exemption for Certain Transactions Involving the San Marcos Development Company Defined Benefit Pension Plan Located in San Diego, California

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the contribution of three unencumbered single-family homes and the real property on which they are located (the Properties) by the San Marcos Development Company (the Employer) to the San Marcos Development Company Defined Benefit Pension Plan (the Plan), the Employer's guarantee of the leses on the Properties, and any repurchase of any of the Properties by the Employer pursuant to a "put" exercised by the Plan. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, the Employer, and the trustee of the Plan, California Canadian Bank (the Bank).

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before February 23, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2105. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund of the Department of Labor, telephone (202) 523-7901. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behelf of the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganiation Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Deparment for the complete representations of the applicant.

1. The Employer is a real estate development company which specializes in the subdivision of land in California and Arizona, the construction of single-family homes thereon, and the sale of such homes and land to the ultimate consumers. The applicant represents that the Employer is financially strong but at present is extremely short of cash and its assets are not liquid. The Employer does not expect to have sufficient cash on hand, after meeting its other fixed obligations, to make the contribution due to the Plan for the Plan year ending June 30, 1980 (estimated by the Plan's actuary as ranging from $160,000 to $265,000), the Employer believes that borrowing to make the contribution would be fiscally irresponsible and could possibly cause irreparable damage to the Employer by slowing its recovery from the 1980 recession as the real estate market improves. For these reasons, the Employer has requested that the Internal Revenue Service waive the Employer's required contribution for the Plan year ending June 30, 1980 and allow the Employer to contribute the waived amount to the Plan over a 15 year amortization period. However, if the proposed exemption is granted, the Employer will engage in the proposed transaction described herein and will withdraw its waiver request, if still pending, or ignore it, if already granted.

2. All employees of the Employer (approximately ten) participated in the Plan as of August 1, 1980. The Employer manages the Plan's investments by directing the Bank. As of June 30, 1980, approximately half of the Plan's total assets were invested in real property; the remainder was held in cash equivalents and in promissory notes, maturing January 10, 1982, of the two principal owners of the Employer.[1] About half of the Plan's real property investments are in single-family homes, rented to unrelated parties, which generated approximate net rental income of 7.2 percent of book value equity for the year ended June 30, 1980, and have appreciated in value to an estimated 139 percent of cost.

3. The Properties are legally described as follows:

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[1] The applicant states that the loans represented by these notes were made pursuant to a provision in the trust agreement relating to the Plan authorizing loans to Plan participants. The provision is intended to comply with the requirements of section 408(b)(1) of the Act, which provides that section 406 shall not apply to any loans made by a plan to parties in interest who are participants or beneficiaries of the plan provided certain conditions are met. Counsel for the applicant believes that the loans to the two principal owners of the Employer are not prohibited transactions. The Department is expressing no opinion as to whether these loans meet the requirements of section 408(b)(1).

Lots 36, 40 and 41 of Casa Real Lakeside, in the County of San Diego, State of California, according to Map thereof No. 7689, recorded in the office of the County Recorder of San Diego County, on July 5, 1973.

The properties are commonly described as follows:

Lot 36, 10244 Avenida Real, Lakeside, California
Lot 40, 11618 Rio Fondo, Lakeside, California
Lot 41, 11612 Rio Fondo, Lakeside, California.

These homes were built to meet the standards of the County of San Diego and of the Federal Housing Administration. The homes qualified for Veterans' Administration loans. The Employer built these homes in 1977 as part of a 50 house tract. As is its practice, the Employer retained these homes for its own investment portfolio and currently is renting them to unrelated parties on a month-to-month basis for $425 to $450 per month. According to Lee C. Johnson Co., a real estate appraisal, consultation, and research firm appointed by the Bank to appraise the Properties, the fair market value of the Properties on September 11, 1980 was $250,000.

4. The Properties would be contributed to the Plan subject to the existing month-to-month leases, but subject to no other encumbrances or liabilities. The fair market value of the Properties equals approximately 23 percent of the Plan's total assets as of June 30, 1980. The Properties would be held by the Plan for investment purposes under the management of the Bank. A proposed amendment to the trust agreement would give the Bank exclusive investment management responsibilities with respect to assets contributed to the trust by the Employer, other than cash or its equivalent. This amendment is in the process of being adopted. The Bank is wholly unrelated to the Employer and is engaged in the banking and trust company business in California. The Bank currently is the trustee of the assets of both the Plan and the defined contribution plan sponsored by the Employer. The Bank has never engaged in commercial transactions with the Employer and no such transactions are contemplated.

5. By letter dated September 16, 1980, the Bank has represented that (a) the Bank has been asked to serve as trustee with respect to the Properties and is willing to do so, (b) the Bank has been authorized and instructed to use its independent fiduciary judgment in serving as trustee and, accordingly, the Bank will be free to refuse to accept the Properties or, if it accepts the Properties, to manage or otherwise dispose of the Properties at any time to any person without the consent of any other party (c) after considering the proposed transaction, the Plan's investment experience, portfolio mix and liquidity needs, the Bank has concluded that it will accept the proposed contribution, and that the contribution would be appropriate for the Plan and best serve the interests of the Plan's participants and beneficiaries, and (d) the Bank reserves the right to refuse to accept the proposed contribution if changed conditions warrant such refusal or if the Bank determines that it would be imprudent to accept the contribution. The Bank has explained that its conclusion, in item (c) above, is based on the following factors: (i) The Employer will only claim as a contribution for funding purposes the amount of the fair market value of the Properties it contributes to the Plan; (ii) the Bank, as trustee, will be free to hold the Properties contributed to the Plan or to sell them as the Bank in its discretion sees fit and will sell the Properties if it determines that it would be imprudent to continue to hold them; (iii) the "put," described below, guarantees the Plan a 10 percent return for 10 years after the Properties are contributed to the Plan, which the Bank states is a reasonable minimum rate of return; (iv) the Plan may in fact enjoy a higher return from the Properties; and (v) in the Bank's experience, homes, such as those to be contributed to the Plan, have been appreciating at a rate faster than 10 percent per year in the San Diego area and quite possibly will continue to do so in the future.

6. To ensure that the Plan actually realizes the expected benefits from the contribution, the Employer proposes to guarantee the existing leases. Specifically, if the original tenant under one of such leases fails to pay rent when due or damages the Property, and the trustee, after making diligent efforts to do so, is unable to collect any such past-due rent or recover amounts sufficient to pay for any such damage to the Property, the Employer will pay such amounts to the trustee within 30 days after receiving the trustee's written request that it do so. In addition, the Employer will give the Plan a "put" under which the Plan may require the Employer to buy back one or more homes for an amount (the put price) equal to the value of the homes at the time of contribution (as determined by an independent appraisal) increased 10 percent per year for the period during which the Plan has held the Property, offset by net rental income from the Property during such period. This put would be exercisable upon 30 days prior written notice to the Employer. The put could be exercised with respect to a home only after the Plan has diligently tried to sell the home but has received no offers from qualified buyers at a price at least equal to the put price and only if the put price is at least equal to the fair market value of the home. Although the put would not have an expiration date, the maximum put price for any home would be limited to twice its appraised value at the time of the contribution. The Bank's letter of September 16, 1980, also states that the proposed "put" and guarantee are acceptable without change.

7. The Employer will pay any costs incurred in the proposed transaction. No commission will be paid to any party.

8. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria contained in section 408(a) of the Act because (a) the contribution would be a one-time transaction; (b) the fair market value of the Properties for purposes of both the contribution and the put has been determined by an independent appraiser appointed by the Bank; (c) the contribution would enable the Plan to effect its customary investments at a considerable savings since all closing and transaction costs will be avoided; (d) the Employer will pay any costs incurred in the proposed transaction; (e) the proposed transaction is likely to yield an attractive return to the Plan from both rent and capital appreciation, both of which will be guaranteed by the Employer; and (f) the trustee has determined that the proposed transaction is appropriate for the Plan and is in the best interests of the Plan's participants and beneficiaries.

Notice to Interested Persons

On or before January 26, 1981, the notice of pendency will be mailed or delivered to all present participants and beneficiaries of the Plan. Included with such notice will be a statement that interested persons have a right to comment and request a hearing on the proposed exemption within the period set forth in this notice. Both the notice and the statement will also be posted on appropriate employee bulletin boards within such 15-day period.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary

or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the contribution of the Properties by the Employer to the Plan provided the contribution is valued at its fair market value, the Employer's guarantee of the leases on the Properties, and any repurchase of the Properties by the Employer pursuant to a put exercised by the Plan.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 31st day of December, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administrator, U.S. Department of Labor.

[FR Doc. 81-853 Filed 1-8-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1188]

Proposed Exemption for Certain Transactions Involving Panlmatic Company Employees' Profit Sharing Plan and Trust, Located in Elk Grove Village, Illinois

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt, prospectively, the leasing of certain real property by Panlmatic Company Employees' Profit Sharing Plan and Trust (the Plan) to Panlmatic Company (the Employer), a party in interest with respect to the Plan. The Proposed exemption, if granted, would affect the Employer, the Plan, its fiduciaries, participants, beneficiaries and other interested persons.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before February 16, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-1188. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: C. E. Beaver, of the Department of Labor, Telephone (202) 523-7901. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an Application for exemption from the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed jointly by the Employer and the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

(1) The Employer, incorporated in Illinois during 1956, is located in a suburb of Chicago at 73 East Bond Street, Elk Grove Village, Illinois (the Bond Property). Its principal activities are the manufacture, assembly, and sale of electrical and mechanical equipment. It has 75 employees. As of September 30, 1979, it had total assets of $2,009,649 with total liabilities of $1,140,342, and retained earnings of $868,307. For the year ended September 30, 1979, the

Employer had net sales of $5,584,747, and income before taxes of $211,464.

(2) The Plan is a qualified, non-contributory, individual account, profit-sharing plan and trust which was established during August 1966 by the Employer. It has 65 participants. The administrator of the Plan is the Employer and the trustees are Messrs. Stanley Luc, Jr. and Robert Rusteburg, who are officers, directors and substantial owners of the Employer. As of September 30, 1979, it had total assets of $1,823,612 with total liabilities of $259. Of its assets, $911,920, or 50 percent, was the current book value of the Bond Property. For the year ended September 30, 1979, the Plan had a net income of $422,467 and during the year the Employer made a maximum allowable funding contribution of $260,479. For the year ended September 30, 1980, in unaudited financial statements, its projected assets totaled $2,460,000 and liabilities were zero. Of these assets, $950,000, or 38 percent, was the current book value of the Bond Property. The net income for the Plan was $636,838 of which $310,000 was projected contributions by the Employer.

(3) The applicants are requesting a prospective exemption from the prohibited transaction provisions of the Act for leasing the Bond Property by the Plan to the Employer. Since purchasing the Bond Property in January 1973 for $325,927 from an unrelated party, the Plan has continuously leased it to the Employer. The Plan had a substantial addition constructed on the Bond Property, which was begun on July 1, 1978, and completed on December 1, 1978, for a cost to the Plan of $413,644. This addition increased the building area by 68 percent; and, upon completion, it is believed by the applicants that under proposed regulations issued by the Department, the transitional rules of section 414(c)(2) of the Act may not have been available for the lease between the Plan and the Employer. Therefore, the applicants request a prospective exemption for the duration of the lease and for its two optional renewal periods.

(4) The subject lease agreement between the Plan and the Employer for the Bond Property is an "absolute" net lease with the Employer responsible for all maintenance, taxes, insurance, and any other expenses of the Bond Property. This lease has an expiration date of June 30, 1984, and two five-year renewal options. The rental payments are $102,000 per year (or $2.01 per square foot), initially yielding the Plan a 13 percent return, which will be increased on October 1, 1981, to $114,000 per year (or $2.25 per square foot). During the renewal periods of the lease the rentals will be increased to the higher of either the fair market rental as determine by an independent, qualified appraiser, or to $140,400 per year during the first renewal period and to $182,400 per year during the second renewal period. Included in the extensive insurance protections provided by the Employer throughout the entire lease agreement, including the two renewal periods, is annual rent coverage.

(5) The Bond Property consists of a one story brick office and industrial building with a parking lot located on a site zoned industrial with a street frontage of 528 feet and a depth of 200 feet. The brick building has a total of 50,593 square feet of which 30,109 square feet was constructed 15 years ago and 20,484 square feet was completed on December 1, 1978. The Plan owns title to the Bond Property free and clear except for the usual utility easements and the leasehold interest of the Employer. As of September 19, 1978, R.J. Schmitt & Associates, Inc. of Prospect Heights, Illinois appraised the Bond Property and found, subject to the completion of the 20,484 square foot addition, that it had a fair market value of $898,000 and its annual fair rental value, on a net basis, was $1.85 per square foot.

(6) On July 11, 1980, The First National Bank of Highland Park, a National Banking Association of Highland Park, Illinois, accepted its appointment to act in a fiduciary capacity as the Independent Real Estate Investment Manager (the Manager) over the Bond Property as an asset of the Plan. Prior to accepting, the Manager made an examination of the lease and employed J.G. Hoppe Real property Consultants of Oak Park, Illinois to inspect the Bond Property and to perform a rental appraisal and a comparative evaluation of the lease arrangements. The fair rental value, on a net basis, was found to be $2.00 per square foot. Thereafter, the Manager (i) approved the lease as reasonable and fair (ii) found the rentals to be at the prevailing market rentals for similar property, and (iii) concluded that the lease arrangements between the Plan and the Employer are in the best interest and to the general benefit of the participants and beneficiaries of the Plan. The Manager is solely responsible for lease negotiations, enforcement of terms, and all other management activities of the Bond Property.

(7) The applicants represent that leasing the Bond Property to the Employer will provide the Plan a return on its investment of significant proportions (13 percent and more), plus long term capital appreciation as contrasted to smaller returns (less than 7 percent) experienced by the other assets of the Plan. In addition, if forced to divest itself of the Bond Property, the applicants feel that the Plan would suffer a loss of investment opportunity with a demonstrated minimum risk and a substantially increasing yield. The applicants predict that rental income from the Bond Property combined with future Employer contributions will increase the value of other assets of the Plan at a much faster rate than the value of the Bond Property will appreciate. This action will result in a rapid decline in the relative value of the Bond property as a percentage of Plan assets. The applicants also represent that the Plan is well protected in the proposed transaction because of the location of the Bond Property in one of the largest industrial complexes in the world with a multiple purpose, high quality, well designed facility that is valuable and readily marketable.

(8) In summary, the applicants represent that the proposed transaction meets the criteria for an exemption under section 408(a) of the Act because (1) the lease agreement will allow the Plan to diversy its investments in a proven successful yielding asset; (2) the lease agreement will be solely managed and monitored by an independent fiduciary; (3) the Plan will be receiving a return which independent appraisers have determined to be fair and reasonable and which will be protected by a rental insurance coverage; and (4) an independent fiduciary has determined that the transaction is appropriate for the Plan and in the best interest of the participants and beneficiaries of the Plan.

The Department notes that the proposed exemption, if granted, would not extend to use of Plan funds for the benefit of the Employer prior to the proposed exemption nor to the lease agreement of the Board Property by the Plan to the Employer after the expiration of the availability of section 414(c)(2) of the Act and prior to the proposed exemption. Such transactions, if prohibited, must be "corrected" within the meaning of section 4975(f)(5) of the Code.

Notice to Interested Persons

Notice of the proposed exemption, including a copy of the notice of pendency as published in the **Federal Register**, will be distributed on or before January 19, 1981 through meetings to actively employed participants or by first class mail to all other participants and beneficiaries. These interested

persons will be informed of their right to submit written comments or request a public hearing.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(a)(1)(A) through (E) of the Code shall not apply, prospectively, to the leasing of the Bond Property, located at 73 East Bond Street, Elk Grove Village, Illinois, for the duration of the lease, and its two optional renewal periods. The proposed exemption is subject to the conditions (1) that any prohibited transactions committed in connection with the use of the assets of the Plan for the benefit of the Employer or with the lease of the Bond Property to the Employer by the Plan are to be "corrected" within the meaning of section 4975(f)(5) of the Code, and (2) that the excise taxes imposed by section 4975 of the Code by reason of such prohibited transactions are paid within 90 days of the published grant of this proposed exemption.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 5th day of January 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-850 Filed 1-8-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1676]

Proposed Exemption for Certain Transactions Involving the Paul W. Lawrence Co., Inc., Profit Sharing Plan, Located in Hastings, Minnesota

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions imposed by the Internal Revenue Code of 1954 (the Code). The proposed temporary exemption will exempt for a period of three years the proposed sales by the Paul W. Lawrence Co., Inc. (the Employer), the sponsor of the Paul W. Lawrence Co., Inc. Profit Sharing Plan (the Plan) of its interests in contracts for deed or residential first mortgage loans (collectively, the Contracts) to the Plan. The proposed exemption will also exempt the guarantee of the obligation of the Employer, and Paul W. Lawrence (Lawrence) and his wife, all parties in interest with respect to the Plan. The proposed exemption, if granted, would affect the Employer, Lawrence, his wife, participants and beneficiaries of the Plan and other persons participating in the proposed transactions.

DATES: Written comments and requests for a public hearing must be received by the Department on or before February 18, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. D-1676. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Lawrence and Samuel Hertogs (Hertogs), the trustees (the Trustees) of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan

No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a profit sharing plan with six participants. As of June 30, 1979, the Plan had net assets of $245,062. Lawrence owns 100% of the stock of the Employer. Hertogs is not a shareholder but is an officer and director of the Employer.

2. The Employer purchases undeveloped real estate, sub-divides the same, constructs homes on the real estate and obtains mortgages thereon. The Employer then sells the homes to purchasers under a contract for deed or a residential first mortgage loan. A contract for deed is a contract whereby the owner in fee simple absolute (the Vendor), or the Vendor's assignee agrees by contract to convey to the buyer (Vendee) by a warranty deed, accompanied by an abstract of title or torrens certificate showing good and marketable title in the Vendor, the fee simple title to the premises upon the payment by the Vendee of the principal and interest due from the Vendee to the Vendor under the contract for deed. A residential first mortgage loan may be a conventional, FHA or VA loan. The Employer is requesting an exemption for a three-year period to sell the above described Contracts to the Plan for a cash purchase price of the lesser of the Employer's cost or the market value of the Contract. If the Employer receives any premium or additional consideration in connection with such Contracts, such premium will be passsed along to the Plan. The Employer will receive no financial benefit from any Contract sold to the Plan. The proposed exemption would also exempt the guarantee of the obligation of the Employer and/or Lawrence and his wife in such transactions.

3. The Contracts that the Employer is proposing to sell to the Plan are not seasoned in the sense that they have not been in existence for any period of time. The proposed transactions would involve new construction by the Employer. In making residential loans and reviewing residential loan applications, the Employer will follow the Federal National Mortgage Association (FNMA) guidelines. The factors influencing acceptability would include the credit record and financial statements of the loan applicant, the ratio between expenses to be assumed as a result of the loan and the stabilized income of the applicant, verification of employment, the age and condition of the property offered as security (determined by inspection), the value of the security and the ratio of the loan sought to the value of the security. The Plan will not purchase any Contract where the loan to value ratio exceeds 85% and any Contract where the Plan does not have the first interest in the property underlying the Contract.

4. The Plan will not purchase any Contract which upon its purchase would put the value of all Contracts owned by the Plan at 50% or more of the current value of the assets of the Plan. No more than 10% of Plan assets will be invested in any one Contract and the Plan will not purchase more than one Contract from any mortgagor or Vendee. All Contracts purchased by the Plan will meet all FNMA underwriting criteria. Also, there will be an appraisal of the underlying security by an FNMA approved independent appraiser prior to any purchase of a Contract by the Plan. In addition, the purchaser of the property will be required to maintain casualty insurance on the property subject to the Contract at all times during the term of the Contract.

5. Prior to any purchase by the Plan of the Employer's interest in a Contract, a party unrelated to the Plan or the Employer, Mr. Francis Poepl (Poepl), president of the Vermillion State Bank in Vermillion, Minnesota, will determine whether each such transaction is a suitable investment for the Plan and that the terms of the proposed transactions are at least as favorable to the Plan as those which the Plan could receive in the same type of transaction with an unrelated party. No Contract will be purchased by the Plan in which the annual return is less than 12%. Poepl will also supervise the servicing of all transactions. The Employer will service the Contracts at no cost to the Plan.

6. The Employer, Lawrence and his wife jointly and severally guarantee as follows:

To repurchase, at the higher of the Plan's cost or the current market value, any Contract with accrued interest more than three months delinquent in payments at any time during the life of the Contract. If the Employer has not purchased the Contract for deed with the accrued interest within ten days of the Contract for deed being three months in arrears in payments. Lawrence or his wife shall do so within ten days thereafter.

7. As of June 30, 1979, the Employer had total net assets of $2,349,376. As of September 30, 1979, Mr. & Mrs. Paul W. Lawrence had over $8,000,000 of assets in excess of liabilities.

8. The Plan has invested in contracts for deed since 1967. Since 1967, there have never been any defaults that have not been cured on any contracts for deed or mortgages thereon, except one contract for deed where the house was repossessed and resold at a gain to the Plan.

9. The three-year period for the exemption would begin on the date the grant of an exemption for the proposed transactions appears in the Federal Register.

10. The applicants represent the proposed transactions will satisfy section 408(a) of the Act as follows: (1) The Trustees represent that the proposed transactions are in the best interests of the Plan; (2) the proposed transactions will be approved and monitored by an independent party; (3) the exemption will be a temporary exemption for three years; (4) the Plan will receive a high rate of return on its investments; (5) the Employer, sole stockholder of the Employer and his wife will provide personal guarantees; and (6) the dollar amount of all the Contracts at the time of their being placed in the Plan will be limited to 50% of the assets of the Plan.

Notice to Interested Persons

A copy of the notice of pendency on or before January 19, 1981 will be hand delivered to all participants and beneficiaries of the Plan.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the

employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and repesentations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale by the Employer of its interests in contracts for deed or redidential mortgage loans to the Plan as described herein and for the guarantee of the obligation of the Employer by Lawrence and his wife.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 5th day of January 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81–851 Filed 1–8–81; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–2128]

Proposed Exemption for Certain Transactions Involving the Dakota Steel and Supply Company Employees Profit-Sharing Retirement Plan Located in Rapid City, S. Dak.

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the cash sale of certain improved real property by the Dakota Steel and Supply Company Employees Profit-Sharing Retirement Plan (the Plan) to the Dakota Steel and Supply Company (the Employer), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, the Employer, and any other persons participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before February 23, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2128. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department of Labor, telephone (202) 523–7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the trustee of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan with approximately 81 participants. Custodial and administrative duties for the Plan are performed by the First Northwestern Trust Company of South Dakota (the Trustee). Major investment decisions affecting the Plan are made by a three member Profit Sharing Retirement Committee, which is comprised of Plan participants who are affiliated with the Employer.

2. In January 1959, the Plan acquired a one acre parcel of improved real property (the Property) from the Employer for a purchase price of $24,100. The Property is located in the Deadwood Avenue industrial area of Pennington County, South Dakota and is legally described as follows: "Lot One (1) of the Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Twenty-Seven (27), Township Two (2) North; Range Seven (7) East of the Black Hills Meridian, Pennington County, South Dakota." The Property is surrounded by other land owned by the Employer. At the time of acquisition, the Property consisted of the one acre tract and a building situated thereon. In subsequent years, the building was expanded to include office and storage facilities.

3. Following acquisition, the Plan leased the land and the building to the Employer for an initial, ten year period commencing in January 1959. Terms of the lease provided for a monthly rental of $250. The lease was renegotiated in 1962 and the rental was then increased to $275 per month. Successive leases were also entered into between the Plan and the Employer at varying durations and rental rates. None of the leases contained renewal provisions.

4. Contemporaneous with the leasing arrangement, the Employer sublet the Property at no profit to the Rapid Tank Company (Rapid Tank), an unrelated entity. Rapid Tank is a vendee of the Employer which desired to be in proximity to the Employer's business premises in order that it could purchase materials utilized in the construction of storage tanks.

5. By letter dated June 29, 1978, the Department advised the Plan that the lease to the Employer constituted a violation of the Act. The Department held, nevertheless, that a lease arrangement by the Plan directly with Rapid Tank would not be prohibited by the Act. Accordingly, in September 1978, the Plan began leasing the Property to Rapid Tank. This leasing arrangement is to continue until August 1981. The current lease provides for a monthly rental of $1,000.

6. Since the Property is surrounded by other holdings of the Employer, ingress and egress is severely impaired for employees of Rapid Tank. To acquire access to the Property, Rapid Tank employees must pass through the Employer's gate and cross certain premises owned by the Employer. Rapid Tank employees possess keys to the Employer's gate for the purpose of gaining access to the Property. However, the Employer considers such possession a security risk, potentially affecting its holdings. Therefore, the Employer has requested the Plan to terminate its leasing arrangement with Rapid Tank as the Employer does not wish for Rapid Tank employees to cross its lands.

7. The Employer has offered to purchase the Property from the Plan for cash. The Employer is considered by the Plan Trustee to be the only logical purchaser of the Property since its present land holdings already surround the subject parcel. If the sale is made prior to the expiration of the lease currently existing between the Plan and Rapid Tank, the sales terms will be made subject to that lease.

8. The proposed sales price of the Property is $93,500. This amount represents the higher of two independent appraisals made of the Property during August 1980. Mr. Donovan D. Rypkema, a real estate appraiser, valued the Property at $43,000. Mr. Eugene P. Neal, a realtor, appraised the Property at $93,500 by placing less emphasis on the access limitations. When consummated, the proposed transaction will not involve the payment of real estate commissions or fees, other than those paid to the appraisers.

9. As of May 1980, the Plan had assets totaling $1,261,372. Thus, the Property involved in the proposed transaction would constitute approximately 7.4% of the total Plan assets.

10. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because (1) it will be a one-time transaction for cash; (2) the sale will permit the Plan to divest itself of an asset available for rental to only a few parties; (3) the purchase price of the property will be the greater of two independent appraisals; (4) no brokerage commissions or fees will be incurred by the Plan; and (5) the Trustee has determined that the proposed transaction is appropriate for the Plan and protective of its participants and beneficiaries.

Notice to Interested Persons

Notice will be given to all interested persons within fifteen (15) days of the publication of the proposed exemption in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing within the time period set forth in the notice of proposed exemption. Notice will be given to current participants, their beneficiaries and the Employer by first class mail.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale, for $93,500, of the Property by the Plan to the Employer, provided this amount is not less than the fair market value on the date of the sale.

The proposed exemption, if granted will be subject to the express conditions

that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 31st day of December 1980.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-845 Filed 1-8-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2162]

Proposed Exemption for Certain Transactions Involving the Employee Group Term Life Plan Maintained by the International Harvester Company Located in Chicago, Ill.

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed exemption would exempt, under certain conditions, the reinsurance by the Association Life Insurance Company, Inc. (ALIC) of a group term life insurance contract sold to the International Harvester Company (the Employer) on behalf of the Employee Group Term Life Plan (the Plan). ALIC is a party in interest with respect to the Plan. The proposed exemption, if granted would affect the Employer, participants and beneficiaries of the Plan, ALIC, and other persons participating in the transactions.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before March 10, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2162. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restictions of section 406(a) and (b) of the Act. The proposed exemption was requested in an application filed on behalf of the Employer and ALIC, pursuant to section 408(a) of the Act, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Preamble

On August 7, 1979, the Department published a class exemption [Prohibited Transaction Exemption 79-41 (PTE 79-41), 44 FR 46365] which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans, if certain conditions are satisfied.

In PTE 79-41, the Department stated its view that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction.

The Department further stated that as of the date of publication of PTE 79-41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and the unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer, a worldwide enterprise having numerous subsidiaries, licensees and joint venturers, designs, manufactures and markets self-propelled heavy machinery for use on and off the highways. At October 31, 1979, the Employer's products were sold through approximately 6,300 independent dealers and distributors, including 3,900 in the United States.

2. The Plan is a welfare benefit plan which provides group term life insurance to domestic salaried and hourly employees of the Employer. The estimated total number of participants currently covered under the Plan is approximately 75,000 active and retired employees. Approximately $1 billion in insurance is in force under the Plan with the annual premium being approximately $76 million.

3. ALIC is a wholly-owned subsidiary of Harco Holdings, Inc. (Harco), a holding company 79 percent of which is owned by the Employer. A wholly-owned subsidiary of the Employer owns the remaining 21 percent of Harco. ALIC is a stock life insurance company which was organized under the laws of the State of Wisconsin in December, 1954, and commenced doing business in January, 1955. Its premiums and annuity considerations are generated from the sale of life, annuity and accident and health policies. Approximately 10% of its aggregate premiums and annuity considerations emanate from reinsurance. Generally, ALIC's business is solicited from various sources including, but not limited to, the following—the Employer and members of its affiliated group, reinsurance, and the general public. As of December 31, 1979, ALIC's balance sheet assets aggregated $28.7 million with a net equity of $12.5 million.

4. The benefits under the Plan have been funded since 1952 through the purchase of a group insurance policy from the Aetna Life and Casualty Company (Aetna). Aetna is unrelated to the Employer and ALIC. Aetna enjoys an A+ (Excellent) rating from the A. W. Best Company, whose insurance ratings and reports are widely utilized in financial and regulatory circles. ALIC now proposed to enter into a reinsurance contract with Aetna in that Aetna will cede less than 10 percent of the total insurance in force under the Plan's policy to ALIC. It is proposed that Aetna will pay over to ALIC, from its general fund, an amount in dollars equal

to the total premiums paid on behalf of the insureds times the percentage of insurance ceded. Aetna will continue to remain liable directly and primarily to the insureds.

5. The applicants represent that the reinsurance transaction, as proposed, will upon implementation and continuously thereafter, meet all of the conditions of PTE 79–41 covering direct insurance transactions:

(a) ALIC is a party in interest as defined in Act section 3(14)(G) by reason of stock affiliation with the employer maintaining the Plan.

(b) ALIC is licensed to sell insurance in 45 states and the District of Columbia.

(c) ALIC obtained a Certificate of Compliance from the Insurance Commissioner of the State of Wisconsin in January, 1955. Such certificate is automatically renewed each year by the Wisconsin Insurance Department and continues to be effective unless rescinded. ALIC's certificate has never been rescinded.

(d) ALIC underwent a financial examination by the Insurance Commissioner of the State of Wisconsin as of December 31, 1976. During the course of future examinations, it is anticipated that the proposed reinsurance contract with Aetna, upon implementation, will be examined thoroughly, as well as the results of the company's participation therein.

(e) ALIC has undergone in the past, and will continue to undergo in the future, an annual examination by an independent certified public accountant.

(f) The Plan pays no more than adequate consideration for the contract; this is true inasmuch as Aetna, one of the largest group underwriters in the country, enjoys substantial economies of scale in overall policy administration, and the premium charged to the Plan is highly competitive. Additionally, the proposed reinsurance transaction will not be a factor in the premium computations and thus will not in any way affect plan costs.

(g) Aetna, the direct insurer of the Plan, will not follow the normal commercial practice of paying a broker a commission for placing the Plan's policy with it.

(h) The gross prmiums and annuity considerations received in 1979 through reinsurance by ALIC for life and health and annuity contracts from all employee plans (and their employers) with respect to which ALIC is a party in interest did not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance in 1979 by ALIC. Such premiums amounted to approximately 1.9 percent of ALIC's gross premiums received. The gross premiums and annuity considerations received in 1979 by ALIC from life, health and annuity contracts for all employee benefit plans (and their employers) with respect to which ALIC is a party in interest did not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance in 1979 by ALIC. Such premiums amounted to approximately 6.7 percent of ALIC's gross premiums received.

The applicants represent that for the future, ALIC will not derive more than a total of 50 percent of its gross premiums (including reinsurance receipts) from transactions involving insurance contracts of plans (and their employers) with respect to which it is a party in interest.

6. In summary, the applicants represent that the subject transactions meet the statutory criteria of section 408(a) of the Act because: (1) The insurance could not be purchased by the Plan directly from ALIC more economically than the Plan purchases it from Aetna; (2) Plan participants and beneficiaries are afforded insurance protection by Aetna, one of the largest and most experienced group insurers in the United States, at competitive rates arrived at through arm's-length negotiations; (3) ALIC is a sound, viable insurance company which has been in business for many years and does a substantial amount of business outside its affiliated group of companies; and (4) Each of the protections provided to the Plan and its participants by PTE 79–41, will be met under the subject reinsurance transaction.

Notice to Interested Persons

Within 30 days from the publication of this notice in the **Federal Register**, notification will be provided to all domestic salaried and hourly employees of the Employer (and its domestic subsidiaries). Notice to current employees will be made by posting on a bulletin board that is customarily used for providing notices with regard to labor management relations matters at the worksites of the Plan participants. In the case of any retired employees covered under the Plan, such notice will be provided by mail. In addition, to the extent that any participants under the Plan are members of an organization described in Act section 3(4), a copy of the notice will be provided to the organization by mail. The notification will contain a copy of this notice of proposed exemption, and will inform interested persons of their right to comment and request a hearing.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

(2) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of

premiums therefrom by ALIC from the group term life insurance contract sold by Aetna to the Employer to provide benefits to the Plan, provided the following conditions are met:

(a) ALIC—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with the Employer that is described in section 3(14)(E) or (G) of the Act,

(2) Is licensed to sell insurance in at least one of the United States or in the District of Columbia,

(3) Has obtained a Certificate of Compliance from the Insurance Commissioner of its domiciliary state, Wisconsin, within the 18 months prior to the date when the transaction is entered into or when such certificates last made available by the State of Wisconsin if earlier; and

4(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

4(B) Has undergone a financial examination (within the meaning of the law oif its domiciliary state, Wisconsin) by the Insurance Commissioner of the State of Wisconsin within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plan pays no more than adequate consideration for the group life insurance contract;

(c) No commissions are paid with respect to the direct sale of the contract, or the reinsurance thereof; and

(d) For each taxable year of ALIC, the gross premiums and annuity considerations received in that taxable year by ALIC for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which ALIC is a party in interest by reason of a relationship to such employer described in section 3(14)(E) or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance in that taxable year for ALIC. For purposes of this condition (d):

(1) The term "gross premiums and annuity considerations received" means the total of premiums and annuity considerations received, both for the subject reinsurance transaction as well as for any direct sale of life insurance, health insurance or annuity contracts to such plans (and their employers) by ALIC. This total is to be reduced (in both the numerator and the denominator of the fraction) by experience refunds paid or credited in that taxable year by ALIC.

(2) All premiums and annuity considerations written by ALIC for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 5th day of January 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-646 Filed 1-8-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-815]

Proposed Exemption for a Certain Transaction Involving the Employees Profit-Sharing Plan of Bernhard Associates Company, Inc., Located in Dallas, Tex.

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the leasing of real property by the Employees Profit-Sharing Plan of Bernhard Associates Company, Inc. (the Plan) to Bernhard Associates Company, Inc. (the Employer). The lease was entered into before the effective date of the Act, but after July 1, 1974, the date specified in the transition rules contained in sections 414 and 2003 of the Act. The proposed exemption, if granted, would affect the Employer and participants and beneficiaries of the Plan.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before February 23, 1981.

EFFECTIVE DATES: If the proposed exemption is granted, the exemption will be effective from January 1, 1975 until March 31, 1980.

ADDRESS: All written comments and requests for a hearing (a least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Departmernt of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-815. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan established for the benefit of employees of the Employer. For the past several years the Plan has had 7-9 participants. On December 27, 1974, Warren K. Bernhard and Donald Krusemark sold to the Plan real estate and improvements located at 2550 Manana, Dallas, Texas (the Property), which the Employer occupied as its principal place of business. The sales price was $70,000, which was paid in cash by the Plan to the sellers. The sellers are officers and

shareholders of the Employer and trustees of the Plan.

2. The Property consists of a tract of land 115.74 feet by 176.7 feet, totaling 20,541 square feet, a portion of which contains a black top parking lot and a building with 6,085 square feet of floor space. The building is a general purpose facility divided into 1,750 square feet of office facilities and 4,335 of warehouse space. Adjoining the Property to the rear is another parcel of land (the Rear Parcel). Two mini-warehouse buildings are located on the Rear Parcel, and there are also areas on the Rear Parcel that can be used for uncovered storage. The mini-warehouse buildings were leased to unrelated third parties.

3. On the same date that the Property was purchased by the Plan, December 27, 1974, the Plan entered into an oral lease with the Employer, under which the Property was leased by the Plan to the Employer for the rental amount of $2,000 per month. The oral lease was on a triple net basis, so that the Employer paid all expenses including taxes, insurance and utilities on the Property. The applicant has represented that under Texas law, an oral lease constitutes a binding and continuous contract. In addition, the Employer has used portions of the Rear Parcel for uncovered storage. The applicant has represented that the monthly rental included payments for its use of the Rear Parcel for uncovered storage space.

4. The Property, valued at its cost, constituted approximately 23.6 percent of Plan assets as of June 30, 1976. The annual rate of return provided to the Plan by the lease, based on the cost of the Property to the Plan, was approximately 34 percent, which exceeded the return the Plan received on its other investments.

5. The applicant submitted three independent appraisals for the fair rental value of the Property. The highest fair market rental value established by these three independent appraisals was $1,250 per month. All three independent appraisals indicate that even including the rental values of the uncovered storage areas on the Rear Parcel, the rental figure of $2000 per month was greater than the fair market rental value for the Property. The applicant has represented that amounts received by the Plan in excess of fair rental value did not cause the annual additions to participants' accounts to exceed the limitations of section 415 of the Code.

6. The lease between the Plan and the Employer terminated on March 31, 1980, on which date the Employer vacated the Property. However, the Employer continued to use the uncovered storage area on the Rear Parcel. Effective May 1, 1980, the Plan entered into an agreement to lease the Property to P & R Electrical Company of Dallas, Texas (P & R), an unrelated party. P & R is paying a monthly rental to the Plan of $1,565. The lease is for a two year period with a one year renewal option. Rental for the renewal term will be based on the then prevailing rate for equivalent properties. In addition, on July 1, 1980, P & R entered into a lease agreement with the Plan with respect to the Rear Parcel. Under the terms of that lease agreement, P & R has sole and exclusive power and authority to lease all of the mini-warehouses located on the Rear Parcel, and P & R also has the right to use all of the uncovered storage space located on the Rear Parcel.

7. The applicant recognizes that the use of the uncovered storage space on the Rear Parcel by the Employer for the period between March 31, 1980 and July 1, 1980 constitutes a prohibited transaction under the Act and the Code for which no exemptive relief is proposed. Accordingly, the Employer represents that it will pay all excise taxes which are applicable under section 4975(a) of the Code by reason of such use of Plan property within 60 days of the publication in the **Federal Register** of a final notice of the granting of the exemption proposed herein. In addition, the Employer represents that it will reimburse the Plan for the fair rental value of the uncovered storage space on the Rear Parcel for the period between March 31, 1980 and July 1, 1980.

8. In summary, the applicant represents that the statutory criteria contained in section 408(a) of the Act have been satisfied as follows: (1) the Property was leased for a higher rental value than that established by independent appraisal and higher than that established for a subsequent third party tenant; (2) all payments on the lease were made in a timely fashion in accordance with the lease agreement; (3) the lease was terminated on March 31, 1980; (4) the trustees of the Plan determined that the transaction was appropriate for the Plan and in the best interests of the Plan participants and beneficiaries; and (5) with respect to the prohibited use of the uncovered storage space on the Rear Parcel, the Employer will fully comply with the excise tax provisions of section 4975 of the Code.

Finally, the applicant represents that the lease was entered into prior to the effective date of the Act without knowledge that the transaction would become prohibited on January 1, 1975. As soon as the applicant realized that the lease had become a prohibited transaction, the applicant submitted a good faith request for an exemption instead of terminating the lease transaction.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415

Notice to Interested Persons

Notification of this proposed exemption will be furnished to all Plan participants within 14 days of the publication of this notice in the **Federal Register.** This notification will inform the interested persons of their right to comment and request a hearing on the proposed exemption, and will contain a copy of the proposed exemption. Notification will be made either by personal delivery or by first class mail.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its

participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the leasing by the Plan to the Employer of the Property, located at 2550 Manana, Dallas, Texas, for the period from January 1, 1975 through March 31, 1980, and the use by the Employer of the uncovered storage areas on the Rear Parcel for that same period, provided the rental payments were not less than fair rental value.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of this proposed exemption.

Signed at Washington, D.C., this 5th day of January 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services, Administration, U.S. Department of Labor.

[FR Doc. 81-843 Filed 1-8-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1575]

Proposed Exemption for Certain Transactions Involving the Kishwaukee Valley Medical Group, S.C. Employee's Retirement Plan and Trust Located in Woodstock, Ill.

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption exemption would exempt both the proposed sale of certain real property by the Kishwaukee Valley Medical Building Partnership (the Partnership) to the Kishwaukee Valley Medical Group, S.C. Employee's Retirement Trust (the Trust) and the proposed lease of the same real property by the Trust to the Kishwaukee Valley Medical Group, S.C. (the Employer). The proposed exemption, if granted, would affect the Trust and its participants and beneficiaries, the Employer, and other persons who would be parties to the two transactions.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before Feburary 16, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application NO. D-1575. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W. Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: C.E. Beaver, of the Department of Labor, telephone (202) 523-7901. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and from taxes imposed bny section 4975 (a) and (b) of the Code, by reason of section 4975(a)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Partnership, the Employer, and the trustee of the Trust, First National Bank of Woodstock, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Employer, an Illinois medical corporation formed from a partnership on January 28, 1968, is owned by 10 physicians who operate a medical clinic (the Clinic) which is located at 1307 West Jackson Street, Woodstock, Illinois, 60 miles northwest of Chicago. Each of these 10 physicians owns 10 percent of the voting stock of the Employer and each works as an employee for the Employer. The Employer has 7 directors on its board and a staff of 12 physicians, who practice in various medical and surgical specialities, plus 49 full and part-time nurses and administrative personnel. The practice of the Employer, founded in 1965 by 2 physicians, has increased with the growth of the local population so that for the year ended December 31, 1977, its outpatient visits totaled 46,424 and its hospitalized patients exceeded 8,000. According to audited financial statements prepared on a cash basis, the Employer had gross receipts from professional services of $1,705,353 for the year ended December 31, 1978. The total assets of the Employer for the year ended December 31, 1978, were $129,291 and its total liabilities were $11,725.

2. The Trust forms a part of the Kishwaukee Valley Medical Group, S.C. Employee's Retirement Plan (the Plan) which is a defined contribution plan adopted in 1969. As of January 1, 1979, the number of participants in the Plan was 44. All employees of the Employer who have attained 21 years of age and have completed one year of service are covered by the Plan. The First National Bank of Woodstock (the Trustee), as trustee under the Plan, has discretionary authority regarding the investment of Trust assets. The most recent favorable determination letter for qualification of the Plan and Trust under section 401(a) of the Code was issued July 18, 1979. As of December 31, 1979, the assets of the Trust, consisting of cash, commercial paper, treasury and corporate bonds, and common stock, had a fair market value of $1,024,717. The Employer regards the Plan and Trust as major factors in its success in attracting and retaining qualified personnel.

3. The Partnership is composed of 10 partners, all of whom are employees of the Employer. Nine of the partners are shareholders of the Employer, and seven are the directors of the Employer. The Partnership is a general partnership whose sole purpose is to own real property, consisting of land and a building thereon, and to lease this property to the Employer for operating its Clinic. This Clinic property is a one story, professional office building and medical clinic. It is readily adaptable for uses other than the practice of medicine. In addition, the Partnership owns certain personal property or equipment which is located on the Clinic property and is leased to the Employer. Currently, the annual rent being paid by the Employer to the Partnership for the Clinic property is $84,000, or $7,000 per month. From this annual rent the Partnership pays out $25,075 per year in expenses for insurance coverage, real estate taxes, major maintenance, equipment, and for professional fees (e.g., accounting, appraisal, and legal services). In addition, the Employer has been paying an additional sum of approximately $11,300 per year for repairs and minor maintenance costs with respect to the Clinic property. An annual rental of $9,000 is also paid by the Employer to the Partnership for the lease of the aforementioned personal property or equipment owned by the Partnership.

4. The Trustee, joined by the other applicants and by a signed petition from participants of the Plan and Trust, has proposed that the Trust purchase the Clinic property from the Partnership. The purchase price for the Clinic property will be the current fair market value as determined by a qualified, independent appraiser within 60 days of the grant of the proposed exemption. This sale will not include the equipment owned by the Partnership and leased to the Employer. The Trustee has expressed an opinion that the sales price for conveyance of the Clinic property is reasonable and fair. An appraisal has been made of the Clinic property by the same independent appraiser, H. F. Harrison and Associates, at four different times: 1973 ($285,000), 1978 ($525,000), 1979 ($560,000), and 1980 ($560,000).

5. The terms for the proposed sale transaction will involve no down payment by the Trust. The entire purchase price will be paid over a period of 8 years and 2 months. The method of payment will be the issuance of a promissory note by the Trust to the Partnership for the amount of the purchase price with interest charges on the unpaid balance computed at an annual rate of 7 percent. The assignment of beneficial interest in the Clinic property will be held in escrow by the State Bank of Woodstock until the purchase price is paid in full by the Trust. Existing mortgage indebtedness of $283,321 on the Clinic property will not be assumed by the Trust, but the Trust will acquire the Clinic property subject to such indebtedness. In order to avoid a conflict, a mortgage on the property with an outstanding balance of $62,014, which is held by the First National Bank of Woodstock (the trustee of the Trust), in its individual capacity, will be refinanced by the State Bank of Woodstock. Thereafter, two banks will be holding mortgages on the property. The State Bank of Woodstock, Woodstock, Illinois for approximately $123,654, and the McHenry State Bank, McHenry, Illinois for approximately $159,667. As payments become due on these outstanding mortgages, the Partnership will continue to be obligated to make payments. All mortgage payments will be accelerated to pay in full the amounts due thereon by February 1985. In the event the Partnership defaults in its payments, the Trust may elect to make the payments and deduct such payments (together with interest, penalties, or attorney's fees resulting from such defaults) from the amount then currently outstanding on the promissory note issued by the Trust for the purchase of the Clinic property.

6. Upon the sale of the Clinic property to the Trust, the Employer proposes to enter into a 10-year lease of the Clinic property with the Trust at an initial monthly rental of $6,700, which was determined by a qualified, independent appraiser. This monthly rental will be increased, to the greater of either the fair rental value as determined by a qualified, independent appraiser, or by 6 percent per annum, during each year of the lease, including the two three-year renewal periods. The lease will be on a "triple net" basis for the Trust, with the Employer bearing all costs incurred by the Clinic property, including taxes, maintenance, professional fees, and any other expenses. The lease will provide the Trust with income sufficient to cover payments due on its promissory note issued for the purchase of the Clinic property, and income sufficient to pay any tax due from unrelated business taxable income. At all times a positive cash flow will be produced by the lease payments of the Employer. The initial annual rentals will yield the Trust a return of 14 percent on the 1980 ($560,000) appraised value of the Clinic property, less the payments due on principal and interest of the purchase price of the Clinic property. Further, it is estimated that the fair market value of the Clinic property will appreciate at a rate of 7½ percent per year. In the event of default by the Employer in its lease payments, the Trust would have three alternatives (i) find a new tenant and collect damages, if any, from the Employer; (ii) cancel its lease with the Employer, void its obligation of payments on its promissory note issued to the Partnership, and return the property to the Partnership; or (iii) liquidate its interest in the property and pay in full its purchase obligations on the promissory note. In the judgment of the Trustee, the terms of this lease agreement are reasonable and fair, the proposed rentals are at or above the prevailing fair market rentals for similar property, and the proposed purchase and lease of the Clinic property will benefit the Trust and its participants and beneficiaries.

7. In summary, the applicants represent that the proposed sale of the Clinic property to the Trust and the proposed lease of the same property to the Employer meets the statutory criteria for an exemption under section 408(a) of the Act because (1) the sale contract and lease agreement will be finalized, documented, and preserved, (2) the current assets of the Trust and contributions from the Employer or employees will not be needed for the purchase price because the lease rentals will fully amortize the purchase price and pay all expenses, (3) the Trust will be insulated from loss if the lease rentals are discontinued, (4) the selling

price of the property will be for the current fair market value as determined by a qualified, independent appraiser within 60 days of the grant of the proposed exemption, (5) the terms of the lease agreement have been judged to be fair and reasonable by the discretionary Trustee, and (6) the favorable and continuing rate of return to the Trust on its investment and the anticipated 7½ percent appreciation in value of the property will be beneficial for the participants and beneficiaries of the Trust.

Notice to Interested Parties

Within ten days of publication of the proposed exemption in the **Federal Register**, all participants and beneficiaries of the Trust will receive, through meetings for active participants, or by first class mail for all other participants and beneficiaries of the Trust, a copy of the notice as published in the **Federal Register** and a statement informing interested persons of their right to comment or request a hearing within the period specified in such notice. Copies of all such communications to participants and beneficiaries of the Trust will be provided to the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provision to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to both the proposed sale of the real property at 13707 West Jackson Street, Woodstock, Illinois by the Partnership to the Trust, and to the proposed lease of that real property by the Trust to the Employer, if such sale and lease are according to the terms set forth in the application for exemption.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in this application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C. this 5th day of January 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-847 Filed 1-8-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2144]

Proposed Exemption for Certain Transactions Involving the Nalle Clinic Company Pension Plan and Trust Located in Charlotte, N.C.

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt a loan by the Nalle Clinic Company Pension Plan and Trust (the Plan) to the Nalle Clinic Company (the Employer), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan and the Employer.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before February 18, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2144. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department of Labor, telephone (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the department of an application for exemption from the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section

4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by legal counsel for the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan, which was established in 1954, is a defined contribution plan with 216 participants and total assets as of June 30, 1980 of $2,923,809. The Employer is a medical clinic formed in 1944 to provide medical services.

2. The Employer, in order to expand its capacity for providing medical care, undertook the construciton of a new Primary Care Center (the Property) located at 7110 Lawyers Road, Charlotte, North Carolina. Construction costs on the Property were financed by North Carolina National Bank.

3. The Plan proposes to loan the Employer $325,000 as permanent financing on the Property receiving in return a first mortgage and a deed of trust on the Property. The proposed loan would be repaid in 120 monthly installments. The interest rate shall be 14¼ percent per annum, for the first five years of the loan. On the fifth anniversary of the making of the loan, the interest rate shall be adjusted to the higher of 14¼ percent per annum, or ¼ percent more than the rate for comparable loans prevailing in Charlotte, Mecklenburg County, North Carolina as determined by the Independent Trustee of the Plan. In addition, payment of physician salaries will be subordinated to the loan payments.

4. The Property has been appraised by Mr. Everett Wohlbruck of Realty World of Charlotte, North Carolina, an independent appraiser, as having a current fair market value of $490,000. Thus, the loan would represent only about 67% of the value of the Property and less than 12% of the Plan's assets. The Employer represents that it will add any additional collateral that may be required during the life of the loan to assure that the value of the collateral is at all times equal to at least 150 percent of the outstanding balance of the loan. During the life of the loan, the Employer will keep the collateral adequately insured against fire or other loss at its expense.

5. The North Carolina National Bank of Charlotte, North Carolina (the Bank), by letter dated October 20, 1980, has represented that it would lend the Employer $325,000 on the same terms and conditions as proposed herein, except that the Bank would only charge 14 percent interest for the first five years of the loan. The Employer represents that interest paid to the Plan by the Employer in excess of fair market interest rates will not cause the annual additions to participants' accounts to exceed the limitations of section 415 of the Code.

6. The applicant represents that the Central Bank of Birmingham is an independent fiduciary with respect to the Plan and has no relationship with the Employer other than as Trustee of the Plan. The independent fiduciary, who is responsible for making an independent determination that the proposed loan is appropriate and suitable for the Plan, has examined the terms of the proposed loan and determined that such a loan is appropriate and suitable for the Plan. The independent fiduciary will be required to make the same determination immediately prior to consummation of the transaction. The independent fiduciary will be empowered and directed as the holder of the note and the beneficiary of the deed of trust to enforce the terms of such instruments, including making demand for timely payment, bringing suit or other appropriate process against the Employer in the event of default, keeping accurate records, and reporting at least annually on the performance of the loan, specifically including whether the value of the collateral securing the loan remains equal to at least 150 percent of the outstanding balance of the loan. The independent fiduciary will be entitled to such information from the Employer and the Plan as may be reasonably necessary to fulfill its responsiblilities, and shall be paid reasonable compensation and reimbursement for reasonable expenses, if any, including legal or appraisal fees or costs. If the Central Bank of Birmingham is unable or unwilling to serve or resigns, another unrelated, qualified, independent fiduciary will be appointed.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because (1) the Plan will receive 14¼ percent on its investment, which is greater than the rate which would be charged the Employer by an unrelated party, (2) the Employer will insure the Property and add additional collateral so that the value of collateral securing the loan is always at least 150 percent of the outstanding balance of the loan, (3) the loan will be administered by an independent fiduciary, and (4) the independent fiduciary has determined that the transaction is appropriate for the Plan and is in the best interests of the Plan's participants and beneficiaries and protective of their interests.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption will be given to all Plan participants by posting the notice of pendency at the Employer's principal place of business in the places customarily used for labor relations matters. Terminated participants and beneficiaries who have the right to receive benefits will be notified by mail. The notice will include a copy of the notice of pendency along with a statement advising interested persons of their right to comment and request a hearing within the time period set forth in the notice of pendency. Notice of the proposed exemption will be posted and mailed within 10 days of its publication in the Federal Register.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsiblity provisions of section 404 of the Act,

which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their benficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to a loan of $325,000 by the Plan to the Employer, based on the terms and conditions set forth above, provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party at the time of consummation of the transaction.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 31st day of December, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-848 Filed 1-8-81; 8:45 am]

BILLING CODE 4510-29-M

[Application Nos. D–2134 and D–2135]

Proposed Exemption for Certain Transactions Involving Ness & Co. Profit Sharing Plan and Northwest Food Brokers, Inc. Employees' Profit Sharing Plan Located in Portland, Oreg.

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt: (1) the proposed sale of a land sale contract (the Contract) to the Ness-NWFB Employees' Retirement Trust (the Trust), which holds the assets of the Ness & Co. Profit Sharing Plan and the Northwest Food Brokers, Inc. Employees' Profit Sharing Plan (collectively, the Plans), by Ness & Co., a contributing employer to the Trust; and (2) the extension of credit resulting from Ness & Co.'s agreement to indemnify and hold the Trust harmless regarding the Contract. The proposed exemption, if granted would affect Ness & Co., the Trust, the Plans, the trustees, participants and beneficiaries of the Trust and Plans and other persons who would participate in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department on or before February 24, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, Attention: Application Nos. D–2134 and D–2135. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler of the Department, telephone (202) 523–8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of two applications for exemption from the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code.

The proposed exemption was requested in two applications filed by Ness & Co., pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The applications contain representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the applicant.

1. The trustees of the Trust (Trustees) are Steven Ness and Terry Nevin, who are, respectively, president and vice-president of both Ness & Co. and Northwest Food Brokers, Inc. (NWFB). Steven Ness and members of his family hold controlling interests in both Ness & Co. and NWFB.

2. Ness & Co. proposes to sell a parcel of real Property (the Property) located at 310 S.E. Sixth Avenue, Portland, Oregon

which is improved by a multipurpose warehouse building, to Mr. Robert L. Young, who is an officer, director and majority shareholder of Image Control Systems, Inc. (Image Control). There is no pre-existing relationship between Mr. Young, Image Control, Ness & Co., NWFB or the Trust. The warehouse at one time served as the primary business location for Ness & Co., but has for several years been leased to unrelated third parties.

3. Mr. Young and Ness & Co. have entered into an earnest money agreement in which Mr. Young agrees to purchase the Property for $195,000. Mr. Young will pay $72,500 as a downpayment at closing. The remainder of the purchase price of $122,500 will be paid pursuant to the terms of the Contract over a period of 15 years with interest at the rate of 20% per annum. The Contract provides for monthly payments in the amount of $2,151.50, which includes principal and interest. No prepayment is permitted under the Contract for the first five years and if there is prepayment between the fifth and fifteenth year, substantial prepayment penalties must be paid by Mr. Young. The Contract requires that Mr. Young maintain insurance on the Property, at his own expense, against fire and other risks. Mr. Young will lease the building to Image Control for a minimum period of 60 months with an agreed monthly lease payment of $2,500. Mr. Young, as lessor, will pay all utilities, taxes and maintenance as provided by the lease agreement.

4. The value of the Property, which is the primary collateral for the Contract, is greatly in excess of the $122,500 obligation. The Property was appraised by Gerald L. Curtis, an independent M.A.I. appraiser, to have a fair market value of $228,000 as of January 1, 1980. Mr. Young's down payment of $72,500 represents 37% of the $195,000 purchase price. Mr. Young's personal net worth is greatly in excess of the $122,500 obligation.

5. Following the closing of the sale of the Property to Mr. Young, Ness & Co. proposes to transfer its vendor's interest in the Contract to the Trust. The purchase price to be paid by the Trust will be $122,500, reduced by the amount of any principal payments received by Ness & Co. prior to the transfer. This will represent approximately 15% of Trust assets. Ness & Co. will agree to indemnify and hold the Trust harmless in the event of any loss suffered as a result of default by Mr. Young under the terms of the Contract. Ness & Co.'s net worth, as of December 31, 1979, was approximately $3 million. The assignment from Ness & Co. to the Trust will be recorded in the appropriate public record to perfect the security interest of the Trust.

5. It is represented that the Contract is readily marketable and with the net return of 20%, it is anticipated that the Trust could sell the Contract to a third party without any substantial discount. Mr. Young obtained a commitment letter from People's National Bank for a similar $122,500 loan. Mr. Curtis noted in his appraisal that demand in the area for this type of building was strong.

6. An independent real estate investment broker, the Hayden-Watson Co. (H–W), stated in a letter dated May 29, 1980, that the purchase of the Contract by the Trust would be a sound investment in that the terms of the Contract are better than a normal market transaction. H–W further stated that the location, size and price of the building on the Property represent a highly marketable product. It was also emphasized that with a land sale contract, the deed remains in the possession of the contract holder until the satisfaction of the debt.

7. In summary, it is represented that the proposed transaction satisfies the statutory criteria of section 408(a) due to the following:

(a) the Trustees state that the proposed transaction is in the best interests of the Plans and their participants and beneficiaries;

(b) an independent real estate investment broker has stated that the terms of the Contract are better than arm's length for the Trust and that the Property is highly marketable;

(c) the collateral underlying the $122,500 Contract was recently appraised by an independent appraiser at $228,000; and

(d) both Mr. Young and Ness & Co. guarantee Contract performance and each has a net worth greatly in excess of $122,500.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the pending exemption will be provided to all interested persons, including all participants and beneficiaries of the Plans. The notice will include a copy of the Notice of Pendency of the exemption published in the **Federal Register** and will inform each recipient of his right to comment on or request a hearing regarding the pending exemption. The notice will be provided within 15 days of the publication in the **Federal Register** and will be delivered by hand to current employees and mailed to the last known address of any other participants or beneficiaries who have a vested interest in either of the Plans.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the applications for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the applications, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the sale of the Contract for $122,500 to the Trust by Ness & Co.; and (2) the extension of credit resulting from Ness & Co.'s agreement to indemnify and hold the Trust harmless with regard to the Contract.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the applications are true and complete, and that the applications accurately describe all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 5th day of January 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-849 Filed 1-8-81; 8:45 am]

BILLING CODE 4510-29-M

Pension and Welfare Benefit Programs

[Application Nos. D-1654, D-1655]

Proposed Exemption for Certain Transactions Involving the Smith & Schnacke Retirement Plan, Part A and the Smith & Schnacke Retirement Plan, Part B, Located in Dayton, Ohio

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed loan of money (the Loan) by the Smith & Schnacke Retirement Plan, Part A and the Smith & Schnacke Retirement Plan Part B, (collectively the Plans) to Smith & Schnacke (the Employer), the sponsor of the Plans. The proposed exemption, if granted, would affect the Plans, the Employer, the participants and beneficiaries of the Plans, and other persons participating in the transaction.

DATE: Written comments and requests for a public hearing must be received by the Department on or before February 25, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application Nos. D-1654, D-1655. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Louis Campagna, of the Department, telephone (202) 523-7352. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby give of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer and the Plans, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978 section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Employer is a Legal Professional Association with offices located in Dayton, Columbus and Cincinnati, Ohio. As of December 31, 1979, the Plans had 154 participants and total assets of $1,963,356. The trustee of the Plans is the Central Trust Company, N.A. of Cincinnati, Ohio.

2. The Employer and the Plans are requesting an exemption to allow the Loan by the Plans to the Employer. The Loan will be used to retire a prior loan (the Prior Loan) which the Employer entered into on March 19, 1979, with the City National Bank and Trust Company of Columbus, Ohio (City National) in the amount of $125,000. City National is otherwise independent of the parties to the transaction. The Prior Loan has a floating interest rate of 1% over the prime lending rate, adjusted monthly, set by City National and is unsecured except for the joint and severable liability of the 48 shareholders (the Shareholders) of the Employer. The Prior Loan is to be repaid on the basis of a ten year amortization schedule with the balance due on March 19, 1984.

3. The amount of the Loan by the Plans to the Employer will be the outstanding balance on the Prior Loan on the date the grant of an exemption for the Loan is published in the Federal Register. As of March 4, 1980, the balance outstanding on the Prior Loan was $115,625.06. The Loan will have a floating interest rate of 1% above the prime lending rate, adjusted monthly, set by City National but in no event will the interest rate be less than 9% per annunm. The Loan will be for a 5 year term, payable in 60 equal monthly installments of principal and interest.

4. The Loan will be secured by certain tangible personal property (the Collateral) of the Employer located at the Employer's offices in Dayton, Ohio. The Collateral will include office furnishings, typewriters, dictating equipment, data processing and other office equipment. An independent appraisal performed by S & V Office Equipment, Inc. of Dayton, Ohio valued the Collateral as of June 23, 1980, at $195,975.00.

5. The Loan will be represented by a promissory note signed by the president of the Employer and all of the

Shareholders of the Employer thereby personally obligating each shareholder jointly and severably for repayment of the Loan in the event of default. The net worth of all the Shareholders of the Employer as of March 4, 1980, was in excess of $750,000.

6. A security agreement and UCC financing statement will be executed by the Employer and the Plans recording the Plans' security interest in the Collateral. Both instruments will be filed with the Secretary of State of Ohio and in the recorder's office in each county of Ohio in which the Employer has a place of business. No other lender has a secured interest in the Collateral. The Collateral will be kept fully insured against theft, fire and other casualty loss throughtout the term of the Loan. All insurance policies on the Collateral will reflect the Plans' interest in the Collateral and will provide that any insured loss will be paid first to the Plans. Proceeds from the sale of any of the Collateral will remain subject to the Plans' security interest until replacement property is obtained.

7. The First National Bank of Cincinnati (the Bank), which is independent of the parties to the transaction, has concluded that the Loan would be in the best interests of the Plans. The Bank will monitor the terms of the Loan, authorize advancement of the Loan proceeds to the Employer and will enforce collection on the Loan in the event of a default. The Bank will monitor the Collateral so that the value of the Collateral will at no time fall below 170% of the balance of the Loan. The Employer, upon the request of the Bank, will pay additional cash to the Plan to reduce the balance of the Loan in the event the value of the Collateral falls below 170% of the balance of the Loan. The Bank will, at any time in its discretion, require the Employer to obtain subsequent independent appraisals of the Collateral to assure the value of the Collateral remains at 170% of the balance of the Loan. In addition, the Employer will provide the Bank with an independent appraisal of the Collateral on June 30th of each year of the Loan's term.

8. In summary, the applicants represent that the proposed Loan satisfies the statutory criteria of section 408(a) of the Act because: (1) the Bank represents that the Loan would be in the best interests of the Plans; (2) the Bank will monitor the terms of the Loan; (3) the Loan will have a high rate of interest with a floor of 9% per annum and will at all times be secured by the Collateral with a value of at least 170% of the balance of the Loan; (4) the Plans will have a first security interest in the Collateral; (5) the Shareholders of the Employer personally guarantee repayment of the Loan in the event of a default; (6) the terms of the Loan are superior to the Plans than those between City National and the Employer for the Prior Loan; and (7) the Loan will be for a relatively short term and will represent less than 6% of the assets of the Plans.

Notice to Interested Persons

Notice of the proposed exemption will be furnished to all active participants in the Plans and all former participants and beneficiaries who have a vested interest in benefits under the Plans. Such notice will contain a copy of the notice of pendency as published in the **Federal Register** as well as a statement informing all such interested persons of their right to comment or request a hearing in regard to the proposed exemption. The notice will be provided within 15 days of publication of the notice of pendency to all interested persons by first class mail or by posting on all bulletin boards and other appropriate places throughout the facilities of the Employer.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4875(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisisons of the Act and the Code, including statutory or administrative exemptions and transitional rules. Futhermore, the fact a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the Loan in an amount representing the balance remaining on the Prior Loan on the date the grant of the exemption for the Loan is published in the **Federal Register** provided that the terms of the Loan are at least as favorable to the Plans as they could obtain in a transaction with an unrelated party. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 31st day of December, 1980.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-854 Filed 1-8-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1936]

Proposed Exemption for Certain Transactions Involving the Washington-Idaho-Montana Carpenters-Employers Retirement Plan Located in Spokane, Washington

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the lease of office space by Washington-Idaho-Montana Carpenters-Employers Retirement Plan (the Plan) to Administration Services, Inc. (ASI), a service provider to the Plan and, therefore, a party in interest. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan and ASI.

DATES: Written comments must be received by the Department of Labor on or before February 18, 1981.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective July 1, 1979.

ADDRESS: All written comments (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-1936. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department of Labor, telephone (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code. The proposed exemption was requested in an application filed by legal counsel for the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the applicaiton on file with the Department for the complete representations of the applicant.

1. The Plan is a multi-employer pension plan with approximately 8,000 participants. ASI has served as contract administrator for the Plan since its inception in 1965. ASI provides administrative support services for the Plan including, among other things, the storing and distributing of Plan literature, maintaining employee pension records and ensuring that employers make the required contributions.

2. In 1967, the Plan constructed an office building (the Building), which is located at East 123 Indiana, Spokane, Washington. The Building had 11,265 square feet of floor space, of which 8,864 feet were considered rentable.

In the spring of 1979, the Plan added a new second floor to the Building. With the new addition, the Building has total floor space of 22,107 square feet, of which 18,270 square feet are considered rentable.

3. In 1970, the Plan entered into a lease with ASI for office space in its Building. The lease covered 4,200 square feet in the Building with monthly rental payments of $1,559 (ASI occupied 47% of the building). With the new addition in 1979, additional office space became available. ASI agreed to rent an additional 2,435 square feet of office space by moving their operations to the Building's new second floor. A new lease was executed on July 1, 1979 which provided for the rental of 6,635 square feet of office space by ASI with monthly rental payments of $4,700 ($8.50 per square foot per year) and providing for rent escalation in case of increased building operating expenses (ASI now occupies 36% of the Building). The lease runs through June 30, 1982 with two renewal options of two years each. The lease provides for renegotation of the rental payments to be charged during the option periods. At the time the new lease was executed, the applicant believed that the transaction was covered by the transitional rules of section 414(c)(2) of the Act. Section 414(c)(2) may not be applicable, therefore the applicant has requested an exemption.

4. On December 5, 1978, J. K. Robbins and Associates prepared a management plan which states that rental of office space on the second floor of the Plan's Building should be at least $7.25 per square foot per year. On April 2, 1979, T. J. Meenach Co. of Spokane, Washington appraised the Building and determined a fair market rental value of $8.50 per square foot per year for the second floor.

5. The applicant represents that ASI is an independent contract administrator who serves other Taft-Hartley trusts as well as private trusts. ASI is a family-owned corporation and no trustee or any other party in interest to the Plan owns or controls any part of ASI. It was further represented that by enlarging the Building and leasing a portion to ASI, it was possible to provide complete handicap facilities for all retired and disabled participants. In addition, the applicant represents that maintaining the Plan's administrative office at the same location for 15 years offers great convenience to Plan participants who live out of town and are not familier with the City of Spokane. Also, since ASI maintains all the Plan's records in the Building, both time and cost savings are realized.

6. The applicant has represented that ASI has no discretionary power with respect to the operation of the Plan and performs no duties which would make ASI a fiduciary with respect to the Plan.

7. In summary, the applicant represents that the transaction meets the statutory criteria for an exemption under section 408(a) of the Act because (1) the rental paid the Plan was determined by an independent appraisal; (2) leasing space to ASI benefits the Plan and its participants and beneficiaries; (3) the decision to lease to ASI and the terms of the lease were decided by the trustees of the Plan, none of whom has any relationship to ASI; and (4) the trustees have determined that the transaction was appropriate for the Plan and was in the best interest of the Plan's participants and beneficiaries.

Notice to Interested Persons

Notice of the proposed exemption will be sent by first class mail within 10 days of publication in the Federal Register to all contributing employers to the Plan, and to each union, members of which are participants in the Plan, for conspicuous posting. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the Federal Register and shall inform interested persons of their right to comment within the time period set forth in the notice of proposed exemption.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things requrie a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1) (E) and (F)of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection within the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the lease of office space by the Plan to ASI as described herein, provided that the terms of the transaction were not less favorable to the Plan than that obtainable in an arm's length transaction with an unrelated party at the time of consummation of the transaction.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of this proposed exemption.

Signed at Washington, D.C., this 31st day of December, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-855 Filed 1-8-81; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1864]

Proposed Exemption for Certain Transactions Involving the Zorn's Poultry Farms, Inc. Retirement Plan Located in Bethpage, New York

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt a loan of $150,000 by the Zorn's Poultry Farms, Inc. Retirement Plan (the Plan) to Zorn's Poultry Farms, Inc. (the Employer), a party in interest with respect to the Plan. The proposed exemption if granted, would affect the participants and beneficiaries of the Plan and the Employer.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before February 27, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–1864. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department of Labor, telephone (202) 523–8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Plan Administrator, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons

are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan, which has been in existence for the past fifteen years, is a defined benefit plan with 13 participants and total assets as of April 30, 1980 of $379,455.

2. The Plan proposes to loan the Employer $150,000 for the construction of a new freezer receiving in return a promissory note collateralized by personalty owned by the Employer, personal guarantees of Peter and Joseph Zorn, and stock owned by Peter Zorn. The personalty serving as security for the loan consists of machinery and equipment of the Employer. The stock offered as security by Mr. Zorn includes 46 shares of Zorn's Poultry Farms, Inc., 25 shares of Zorn's Caterers, Inc. and 60 shares of Zorn's Realties, Inc. The loan is to be repaid in quarterly installments over a five year period. The interest rate shall be the prime rate as established by Citibank of New York at the biginning of each respective quarter plus 2%, but in no case less than 12% annually. The loan will be secured by a properly executed Security Agreement and Uniform Commercial Code financing statement filed in favor of the Plan and also by the personal guarantees of Peter and Joseph Zorn.

3. The personalty of the Employer, including the new freezer, has been appraised by Daley-Hodkin Appraisal Corporation of Milville, New York, as having a current fair market value of no less than $225,000. The net worth of the individuals grarantying the loan is at least $1.3 million. The stock pledged as collateral is not publicly traded and no market value has been determined. The fair market value of the personalty is 150% of the amount of the proposed loan and the Employer represents that it will add any additional collateral that may be required during the life of the loan to ensure that the value of the collateral is at all times equal to at least 150 percent of the outstanding balance of the loan. During the life of the loan, the Employer will keep the collateral adequately insured against fire or other loss at its expense.

4. The Bankers Trust Company of Farmingdale, New York (Bankers Trust), has represented that it would lend between $100,000 and $150,000 to the Employer for 5 years at a floating interest rate of prime plus 1% with no minimum interest rate. The security required by Bankers Trust for the loan consists of a security interest on the new freezer and the personal guarantees of Peter and Joseph Zorn.

5. The trustees of the Plan have appointed Mr. Robert H. Troescher, a partner in the law firm of Hill, Lent and Troescher (the Law Firm) located in Lynbrook, New York, to serve as an independent trustee and escrow agent. Mr. Troescher has no other relationship with the Employer or the Plan.

Mr. Troescher has examined the proposed loan transaction and has represented that it is in the best interests of the Plan. As independent trustee, Mr. Troescher will be empowered to enforce the terms of the loan agreement between the Plan and the Employer, including making demand for timely payment, bringing suit or other appropriate process in the event of default, and ensuring that the security for the loan remains equal to at least 150 percent of the outstanding balance of the loan. If Mr. Troescher is unable to perform his duties, he has designated Mr. John K. Mountford as his substitute trustee and Mr. John J. Tormey as secondary substitute trustee. Mr. Mountford is a partner and Mr. Tormey is an associate in the Law Firm.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because (1) the loan will be administered by an independent trustee and escrow agent; (2) the Employer will insure the collateral and additional collateral so that value of the collateral securing the loan is always at least 150% of the outstanding balance of the loan; (3) the Plan will receive an interest rate which is greater than the rate which the Employer would be charged by an unrelated party; (4) the loan will be personally guaranteed by Peter and Joseph Zorn; and (5) the independent trustee and escrow agent has determined that the transaction is appropriate for the Plan and is in the best interests of the Plan's participants and beneficiaries and protective of their interests.

Notice to Interested Persons

Within 20 days after the notice of pendency is published in the **Federal Register**, notice will be given to all Plan participants and beneficiaries by personal delivery, and by posting on a conspicuous bulletin board readily available to all working employees. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing within the time period set forth in the notice of proposed exemption.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is

considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) throught (E) of the Code, shall not apply to a loan of $150,000 by the Plan to the Employer, based on the terms and conditions set forth above, provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of the transaction.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 5th day of January, 1981.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 81-856 Filed 1-8-81; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

[TA-W-8100, 8100A-L, 8304, 8592, 8592A-LL, 8627]

Garland Corp. et al.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Garland Corporation, Brockton, Massachusetts, Garland Knitting Mills, Incorporated, Beaufort, South Carolina, DSB, Incorporated, Brockton, Massachusetts, Bristol Knitting Mills, Incorporated, Fall River, Massachusetts, and Garland Knitting Mills of Georgia, Incorporated, Warrenton, Georgia.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigations were initiated on May 19, May 27, and June 9, 1980 in response to petitions filed on behalf of workers at the Garland Corporation, Brockton, Massachusetts (TA-W-8100); Bristol Knitting Mills, Incorporated, Fall River, Massachusetts (TA-W-8304); DSB, Incorporated, Brockton, Massachusetts (TA-W-8592) and Garland Knitting Mills of Georgia, Incorporated, Warrenton, Georgia (TA-W-8627). The investigation revealed that Bristol Knitting Mills, Incorporated, DSB Incorporated and the Garland Knitting Mills of Georgia, Incorporated are wholly owned subsidiaries of the Garland Corporation. The investigation was expanded to include Garland Knitting Mills, Incorporated, Beaufort, South Carolina (TA-W-8100A), Garland Corporation showrooms (TA-W-8100B-8100L) and DSB, Incorporated retail stores and Garland Company stores (TA-W-8592-8592LL—showroom and retail store locations are found in the appendix). The workers produce women's sweaters, women's sportswear and women's dresses.

U.S. imports of women's, misses' and children's sweaters, slacks, shorts and dresses increased absolutely in the first quarter of 1980 compared to the like period in 1979. In 1979, the ratio of imports to domestic production was 126.6 percent for sweaters, and 43.3 percent for slacks and shorts.

In a survey conducted by the Department of Commerce, customers accounting for a significant proportion of the Garland Corporation and its subsidiaries' sales declines indicated that they had decreased purchases from the subject firm and subsidiaries and had increased purchases of imported women's apparel during the fiscal year ending October, 1979 compared to the fiscal year ending October 1978. The Department of Commerce certified the Garland Corporation and its subsidiaries eligible to apply for firm adjustment assistance on March 20, 1980 (Project number F-MA-0944).

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's sweaters, women's sportswear and women's dresses produced at the Garland Corporation; Garland Knitting Mills, Incorporated; Bristol Knitting Mills, Incorporated; Garland Knitting Mills of Georgia, Incorporated; and sold by DSB, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of the Garland Corporation and subsidiaries. In accordance with the provisions of the Act, I make the following certifications:

"All workers of the Garland Corporation, Brockton, Massachusetts (TA-W-8100) including company showrooms (TA-W-8100B-8100L) and all workers of all retail outlets and Garland Company Stores of DSB, Incorporated, Brockton, Massachusetts (TA-W-8592-8592LL) who became totally or partially separated from employment on or after December 1, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and

"All workers of Garland Knitting Mills, Incorporated, Beaufort, South Carolina (TA-W-8100A) who became totally or partially separated from employment on or after May 1, 1979 and on or before October 25, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and,

All workers of Bristol Knitting Mills, Incorporated, Fall River, Massachusetts (TA-W-8304) who became totally or partially separated from employment on or after January 1, 1980 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and

All workers of Garland Knitting Mills of Georgia, Incorporated, Warrenton, Georgia (TA-W-8627) who became totally or partially separated from employment on or after May 1, 1980 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of August 1980.

Note.—This document was submitted to the Office of the Federal Register for publication on January 6, 1981.

Harry J. Gilman,

Supervisory Economist, Office of Foreign Economic Research.

DSB Retail Stores

8592A, 8592B	Boston (2), Massachusetts (Dock Square, New Burry Street)
8592C	So. Weymouth, Massachusetts
8596D	Burlington, Massachusetts
8592E	Canton, Massachusetts
8592F	Worcester, Massachusetts
8592G	Hadley, Massachusetts
8592H	So. Portland, Maine
8592I	So. Burlington, Vermont
8592J	Auburn, Maine
8592K	Medford, Massachusetts
8592L	Nashua, New Hampshire
8592M	Providence, Rhode Island
8592N	Lincoln, Rhode Island
*8592O	Cranston, Rhode Island
*8592P	Wellesley, Massachusetts
8592Q	Cambridge, Massachusetts

*Closed, December, 1979.

Garland Company Stores

8592R	Brockton, Massachusetts
8592S	Beaufort, South Carolina
8592T	Saugus, Massachusetts
8592U	Quincy, Massachusetts
8592V	Boston, Massachusetts (Washington St)
8592W	Framingham, Massachusetts
8592X	Fall River, Massachusetts

8592U Leominister, Massachusetts
8592Z Cohasset, Massachusetts
8592AA Waterville, Maine
8592BB Salem, New Hampshire
8592CC Bath, Maine
8592DD Hyannis, Massachusetts
8592EE Portsmouth, New Hampshire
8592FF Lewiston, Maine
8592GG Wells, Maine
8592HH Pittsfield, Massachusetts
8592II Laconia, New Hampshire
8592JJ Salem, Massachusetts
8592KK Barre, Vermont
8592LL Rutland, Vermont

Garland Showrooms

TA-W-8100B Atlanta, Georgia
TA-W-8100C Chicago, Illinois
TA-W-8100D Dallas, Texas
TA-W-8100E Denver, Colorado
TA-W-8100F Los Angeles, California
TA-W-8100G Minneappolis, Minnesota
TA-W-8100H New York, New York
TA-W-8100I Detroit, Michigan
TA-W-8100J Charlotte, North Carolina
TA-W-8100K San Francisco, California
TA-W-8100L Seattle, Washington

[FR Doc. 81-858 Filed 1-8-81; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other person showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 19, 1981.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 19, 1981.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 31st day of December 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Ball & Socket Plastics, Inc. (company)	Waldoboro, ME	12/23/80	12/16/80	TA-W-11,983	Cast polyester and casein garment buttons.
Target Toga (ILGWU)	Garfield, NJ	12/23/80	12/17/80	TA-W-11,984	Sportcoats and raincoats.
Van Heusen Co. (company)	Geneva, AL	12/23/80	12/17/80	TA-W-11,985	Men's sport and dress shirts.
Van Heusen Co. (company)	Opp, AL	12/23/80	12/17/80	TA-W-11,986	Men's sport and dress shirts.
Van Heusen Co. (company)	Hartford, AL	12/23/80	12/17/80	TA-W-11,987	Men's sport and dress shirts.
Van Heusen Co. (company)	Clayton, AL	12/23/80	12/17/80	TA-W-11,988	Men's sport and dress shirts.
Van Heusen Co. (company)	Aguadilla, PR	12/23/80	12/17/80	TA-W-11,989	Men's sport and dress shirts.
Van Heusen Co. (company)	Ozark, AL	12/23/80	12/17/80	TA-W-11,990	Men's sport and dress shirts.
Van Heusen Co. (company)	Brinkley, AR	12/23/80	12/17/80	TA-W-11,991	Men's sport and dress shirts.
Van Heusen Co. (company)	Augusta, AR	12/23/80	12/17/80	TA-W-11,992	Men's sport and dress shirts.
Armour Handcrafts, Bucilla Div. (workers)	Long Island City, NY	12/23/80	12/20/80	TA-W-11,993	Needlepoint and stitching kits.
Ford Motor Co., Kentucky Truck Plant (company).	Louisville, KY	12/22/80	12/12/80	TA-W-11,994	Medium and heavy duty trucks.
Julius Berger & Co., Inc. (company)	W. Orange, NJ	12/29/80	12/11/80	TA-W-11,995	Infants wear.
Metro Goldwyn Meyers (workers)	Culvert City, CA	12/23/80	12/12/80	TA-W-11,996	Produces and distributes motion pictures.
Nicholson Machine Products, Inc. (company)	Trenton, MI	12/23/80	12/16/80	TA-W-11,997	Machine: connecting rods, pinion gear, manifolds, transmission parts.
P & K American, Inc. (workers)	Humptulips, WA	12/23/80	12/18/80	TA-W-11,998	Shakes and shingles.
Raycord Company, Inc. (company)	Spartanburg, SC	12/24/80	12/11/80	TA-W-11,999	Contractor of men's and ladies' shirts.
Raycord Company, Inc. (company)	Chesnee, SC	12/24/80	12/11/80	TA-W-12,000	Contractor of men's and ladies' shirts.
Washington Stove Works (International Molders & Allied Workers Union).	Everett, WA	12/23/80	12/17/80	TA-W-12,001	Free standing fireplaces (Franklin Stoves).
Ditto of California, Inc. (company)	Panorama City, CA	12/23/80	12/16/80	TA-W-12,002	Ladies' jeans and tops.
Ditto of California, Inc. (company)	Leesville, LA	12/23/80	12/16/80	TA-W-12,003	Ladies' jeans and tops.
Gulf & Western Industries: Paramont Pictures (workers).	Los Angeles, CA	12/23/80	12/12/80	TA-W-12,004	Produces and distributes motion pictures.
Mallory Capacitor Co. (workers)	Huntsville, AL	12/29/80	12/20/80	TA-W-12,005	Capacitors.
Mario Sportswear (workers)	Boston, MA	12/22/80	12/16/80	TA-W-12,006	Skirts.
Merit Plastics, Inc., Service Cable Div. (workers).	Mt. Clemens, MI	12/22/80	12/11/80	TA-W-12,007	Break cables.
Ray-O-Vac Corp. (IBEW)	Lancaster, OH	12/22/80	12/15/80	TA-W-12,008	Nine volt batteries.
Sebewaing Industries, Inc. (workers)	Sebewaing, MI	12/22/80	12/16/80	TA-W-12,009	Metal stamping for auto assembly.
Smart Maid Coat & Suit Corp. (workers)	New York, NY	12/22/80	12/8/80	TA-W-12,010	Ladies' coats and suits.
Apparel Suppliers of Calif., Inc. (Co.)	Chula Vista, CA	12/29/80	12/17/80	TA-W-12,011	Mfg. women's and men's clothing.
Salant & Salant (company)	Truman, AR	12/29/80	12/23/80	TA-W-12,012	Jeans.
Salant & Salant (company)	Somerville, TN	12/29/80	12/23/80	TA-W-12,013	Office complex that services Salant Corp.
Somerville Mfg. Co., Inc. (company)	Vivian, LA	12/29/80	12/23/80	TA-W-12,014	Men's dress slacks.
Star Coat Manufacturing Co., Inc. (company)	Hoboken, NJ	12/22/80	12/17/80	TA-W-12,015	Ladies' coats and blouses.
Supercraft Coats, Inc. (workers)	Garfield, NJ	12/23/80	12/16/80	TA-W-12,016	Ladies' coats and suits.
Warner Communications, Inc.: Warner Brothers, Inc. (workers).	Burbank, CA	12/23/80	12/12/80	TA-W-12,017	Produces and distributes motion pictures.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Westboro Shoe Mfg. Co. (workers)	Dexter, MO	12/22/80	12/17/80	TA-W-12,018	Sewing uppers of shoes.
White Farm Equipment Co. (workers)	Syracuse, NY	12/23/80	12/17/80	TA-W-12,019	Tractors and plows.
Adams Co. (workers)	Dubuque, IA	12/30/80	12/26/80	TA-W-12,020	Fireplace sets and transmission parts.
Columbia Pictures Industries, Inc. (workers)	Burbank, CA	12/23/80	12/12/80	TA-W-12,021	Producing and distributing motion pictures.
Hampshire Manufacturing Co. (workers)	Nashua, NH	12/30/80	12/24/80	TA-W-12,022	Vinyl fabricators.
Lally Mfg. Corp. (workers)	New York Mills, NY	12/30/80	12/12/80	TA-W-12,023	Men's and women's clothing.
MCA, Inc. (workers)	Universal City, CA	12/23/80	12/12/80	TA-W-12,024	Producing and distributing motion pictures.
Post Shake Co., Inc. (workers)	Montesano, WA	12/30/80	12/26/80	TA-W-12,025	Cedar shakes.
RCR Sportswear, Inc. (ILGWU)	Passaic, NJ	12/23/80	12/17/80	TA-W-12,026	Ladies' coats and raincoats.
Walt Disney Productions (workers)	Burbank, CA	12/23/80	12/12/80	TA-W-12,027	Producing and distributing motion pictures.
20th Century Fox Film Corp. (workers)	Los Angeles, CA	12/23/80	12/12/80	TA-W-12,028	Producing and distributing motion pictures.
Advanced Plating of Michigan (workers)	Harper Woods, MI	12/31/80	12/17/80	TA-W-12,029	Co. chrome plates auto parts.
Cutler Metal Products Co. (workers)	Camden, NJ	12/31/80	12/23/80	TA-W-12,030	Fuel tanks for tractor trailers.
Duke of Hollywood (ACTWU)	Los Angeles, CA	12/31/80	12/22/80	TA-W-12,031	Men's sportshirts.
Fedders Automotive Components Co. (USWA)	Buffalo, NY	11/24/80	11/21/80	TA-W-12,032	Automotive radiators.
Gunter Shake, Inc. (workers)	Forks, WA	12/31/80	12/22/80	TA-W-12,033	Cedar shakes and shingles.
Herbert Kenzer, Inc. (workers)	New York, NY	12/31/80	12/23/80	TA-W-12,034	Manufactures ladies coats.
Hurst Performance (workers)	Brighton, MI	12/31/80	12/27/80	TA-W-12,035	Install sun roofs.
Vogue Dolls, Inc. (workers)	Laconia, NH	12/31/80	12/23/80	TA-W-12,036	Doll clothing.

[FR Doc. 81-857 Filed 1-6-81; 8:45 am]

BILLING CODE 4510-28-M

MINIMUM WAGE STUDY COMMISSION

Notice of Meeting; Location Change

On January 6, 1981 a notice was published in the **Federal Register** (46 FR 1378; 81-374) for meetings to be held January 12-16, 1981. Due to an unavoidable conflict in the availability of rooms the place of the meetings has been changed to:

January 12: Rayburn HOB 2175, 10:30 a.m.
January 13: Rayburn HOB 2261, 9 a.m.
January 14: Rayburn HOB 2257, 10 a.m.
January 15: Rayburn HOB 2261, 9 a.m.
January 16: Rayburn HOB 2261, 9 a.m.

Washington, D.C. this 7th of January 1981.

Louis E. McConnell,
Executive Director.

[FR Doc. 81-1028 Filed 1-6-81; 9:35 am]

BILLING CODE 4510-23-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 11530; 812-4751]

D. L. Babson Tax-Free Income Fund, Inc.; Filing of Application

January 5, 1981.

Notice is hereby given that D. L. Babson Tax-Free Income Fund, Inc., 2440 Pershing Road, Kansas City, Missouri 64108, ("Applicant"), registered under the Investment Company Act of 1940 ("Act"), as an open-end, diversified, management investment company, filed an application on October 24, 1980, and an amendment thereto on December 10, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant's Money Market Portfolio to compute its net asset value per share using the armotized cost method. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "series" mutual fund, which is currently offering two separate and diversified portfolios of municipal bonds. Applicant states that its investment objective is to provide investors with the highest level of regular income exempt from federal income tax consistent with the quality and maturity standards prescribed for each of Applicant's portfolios. It is further stated that on September 23, 1980, Applicant's board of directors approved amendments to Applicant's Articles of Incorporation providing for the addition of a new class of shares (to be called the "Money Market Portfolio"). Those amendments were approved by shareholders on December 8, 1980.

Applicant represents that the Money Market Portfolio is designed to offer substantial individual investors, banks, corporations and other institutions a convenient way to invest in a professionally-managed portfolio of short-term municipal obligations, interest payments on which are exempt from federal income tax. The Money Market Portfolio also invests in commitments to purchase such securities on a "when-issued" basis. It is stated that these obligations are issued by cities, municipalities and municipal agencies, and will include Tax Anticipation Notes, Revenue Anticipation Notes, Tax and Revenue Anticipation Notes, Bond Anticipation Notes, Grant Anticipation Notes and Construction Loan Notes. Applicant states that the Money Market Portfolio will also invest in Project Notes, which are obligations of a state or local public housing agency but guaranteed by the federal government through the Department of Housing and Urban Development. Applicant represents that the maturities of these instruments at the time of issuance generally will be less than one year. The Money Market Portfolio will also invest in tax-free municipal obligations on which the original maturities exceeded one year, if at the time of purchase the time remaining to maturity is not more than one year. It is also stated that the dollar-weighted average maturity of the Money Market Portfolio will at all times be 120 days or less.

Applicant states that the municipal bonds held by the Money Market Portfolio will be rated at the time of purchase within the two highest grades (Aaa, Aa) assigned by Moody's Investors Services, Inc. ("Moody's") or (AAA, AA) assigned by Standard & Poor's Corporation ("S&P"), or will be of comparable quality as determined by the board of directors. The Money Market Portfolio may, from time to time, invest in "Temporary Investments", consisting of short-term notes issued by or on behalf of municipal issuers meeting the prescribed quality standards; commercial paper or other corporate notes meeting comparable quality standards; obligations of the United States government, its agencies or instrumentalities, bank certificates of deposit; bankers acceptances; and any of the foregoing classes of securities subject to short-term repurchase agreements.

Applicant states, in addition, that all of the above instruments are generally offered on the basis of a quoted yield to maturity and the market price of the security is adjusted so that relative to the stated range of interest it will return the quoted rate to the purchaser. Applicant states that the Money Market Portfolio intends to declare and credit its net income as a dividend to its shareholders on a daily basis and distribute it monthly, and that for this purpose "net income" will consist of all interest income accrued on the portfolio assets of the Applicant, less all expenses of that Portfolio. Applicant asserts that if it values its securities on the basis of amortized cost, there will be no calculation for unrealized capital gains or losses, and that since its dividend will be paid daily, the per share net asset value of the Money Market Portfolio will remain constant at $1.00.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors. Rule 22c–1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a–4 provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by an investment company's board of directors. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent generally with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). In view of the foregoing, Applicant requests exemptions from the provisions of Section 2(a)(41) of the Act, and Rules 2a–4 and 22c–1 thereunder, to the extent necessary to permit Applicant to value portfolio securities of its Money Market Portfolio by means of the amortized cost method of valuation (i.e., valuing securities at cost, adjusted for amortization of premium or accretion of discount).

Section 6(c) of the Act provides in part, that upon application the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that it wishes to attract sophisticated individual and institutional investors and that it believes that many of these investors require a short-term municipal bond fund which maintains a constant net asset value per share and pays dividends which do not fluctuate on account of daily changes in the values of its portfolio securities. Applicant states that it believes that in order to attract such investors and retain them as shareholders, the Money Market Portfolio must have a stable net asset value, preferably at $1.00 per share, and a constant steady flow of investment income. Applicant also states that it will not own portfolio securities having maturities exceeding one year, and that its average portfolio maturity will not exceed 120 days. Applicant further states that it believes that, with respect to municipal securities maturing in 120 days or less, there is normally a negligible discrepancy between market value and the amortized cost value of such securities. On the basis of the foregoing, Applicant believes that the valuation of its Money Market Portfolio's investment securities on the amortized cost basis will benefit its shareholders by enabling the Money Market Portfolio to more effectively maintain its $1.00 price per share while providing shareholders with the opportunity to receive a flow of investment income less subject to fluctuation than under procedures whereby its daily dividend would be adjusted by all realized and unrealized gains and losses on its portfolio securities. Lastly, Applicant states that a number of short-term money market funds which will be in direct competition with the Money Market Portfolio now effect sales, redemptions and repurchases of their shares at prices calculated by means of the amortized cost method of valuation. Therefore, Applicant's board of directors has determined in good faith that this method of calculating the net asset value per share of the Money Market Portfolio under such circumstances is appropriate and in the best interests of shareholders. In addition, Applicant has agreed that the following conditions be imposed in any order granting the exemptions it has requested:

1. In supervising the operations of the Money Market Portfolio and delegating special responsibilities involving management of the Portfolio to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and the Money Market Portfolio's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors of the Applicant shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the Money Market Portfolio's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of directors will promptly consider what action, if any, should be initiated.

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

(c) Where the board of directors believes the extent of any deviation from the $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the Money Market Portfolio's average portfolio maturity; a capital distribution; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. The Money Market Portfolio will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Money Market Portfolio will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modificiations thereto) described in condition 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the boards of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. The Money Market Portfolio will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which Applicant's board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

6. Applicant will include in each of its quarterly reports, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than January 30, 1981, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-740 Filed 1-8-81; 8:45 am]

BILLING CODE 8010-01-M

[2] Applicant states that in fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, the Money Market Portfolio will invest available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[Release No. 34-17413; File No. (SR-CBOE-1980-7)]

Chicago Board Options Exchange, Inc.; Filing of Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 19, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Chicago Board Options Exchange's ("CBOE") Statement of the Terms of Substance of the Proposed Rule Change.

[The following amendments to the rule changes in SR-CBOE-1980-7, as filed on April 17, 1980, replace and restate in their entirety those originally proposed rule changes.]

Chapter XX—GNMA Options

Introduction

The rules in this Chapter are applicable only to options where the underlying security is a GNMA (as defined below). In addition, the rules in Chapters I through XIX are also applicable to options where the underlying security is a GNMA, in some cases supplemented by one or more rules in this Chapter, except for rules that have been replaced in respect of GNMA options by one or more rules in this Chapter and except where the context otherwise requires. Whenever a rule in this Chapter supplements or, for purposes of this Chapter, replaces one or more rules in Chapters I-XIX, that fact is indicated in brackets following the rule in this Chapter.

Definitions

Rule 20.1—GNMA.

(a) The term "GNMA" means a mortgage pass-through security guaranteed as to timely payment of principal and interest by the Government National Mortgage Association, as described in the current standard prospectus of the Department of Housing and Urban Development covering such securities, bearing a stated rate of interest which is a qualifying rate. Any two or more separate certificates representing GNMAs bearing the same qualifying rate delivered in accordance with the Rules of the Clearing Corporation upon exercise of an option contract shall, for purposes of the Rules, be deemed to be a single GNMA, having a remaining unpaid principal balance equal to the sum of the remaining unpaid principal balances of such separate certificates. Options on GNMAs are sometimes referred as GNMA options.

Put

(b) The term "put" means an option contract under which the holder of the option has the right, in accordance with the terms and provisions of the option, to sell to the Clearing Corporation, subject to Rule 20.8(c), the nominal principal amount of the underlying security covered by the option cover.

Call

The term "call" means an option contract under which the holder of the option has the right, in accordance with the terms and provisions of the option, to purchase from the Clearing Corporation, subject to Rule 20.8(c), the nominal principal amount of the underlying security covered by the option contract.

Exercise Price

(d) The term "exercise price" means the specified percentage of the nominal principal amount at which the underlying security may be purchased or sold upon exercise of an option contract assuming delivery of a GNMA bearing a stated rate of interest equal to the designated rate. If the stated rate of interest of a GNMA delivered upon exercise of an option contract is a qualifying rate other than the designated rate, however, the exercise price shall be an amount which provides the same yield to maturity as the amount which would have been payable if the stated rate of interest had been equal to the designated rate (assuming a 30-year term and prepayment at the end of the twelfth year of the mortgage obligations underlying GNMAs).

Aggregate Exercise Price

(e) The term "aggregate exercise price" means the exercise price of an option contract multiplied by the nominal principal amount of the underlying security covered by the option contract; provided that if the remaining unpaid principal balance of a GNMA delivered upon exercise of an option contract varies from the nominal principal amount as permitted by Rule 20.8(c), the aggregate exercise price shall be adjusted to equal the product of the exercise price and such remaining unpaid principal balance, plus in each case the appropriate differential.

Covered

(f) The term "covered" has the same meaning as set forth in Rule 1.1(y), except that long positions must match short positions on the basis of the remaining unpaid principal balance of the underlying GNMA within the variation permitted by Rule 20.8(c), and all "covering" underlying GNMAs must bear a qualifying rate of interest.

Designated Rate

(g) The term "designated rate" means a rate of interest of 8% or such other rate as may be designated by the Board (or the Committee designated by the Board).

Nominal Principal Amount

(h) The term "nominal principal amount" means the remaining unpaid principal balance of GNMAs required to be delivered to the holder of a call or by the holder of a put upon exercise of an option without regard to any variance in the remaining unpaid principal balance permitted to be delivered upon such exercise by Rule 20.8(c) or the Rules of the Clearing Corporation.

Qualifying Rate

(i) The term "qualifying rate" means any rate of interest equal to or less than the GNMA production rate; provided that:

(A) in the event of any increase in the GNMA production rate, a GNMA issued prior to the date of any such change bearing a stated rate of interest equal to any such changed GNMA production rate (or any lower rate of interest which was not a qualifying rate on the day prior to that date) shall be deemed not to bear a qualifying rate until the expiration of 45 days from the date of such increase or until after the settlement date for options on GNMAs following the next expiration date for any series of such options whichever shall last occur, unless such GNMA bears a stated rate of interest deemed to constitute a qualifying rate in accordance with subparagraph (B) hereof; and

(B) in the event of any decrease in the GNMA production rate, a GNMA bearing a stated rate of interest which was equal to the GNMA production rate (or any lower rate of interest which is not otherwise a qualifying rate) on the day prior to the date of any such decrease shall be deemed to continue to bear a qualifying rate for a period of 45 days from the date of such decrease or until the settlement date for options on GNMAs following the next expiration date for any series of such options, whichever shall last occur.

GNMA Production Rate

(j) The term "GNMA production rate" means a rate of interest .50% below the maximum stated rate of interest on residential mortgages which the Federal Housing Administration is willing to insure and which the Veterans Administration is willing to guarantee, as it may vary from time to time in accordance with official announcements of changes in such rates made by the Federal Housing Administration.

Appropriate Differential

(k) The term "appropriate differential" with respect to a GNMA option contract means a positive or negative amount equal to the product of (A) the difference between the remaining unpaid principal balance of a GNMA delivered upon exercise of that contract and the nominal principal amount, and (B) the difference between the current cash market price of GNMAs bearing the same stated rate of interest as that borne by the GNMA delivered upon exercise and the exercise price.

Current Cash Market Price

(l) The term "current cash market price" with respect to GNMAs means the prevailing price in the cash market for GNMAs to be delivered on the next monthly settlement date determined in the manner specified by the Board.

. . . Interpretations and Policies

.01 For purposes of paragraph (a) of this Rule, the current standard prospectus of the Department of Housing and Urban Development covering GNMAs shall be form HUD 1717.

.02 The following example illustrates the meanings of the terms "exercise price," "aggregate exercise price," "nominal principal amount," and "appropriate differential" in connection with a call option on GNMAs, as those terms are defined in paragraphs (d), (e), (h) and (k) of this Rule.

Assume that the holder of one call option on GNMAs (*i.e.*, an option permitting the holder to purchase from the Clearing Corporation $100,000 remaining unpaid principal balance of GNMAs, the nominal principal amount), having an exercise price of 85 (*i.e.*, 85% of the nominal principal amount), elects to exercise the call. Further, assume that the GNMA delivered to the holder upon such exercise bears a qualifying rate of interest equal to 10% and, in accordance with Rule 20.8(c), has a remaining unpaid principal balance of $99,000. Finally, assume that the current cash market price of GNMAs bearing a stated rate of interest of 10% is 100 (*i.e.*, 100% of the remaining unpaid principal balance).

The exercise price of the option being exercised is adjusted, on the basis of the standard assumptions for GNMAs, to provide the yield equivalent of a GNMA at the designated rate or 8% (*i.e.*, the exercise price becomes 98¾₄ instead of 85). Further, because the remaining unpaid principal balance of the GNMA delivered varies from the nominal principal amount, the aggregate exercise price (which would have equaled 98¾₄% × $100,000 or $98,046.88, in the event the GNMA delivered had had a remaining unpaid principal balance of $100,000, the nominal principal amount) is adjusted to equal the product of the adjusted exercise price (98¾₄) and the

remaining unpaid principal balance of the GNMA delivered upon exercise ($99,000), or $97,066.41, plus the appropriate differential. In this case, the appropriate differential is an amount equal to the product of the difference between the remaining unpaid principal balance of the GNMA delivered upon exercise ($99,000) and the nominal principal amount ($100,000, or −$1,000, and the difference between the current over-the-counter cash market price of GNMAs bearing a stated rate of interest at 10% (100) and the adjusted exercise price of the call (98$^{32}/_{64}$), or 1$^{6}/_{64}$, yielding −$19.53. Thus, adding the negative amount of −$19.53, the appropriate differential, to $97,066.41, the product obtained in the first step of the aggregate exercise price adjustment, the aggregate exercise price payable by the holder of the call upon exercise is $97,046.88.

.03 A determination of the current cash market price for purposes of calculating the appropriate differential pursuant to paragraph (k) of this Rule shall be made immediately prior to the time the Clearing Corporation, in accordance with the Rules of the Clearing Corporation, commences preparation of advice as to the aggregate exercise price of puts and calls on GNMAs which have been exercised.

[Rule 20.1 and the Interpretations and Policies 20.1.01, .02 and .03 replace definitions set forth in Rule 1.1(n), (o) (s) and (t), and supplement the definition set forth in Rule 1.1(y).]

Wire Connections

Rule 20.2. The Exchange will permit members to establish and maintain wire connections with other members and nonmembers for the purpose of obtaining timely information on price movements in GNMAs. Written notice of each such wire connection shall be filed promptly with the Exchange.

Position Limits

Rule 20.3 Except with the prior written permission of the President or his designee, no member shall make, for any account in which it has an interest or for the account of any customer, an opening transaction in GNMA options if the member has reason to believe that as a result of such transaction the member or its customer would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of 1,000 option contracts (whether long or short) of the put class and the call class on the same side of the market covering underlying GNMAs, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options, or such other number of option contracts as may be fixed from time to time by the Board as the position limit for one or more series of options. Reasonable notice shall be given of each new position limit fixed by the Board, by posting notice thereof on the bulletin board of the Exchange floor.

[Rule 20.3 replaces Rule 4.11.]

Exercise Limits

Rule 20.4. Except with the prior written permission of the President or his designee, no member shall exercise, for any account in which it has an interest or for the account of any customer, a long position in GNMA options where such member or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five consecutive business days aggregate long positions in excess of 1,000 GNMA option contracts or such other number of such contracts as may be fixed from time to time by the Board as the exercise limit for GNMA options. Reasonable notice shall be given of each new exercise limit fixed by the Board, by posting notice thereof on the bulletin board on the Exchange floor.

[Rule 20.4 replaces Rule 4.12.]

Reports Related to Position Limits and Liquidation of Positions

Rule 20.5. For purposes of Rules 4.13 and 4.14, references to Rule 4.11 in connection with position limits shall be deemed, in the case of GNMA options, to be to Rule 20.2.

[Rule 20.5 supplements Rules 4.13 and 4.14.]

Designation of GNMA Options

Rule 20.6 GNMA options dealt in on the Exchange are designated by reference to the issuer of the underlying security (*i.e.*, GNMA), expiration month, the year of the expiration month for the longest term option series, exercise price and type (put or call). GNMA options dealt in on the Exchange shall be deemed to be for GNMAs bearing a stated rate of interest equal to the designated rate.

[Rule 20.6 replaces Rule 5.1.]

Approval of Underlying Securities

Rule 20.7. GNMAs may be approved as underlying securities for Exchange transactions by the Board (or the Committee designated by the Board), subject to such requirements as to remaining unpaid principal balance, date of issuance, pool or other characteristics as the Board (or the Committee designated by the Board) deems necessary or appropriate in the interest of maintaining a fair and orderly market or for the protection of investors.

. . . Interpretations and Policies

.01 The Board has determined that GNMA pools which include builder loans shall be ineligible as underlying securities for GNMA options dealt in on the Exchange.

.02 The Board (or the Committee designated by the Board) may determine, for any reason, to withdraw approval of GNMAs as underlying securities; and, after any announcement by the Exchange of any such withdrawal, each member organization shall, prior to effecting any GNMA option transaction for a customer, inform such customer of that fact.

[Rule 20.7 and Interpretations and Policies 20.7.01 and .02 replace Rules 5.3 and 5.4.]

Terms of GNMA Option Contracts

Rule 20.8. (a) The expiration month, expiration year and exercise price for GNMA option contracts of each series shall be determined by the Board (or the Committee designated by the Board) at the time each series of options is first opened for trading. Unless the Board (or the Committee designated by the Board) otherwise provides and so indicates at the post at which the option contract is traded, GNMA options shall expire in the months of March, June, September and December, and a series of options of a given expiration month shall generally be opened for trading about 15 months prior to such expiration month (*e.g.*, September options will generally be opened during June of the preceding year).

(b) The exercise price of each series of GNMA options shall be fixed by the Board (or the Committee designated by the Board) at a percentage of nominal principal amount, assuming a stated rate of interest equal to the designated rate, which is an integral multiple of 2% and which results in a yield (assuming a 30-year term and prepayment at the end of the twelfth year for the mortgage obligations underlying GNMAs) which is reasonably close to the current yield of GNMAs bearing a stated rate of interest equal to the then current highest qualifying rate (unless another qualifying rate shall have been specified, for purposes of this Rule, by the Board or the Committee designated by the Board as determined by the current cash market price of such GNMAs at the time such series of options is first designated for trading. Additional series of GNMA options may be opened to reflect substantial changes

in prices. The exercise price of all GNMA options of any series of GNMA options may be fixed by the Board (or the Committee designated by the Board), upon two business days' notice, at a percentage of nominal principal amount, assuming a stated rate of interest equal to the designated rate, which is an integral multiple of 1% so long as the foregoing provisions with respect to the resulting yield are satisfied. Notice of any such changed exercise price shall be posted on the bulletin board on the Exchange floor.

(c) The remaining unpaid principal balance of a GNMA delivered upon exercise of a put or a call may vary, in accordance with the Rules of the Clearing Corporation, in any amount less than 2.5% of the nominal principal amount.

. . . Interpretations and Policies

.01 In fixing exercise prices of GNMA options, the Board (or the Committee designated by the Board) may take into account prices of GNMAs bearing a stated rate of interest equal to the highest qualifying rate (unless another qualifying rate shall have been specified for purposes of this Rule, by the Board or the Committee designated by the Board) in the market for forward delivery.

[Rule 20.8 and Interpretation and Policy 20.8.01 replace paragraph (a) of Rule 5.6.]

Days and Hours of Business

Rule 20.9. Except under unusual conditions as may be determined by the Board (or the Committee or the Exchange official or officials designated by the Board), hours during which GNMA option transactions may be made on the Exchange shall correspond to the hours during which underlying GNMAs are normally traded in the over-the-counter cash market.

. . . Interpretations and Policies

.01 GNMA option trading shall normally end at 2:00 p.m. (Chicago time).

[Rule 20.9 and Interpretation and Policy 20.9.01 replace Interpretation and Policy 6.1.01.]

Trading Rotations

Rule 20.10. (a) The opening rotation in each series of GNMA options shall be overseen by an Exchange employee designated as the Post Coordinator for GNMA options and shall be held as promptly following availability of opening quotations on the quotation display mechanism(s) approved by the Exchange as the Post Coordinator deems appropriate under the circumstances. Generally, the Post Coordinator shall open first those series with respect to which the greatest buying and selling interest has been expressed have been opened (deferring opening relatively inactive series); provided, however, that more than one series may be opened simultaneously. These procedures may be altered or supplemented by the Board (or the Committee designated by the Board).

(b) In the event that current quotations are not available for underlying GNMAs within a reasonable time after 8:00 a.m. (Chicago time), the Post Coordinator shall report the delay to a Floor Official and an inquiry shall be made to determine the cause of the delay. The opening rotation for GNMA options shall be delayed until such current quotations are available, unless two Floor Officials determine that the interests of a fair and orderly market are best served by opening trading.

[Rule 20.10 supplements Interpretation and Policy 6.2.01.]

Trading Halts and Suspension of Trading

Rule 20.11. Another factor that may be considered by Floor Officials in connection with the institution of trading halts in GNMA options and by the Board in connection with the suspension of trading in GNMA options is that current quotations for the underlying securities are unavailable or have become unreliable.

[Rule 20.11 supplements Rules 6.3 and 6.4.]

Meaning of Premium Bids and Offers

Rule 20.12. Bids and offers for GNMAs shall be expressed in thirty-seconds of a point (one point being equal to $1,000 and 1/32 of a point being equal to $31.25), unless a different fraction of a point shall have been approved for this purpose by the Board (or the Committee designated by the Board) for all GNMA Options or a GNMA option contract of a particular series.

[Rule 20.12 replaces Rules 6.41 and 6.42.]

Priority of Bids and Offers

Rule 20.13. The following rules of priority shall be observed with respect to bids and offers for GNMA options:

(a) Priority of bids. The highest bid shall have priority, but where two or more bids for the same option contract represent the highest price, priority shall be afforded to such bids in the sequence in which they are made.

(b) Priority of offers. The lowest offer shall have priority, but where two or more offers for the same option contract represent the lowest price, priority shall be afforded to such offers in the sequence in which they are made.

(c) Openings. Any order present at the post at least five (5) minutes prior to commencement of the opening rotation for that series of GNMA options shall be entitled to participate in the opening.

[Rule 20.13 replaces Rules 6.45 and 6.46.]

Accommodation Liquidations

Rule 20.14. Paragraphs (ii)–(v) of Rule 6.54 shall not be applicable to GNMA options closing transactions.

[Rule 20.14 replaces Rule 6.54.]

Reconciliation of Unmatched Trades

Rule 20.15. All Exchange members, Clearing Members and their respective agents shall resolve unmatched trades in GNMA options from the previous day's trading no later than 8:00 a.m. (Chicago time) of the following business day.

[Rule 20.15 supplements Rule 6.61.]

Responsibilities of Floor Brokers

Rule 20.16. A Floor Broker handling a contingency order that is dependent upon quotations or prices other than those originating on the floor shall be responsible for satisfying the dependency requirement on the basis of the most reliable information reasonably available to him concerning such quotations and prices but, in no event, shall be held to an execution of such an order. Unless mutually agreed by the members involved, an execution or nonexecution that results shall not be altered by the fact that such information is subsequently found to have been erroneous.

[Rule 20.16 replaces paragraph (b) of Rule 6.73.]

Post Coordinators for GNMA Options

Rule 20.17. Notwithstanding any provision in the Rules to the contrary, there shall be neither Board Brokers nor Order Book Officials for GNMA options and there shall be no limit order book for GNMA options. The functions of Order Book Officials set forth in Rules 7.5 and 7.6 shall be performed with respect to GNMA options by an exchange employee designated as the Post Coordinator for GNMA Options.

[Rule 20.17 supplements Rules 7.3, 7.4, 7.5 and 7.6 and 7.11.]

Obligations of Market-Makers

Rule 20.18. Without limiting the general obligation to deal for his own account as stated in Rule 8.7(b), a Market-Maker holding an Appointment in GNMA options, in the course of maintaining a fair and orderly market, is expected to bid and/or offer so as to create differences of:

(i) no more than ¼ point between the bid and offer for each option contract for which the bid is less than 1 point;

(ii) no more than ½ point where the bid is 1 point or more but less than 5 points;

(iii) no more than ¾ point where the bid is 5 points or more but less than 10 points; and

(iv) no more than 1 point where the bid is 10 points or more,

Provided that the Board (or the Committee designated by the Board) may establish differences other than the above for all GNMA options or for one or more series of options.

. . . Interpretations and Policies

.01 The bid/ask differentials specified in Rule 20.18 shall apply to all but the two longest term GNMA option series. For these series the maximum bid/ask differential shall be (i) ½ point for option contracts where the bid is less than 1 point; (ii) 1 point for option contracts where the bid is 1 point or more but less than 5 points; (iii) 1½ points for option contracts where the bid is 5 points or more but less than 10 points; and (iv) 2 points for all other transactions.

.02 The bid/ask differentials specified in Rule 20.18 and in Interpretation and Policy .01 thereto may be waived by the Board (or the Committee or the Exchange official or officials designated by the Board) in the interests of preserving a fair and orderly market as an alternative to halting or suspending trading in GNMA options under Rules 6.3 and 6.4 when conditions are present which otherwise would cause such a halt or suspension.

[Rule 20.18 and Interpretations and Policies 20.18.01 and .02 supplement paragraph (b) of Rule 8.7.]

Opening of Accounts

Rule 20.19. In addition to the general approval and prospectus delivery required under Rule 9.7, a customer's account must be specially approved for transactions in GNMA options before a member organization may accept an order from a customer to purchase or write such options, and at or prior to the time of such approval the member organization shall furnish the customer with a current Clearing Corporation prospectus on GNMA options as provided in Rules 9.15 and 20.20.

[Rule 20.19 supplements Rule 9.7.]

Delivery of Current Prospectus

Rule 20.20. For purposes of this Chapter the term "current prospectus" means that edition of the prospectus on GNMA options (or the GNMA options supplement together with the current prospectus on stock options) of the Clearing Corporation as registrant which, at the time it is to be furnished to a given customer, meets the requirements of Section 10(a)(3) of the Securities Act of 1933. (Note: The Exchange will advise members when a new Clearing Corporation prospectus on GNMA options meeting the requirements of Section 10(a)(3) is available).

[Rule 20.20 supplements Rule 9.15.]

Communications to Customers

Rule 20.21. (a) Except as otherwise provided in this Rule, no written materials respecting GNMA options may be disseminated to any person who has not previously or contemporaneously received a current prospectus.

(b) Advertisements that describe or refer to GNMA options may only be used (and copies of the advertisements may be sent to persons who have not received a current prospectus) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to options. Under Rule 134, advertisements must be limited to general descriptions of the security being offered and of its issuer. Advertisements under this Rule shall state the name and address of the person from whom a current prospectus may be obtained; if an advertisement under this Rule deals with both stock options and GNMA options, such advertisement shall state the name(s) and address(es) of the person(s) from whom current copies of both prospectuses may be obtained. Such advertisements may have the characteristics set forth in subparagraphs (i)–(iii) of Interpretation and Policy 9.21.02A.

[Rule 20.21 supplements Rule 9.21.]

Allocation of Exercise Assignment Notices

Rule 20.22. In the case of GNMA options, the method of allocation of exercise notices established pursuant to Rule 11.2 may provide that an exercise notice of block size shall be allocated to a customer or customers having an open short position of block size and that an exercise notice of less than block size shall not be allocated, to the extent feasible, to a customer having a short position of block size. For the purposes of this Rule, an exercise notice or a short position of 10 or more contracts where the underlying security is a GNMA shall be deemed to be of "block size."

[Rule 20.22 supplements Rule 11.2.]

Delivery and Payment

Rule 20.23. In the case of GNMA options, payment of the aggregate exercise price (i) shall be accompanied by payment of accured interest on the underlying GNMAs from and including the first day of the month in which such options are exercised to and including the exercise settlement date; and (ii) shall not be required until the Member Organization informs the customer of the precise amount of the aggregate exercise price.

[Rule 20.23 supplements Rule 11.3.]

Margin Requirements

Rule 20.24. (a) This Rule sets forth the minimum amount of margin which must be maintained in margin accounts of customers having positions in GNMA option contracts dealt in on the Exchange. The Exchange may at any time impose higher margin requirements in respect of such positions when it deems such higher margin requirements to be advisable.

(b) For each put or call GNMA option contract carried in a short position in the account, margin must be maintained equal to at least 130% of the current market value of the contract plus $1,500; provided, however, that the maximum margin required for any GNMA option contract carried in a short position shall be $5,000 plus the current market value of the contract.

(c) The requirements set forth in paragraph (b) hereof are subject to the following exceptions, which in each case may be applied at the discretion of the Member Organization with which the account is maintained.

(1) Short call covered by long GNMA. No margin is required in respect of a GNMA call option contract carried in a short position which is covered by long position in underlying GNMAs within the meaning of Rules 1.1(y) and 20.1(f).

(2) Spreads with same expiration date. This subparagraph (c)(2) applies to accounts carrying positions in long call GNMA options (or short put GNMA options) which are offset by positions in short call GNMA options (or long put GNMA options) for the same nominal principal amount of GNMA's provided that the expiration date of the long calls (or short puts) is the same as the expiration date of the offsetting short calls (or long puts).

(A) When the exercise price of the long call GNMA option (or short put GNMA option) is less than or equal to the exercise price of the offsetting short call GNMA option (or long put GNMA option), no margin is required, provided that the long option is paid in full.

(B) When the exercise price of the long call GNMA option (or short put GNMA option) is greater than the exercise price of the offsetting short call GNMA option (or long put GNMA option), margin is required equal to the difference in exercise prices multiplied by the appropriate muliplier factor set forth below. For purposes of this subparagraph (c)(2)(B), the mutiplier factor to be applied shall depend on the then current highest qualifying rate as defined in Rule 20.1(i). If the then current highest qualifying rate is less than 8%, the multiplier factor shall be 1; if the then current highest qualifying rate is greater than or equal to 8% but less than 10%, the multiplier factor shall be 1.2; if the then current highest qualifying rate is greater than or equal to 10% but less than 12%, the multiplier factor shall be 1.4; and if the then current highest qualifying rate is greater than or equal to 12%, but less than or equal to 14% the multiplier factor shall be 1.5. The multiplier factor or factors for higher qualifying rates shall be established by the Board (or the Committee designated by the Board) as required.

(3) Other spreads. This subparagraph (c)(3) applies to accounts carrying positions in long call GNMA options (or short put GNMA option) which are offset by positions in short call GNMA options (or long put GNMA options) for the same nominal principal amount of GNMAs, provided that the expiration date of the long calls (or short puts) is different than the expiration date of the offsetting short calls (or long puts). For each put or call GNMA option contract carried in a short position in the account which is offset by a corresponding option contract carried in a long position in the account, margin must be maintained equal to at least 130% of the current market value of the short option contract plus $1,500, reduced by the current market value of offsetting long option contract; provided, however, that the minimum margin required for a spread position subject to this subparagraph (c)(3) shall be $1,00.

(4) Short put and short call. This subparagraph (c)(4) applies to accounts carrying positions in short put GNMA options which are offset by positions in short call GNMA options for the same nominal principal amount of GNMAs. The margin required for such a position shall be the margin required for the short put option contract or the margin required for the short call option contract (pursuant to paragraph (b) of this Rule), whichever is greater, plus the current market value of the other contract.

[Rule 20.24 supplements Rule 12.3.]

Determination of Value for Margin Purposes

Rule 20.25. For margin purposes, positions in GNMAs shall be valued at the current cash market price for GNMAs bearing the same stated rate of interest as those in the positions. Notwithstanding anything to the contrary in Rule 12.5, GNMA options contracts, for purposes of Rule 20.24, shall be deemed to have market value and the term "current market value" as to any position in a particular GNMA options series (as used in that Rule) shall mean the closing price of the series on the Exchange on the day with respect to which a determination of current market value is made.

[Rule 20.25 supplements Rule 12.5.]

CBOE's Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

Item 3. Purpose of Proposed Rule Changes.

The basis and purpose of CBOE's proposed rule changes remain the same as set forth in SR–CBOE–1980–7, as originally filed. The amendments to these proposed rule changes, set forth above, are intended to clarify and make certain technical changes in those proposed rule changes (i) to establish positions and exercise limits of 1,000 options for GNMA options; (ii) to exclude GNMA pools which include builder loans from securities underlying GNMA options dealt in on CBOE; (iii) to alter exercise price intervals; (iv) to eliminate a limit order book for GNMA options; (v) to provide for a Post Coordinator for GNMA options (who will assume certain responsibilities normally carried out by board brokers or order book officials); (vi) to clarify the prices of bids for GNMA options (in view of elimination of a limit order book for such options); (vii) to alter permissible maximum bid-ask differentials for GNMA options; and (viii) to establish different minimum customer margin requirements. In addition, the amendments transfer the proposed rule changes to a separate chapter of CBOE's rules. The material amendments are discussed in greater detail below. Amendments not discussed below make only clarifying changes.

The Introduction to Chapter 20 (which would contain all rules uniquely applicable to GNMA options) would make clear the limited application of the chapter and the general applicability of CBOE's other rules to GNMA options except as otherwise provided in the chapter.

The definition of "qualifying rate" in proposed Rule 21.1(i) (which would replace the amendment to Rule 1.1(hh) originally proposed) would be amended to take into account changes in the GNMA production rate greater than the minimum possible interval, treating GNMAs bearing stated rates of interest in the "gaps" created by any such GNMA production rate change in a manner consistent with the pattern intended to be established by the definition as originally proposed.

Proposed Rules 20.3 and 20.4 would retain the position and exercise limits of 1,000 contracts originally proposed for GNMA options.

Interpretation and Policy .01 to Rule 20.7 (which would replace the amendment to Rule 5.3 originally proposed) would establish that GNMA pools which include builder loans are ineligible as underlying securities for GNMA options traded on the CBOE, conforming CBOE's proposed GNMA options market to prevailing practice in GNMA cash and futures markets, which take into account the fact that such loans typically are refinanced in a relatively short period of time (resulting in more rapid pay-downs than are typical for other GNMAs).

Rule 20.8(b) (which would replace the amendment to Rule 5.6 originally proposed) would provide for the introduction of exercise prices at intervals of 2% rather than 1% (reserving authority to revert to 1% intervals) to take into account recently experienced volatility in GNMAs and thereby to reduce the chances of an inappropriate proliferation of GNMA options series. In addition, Interpretation and Policy .01 to the Rule would make clear that GNMA prices in the market for forward delivery may be taken into account in determining and introducing exercise prices. Such flexibility is necessary in the event the forward market trades at a significant premium or discount to the spot market in order to facilitate arbitrage between the GNMA forward and GNMA options markets, thus enhancing pricing efficiency.

Rule 20.10 (which would replace the amendment to Rule 6.2 originally proposed) would provide that opening rotations in GNMA options are to be overseen by a CBOE employee designated as a Post Coordinator for such options. Because there will not be board brokers or order book officials for GNMA options (as discussed below), this opening function is to be performed by the Post Coordinator. Further, the Rule would establish general opening procedures differing from those used for stock options and would provide for changes in those procedures.

Rule 20.11 (which would replace the amendments to Rules 6.3 and 6.4 originally proposed) would make clear that, in the event quotations for GNMAs are believed to have become unreliable, trading halts or suspensions in GNMA options may be instituted (in the same manner as when such quotations become unavailable).

Rule 20.12 (which would replace the amendments to Rules 6.41 and 6.42 originally proposed) would simplify terminology used in the rules and would establish thirty-seconds of a point rather than sixty-fourths of a point as the standards for bids and offers for GNMA options.

Rule 20.13 (which would replace the amendment to Rule 6.45 originally proposed) reflects elimination of a limit order book for GNMA options, discussed below, and would clarify the priorities of bids and offers for GNMA options under that circumstance. Rule 20.14 (which would replace the amendment to Rule 6.54 originally proposed) similarly would make clear that paragraphs (ii) through (v) of Rule 6.54 do not apply to GNMA options in that circumstance.

Rule 20.16 (which would replace the amendment to Rule 6.73 originally proposed) would make clear that floor brokers handling contingency orders for GNMA options dependent upon prices other than those originating on the CBOE will be entertained only on a "not-held" basis in view of the character of and relative lack of information concerning completed transactions in GNMAs in other markets.

Rule 20.17 would eliminate a limit order book for GNMA options and would transfer the regulatory functions normally performed by board brokers and order book officials to the Post Coordinator for GNMA options. This change reflects CBOE's judgment that, in view of the likely number of series of GNMA options and the anticipated sudden influxes of GNMA options orders upon announcements of government actions or statistical information, the operational problems associated with administering a limit order book would significantly impede trading during periods when prompt trading responses are most vital. In addition, CBOE believes that, given the different composition of anticipated participants in the planned GNMA options market and the fact that simple limit order strategies are unlikely to be used as frequently as in CBOE's stock option market, it would be neither appropriate nor administratively feasible to maintain a GNMA options limit order book. Finally, in view of the larger dollar amounts which will characterize GNMA options transactions, CBOE does not believe, under the circumstances, that it should expose itself to the increased liabilities which would be associated with maintenance of a GNMA options limit order book.

Rule 20.18 (which would replace the amendment to Rule 8.7 originally proposed) would expand the maximum bid-ask differentials for GNMA options quotations to levels CBOE believes are appropriate in view of the significantly increased volatility of GNMA's recent experience, introducing four categories of differentials geared to different premium levels (referenced to preceding bid prices) in place of the originally proposed two categories. These requirements parallel, in large part, those set forth in Rule 8.7(b) applicable to options on stocks. In addition, Interpretation and Policy .02 to the rule would permit waiver of the maximum bid-ask differential in the interest of preserving a fair and orderly market as an alternative to initiating trading halts or suspensions in GNMA options when conditions are present which would otherwise cause such a halt or suspension. CBOE believes that this greater flexibility is appropriate to its proposed GNMA options market, particularly since conditions in the GNMA markets can become very uncertain immediately prior to announcements of changes, government actions or statistical information.

Rules 20.24 and 20.25 (which would replace the amendments to Rules 12.3 and 12.5 originally proposed) would establish a new minimum customer margin system for GNMA options based upon GNMA options premiums. Margin required for short call or put positions would be 130% of the current market value of each contract in the position plus $1,500 per contract (subject to a maximum of the sum of such current market values plus $5,000). Margin required with respect to spreads having the same maturity in the event the exercise price of the long call (or short put) is greater than that of the short call (or long put) would be equal to the difference in the exercise price multiplied by a variable factor keyed to the then current highest qualifying rate (ranging from 1.0 in the case of a qualifying rate below 8% to 1.5 in the case of qualifying rates at or between 12% and 14%). Margin required on other spreads would be 130% of the current market value of each short option contract plus $1,500 per contract, reduced by the current market value of each long option contract, subject to a $1,000 minimum for such a spread position. Margin for short call and short put positions would be the greater of the requirements for either short position considered alone plus the sum of the current market values for contracts in the other position. Each side of all other combination positions would be margined separately. This premium based customer margin system is expected to afford considerably greater protection than the system originally proposed (*i.e.*, 3% margin based on the value of underlying GNMAs). In addition, the new system would simplify margin computations and would effect automatic variations in margins in response to changes in market volatility.

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 9, 1981.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 5, 1981.

[FR Doc. 81-736 Filed 1-8-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17415; File No. SR-CSE-80-7]

The Cincinnati Stock Exchange; Filing of Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 5, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Cincinnati Stock Exchange's Statement of the Terms of Substance of the Proposed Rule Change

Effective December 1, 1980, members present on the floor of the Exchange or members using a representative of a member present on the floor of the Exchange, whether executing orders for their firms or others, will be obligated to pay to the Exchange a floor fee equal to $0.05 per 100 shares per single side of each round lot transaction executed outside the National Securities Trading System ("NSTS") with a maximum of $12.50 per single side of such transaction.

On transactions executed outside the NSTSA, the floor fees charged to any member shall not exceed $500.00 per month.

The Cincinnati Stock Exchange's Statement of Basis and Purpose.

By action of the Executive Committee on November 7, 1980, a floor fee on transactions executed outside the NSTS was established.

Section 6(b)(4) of the Act is the basis for these fees since specified charges are reasonable and equitably allocated to those who avail themselves of such Exchange services.

No comments were solicited from Members nor were any received.

Fees as set forth impose no burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of purpose of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number references in the caption above and should be submitted on or before January 30, 1981.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 5, 1981.

[FR Doc. 81-739 Filed 1-8-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11531; 811-2710]

Den Management, Inc.; Proposal To Terminate Registration

January 5, 1981.

Notice is hereby given that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), 1 Spruce Place, Denville, NJ 07834, to declare by order on its own motion, that Den Management, Inc. ("Fund"), registered under the Act as an open-end, non-diversified management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized under the laws of the State of New Jersey on October 27, 1976, and registered under the Act on November 24, 1976. The files of the Commission further indicate that the Fund has not filed a registration statement pursuant to the Securities Act of 1933 and thus, has not made a public distribution of its securities. Furthermore, the Fund has never filed any of the periodic reports required by the Act. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in part, that when the Commission, on its own motion or upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 30, 1981, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the matter accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-741 Filed 1-8-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11533; 811-2983]

Federated Cash Management Trust; Filing of Application

January 5, 1981

Notice is Hereby Given that Federated Cash Management Trust ("Applicant"), 421 Seventh Avenue Pittsburgh, PA 15219 which is registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on October 21, 1980, requesting an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on December 28, 1979, and that it simultaneously registered an indefinite number of its shares of beneficial interest of common stock

under the Securities Act of 1933. According to the application, the registration of those shares became effective on April 9, 1980, at which time an initial public offering of those shares commenced. Applicant further states that it was dissolved pursuant to its Declaration of Trust and applicable state law on August 18, 1980.

According to the application, on August 18, 1980, Applicant's Trustees recommended to its shareholders that Applicant's affairs be wound up and terminated and that unanimous consent of shareholders approving such termination was obtained on August 18, 1980. Applicant states that it voluntarily redeemed all of its 5,355,932 outstanding shares at their $1 net asset value per share and that such redemptions were completed on August 18, 1980. Applicant further states that all its portfolio securities either matured or were sold to Federated Master Trust (a money market fund registered under the Act) pursuant to Rule 6C-5(T) under the Act. According to the application, that liquidation resulted in transfer agent and administrative fees of $21,645.99, which were assumed by Cash Management Research Corp., Applicant's investment adviser.

Applicant states that as of the date of the filing of the application it had no assets or liabilities and was not a party to any litigation or administrative proceeding. Applicant further states that it is not engaged and does not propose to engage in any business activities other than those necessary for the winding up of its affairs and that there are no shareholders of Applicant to whom distribution in complete liquidation of their interests has not been made. According to the application, Applicant intends to file Articles of Dissolution with the Secretary of State of the Commonwealth of Massachusetts.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company as defined by the Act, it shall so declare by order and, upon taking effect of such order, the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person may, not later than January 30, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidvit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-742 Filed 1-8-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21876; 70-6536]

National Fuel Gas Supply Corporation et al; Proposed Institution of System Money Pool Arrangement, Proposed Establishment of New Short-Term Borrowing Limitations and Request for Exception From Competitive Bidding

January 5, 1981.

In the Matter of National Fuel Gas Supply Corporation, 308 Seneca Street, Oil City, Pennsylvania 16301; Penn-York Energy Corporation, 10 Lafayette Square, Buffalo, New York 14203; National Fuel Gas Distribution Corporation, 10 Lafayette Square, Buffalo, New York 14203; National Fuel Gas Company, 30 Rockefeller Plaza, New York, New York 10112.

Notice is hereby given that National Fuel Gas Company ("National"), a registered holding company, and three of its subsidiary companies, National Fuel Gas Distribution Corporation ("Distribution"), National Fuel Gas Supply Corporation ("Supply") and Penn-York Energy Corporation ("Penn-York") have filed an application-declaration and amendments thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10, 12(b) and 12(f) thereof and Rules 42, 43, 45, 50(a)(2), and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, as amended, which is summarized below, for a complete statement of the proposed transactions.

National, Distribution, Supply, and Penn-York (collectively, the "System") are seeking authorization for National to incur external short-term borrrowings, by the issuance of notes to banks and commercial paper to a dealer through December 31, 1981. The proceeds from such borrowings would be loaned to System subsidiaries. National proposes to issue up to $40,000,000 of commercial paper and to establish bank lines of credit of $138,700,000. The companies also request approval for the institution of a System money pool. It is anticipated that during 1981 subsidiaries will have an aggregate amount of up to $70,000,000 of surplus funds from System companies would be made available through the money pool.

The maximum principal amount of unsecured debt the System may have outstanding at any one time from bank borrowings, commercial paper sales, surplus fund loans or any other source would be $92,687,764, which is 20% of System's consolidated capitalization as of September 30, 1980. According to National's Certificate of Incorporation as discussed in this Commission's Order of May 21, 1980 (HCAR No. 21585), the System's outstanding short-term debt may not exceed 20% of the System's consolidated capitalization. However, borrowings by Supply for the purchase of gas for storage is considered to be "inventory loans" and are not included as "unsecured debt" for purposes of National's Certificate of Incorporation. The aggregate maximum outstanding principal amount of short-term borrowings by the System would be $138,700,000. These borrowings include up to $46,012,236 of inventory loans to Supply.

During 1981 the subsidiaries will need to borrow a maximum aggregate amount of $180,000,000 for working capital. Distribution will require $90,000,000 for its construction program and the financing of deferred purchase gas costs. Supply needs working capital up to $50,000,000 for the purchase of gas to be stored during the summer and withdrawn for sale in the winter as well as for construction and deferred purchase gas costs. Penn-York will need to borrow up to approximately $40,000,000 for the development of underground storage facilities for the use of non-affiliated utilities. Distribution, Supply and Penn-York would borrow up to $90,000,000, $50,000,000 and $40,000,000, respectively.

However, due to differences in timing, working capital requirements can be satisfied through short-term unsecured borrowings not to exceed $92,687,764, plus up to $46,012,236 in gas inventory loans to supply.

National would administer the money pool and coordinate the System's short-term borrowings. Borrowings outside the System, when necessary, would be made through the issuance and sale of commercial paper and/or borrowings from banks and such funds would be included in the money pool. Requests by subsidiaries for short-term loans would be met from money pool sources in the following order: (1) surplus funds of any of the subsidiaries; (2) surplus funds of National; (3) proceeds from National's sale of commercial paper and bank borrowings. It is not expected that National will need to make borrowings through the money pool and no loans would be made by any subsidiary to National.

Loans through the money pool will be adequately documented on the books of the participants. The interest rate applicable to all loans of surplus funds through the money pool will be the lower of the following two rates as published daily in *The Wall Street Journal:* (1) the rate for commercial paper placed directly by a major finance company and having a term most nearly equal to the particular money pool loan in question, or (2) the prime rate. The interest rate applicable to funds borrowed by National (either through commercial paper or bank loans) and loaned through the money pool will be equal to National's net cost for such external borowings. In cases where both surplus funds from other subsidiaries and external funds are concurrently borrowed through the money pool, the interest rate applicable to all funds will be equal to the net cost of the externally borrowed funds. Interest on all borrowings through the money pool will be payable monthly until the principal amount is paid in full except where there are external borrowings from Chase. In that instance, interest will be payable in a manner to allow National to make its payment of interest on a quarterly basis. Any surplus funds not needed by other subsidiaries or for the retirement of external borrowings will be temporarily invested by the subsidiary that generated the surplus.

Costs for compensating balances to support the lines of credit may be incurred although System operating balances are expected to meet compensating balance requirements. In some cases, however, one subsidiary may have a larger operating balance than required to support its allocable share of the lines of credit and its balance will be used to support the allocable share of another subsidiary. Therefore, initially, the cost of compensating balances will be allocated to the subsidiaries on the basis of 50% to Distribution Corporation, 28% to Supply Corporation and 22% to Penn-York. At the end of the calendar year, the costs would be retroactively reallocated among the subsidiaries on the basis of the relative maximum outstanding short-term borrowings of each subsidiary during the year. Each subsidiary would pay that portion of total line of credit costs equal to the ratio of its maximum short-term borrowings to the maximum aggregate System short-term borrowings on a non-coincidental basis during the year.

If intra-system sources of funds are insufficient to meet short-term loan requests, National proposes to issue and sell from time to time through December 31, 1981, commercial paper in an aggregate maximum outstanding principal amount of $40,000,000 to A. G. Becker & Co., Incorporated ("Dealer") and/or short-term unsecured notes to The Chase Manhattan Bank, N.A. ("Chase") and make the proceeds therefrom available to its subsidiaries through the money pool.

The commercial paper will be sold by National to the Dealer in minimum sale amounts of not less than $50,000 and note denominations of not less than $25,000, with varying maturities not to exceed nine months, and will not be prepayable prior to maturity. No commission will be payable in connection with the issuance and sale of the commercial paper; however, the Dealer will reoffer and sell the commercial paper at a discount rate of ⅛ of 1% per annum less than the prevailing discount rate from the Dealer to National. The Dealer, in reoffering the commercial paper, will limit the reoffer and sale to a nonpublic list of not more than 200 buyers of commercial paper including commercial banks, insurance companies, corporate pension funds, investment trusts, foundations, college and university funds, municipal and state funds, or other financial institutions which normally invest funds in commercial paper. No sale will be made to any buyer unless and until such buyer has received a current report of the financial condition of National. It is anticipated that the commercial paper of National will be held by the buyer to maturity; however, the Dealer may, if desired, repurchase the commercial paper and reoffer it to others on the approved list of buyers.

The decision to issue commercial paper or short-term notes would be at the discretion of National, except that, if the effective interest cost for commercial paper exceeds the effective cost of equivalent borrowings from Chase under the back-up line of credit on the date of issue, National will issue its short-term unsecured notes to Chase.

National proposes to establish lines of credit with banks and to issue and sell short-term unsecured notes to such banks through December 31, 1981 up to an aggregate outstanding principal amount of $138,700,000. Of these borrowings $46,012,236 of the proceeds will be committed for the purchase of gas inventory by Supply. The proceeds would be made available to the subsidiaries through the money pool.

Lines of credit will be established with Chase as well as Buffalo, Erie and Oil City banks. Under each of the lines of credit, any unsecured note issued will be issued by National, will be dated as of the date of issue, will mature not later than twelve months from the date thereof and will be prepayable at any time, in whole or in part, without penalty or premium. The notes issued and sold to Chase and to the Erie and Oil City banks will bear interest at the prime rate of interest in effect from time to time at Chase. The notes issued and sold to the Buffalo banks will bear interest at the prime rate of interest in effect from time to time at each individual bank. In the case of Chase, interest will be payable quarterly until the principal amount is paid in full. In the case of all the other banks, interest will be payable monthly until the principal amount is paid in full.

There will be no commitment fee or any closing or related costs in connection with the above borrowings. However, each bank may require the System to keep compensating balances that will usually be met through normal operating balances. However, assuming National borrowed the full amount under each line of credit, and the full average compensating balance under each line was required, the effective cost of money, based on the current 21% prime rate, would range from 23.333% to 26.250%. The 26.250% rate is the maximum effective interest cost and is based on a 20% compensating balance. The weighted average effective cost of money if all lines were fully utilized would be 25.990%.

National requests an exception from the competitive bidding requirements of Rule 50(b) pursuant to subparagraph (a)(5) for the issuance of commercial paper by National because the notes will mature within nine months, will be issued to a limited, defined group of

buyers, the interest cost will not exceed the cost of equivalent bank borrowings from Chase, and current commercial paper notes for prime issuers are published in daily financial publications.

It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. It is further stated that the fees and expenses to be incurred in connection with the proposed transactions are estimated to be $2,800. It is requested that the reports required by Rule 24 be provided on a quarterly basis.

Notice is further given that any interested person may, not later than January 29, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended, or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-743 Filed 1-8-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11532; 811-294]

New York Bank Trust Shares; Proposal To Terminate Registration

January 5, 1981.

Notice is hereby given that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that New York Bank Trust Shares ("Fund"), c/o National Distribution Group, 111 Broadway, New York, New York 10006, registered under the Act as a unit investment trust, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund registered under the Act on November 1, 1940, and that National Distributors Corporation, a Maryland corporation, acted as depositor to the Fund. The files of the Commission further indicate that the Fund made a public offering of its shares prior to the effective date of the Securities Act of 1933. The files of the Commission also indicate that the trust agreement between the Fund and National Distributors Corporation was terminated as of February 15, 1944, and that notice of such termination was given to the certificate holders of the Fund on or about November 15, 1943. In addition, the files of the Commission indicate that the last communication the staff had with the Fund was in November, 1943. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in part, that when the Commission on its own motion upon or application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 30, 1981 at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the matter accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-744 Filed 1-8-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17414; File No. SR-NYSE-80-45]

New York Stock Exchange, Inc.; Filing of Proposed Rule Change

Pursuant to Section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 87s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on December 8, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Taking or Supplying Securities Named in Order Rule 91:

* * * * *

.40 Orders received by specialists via the DOT system—In the case where a specialist takes or supplies, for an account in which he has an interest, the securities named in an order which is received by the specialist via the DOT system, paragraphs (b)(3) and (c)(3) and paragraph .10 above shall not apply. A member representing the member organization which transmitted the order via the DOT system, may reject any such trade by notifying the specialist in writing promptly after the member organization has received a report on the transaction. Any transaction not rejected in this manner shall be deemed accepted.

The Exchange's Statement of the Basis and Purpose

The proposed rule change would amend Rule 91 to exempt transactions involving DOT [1] orders from the requirement that a specialist must confirm with the member of the Floor *each* transaction in which the specialist takes or supplies securities named in an order that he holds as agent for the member. It is proposed that the present

[1] DOT is the Designated Order Turnaround System which electronically delivers directly to the trading post for a stock, orders transmitted to the Exchange by member organizations subscribing to the service. DOT presently handles market orders up to 299 shares and day limit orders up to 900 shares.

confirmation procedure be replaced by an exception-type process which would give the member the right to reject any DOT trade by notifying the specialist in writing promptly after the member organization has received a report on the transaction. Orders not submitted through the DOT system would continue to be subject to the present written confirmation procedure.

If a member organization believes that it received a poor execution on a DOT order, it can send its Floor broker to the specialist's post promptly after receiving the report on the transaction. If the Floor broker in questioning the execution price then learns that the specialist acted as principal, he may reject the trade.

The Exchange's Statement of Basis Under the Act for the Proposed Rule Change

The DOT system has significantly improved the processing of small orders by sending such orders directly to the specialist. By adding to the operational efficiency of the DOT system and allowing for easier future enhancement of the system, the proposed change to Rule 91 will better enable the Exchange to meet the objectives and requirements of the Securities Exchange Act of 1934 (the "Act"), which include the maintenance of fair and orderly markets, and the fostering of cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to transactions in securities (see Section 6(b) and 11(a) of the Act).

The enhancement and added operation capacity of the DOT system will result in a more efficient and effective market operation (see Section 11(A)(a)(1)(B) of the Act). In addition, such improvements to the DOT system would help assure the economically efficient execution of securities transactions (see Section 11A(a)(1)(C)(1) of the Act). Furthermore, such improvements to the DOT system would be consistent with and advance the purposes of the Act set forth in Section 17A(a)(1), including the prompt and accurate clearance and settlement of securities transactions and the introduction of more efficient procedures for the clearance and settlement operation.

Comments Received From Members, Participants or Others on Proposed Rule Change

The Exchange has not solicited comment on these proposed rule changes and it has not received any.

Burden on Competition

The Exchange does not perceive any unnecessary burden on competition that will be imposed by the proposed rule change.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date, if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 5, 1981.

[FR Doc. 81-745 Filed 1-8-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

[Public Debt Series—No. 39-80]

Interest Rate on Treasury Notes of Series C-1988

The Secretary announced on December 30, 1980, that the interest rate on the notes designated Series C-1988 described in Department Circular—Public Debt Series—No. 39-80 dated December 16, 1980, will be 12⅜ percent. Interest on the notes will be payable at the rate of 12⅜ percent per annum.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 81-826 Filed 1-8-81; 8:45 am]

BILLING CODE 4810-40-M

Fiscal Service

[Dept. Circ. 570, 1980 Rev., Supp. No. 16]

Surety Companies Acceptable on Federal Bonds; Warning—Additional Counterfeit Surety Bonds

The Treasury Department alerted federal agencies engaged in surety bonding operations and federal bond-approving officers that counterfeit surety bonds may have been accepted by government agencies by FR 45 No. 207, page 70370 October 23, 1980. Federal agencies and bond-approving officers are advised that additional counterfeit surety bonds may have been accepted. Therefore the Treasury requests that federal agencies take positive steps to disseminate this notice to all agency bond-approving officers.

Individuals posing as employees or representatives of Industrial Indemnity Company, San Francisco, California, are offering bogus bonds and commitments in eastern Pennsylvania and New Jersey.

The counterfeit bonds discovered so far were written using the Industrial Indemnity Company name with the initials N.A. following and showing a business address of 603D Edison Avenue, Philadelphia, Pennsylvnia. However, this is not to say that other variations may not exist.

Neither "Industrial Indemnity Company, N.A." nor their employees or agents have any connection with nor any authority to issue bonds or make any commitment on behalf of the San Francisco-based Industrial Indemnity Company.

Industrial Indemnity Company, incorporated in the state of California in 1920, is wholly-owned by Crum & Forster, a New York based insurance holding company. It is licensed to issue surety bonds in all states except Connecticut and West Virginia and holds a Treasury Department certificate of authority as an acceptable surety on federal bonds. The company was last listed at FR 45 No. 128, page 44506 July 1, 1980 (Treasury Circular 570, 1980 revision). This company is and has been in good standing with the Treasury Department and bona fide bonds issued by it should be accepted.

Federal bond-approving officers are advised to search their files from May 1, 1980 and to look closely at the name of the surety appearing on the bonds. Anyone finding a bond listing the Industrial Indemnity Company name with the initials N.A. following should refer the matter to Charles McMannus of the U.S. Postal Inspector's Office, P.O. Box 7500, Philadelphia, Pennsylvania 19100, or phone Mr. McMannus on (215) 596-5208 or FTS 596-5208. Bond-approving officers should also closely examine the corporate seal impressed on the bond and the related power-of-attorney.

In order to verify the authenticity of a doubtful bond, bond-approving officers may call Industrial Indemnity Company's Vice President of Surety, Ken Ryan, or Assistant Vice President of Surety, Thomas E. Frederick, at (415) 986-3535. (Caution—do not check authenticity by calling a phone number inserted or labeled on a bond or power-of-attorney.)

If a bond-approving officer finds that he or she has accepted a counterfeit bond, strong steps should be taken to protect the interests of the Government and any laborers, materialmen or suppliers involved. At the discretion of the agency, such steps may include halting progress payments until the principal has furnished a satisfactory bond, defaulting a principal, requiring a principal to make positive arrangements to pay his suppliers, etc.

Questions concerning this notice should be directed to the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226 by phoning (202) 634-2458 or FTS 634-2458.

Dated: December 30, 1980.

Irvin E. Faunce,

Acting Commissioner, Bureau of Government Financial Operations.

[FR Doc. 81-696 Filed 1-8-81; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Scientific Review and Evaluation Board for Health Services Research and Development; Meeting

In accordance with Public Law 92-463, the Veterans Administration gives notice of a meeting of the Scientific Review and Evaluation Board for Health Services Research and Development. This meeting will convene in Room 119 of the Veterans Administration Central Office Building, 810 Vermont Avenue, NW, Washington, DC, January 15 and 16, 1981, beginning at 3 p.m., on January 15, 1981 and at 9 a.m., on January 16, 1981. The purpose of the meeting is to review health services research and development applications for scientific and technical merit and to make recommendations to the Director, Health Services Research and Development Service (HSR&DS) regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) at the start of the January 15th session for approximately one hour to cover administrative matters and to discuss the general status of the program. During the closed session, the Board will be reviewing research and development applications relating to the delivery and organization of health services. This review involves oral review and discussion of site visits, staff and consultant critiques of research protocols, and similar documents that necessitate the consideration of personnel qualifications and the performance and competence of individual investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Proprietary data from contractors and private firms will also be presented and this information should not be disclosed in a public session. Further, the Board's recommendations are strictly advisory in nature; other factors are considered in final funding decisions. Premature disclosure of Board recommendations would be likely to significantly frustrate implementation of final proposed actions. Thus, the closing is in accordance with 5 U.S.C. 552(c)(4), (c)(6), and (c)(9)(B), and the determination of the Administrator of Veterans Affairs under section 10(d) of of Public Law 92-463.

Due to the limited seating capacity of the room those who plan to attend the open session should contact Mrs. Dolores Zupan, Program Assistant (15D), Scientific Review Division, Research and Development, Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420 (202-389-5414) at least three days before the meeting.

The appearance of this notice at least 15 days in advance of the meeting has been hindered due to delays in administrative processing.

Dated: January 5, 1981

By direction of the Administrator:

Max Cleland,

Administrator.

[FR Doc. 81-697 Filed 1-8-81; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 6
Friday, January 9, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

CONTENTS

Civil Rights Commission 1
Federal Energy Regulatory Commission 2
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CORRECTIONS

In the **Federal Register** of Tuesday, January 6, 1981, on pages 1393 and 1394, the documents for the Consumer Product Safety Commission, the Federal Energy Regulatory Commission, the Federal Home Loan Bank Board, and the Nuclear Regulatory Commission carried incorrect **Federal Register** Document Numbers. They should be changed as follows:

Agency	Incorrect docket	Correct docket
1. Consumer Product Safety Commission.	S-2363-81	S-2-81
2. Federal Energy Regulatory Commission.	S-2382-81	S-1-81
3. Federal Home Loan Bank Board.	S-2384-81	S-3-81
4. Nuclear Regulatory Commission.	S-2385-81	S-4-81

BILLING CODE 1505-01-M

1

COMMISSION ON CIVIL RIGHTS.

DATES:

January 11, 1981, 7 p.m.–9 p.m.;
January 12, 1981, 9 a.m.–12 noon; 1:30–4 p.m.

PLACE: Holiday Inn, Mass. Ave., N.W., at Thomas Circle, Washington, D.C., 1121 Vermont Ave., Room 512, Washington, D.C.

STATUS: Open to public.

MATTERS TO BE CONSIDERED: Sunday, January 11:

I. Approval of Agenda;
II. Approval of Minutes of Last Meeting;
III. Review of Agency Operating Plan;
IV. Review of Miami Hearing;
V. Memorandum on Affirmative Action Consultation.

Monday, January 12:

VI. Applicability of Title VI of the Civil Rights Act of 1964, to Payments Made Under Part B of Medicare;
VII. Review of ERA Statement;
VIII. Review of Child Care Report;
IX. Review of Health Consultation Statement;
X. Review of National Indian Report;
XI. State Advisory Committee Re-charters:
A. Alaska
B. Nebraska
C. South Dakota
D. Vermont
E. Virginia
F. Wisconsin
XII. Action re: Idaho Advisory Committee Report Entitled *"A Roof Over Our Head: Migrant and Seasonal Farmworker Housing in Idaho"*;
XIII. Followup re: *Sin Papeles: The Undocumented in Texas*;
XIV. Civil Rights Developments in the Central States Region;
XV. Staff Director's Report:
A. Status of Funds
B. Personnel Report
C. Office Directors' Reports
D. Correspondence
1. Letter from White House on Anti-Civil Rights Amendments.

PERSONS TO CONTACT FOR FURTHER INFORMATION: Charles Rivera or Barbara Brooks, Press and Communications Division (202) 254–6697.

[S-28-81 Filed 1-7-81; 11:37 am]

BILLING CODE 6335-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 1393, January 6, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., January 7, 1981.

CHANGE IN THE MEETING: The following item has been added:

Item Number, Docket Number, and Company

ER-7: ER80-508, Boston Edison Company.

Kenneth F. Plumb,
Secretary.

[S-29-81 Filed 1-7-81; 11:45 am]

BILLING CODE 6450-85-M

3

FEDERAL RESERVE SYSTEM.

BOARD OF GOVERNORS.

TIME AND DATE: 10 a.m., Wednesday, January 14, 1981.

PLACE: Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed interpretation of Regulation K (International Banking Operations) concerning investments by U.S. banking organizations in foreign companies and foreign banks that do business in the U.S.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION:
Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: January 6, 1981.

James McAfee,
Assistant Secretary of the Board.

[S-27-80 Filed 1-6-81; 4:26 pm]

BILLING CODE 6210-01-M

4

[USITC ERB-80-14A]

INTERNATIONAL TRADE COMMISSION.
Executive Resources Board (ERB)

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 187, January 2, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, January 7, 1981.

CHANGES IN THE MEETING: The meeting previously scheduled to be held on Wednesday, January 7, 1981, has been rescheduled for Wednesday, January 21, 1981. There are no other changes to the agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S-30-80 Filed 1-7-81; 2:54 pm]

BILLING CODE 7020-02-M

5

SECURITIES EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission

will hold the following meetings during the week of January 12, 1981, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Monday, January 12, 1981, at 9:30 a.m. and on Tuesday, January 13, 1981, at 10:00 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 522b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, Friedman, and Thomas determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Monday, January 12, 1981, at 9:30 a.m., will be:

Regulatory matter bearing enforcement implications.

The subject matter of the closed meeting scheduled for Tuesday, January 13, 1981, at 10:00 a.m., will be:

Access to investigative files by Federal, State, or Self-Regulatory authories.
Litigation matters.
Formal orders of investigation.
Settlement of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive action and institution of administrative proceeding of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Administrative proceeding of an enforcement nature.
Freedom of Information Act appeal.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272-2092.

January 7, 1980.

[S-31-80 Filed 1-7-81; 3:20 pm]

BILLING CODE 8010-01-M

federal register

Friday
January 9, 1981

Part II

Department of Health and Human Services

Food and Drug Administration

New Animal Drugs for Use in Animal Feeds; Definitions and General Considerations; Revised Procedures Re Medicated Feed Applications

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 207, 210, 225, 226, 501, 510, 514, and 558

[Docket No. 77N-0076]

New Animal Drugs for Use in Animal Feeds; Definitions and General Considerations; Revised Procedures Re Medicated Feed Applications

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to revise the current procedures and requirements concerning conditions of approval for the manufacture of animal feeds containing new animal drugs. Incorporated in this proposal are the terms previously proposed defining the various medicated feed articles produced.

DATE: Comments by April 9, 1981.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: George Graber, Bureau of Veterinary Medicine (HFV-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4438.

SUPPLEMENTARY INFORMATION:

I. Terminology for Medicator Feeds

In the **Federal Register** of January 17, 1978 (43 FR 2526), the agency proposed revised definitions for articles used in the manufacture of medicated animal feeds. The period for comment on the proposal was extended to May 19, 1978. As proposed, the currently used terminology, "premix", "intermediate premix", "supplement" or "concentrate", and "complete feed", would have been replaced by Type A, Type B, Type C, and Type D medicated feed articles. The proposed changes were intended to eliminate the ambiguity that currently exists in medicated feed nomenclature.

The currently used definitions were promulgated by the agency in the **Federal Register** of July 19, 1964 (29 FR 10506), under section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348), to establish the various types of food additives and animal feed products that were applicable to the use of drugs in animal feeds. The definitions were based on the safety considerations such as the concentration of the drug in each article, the intended use of the article, and the risk of harm to humans associated with ingesting the article by the animal or food derived from the animal.

Section 558.3 (21 CFR 558.3) lists and defines the feed additive articles as complete feed, feed supplement, feed concentrate, and feed premix. Ambiguities have arisen because these commonly used terms have different meanings in the animal feed industry. For example, a "concentrate" is a concentrated source of energy (e.g., certain basal feedstuffs such as corn, soybeans, or milo) to the animal scientist and many others in the industry. However, many in the feed and animal drug industry and the regulatory agencies use the term "concentrate" to mean a concentrated drug supplement. A drug concentrate is also known as an intermediate premix or custom premix that contains only drugs, vitamins, and minerals. Thus, a concentrate for feed is referred to by several terms, some of which have different meanings.

Similarly, a "supplement" is known by many in the agricultural industry as an article of feed that supplies protein, vitamins, or minerals to animal diets that are otherwise nutritionally complete. Others view a supplement as being a dilute medicated feed concentrate. The term may also be used to refer to a supplemental medicated feed application.

A premix refers to a concentrated mix of any ingredient normally added to animal feed. It thus includes drugs, nutrients, and other substances added for medicinal or nutritional purposes.

The 1978 proposal, among other things, more precisely defined the difference between an animal drug requiring an application to be approved under section 512(c) of the act (21 U.S.C. 360b(c)) and a regulation published under section 512(i) of the act (21 U.S.C. 360b(i)) and an animal feed requiring an application to be approved under section 512(m)(2) of the act (21 U.S.C. 360b(m)(2)). It changed the conditions for approval of intermediate premixes (Type B medicated feeds) from an NADA to a medicated feed application on the basis that such articles are medicated animal feeds. The document also proposed revised definitions of production classes of animals.

The agency is publishing a new proposal to redefine the various types of medicated feed articles to utilize terminology not subject to varying trade and government usage and interpretation and to identify more clearly those medicated feed articles requiring an approved new animal drug application (NADA) or medicated feed application. When the original terms in § 558.3 were promulgated, the American Feed Manufacturers Association (AFMA) suggested that the medicated feed articles be designated by letter. The agency has concluded that terms such as those suggested by AFMA provide a practical system for clearly identifying the various types of medicated animal feeds. The definitions designate the currently used medicated feed articles as Type A medicated article and Type B or Type C medicated feeds.

II. The Task Force

In June 1978, FDA formed a Medicated Feed Task Force composed of members representing the Bureau of Veterinary Medicine (BVM), Executive Director of Regional Operations (EDRO), Associate Commissioner for Regulatory Affairs (ACRA), and the Office of the Chief Counsel. The Task Force was to review and examine the existing medicated feed program and to explore and recommend ways to employ resources more efficiently.

The Task Force concluded that the existing program is the result of piecemeal policies affecting animal drugs resulting from application of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.) (the act) enacted in 1938, as it evolved before and after the passage of the Animal Drug Amendments of 1968 (Pub. L. 90-399). For example, section 201(g) of the act (21 U.S.C. 321(g)), which defines the term "drug", does not distinguish between drugs intended for use in man or other animals, nor did section 201(p) of the act (21 U.S.C. 321(p)), which defines the term "new drug", distinguish between new drugs intended for use in man or other animals. Therefore, before enactment of the Animal Drug Amendments, new drugs intended for both man and other animals were subject to the preclearance provisions of section 505 of the act (21 U.S.C. 355).

In 1945, Congress added section 507 to the act (21 U.S.C. 357) requiring the agency to certify batches of drugs composed wholly or partly of any kind of penicillin. This section has been amended several times to include streptomycin, chlortetracycline, bacitracin, chloramphenicol, and their derivatives. Again, no distinction was made in these provisions between the use of these drugs in man or other animals. Under authority granted by section 507(c) of the act (21 U.S.C. 357(c)), however, the Commissioner of Food and Drugs exempted antibiotics that were added to animal feeds from the certification provisions if the antibiotics were labeled for specific

conditions of use that were published in the regulations.

From the mid-1940's medicated premixes have been marketed for the administration of drugs to animals in medicated feed. Until the effective date of the Animal Drug Amendments of 1968, the act provided no unique procedure under the act for the review and approval of animal drugs, including those for the manufacture of medicated animal feed by feed mills. Before a new drug could be manufactured into a medicated feed, an application for the manufacture of a medicated premix required approval. The holder of the premix approval was then required to supplement its application for each feed manufacturer requesting use of the drug.

The Food Additives Amendment of 1958 applied to food additives intended for both man or other animals. This amendment added section 201(s) to the act (21 U.S.C. 321(s)), which defines the term "food additive" as any substance the intended use of which results or may reasonably be expected to result, directly, or indirectly, in its becoming a component or otherwise affecting the characteristics of any food. Thus, any drug added to food or feed of an animal was a food additive, and any drug capable of causing residues in the edible products of the food-producing animal was also considered to be a food additive because the residue from such drug would constitute a food additive in the edible products. Such drugs placed on the market following enactment of the Food Additives Amendment of 1958 could not be legally marketed unless a food additive regulation was promulgated providing for the drug's safe use or the drug was generally recognized as safe and, for those uses approved after October 10, 1962, as effective.

Because animal drugs intended for use in animal feeds were subject to the preclearance provisions of three distinct sets of procedural requirements, their administrative and preclearance provisions were overlapping, unduly complex, and time consuming.

The Animal Drug Amendments of 1968 added a new section—section 512 (21 U.S.C. 360b)—to the act, in which were consolidated the various parts of the act that related to new drugs intended for use in animals, including those intended for use in animal feeds. Consequently, section 512 of the act provides for separate, distinct requirements regarding regulation of new animal drugs and animal feeds bearing or containing new animal drugs.

New sections 201(w) and 201(x) of the act (21 U.S.C. 321(w) and 321(x)) defining the terms "new animal drug" and "animal feed," respectively, were also added.

Even after passage of the Animal Drug Amendments, the medicated feed program continued to grow in a haphazard way. Exemptions from section 512(m) of the act resulted in feeds containing some carcinogenic drugs being exempt from preapproval requirements, whereas feeds containing some drugs with wide margins of safety are subject to only partial or no exemptions. This was compounded by inconsistencies in the exemptions among drugs and among uses of individual drugs. For example, a new animal drug in feed may be exempted for one species but not others, making the preclearance procedure confusing and difficult to enforce because marketing under the exempted use may be diverted to a nonexempted use.

It was against this background that the Medicated Feed Task Force met to evaluate the agency's past policies, consider current needs, and recommend new initiatives in the agency's medicated feed programs. The Task Force concluded that the current medicated feed program lacks focus. It recommended, among other things, that regulatory control of feeds containing new animal drugs that pose a potential risk to humans from residues should be strengthened, and control of feeds containing drugs that pose little risk to humans should be reduced, thereby better utilizing the limited resources of the agency. Requirements for approved medicated feed applications should be based upon the degree of risk from use of the drug either in terms of the toxicity of the drug itself or the concentration of the drug in a feed. FDA should approve such applications only after firms pass an inspection demonstrating their ability to manufacture feeds in compliance with current good manufacture practice regulations (21 CFR Part 225). The Task Force presented its report, entitled "Second Generation of Medicated Feeds," to the Commissioner of Food and Drugs, who announced its availability in the Federal Register of December 15, 1978 (43 FR 58634).

Following the Commissioner's decision to implement the recommendations of the Task Force to restructure the medicated feed program, the agency announced in the Federal Register of March 6, 1979 (44 FR 12208) that it was postponing action on the feed definitions proposal.

Since the release of the Task Force report and in response to comments on the report submitted by the public, additional revisions to the recommendations of the Task Force have been made by the agency. The revisions are consistent with the aims of the Task Force and the mandate of the agency to protect the public health.

III. Purpose of This Proposal

The purpose of this document is to:

1. Propose revisions in the current procedures and requirements concerning conditions of approval for the manufacture of animal feeds containing new animal drugs on the basis of the recommendations of the Medicated Feed Task Force.

2. Propose terms defining the various medicated feed articles produced.

3. Respond to comments made on the 1978 feed definitions proposal.

4. Respond to comments received on the Medicated Feed Task Force Report.

5. Announce the compliance (directed inspection) program.

6. Explain the implementation process and schedule of the new program.

7. Propose good manufacturing practice regulations for firms producing medicated feeds not requiring an approved medicated feed application.

IV. Drug Categories

The Task Force recommendations focused on maximizing public health protection by orienting the medicated feed program to the human risk potential of medicated feeds. Control is strengthened where the potential risk is greatest and lessened where the risk is minimal. The drugs administered in medicated feed are placed in three categories. The placement is subject to change by notice and comment rulemaking, based on review of existing or new safety data.

Where the potential for unsafe residues is the least, the level of use for the drug for subsequent manufacture of a medicated feed is least limited. Where the potential for drug residues is greatest from misuse, the level of use for the drug for subsequent manufacture of a medicated feed is more limited. Where the agency's concern about the safety of the drug is the greatest, the level of use for the drug for subsequent manufacture of a medicated feed will be the most limited.

The concentration of a medicated feed article exempt from the requirement of an approved medicated feed application is a function of its category and its highest continuous use level. The manufacture of a Type A medicated article will continue to require an approved new animal drug application. The manufacture of a Type B or Type C mediated feed from a Type A medicated article will require an approved medicated feed application. However, the use of a Type B or Type C medicated feed for further manufacture is exempt

from the requirement of an approved medicated feed application. The maximum (Type B medicated feed) exempt level for a Category I drug is 200 times the highest continuous use level; for a Category II drug, 100 times the highest continuous use level; and for a Category III drug, 50 times the highest continuous use level.

Category I—These drugs require no withdrawal period at the lowest use level in each species for which they are approved.

Drugs in this category include: aklomide, ammonium chloride, amprolium with or without ethopabate, bacitracin (from bacitracin methylene disalicylate or zinc bacitracin), bambermycins, buquinolate, chlortetracyline, coumaphos, decoquinate, dichlorvos, erythromycin (thiocyanate salt), ethylenediamine dihydriodide, iodinated casein, nequinate, nystatin, oleandomycin, oxytetracycline, penicillin, penicillin with streptomycin, poloxalene, streptomycin, tylosin, virginiamycin, zoalene.

Category II—These drugs are subject to a withdrawal period at the lowest use level for at least one species for which they are approved.

Drugs in this category include: arsanilate sodium, arsanilic acid, butynorate, carbarsone, clopidol, famphur, hygromycin B, lasalocid, levamisole, lincomycin, monensin, neomycin, nicarbazin, nitrasone, novobiocin, phenothiazine, piperazine, pyrantel tartrate, robenidine, ronnel, roxarsone, sulfadimethoxine-ormetoprim, sulfaethoxypyridazine, sulfamethazine, sulfamerazine, sulfanitran with aklomide, sulfaquinoxaline, sulfathiazole, thiabendazole.

Category III—These drugs are regulated on a "no-residue" basis or with a "zero" tolerance because of a carcinogenic concern.

Drugs in this category include: carbadox, chlormadinone acetate, dimetridazole, furazolidone, ipronidazole, melengestrol acetate, nitrofurazone, nitromide.

The act does not explicitly provide for an exemption from approval for the direct manufacture of a medicated feed from a new animal drug (Type A medicated article), or for the manufacture of one medicated feed from another medicated feed. Section 512(a)(1) of the act requires that before a new animal drug can be approved for use in manufacturing a medicated feed, an application must be filed with FDA under section 512(b) of the act. The following information must be included in the application:

1. Full reports of investigations which have been made to show whether or not the drug is safe and effective for use;

2. A full list of the articles used as components of the drug;

3. A full statement of the composition of the drug;

4. A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the drug;

5. Such samples of the drug and of the articles used as components thereof, of any animal feed for use in on which the drug is intended, and of the edible portions or products (before or after slaughter) of animals to which the drug (directly or in or on animal feed) is intended to be administered, as FDA may require;

6. Specimens of the labeling proposed to be used for the drug, or in case the drug is intended for use in animal feed, proposed labeling appropriate for such use, and specimens of the labeling for the drug to be manufactured, packed, or distributed by the applicant;

7. A description of practicable methods for determining the quantity, if any, of the drug in or on food, and any substance formed in or on food, because of its use; and

8. The proposed tolerance or withdrawal period or other use restrictions for the drug if any tolerance or withdrawal period or other use restrictions are required in order to ensure that the proposed use of the drug will be safe.

Upon approval of an animal drug application, a regulation is published under section 512(i) of the act, which provides:

> When a new animal drug application filed pursuant to subsection (b) is approved the Secretary shall by notice, which upon publication shall be effective as a regulation, publish in the **Federal Register** the name and address of the applicant and the conditions and indications of use of the new animal drug covered by such application, including any tolerance and withdrawal period or other use restrictions and, if such new animal drug is intended for use in animal feed, appropriate purposes and conditions of use (including special labeling requirements) applicable to any animal feed for use in which such drug is approved, and such other information, upon the basis of which such application was approved, as the Secretary deems necessary to assure the safe and effective use of such drug.* * *

Before an animal feed bearing or containing a new animal drug can be approved, an application must be filed with FDA under section 512(m)(1) of the act, which provides the following:

> Any person may file with the Secretary an application with respect to any intended use or uses of an animal feed bearing or containing a new animal drug. Such person shall submit to the Secretary as part of the application (A) a full statement of the composition of such animal feed, (B) an identification of the regulation or regulations (relating to the new animal drug or drugs to be used in such feed), published pursuant to subsection (i), on which he relies as a basis for approval of his application with respect to the use of such drug in such feed, (C) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such animal feed, (D) specimens of the labeling proposed to be used for such animal feed, and (E) if so requested by the Secretary, samples of such animal feed or components thereof.

This document proposes to modify the current requirements for obtaining approval for the manufacture of medicated animal feeds by not requiring the submission of medicated feed applications for those drug uses where there are adequate data available to show that to do so will not compromise the public health. While FDA believes that there exists implied authority for the agency to waive unnecessary ministerial requirements of the act, it is currently seeking an amendment to section 512 of the act that will provide explicit statutory authority to grant such exemptions.

For each drug category an approved medicated feed application is not required for the use of Type B medicated feed for the subsequent manufacture of another Type B or a Type C medicated animal feed.

The drug categories set the maximum levels for each Type B medicated feed based upon the highest continuous use level, as follows:

Maximum concentration

Category	Type B
I	200X
II	100X
III	50X

(X—the multiple of the highest continuous use level on a drug-by-drug basis)

The term "highest continuous use level" means the highest feed dosage at which the drug is approved for continuous use (14 days or more) or, if the drug is not approved for continuous use, it means the highest level used for disease prevention or control. If the drug is approved for multiple species at different use levels, the highest level would govern under this definition.

Because of the exemptions from approved medicated feed applications available under these provisions, it is expected that the number of firms requiring approved medicated feed applications will be greatly reduced. This will provide regulatory focus on

those products of greatest human health concern through uniform application of criteria for exemption.

V. Proposed Definitions

In the light of the recommendations of the Medicated Feed Task Force, and the comments received on the report of the Task Force, the definitions proposed in 1978 have been reevaluated and are being revised. As previously stated, the revised definitions of medicated feed articles serve several purposes. First, they establish a clear separation between those medicated feed articles that constitute new animal drugs subject to approval under section 512(c) of the act and animal feeds subject to approval under section 512(m)(2) of the act. Second they serve to distinguish among the various kinds of medicated feed articles subject to approval under section 512(m)(2) of the act. Type A medicated articles constitute animal drugs; Type B and Type C medicated feeds constitute animal feeds containing new animal drugs.

A. *Type A medicated article.* Under the proposed new definitions, the most concentrated article will be designated as Type A. This is a drug premix for medicating animal feed. The article will be solely for use in the manufacture of other medicated animal feed articles (animal feed bearing or containing a new animal drug), and it will be limited to use solely in accordance with its published regulation. It will consist of a new animal drug for use in the manufacture of a medicated animal feed and is approved under section 512(b) of the act. It usually will include a diluent (carrier substance), and it must be further diluted with nutrient material to produce either a Type B or Type C medicated feed.

A proposed Type A medicated article is comparable to the present "feed additive premix". In the current regulations, a "premix" must be diluted so that not more than 100 pounds of the article is added to a basic feed to produce 1 ton of a complete medicated animal feed, and this feed must have been shown to be safe and effective in accordance with section 512(b) of the act for its labeled drug use. In such premixes, a large quantity of carrier substances is required. The premix is then mixed with nutrient feed ingredients to produce the medicated animal feed. The NADA for a Type A medicated article must include evidence that all Type B and Type C medicated feed manufactured from it are safe when used as directed. In addition, the NADA must include adequate and well-controlled investigations demonstrating that such Type C medicated feeds are effective whether manufactured directly or through a Type B medicated feed.

When the Type A article and the medicated feeds (Type B and Type C) manufactured from it have been shown to be safe and effective under their labeled conditions of use in accordance with the requirements of section 512 of the act and the applicable regulations, the NADA will be approved. Notice of the approval and any applicable restrictions and conditions of use will be published in the Federal Register in accordance with section 512(i) of the act (21 U.S.C. 360b(i)). Consequently, a Type A medicated article requires an approved NADA and must be shipped in accordance with section 512(a)(1) of the act and 21 CFR 510.7.

A Type A medicated article is defined as a new animal drug intended solely for use in the manufacture of Type B or Type C medicated feeds. It consists of a new animal drug(s), with or without carrier (e.g., calcium carbonate, rice hulls, corn gluten) with or without other inactive ingredients. The manufacture of a Type A medicated article requires an application approved under § 514.105(a) (21 CFR 514.105(a)).

Type B and Type C medictated feeds are animal feeds containing one or more drugs and a substantial quantity of nutrient ingredients. For the purpose of these regulations, a substantial quantity of nutrients includes vitamins and/or minerals and/or other nutritional ingredients in an amount not less than 50 percent of the weight of the Type A medicated feed article. The manufacture of a medicated animal feed from a Type A medicated article requires an application approved under § 514.105(b).

The primary emphasis of the Task Force was to stress drug safety to humans as the major criterion for establishing conditions for approval of medicated feed applications. The safety of an animal drug in feed is a function of both the human risk potential associated with the drug and its concentration in a medicated feed. The human risk potential is the basis for the categorization of animal drugs used in feed. The Type B and Type C medicated feeds are designated in terms of drug concentration. The conditions for approval for their manufacture is a function of the category of drug and nature of the medicated feed as follows.

B. *Type B medicated feed.* The proposed Type B medicated feed will be an animal feed bearing or containing a new animal drug that is intended solely for further manufacturing of other medicated feeds (Type B or Type C). The Type B medicated feed will consist of a new animal drug(s) approved under section 512(b) of the act as a Type A medicated article, a carrier, and nutrients. A proposed Type B medicated feed will conform to the statutory definition of animal feed. Before the article can be fed to animals, however, it must be substantially diluted with a nutrient(s) to form a Type C medicated feed.

The Type B medicated feed will be similar to the present "feed concentrate." The definition of the Type B feed, however, has been revised to encompass intermediate premixes.

In recent years there has been a trend, particularly in the medicated feed industry, toward unit packaging. This precludes the need for weighing of the drug component by the subsequent mixer, thereby improving quality control by eliminating possible weighing errors, cross-contamination of open bags, and other handling and weighing procedures prone to errors. The Task Force anticipates that the same trend would occur in lower concentration medicated feeds if intermediate level mixers were provided the economic incentive. A Type B medicated feed and the conditions proposed for its approval are intended to accommodate and encourage this trend. The maximum concentration of a Type B medicated feed is 200 times the highest continuous use level for Category I drugs, 100 times the highest continuous use level for Category II drugs, and 50 times the highest continuous use level for Category III drugs. The 200X, 100X, and 50X factors are divisible into 2,000 pounds, and multiples thereof, which are batch sizes commonly used in the industry.

C. *Type C medicated feed.* A proposed Type C medicated feed will also be a medicated animal feed bearing or containing a new animal drug. It will be produced by substantially diluting a Type A medicated article or Type B medicated feed with other feed ingredients to a level for use that is covered by an approved NADA. A Type C feed may be offered as a complete feed, or when specified under 21 CFR Subchapter E, it may be fed top dressed or offered free-choice in conjunction with other animal feed to supplement the amimal's total daily ration.

The manufacture of Type B and Type C medicated feeds produced from a Type A medicated article is subject to the current good manufacturing practice regulations in 21 CFR Part 225. Where an approved medicated feed application is required such application shall include the following information:

1. Name and address of the applicant;

2. The registration number and last date of registration of each mill as

assigned pursuant to section 510 of the act;

3. Whether the submission is an original or supplemental application;

4. Identification of the drug(s) or Type A medicated feed article used by name, potency, and manufacturer;

5. The species of animal(s) for which the medicated feed is intended;

6. The form of feed to be produced, i.e., mash, meal, crumbles, pellets, liquid, or other;

7. Whether the feed is to be shipped in bag or bulk;

8. Whether the feed is a Type B or Type C feed;

9. Whether the feed is for sale or own use or both;

10. The generic or brand name of the medicated feed, name of the drug(s) and finished level in feed, and amount of drug(s) or premix per ton;

11. Identification of the regulation(s) in Subchapter E on which the request for approval of the medicated feed is based;

12. Whether the attached labeling is in draft or final printed form;

13. A commitment to establish and maintain the required program of sampling and assaying as follows:

a. For Type B medicated feeds, assays of the first three batches manufactured, followed thereafter by assay of representative samples of not less than 5 percent of the annual production of each Type B medicated feed produced. The samples shall be collected and assayed by approved official methods. When any batch does not assay within limitations, each subsequent batch shall be assayed until three consecutive batches are within limitations. Reports of assays shall be kept on the premises for not less than 1 year after the last date of shipment of the assayed medicated feed.

b. For Type C medicated feeds, an assay of the first batch manufactured, followed thereafter by two samples at periodic intervals during the calendar year. If a medicated feed contains a combination of drugs, only one of the drugs need be subject to analysis each time, provided the one tested is different from the one(s) previously tested. Reports of assays shall be kept on the premises for not less than 1 year after the last date of shipment of the assayed medicated feed.

14. A statement of minimum and maximum assay variation permitted from the labeled amount of the drug;

15. Identification of the authorized agent;

16. Applicant's name, title, and signature of responsible individual, and date.

This document proposes a new § 558.4 *Medicated feed applications.* The use of any Type A medicated article (premix) in the subsequent manufacture of Type B or Type C medicated feeds must be the subject of an approved medicated feed application. Each drug approved for use in medicated feed is listed in tabular form under its appropriate category. The maximum drug concentrations for Type B medicated feeds are given along with their respective assay limits. The regulation states that under section 512(a)(1) of the act a new animal drug intended for use in the manufacture of an animal feed shall be deemed to be unsafe for such purposes, unless the consignee for the drug holds an approved medicated feed application. The types of feed and drug levels that will not require an approved medicated feed application are proposed as follows:

Category I Drugs—Type B and Type C medicated feeds manufactured from any Type B feeds containing up to 200 times the highest approved continuous use level.

Category II Drugs—Type B and Type C medicated feeds manufactured from Type B feeds containing up to 100 times the highest approved continuous use level.

Category III Drugs—Type B and Type C medicated feeds manufactured from Type B feeds containing up to 50 times the highest approved continuous use level.

The Task Force also recommended that generic labeling be permitted for the approval of Type B and Type C feeds. The generic labeling permits the use of one representative label for each drug for each use, permitting different brand names under the same approval for Type B and Type C medicated feeds. This change has already been placed into effect for Type C medicated feeds and is reducing the number of labels being submitted for approval.

Consistent with the agency's concern with utilizing its limited resources on drugs and drug levels of human health significance, the regulations covering current good manufacturing practice are revised to maintain the current requirements for use of drugs of public health significance and to reduce the requirements for use of drugs for which an approved medicated feed application is not required. Accordingly, Part 225 is amended to provide for a relaxation of the requirements for current good manufacturing practice where the drug or drug concentration is of less public health significance.

VI. Comments on the January 17, 1978, Proposal

In the light of the conclusions and recommendations of the Task Force, the January 17, 1978, proposal has been reevaluated. The agency received nearly 50 responses to the proposal from animal feed and drug manufacturers, associations, and individuals. The issues raised and the agency's response to each are as follows:

1. Four comments asked that an economic impact study be completed before finalizing the proposal. The comments expressed concern that implementation of the proposal would result in significant cost increases, particularly from an increased burden of paperwork. This could result in loss of marginally profitable product lines.

The proposed action was intended to reduce the preclearance requirements for animal drugs in feed. Specifically, at the present time Type B medicate feed applications (intermediate premixes) require approval under section 512(c) of the act as new animal drugs. The proposal places these articles in the category of animal feeds requiring approval under section 512(m) of the act. This change substantially reduces the kind of information required for approval and removes the requirement that an approval be published for each such article under section 512(i) of the act. Under these circumstances the agency stated in its proposal that the action did not contain a major proposal requiring preparation of an inflation impact statement. No factual information was submitted in the comments to refute this conclusion. Nevertheless, the agency has prepared a revised regulatory analysis assessment which is on file with the Dockets Management Branch. Also, see "X. Summary of Regulatory Analysis Assessment" below.

2. A number of comments requested FDA to provide additional opportunity for public participation, either through a public hearing or by reproposal, before finalizing the 1978 proposal.

In connection with the implementation of the Medicated Feed Task Force and in consideration of the comments received on the initial proposal, this proposal incorporates further revisions to the recommendations of the Task Force. Moreover, the report of the Task Force has been made publicly available for comment. Interested persons are again being provided an opportunity for comment through this proposal.

3. Comments were made on alleged changes in the conditions of use for certain drugs through the comment and rulemaking procedure. A number of comments addressed specific changes in the regulations allegedly altering their conditions of use.

The agency did not intend to change the conditions of use of new animal drugs through rulemaking procedures.

Each of the specific comments received alleging changes in conditions of use of new animal drugs has been evaluated and, where appropriate, revisions have been made in this proposal.

4. Two comments requested that the regulations be amended to include the criteria for exemption from the requirement of an approved medicated feed application.

This proposal sets forth the medicated feed application exemption criteria based upon human risk potential.

5. Several comments requested that "on-farm" mixers be exempt from the requirement of an approved medicated feed application.

The act does not provide a basis for the preferential treatment of on-farm mixers over commercial feed mills. If an establishment, be it a commercial mill or an on-farm mixer, chooses to manufacture medicated feeds that do not require an approved application, they must be produced from the appropriate concentration of a Type B medicated feed as given in proposed § 558.4(c). Conversely, if an establishment, whether a commercial mill or an on-farm mixer, chooses to manufacture feeds that exceed the exempted concentrations in § 558.4(c), then an approved application is required. An approved medicated feed application merely requires that a firm register and comply with current good manufacturing practice regulations (21 CFR Part 225). The agency will consider any suggestions relative to any authority under the act that could provide for alternate requirements for "on-farm" mixers.

6. A number of comments requested that animal drugs that are not new animal drugs be exempt from the requirements of section 512(m) of the act.

The agency agrees that section 512(m) of the act does not apply to other than new animal drugs. Each of the animal drugs named in proposed § 558.4(c) is a new animal drug and thus subject to the requirements of section 512(m) of the act.

7. It was suggested that the requirement of approved medicated feed applications for the use of each drug be abandoned in favor of a system of certification of feed mills.

The Medicated Feed Task Force considered this approach as a possible alternative to the current system of approval of medicated feed applications. Although the concept of certification appeared to be advantageous in reducing paperwork, it was rejected because there is no authority under the act for such a program.

8. Several comments expressed concern that the amendment to § 207.20 *Who must register and submit a drug list* appeared to require that animal feed manufacturers list their drugs as well as register under section 510 of the act.

The amendment proposed was not intended to impose a drug listing requirement. On the contrary, the amendment would place Type B medicated feeds under the exemption from drug listing. At the present time they are not exempt from listing. Under this proposal, the exemption from drug listing is retained, and the regulation provides a further exemption from registration for all firms except those manufacturing medicated animal feeds requiring approved medicated feed applications.

9. A comment asked that Part 225—Current Good Manufacturing Practice for Medicated Feeds, be revised in paragraph (b)(3) of § 225.58 *Laboratory controls* to change the words "each batch" to "each Type B medicated feed article". The change was requested for clarity and consistency with § 514.2(c)(6). It was requested that the requirement in the third sentence of paragraph (b)(3) be changed to reduce the number of batch assays from five to three when one is out of compliance. It was argued that if three consecutive assays are adequate to initially establish control, three should be sufficient to reestablish control.

FDA agrees and has adopted both changes.

10. A number of comments requested that § 510.110 *Animal feed labeling; collective names for feed ingredients* be revised to permit the use of the same collective names in the labeling of Type B medicated feeds as is currently permitted in the labeling of supplements of complete feeds.

On the basis of the recommendations of the Medicated Feed Task Force, this revision is being proposed. The requested revision would permit the latitude in the labeling of Type B medicated feeds as is currently enjoyed for the labeling of Type C medicated feeds. The use of collective names permits the manufacturer to select alternate feed ingredients having similar characteristics on a "least-cost" basis without the necessity for providing alternate labeling for each formulation change. This change will reduce the amount of paperwork otherwise generated by the submission of supplemental applications for each alternative label change. The same rationale exists for the use of collective names for Type B medicated feed as for Type C medicated feed (e.g., linear programming of formulations based upon availability and cost of ingredients).

11. The proposal added a new paragraph (m) to § 510.3 *Definitions and interpretations*, providing for definitions of various production classes of animals. Many of the comments objected to the setting of age and/or weight limitations for classes of animals by regulation. They argued that such designations should be used solely as guidelines because of variations in feeding programs, local custom, and customer preference. In addition, many comments and suggestions were submitted regarding the specific animal classes.

The agency agrees that the definitions provided should be considered to be guidelines rather than regulations, and this proposal sets them forth as such. Their purpose is solely to clarify classes of animals in relation to label directions for use of animal drugs. Additionally, certain changes have been made in the definitions on the basis of comments received.

12. Several comments objected to the requirement in § 514.1(b)(3)(v)(*b*) that a new animal drug application for approval to manufacture a medicated premix include representative labeling for Type B, C, and D medicated feed articles to be manufactured from the premix. Objections were based primarily on the inability of the premix manufacturer to anticipate all of the various labeling that might be used for the medicated feed.

This requirement is not new. Representative feed labeling has been required previously as part of a new animal drug application for a premix. Obviously the premix manufacturer will be unable to anticipate all labeling that might be used. However, representative or typical labeling provides useful information to agency reviewers as to how the feeds will be offered for sale. Moreover, section 512(b)(6) of the act requires such representative labeling to be included in a new animal drug application.

13. A number of comments objected to the requirement in § 514.1(b)(5)(x) as appearing to require stability data routinely on nondrug ingredients. Comments stated that unless the premix manufacturer tested the stability of every nutrient ingredient that might be mixed with his premix, a feed manufacturer could be prevented from incorporating nutrients not stability tested by the sponsor of the premix. They objected that it is unreasonable to require this kind of stability testing for the use of medicated premixes when it is not required for use in nonmedicated feeds.

FDA agrees that routine stability testing for nondrug ingredients should not be required. However, where a stability problem for a nondrug ingredient is known or suspected, stability data may be requested by the agency.

14. Several comments stated that the feed assay requirements should be the same whether or not the manufacture of a feed required an approved medicated feed application.

Section 225.58 *Laboratory controls* is being revised. As revised, the manufacture of medicated feeds that do not require an approved application does not require a schedule of assays to be conducted. As previously stated, the agency program proposes to require more stringent controls over drugs of greater public health significance. Consistent with this goal, current good manufacturing regulations, including the requirement for performing routine assays, are more stringent for feeds requiring approved medicated feed applications than for those that do not. The regulations being proposed will not require that routine assays be performed for feeds not requiring an approved application. However, when assays have been performed, including those by State Feed Control Officials, records shall be maintained and, where necessary, corrective action shall be taken and documented.

15. Comments requested that the assay requirements for Type B medicated feeds provide a greater assay range than assay requirements for Type A medicated articles.

Because the agency does not have adequate information on appropriate assay limits for Type B medicated feeds, it had established the same limits for Type B feeds as for Type A medicated feed articles. However, the agency may revise the limits set by this proposal upon receipt of sufficient information in response to this proposal.

16. A number of comments requested that the regulations provide for the submission of representative master formulas in the medicated feed application rather than specific master formulas for each batch variation of Type B medicated feed produced. The comments argued that master formulas are frequently revised to provide for changes in formulations based upon availability of alternate ingredients and production of least-cost formulation. The requirement of preapproval for each such formulation would discourage this practice, resulting in an increase in production cost.

The agency agrees that the industry should have the latitude to adjust feed formulas to meet changing needs. Firms are required under current good manufacturing regulations to maintain a Master Record File and batch production records. Under these circumstances, and consistent with the decision to permit the use of collective names in the labeling of feed ingredients (see comment number 10 above), the requirement of submission of master formulas is deleted from this proposal.

17. Other comments regarding the content of medicated feed applications were concerned with the possible use of a facilities and procedures file for multi-plant firms to eliminate repetitious submissions, identification of responsible positions rather than responsible persons, and the commitment to have the required assays done rather than designating a specific laboratory.

Based upon recommendations of the Medicated Feed Task Force, each of these suggestions has been adopted. Rather than requiring detailed information in applications, greater reliance will be placed on field inspection programs to ensure that firms are in compliance with current good manufacturing practice regulations (21 CFR Part 225).

18. Three comments objected to the use of the word "premix" in defining Type A medicated articles because the agency had stated that the word tends to be ambiguous and subject to misunderstanding. The comments also objected to reference to nutrient content as part of the definition of a Type A medicated article.

This proposal deletes the word "premix" from the definition. However, the dividing line between a new animal drug (Type A medicated article) as defined in section 201(w) of the act and an animal feed (Type B or Type C medicated feed) as defined in section 201(x) of the act, is based upon the presence of a substantial source of nutrients. Therefore, reference to nutrient content is an essential part of the definition.

19. Comments objected to the defining of Type B and Type C medicated feeds in terms of nutrient content, misuse, and potential for producing unsafe residues.

As previously noted, the nutrient content is a part of the definition of an animal feed in section 210(x) of the act. For the purpose of defining Type B medicated feeds, a substantial quantity of nutrients is an amount not less than 50 percent of the weight of the Type A medicated feed article from which it is manufactured. References to misuse and potential for unsafe residues are not a part of the revised definitions. However, the potential for unsafe residues is a factor in determining the maximum permitted drug level in a Type B medicated feed.

20. A comment stated that the regulations should permit the manufacture of a Type B medicated feed from two Type A medicated articles.

The regulations do not bar the manufacture of a Type B medicated feed from two Type A medicated articles provided that an application has been approved for the combination and the combination product was authorized by regulations under section 512(i) of the act.

21. Comments objected to the provision in the definition of a Type C medicated feed article that when fed free-choice in amounts not less than one-half pound per head per day, the article shall not produce unsafe residues in food-producing animals. The comments pointed out that numerous drugs are approved for free-choice feeding on the basis of less than one-half pound per head per day and that the restriction would in effect withdraw prior approvals.

The agency has determined that the definition need not include the one-half pound restriction. The need to set a minimum on the amount of feed to be offered free-choice is a matter to be addressed as a part of the conditions of approval for the Type A medicated article and where such a restriction is appropriate, it will be included in the regulation published under section 512(i) of the act describing the conditions of use of the drug.

22. Seven comments stated that the proposed definition of a Type D medicated feed article should not be limited to the sole ration, but should recognize that these diets are supplemented with drinking water and frequently with oyster shell, grit, salt, and minerals as well as roughage.

Because good nutritional practice often dictates the supplementation of a base ration with free-choice nutrients the definition has been so revised. In addition, the use of drinking water is also recognized in the revised definition. The Type D medicated feed article defined in the 1978 proposal is combined with the Type C medicated feed article in this proposal.

23. One comment was concerned that the regulations would not identify holders of approved Type B medicated feed applications.

Because a Type B medicated feed is not a new animal drug but is an animal feed bearing or containing a new animal drug, its approval is not required to be the subject of a regulation published under section 512(i) of the act. The agency believes that to require publication of approval of all Type B

medicated feeds would place an unnecessary burden on the agency and the regulated industry. Furthermore, because the use of a Type B feed does not require an approved medicated feed application, such identification would serve no useful purpose.

24. Nine comments stated that the proposal should continue to permit exemptions from the requirement of approved applications for the manufacture of medicated feeds covered by § 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals.*

The agency does not agree. Section 558.15 was established to require and obtain the submission of appropriate data with which to evaluate the long-term effects of the use of subtherapeutic antibacterials in animal feed. The section was not intended to provide a basis for exemption from other requirements of the act. At the time the section was established many of the products subject to it were being marketed without the approval of medicated feed applications. Rather than address the status of such products at that time, the agency permitted their continued marketing only on an interim basis while the data required by § 558.15 were being obtained and evaluated. The agency cannot justify the continued manufacture of these medicated feeds without an approved medicated feed application. Therefore, if this proprosal is finalized, 180 days thereafter, under the provisions of § 558.4 as amended, the use of each drug or combination drug in the manufacture of a medicated feed must be the subject of an approved application pursuant to section 512(m) of the act. Alternatively, in the absence of any other regulation upon which a sponsor may rely, the agency would have no choice but to proceed against their use in the manufacture of medicated feed.

25. Numerous comments were received addressing the changes proposed in the various regulations listed in Subpart B—Specific New Animal Drugs for Use in Animal Feeds. The comments were concerned with editorial errors, failure to include certain approved sponsors or approved uses, and proper identification of Type C and Type D medicated feed articles.

Each of these comments has been considered, and appropriate revisions have been made. However, because the regulations involved are subject to ongoing amendments and changes and because this proposal causes a number of the comments to become moot, the individual comments are not discussed.

The revisions proposed in the medicated feed approval system will require significant changes in some of the current procedures and requirements. Currently, all firms manufacturing medicated animal feeds are required to register under section 510 of the act. The amended regulations will require only those firms manufacturing medicated animal feed requiring approved medicated feed applications to register.

A number of new animal drugs approved under section 512(b) of the act will become animal feed and meet the definition of an animal feed in proposed § 558.3(b)(2). This document proposes to delete these approvals from the existing regulations and deem such approvals to be for approved medicated feed applications. This action is to the benefit of the sponsors of these applications because they will no longer be required to list their drugs under Part 207; they may market their medicated feeds to customers not required to hold an approved medicated feed application; and they will no longer be required to submit periodic records and reports under § 510.300 (21 CFR 510.300).

Certain medicated feed articles have heretofore been permitted to be manufactured under a waiver from the requirement of an approved medicated feed application. This document proposes to replace all previously granted waivers with a categorizing of exemptions based upon factors of human safety. Therefore, approved medicated feed applications will be required for some medicated feed articles that were formerly exempt. To provide for the submission and approval of such medicated feed applications where none was previously required, the effective date for implementation of this proposal shall be 180 days following the date of publication of a final order based upon this proposal.

VII. Comments on the Task Force Report

Following the release of the Task Force Report, a number of comments were received by the agency. Based upon comments received, additional meetings and further discussions on the proposed medicated feed program, a number of modifications in the recommendations of the Task Force have been made. Points that were raised by the comments and the agency's responses are as follows:

1. Several comments questioned the authority of the agency to revoke existing exemptions from the requirement of an approved medicated feed application through notice and comment rulemaking procedure, when the exemption has been granted as a part of the conditions of approval of a new animal drug application.

Some exemptions resulted historically from a change in the new animal drug status of the article; others were granted on the basis of uniform criteria set forth in a 1971 Bureau of Veterinary Medicine memorandum for administrative waiver of the ministerial requirements of section 512(m) of the act. In the former case the agency took no affirmative action granting the waiver. In the latter case, where the waiver was granted on the bais of the 1971 memorandum, each approval published in the **Federal Register** publication stated that the memorandum constituted an interim agency policy that is under review. This proposal constitutes notice of termination of the interim policy. The criteria being proposed are in anticipation that the Congress will make explicit what the agency has considered implicit regarding the authority of the agency to waiver the ministerial requirements of section 512(m) of the act.

2. Comments were concerned that the Task Force implementation be placed into effect uniformly to ensure that the new requirements do not create competitive disadvantages in the manufacture and marketing of medicated feeds. Concern was also expressed that any revised labeling be implemented so as to coincide with date of registration of feeds in the various States.

The agency intends to place this program into effect uniformly 180 days following finalization of this proposal. In this manner no competitive advantages would be expected to occur.

3. One comment suggested that the category designation system of I, IIA, IIB, and IIC was confusing and should be replaced with categories I, II, III, and IV.

The agency has revised its initial recommendations to establish three categories of drugs (I, II, and III).

4. A comment requested that the medicated feed application be simplified by deleting the requirement that the supplier of the premix (Type A medicated article) be named in the application. In lieu of this requirement the comment proposed that the applicant include a commitment to purchase such articles only from approved suppliers.

The agency believes that the name of the sponsor of the premix is necessary in an application to ensure that suppliers of Type A medicated articles are in compliance by being registered and by holding approved applications for such articles. Feed manufacturers may identify alternate suppliers for the

Type A medicated articles they purchase.

5. A comments requested that collective names be permitted in the labeling of Type B medicated feed articles.

As was previously stated, the agency agrees with this comment and is providing for the use of collective names in the labeling of Type B medicated feeds.

6. A comment suggested that the definition of a Type B medicated feed article be revised to delete the word "substantially" in reference to the required dilution of a Type A medicated article to produce a Type B medicated feed article. It was pointed out that a number of medicated feed articles that are, infact, intermediate premixes may be produced with less than a substantial dilution.

The agency agrees and has revised the definition as previously discussed to encompass such articles.

7. A comment alleged that the manufacture of Type D medicated feed articles directly from Type A medicated articles is more likely to ensure the proper amount of drug in the finished feed, and hence less likely to result in residues, than producing a Type D feed from Type B or Type C medicated feed articles. The assumption is that intermediate steps in the manufacturing process accord greater opportunity for error in mixture and cross-contamination. It was requested that special consideration be given exempting on-farm mixers from the requirement of approved medicated feed applications.

The agency acknowledges that this may be so for the most modern mills having the most sophisticated equipment, whether on-farm or commercial feed mill. For the most part, however, the industry does not have the capability for precision mixing. Moreover, the magnitude for error is substantially increased when highly concentrated drugs are used. Special exemption for on-farm mixers is not provided for. As previously noted, the previously proposed Type D medicated feed article has been combined with the proposed Type D medicated feed article and constitutes a Type C medicated feed in this proposal. No data were submitted that would establish that the manufacture of these medicated feeds directly from a Type A medicated article would be more likely to ensure the proper amount of drug in the finished feed than when they are producted through the intermediate step of a Type B medicated feed. To manufacture feeds containing high risk drugs, in addition to obtaining an approved medicated feed application, the firm must register and comply with current good manufacturing practices. Without the capacity to comply with CGMP's, a firm should not be using high-risk drugs.

8. Several comments requested that the Task Force reconsider certain criteria for drug use approval to consider that potential risk based upon "intended use" rather than "drug concentration." It was stated that large-scale mixer-feeders using concentrated drug sources are less likely to cause edible products of treated animals to contain illegal drug residues than feeds from commercial manufacturers. An approach was suggested for such operations that would include separate regulations covering good manufacturing practices for mixer-feeders, require that they be certified for exemption from sections 510 and 512(m) of the act, and provide for revocation of certificates for repeat violators.

The agency believes that the concentration of drug permitted to be exempt for mixer-feeders should be controlled as previously discussed in comment number 7. above. Although the concept of certification for exemption from sections 510 and 512(m) of the act has merit, there is no authority under the act for such certifications.

9. A comment requested that the regulations include the maximum levels of Type C medicated feed articles.

The agency has revised the initial proposal to provide that the maximum of a Type B level of the drug will be that specified in the regulations published under section 512(i) of the act. The maximum of the Type C medicated feed will be the highest level of use specified in the regulation published under section 512(i) of the act.

10. Several comments requested that Category IV drugs be permitted a 20X exemption in order that certain customarily used on-farm mixer drugs continue to be available to mixer-producers.

Under the revised criteria, these drugs now in Category III will be available at 50X or below without the requirement of a medicated feed application.

11. Concern was expressed that firms having passed an inspection within the last year or two not be subject to another preinspection and that, under the implementation of the preinspection approval program, firms that fail the inspection be reinspected on an expedited basis and in any case in less than a 12-month period.

Firms that have passed inspection within the past year would not ordinarily be subject to immediate reinspection under the new proposed program. Reinspection of firms that have failed a prior inspection will occur as soon as practicable on the basis of the availability of agency resources.

12. Comments urged the use of State inspection involvement and thorough training to ensure uniform and broad implementation.

The agency agrees with these concerns and is taking a number of steps to ensure uniform implementation. These include the involvement of State agencies through contractual agreements with FDA to participate in the inspectional programs, and participation by State and Federal personnel in a comprehensive medicated feed training program.

VIII. Implementation Procedures

The Task Force recommended a major reordering and restructuring of the medicated feed program to focus on protection of the public from unsafe drug residues in the edible products of treated animals. It proposed that agency resources be directed toward the use of high-risk drugs and drugs in high risk concentrations in feed by:

(1) Requiring an approved medicated feed application under section 512(m) of the act for the manufacture of such a feed, and

(2) Approving such application only after an inspection of the manufacturing facilities of the applicant establishes that the firm is capable of manufacturing feeds containing high risk drugs or drugs in high risk concentration, in that the firm is operating in compliance with current good manufacturing practice (CGMPR). Manufacturers of medicated feeds will be inspected within a 3-year time period.

The directed inspections are intended to permit more efficient use of inspectional resources to determine whether medicated feed firms are in compliance with key CGMPR factors. During this inventory inspectional phase (directed inspection), which has already begun and will continue until this proposal is finalized, the agency will develop an inventory of firms in compliance with CGMPR's.

If the proposal is finalized, firms in compliance may apply for approval of medicated feeds requiring approval under section 512(m) of the act under a new medicated feed application to be developed and issued by the agency. Firms that fail the directed inspection will be denied approval of additional medicated feed applications unless corrective actions have been taken resulting in compliance with the CGMPR's. Additionally, the agency will evaluate each failure to determine whether further administrative and regulatory action should be initiated.

i.e., withdrawal of approval of applications, regulatory letter, seizure, injunction, prosecution. A firm failing inspection may either initiate immediate corrective action or may voluntarily request withdrawl of approval of its medicated feeds application(s) and cease manufacturing medicated feeds which require this approval.

The final regulation under this proposal will, if adopted, exempt from drug registration under section 510 of the act (21 U.S.C. 360) medicated feed manufacturers not requiring approved applications pursuant to section 512(m) of the act (21 U.S.C. 360b(m)). These firms will not be considered subject to the biennial inspectional requirements of the act, but will continue to be subject to all other provisions of the act.

IX. Summary of Amendments

The revisions proposed in the medicated feed approval system will require significant changes in some of the current procedures and requirements. The specific amendments proposed are as follows:

§ 207.10 *Exemptions for domestic establishents.* This section is amended to exempt from registration firms that do not require approved medicated feed applications for the medicated feeds they manufacture. Consistent with the recommedations of the Task Force, only firms manufacturing medicated feed articles that require an approved medicated feed application will be required to register under section 510 of the act. Currently, all firms manufacturing medicated animal feeds must register. This change should substantially reduce the number of firms currently subject to the 2-year inspectional obligation in section 510(h) of the act. It would not, however, preclude inspection by the agency.

§ 207.20 *Who must register and submit a drug list.* This section is amended in paragraph (a) to incorporate the new medicated feed nomenclature.

§ 210.3 *Definitions.* This section is amended to insert the revised definitions of medicated feed types into the regulations and to provide a cross-reference to the regulations regarding current good manufacturing practices.

Part 225—Current Good Manufacturing practice for Medicated Feeds. This part is amended by inserting the revised nomenclature and revised assay requirements. New §§ 225.120 through 225.202 are established for current good manufacturing practice for firms not producing medicted animal feeds requiring approved medicated feed applications.

Part 226—Current Good Manufacturing Practice for Medicated Premixes. This part is amended by inserting the revised nomenclature.

§ 501.110 *Animal feed labeling; collective names for feed ingredients.* This section is amended to provide for the new medicated feed nomenclature and to permit the use of collective names in the labeling of Type B medicated feeds.

§ 510.3 *Definitions and interpretations.* A new paragraph (m) is proposed to include the revised species and classes of food animals.

§ 510.7 *Consignees of new animal drugs for use in the manufacture of animal feed.* This section is revised in paragraph (b)(2) to provide for the conditions for exemption from the requirement of an approved medicated feed application from section 512(m) of the act in accordance with the provisions of § 558.4.

§ 514.1 *Applications.* This section is amended in paragraph (b) to include the revised nomenclature and provide for the submission of representative labeling for Type B medicated feeds.

§ 514.2 *Applications for animal feeds bearing or containing new animal drugs.* This section is completely revised and expanded to include the specific information to be submitted in medicated feed applications for Type B and Type C approvals.

§ 514.112 *Return of applications for animal feeds bearing or containing new animal drugs.* This section was formerly covered by § 558.4. It has been transferred and updated without substantive change.

§ 558.3 *Definitions and general considerations applicable to this part.* This section has been completely revised. Each of the types of medicted feed articles are defined, and the criteria for their exemption from the requirement or an approved medicated feed application are set forth.

§ 558.4 *dMedicated feed applications.* A new section is proposed to set forth the provisions for the approval of medicated feed applications. It cites the requirement in the act that an application is required to include a reference to the regulation on which the approval relies. In order that these requirements be inclusive of all currently marketed medicated articles, this section provides that in addition to the specific regulations in Part 558, Subpart B, §§ 510.515, 558.15, and 558.20 may provide a basis for such reference. The section describes the categories and lists the drugs in each category. The listing includes the maximum level of Type B medicated feeds and the assay limits for each. In some instances specific assay limits could not be found in agency files. If any interested persons find these assay limits inappropriate, they are invited to submit data justifying any requested revisions.

§ 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed on animals.* Paragraph (g) is amended to include the revised nomenclature and to delete a provision that intermediate premixes produced from premixes in compliance with this section need not submit applications for their approval. This section was promulgated in the **Federal Register** of April 20, 1973 (38 FR 9811) requiring that certain data be submitted to justify the continued use of such drugs. Each drug sponsor was required to submit commitments to carry out the necessary studies. The regulation was amended in the **Federal Register** of February 25, 1976 (38 FR 8282) identifying each product and sponsor that complied with the commitment to provide required data. As amended, paragraph (g)(2) of the section exempted from the submission of applications and data the manufacturer of intermediate premixes, provided that the intermediate premixes were produced from premixes in compliance with the section.

Because such articles are redefined in this proposal as Type B medicated feeds, they will be subject to section 512(m) of the act, and approved medicated feed applications will be required for their manufacture. This will ensure equitable and uniform requirements for the manufacture of all Type B medicated feeds. Because the exemption was granted under notice and comment rulemaking procedure, the same procedure is being used for its revocation.

§ 558.20 *Drugs used in medicated feeds before January 1, 1958 which are not otherwise listed; interim listing.* A new section is proposed to include reference to drugs in medicated feeds not covered by specific regulations. The listing of these drugs does not alter their current status under the act, but does provide a basis for their continued use subject to approval of medicated feed applications under procedures described in § 558.4.

Part 558, Subpart B—Specific New Animal Drugs for Use in Animal Feeds. This subpart is republished with the following changes:

1. The revised nomenclature is added.

2. Conditions for waiver from the requirements of section 512(m) of the act are revoked. These conditions are included in § 558.4.

3. Assay limits are revoked. These are also covered by § 558.4.

4. A number of new animal drug sponsors listed pursuant to section 512(i) of the act are deleted. Under the revised

definitions these articles constitute animal feeds because they meet the definition of an animal feed in proposed § 558.3(b)(2). This document proposes to delete these listings from the existing regulations and deem such approvals to be approved medicated feed applications. This action is to the benefit of the sponsors of these applications because they will no longer be required to list their drugs under Part 207 (21 CFR Part 207); they may market their medicated feed articles to customers not required to hold an approved medicated feed application; and they will no longer be required to submit periodic records and reports under § 510.300 of the regulations.

5. Regulations covering drugs approved prior to August 1, 1969 for use in feed which were the subject of regulations published under the Food Additives Amendment of 1958 did not identify the sponsors of such articles. This proposal adds the sponsors of the food additive petitions for those drugs when the regulations were first promulgated under the Food Additives Amendment. Any other persons not so identified will be added to the final regulations if they respond in writing to this proposal identifying their approval by NADA number and approval date.

Currently, all firms manufacturing medicated animal feeds are required to register under section 510 of the act. The amended regulations will require only those firms manufacturing medicated animal feed requiring approved medicated feed applications to register.

Certain medicated feed articles have heretofore been permitted to be manufactured under a waiver from the requirement of an approved medicated feed application. This document proposes to replace all previously granted waivers with a categorizing of exemptions based upon factors of human safety. Therefore, approved medicated feed applications will be required for some medicated feed articles that were formerly exempt. To provide for the submission and approval of such medicated feed applications where none was previously required, the effective date for implementation of this proposal shall be 180 days following the date of publication of a final order based upon this proposal.

In compliance with Executive Order 12044 on Improving Government Regulations, and in accordance with Department (HHS) guidelines, FDA has asessed the economic impact of this rulemaking. Based on this assessment, FDA has determined that a Regulatory Analysis, as described in E.O. 12044, is not required. Following is a summary of the results of the Regulatory Analysis Assessment. A copy of the complete Regulatory Assessment is on file with the Dockets Management Branch, Food and Drug Administration.

X. Summary of Regulatory Analysis Assessment

FDA estimated the direct costs to industry and to the agency of the proposed restructured medicated feeds program for the 3-year transition phase and for subsequent years. In the estimated transitional phase, industry will incur net estimated startup costs of $3.0 million ($1.0 million annually). This includes one-time costs to submit applications for 26 previously exempt drugs. It also includes transitional phase savings because exemptions for drugs in newly-defined risk-by-feed-type categories and the generic labeling provision will reduce the number of "business as usual" applications.

The transitional phase impact on FDA will be $1.0 million ($0.3 million annually). This includes the inspection cost increment over present costs of inspections assuming that FDA will inspect all medicated feed establishments in its present inventory during the 3-year transitional phase, and that the agency will be successful in implementing a directed compliance program that significantly reduces the duration of inspections. It also includes the cost of processing applications for the previously exempt drugs and a saving on handling "business as usual" applications. (It is also possible to estimate the FDA inspection cost impact against the hypothetical baseline of full implementation of the existing statutory biennial inspection requirement. On this basis, FDA would have significant "savings" in the transition phase.)

Estimated Annual Net Costs and Savings[a] of the Proposed Medicated Feeds Program

(In millions of dollars)

Cost component	Transitional phase		Ongoing phase	
	Industry	FDA	Industry	FDA
Submision of applications for previously exempt drugs in feeds	1.53	0.11		
New submissions	(0.54)	(0.04)	(0.54)	(0.04)
Inspections[b]		0.25		(0.19) to 1.28
Net cost or savings	0.99	0.32	(0.54)	(0.23) to 1.24

[a] Savings expressed in parentheses.
[b] The range of impacts reflects low and high estimates of establishments in the FDA official inventory.

After the transition phase, it is estimated that the medicated feeds industry will save $0.5 million annually. In the ongoing period of the restructured program the estimated range of impact on FDA is from savings of $0.2 million annually to costs of $1.2 million annually, depending on the number of establishments that will require biennial inspection.

The regulatory analysis assessment discusses possible industry adaptations to the restructured program.

The agency has determined pursuant to 21 CFR 25.24(b)(12) and (d)(13) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Parts 207, 210, 225, 226, 501, 510, 514, and 558 be amended as follows:

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

1. Part 207 is amended in § 207.10 by revising paragraph (f) to read as follows:

§ 207.10 Exemptions for domestic establishments.

* * * * *

(f) Persons who use drugs to manufacture Type B or Type C medicated animal feed except persons required under the act and its regulations to hold an approved medicated feed application to possess and use a drug or animal feed bearing or containing the drug.

PART 210—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING OF DRUGS: GENERAL

2. Part 210 is amended by revising the title of the part as set out above and in § 210.3 by revising paragraph (b)(13) and (14) to read as follows:

§ 210.3 Definitions.

* * * * *

(b) * * *

(13) The term "medicated feed" means any Type B or Type C medicated feed as defined in § 558.3 of this chapter. The feed contains one or more drugs as defined in section 201(g) of the act. The manufacture of medicated feeds is subject to the requirements of Part 225 of this chapter.

(14) The term "medicated premix" means a Type A medicated article as

defined in § 558.3 of this chapter. The article contains one or more drugs as defined in section 201(g) of the act. The manufacture of medicated premixes is subject to the requirements of Part 226 of this chapter.

* * * * *

PART 225—CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED FEEDS

3. Part 225 is amended:

a. In § 225.1 by revising paragraph (b), to read as follows:

§ 225.1 Current good manufacturing practice.

* * * * *

(b)(1) The provisions of this part set forth the criteria for determining whether the manufacture of a medicated feed is in compliance with current good manufacturing practice. These regulations shall apply to all types of facilities and equipment used in the production of medicated feeds, and they shall also govern those instances in which failure to adhere to the regulations has caused nonmedicated feeds that are manufactured, processed, packed, or held to be adulterated. In such cases, the medicated feed shall be deemed to be adulterated within the meaning of section 501(a)(2)(B) of the act, and the nonmedicated feed shall be deemed to be adulterated within the meaning of section 402(a)(2)(D) of the act.

(2) The regulations in §§ 225.10 through 225.115 apply to facilities manufacturing one or more medicated feeds for which an approved medicated feed application is required. The regulations in §§ 225.120 through 225.202 apply to facilities manufacturing solely medicated feeds for which approved medicated feed applications are not required.

b. In § 225.58 by revising paragraph (b)(1) and (2), to read as follows:

§ 225.58 Laboratory controls.

* * * * *

(b) * * *

(1) For Type C medicated feeds, an assay of the first batch manufactured, followed thereafter by two samples at periodic intervals during the calendar year. If a medicated feed contains a combination of drugs, only one of the drugs need be subject to analysis each time, provided the one tested is different from the one(s) previously tested. Reports of assays shall be kept on the premises for not less than 1 year after the last date of shipment of the assayed medicated feed.

(2) For all Type B medicated feeds, assays of the first three batches manufactured, followed thereafter by assay of representative samples of not less than 5 percent of the annual production of each Type B medicated feed produced. The samples shall be collected and assayed by approved official methods. When any batch does not assay within limitations, each subsequent batch shall be assayed until three consecutive batches are within limitations. Reports of assay shall be kept on the premises for not less than 1 year after the last date of shipment of the assayed medicated feed.

* * * * *

c. By adding new Subpart F consisting of §§ 225.120, 225.130, and 225.135, to read as follows:

Subpart F—Facilities and Equipment

Sec.
225.120 Buildings and grounds.
225.130 Equipment.
225.135 Work and storage areas.

Subpart F—Facilities and Equipment

§ 225.120 Buildings and grounds.

Buildings used for production of medicated feed shall provide adequate space for equipment, processing, and orderly receipt and storage of medicated feed. Areas shall include access for routine maintenance and cleaning of equipment. Buildings and grounds shall be constructed and maintained in a manner to minimize vermin and pest infestation.

§ 225.130 Equipment.

Equipment shall be capable of producing a medicated feed of intended potency, safety and purity, and shall be maintained in a reasonably clean and orderly manner. Scales and liquid metering devices shall be accurate and of suitable size, design, construction, precision, and accuracy for its intended purpose. All equipment shall be designed, constructed, installed, and maintained so as to facilitate inspection and use of cleanout procedure(s).

§ 225.135 Work and storage areas.

Work areas and equipment used for the production or storage of medicated feeds or components thereof shall not be used for, and shall be physically separated from, work areas and equipment used for the manufacture of fertilizers, herbicides, insecticides, fungicides, rodenticides, and other pesticides unless such articles are approved for use in the manufacture of medicated feed.

d. By adding new Subpart G consisting of §§ 225.142, 225.158, and 225.165, to read as follows:

Subpart G—Product Quality Assurance

Sec.
225.142 Components.
225.158 Laboratory assays.
225.165 Equipment clean-out procedures.

Subpart G—Product Quality Assurance

§ 225.142 Components.

Adequate procedures shall be established and maintained for the receipt, labeling, storage, and use of all medicated feed articles intended for use in manufacturing medicated feeds to aid in assuring their identity, strength, and purity. All drug components must be used in accord with the labeled directions for use. Packaged drugs in the storage areas shall be stored in their original closed containers. Bulk drugs shall be identified and stored in a manner such that their identity, strength, quality, and purity will be maintained. An accurate inventory record shall be maintained for each drug component and shall be reconciled with production records each day the drug component is used in the production of medicated feeds. Significant discrepancies must be investigated and appropriate action taken immediately.

§ 225.158 Laboratory assays.

Where the results of laboratory assays of drug components, including assays by State Feed Control Officials, indicate that the medicated feed is not in accord with the permissible limits specified in this chapter, investigation and corrective action shall be implemented immediately and such records shall be maintained on the premises for a period of one year.

§ 225.165 Equipment clean-out procedures.

Adequate clean-out procedures shall be established and used for all equipment used in the production and distribution of medicated feeds to avoid unsafe contamination of medicated and nonmedicated feeds.

e. By adding new Subpart H consisting of § 225.180, to read as follows:

Subpart H—Labeling

Sec.
225.180 Labeling.

Subpart H—Labeling

§ 225.180 Labeling.

Medicated feed that is mixed for further distribution shall be accompanied by appropriate labeling. Such labeling shall identify the medicated feed and provide the user with adequate directions for use,

including appropriate withdrawal and other warning or caution statements.

f. By adding new Subpart I consisting of § 225.202, to read as follows:

Subpart I—Records

Sec.
225.202 Formula, production, and distribution records.

Subpart I—Records

§ 225.202 Formula, production, and distribution records.

Where applicable, records after the last date of shipment of the medicated feed identifying the formulation, date of mixing, and distribution of the medicated feed shall be maintained for one year. Such records shall be adequate to facilitate the recall of specific batches of medicated feed that have been distributed and to reconcile drug component usage against the inventory.

PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR TYPE A MEDICATED ARTICLES

4. Part 226 is amended by changing the term "medicated premixes" to "Type A medicated article(s)" wherever it appears.

PART 501—ANIMAL FOOD LABELING

5. Part 501 is amended in § 501.110 by revising paragraph (a)(1) to read as follows:

§ 501.110 Animal feed labeling; collective names for feed ingredients.

(a) * * *

(1) The animal feed is a Type B or Type C medicated feed as defined in § 558.3 of this chapter and is intended solely for animal use.

* * * * *

PART 510—NEW ANIMAL DRUGS

6. Part 510 is amended:

a. In § 510.3 by adding new paragraph (m), to read as follows:

§ 510.3 Definitions and interpretations

* * * * *

(m) The following definitions of production classes of animals are to be considered as a guideline for use in animal drug labeling:

(1) *In poultry.* (i) "Broiler chickens" and "fryer chickens" are synonymous and denote chickens marketed for meat purposes only, usually at 6 to 9 weeks of age.

(ii) "Roaster chickens" are chickens marketed for meat purposes only, usually at 9 to 14 weeks of age.

(iii) "Replacement chickens" are chickens raised for the purpose of replacing breeding and laying chickens.

(iv) "Laying chickens" are chickens maintained for the purpose of producing eggs for food only.

(v) "Breeding chickens" are chickens raised for the purpose of producing eggs for hatching only.

(vi) "Fryer-roaster turkeys" are turkeys marketed for meat purposes only, usually at 12 to 17 weeks of age.

(vii) "Young hen or tom turkeys" are turkeys marketed for meat purposes only, usually at 17 to 26 weeks of age.

(iii) "Replacement turkeys" are turkeys raised for the purpose of replacing breeding turkeys only.

(ix) "Breeding turkeys" are turkeys maintained for the purpose of producing eggs for hatching only.

(2) *In swine.* (i) "Breeding swine" are swine used for reproduction.

(ii) "Prestarting swine" are swine that weigh up to 20 pounds.

(iii) "Starting swine" are swine that weigh from 21 to 40 pounds.

(iv) "Growing swine" are swine that weigh from 41 to 100 pounds.

(v) "Developing swine" are swine that weigh 75 to 126 pounds.

(vi) "Finishing swine" are swine that weigh between 100 to 125 pounds to market weight.

(3) *In ruminants*—(i) Cattle.

(*a*) "Calves" are cattle from birth to 8 months of age.

(*1*) "Vealers" are cattle intended for slaughter which have subsisted largely on milk or milk replacers and are usually less than 4 months of age and generally have a live weight less than 400 pounds.

(*2*) "Slaughter calves" are those from 3 to 8 months of age which are inteded for slaughter or for stocker or feeder cattle.

(*3*) "Replacement calves" are those intended for breeding purposes only.

(*b*) "Stocker and feeder cattle" are those intended for feedlots or slaughter only.

(*c*) "Feedlot cattle" are those maintained in feedlots and intended for slaughter.

(*d*) "Breeding cattle" are those intended for reproduction purposes.

(*1*) "Replacement heifers" are females prior to first parturition.

(*2*) "Replacement bulls" are males, 8 to 14 months of age.

(*3*) "Breeding cows" are females beyond first parturition.

(*4*) "Breeding bulls" are males, 14 months of age and older.

(*e*) "Lactating dairy cows" are cows of dairy or dual purpose breeds that produce milk intended for human consumption.

(*f*) "Non-lactating cows or dry dairy cows" are cows of dairy or dual purpose breeds that temporarily are not producing milk.

(ii) Sheep:

(*a*) "Lambs" are sheep from birth to 14 months of age.

(*1*) "Replacement lambs" are those intended for breeding purposes only.

(*2*) "Feedlot lambs" are those maintained in feedlots and intended for slaughter.

(*b*) "Breeding sheep" are those of breeding age used primarily for reproduction purposes.

b. In § 510.7 paragraph (b)(2) is revised to read as follows:

§ 510.7 Consignees of new animal drugs for use in the manufacture of animal feed.

* * * * *

(b) * * *

(2) When the use of such drug in the manufacture of an animal feed has been exempted from the requirements of section 512(m) of the act in accordance with the provisions of § 558.4 of this chapter.

PART 514—NEW ANIMAL DRUG APPLICATIONS

7. Part 514 is amended:

a. In § 514.1 by revising paragraphs (b)(3) (v)(*b*) and (vii)(*a*) and (b)(5)(x), to read as follows:

§ 514.1 Applications.

* * * * *

(b) * * *

(3) * * *

(v) * * *

(*b*) Representative labeling proposed to be used for Type B and Type C medicated feeds containing the new animal drug.

* * * * *

(vii) * * *

(*a*) A description of practicable methods of analysis of adequate sensitivity to determine the amount of the new animal drug in its final dosage form including Type B and Type C medicated feeds and in drinking water should also be included. Methods should be included for any Type A medicated article. Where two or more active ingredients are included, methods should be quantitative and specific for each active ingredient.

* * * * *

(5) * * *

(x) A complete description of, and data derived from, studies of the stability of the new animal drug, including information showing the suitability of the analytical methods used. A description of any additional stability studies underway or planned. Stability data for the finished dosage

form of the new animal drug in the container in which it is to be marketed, including any proposed multiple dose container, and, if it is to be put into solution at the time of dispensing, for the solution prepared as directed. If the new animal drug is intended for use in the manufacture of Type B or Type C medicated feed as defined in § 558.3 of this chapter, stability data shall be derived from studies in which representative formulations of the medicated feed articles are used. If the data indicate that an expiration date is needed to preserve the identity, strength, quality, and purity of the new animal drug, the applicant shall propose such expiration date. If no expiration date is proposed, the applicant shall justify its absence.

* * * * *

b. By revising § 514.2, to read as follows:

§ 514.2 Applications for animal feeds bearing or containing new animal drugs.

(a) Applications to be filed under section 512(m) of the act shall be completed, signed, and submitted in triplicate in the form described in paragraphs (b) and (c) of this section.

(b) Each application for a Type B or Type C medicated feed shall include the following information:

(1) The name and address of the applicant.

(2) The registration number assigned pursuant to section 510 of the act and last date of registration of each mill.

(3) Whether the submission is an original or supplemental application.

(4) Identification of the drug(s) or Type A medicated article used by name, potency, and manufacturer.

(5) The species of animal(s) for which the feed is intended.

(6) The form of feed to be produced, i.e., mash, meal, crumbles, pellets, liquid, or other specified form.

(7) Whether the feed is to shipped in bag or bulk.

(8) Whether the feed is a Type B or Type C medicated feed.

(9) Whether the feed is for sale or for own use (not for sale).

(10) The generic labeling of the medicated feed and level of the drug(s) in the finished feed, and the amount of Type A or Type B medicated feed per ton contained therein.

(11) Identification of the regulation(s) in Subchapter E of this chapter on which approval relies.

(12) Sample generic labeling representative of each intended use as stated in the claim. Each generic label shall include the claim, drug level, mixing directions, feeding directions, caution and/or warning statements and any other special directions required by the published regulation. This shall consist of bag labels, invoice copy, bulk labels, and placards when applicable.

(13) A commitment to establish and maintain the required program of sampling and assaying as follows:

(i) For Type B medicated feeds assays of the first three batches manufactured, followed thereafter by assay of representative samples of not less than 5 percent of the annual production of each Type B medicated feed produced. The samples shall be collected and assayed by approved official methods. When any batch does not assay within limitations, each subsequent batch shall be assayed until three subsequent batches are within limitations. Reports of assays shall be kept on the premises for not less than 1 year after the last date of shipment of the assayed medicated feed.

(ii) For Type C medicated feeds, an assay of the first batch manufactured, followed thereafter by two samples at periodic intervals during the calendar year. If a medicated feed contains a combination of drugs, only one of the drugs need be subject to analysis each time, provided the one tested is different from the one(s) previously tested. Reports of assays shall be kept on the premises for not less than 1 year after the last date of shipment of the assayed medicated feed.

(14) A statement of the minimum and maximum assay permitted from the labeled amount of the drug.

(15) Identification of the agent authorized to act on behalf of applicant.

(16) The applicant's name, responsible individual's title and original signature, and date.

(c) Upon approval, one copy of the application will be signed by an authorized employee of the Food and Drug Administration designated by the Commissioner, and it will be returned to the applicant.

c. By adding new § 514.112, to read as follows:

§ 514.112 Return of applications for animal feeds bearing or containing new animal drugs.

Applications submitted pursuant to § 514.2 will be returned to the applicant if such applications are incomplete or inaccurate or do not contain an identification of the applicable regulation(s). These regulations, published pursuant to section 512(i) of the act, are found in Part 558 of this chapter, and are the basis on which approval of the application relies, as required by § 514.2(b)(11).

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

8. Part 558 is amended:

a. By revising § 558.3, to read as follows:

§ 558.3 Definitions and general considerations applicable to this part.

(a) Regulations in this part provide for approved uses of drugs and combinations of drugs in animal feeds. Approved combinations of such drugs are specifically identified or incorporated by cross reference. Unless specifically provided for by the regulations, a combination of two or more drugs is not approved.

(b) The following definitions apply to terms used in this part:

(1) A "Type A medicated article" is intended solely for use in the manufacture of another Type A medicated article or a Type B or Type C medicated feed. It consists of an animal drug(s), with or without carrier (e.g., calcium carbonate, rice hull, corn gluten) with or without other inactive ingredients. The manufacture of a Type A medicated article requires an application approved under § 514.105(a) of this chapter.

(2) A "Type B medicated feed" is intended solely for the manufacture of other medicated feeds (Type B or Type C). It contains a substantial quantity of nutrients including vitamins and/or minerals and/or other nutritional ingredients in an amount not less than 50 percent of the weight of the Type A medicated article. It is manufactured by diluting a Type A medicated article or another Type B medicated feed. The maximum concentration of a Type B medicated feet is 200 times the highest continuous use level for Category I drugs, 100 times the highest continuous use level for Category II drugs, and 50 times the highest continuous use level for Category III drugs. The term "highest continuous use level" means the highest dosage at which the drug is approved for continuous use (14 days or more), or, if the drug is not approved for continuous use, it means the highest level used for disease prevention or control. If the drug is approved for multiple species at different use levels, the highest level would govern under this definition. The manufacture of a Type B medicated animal feed from a Type A medciated article requires an application aproved under § 514.105(b) of this chapter.

(3) A "Type C medicated feed" is intended as the complete feed for the animal or may be fed top dressed on or offered free-choice in conjunction with other animal feed. It contains a substantial quantity of nutrients

including vitamins and/or minerals and/or other nutritional ingredients in an amount not less than 50 percent of the weight of the Type A medicated article. It is manufactured by diluting a Type A medicated article or another Type B medicated feed. A Type C medicated feed may be further diluted to produce another Type C medicated feed. The manufacture of a Type C medicated feed from a Type A medicated article requires an application approved under § 514.105(b) of this chapter.

(4) New animal drugs for use in animal feed are placed in three categories as follows:

(i) *Category I*—These drugs require no withdrawal period at the lowest use level in each species for which they are approved.

(ii) *Category II*—These drugs require a withdrawal period at the lowest use level for at least one species for which they are approved.

(iii) *Category III*—These drugs are regulated on a "no-residue" basis or with a "zero" tolerance because of a carcinogenic concern.

b. By revising § 558.4, to read as follows:

§ 558.4 Medicated feed applications.

(a) Section 512(a)(1) of the act provides that a new animal drug intended for use in the manufacture of an animal feed shall be deemed to be unsafe for such purposes, unless the consignee for the drug holds an approved medicated feed application. Therefore, the manufacture of all medicated feeds, including those provided for in §§ 510.515, 558.15, and 558.20 directly from Type A medicated articles, are required to be the subject of approved medicated feed applications unless exempted under § 558.4(b).

(b) Exemptions from the requirement of an approved medicated feed application for the manufacture of Type B and Type C medicated feeds are based upon the public health significance of the drug. Animal drugs for use in animal feeds are identified in Categories I through III with the categories in order of increased public health significance. An approved medicated feed application is not required for the manufacture of any medicated animal feed produced from a Type B or Type C medicated feed conforming to the conditions for use prescribed by regulation.

(c) This paragraph identifies each drug by category, the maximum level of drug in Type B medicated feeds, and the assay limits for the drug in Type B and Type C medicated feeds, as follows:

BILLING CODE 4110-03-M

Category I.

Drug	Type B Maximum (200 X)	Assay Limits (% of Labeled Amount) Type B	Type C
Aklomide	22.75 g/lb (5.0%)	90-110	85-120
Ammonium chloride	8.0 - 16.5 oz/lb	90-110	85-120
Amprolium with or without Ethopabate	22.7 g/lb (5.0%)	94-114	85-115
Bacitracin (from bacitracin methylene disalicylate or zinc bacitracin)	10.0 g/lb	85-115	70-130
Bambermycins	800 g/ton	90-110	70-130
Buquinolate	9.8 g/lb (2.2%)	90-110	85-120
Chlortetracycline	10 g/lb	95-125	70-130
Coumaphos	90.8 g/lb (20%)	95-115	80-120
Decoquinate	2.72 g/lb (0.6%)	90-105	80-120
Dichlorvos	5.0 g/lb (11.0%)	100-115	80-130
Erythromycin (thiocyanate salt)	6.47 g/lb	85-115	<20 g/ton 50-150 >20 g/ton 75-125
Ethylenediamine dihydriodide	337.5 g/ton (0.037%)	90-110	85-115
Iodinated casein	20 g/lb (4.4%)	85-115	75-125
Nequinate	1.83 g/lb (0.4%)	95-112	80-120
Nystatin	5.0 g/lb	85-115	75-125
Oleandomycin	1.125 g/lb	85-120	70-130
Oxytetracycline	10.0 g/lb	90-120	65-135
Penicillin	10.0 g/lb	80-120	65-135
Penicillin, Streptomycin	1.5 g/lb 7.5 g/lb	80-120 85-115	65-135 70-130
Poloxalene	12.0%	90-110	85-115
Tylosin	10.0 g/lb	80-120	75-125
Virginiamycin	5.0 g/lb	85-115	70-130
Zoalene	11.4 g/lb (2.5%)	98-104	85-115

Category II.

Drug	Type B Maximum (100 %)	Assay Limits (% of Labeled Amount) Type B	Type C
Arsanilate Sodium	4.5 g/lb (1.0%)	98-108	75-125
Arsanilic acid	4.5 g/lb (1.0%)	98-108	75-125
Butynorate	17.0 g/lb (3.75%)	90-110	85-115
Butynorate, Sulfanitran, Dinsed, Roxarsone	9.05 g/lb (2.0%) 13.6 g/lb (3.0%) 9.05 g/lb (2.0%) 2.27 g/lb (0.5%)	90-110 85-115 90-110 95-103	85-115 75-125 85-115 85-120
Butynorate, Piperazine, Phenothiazine	63.45 g/lb (14.0%) 49.85 g/lb (11.0%) 272.9 g/lb (58.0%)	90-110 90-110 90-110	85-115 85-115 85-115
Carbarsone	17 g/lb (3.75%)	93-102	85-115
Clopidol	5.7 g/lb (1.25%)	94-106	80-120
Famphur	5.5 g/lb	100-110	90-115
Hygromycin B	1200 g/ton	90-110	75-125
Lasalocid	5.65 g/ton (1.25%)	100-120	75-125
Levamisole	36 g/lb	85-120	85-125
Lincomycin	2.0 g/lb	90-115	80-130
Monensin	5.5 g/lb	90-110	75-125
Neomycin	7.0 g/lb	80-120	70-125
Neomycin, Oxytetracycline	7.0 g/lb 10.0 g/lb	80-120 80-120	70-125 65-135
Nicarbazine	5.675 g/lb (1.25%)	98-106	80-120
Nitarsone	8.5 g/lb (1.875%)	90-110	85-115
Novobiocin	17.5 g/lb	85-115	80-120
Phenothiazine	66.5 g/lb	90-110	85-115
Piperazine	165 g/lb (40.25%)	90-110	85-115
Pyrantel tartrate	4.8 g/lb	90-110	85-115
Robenidine	1.5 g/lb (0.33%)	95-115	80-120
Ronnel	6.0%	85-115	80-120
Roxarsone	2.275 g/lb (0.5%)	95-103	85-120
Roxarsone, Aklomide	2.275 g/lb (0.5%) 11.35 g/lb (2.5%)	95-103 90-110	85-120 85-120

Category II.

Drug	Type B Maximum (100 X)	Assay Limits (% of Labeled Amount) Type B	Type C
Roxarsone, Clopidol, Bacitracin methylene disalicylate	2.275 g/lb (0.5%) 11.35 g/lb (2.5%) 5 g/lb	95-103 94-106 85-115	85-120 80-120 70-130
Roxarsone, Monensin	2.275 g/lb (0.5%) 5.5 g/lb	95-103 90-110	85-120 75-125
Sulfadimethoxine with Ormetoprim	5.65 g/lb (1.25%)	95-115	75-125
Sulfaethoxypyridazine	11.0%	95-105	85-115
Sulfamerazine	4.0%	85-115	80-120
Sulfamethazine	5.0 g/lb (1.25%)	85-115	80-120
Sulfamethazine, Chlortetracycline, Penicillin	5.0 g/lb (1.25%) 5.0 g/lb 2.5 g/lb	85-115 95-125 80-120	80-120 70-130 65-135
Sulfamethazine, Chlortetracycline	5 g/lb (1.25%) 5.0 g/lb	85-115 95-125	80-120 70-130
Sulfamethazine, Tylosin	5 g/lb (1.25%) 5 g/lb	85-115 80-120	80-120 75-125
Sulfanitran, Aklomide	13.6 g/lb (3.0%) 11.29 g/lb (2.5%)	85-115 90-110	75-125 85-120
Sulfanitran, Aklomide, Roxarsone	13.6 g/lb (3.0%) 11.2 g/lb (2.5%) 2.715 g/lb (0.625%)	85-115 90-110 95-103	75-125 85-125 70-130
Sulfanitran, Aklomide, Roxarsone	13.6 g/lb (3.0%) 11.2 g/lb (2.5%) 2.27 g/lb (0.5%)	85-115 90-110 95-103	75-125 85-120 80-120
Sulfaquinoxaline	11.2 g/lb (2.5%)	85-115	80-120
Sulfathiazole, Chlortetracycline, Penicillin	5 g/lb (1.25%) 5 g/lb 2.5 g/lb	85-115 85-125 80-120	80-120 70-130 65-135
Thiabendazole	45.4 g/lb (10.0%)	94-106	85-115

BILLING CODE 4110-03-C

Category III.

Drug	Type B Maximum (50 X)	Assay Limits (% of Labeled Amount) Type B	Type C
Carbadox	1.25 g/lb (0.0875%)	90-110	75-125
Chlormadinone acetate	0.011%	85-115	75-125
Dimetridazole	4.4 g/lb (1.0%)	96-103	85-120
Furazolidone	5 g/lb (1.1%)	95-105	85-115
Ipronidazole	1.414 g/ton (0.313%)	98-115	75-125
Melengestrol acetate	0.011%	90-110	70-120
Nitrofurazone	5.0 g/lb (1.0%)	90-110	80-120
Nitromide, Sulfanitran	5.67 g/lb (1.25%) 6.8 g/lb (0.625%)	90-110 85-115	85-115 75-125
Nitromide, Sulfanitran, Roxarsone	5.67 g/lb (1.25%) 6.8 g/lb (0.625%) 1.135 g/lb (0.25%)	90-110 85-115 95-103	85-115 75-125 85-120

(d) When drugs from more than one category are in combination, the category defining the most restricted use will apply to the combination drug product.

c. In § 558.15 by revising the introductory text of paragraph (g) and paragraph (g)(2), to read as follows:

§ 558.15 Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals.

* * * * *

(g) The submission of applications and data required by paragraphs (a) and (b) of this section is not required for the continued manufacture of any Type A medicated article which is produced solely from another Type A medicated article that is in compliance with the requirements of this section.

* * * * *

(2) The following is a list of drug combinations permitted when prepared from Type A medicated articles listed in paragraph (g)(1) of this section. Drug combinations listed in Subpart B of this part name their sponsors and are incorporated herein by reference because they are safe and effective by contemporary standards, or such sponsors have been notified of any additional safety or efficacy data required on an individual basis:

* * * * *

d. By adding new § 558.20, to read as follows:

§ 558.20 Drugs used in medicated feeds in use before January 1, 1958 which are not otherwise listed; interim listing.

Applications for animal feeds bearing or containing new animal drugs must contain a reference to a section in the new animal drug regulations where the drug and the intended use is listed. For the purposes of such applications the following list of drugs was compiled. The list identifies drugs which must be the subject of approved medicated feed applications and which are not listed for the indicated uses in other new animal drug regulations. The drugs are not listed elsewhere since they were in use prior to the Food Additives Amendment to the Federal Food, Drug, and Cosmetic Act of January 1, 1958, which amendment required the listing of such drugs in appropriate regulations.

BILLING CODE 4110-03-M

Drug Ingredient	Species	Use Levels	Indications for Use	Limitations
Arsanilate sodium	Swine	0.005-0.01%	Increase rate of gain and improve feed efficiency in growing swine.	Withdraw 5 days before slaughter. As sole source of organic arsenic.
Arsanilate sodium	do	0.01%	Control of swine dysentery (hemorrhagic enteritis, bloody dysentery).	Withdraw 5 days before slaughter. Feed continuously as sole source of organic arsenic.
Arsanilate sodium	do	0.025-0.04%	Treatment of swine dysentery (hemorrhagic enteritis, bloody dysentery).	Withdraw 5 days before slaughter. Feed for 5-6 days as sole source of organic arsenic.
Arsanilic acid	Swine	0.005-0.01%	Increase rate of gain and improve feed efficiency in growing swine.	Withdraw 5 days before slaughter. As sole source of organic arsenic.
Arsanilic acid	do	0.01%	Control of swine dysentery (hemorrhagic enteritis, bloody dysentery).	Withdraw 5 days before slaughter. Feed continuously as sole source of organic arsenic.
Arsanilic acid	do	0.025-0.04%	Treatment of swine dysentery (hemorrhagic enteritis, bloody dysentery).	Withdraw 5 days before slaughter. Feed for 5-6 days as sole source of organic arsenic.
Butynorate (dibutyltin dilaurate)	Turkeys	0.0375%	As an aid in the prevention of coccidiosis (caused by E. meleagridis, E. meleagrimitis, E. gallopavonis) and hexamitiasis.	Withdraw 7 days before slaughter.

Drug Ingredient	Species	Use Levels	Indications for Use	Limitations
Butynorate plus sulfanitran, dinsed and roxarsone	do	0.02% 0.03% 0.02% 0.0025- 0.005%	Aid in stimulating growth and improving feed efficiency; preventing coccidiosis (E. meleagridis, E. meleagrimitis, E. gallopavonis), large roundworms, tapeworms and hexamitiasis.	do
Ethylenediamine dihydriodide	Chickens and Turkeys	1/4 lb/ton	As aid in the removal of mucus from upper respiratory tract following treatment for chronic respiratory disease (air-sac	Treat birds with caution until tolerance is determined, because of variation in susceptibility to iodides. Treat 5-7 days.
Ethylenediamine dihydriodide	Swine	250 to 500 mg daily.	By loosening mucus and congestion, aid in control of respiratory difficulties. Aids in loosening mucus in upper respiratory tract.	Treat animals with caution until tolerance is determined because of variation in susceptibility to iodides. Treat for 7 days.
Ethylenediamine dihydriodide	Sheep	Self feed at rate to provide 12 mg per head per day.	As an aid in prevention of soft tissue lumpy jaw in sheep.	

Drug Ingredient	Species	Use Levels	Indications for Use	Limitations
Ethylenediamine dihydriodide	Cattle	400 to 500 mg per head daily.	Aids in the treatment of foot rot caused by Spnerophorus necrophorus; aids in treatment of soft tissue lumpy jaw caused by Actinobacillus lignierisi.	Treat animals with caution until tolerance is determined, because of variation in susceptibility to iodides. Not to be administered to dairy cattle in production. Feed for 2-3 weeks.
Ethylenediamine dihydriodide	Cattle	50 mg per head daily in feed continuously.	Aids in the prevention of foot rot and soft tissue lumpy jaw.	
Neomycin sulfate	Chickens, Turkeys and Ducks	70-140 g/ton of complete feed as neomycin base.	For treatment of bacterial enteritis (nonspecific enteritis, salmonellosis, bluecomb, mud fever).	
Neomycin sulfate	Mink	140 g/ton of complete feed as neomycin base.	For treatment of bacterial enteritis and diarrhea.	
Neomycin sulfate	Swine, Calves, Cattle, Horses, Sheep, Goats	70-140 g/ton of complete feed as neomycin base.	For treatment of bacterial enteritis (scours, diarrhea, bloody dysentery, vibrionic dysentery, winter dysentery, white scours, colibacillosis, salmonellosis; diarrhea caused by E. coli, vibrio and salmonella organisms); enterotoxemia in lambs.	

Drug Ingredient	Species	Use Levels	Indications for Use	Limitations
Nitarsone (4-nitrophenyl-arsonic acid)	Chickens and Turkeys	0.01875%	As an aid in the prevention of blackhead.	Withdraw 5 days before slaughter. As sole source of organic arsenic.
Phenothiazine	Chickens	0.5 g per bird.	Removal of cecal worms (Heterakis gallinarum).	For 1 day only.
Phenothiazine	Turkeys	1 g per bird.	do	do.
Phenothiazine	Swine	5 g up to 25 lb; 8 g, 26-50 lb; 10 g, 51-100 lb; 20 g, 101-200 lb; 30 g, 201 lb and up.	Removes nodular worms (Oesophagostomum).	
Phenothiazine	Sheep and Goats	25-60 lb body weight, 12.5 g; over 60 lb body weight, 25 g.	Removal of stomach worms (Haemonchus, Ostertagia, and Trichostrongylus spp.); large-mouth bowel worms (Chabertia spp.), and hookworms (Bunostomum spp.).	Milk from dairy animals which have been treated with phenothiazine should not be used for food for four days following treatment.
Phenothiazine	do	1 g/head/day	Control of stomach worms (Haemonchus, Ostertagia, and Trichostrongylus spp.); large-mouth bowel worms and hookworms (Chabertia spp.), (Bunostomum spp.).	Do not feed to lactating dairy animals. Feed continuously.
Phenothiazine	Cattle	10 g/100 lb body weight, up to a maximum of 70 g.	Removes common stomach worms (Haemonchus), lesser stomach worms (Ostertagia), hair worms, bankrupt worms (Trichostrongylus spp.),	Milk from dairy animals which have been treated with phenothiazine should not be used for food for four days following

Drug Ingredient	Species	Use Levels	Indications for Use	Limitations
			nodular worm (Oesophagostomum spp.), and large-mouth bowel worms (Chabertia spp.).	treatment.
Phenothiazine	do	20 g/100 lb body weight up to a maximum of 80 g. Micronized (2-3 micron size particles)--(10 g/100 lb body weight, up to a maximum of 60 g.	Hookworms (Bunostomum spp.)	For 1 day only. Milk from dairy animals which have been treated with phenothiazine should not be used for food for four days following treatment.
Phenothiazine	Cattle	0.25 g/100 lb body weight/day. For adult average dose is 2 g.	Controls common stomach worms (Haemonchus), lesser stomach worms (Ostertagia), hair worms, bankrupt worms (Trichostrongylus spp.), nodular worm (Oesophagostomum spp.) and large-mouth bowel worms (Chabertia spp.).	Do not feed to lactating dairy animals.
Phenothiazine	Horses and Mules	2.5 g/100 lb body weight up to a maximum of 30 g.	Removal of strongyles (Strongylus spp.).	For 1 day only.

Drug Ingredient	Species	Use Levels	Indications for Use	Limitations
Phenothiazine	do	2 g per head per day.	do	For continuous use; feed 2 g per head per day for 21 consecutive days then none for 9 days. Repeat the feeding schedule as long as worm control is desired.
Piperazine	Chickens (under 6 weeks of age)	0.2-0.4%	Control of infestation of large roundworms (Ascaris).	As sole source of feed. For 1 day treatment. Directions for use should assure that the amount of feed consumd will furnish in 1 day 50 mg of piperazine per bird.
Piperazine	Chickens (over 6 weeks of age)	0.2-0.4%	Control of infestation of large roundworms (Ascaris).	As sole source of feed. For 1 day treatment. Directions for use should assure that the amount of feed consumed will furnish in 1 day 100 mg of piperazine per bird.
Piperazine	Turkeys (under 12 weeks of age)	0.2-0.4%	Control of infestation of large roundworms (Ascaris).	As sole source of feed. For 1 day treatment. Directions for use should assure that the amount of feed consumed will furnish in 1 day 100 mg of piperazine per bird.

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Drug Ingredient	Species	Use Levels	Indications for Use	Limitations
Piperazine	Turkeys (over 12 weeks of age)	0.2-0.4%	do	As sole source of feed. For 1 day treatment. Directions for use should assure that the amount of feed consumed will furnish in 1 day 100-400 mg of piperazine per bird according to size.

e. By republishing Subpart B of Part 558 to reflect the proposed definitions and other considerations, as follows:

Subpart B—Specific New Animal Drugs for Use in Animal Feeds

Sec.
558.35 Aklomide.
558.45 Ammonium chloride, feed grade.
558.55 Amprolium.
558.58 Amprolium and ethopabate.
558.60 Arsanilate sodium.
558.62 Arsanilic acid.
558.76 Bacitracin methylene disalicylate.
558.78 Bacitracin zinc.
558.95 Bambermycins.
558.105 Buquinolate.
558.115 Carbadox.
558.120 Carbarsone (not U.S.P.).
558.126 Chlormadinone acetate.
558.128 Chlortetracycline.
558.145 Chlortetracycline, penicillin procaine, and sulfamethazine.
558.155 Chlortetracycline, penicillin procaine, and sulfathiazole.
558.175 Clopidol.
558.185 Coumaphos.
558.195 Decoquinate.
558.205 Dichlorvos.
558.240 Dimetridazole.
558.248 Erythromycin thiocyanate.
558.254 Famphur.
558.262 Furazolidone.
558.266 Griseofulvin.
558.274 Hygromycin B.
558.295 Iodinated casein.
558.305 Iponidazole.
558.311 Lasalocid sodium.
558.315 Levamisole hydrochloride (equivalent).
558.325 Lincomycin.
558.342 Melengestrol acetate.
558.355 Monensin.
558.365 Nequinate.
558.366 Nicarbazin.
558.367 Niclosamide.
558.370 Nitrofurazone.
558.376 Nitromide and sulfanitran.
558.415 Novobiocin.
558.430 Nystatin.
558.435 Oleandomycin.
558.450 Oxytetracycline.
558.460 Penicillin.
558.464 Poloxalene.
558.465 Poloxalene liquid Type C medicated feed article.
558.485 Pyrantel tartrate.
558.515 Robenidine hydrochloride.
558.525 Ronnel.
558.526 Ronnel liquid Type C medicated feed.
558.530 Roxarsone.
558.565 Styrylpyridinum chloride, diethylcarbamazine (as base).
558.575 Sulfadimethoxine, or metoprim.
558.579 Sulfaethoxypyridazine.
558.582 Sulfamerazine.
558.615 Thiabendazole.
558.625 Tylosin.
558.630 Tylosin and sulfamethazine.
558.635 Virginiamycin.
558.680 Zoalene.

§ 558.35 Aklomide.

(a) [Reserved]
(b) [Reserved]
(c) *Approvals.* Type A medicated article to 017210 in § 510.600(c) of this chapter, as follows:
(1) 50 percent aklomide.
(2) 25 percent aklomide and 20 percent sulfanitran.
(3) 25 percent aklomide, 20 percent sulfanitran, and 5 percent roxarsone.
(4) 50 percent aklomide and 10 percent roxarsone.
(d) [Reserved]
(e) [Reserved]
(f) *Related tolerances.* See § 556.30 of this chapter.
(g) *Conditions of use.* It is used for chickens as follows:
(1) *Amount per ton.* Aklomide, 227 grams (0.025 percent).
(i) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. tenella* and *E. necatrix.*
(ii) *Limitations.* Not to be fed to birds laying eggs for human consumption.
(2) *Amount per ton.* Aklomide, 227 grams (0.025 percent) with sulfanitran, 181.6 grams (0.02 percent).
(i) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix,* and *E. acervulina.*
(ii) *Limitations.* Not to be fed to laying chickens; withdraw 5 days before slaughter.
(3) *Amount per ton.* Aklomide, 227 grams (0.025 percent) with sulfanitran, 181.6 grams (0.02 percent) and roxarsone, 22.7–45.4 grams (0.0025–0.005 percent).
(i) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix,* and *E. acervulina;*

growth promotion and feed efficiency; improving pigmentation.

(ii) *Limitations.* Not to be fed to laying chickens; withdraw 5 days before slaughter; as sole source of organic arsenic; chickens should have access to drinking water at all times.

(4) *Amount per ton.* Aklomide, 227 grams (0.025 percent) with roxarsone, 22.7–45.4 grams (0.0025–0.005 percent).

(i) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. tenella,* and *E. necatrix;* growth promotion and feed efficiency; improving pigmentation.

(ii) *Limitations.* Not to be fed to birds laying eggs for human consumption; withdraw 5 days before slaughter; as sole source of organic arsenic; chickens should have access to drinking water at all times.

§ 558.45 Ammonium chloride, feed grade.

(a) [Reserved]

(b) [Reserved]

(c) *Approvals.* Type A medicated article: 99 percent to 011462 and 000018 in § 510.600(c) of this chapter.

(d) [Reserved]

(e) [Reserved]

(f) *Conditions of use.* It is used for cattle and sheep as follows:

(1) *Amount per day.* 21.3–35.5 grams (0.75–1.25 oz.) per head.

(i) *Indications for use.* Reduction of the incidence of urinary calculi.

(ii) *Limitations.* For range cattle.

(2) *Amount per day.* 28.4–42.5 grams (1.0–1.5 oz.) per head.

(i) *Indications for use.* Reduction of the incidence of urinary calculi.

(ii) *Limitations.* For fattening cattle.

(3) *Amount per day.* 7.1 grams (0.25 oz.) per head.

(i) *Indications for use.* Reduction of the incidence of urinary calculi.

(ii) *Limitations.* For sheep.

§ 558.55 Amprolium.

(a) *Approvals.* (1) Type A medicated feed article: 25 percent to No. 000006 in § 510.600(c) of this chapter for use as in paragraph (e)(1) of this section.

(2) [Reserved]

(b) [Reserved]

(c) *Special considerations.* Do not use in Type B or Type C medicated feeds containing bentonite.

(d) *Related tolerances.* See § 556.50 of this chapter.

(e) *Conditions of use*—(1) *Calves.* It is used as follows:

(*i*) *Amount.* 227 milligrams per 100 pounds (5 milligrams per kilogram) body weight per day.

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *Eimeria bovis* and *E. zurnii.*

(*b*) *Limitations.* Administer form Type C medicated feeds/containing from 0.05 to 1.25 percent amprolium with the usual amount of feed consumed in 1 day; feed for 21 days during periods of exposure or when experience indicates that coccidiosis is likely to be a hazard; withdraw 24 hours before slaughter; as sole source of amprolium.

(*ii*) *Amount.* 454 miligrams per 100 pounds (10 milligrams per kilogram) body weight per day.

(*ii*) *Indications for use.* As an aid in the treatment of coccidiosis caused by *Eimeria bovis* and *E. zurnii.*

(*b*) *Limitations.* Administer from a Type C medicated feed article containing from 0.05 to 1.25 percent amprolium with the usual amount of feed consumed in 1 day; feed for 5 days; for a satisfactory diagnosis, a microscopic examination of the feces should be done by a veterinarian or diagnostic laboratory before treatment; when treating outbreaks, the drug should be administered promptly after diagnosis is determined; withdraw 24 hours before slaughter; as sole source of amprolium.

(2) *Chickens and turkeys.* It is used as follows:

Amprolium in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 36.3 to 113.5 (0.004% to 0.0125%).		Replacement chickens; development of active immunity to coccidiosis.	Feed as follows—	

Growing conditions	Up to 5 weeks of age	From 5 to 8 weeks of age	Over 8 weeks of age
	Amprolium grams per ton	*Amprolium grams per ton*	*Amprolium grams per ton*
Severe exposure coccidiosis.	113.5 (0.0125%)	72.6–113.5 (0.008%–0.0125%).	36.3–113.5 (0.004%–0.0125%)
Moderate exposure to coccidiosis.	72.6–113.5 (0.008%–0.0125%)	54.5–113.5 (0.006%–0.0125%).	36.3–113.5 (0.004%–0.0125%)
Slight exposure to coccidiosis.	36.3–113.5 (0.004%–0.0125%)	36.3–113.5 (0.004%–0.0125%).	36.3–113.5 (0.004%–0.0125%)

Arsanilate sodium 90 (0.01%).		Replacement chickens; development of active immunity to coccidiosis; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic; feed according to subtable in item (i).
Arsanilic acid 90 (0.01%).		Replacement chickens; development of active immunity to coccidiosis; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic; feed according to subtable in item (i).
Arsanilic acid 90 (0.0%) plus erythromycin 4.6 to 18.5.		1. Replacement chickens; development of active immunity to coccidiosis; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic; feed according to subtable in item (i).
Arsanilic acid 90 (0.01%) plus erythromycin 92.5.		1. Replacement chickens; development of active immunity to coccidiosis; growth promotion and feed efficiency; improving pigmentation; as an aid in the prevention of chronic respiratory disease during periods of stress.	Feed for 2 d before stress and 3 to 6 d after stress; withdraw 5 d before slaughter; as sole source of organic arsenic. Feed according to subtable in item (i).
		2. Replacement chickens; development of active immunity to coccidiosis; growth promotion and feed efficiency; improving pigmentation; as an aid in the prevention of infectious coryza.	Feed for 7 to 14 d; withdraw 5 d before slaughter, as sole source of organic arsenic. Feed according to subtable in item (i).
Arsanilic acid 90 (0.01%) plus erythromycin 185.		Replacement chickens; development of active immunity to coccidiosis; growth promotion and feed efficiency; improving pigmentation; as an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease.	Feed for 5 to 8 d; do not use in birds producing eggs for food purposes; withdraw 5 d before slaughter; as sole source of organic arsenic. Feed according to subtable in item (i).

Amprolium in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
		Growing conditions	Up to 5 weeks of age / From 5 to 8 weeks of age / Over 8 weeks of age	
			Amprolium grams per ton / *Amprolium grams per ton* / *Amprolium grams per ton*	
	Bacitracin 100 to 200	Replacement chickens; development of active immunity to coccidiosis; treatment of chronic respiratory disease (air-sac infection) and blue comb (nonspecific infectious enteritis).	As bacitracin methylene disalicylate or bacitracin zinc. Feed according to subtable in item (i).	
	Chlortetracycline 100 to 200.	Replacement chickens; development of active immunity to coccidiosis; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis); prevention of synovitis.	Not to be fed to laying chickens; as chlortetracycline hydrochloride. Feed according to subtable in item (i).	
(i) 36.3 to 113.5 (0.004% to 0.0125%).	Erythromycin 4.6 to 18.5.	Replacement chickens; development of active immunity to coccidiosis; growth promotion and feed efficiency.	As erythromycin thiocyanate. Feed according to subtable in item (i)	
	Erythromycin 92.5	1. Replacement chickens; development of active immunity to coccidiosis; as an aid in the prevention of infectious coryza.	Feed for 7 to 14 d; withdraw 24 h before slaughter. Feed according to subtable in item (i).	
		2. Replacement chickens; development of active immunity to coccidiosis; as an aid in the prevention of chronic respiratory disease during periods of stress.	Feed for 2 d before stress and 3 to 6 d after stress; withdraw 24 h before slaughter. Feed according to subtable in item (i).	
	Erythromycin 185	Replacement chickens; development of active immunity to coccidiosis; as an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease.	Feed for 5 to 8 d; do not use in birds producing eggs for food purposes; withdraw 48 h before slaughter. Feed according to subtable in item (i).	
	Hygromycin B 8 to 12	Replacement chickens; development of active immunity to coccidiosis; control of infestation of large round worms (*Ascaris gall*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*).	Feed according to subtable in item (i)	
	Penicillin 2.4 to 50	Replacement chickens; development of active immunity to coccidiosis; growth promotion and feed efficiency.	As penicillin. Feed according to subtable in item (i)	
	Penicillin plus streptomycin 90 to 180 (of combination).	Replacement chickens; development of active immunity to coccidiosis; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis).	Type C medicated feed contains 16.7% penicillin; as penicillin procaine, as streptomycin sulfate. Feed according to subtable in item (i).	
	Roxarsone 22.7 to 45.4 (0.0025% to 0.005%).	Replacement chickens; development of active immunity to coccidiosis; growth promotion, and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsonic. Feed according to subtable in item (i).	
(ii) 72.6 to 113.5 (0.008% to 0.0125%).		Broiler chickens; prevention of coccidiosis caused by *Eimeria tenella* only.	Withdraw 5 d before slaughter; as sole source of organic arsenic. Feed according to subtable in item (ii).	
	Arsanilate sodium 90 (0.01%).	Broiler chickens; prevention of coccidiosis caused by *E. tenella* only; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter, as sole source of organic arsenic	
	Arsanilic acid 90 (0.01%.	do	do	
	Bacitracin 100 to 200	Broiler chickens; prevention of coccidiosis caused by *E. tenella* only; treatment of chronic respiratory disease (air-sac infection) and blue comb (nonspecific infectious enteritis).	As bacitracin methylene disalicylate, or bacitracin zinc	
	Chlortetracycline 100 to 200.	Broiler chickens; prevention of coccidiosis caused by *E. tenella* only; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis); prevention of synovitis.	Not for laying chickens; as chlortetracycline hydrochloride	
	Hygromycin B 8 to 12	Broiler chickens; prevention of coccidiosis caused by *Eimeria tenella* only; control of infestation of large round worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*).	Feed according to subtable in item (ii)	
	Penicillin 2.4 to 50	Broiler chickens; prevention of coccidiosis caused by *E. tenella* only; growth promotion and feed efficiency.	As penicillin procaine	
	Penicillin plus streptomycin 90 to 180 (of combination).	Treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis).	Type C medicated feed contains 16.7% penicillin; as penicillin procaine; as streptomycin sulfate.	
	Roxarsone 22.7 to 45.4 (0.0025% to 0.005%).	Broiler chickens; prevention of coccidiosis caused by *E. tenella* only; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic	
(iii) 113.5 (0.0125%).		1. Laying chickens; prevention of coccidiosis		
		2. Laying chickens; treatment of coccidiosis	For moderate outbreaks of coccidiosis; administer for 2 weeks	
	Bambermycins 1 to 3 plus roxarsone 22.8 to 34.1 (0.0025% to 0.00375%).	Broiler chickens; as an aid in the prevention of coccidiosis; for increased rate of weight gain; improved feed efficiency, and improved pigmentation.	Feed continuously as the sole ration; as sole source of amprolium and organic arsenic; roxarsone as provided by 017210 in § 510.600(c) of this chapter, bambermycins by 012799; withdraw 5 d before slaughter.	
(iv) 113.5 to 227 (0.0125% to 0.025%).	Bambermycins 1 to 3 plus roxarsone 22.8 to 34.1 (0.0025% to 0.00375%).	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis.		
		2. Turkeys; prevention of coccidiosis		
	Arsanilate sodium 90 (0.01%).	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic	
		2. Turkeys; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	do	
	Arsanilic acid 90 (0.01%)	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	do	
		2. Turkeys; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	do	
	Arsanilic acid 90 (0.01%) plus erythromycin 92.5.	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation; as an aid in the prevention of chronic respiratory disease during periods of stress.	Feed for 2 d before stress and 3 to 6 d after stress; withdraw 5 d before slaughter; as sole source of organic arsenic.	

Amprolium in grams per ton	Combination in grams per ton	Indications for use		Limitations	Sponsor
		Growing conditions	Up to 5 weeks of age	From 5 to 8 weeks of age	Over 8 weeks of age
			Amprolium grams per ton	*Amprolium grams per ton*	*Amprolium grams per ton*
		2. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation; as an aid in the prevention of infectious coryza.		Feed for 7 to 14 d; withdraw 5 d before slaughter; as sole source of organic arsenic.	
(iv) 113.5 to 227 (0.0125% to 0.025%).	Arsanilic acid 90 (0.01%) plus erythromycin 185.	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation; as an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory diseases.		Feed for 5 to 8 d; do not use in birds producing eggs for food purposes; withdraw 5 d before slaughter; as sole source of organic arsenic.	
	Arsanilic acid 90 (0.01 pct) plus erythromycin 4.6 to 18.5.	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improved pigmentation.		Withdraw 5 d before slaughter; as sole source of organic arsenic	
	Bacitracin 4 to 50	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency.		As bacitracin methylene disalicylate or bacitracin zinc; bacitracin zinc by 012769, 046573 in § 510.600(c) of this chapter.	
		2. Turkeys; prevention of coccidiosis; growth promotion and feed efficiency.		do	
	Bacitracin 100 to 200	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis).		do	
		2. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis).		As bacitracin zinc	
	Bacitracin 100 to 500	Turkeys; prevention of coccidiosis; treatment of infectious sinusitis, blue comb (mud fever).		As bacitracin zinc	
	Bacitracin plus penicillin 100 to 500 (of combination).	do		Type C medicated feed contains 50% to 75% of bacitracin but not more than 125 g penicillin; as penicillin procaine; as bacitracin zinc.	
	Chlortetracycline 100 to 200.	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis); prevention of synovitis.		Not for laying chickens, as chlortetracycline hydrochloride	
	Erythromycin 4.6 to 18.5.	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency.		As erythromycin thiocyanate	
(iv) 113.5 to 227 (0.0125% to 0.025%).	Erythromycin 92.5	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; as an aid in the prevention of chronic respiratory disease during periods of stress.		Feed for 2 d before stress and 3 to 6 d after stress; withdraw 24 h before slaughter.	
		2. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; as an aid in the prevention of infectious coryza.		Feed for 7 to 14 d; withdraw 24 h before slaughter	
	Erythromycin 185	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; as an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease.		Feed for 5 to 8 d, do not use in birds producing eggs for food purposes; withdraw 48 h before slaughter.	
	Hygromycin B 8 to 12	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; control of infestation of large round worms (*Heterakis gallinae*) and capillary worms. *Capillaria obsignata*.		Feed according to subtable in item(i)	
	Penicillin 2.4 to 50	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency.		As penicillin procaine	
		2. Turkeys; prevention of coccidiosis; growth promotion and feed efficiency.		do	
	Penicillin plus streptomycin 90 to 180 (of combination).	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis).		Type C medicated feed contains 16.7% penicillin; as penicillin procaine; as streptomycin sulfate.	
		2. Turkeys; prevention of coccidiosis; treatment of infectious sinusitis, blue comb (mud fever), hexamitiasis.		Type C medicated feed contains not less than 2.4 g of penicillin nor less than 12 g of streptomycin; as penicillin procaine; as streptomycin sulfate.	
	Roxarsone 22.7 to 45.4 (0.0025% to 0.005%).	1. Broiler chickens and replacement chickens were immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation.		Withdraw 5 d before slaughter, as sole source of organic arsenic	
		2. Turkeys; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation.		do	
(v) 227 (0.025%)		Laying chickens; treatment of coccidiosis		For severe outbreaks of coccidiosis; administer for 2 weeks	

§ 558.58 Amprolium and ethopabate.

(a) *Approvals.* Type A medicated article: 25 percent amprolium and 0.8 percent ethopabate; 25 percent amprolium and 8 percent ethopabate; 5 percent amprolium and 0.16 percent ethopabate; 5 percent amprolium and 1.6 percent ethopabate; to 000006 in § 510.600(c) of this chapter.

(b) [Reserved]

(c) *Special considerations.* Do not use in Type B or Type C medicated feeds containing bentonite.

(d) *Related tolerances.* See §§ 556.50 and 556.260 of this chapter.

(e) *Conditions of use.* (1) It is used for chickens as follows:

Amprolium and ethopabate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) Amprolium 113.5 (0.0125 pct) and ethopabate 3.6 (0.0004 pct).	.....	Broiler chickens as an aid in the prevention of coccidiosis	Not for laying hens; as sole source of amprolium	.....
(ii) Amprolium 113.5 (0.0125 pct) and ethopabate 3.6 (0.0004 pct).	Bambermycins 2 to 3 plus roxarsone 22.8 to 34.1 (0.0025 to 0.00375 pct).	Broiler chickens; as an aid in the prevention of coccidiosis, for increased rate of weight gain improved feed efficiency, and pigmentation.	Feed continuously as the sole ration; as sole source of amprolium and organic arsenic, amprolium and ethopabate as provided by 000006 in sec. 510.600(c) of this chapter, roxarsone by 017210, bambermycins by 000039; withdraw 5 d before slaughter.	.....
	Lincomycin 2 to 4	Broiler chickens; for increase in rate of weight gain; improved feed efficiency; as an aid in the prevention of coccidiosis.	NOt for laying chickens; as lincomycin hydrochloride monohydrate; as sole source of amprolium.	.....
	Lincomycin 2 to 4 plus roxarsone 45.4 (0.005 pct).	Broiler chickens; for increase in rate of weight gain; improved feed efficiency and; pigmentation; as an aid in the prevention of coccidiosis.	Not for laying chickens; as lincomycin hydrochloride monohydrate; withdraw 5 d before slaughter; as sole source of amprolium and organic arsenic.	.....
	Roxarsone 45.4 (0.005 pct).	Broiler chickens; to aid in prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima,* and *E. brunetti* is likely to occur, for increased rate of weight gain in broiler chickens raised in floor pens.	Do not feed to laying chickens; withdraw 5 d before slaughter; as sole source of amprolium; do not use as a treatment for outbreaks of coccidiosis; feed as sole ration from time chickens are placed on litter until past the time when coccidiosis is ordinarily a hazard; roxarsone as provided by 017210 in sec. 510.600(c) of this chapter; combinations as provided by 000006.	.....
(iii) Amprolium 113.5 (0.0125 pct) and ethopabate 36.3 (0.004 pct).	.....	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina E. maxima* and *E. brunetti* is likely to occur.	Not for chickens over 16 weeks of age	.....
	Arsanilic acid 90 (0.01 pct) plus erythromycin 4.6 to 18.5.	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improve pigmentation.	Not for laying hens; withdraw 5 d before slaughter; as sole source of organic arsenic; as erythromycin thiocyanate.	.....
	Bacitracin 4 to 50	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; to aid in prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima,* and *E. brunetti* is likely to occur; for increased rate of weight gain in broiler chickens raised in floor pens.	Not for chickens over 16 weeks of age; do not feed to laying chickens; as sole source of amprolium; not for use as a treatment for outbreaks of coccidiosis; as bacitracin methylene disalicylate as provided by 046573 or bacitracin zinc as provided by 012769 in sec. 510.600(c) of this chapter feed as the sole ration from the time chickens are placed on litter until past the time when coccidiosis is ordinarily a hazard; combination as provided by 000006 in sec. 510.600(c) of this chapter.	
	Bacitracin 10 to 50 plus roxarsone 15.4 to 45.4 (0.0017 pct to 0.005 pct).	Broiler chickens; as an aid in prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima,* and *E. brunetti* is likely to occur, improved feed efficiency.	Do not feed to laying chickens; withdraw 5 d before slaughter, as sole source of amprolium and organic arsenic, do not use as a treatment for outbreaks of coccidiosis feed as the sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard, amprolium and ethopabate as provided by 000006 in sec. 510.600(c) of this chapter, bacitracin zinc as provided by 012769; roxarsone as provided by 017210, combination as provided by 012769.	012769
	Bacitracin 10 plus roxarsone 30 to 45.4 (0.0033 pct to 0.005 pct).	Broiler chickens; as an aid in prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima,* and *E. brunetti* is likely to occur, improved feed efficiency and improved pigmentation.	do	012769
	Bambermycins 1 to 3	Broiler chickens; as an aid in the prevention of coccidiosis from *Eimeria acervulina, E. maxima,* and *E. brunetti* is likely to occur, for increased rate of weight gain, and improved feed efficiency.	Feed continuously as the sole ration as sole source of amprolium, amprolium and ethopabate as provided by 000006 in sec. 510.600(e) of this chapter, bambermycins as provided by 012799.	.....
	Bambermycins 1 to 3 plus roxarsone 22.8 to 34.1 (0.0025 pct to 0.00375 pct).	Broiler chickens; as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima,* and *E. brunetti* is likely to occur, for increased rate of weight gain; improved feed efficiency, and improved pigmentation.	Feed continuously as the sole ration; as source of amprolium and organic arsenic amprolium and ethopabate as provided by 000006 in sec. 510.500(c) of this chapter; roxarsone by 017210; bambermycins by 012799. Withdraw 5 d before slaughter.	.....
	Erythromycin 4.6 to 18.5.	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency.	Not for laying hens; withdraw 24 h before slaughter; as erythromycin thiocyanate.	.....
(iv) Amprolium 113.5 to 227 (0.0125 to 0.025 pct) and ethopabate 3.6 (0.0004 pct).	.....	For broiler chickens and replacement chickens where immunity to coccidiosis is not desired, prevention of coccidiosis.	Not for laying hens	.....
	Arsanilic acid 90 (0.01 pct).	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired, prevention of coccidiosis; growth promotion and feed efficiency improving pigmentation.	As sole source of organic arsenic; withdraw 5 d before slaughter; not for laying hens.	.....
	Arsanilic acid 90 (0.01 pct) plus erythromycin 92.5.	1. For broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; as an aid in the prevention of chronic respiratory disease during periods of stress; growth promotion and feed efficiency; improving pigmentation.	Feed for 2 d before stress; and 3 to 8 d after stress, withdraw 5 d before slaughter; as sole source of organic arsenic; not for laying hens.	.....

Amprolium and ethopabate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
		2. For broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; as an aid in the prevention of infectious coryza; growth promotion and feed efficiency; improving pigmentation.	Feed for 7 to 14 d; withdraw 5 h before slaughter; as sole source of organic arsenic; not for laying hens.	
	Arsanilic acid 90 (0.01 pct) plus erythromycin 135.	For broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; as an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease; growth promotion and feed efficiency; improving pigmentation.	Feed for 5 to 8 d; do not use in birds producing eggs for food purposes; withdraw 5 d before slaughter; as sole source of organic arsenic.	
	Bacitracin 4 to 50	For broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency.	As bacitracin methylene disalicylate; not for laying hens	
	Bacitracin 100 to 200	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; treatment of chronic respiratory disease (air-sac infection) and blue comb (nonspecific infectious enteritis).	do	
		2. For broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis).	As bacitracin zinc not for laying hens	
	Bacitracin 4 to 50 plus roxarsone 22.7 to 45.4 (0.0025 to 0.005 pct).	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	As bacitracin methylene disalicylate; not for laying hens; as sole source of organic arsenic; withdraw 5 d before slaughter.	
	Chlortetracycline 100 to 200.	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis), prevention of synovitis.	Not for laying hens; as chlortetracycline hydrochloride	
	Chlortetracycline 200	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; treatment of chronic respiratory disease caused by strains of *Mycoplasma gallisepticum* susceptible to chlortetracycline.	In low calcium Type medicated feeds containing 0.8 pct dietary calcium and 1.5 pct sodium sulfate; feed continously as sole ration for not more than the 1st 3 weeks of life; not for laying hens.	
	Erythromycin 92.5	1. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; as an aid in the prevention of chronic respiratory disease during periods of stress.	Feed for 2 d before stress and 3 to 6 d after stress; withdraw 24 h before slaughter; not for laying hens.	
		2. Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; as an aid in the prevention of infectious coryza.	Feed to 7 to 14 d; withdraw 24 before slaughter; not for laying hens	
	Erythromycin 185	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; as an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease.	Feed for 5 to 8 d; do not use in birds producing eggs for food purposes; withdraw 48 h before slaughter.	
	Penicillin 2.4 to 50	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	Not for laying hens; as penicillin procaine	
	Penicillin plus streptomycin 90 to 180 (of combination).	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis).	Type C medicated feed contains 16.7 pct penicillin; as penicillin procaine, as streptomycin sulfate; not for laying hens.	
	Roxarsone 22.7 to 45.5 (0.0025 to 0.005 pct).	Broiler chickens and replacement chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	As sole source of organic arsenic; withdraw 5 d before slaughter; not for laying hens.	
(v) Amprolium 136.2 (0.015 pct) and ethopabate 3.6 (0.0004 pct).	Bacitracin 10	Broiler chickens, as an aid in the prevention of coccidiosis; growth promotion and feed efficiency.	Feed as sole ration; use as sole source of amprolium; do not feed to laying hens; as bacitracin methylene disalicylate.	047019

§ 558.60 Arsanilate sodium.

(a) [Reserved]

(b) [Reserved]

(c) *Approvals.* Type A medicated article: 20, 50, or 100 percent arsanilate sodium, to 043731 in § 510.600(c) of this chapter.

(d) *Related tolerances.* See § 556.680 of this chapter.

(e) *Conditions of use.* (1) It is used for chickens and turkeys as follows:

(i) *Grams per ton.* 90 (0.01 percent).

(ii) *Indications for use.* For growth promotion and feed efficiency; improving pigmentation.

(iii) *Limitations.* Withdraw 5 days before slaughter; as sole source of organic arsenic.

(2) Arsanilate sodium may also be used in combination with:

(i) Amprolium as in § 558.55.

(ii) Zoalene as in § 558.60.

§ 558.62 Arsanilic acid.

(a) [Reserved]

(b) [Reserved]

(c) *Approvals.* Type A medicated article: 20, 50, or 100 percent arsanilate acid to 043731 in § 510.600(c) of this chapter.

(d) *Related tolerances.* See § 556.60 of this chapter.

(e) Conditions of use—(1) It is used for chickens and turkeys as follows:

Arsanilic acid in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
90 (0.01 pct)		1. Chickens; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic	
		2. Turkeys; growth promotion and feed efficiency; improving pigmentation.	do	
	Erythromycin 4.6 to 18.5	Chickens; growth promotion and feed efficiency; improving pigmentation.	As erythromycin thiocyanate; withdraw 5 d before slaughter; as sole source of organic arsenic.	
	Erythromycin 92.5	1. Chickens; as an aid in the prevention of chronic respiratory disease during periods of stress; growth promotion and feed efficiency; improving pigmentation.	As erythromycin thiocyanate; feed for 2 d before stress and 3 to 6 d after stress; withdraw 5 d before slaughter; as sole source of organic arsenic.	
		2. Chickens; as an aid in the prevention of infectious coryza; growth promotion and feed efficiency; improving pigmentation.	As erythromycin thiocyanate; feed for 7 to 14 d; withdraw 5 d before slaughter; as sole source of organic arsenic.	
	Erthromycin 185	Chickens; as an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease; growth promotion and feed efficiency; improving pigmentation.	As erythromycin thiocyanate; feed for 5 to 8 d; do not use in birds producing eggs for food purposes; withdraw 5 d before slaughter; as sole source of organic arsenic.	

(2) Arsanilic acid may also be used in combination with:

(i) Amprolium as in § 558.55.

(ii) Amprolium and ethopabate as in § 558.58.

(iii) Bacitracin zinc as in § 558.78.

(iv) Bacitracin and zoalene as in § 558.680.

(v) Buzuinolate as in § 558.105.

(vi) Zoalene as in § 558.680.

§ 558.76 Bacitracin methylene disalicylate.

(a) *Approvals.* Type A medicated article: 25, 40, or 50 percent bacitracin methylene disalicylate to 046573 in § 510.600(c) of this chapter.

(b) [Reserved]

(c) *Special considerations.* The quantities of antibiotics are expressed in terms of the equivalent amount of antibiotic standard.

(d) *Related tolerances.* See § 556.70 of this chapter.

(e) *Conditions of use.* (1) It is used as follows:

Bacitracin methylene disalicylate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 4 to 50		Chickens, turkeys, and pheasants; growth promotion and feed efficiency.		
(ii) 5 to 20		Quail; not over 5 weeks of age; growth promotion and feed efficiency.		
(iii) 10 to 50		1. Swine; growth promotion and feed efficiency		
		2. Chickens; maintaining or increasing egg production	Feed 50 g per ton 1st 4 to 6 weeks of egg production; 10 to 50 g per ton for remainder of egg-laying period.	
(iv) 50 to 100		1. Chickens; prevention of chronic respiratory disease (airsac infection); blue comb (nonspecific infectious enteritis).		
		2. Swine; aid in prevention of bacterial swine enteritis		
		3. Turkeys; prevention of infectious sinusitis, blue comb (mud fever).		
(v) 100		1. Chickens; maintaining or increasing hatchability of eggs		
		2. Chickens; during times of stress, prevention of diseases named in this section caused by organisms susceptible to bacitracin.		
		3. Chickens; prevention of early mortality of chicks due to susceptible organisms.	For chicks; in starter ration	
		4. Swine; treatment of bacterial swine enteritis		
100 of combination	Penicillin	1. Chickens; maintaining or increasing hatchability of eggs	Type C medicated feed combination containing 75 g of bacitracin plus 25 g of penicillin; as penicillin procaine.	
		2. Swine; treatment of bacterial swine enteritis	Type C medicated feed containing 50 to 75 pct of bacitracin; as penicillin procaine.	
(vi) 100 to 200		1. Chickens; treatment of chronic respiratory disease (airsac infection); blue comb (nonspecific infectious enteritis)		
		2. Turkeys; treatment of infectious sinusitis, blue comb (mud fever).		
100 to 200 of combination	Penicillin	1. Chickens; treatment of chronic respiratory disease (airsac infection); blue comb (nonspecific infectious enteritis).	Type C medicated feed containing not less than 25 g of penicillin nor less than 50 g of bacitracin; as penicillin procaine.	
		2. Turkeys; treatment of infectious sinusitis, blue comb (mud fever).	do	

(2) It is used for cattle as follows:

(i) *Amount.* 70 milligrams per head per day.

(*a*) *Indications for use.* Feedlot beef cattle: reduction in the number of liver condemnations due to abscesses.

(*b*) *Limitations.* Administer continuously throughout the feeding period.

(ii) *Amount.* 250 milligrams per head per day.

(a) *Indications for use.* Feedlot beef cattle: reduction in the number of liver condemnations due to abscesses.

(b) *Limitations.* Administer continuously for 5 days then discontinue for subsequent 25 days, repeat the pattern during the feeding period.

(3) It is also used in combination with:

(i) Amprolium as in § 558.55.

(ii) Amprolium with ethopabate as in § 558.58.

(iii) Arsanilic acid with zoalene as in § 558.680.

(iv) Carbarsone (not U.S.P.) as in § 558.120.

(v) [Reserved]

(vi) Hygromycin B as in § 558.274.

(vii) Monensin as in § 558.355.

(viii) Lasalocid sodium as in § 558.311.

(ix) Monensin and roxarsone as in § 558.355.

§ 558.78 Bacitracin zinc.

(a) *Approvals.* (1) Premix level of 50 grams bacitracin zinc per pound to 046573 in § 510.600(c) of this chapter for use as in paragraph (e)(1)(i) and (ii) only of this section.

(2) Premix levels of 10, 25, 40, and 50 grams of bacitracin zinc per pound to 012769 in § 510.600(c) of this chapter for use as in paragraph (e) of this section.

(b) [Reserved]

(c) *Special considerations.* The quantities of antibiotics are expressed in terms of the equivalent amount of antibiotic standard.

(d) *Related tolerances.* See § 556.70 of this chapter.

(e) *Conditions of use.* (1) It is used in complete feeds as follows:

Bacitracin zinc in grams per ton	Combinations in grams per ton	Indications for use	Limitations	Sponsor
(i) 4 to 50		1. Chickens, turkeys, and pheasants; growth promotion and feed efficiency.		
		2. Chickens, turkeys and pheasants; for increased rate of weight gain and improved feed efficiency.	Growing chickens, turkeys, and pheasants	046573, 012769
(ii) 5 to 20		1. Quail; growth promotion and feed efficiency	In quail not over 5 weeks of age	
		2. Quail; for increased rate of weight gain and improved feed efficiency.	Growing quail; feed as the complete feed to starting quail through 5 weeks of age.	046573, 012769
(iii) 10 to 50		1. Swine; growth promotion and feed efficiency		
		2. Chickens; maintaining or increasing egg production	Feed 50 g per ton 1st 4 to 6 weeks of egg production; 10 to 50 g per ton for remainder of egg-laying period.	012769
		3. Swine; increased rate of weight gain and improved feed efficiency.		012769
(iv) 50 to 100		1. Chickens, prevention of chronic respiratory disease (airsac infection); blue comb (nonspecific infections enteritis).		012769
		2. Turkeys; prevention of infectious sinusitis, blue comb (mud fever).		012769
		3. Swine; aids in the prevention of bacterial swine enteritis		012769
(v) 100		1. Chickens; maintaining or increasing hatchability of eggs		012769
		2. Chickens; during times of stress, prevention of diseases named in this section caused by organisms susceptible to bacitracin.		012769
		3. Swine; treatment of bacterial swine enteritis		012769
100 of combination	Penicillin	Swine; treatment of bacterial swine enteritis	Feed containing 50% to 75% bacitracin; as procaine penicillin	
(vi) 100 to 500		1. Chickens; treatment of chronic respiratory disease (airsac infection); blue comb (nonspecific infectious enteritis).		012769
		2. Chickens; prevention of early mortality of chicks due to susceptible organisms.	For chicks; in starter feed	012679
		3. Turkeys; treatment of infectious sinusitis, blue comb (mud fever).		012679
100 to 500 of combination	Penicillin	1. Chickens; treatment of chronic respiratory disease (airsac infection); blue comb (nonspecific infectious enteritis).	Feed containing not less than 50% nor more than 75% of bacitracin except that it contains not more than 125 g of penicillin; as procaine penicillian.	
		2. Turkeys; treatment of infectious sinusitis, blue comb (mud fever).	do	

(2) It is used in feed for growing cattle at 35 to 70 milligrams per head per day as follows:

(i) To aid in stimulating growth and improving feed efficiency.

(ii) For increased rate of weight gain and improved feed efficiency; see sponsor 012769.

(3) Bacitracin zinc is used in accordance with the provisions of this section in combination with:

(i) Amprolium as in § 558.55.

(ii) Amprolium with ethopabate as in § 558.58.

(iii) Arsanilic acid and zoalene as in § 558.680.

(iv) [Reserved]

(v) Hygromycin B as in § 558.274.

(vi) Monensin as in § 558.355.

(vii) Zoalene as in § 558.680.

§ 558.95 Bambermycins.

(a) [Reserved]

(b) *Approvals.* (1) Type A medicated article: 2 and 10 grams of bambermycins activity per pound to 012799 in § 510.600(c) of this chapter for use as provided in paragraph (e)(1) and (e)(2)(i) and (ii) of this section.

(2) Type A medicated article: 0.4 gram of bambermycins activity per pound to 012799 for use as provided in paragraph (e)(2) of this section.

(c) [Reserved]

(d) [Reserved]

(e) *conditions of use*—(1) *Broiler chickens.* It is used as follows:

(i) *Amount per ton.* 1 to 2 grams.

(a) *Indications for use.* For increased rate of weight gain and improved feed efficiency.

(b) *Limitations.* Feed continuously as the sole ration.

(ii) *Amount per ton.* Bambermycins, 1 to 3 grams plus amprolium, 113.5 grams (0.125 percent) plus ethopabate, 36.3 grams (.004 percent).

(a) *Indications for use.* As an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *E. acervulina, E. maxima,* and *E. brunetti* is likely to occur. For increased rate of weight gain and improved feed efficiency.

(b) *Limitations.* Feed continuously as the sole ration; as sole source of amprolium; amprolium and ethopabate

as provided by No. 000006 in § 510.600(c) of this chapter.

(iii) *Amount per ton.* Bambermycins, 1 to 3 grams plus amprolium, 1,13.5 grams (.0125 percent) plus ethopabate, 36.3 grams (.004 percent) plus roxarsone, 22.8 to 34.1 grams (.0025–.00375 percent).

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *E. acervulina, E. maxima,* and *E. brunetti* is likely to occur. For increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(*b*) *Limitations.* Feed continuously as the sole ration; as sole source of amprolium and organic arsenic: amprolium and ethopabate as provided by .000006 in § 510.600(c) of this chapter, roxarsone as provided by No. 017210 in § 510.600(c) of this chapter. Withdraw 5 days before slaughter.

(iv) *Amount per ton.* Bambermycins, 1 to 3 grams plus amprolium, 113.5 grams (.0125 percent) plus ethopabate, 3.63 grams (.0004 percent) plus roxarsone, 22.8 to 34.1 grams (.0025–.00375 percent).

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis. For increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(*b*) *Limitations.* Feed continuously as the sole ration; as sole source of amprolium and organic arsenic; amprolium and ethopabate as provided by 000006 in § 510.600(c) of this chapter, roxarsone as provided by No. 017210. Withdraw 5 days before slaughter.

(v) *Amount per ton.* Bambermycins, 1 to 3 grams plus amprolium, 113.5 grams (.0125 percent) plus roxarsone, 22.8 to 34.1 grams (.0025–.00375 percent).

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis. For increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(*b*) *Limitations.* Feed continuously as the sole ration; as sole source of amprolium and organic arsenic; amprolium as provided by 000006 in § 510.600(c) of this chapter, roxarsone as provided by 017210. Withdraw 5 days before slaughter.

(vi) *Amount per ton.* Bambermycins, 1 gram plus monensin, 90 to 110 grams.

(*a*) *Indications for use.* For increased rate of weight gain and improved feed efficiency; as an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *maxima.*

(*b*) *Limitations.* Do not feed to laying chickens; feed continuously as sole ration; withdraw 72 hours before slaughter; as monensin sodium provided by 000986 in § 510.600(c) of this chapter; as bambermycins provided by 012799 in § 510.600(c) of this chapter.

(vii) *Amount per ton.* Bambermycins, 1 gram plus monensin, 90 to 100 grams plus roxarsone, 22.7 to 45.4 grams (.0025 to .005 percent).

(*a*) *Indications for use.* For increased rate of weight gain and improved feed efficiency; as an aid in the prevention of coccidiosis caused by *E. necatrix, E tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(*b*) *Limitations.* Do not feed to laying chickens; feed continuously as sole ration; use as sole source of organic arsenic; withdraw 5 days before slaughter; as monensin sodium provided by 000986 in § 510.600(c) of this chapter; as bambermycins provided by 012799 as roxarsone provided by 017210.

(viii) *Amount per ton.* Bambermycins, 1 gram plus zoalene, 113.4 grams (0.0125 percent).

(*a*) *Indications for use.* As an aid in the prevention and control of coccidiosis; for increased rate of weight gain and improved feed efficiency.

(*b*) *Limitations.* Do not feed to chickens over 14 weeks of age; feed continuously as sole ration; zoalene as provided by 025700 in § 510.600(c) of this chapter.

(ix) *Amount per ton.* Bambermycins, 1 gram plus zoalene, 113.4 grams (0.0125 percent) plus roxarsone, 22.7 grams (0.0025 percent).

(*a*) *Indications for use.* As an aid in the prevention and control of coccidiosis; for increased rate of weight gain and improved feed efficiency.

(*b*) *Limitations.* Do not feed to chickens over 14 weeks of age; feed continuously as sole ration; feed as sole source of organic arsenic; withdraw 5 days before slaughter, zoalene as provided by 025700, roxarsone as provided by 017210 in § 510.600(c) of this chapter.

(2) *Growing-finishing swine.* It is used as follows:

(i) *Amount per ton.* 2 grams.

(*a*) *Indications for use.* For increased rate of weight gain and improved feed efficiency.

(*b*) *Limitations.* Feed continuously as sole ration.

(ii) *Amount per ton.* 2 to 4 grams.

(*a*) *Indications for use.* For increased rate of weight gain.

(*b*) *Limitations.* Feed continuously as sole ration.

§ 588.105 Buquinolate.

(a) [Reserved]

(b) *Approvals.* Type A medicated feed article: 16.5 and 22 percent to 000149 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Special considerations.* Do not use in Type B or Type C medicated feeds containing bentonite.

(e) *Related tolerances.* See § 556.90 of this chapter.

(f) *Conditions of use.* It is used as follows:

(1) *Broiler or fryer chickens*—(i) *Amount per ton.* Buquinolate, 75 grams (0.00825 percent).

(*a*) *Indications for use.* An aid in the prevention of coccidiosis caused by *E. tenella, E. maxima, E. necatrix, E. brunetti,* and *E. acervulina.*

(*b*) *Limitations.* Feed continuously as the sole ration.

(ii) *Amount per ton.* Buquinolate, 75 grams (0.00825 percent) plus arsanilic acid, 90 grams (0.01 percent).

(*a*) *Indications for use.* An aid in the prevention of coccidiosis caused by *E. tenella, E. maxima, E. necatrix, E. brunetti,* and *E. acervulina;* growth promotion and feed efficiency; improving pigmentation.

(*b*) *Limitations.* Feed continuously as the sole ration; withdraw 5 days before slaughter; as sole source of organic arsenic.

(iii) *Amount per ton.* Buquinolate, 75 grams (0.00825 percent) plus roxarsone, 22.7–45.4 grams (0.0025–0.005 percent).

(*a*) *Indications for use.* An aid in the prevention of coccidiosis caused by *E. tenella, E. maxima, E. necatrix, E. brunetti,* and *E. acervulina;* growth promotion and feed efficiency; improving pigmentation.

(*b*) *Limitations.* Feed continuously as the sole ration; withdraw 5 days before slaughter; as sole source of organic arsenic.

(iv) *Amount per ton.* Buquinolate, 75 grams (0.00825 percent) plus penicillin, 2.4–50 grams.

(*a*) *Indications for use.* An aid in the prevention of coccidiosis caused by *E. tenella, E. maxima, E. necatrix, E. brunetti,* and *E. acervulina;* growth promotion and feed efficiency.

(*b*) *Limitations.* Feed continuously as the sole ration; as penicillin procaine.

(v) *Amount per ton.* Buquinolate, 75 grams (0.00825 percent) plus bacitracin, 4–50 grams.

(*a*) *Indications for use.* An aid in the prevention of coccidiosis caused by *E. tenella, E. maxima, E. necatrix, E. brunetti,* and *E. acervulina;* growth promotion and feed efficiency.

(*b*) *Limitations.* Feed continuously as the sole ration; as bacitracin zinc or bacitracin methylene disalicylate.

(vi) *Amount per ton.* Buquinolate, 75 grams (0.00825 percent) plus penicillin plus bacitracin, 3.6–50 grams.

(*a*) *Indications for use.* An aid in the prevention of coccidiosis caused by *E. tenella, E. maxima, E. necatrix, E.*

brunetti, and *E. acervulina*; growth promotion and feed efficiency.

(*b*) *Limitations.* Feed continuously as the sole ration; not less than 0.6 gram of penicillin nor less than 3 grams of bacitracin; as procaine penicillin plus bacitracin zinc or bacitracin methylene disalicylate.

(vii) *Amount per ton.* Buquinolate, 75 grams (0.00825 percent) plus chlortetracycline, 200 grams.

(*a*) *Indications for use.* An aid in the prevention of coccidiosis caused by *E. tenella, E. maxima, E. necatrix, E. brunetti*, and *E. acervulina*; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific enteritis); prevention of synovitis.

(*b*) *Limitations.* In low calcium type C medicated feeds containing 0.8 percent dietary calcium and 1 to 1.5 percent sodium sulfate; to be fed continuously for not more than the first 21 days of life.

(viii) *Amount per ton.* Buquinolate, 75 grams (0.00825 percent) plus lincomycin, 2–4 grams.

(*a*) *Indications for use.* For increase in rate of weight gain and improved feed efficiency; as an aid in the prevention of coccidiosis caused by *E. tenella, E. maxima, E. necatrix, E. brunetti, E. acervulina.*

(*b*) *Limitations.* For broiler and fryer chickens; feed continuously as the sole ration.

(ix) *Amount per ton.* Buquinolate, 75–100 grams (0.00825–0.011 percent) plus roxarsone, 22.7–34.0 grams (0.0025–0.00375 percent).

(*a*) *Indications for use.* An aid in the prevention of coccidiosis caused by *E. tenella, E. maxima, E. necatrix, E. brunetti*, and *E. acervulina*; growth promotion and feed efficiency; improving pigmentation.

(*b*) *Limitations.* Feed continuously as sole ration; withdraw 5 days before slaughter; as sole course of organic arsenic; roxarsone as provided by 017210 in § 510.600(c) of this chapter.

(x) *Amount per ton.* Buquinolate, 100 grams (0.011 percent) plus bacitracin, 4–15 grams.

(*a*) *Indications for use.* An aid in the prevention of coccidiosis caused by *E. tenella, E. maxima, E. necatrix, E. brunetti*, and *E. acervulina*; increased rate of weight gain.

(*b*) *Limitations.* Feed continuously as the sole ration; as bacitracin methylene disalicylate provided by No. 046573 in § 510.600(c) of this chapter.

(xi) *Amount per ton.* Buquninolate, 100 grams (0.011 percent) combined with bacitracin, 19–35 grams.

(a) *Indications for use.* An aid in the prevention of coccidiosis caused by *E. tenella, E. maxima, E. necatrix, E. brunetti*, and *E. acervulina*; increased rate of weight gain and improved feed efficiency.

(b) *Limitations.* For floor raised broiler or fryer chickens, feed continuously as sole ration; as bacitracin zinc provided by 012769 in § 510.600(c) of this chapter.

(2) *Broiler, fryer, roaster or replacement chickens*—(i) *Amount per ton.* 75–100 grams (0.00825–0.011 percent).

(ii) *Indications for use.* An aid in the prevention of coccidiosis caused by *E. tenella, E. maxima, E. necatrix, E. brunetti*, and *E. acervulina.*

(iii) *Limitations.* Feed continuously as the sole ration; do not administer over 75 grams per ton (0.00825 percent) to replacement chickens over 20 weeks of age.

(3) *Laying or breeding chickens*—(i) *Amount per ton. 75 grams (0.00825 percent).*

(ii) *Indications for use.* An aid in the prevention of coccidiosis caused by *E. tenella, E. maxima, E. necatrix, E. brunetti*, and *E. acervulina.*

(iii) *Limitations.* Feed to caged layers for 2 weeks following caging; feed continuously to layers and breeders kept on floors while in production or until marketed.

§ 558.115 Carbadox.

(a) [Reserved]

(b) *Approvals.* Type A medicated article: 2.2 percent (10 grams per pound) to 000069 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See § 556.100 of this chapter.

(e) *Special considerations.* Do not use in Type B or Type C medicated feeds containing bentonite.

(f) *Conditions of use.* It is used for swine as follows:

(1) *Amount per ton.* 10–25 grams (0.0011–0.00275 percent).

(i) *Indications for use.* For increase in rate of weight gain and improvement of feed efficiency.

(ii) *Limitations.* Do not feed to swine weighing more than 75 pounds body weight; do not feed to swine within 10 weeks of slaughter; do not use in Type D medicated feed articles containing less than 15 percent crude protein.

(2) *Amount per ton.* 50 grams (0.0055 percent).

(i) *Indications for use.* For control of swine dysentery (vibrionic dysentery, bloody scours, or hemorrhagic dysentery); control of bacterial swine enteritis (salmonellosis or necrotic enteritis caused by *Salmonella choleraesuis*); increase rate of weight gain and improve feed efficiency.

(ii) *Limitations.* Do not feed to swine weighing more than 75 pounds body weight; do not feed to swine within 10 weeks of slaughter; do not use in Type D medicated feed articles containing less than 15 percent crude protein.

(3) *Amount per ton.* Carbadox 50 grams (0.0055 percent) plus pyrantel tartrate, 96 grams (0.0106) percent).

(i) *Indications for use.* For control of swine dysentery (vibrionic dysentery, bloody scours, or hemorrhagic dysentery); control of bacterial swine enteritis (salmonellosis or necrotic enteritis caused by *Salmonella choleraesuis*); aid in the prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; aid in the prevention of establishment of nodular worm (*Oesophagostomum*) infections.

(ii) *Limitations.* Do not feed to swine over 75 pounds; do not feed within 10 weeks of slaughter; consult a veterinarian before feeding to severly debilitated animals; feed continuously as sole ration. Do not use in Type C medicated feeds containing less than 15 percent crude protein.

§ 558.120 Carbarsone (not U.S.P.).

(a) *Approvals.* (1) Type A medicated article: 37.5 percent carbarsone to 011794 in § 510.600(c) of this chapter.

(2) Type A medicated article: 25 percent carbarsone and 5 grams per pound bacitracin (as bacitracin methylene disalicylate) to 011794.

(b) [Reserved]

(c) [Reserved]

(d) *Related tolerances.* See § 556.60 of this chapter.

(e) *Conditions of use.* (1) It is used for turkeys as follows:

(i) *Grams per ton.* 227 to 340.5 (0.025 to 0.0375 percent).

(*a*) *Indications for use.* As an aid in the prevention of blackhead.

(*b*) *Limitations.* Feed continuously beginning 2 weeks before blackhead is expected and continue as long as prevention is needed; withdraw 5 days before slaughter; as sole source of organic arsenic.

(ii) *Grams per ton.* 227 to 340.5 (0.025 to 0.0375 percent) carbarsone plus 10 grams per ton bacitracin (as bacitracin methylene disalicylate).

(*a*) *Indications for use.* As an aid in the prevention of blackhead; for increased rate of weight gain.

(*b*) *Limitations.* Feed continuously beginning 2 weeks before blackhead is expected and continue as long as prevention is needed; withdraw 5 days before slaughter; as sole source of organic arsenic.

(2) Carbarsone (not U.S.P.) may also be used in combination with:

(i) Zoalene as in § 558.680.

(ii) [Reserved]

§ 558.126 Chlormadinone acetate.

(a) *Approvals.* Type A medicated articles: 1 gm per lb. to 000986, 2 gm per lb. to 000033, in § 510.600(c) of this chapter.

(b) [Reserved]

(c) [Reserved]

(d) *Related tolerances.* See § 556.130 of this chapter.

(e) *Conditions of use.* It is used for beef heifers and beef cows as follows:

(1) *Amount.* 10 milligrams per head per day.

(2) *Indications for use.* Synchronization of estrus (heat).

(3) *Limitations.* Administer for 18 days; do not administer within 28 days of slaughter; do not administer to cows producing milk for food.

§ 558.128 Chlortetracycline.

(a) [Reserved]

(b) [Reserved]

(c) *Approvals.* Type A medicated article: 10 and 50 gm per lb. Chlortetracycline to 010042 in § 510.600(c) of this chapter; 35 gm chlortetracycline with 7.7 percent (35 gm) sulfamethazine to 010042.

(d) *Related tolerances.* See § 556.150 of this chapter.

(e) *Conditions of use.* (1) It is used for cockatoos, macaws, and parrots as follows:

(i) *Amount.* 10 milligrams per gram of mash.

(ii) *Indications for use.* Treatment of psittacine birds suspected or known to be infected with psittacosis.

(iii) *Limitations.* As chlortetracycline hydrochloride.

(2) It is used for laboratory mice as follows:

(i) *Amount.* Not less than 100 grams per ton of feed.

(ii) *Indications for use.* As an aid in reducing the incidence of bacterial diarrhea.

(3) It is used as follows:

Table 1

Chlortetracycline in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 10 to 50		1. Chickens and turkeys; growth promotion and feed efficiency.	As chlortetracycline hydrochloride	
		2. Swine; growth promotion and feed efficiency	do	
(ii) 20 to 50		1. Lambs and growing sheep; growth promotion and feed efficiency.	do	
		2. Mink; growth promotion and feed efficiency; as an aid in increasing pelt size.	do	
(iii) 50 to 100		1. Chickens and turkeys; during times of stress, for prevention of diseases named in this section caused by organisms susceptible to the indicated levels of the cycline salt.	do	
		2. For chickens; prevention of chronic respiratory disease (air-sac infection).	do	
		3. For turkeys; prevention of infectious sinusitis, hexamitiasis	do	
		4. For laying chickens; maintaining or increasing egg production or hatchability of eggs.	do	
		5. For chicks; prevention of early mortality due to organisms susceptible to chlortetracyline.	do	
		6. Swine; maintenance of weight gain in the presence of atrophic rhinitis; reduction of the incidence of cervical abscesses; preventon of bacterial swine enteritis; prevention of bacterial swine enteritis during times of stress.	do	
100 to 200		1. For chickens; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis); prevention of synovitis.	Not to be fed to laying chickens; as chlortetracycline hydrochloride	
		2. For turkeys; treatment of blue comb (nonspecific infectious enteritis, mud fever), infectious sinusitis, hexamitiasis; prevention of synovitis.	As chlortetracyline hydrochloride	
		3. For chickens; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis); prevention of synovitis.	Not to be fed to laying chickens; as chlortetracyline hydrochloride as follows: In low-calcium, Type C medicated feed containing 0.8 pct dietary calcium, not to be fed continuously for more than 8 weeks; in low-calcium Type C medicated feed containing 0.40 to 0.55 pct dietary calcium, not to be fed continuously for more than 5 d; in low-calcium Type C medicated feed containing 0.8 pct dietary calcium and 1 to 1.5 pct sodium sulfate, to be fed continuously for not more than the 1st 3 weeks of life.	
		4. Swine; treatment of bacterial swine enteritis	As chlortetracyline hydrochloride	
(iv) 200		1. For chickens; prevention and control of coccidiosis caused by *Eimeria necatrix* and *E. tenella*.	Not to be fed to laying chickens; as chlortetracyline hydrochloride in low-calcium Type C medicated feed containing 0.8 pct dietary calcium, not to be fed continuously for more than 8 weeks; in low-calcium Type C medicated feed containing 0.8 pct dietary calcium and 1.0 to 1.5 pct sodium sulfate, to be fed continuously for not more than the first 3 weeks of life.	
		2. For chickens; treatment of coccidiosis caused by *Eimeria necatrix* and *E. tenella*.	Not to be fed to laying chickens; as chlortetracyline hydrochloride in low-calcium Type C medicated feed containing 0.4 to 0.55 pct dietary calcium, not to be fed continuously for more than 5 d.	
		3. For chickens; control of synovitis	Not to be fed to laying chickens; as chlortetracyline hydrochloride	
		4. For turkeys; control of snyovitis	As chlortetracyline hydrochloride	
		5. For broiler chickens; treatment of chronic respiratory disease caused by strains of *Mycoplasma gallisepticum* susceptible to chlortetracyline.	In low-calcium Type C medicated feed containing 0.8 pct dietary calcium and 1.5 pct sodium sulfate; feed continuously as Type C medicated feed for not more than the first 3 weeks of life.	
		6. Swine; as an aid in reducing spread of leptospirosis	Sole medication; as chlortetracyline hydrochloride	
(v) 200 to 400		For ducks; for the control and treatment of fowl cholera caused by *Pasteurella multocida* susceptible to chlortetracyline.	Feed in Type C medicated feed to provide from 8 to 28 mg per pound of body weight per day depending upon age and severity of disease, for not more than 21 d; as the calcium complex of chlortetracyline equivalent to chlortetracyline hydrochloride.	
(vi) 400		1. For turkey poults not over 4 weeks of age; aid in reducing mortality due to paratyphoid caused by *Salmonella typhimurium*.	In low-calcium Type C medicated feed containing 1 pct total calcium with not less than 0.45 pct calcium from calcium sulfate; as chlortetracyline hydrochloride.	
		2. Swine; as an aid in reducing shedding of leptospirae; as an aid in reducing the abortion rate of swine and the mortality rate of newborn pigs when leptospirosis is present.	To be fed for 14 d as sole medication; as chlortetracyline hydrochloride.	
(vii) 500		For chickens; aid in the reduction of mortality due to *E. coli* infections suspectible to such treatment.	Not to be fed to laying chickens, as chlortetracyline hydrochloride; in Type C medicated feed containing 0.8 pct dietary calcium; not to be fed continuously for more than 5 d; withdraw 24 h prior to slaughter.	

Table 2

Chlortetracycline Milligrams per pound of body weight per day	Combination in milligrams per head per day	Indications for use	Limitations	Sponsor
(i) 0.1		For calves up to 250 lb in weight; growth promotion and feed efficiency.	In milk replacers or starter Type C medicated feed	
(ii) 0.5		1. For beef cattle over 1,500 lb in weight; aid in prevention of anaplasmosis.	Not to be administered within 48 h of slaughter	
		2. For calves up to 250 lb in weight; aid in the prevention of bacterial diarrhea.	In milk replacers or starter Type C medicated feed	
(iii) 5.0		For beef cattle; aid in the elimination of the carrier state of anaplasmosis.	Feed for 60 days; for use in the carrier state only; not to be fed within 10 d of slaughter. Labeling shall include a statement that a positive complement-fixation test at conclusion of a 60-d feeding period does not necessarily establish that anaplasmosis carrier state is still active. To positively establish that the carrier state has been eliminated, inject blood from a suspected carrier into a splenectomized (susceptible) calf.	
(iv) 25 to 70		For calves; growth promotion and feed efficiency		
(v) 70		1. For feedlot cattle; aid in prevention of liver abscesses		
		2. For beef cattle up to 700 lb in weight; aid in reduction of bacterial diarrhea; aid in prevention of foot rot.		
		3. For growing cattle; growth promotion and feed efficiency		
(vi) 85		For horses up to 1 year of age; growth promotion and feed efficiency.	Do not slaughter for food purposes	
(vii) 100		For beef cattle over 700 lb in weight; aid in reduction of bacterial diarrhea; aid in prevention of foot rot.		
(viii) 350		1. For beef cattle; aid in prevention of bacterial pneumonia and shippings fever (hemorrhagic septicemia); aid in reduction of losses due to respiratory infection (infectious rhinotracheitis, shipping fever complex).	Not to be administered within 48 h of slaughter	
		2. For beef cattle up to 700 lb in weight; aid in prevention of anaplasmosis.	do	
	Sulfamethazine 350	For beef cattle; aid in the maintenance of weight gains in the presence of respiratory disease such as shipping fever.	Feed to 28 d; withdraw 7 d prior to slaughter	
(ix) 500		For beef cattle 700 to 1,000 lb in weight; aid in prevention of anaplasmosis.	Not to be administered within 48 h of slaughter	
(x) 750		For beef cattle 1,000 to 1,500 lb in weight; aid in prevention of anaplasmosis.	do	

(4) Chlortetracycline may also be used in combination with:

(i) Amprolium as in § 558.55.

(ii) Amprolium plus ethopabate as in § 558.58.

(iii) Buquinolate as in § 558.105.

(iv) Clopidol as in § 558.175.

(v) Decoquinate as in § 558.195.

(vi) [Reserved]

(vii) Hygromycin B as in § 558.274.

(viii) Robenidine hydrochloride as in § 558.515.

(ix) Roxarsone as in § 558.530.

(x) Zoalene as in § 558.680.

§ 588.145 Chlortetracycline, penicillin procaine, and sulfamethazine.

(a) *Specifications.* (1) The antibiotic substance refers to the antibiotic or feed-grade antibiotic.

(2) [Reserved]

(3) [Reserved]

(4) The antibiotic activities are expressed in terms of the appropriate antibiotic standards.

(5) Type C medicated feed contains in each ton, 100 grams of chlortetracycline, 50 grams of penicillin as penicillin procaine and 100 grams of sulfamethazine.

(b) *Approvals.* Type A medicated article: 20 grams of chlortetracycline per pound, 4.4 percent (20 grams) of sulfamethazine, and pencillin procaine equivalent in activity to 10 grams of penicillin per pound to 000196 and 010042 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) [Reserved]

(e) *Related tolerances.* See §§ 556.150, 556.510, and 556.670 of this chapter.

(f) *Conditions of use.* (1) It is administered to swine for reduction of the incidence of cervical abscesses; treatment of bacterial swine enteritis (salmonellosis or necrotic enteritis caused by *Salmonella choleraesuis* and vibrionic dysentery); prevention of these diseases during times of stress; maintenance of weight gains in the presence of atrophic rhinitis; growth promotion and increased feed efficiency in swine weighing up to 75 pounds.

(2) Withdraw 7 days prior to slaughter.

§ 558.155 Chlortetracycline, penicillin procaine, and sulfathiazole.

(a) *Specifications.* (1) The antibiotic substance refers to the antibiotic or feed-grade antibiotic.

(2) [Reserved]

(3) [Reserved]

(4) The antibiotic activities are expressed in terms of the appropriate antibiotic standards.

(b) *Approvals.* (1) Type A medicated articles: 20 grams of chlortetracycline hydrochloride, 4.4 percent (20 grams) sulfathiazole, and penicillin procaine, equivalent to 10 grams of penicillin per pound, to 025001 in § 510.600(c) of this chapter.

(2) Type A medicated articles: 40 grams of chlortetracycline hydrochloride, 8.8 percent (40 grams) sulfathiazole, and penicillin procaine equivalent to 20 grams of penicillin per pound, to 025001 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) [Reserved]

(e) *Related tolerances.* See §§ 556.150, 556.510, and 556.690 of this chapter.

(f) *Conditions of use.* It is used for swine as follows:

(1) *Amount per ton.* Chlortetracycline, 100 grams plus penicillin, 50 grams plus sulfathiazole, 100 grams.

(2) *Indications for use.* For increased rate of weight gain and improved feed efficiency in animals up to 6 weeks postweaning. For increased rate of weight gain in animals from 6 to 16 weeks postweaning. Maintenance of weight gains in the presence of atrophic rhinitis; reduction of the incidence of cervical abscesses; treatment of bacterial swine enteritis (salmonellosis or necrotic enteritis caused by *Salmonella choleraesuis* and vibrionic dysentery).

(3) *Limitations.* For swine raised in confinement (dry-lot) or on limited pasture; withdraw 7 days prior to slaughter; as penicillin procaine and chlortetracycline hydrochloride, as follows:

Minimum Amount of Type C Medicated Feed Article Which the Animal Should Consume

Type of feed	Approximate body weight in pounds	Minimum desired daily feed intake in pounds
Prestarter (up to 6 weeks' postweaning)	20	1
Starter (up to 6 weeks' postweaning)	50	1½
Grower (6 to 16 weeks' postweaning)	80	2
Finisher (6 to 16 weeks' postweaning)	150	3

§ 558.175 Clopidol.

(a) [Reserved]

(b) *Approvals.* (1) Type A medicated articles: 25-percent to 025700 in § 510.600(c) of this chapter.

(2) [Reserved]

(3) Type A medicated article combinations of clopidol 25 percent, roxarsone 10 percent, and bacitracin methylene disalicylate, 4, 10, 15, or 25 grams per pound to 025700 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See § 566.160 of this chapter.

(e) *Conditions of use.* It is used as follows:

(1) *Broiler chickens*—(i). *Amount per ton.* Clopidol 113.5 grams (0.0125 percent).

(a) Indications for use. Aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.*

(b) Limitations. Do not feed to chickens over 16 weeks of age.

(ii) *Amount per ton.* Clopidol, 113.5 grams (0.0125 percent) plus roxarsone, 45.4 grams (0.005 percent).

(a) Indications for use. Aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati;* growth promotion and feed efficiency; improved pigmentation.

(b) Limitations. Do not feed to chickens over 16 weeks of age withdraw 5 days before slaughter; as sole source of organic arsenic.

(iii) *Amount per ton.* Clopidol, 113.5 grams (0.0125 percent) plus roxarsone, 45.4 grams (0.005 percent) plus bacitacin, 4–25 grams.

(a) Indications for use. Aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati;* growth promotion and feed efficiency; improved pigmentation; increased rate of weight gain..

(b) Limitations. Do not feed to chickens over 16 weeks of age withdraw 5 days before slaughter; as sole source of organic arsenic; as bacitracin methylene disalicylate, provided by 046573 in § 510.600(c) of this chapter; or as bacitracin zinc provided by 012769.

(iv) *Amount per ton.* Clopidol, 113.5 grams (0.0125 percent) plus bacitracin zinc, 5 to 25 grams.

(a) Indications for use. For increased rate of weight gain and improved feed efficiency; aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.*

(b) Limitations. Feed continuously as sole ration. Bacitracin zinc as provided by 012769 in § 510.600(c) of this chapter.

(v) *Amount per ton.* Clopidol, 113.5 grams (0.0125 percent) plus bacitracin methylene disalicylate, 4 to 50 grams per ton.

(a) Indications for use. For increased rate of weight gain; to aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. maxima, E. mivati,* and *E. brunetti.*

(b) Limitations. Feed continuously as the sole ration from the time chicks are placed in floor pens until slaughter. Do not feed to chickens over 16 weeks of age. Bacitracin methylene disalicylate as provided by 046573 in § 510.600(c) of this chapter.

(vi) *Amount per ton.* Clopidol, 113.5 grams (0.0125 percent) plus lincomycin, 2–4 grams.

(a) Indications for use. Aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati;* increase in rate of weight gain and improved feed efficiency.

(b) Limitations. As lincomycin hydrochloride monohydrate; do not feed to chickens over 16 weeks of age.

(2) *Broiler chickens and replacement chickens.* (i) *Amount per ton.* Clopidol, 113.5 or 227 grams (0.0125 or 0.025 percent).

(a) Indications for use. Aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.*

(b) Limitations. Feed up to 16 weeks of age if intended for use as caged layers; feed continuously as the sole ration; withdraw 5 days before slaughter if given at the level of 0.025 percent in type C medicated feed or reduce level to 0.0125 percent 5 days before slaughter.

(ii) *Amount per ton.* 113.5 grams (0.0125 percent) clopidol with 200 grams chlortetracycline.

(a) Indications for use. Aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. maxima, E. mivati,* and *E. brunetti,* and infectious synovitis caused by *Mycoplasma synoviae.*

(b) Limitations. Feed continuously as sole ration from the time chicks are

placed in floor pens, up to 21 days of age.

(3) [Reserved]

(4) *Replacement chickens*—(i) *Amount per ton.* Clopidol, 113.5 grams (0.0125 percent).

(a) *Indications for use.* Aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.*

(b) *Limitations.* For replacement chickens intended for use as caged layers; do not feed to chickens over 16 weeks of age.

(ii) *Amount per ton.* Clopidol, 113.5 grams (0.0125 percent) plus roxarsone 45.4 grams (0.005 percent).

(a) *Indications for use.* Aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati; growth promotion and feed efficiency; improving pigmentation.*

(b) *Limitations.* For replacement chickens intended for use as caged layers; do not feed to chickens over 16 weeks of age; withdraw 5 days before slaughter; as sole source of organic arsenic.

(5) *Turkeys*—(i) Amount per ton. Clopidol, 113.5 or 227 grams (0.0125 or 0.025 percent).

(ii) *Indications for use.* Aid in the prevention of leucocytozoonosis caused by *Leucocytozoon smithi.*

(iii) *Limitations.* For turkeys grown for meat purposes only; to be administered continously in Type C medicated feed at 0.0125 or 0.025 percent clopidol as the sole ration depending upon management practices, degree of exposure, and amount of feed eaten; withdraw 5 days before slaughter.

§ 558.185 Coumaphos.

(a) [Reserved]

(b) *Approvals.* (1) Type A medicated articles: 1.12, 2.0, 11.2, and 50 percent for use as in paragraph (f) of this section to 000859 in § 510.600(c) of this chapter.

(2) Type A medicated articles: 1.12 and 11.2 percent for use as in paragraph (f)(1)(ii) of this section to 017800.

(c) [Reserved]

(d) *Special considerations.* Warning—Coumaphos is a cholinesterase inhibitor. Do not use this product simultaneously or within a few days before or after treatment with or exposure to cholinesterase-inhibiting drugs, pesticides, or chemicals. Atropine is antidotal.

(e) *Related tolerances.* See 40 CFR 180.189.

(f) *Conditions of use.* It is used as follows:

(1) *Beef and dairy cattle*—(i) *Amount.* Coumaphos 0.00012 lb. (0.054 gram) per 100 lb. body weight per day.

(a) *Indications for use.* As an aid in the reduction of fecal breeding flies through control of fly larvae.

(b) *Limitations.* Feed for the duration of fly season in a feed containing 0.0033 percent not over 0.0066 percent coumaphos; do not feed to animals less than 3 months old; not for use in pelleted feed.

(ii) *Amount.* Coumaphos, 0.0002 lb. (0.091 gram) per 100 lb. body weight per day.

(a) *Indications for use.* Control of gastrointestinal roundworms (*Haemonchus spp., Ostertagia spp., Cooperia spp., Nematodirus spp., Trichostrongylus spp.*).

(b) *Limitations.* Feed for 6 consecutive days in the normal grain ration to which the animals are accustomed but not in rations containing more than 0.1 percent coumaphos; do not feed to animals less than 3 months old do not feed to sick animals or animals under stress, such as those just shipped, dehorned, castrated, or weaned within the last 3 weeks; do not feed in conjunction with oral drenches or with feeds containing phenothiazine. Should conditions warrant, repeat treatment at 30-day intervals.

(2) *Laying chickens*—(i) *Amount.* Coumaphos 27.2 grams per ton (0.003 percent).

(ii) *Indications for use.* For control of capillary worm (*Capillaria obsignata*) and as an aid in control of common roundworm (*Ascaridia galli*) and cecal worm (*Heterakis gallinae*).

(iii) *Limitations.* Administer continuously for 14 days; when reinfection occurs, treatment may be repeated but not sooner than 3 weeks after the end of the previous treatment; do not feed to chickens within 10 days of vaccination or other conditions of stress; treatment of colored breeds of commercial layers should be avoided while in production since these breeds appear to be more sensitive to coumaphos than white breeds; as sole medication; medications in general should be avoided while birds are approaching peak production; such interruption of normal feeding practices may upset the flock and lower egg production; diagnosis by competent personnel is essential; flock condition and production records should be carefully evaluated prior to treatment.

(3) *Replacement pullets*—(i) *Amount.* Coumaphos 36.3 grams per ton (0.004 percent).

(ii) *Indications for use.* For control of capillary worm (*Capillaria obsignata*) and as an aid in control of common roundworm (*Ascaridia galli*) and cecal worm (*Heterakis gallinae*).

(iii) *Limitations.* Administer before the onset of production; diagnosis by competent personnel is essential; administer continuously for from 10 to 14 days; do not feed to chickens under 8 weeks of age nor within 10 days of vaccination or other conditions of stress; if birds are maintained on contaminated litter or exposed to infected birds, a second 10 to 14 day treatment is recommended but not sooner than 3 weeks after the end of the previous treatment; as sole medication; if reinfection occurs after production begins, repeat treatment as recommended for laying flocks.

§ 558.195 Decoquinate.

(a) [Reserved]

(b) [Reserved]

(c) *Approvals.* Type A medicated articles: 6 percent to 011801 in § 510.600(c) of this chapter.

(d) [Reserved]

(e) *Related tolerances.* See § 556.170 of this chapter.

(f) *Special considerations.* Bentonite should not be used in decoquinate containing medicated feeds.

(g) *Conditions of use.* (1) It is used as follows:

Table 1

Decoquinate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
27.2 (0.003 pct)		Broiler chickens; as an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. mivati, E. acervulina, E. maxima,* and *E. brunetti.*	Do not feed to laying chicken	011801
	Bacitracin 10 to 50	Broiler chickens; as an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. mivati, E. acervulina, E. maxima,* and *E. brunetti;* for increased rate of weight gain and improved feed efficiency.	Do not feed to laying chickens; feed as sole ration; as bacitracin zinc provided by 012769 in sec. 510.600(c) of this chapter.	011801
	Chlortetracycline 200	Broiler chickens; as an aid in the prevention of coccidiosis caused by *Eimeria Tenella, E. necatrix, E. acervulina, E. maxima,* and *E. brunetti;* for the treatment of chronic respiratory disease (air-sac infection), prevention of synovitis.	Do not feed to laying chickens; in low calcium Type C medicated feed articles containing 0.8 pct of calcium; not to be fed continuously for more than 8 weeks; as chlortetracycline hydrochloride provided by 010042 in sec. 510.600(c) of this chapter.	
	Roxarsone 45.4 (0.005 pct).	Broiler chickens; as an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. mivati, E. acervulina, E. maxima,* and *E. brunetti;* growth promotion and feed efficiency; improving pigmentation.	Do not feed to laying chickens; withdraw 5 d before slaughter, as sole source of organic arsenic.	011801
	Lincomycin 2	Broiler chickens; as an aid in the prevention of coccidiosis caused by *Eimeria Tenella, E. necatrix, E. acervulina, E. maxima, E. mivati,* and *E. brunetti;* for increased rate of weight gain and improved feed efficiency.	Do not feed to laying chickens; feed as sole ration; as lincomycin hydrochloride monohydrate provided by 000009 in sec. 510.600(c) of this chapter.	000009, 011801
	Roxarsone 11 to 45 (0.0012–0.005 pct) plus bacitracin 2 to 50.	Broiler chickens; as an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. Mivati, E. maxima,* and *E. brunetti;* for increased rate of weight gain and improved feed efficiency.	Do not feed to laying chickens; withdraw 5 d before slaughter; as sole source of organic arsenic; as bacitracin zinc provided by 012769 in sec. 510.600(c) of this chapter; as roxarsone provided by 017210.	011801

Table 2

Decoquinate	Combination in grams per ton	Indications for use	Limitations	Sponsor
22.7 mg per 100 lb of body weight per day (0.5 mg per kilogram).		Cattle; as an aid in the prevention of coccidiosis in ruminating calves and cattle caused by *Eimeria bovis* and *E. zurnii.*	Administer as a feed containing 0.0015 to 0.003 pct decoquinate, or 0.05 to 0.5 pct decoquinate. Feed for at least 28 d during periods of coccidiosis or when it is likely to be a hazard. Do not feed to breeding animals or cows producing milk for food. .0015—.003 pct feed should be consumed within 7 d of manufacture, 0.5—.5 pct feed within 2 mo.	011801

§ 558.205 Dichlorvos.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 9.6 percent to 025001 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Special considerations.* (1) Dichlorvos is to be included in meal or mash or mixed with feed in crumble form only after the crumble feed has been manufactured. Do not mix in feed to be pelleted nor with pelleted feed. Do not soak the feed or administer as wet mash. Type C medicated feed must be dry when administered. Do not use in animals other than swine. Do not allow fowl access to feed containing dichlorvos or to feces from treated animals.

(2) Dichlorvos is a cholinesterase inhibitor. Do not use this product in animals simultaneously or within a few days before or after treatment with or exposure to cholinesterase-inhibiting drugs, pesticides, or chemicals.

(e) *Related tolerances.* See § 556.180 of this chapter.

(f) *Conditions of use.* It is used for swine as follows:

(1) *Amount per ton.* Dichlorvos, 348 grams (0.0384 percent).

(i) *Indications for use.* For the removal and control of mature, immature, and/or fourth-stage larvae of the whipworm (*Trichuris suis*), nodular worm (*Oesophagostomum sp. p.*), large roundworm (*Ascaris suum*), and the thick stomach worm (*Ascarops strongylina*) of the gastrointestinal tract.

(ii) *Limitations.* For swine up to 70 pounds body weight, feed as sole ration for 2 consecutive days. For swine from 70 pounds to market weight, feed as sole ration at the rate of 8.4 pounds of feed per head until feed has been consumed. For boars, open or bred gilts, and sows, feed as sole ration at the rate of 4.2 pounds per head per day for 3 consecutive days.

(2) *Amount per ton.* Dichlorvos, 479 grams (0.0528 percent).

(i) *Indications for use.* For the removal and control of mature, immature, and/or fourth-stage larvae of the whipworm (*Trichuris suis*), nodular worm (*Oesophagostomum sp. p.*), large roundworm (*Ascaris suum*), and the

thick stomach worm (*Ascarops strongylina*) of the gastrointestinal tract.

((ii) *Limitations.* For boars, open or bred gilts, and sows, feed as sole ration at the rate of 6 pounds per head for one feeding.

(3) *Amounts per ton.* Dichlorvos, 334–500 grams (0.0366–0.0550 percent).

(i) *Indications for use.* An aid in improving litter production efficiency by increasing pigs born alive, birth weights, survival to market, and rate of weight gain. Treatment also removes and controls mature, immature and/or fourth-stage larvae of whipworm (*Trichuris suis*), nodular worm (*Oesophagostomum sp. p.*), large roundworm (*Ascaris suum*), and the thick stomach worm (*Ascarops strongylina*) occurring in the gastrointestinal tract of the sow or gilt.

(ii) *Limitations.* For pregnant swine; mix into a gestation feed to provide 1,000 milligrams per head daily during last 30 days of gestation.

§ 558.240 Dimetridazole.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 30 percent to 017210 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See § 556.210 of this chapter.

(e) *Conditions of use.* It is used for turkeys as follows:

(1) *Amount per ton.* 136 to 182 grams (0.015 to 0.02 percent).

(i) *Indications of use.* For prevention of blackhead (histomoniasis, infectious enterohepatitis), growth promotion and feed efficiency.

(ii) *Limitations.* Feed continuously; do not feed to birds producing eggs for human consumption; withdraw 5 days before slaughter; as sole source of dimetridazole.

(2) *Amount per ton.* 544 to 725 grams (0.06 to 0.08 percent).

(i) *Indications for use.* As an aid in the control of blackhead (histomoniasis, infectious enterohepatitis).

(ii) *Limitations.* Feed for not more than 7 days; do not feed to birds producing eggs for human consumption; withdraw 5 days before slaughter; as sole source of dimetridazole.

§ 558.248 Erythromycin thiocyanate.

(a) *Approvals.* Type A medicated articles: 2.2 percent (10 grams per pound) to 043731 in § 510.600(c) of this chapter for use in swine feed; 11 percent (50 grams per pound) to 043731 for chicken, turkey, and cattle feed.

(b) [Reserved]

(c) *Special considerations.* The levels of antibiotic are expressed in terms of erythromycin master standard. One gram of erythromycin thiocyanate is equivalent to 0.925 gram of erythromycin master standard.

(d) *Related tolerances.* See § 556.230 of this chapter.

(e) *Conditions of use*—(1) It is used as follows:

Erythromycin thiocyanate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 4.6 to 18.5		Chickens; growth promotion and feed efficiency		
(ii) 9.25 to 18.5		Turkeys; growth promotion and feed efficiency	For turkeys not over 12 weeks of age	
(iii) 9.25 to 64.75		Swine; increase in weight gain, improved feed efficiency in starter pigs (9.25 to 64.75) and grower-finishing pigs (9.25).	Starter ration for animals up to 35 lb body weight	043731
(iv) 18.5		Laying chickens; aid in increasing egg production		
(v) 92.5		1. Chickens; as an aid in the prevention of chronic respiratory disease during periods of stress.	Feed for 2 d before stress and 3 to 6 d after stress; withdraw 24 h before slaughter.	
		2. Chickens; as an aid in the prevention of infectious coryza.	Feed for 7 to 14 d; withdraw 24 h before slaughter	
		3. Turkeys; as an aid in the prevention of chronic respiratory disease during periods of stress.	Feed for 2 d before stress and 3 to 6 d after stress	
(vi) 185		1. Chickens; as an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease.	Feed for 5 to 8 d; do not use in birds producing eggs for food purposes; withdraw 48 h before slaughter.	
		2. Turkeys; as an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease.	Feed for 5 to 8 d; do not use in birds producing eggs for food purposes.	

(2) It is used for feedlot beef cattle at 37 milligrams per head per day as an aid in stimulating growth and improving feed efficiency.

(3) Erythromycin thiocyanate may also be used in combination with:

(i) Amprolium as in § 558.55.

(ii) Amprolium and ethopabate as in § 558.58.

(iii) Arsanilic acid as in § 558.62.

(iv) Zoalene as in § 558.680.

§ 558.254 Famphur.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 13.2 and 33.3 percent to 010042 in § 510.600(c) of this chapter.

(c) *Special considerations.* Famphur is a cholinesterase inhibitor. Do not use this product in animals simultaneously or within a few days before or after treatment with or exposure to cholinesterase-inhibiting drugs, pesticides, or chemicals.

(d) *Related tolerances.* See 40 CFR 180.233.

(e) *Conditions of use.* It is used for cattle as follows:

(1) *Amount.* 1.1 milligrams per pound body weight per day.

(i) *Indications for use.* For control of grubs and as an aid in control of sucking lice.

(ii) *Limitations.* For beef cattle and nonlactating dairy cows; feed for 30 days; withdraw from dry diary cows and heifers 21 days prior to freshening; withdraw 4 days prior to slaughter.

(2) *Amount.* 2.3 milligrams per pound body weight per day.

(i) *Indications for use.* For control of grubs.

(ii) *Limitations.* For beef cattle and nonlactating dairy cows; feed for 10 days; withdraw from dry dairy cows and heifers 21 days prior to freshening; withdraw 4 days prior to slaughter.

§ 558.262 Furazolidone.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 10, 50, and 100 grams per pound to 000007 and 011801 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See § 556.290 of this chapter.

(e) *Conditions of use.* It is used for swine as follows:

(1) *Amount per ton.* 150 grams (0.0165 percent).

(i) *Indications for use.* In sows, for prevention of bacterial scours in baby pigs; growth promotion while on medication.

(ii) *Limitations.* Feed 1 week before farrowing and 2 weeks after farrowing.

(2) *Amount per ton.* 100 to 200 grams (0.011 to 0.022 percent).

(i) *Indications of use.* Prevention of bacterial enteritis (necrotic enteritis, necro) and vibrionic (bloody) dysentery; growth promotion while on medication.

(ii) *Limitations.* Feed 100 grams per ton for 5 weeks; or 150 grams per ton for 3 weeks; or 200 grams per ton for 2 weeks.

(3) *Amount per ton.* 300 grams (0.033 percent).

(i) *Indications for use.* Treatment of bacterial enteritis (necrotic enteritis, necro) and vibrionic (bloody) dysentery; growth promotion while on medication.

(ii) *Limitations.* Feed 10 to 14 days.

§ 558.266 Griseofulvin.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 35 percent (160 grams per pound) to 000085 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use.* It is used for chinchillas as follows:

(1) *Amount.* 160 milligrams per pound (0.0353 percent).

(2) *Indications for use.* Prevention, treatment, and control of fungal infections caused by *Trichophyton,* and as an aid in the prevention of fur chewing associated with these fungal infections.

(3) *Limitations.* Administer as sole ration.

§ 558.274 Hygromycin B.

(a) *Approvals.* Type A medicated article: 2.4 and 8 grams to 000986 in § 510.600(c) of this chapter.

(b) [Reserved]

(c) [Reserved]

(d) *Related tolerances.* See § 556.330 of this chapter.

(e) *Conditions of use.* It may be used as follows:

Hygromycin B in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 5 to 12		Chickens; control of infestation of large roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*).	Withdraw 3 days before slaughter	000986
	Bacitracin 100	Chickens; control of infestation of large roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*); treatment of chronic respiratory disease (airsac infection), blue comb (nonspecific infectious enteritis).	As bacitracin methylene disalicylate or bacitracin zinc, withdraw 3 days before slaughter.	
	Bacitracin plus penicillin (100 to 200 of combination).	1. Chickens; control of infestation of large roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*); treatment of chronic respiratory disease (airsac infection), blue comb (nonspecific infectious enteritis).	Feed containing not less than 25% of penicillin plus not less than 50% of bacitracin; as penicillin procaine plus bacitracin methylene disalicylate; withdraw 3 days before slaughter.	
		2. Chickens; control of infestation of large roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*); treatment of chronic respiratory disease (airsac infection), blue comb (nonspecific infectious enteritis).	Combination containing not less than 50% nor more than 75% of bacitracin, except that it contains not more than 125 g of penicillin; as penicillin procaine plus bacitracin zinc, withdraw 3 days before slaughter.	
		3. Chickens; control of infestation of large roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*); treatment of chronic respiratory disease (airsac infection), blue comb (nonspecific infectious enteritis).	Combination containing 50% to 75% bacitracin, but not more than 125 g of penicillin, as penicillin procaine, withdraw 3 days before slaughter.	
	Chlortetracycline 100 to 200.	Chickens; control of infestation of large roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*); treatment of chronic respiratory disease (airsac infection), blue comb (nonspecific infectious enteritis); prevention of synovitis.	Not to be fed to laying chickens; as chlortetracycline hydrochloride; withdraw 3 days before slaughter.	
	Penicillin 100	Chickens; control of infestation of large roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*); treatment of chronic respiratory disease (airsac infection), blue comb (nonspecific infectious enteritis).	As penicillin procaine, withdraw 3 days before slaughter	
	Penicillin plus streptomycin (90 to 180 of combination).	...do	Feed containing 16.7% of penicillin; as penicillin procaine plus streptomycin sulfate; withdraw 3 days before slaughter.	
	Tylosin 4 to 50	Chickens; control of infestation of large roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*); growth promotion and feed efficiency.	As tylosin phosphate withdraw 3 days before slaughter	000986
(ii) 12		Swine; control of infestation of large roundworms (*Ascaris suis*), nodular worms (*Oesophagostenum dentatum*) and whipworms (*Trichuris suis*).	Withdraw 15 days before slaughter	000986
	Chlortetracycline 100 to 200.	Swine; control of infestation of large roundworms (*Ascaris suis*), nodular worms (*Oesophagostenum dentatum*) and whipworms (*Trichuris suis*); treatment of bacterial swine enteritis.	As chlortetracycline hydrochloride; withdraw 15 days before slaughter	
Tylosin 10 to 100		Swine: Control of infestations of large roundworms (*Ascaris suis*), nodular worms (*Oesophagostomum dentatum*), and whipworms (*Trichuris suis*); growth promotion and feed efficiency.	As tylosin phosphate; withdraw 15 days prior to slaughter, feed continuously as follows:	000986

Animal wt (lbs.)	Amount of tylosin (g/t)
Up to 40	20 to 100
41 to 100	20 to 40
101 to market wt	10 to 20

(2) Hygromycin B may also be used in combination with:

(i) Amprolium as in § 558.55.

(ii) Zoalene as in § 558.680.

§ 558.295 Iodinated casein.

(a) *Approvals.* See 017762 in § 510.600(c) of this chapter.

(b) *NAS/NRC status.* The use of this drug is NAS/NRC reviewed and found effective. Applications for these uses need not include efficacy data as required by § 514.111 of this chapter but may require bioequivalency or safety data.

(c) *Conditions of use.* (1) *Ducks.*—(i) *Amount per ton.* 100 to 200 grams.

(ii) *Indications for use.* For increased rate of weight gain and improved feathering in growing ducks.

(2) *Dairy cows*—(i) *Amount per pound.* ½ to 1½ grams per 100 lb of body weight.

(ii) *Indications for use.* For increased milk production in dairy cows.

(iii) *Limitations.* This drug is effective for limited periods of time, and the effectiveness is limited to the declining phase of lactation. Administration must be accompanied with increased feed intake; administration may increase heat sensitivity of the animal.

§ 558.305 Ipronidazole.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 12.5 percent to 000004 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See § 556.340 of this chapter.

(e) [Reserved]

(f) *Conditions of use.* It is used for turkeys as follows:

(1) *Amount per ton.* Ipronidazole, 56.75 grams (0.00625 percent).

(i) *Indication for use.* As an aid in the prevention of blackhead (histomoniasis). For increased rate of weight gain and improved feed efficiency.

(ii) *Limitations.* Withdraw 4 days before slaughter. Do not feed to turkeys producing eggs for food.

(2) *Amount per ton.* Ipronidazole, 56.75 grams (0.00625 percent) plus sulfadimethoxine, 56.75 grams (0.00625 percent) plus ormetoprim, 34.05 grams (0.00375 percent).

(i) *Indications for use.* As an aid in the prevention of blackhead (histomoniasis) and coccidiosis caused by all Eimeria species known to be pathogenic to turkeys, namely, *E. adenoeides, E. gallopavonis,* and *E. meleagrimitis;* bacterial infections due to *P. multocida* (fowl cholera).

(ii) *Limitations.* Withdraw 5 days before slaughter. Do not feed to turkeys producing eggs for food.

(3) *Amount per ton.* Ipronidazole, 227 grams (0.025 percent).

(i) *Indications for use.* For the treatment of blackhead (histomoniasis) in turkeys.

(ii) *Limitations.* Withdraw 4 days before slaughter. Do not feed to turkeys producing eggs for food. Feed for 7 days at the 0.025 percent level. Follow treatment with the preventive level (0.00625 percent) of ipronidazole.

§ 558.311 Lasalocid sodium.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 68 and 90.7 grams per pound of lasalocid sodium activity to 000004 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerance.* See § 556.347 of this chapter.

(e) *Conditions of use.* It is used for broiler or fryer chickens as follows:

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(1) 68 (0.0075 pct) to 113 (0.0125 pct).		For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*	For broiler or fryer chickens only; feed continuously as the sole ration; withdraw 3 days before slaughter.	000004
(2) 68 (0.00075 pct) to 113 (0.0125 pct).	Roxarsone 45.4 (0.005 pct).	For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima* and as an aid in the reduction of lesions due to *E. tenella.*	For broiler or fryer chickens only; feed continuously as the sole ration; as sole source of organic arsenic; withdraw 5 days before slaughter, roxarsone provided by 017210 and 011801 in sec. 510.600(c) of this chapter.	000004
(3) 68 (0.0075 pct)	Lincomycin 2 (0.00044 pct).	For the prevention of coccidiosis caused by *Eimeria mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix;* for increased rate of weight gain and improved feed efficiency.	For broiler and fryer chickens only; feed continuously as sole ration; withdraw 5 days before slaughter; finished feed must be used within 4 weeks of manufacture; as lincomycin hydrochloride monohydrate.	000004
(4) 68 (0.0075 pct)	Bacitracin 10 to 50	For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain and improved feed efficiency.	For broiler and fryer chickens only; feed continuously as sole ration; withdraw 3 days before slaughter; bacitracin methylene disalicylate provided by 046573 in § 510.600(c) of this chapter.	000004

§ 558.315 Levamisole hydrochloride (equivalent).

(a) [Reserved]

(b) [Reserved]

(c) *Approvals.* Type A medicated articles: 227 grams per pound to No. 043781 in § 510.600(c) of this chapter.

(d) [Reserved]

(e) *Related tolerances.* See § 556.350 of this chapter.

(f) [Reserved]

(g) *Conditions of use.* It is used as follows:

(1) *Cattle*—(i) *Amount per pound.* 0.36–3.6 grams (0.08–0.8 percent).

(ii) *Indications for use.* Treatment of the following gastrointestinal worms and lung worm infections: stomach worms (*Hawmonchus, Trichostrongylus, Ostertagia*), intestinal worms (*Trichostrongylus Cooperia, Nematodirus, Bunostomum, Oesophagostomum*), and lungsworms (*Dictyocaulus*).

(iii) *Limitations.* Administer mixed thoroughly in one half the usual amount of morning feed; the mixed feed should be consumed within 6 hours; when the mixed feed is consumed resume normal feeding; mixed Type C medicated feed is to be fed at the rate of 0.36 grams of levamisole hydrochloride (equivalent) per 100 lb. of body weight; conditions of constant helminth exposure may require retreatment within 2 to 4 weeks after the first treatment; do not slaughter for food within 48 hours of treatment; consult veterinarian before using in severely debilitated animals; do not administer to dairy animals of breeding age; for use in pelleted or meal feed only; the label shall bear the caution, "Muzzle foam may be observed. However, this reaction will disappear within a few hours. If this condition persists, a veterinarian should be consulted. Follow recommended dosage carefully."

(2) *Swine*—(i) *Amount per pound.* 0.36 grams (0.08 percent).

(ii) *Indications for use.* Treatment of the following nematode infections: large roundworms (*Ascaris suum*), nodular worms (*Oesophagostomum* spp.), lungworms (*Metastrongylus* spp.), intestinal threadworms (*Strongyloides ransomi*), swine kidney worms (*Stephanurus dentatus*).

(iii) *Limitations.* It is recommended that regular feed be withheld overnight and Type C medicated feed administered the following morning; feed 1 lb. of 0.08 percent Type C medicated feed per 100 lbs. of body weight of pigs to be treated; may be fed as sole feed or thoroughly mixed with 1 to 2 parts of regular feed prior to feeding; when mixed feed is consumed, resume normal feeding. Pigs maintained under conditions of constant worm exposure may require retreatment within 4 to 5 weeks after the first treatment due to reinfection; do not slaughter for food within 72 hours of treatment; the label shall bear the caution, "Excessive salivation or muzzle foam may be observed. This reaction is occasionally seen and will disappear in a short time after medication. If pigs are infected with mature lungworms, coughing and vomiting may be observed soon after Type C medicated feed is consumed. This reaction is due to the expulsion of worms from the lungs and will be over in several hours."

§ 558.325 Lincomycin.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 4 grams per pound to 000009 in § 510.600(c) of this chapter for use as in paragraphs (f)(1) and (f)(3) of this section; 20 grams per pound to 000009 for use as in paragraph (f) (1), (2), and (3).

(c) [Reserved]

(d) *Related tolerances.* See § 556.360 of this chapter.

(e) [Reserved]

(f) *Conditions of use.* (1) Broilers. It is used as follows:

(i) *Amount per ton.* 2 to 4 grams.

(*a*) *Indications for use.* For increase in rate of weight gain and improved feed efficiency.

(*b*) *Limitations.* As lincomycin hydrochloride monohydrate.

(ii) *Amount per ton.* 2 grams.

(*a*) *Indications for use.* For control of necrotic enteritis caused by *Clostridium spp.* or other susceptible organisms.

(*b*) *Limitations.* As lincomycin hydrochloride monohydrate.

(2) *Swine.* It is used as follows:

(i) *Amount per ton.* 40 grams.

(*a*) *Indications for use.* For control of swine dysentery.

(*b*) *Limitations.* Feed as sole ration; for use in swine on premises with a history of swine dysentery but where symptoms have not yet occurred; not for use in breeding swine; withdraw 6 days before slaughter.

(ii) *Amount per ton.* 100 grams; then 40 grams.

(*a*) *Indications for use.* For treatment and control of swine dysentery.

(*b*) *Limitations.* Feed 100 grams per ton for 3 weeks or until signs of disease disappear, followed by 40 grams per ton; feed as sole ration; not for use in breeding swine; withdraw 6 days before slaughter.

(iii) *Amount per ton.* 100 grams.

(*a*) *Indications for use.* For treatment of swine dysentery.

(*b*) *Limitations.* Feed as sole ration for 3 weeks or until signs of disease disappear; not for use in breeding swine; withdraw 6 days before slaughter.

(3) Lincomycin may also be used for broilers in combination with:

(i) Amprolium, ethopabate, and roxarsene as in §§ 558.58 and 558.530.

(ii) Amprolium and ethopabate as in § 558.58.

(iii) Clopidol as in § 558.175.

(iv) Buquinolate as in § 558.105.

(v) Decoquinate as in § 558.195.

(vi) Zoalene as in § 558.680.

(vii) Monensin as in § 558.355.

(viii) Robenidine hydrochloride as in § 558.515.

(ix) Roxarsone and monensin sodium as in §§ 558.355 and 558.530.

(x) Lasalocid sodium as in § 558.311.

(xi) Nicarbazin and roxarsone as in § 558.366.

(xii) Nicarbazin as in § 558.366.

§ 558.342 Melengestrol acetate.

(a) *Approvals.* Dry Type A medicated articles: 100 milligrans of melengestrol acetate per pound; liquid Type A medicated articles: 500 milligrams of melengestrol acetate per pound, to 000009 in § 510.600(c) of this chapter.

(b) [Reserved]

(c) [Reserved]

(d) *Related tolerances.* See § 556.380 of this chapter.

(e) *Conditions of use.* It is used for heifers as follows:

(1) *Amount.* 0.25 to 0.50 milligram per head per day.

(2) *Indications for use.* For increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat).

(3) *Limitations.* Heifers being fed for slaughter; withdraw 48 hours prior to slaughter.

§ 558.355 Monensin.

(a) *Specifications.* Monensin is present as monensin or the sodium salt. A mininum of 90 percent of monensin activity is derived from monensin A.

(b) *Approvals.* Approvals for Type A medicated articles containing specified levels of monensin activity to firms identified in § 510.600(c) of this chapter for conditions of use indicated in paragraph (f) of this section are as follows:

(1) To 000986: 36.3 (for export only), 44, 45, or 60 grams per pound, paragraph (f) (1)(i) and (4) of this section.

(2) To 000986: 110 grams per lb., paragraph (f)(1) (i), (iii), (iv), (v), (ix), and (x).

(3) To 000986: 44 grams per lb. with 18 grams per lb. of roxarsone; 110 grams per lb. with 45 grams per lb. of roxarsone, paragraph (f)(1)(ii).

(4) To 012286; 303.5 grams per ton, as monensin sodium, with .0138 percent roxarsone, paragraph (f)(1)(ii).

(5)–(6) [Reserved]

(7) To 000986: 20, 30, 45, or 60 grams per pound, as monensin sodium, paragraph (f)(3).

(c) [Reserved]

(d) *Special considerations.* (1) Type C medicated chicken feed containing monensin as the mycelial cake shall bear an expiration date of 90 days after its date of manufacture.

(2) Type C medicated cattle feeds containing 30 grams or less monensin sodium per ton shall bear an expiration date of 30 days after its date of manufacture.

(3)–(4) [Reserved]

(5) Liquid Type C medicated feeds shall bear an expiration date of 8 weeks after its date of manufacture.

(e) *Related tolerances.* See § 556.420 of this chapter.

(f) *Conditions of use.* It is used as follows:

(1) *Broiler chickens*—(i) *Amount per ton.* Monensin, 90–110 grams.

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(*b*) *Limitations.* Do not feed to laying chickens; feed continuously as the sole ration; withdraw 72 hours before slaughter; as monensin or monensin sodium.

(ii) *Amount per ton.* Monensin, 90–110 grams, plus roxarsone, 45.4 grams (0.005 percent).

(*a*) *Indications for use.* Growth promotion and feed efficiency, improving pigmentation; as an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati* and *E. maxima.*

(*b*) *Limitations.* Do not feed to laying chickens; feed continuously as the sole ration; withdraw 5 days before slaughter; as sole source of organic arsenic; as monensin or monensin sodium.

(iii) *Amount per ton.* Monensin, 90–110 grams plus bacitracin, 5–25 grams.

(*a*) *Indications for use.* For increased rate of weight gain and improved feed efficiency; as an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(*b*) *Limitations.* Do not feed to laying chickens; feed continuously as sole ration; withdraw 72 hours before slaughter; as bacitracin methylene disalicylate provided by 046573 in § 510.600(c) of this chapter; as monensin sodium.

(iv) *Amount per ton.* Monensin, 90–110 grams plus bacitracin, 10 grams.

(*a*) *Indications for use.* For increased rate of weight gain and improved feed efficiency; as an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(*b*) *Limitations.* Do not feed to laying chickens; feed continuously as sole ration; withdraw 72 hours before slaughter; as bacitracin zinc provided by 012769 in § 510.600(c) of this chapter; as monensin sodium.

(v) *Amount per ton.* Monensin, 90–110 grams plus bacitracin, 10–30 grams.

(*a*) *Indications for use.* For improved feed efficiency; as an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(*b*) *Limitations.* Do not feed to laying chickens; feed continuously as sole ration; withdraw 72 hours before slaughter; as bacitracin zinc provided by 012769 in § 510.600(c) of this chapter; as monensin sodium.

(vi) *Amount per ton.* Monensin, 90 to 110 grams plus bambermycins, 1 gram. See § 558.95(e)(1)(vi).

(vii) *Amount per ton.* Monensin, 90 to 110 grams plus bambermycins, 1 gram plus roxarsone, 22.7 to 45.4 grams (.0025 to .005 percent). See § 558.95(e)(1)(vii).

(viii) *Amount per ton.* Monensin, 90 to 110 grams plus oxytetracycline, 200 grams.

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima;* for the control of complicated chronic respiratory disease (CRD or air-sac infection) caused by *Mycoplasma gallisepticum* and *Escherichia coli.*

(*b*) *Limitations.* Withdraw 72 hours before slaughter; do not feed to laying chickens; feed continuously as sole ration; as monensin sodium.

(ix) *Amount per ton.* Monensin, 90–110 grams plus lincomycin, 2 grams.

(*a*) *Indications for use.* For increase in rate of weight gain and improved feed efficiency; as an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(*b*) *Limitations.* Do not feed to laying chickens; to be fed as a sole ration, withdraw 72 hours before slaughter; as monensin sodium.

(x) *Amount per ton.* Monensin, 90–110 grams plus lincomycin, 2 grams and roxarsone, 15–45 grams.

(*a*) *Indications for use.* For increase in rate of weight gain; as an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(*b*) *Limitations.* Do not feed to laying chickens; feed continuously as the sole ration; withdraw 5 days before slaughter; as sole source of organic arsenic; as roxarsone provided by 017210 in § 510.600(c) of this chapter; as monensin sodium provided by 000986; as lincomycin provided by 000009; as a combination provided by 000009.

(xi) *Amount per ton.* Monensin, 90 to 110 grams, plus lincomycin, 2 grams and roxarsone, 15 to 30 grams.

(*a*) *Indications for use.* For increase in rate of weight gain, improved feed efficiency, improved pigmentation, and as an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati* and *E. maxima.*

(*b*) *Limitations.* Do not feed to laying chickens; feed continuously as the sole ration; withdraw 5 days before slaughter; as sole source of organic arsenic; as roxarsone provided by 017210 in § 510.600(c) of this chapter; as monensin sodium provided by 000986; as lincomycin provided by No. 000009; as a combination provided by 000009.

(xii) *Amount per ton.* Monensin, 90 to 110 grams, plus bacitracin methylene disalicylate, 25 grams, and roxarsone, 11.3 to 22.7 grams.

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. maxima,* and *E. mivati;* for increased rate of weight gain and for improved feed efficiency.

(*b*) *Limitations.* Do not feed to laying chickens; feed continuously as sole ration; withdraw 5 days before slaughter; as sole source of organic arsenic; as monensin sodium provided by 000986 in § 510.600 of this chapter; as bacitracin methylene disalicylate provided by 046573; as roxarsone provided by 011801.

(2) [Reserved]

(3) *Cattle*—(i) *Amount per ton.* Monensin, 5–30 grams.

(a) Indications for use. Improved feed efficiency.

(b) Limitations. Feed only to cattle being fed in confinement for slaughter. Feed continuously at a rate of 50 to 360 milligrams of monensin per head per day; as monensin sodium. Type C medicated feeds may be manufactured from monensin liquid Type B or Type C medicated feeds which contain a minimum of 20 percent molasses in combination with any of the following feed ingredients or their equivalents: condensed fermentation solubles, whey, ammonium, polyphosphate, sodium hydroxide, phosphoric acid, fat, sulfuric acid, attapulgite clay, water, urea, vitamins, and/or minerals; a pH of 4.3 to 6; agitate until homogenous prior to use; mix thoroughly with grain and/or roughage prior to feeding. Do not allow horses or other equines access to feed containing monensin. Ingestion of monensin by horses has been fatal.

(ii) *Amount per ton.* Monensin, 10 to 30 grams, plus tylosin, 10 grams.

(a) Indications for use. Improved feed efficiency; for reduction of incidence of liver abscesses caused by *Sphaerophorus necrophorus* and *Corynebacterium pyogenes.*

(b) Limitations. Feed only to cattle being fed in confinement for slaughter. Feed continuously as sole ration at the rate of 100 to 360 milligrams of monensin and 90 milligrams of tylosin per head per day; as monensin sodium; as tylosin phosphate. Do not allow horses or other equines access to formulations containing monensin (ingestion of monesin by horses has been fatal).

(iii) *Amount per ton.* Monensin, 25 to 400 grams.

(a) Indications for use. Increased rate of weight gain.

(b) Limitations. Feed to pasture cattle (slaughter, stocker, and feeder) weighing more than 400 pounds. Feed at the rate of not less than 50 nor more than 200 milligrams per head per day in a minimum of 1 pound of feed, as monensin sodium. During the first 5 days of feeding, cattle should receive no more than 100 milligrams per day. Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result. Do not allow horses or other equines access to formulations containing monensin (ingestion of monensin by equines has been fatal).

(4) *Replacement chickens intended for use as cage layers*—(i) *Amount per ton.* Monensin, 90 to 110 grams.

(ii) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(iii) *Limitations.* Do not feed to laying chickens; feed continuously as sole ration; withdraw 72 hours before slaughter; as monensin sodium; do not feed to chickens over 16 weeks of age.

§ 558.365 Nequinate.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles; 4 percent nequinate to 017800 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See § 556.440 of this chapter.

(e) *Special considerations.* Do not use in Type B or Type C medicated feed containing bentonite.

(f) *Conditions of use.* It is used as follows:

(1) *Broiler or fryer chickens*—(i) *Amount per ton.* Nequinate, 18.16 grams.

(a) Indications for use. An aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.*

(b) Limitations. Feed continuously as the sole ration.

(ii) *Amount per ton.* Nequinate, 18.16 grams (0.002 percent) plus roxarsone, 45.4 grams (0.005 percent).

(a) Indications for use. An aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. brunetti,* and *E. mivati;* growth promotion and feed efficiency; for improving pigmentation.

(b) Limitations. Feed continuously as sole ration throughout the starting period; withdraw 5 days before slaughter; as sole source of organic arsenic.

(iii) *Amount per ton.* Nequinate, 18.16 grams (0.002 percent) plus oxytetracycline, 200 grams.

(a) Indications for use. For control of complicated chronic respiratory disease (air-sac infection), infectious synovitis, and treatment of blue comb (nonspecific infectious enteritis).

(b) Limitations. As monoalkyl (C_8-C_{18}) trimethylammonium oxytetracycline as provided by No. 000069 in § 510.600(c) of this chapter.

(2) *Roaster chickens or replacement chickens for caged layers*—(i) *Amount per ton.* Nequinate, 18.16 grams (0.002 percent).

(ii) *Indications for use.* An aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.*

(iii) *Limitations.* Feed continuously as the sole ration; do not feed to chickens over 16 weeks of age.

§ 558.336 Nicarbazin.

(a) *Approvals.* Type A medicated article: 25 percent nicarbazin to 000006 in § 510.600(c) of this chapter.

(b) [Reserved]

(c) *Related tolerances.* See § 556.445 of this chapter.

(d) [Reserved]

(e) *Conditions of use.* It is used for chickens as follows:

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
113.5 (0.0125 pct) [1]		Chickens; aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis [1].	Feed continously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for coccidiosis; do no use in flusing mashes; do not feed to laying hens; withdraw 4 days before slaughter.	000006
	Lincomycin 2 (0.00044 pct).	Broiler chickens; aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima E. necatrix* and *E. brunetti*) coccidiosis; for increased rate of weight gain.	do	000006
113.5 (0.0125 pct)	Roxarsone 22.7 (0.0025)	do	Feed continously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; as sole source of organic arsenic; do not use a treatment for coccidiosis; do not use in flushing mashes; do not feet to laying hens; withdraw 5 days before slaughter.	000006
	Roxarsone 22.7 (0.0025) plus lincomycin 2 (0.0004).	do	do	000006

[1] These claims are NAS/NRC reviewed and are found effective. Applications for these uses need not include the effectiveness data specified by § 514.111 of this chapter.

§ 558.367 Niclosamide.

(a) *Approvals.* Type A medicated articles: 66 percent to No. 000859 in § 510.600(c) of this chapter.

(b) [Reserved]

(c) *Conditions of use.* It is used for laboratory mice as follows:

(1) *Amount per ton.* 6.6 pounds (0.033 percent).

(2) *Indications for use.* Control of the mouse tapeworm *Hymenolepis nana.*

(3) *Limitations.* Feed daily for 7 consecutive days. Do not administer other drugs during treatment. If reinfection occurs, treatment may be repeated after 30 days. Do not feed to sick or debilitated animals or animals under severe stress. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism. When mixed according to directions and fed free choice, the Type C medicated feed will provide a daily dose of 500 milligrams per kilogram of body weight.

§ 558.370 Nitrofurazone.

(a) [Reserved]

(b) [Reserved]

(c) *Approvals:* Type A medicated articles: 50 grams per pound to 000007 and 011801 in § 510.600(c) of this chapter.

(d) *Conditions of use.* It is used for mink as follows:

(1) *Amount per ton.* 100 to 200 grams (0.011 to 0.022 percent).

(i) *Indications for use.* Treatment of gray diarrhea.

(ii) *Limitations.* Feed 100 grams per ton for 3 days, then 200 grams per ton for 21 days (amount of active ingredient calculated on Type C medicated feed before water added); do not repeat treatment. Discard unused Type C medicated feed every 24 hours.

(2) *Amount per ton.* 100 grams (0.011 percent).

(i) *Indications for use.* Control of gray diarrhea.

(ii) *Limitations.* Feed continously during susceptible period, not to exceed 90 days (amount of active ingredient calculated on Type C medicated feed before water added). Discard unused mixed Type C medicated feed every 24 hours.

§ 558.376 Nitromide and sulfanitran.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 25 percent nitromide, 30 percent sulfanitran, with or without 5 percent roxarsone to 017210 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See §§ 556.220 and 556.680 of this chapter.

(e) *Condtions of use.* It is used for chickens as follows:

(1) *Amount.* 227 grams per ton nitromide (0.025 percent) and 272 grams per ton sulfanitran (0.03 percent).

(i) *Indications for use.* As an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix,* and *E. acervulina.*

(ii) *Limitations.* Not to be fed to laying chickens; withdraw 5 days before slaughter; from Type A medicated articles containing not more than 25 percent nitromide and 30 percent sulfanitran.

(2) *Amount.* 227 grams per ton nitromide (0.025 percent) and 272 grams per ton sulfanitran (0.03 percent), plus 45.4 grams per ton roxasone (0.005 percent).

(i) *Indications for use.* Prevention of coccidiosis caused by *Eimeria tenella, E. necatrix,* and *E. acervulina; growth promotion and feed efficiency; improving pigmentation.*

(ii) *Limitations.* Not to be fed to laying chickens; withdraw 5 days before slaughter; from Type A medicated articles containing not more than 25 percent nitromide, 30 percent sulfanitran, and 5 percent roxarsone; as sole source of organic arsenic.

§ 558.415 Novobiocin.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 25 grams of novobiocin activity per pound to 000009 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) [Reserved]

(e) *Related tolerances.* See § 556.460 of this chapter.

(f) *Conditions of use.* It is used as follows:

(1) *Chickens*—(i) *Amount.* Novobiocin, 6–7 mgs. per lb. body weight per day.

(*a*) *Indications for use.* Aid in the treatment of breast blisters associated with staphylococcal infections susceptible to novobiocin.

(*b*) *Limitations.* Administer, as sole ration, Type C medicated feed which contains not less than 200 grams of novobiocin activity per ton; not for laying chickens; feed 5 to 7 days; withdraw 4 days before slaughter.

(ii) *Amount.* Novobiocin, 10–14 mgs. per lb. body weight per day.

(*a*) *Indications for use.* Treatment of staphylococcal synovitis and generalized staphylococcal infections susceptible to novobiocin.

(*b1*) *Limitations.* Administer, as sole ration, Type C medicated feed which contains not less than 350 grams of novobiocin activity per ton; not for laying chickens; feed 5 to 7 days; withdraw 4 days before slaughter.

(2) *Turkeys*—(i) *Amount. Novobiocin, 4–5 mgs. per lb. body weight per day.*

(*a*) *Indications for use.* Aid in the treatment of breast blisters associated with staphylococcal infections susceptable to novobiocin.

(*b*) *Limitations.* Administer, as sole ration, Type C medicated feed which contains not less than 200 grams of novobiocin activity per ton; not for laying turkeys; feed 5 to 7 days; withdraw 4 days before slaughter.

(ii) *Amount.* Novobiocin, 5–8 mgs. per pound of body weight per day.

(*a*) *Indications for use.* Aid in the control of recurring outbreaks of fowl cholera caused by strains of *Pasteurella multocida* susceptible to novobiocin following initial treatment with 7–8 mgs. per pound of body weight per day.

(*b*) *Limitations.* Administer, as sole ration, Type C medicated feed which contains not less than 200 grams of novobiocin activity per ton; feed 5 to 7 days; not for laying turkeys; withdraw 4 days before slaughter.

(iii) *Amount.* Novobiocin, 7–8 mgs. per pound of body weight per day.

(*a*) *Indications for use.* Treatment of staphylococcal synovitis and generalized staphylococcal infection susceptible to novobiocin; treatment of acute outbreaks of fowl cholera caused by strains of *Pasteurella multocida* susceptible to novobiocin.

(*b*) *Limitations.* Administer, as sole ration, Type C medicated feed which contains not less than 350 grams of novobiocin activity per ton; feed 5 to 7 days; not for laying turkeys; withdraw 4 days before slaughter.

(3) *Mink*—(i) *Amount.* 20 mgs. per lb. body weight per day.

(ii) *Indications for use.* For treatment of generalized infections, abscesses, or urinary infections caused by staphylococcal or other novobiocin sensitive organisms.

(iii) *Limitations.* Administer, as sole ration, Type C medicated feed which contains not less than 200 grams of novobiocin activity per ton; feed for 7 days.

(4) *Ducks*—(i) *Amount.* Novobiocin, 350 grams per ton.

(ii) *Indications for use.* Control of infectious serositis and fowl cholera in ducks caused by *Pasteurella anatipestifer* and *P. multocida,* susceptible to novobiocin.

(iii) *Limitations.* Administer, as sole ration, for 5 to 7 days, continue medication for 14 days if necessary.

repeat if reinfection occurs; discontinue use at least 3 days before slaughter; not for use in laying ducks.

§ 558.430 Nystatin.

(a) [Reserved].

(b) *Approvals.* Type A medicated articles: 20 grams of nystatin activity per pound to 000003 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See § 556.470 of this chapter.

(e) *Conditions of use.* It is used for chickens and turkeys as follows:

(1) *Amount.* 50 grams per ton.

(i) *Indications for use.* Chickens and turkeys: aid in control of crop mycosis and mycotic diarrhea (*Candida albicans*).

(ii) *Limitations.* Growing and laying chickens; growing turkeys.

(2) *Amount.* 100 grams per ton.

(i) *Indications for use.* Chickens and turkeys; treatment of crop mycosis and mycotic diarrhea (*Candida albicans*).

(ii) *Limitations.* Growing and laying chickens; growing turkeys; to be fed for 7 to 10 days.

§ 558.435 Oleandomycin.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 5 grams of oleandomycin activity per pound to 000069 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See § 558.480 of this chapter.

(e) *Special considerations.* Do not use bentonite in Type B or Type C medicated feeds containing oleandomycin.

(f) *Conditions of use.* It is used as follows:

(1) *Chickens and turkeys*— (i) *Amount per ton.* Oleandomycin, 1–2 grams.

(ii) *Indications for use.* For increased rate of weight gain and improved feed efficiency for broiler chickens and growing turkeys.

(2) *Swine*—(i) *Amount per ton.* Oleandomycin, 5–11.25 grams.

(ii) *Indications for use.* For increased rate of weight gain and improved feed efficiency in growing-finishing swine.

§ 558.450 Oxytetracycline.

(a) *Approvals.* Type A medicated articles equivalent of 10 and 50 grams per pound of oxytetracycline hydrochloride to 000069 in § 510.600(c) of this chapter.

(b) [Reserved]

(c) *Special considerations.* The amount of oxytetracycline is expressed in terms of an equivalent amount of oxytetracycline hydrochloride.

(d) *Related tolerances.* See § 556.500 of this chapter.

(e) *Conditions of use.* (1) It is used as follows:

Table 1.—*For Chickens and Turkeys*

Oxytetracycline in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 50		Chickens and turkeys; during times of stress, for prevention of diseases named in this section caused by organisms susceptible to the named levels of the oxytetracycline salt.	As mono-alkyl (C_8-C_{18}) trimethyl ammonium oxytetracycline	
(ii) 50 to 100		1. Chickens; prevention of blue comb (nonspecific infectious enteritis).	do	
		2. Chickens and turkeys; prevention of early mortality of chicks and poults due to organisms susceptible to the oxytetracycline salt.	For chicks (1st 2 weeks of life); for poults (1st 4 weeks of life); as mono-alkyl (C_8-C_{18}) trimethyl ammonium oxytetracycline.	
		3. Turkeys; prevention of hexamitiasis	As mono-alkyl (C_8-C_{18}) trimethyl ammonium oxytetracycline	
(iii) 100 to 200		1. Chickens; prevention of complicated chronic respiratory disease (air-sac infection) and control of complicated chronic respiratory mortality and severity during outbreaks; prevention of fowl cholera.	do	
		2. Chickens; treatment of blue comb (nonspecific infectious enteritis); prevention of infectious synovitis; control of complicated chronic respiratory disease (air-sac infection) by lowering mortality and severity of disease during outbreaks; reduction of lesion and mortality due to organisms susceptible to oxytetracycline in the presence of complicated chronic respiratory disease (air-sac infection).	As mono-alkyl (C_8-C_{18}) trimethly ammonium oxytetracycline in low-calcium Type C medicated feed containing 0.18 pct to 0.55 pct dietary calcium; not to be fed continuously for more than 5 d; low calcium Type C medicated feed may be fed for a total of 3 to 5 d periods through the 1st 10 weeks of life with an interim period of 5 d between each low-calcium feeding; Not to be fed to laying chickens.	
		3. Turkeys; control of infectious sinusitis; prevention of infectious synovitis.	As mono-alkyl (C_8-C_{18}) trimethyl ammonium oxytetracycline	
		4. Turkeys; control blue comb (nonspecific infectious enteritis, mud fever); treatment of hexamitiasis.	do	
(iv) 200		1. Turkeys; control of infectious synovitis	As mono-alkyl (C_8-C_{18}) trimethyl ammonium oxytetracycline	
		2. Chickens; prevention of avian infectious hepatitis; prevention and control of *E. tenella*, cause of cecal coccidiosis, caused by *E. tenella*.	As mono-alkyl (C_8-C_{18}) trimethyl ammonium oxytetracycline in low-calcium Type C medicated feed containing 0.18 pct to 0.55 pct dietary calcium; not to be fed continuously for more than 5 d; low-calcium Type C medicated feed may be fed for a total of 35-d periods through the 1st 10 weeks of life with an interim period of 5 d between each low-calcium feeding. Not to be fed to laying chickens.	
		3. Chickens; control of infectious synovitis	As mono-alkyl (C_8-C_{18}) trimethyl ammonium oxytetracycline	
		4. Chickens; control of fowl cholera during periods of outbreaks.	As mono-alkyl (C_8-C_{18}) trimethyl ammonium oxytetracycline; in low-calcium Type C medicated feed containing 0.18 pct to 0.55 pct dietary calcium; for 2 weeks from outbreak of disease, 5 d of low calcium and the remaining period on normal calcium; not to be fed to laying chickens.	
	Monensin 90 to 110	Broiler chickens; for the control of complicated chronic respiratory disease (CRD or air-sac infection) caused by *Mycoplasma gallisepticum* and *Escherichia coli*; and as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati*, and *E. maxima*.	Withdraw 72 h before slaughter; do not feed to laying chickens; feed continuously as sole ration; as monensin sodium.	000069
	Nequinate 18.16 (0.002 pct).	Broiler or fryer chickens; as an aid in prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti* and *E. mivati*. For control of complicated chronic respiratory disease (air-sac infections) infectious synovitis, and treatment of blue comb (nonspecific infectious enteritis).	As mono-alkyl (C_8-C_{18}) trimethyl ammonium oxytetracycline	
(v) 500		Broiler chickens; as an aid in the reduction of mortality due to air-sacculitis (air-sac infection) caused by *Escherichia coli* sensitive to oxytetracycline.	Feed for 5 d as sole ration; treat at first clinical signs of disease; do not feed to laying hens; withdraw 24 hr prior to slaughter.	000069

Table 2.—*For Cattle*

Oxytetracycline in milligrams per head per day	Combination in milligrams per head per day	Indications for use	Limitations	Sponsor
75 to 80		Beef cattle; reduction of the incidence and severity of liver abscesses.	For beef cattle weighing over 400 lb; as mono-alkyl (C_8-C_{18}) trimethyl-ammonium oxytetracycline.	

Table 3.—*For Fish*

Oxytetracycline	Combination	Indications for use	Limitations	Sponsor
(i) 250 mg per kilogram of fish per day (11.35 g per 100 lb of fish per day).		Pacific salmon; for marking of skeletal tissue	For salmon not over 30 g body weight; administer as sole ration for 4 consecutive days in Type C medicated feed containing oxytetracycline hydrochloride or mono-alkyl (C_8-C_{18}) trimethyl-ammonium oxytetracycline; fish not to be liberated for at least 7 d following the last administration of type D article.	
(ii) 2.5 to 3.75 g per 100 lb of fish per day.		1. Salmonids; control of ulcer disease caused by *Hemophilus piscium*, furunculosis caused by *Aeromonas salmonicida*, bacterial hemorrhagic septicemia caused by *Aeromonas liquefaciens*, and pseudomonas disease.	Administer as mono-alkyl (C_8-C_{18}) trimethyl ammonium oxytetracycline in Type C medicated feed for 10 d; do not liberate fish or slaughter fish for food for 21 d following the last administration of type C medicated feed; do not administer when water temperature is below 9° C (48.2° F).	
		2. Catfish; control of bacterial hemorrhagic septicemia caused by *Aeromonas liquefaciens* and pseudomonas disease.	Administer as mono-alkyl (C_8-C_{18}) trimethyl ammonium oxytetracycline in Type C medicated feed for 10 d; do not liberate fish or slaughter fish for food for 21 d following the last administration of Type C medicated feed; do not administer when water temperature is below 16.7° C (62° F).	

(2) Oxytetracycline may also be used in combination with:
(i) Robenidine hydrochloride as in § 558.515.
(ii) [Reserved]

§ 558.460 Penicillin.

(a) *Specifications.* As penicillin procaine G or feed grade penicillin procaine.
(b) [Reserved]
(c) [Reserved]
(d) [Reserved]
(e) *Related tolerances.* See § 556.510 of this chapter.
(f) *Conditions of use.* (1) It is used as follows:

Penicillin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 1.5 to 42.5	Streptomycin 7.5 to 48.5.	Swine; growth promotion and feed efficiency	Feed not more than 50 g of Type C medicated feed containing at least 1.5 g of penicillin and at least 7.5 g of streptomycin; as streptomycin sulfate.	
(ii) 2.4 to 38.0	Streptomycin 12.0 to 47.6.	Chickens and turkeys; growth promotion and feed efficiency.	Feed not more than 50 g of Type C medicated feed containing at least 2.4 g of penicillin and at least 12 g of streptomycin; as streptomycin sulfate.	
(iii) 2.4 to 50		Chickens, turkeys, and pheasants; growth promotion and feed efficiency.		
(iv) 5 to 20		Quail; growth promotion and feed efficiency	Quail, not over 5 weeks of age	
(v) 10 to 50		Swine; growth promotion and feed efficiency		
(vi) 22.5 to 50 (of combination).	Streptomycin	Chickens; maintaining or increasing egg production	Type C medicated feed contains 16.7 pct of penicillin; as penicillin procaine, as streptomycin sulfate.	
(vii) 45 to 90 (of combination).	do	Swine; aid in the prevention of bacterial swine enteritis	do	
(viii) 50 to 100		1. Chickens; prevention of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis).		
		2. Turkeys; prevention of infectious sinusitis, blue comb (mud fever).		
(ix) 90 (of combination).	Streptomycin	1. Chickens; prevention of early mortality caused by organisms susceptible to penicillin and streptomycin.	For chicks; in starter ration containing 16.7 pct of penicillin; as penicillin procaine, as streptomycin sulfate.	
		2. Swine; treatment of bacterial swine enteritis	Type C medicated feed contains 16.7 pct of penicillin; as penicillin procaine; as streptomycin sulfate.	
(x) 90 to 180 (of combination).	do	1. Chickens; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis).	do	
		2. Turkeys; treatment of infectious sinusitis, blue comb (mud fever), hexamitiasis.	do	
(xi) 90 to 270 (of combination).	do	Swine; treatment of bacterial swine enteritis	Type C medicated feed contains 16.7 pct of penicillin; feed not more than 14 d; as penicillin procaine; as streptomycin sulfate.	
(xii) 100		1. Chickens; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific enteritis).		
		2. Turkeys; treatment of infectious sinusitis, blue comb (mud fever).		

(2) Penicillin may also be used in combination with:

(i) Amprolium as in § 558.55.

(ii) Amprolium plus ethopabate as in § 558.58.

(iii) Bacitracin methylene disalicylate as in § 558.76.

(iv) Bacitracin zinc as in § 558.78.

(v) Buquinolate as in § 558.105.

(vi) Hygromycin B as in § 558.274.

(vii) [Reserved]

(viii) Reserpine as in § 558.505.

(ix) Roxarsone and zoalene as in § 558.680.

(x) Zoalene as in § 558.680.

§ 558.464 Poloxalene.

(a) [Reserved]

(b) *Approvals.* Dry Type A medicated article of 53 percent and liquid Type A medicated article of 99.5 percent to 000007 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) For prevention of legume (alfalfa, clover) and wheat pasture bloat in cattle.

(2) Poloxalene dry Type A medicated article and liquid Type A medicated article must be thoroughly blended and evenly distributed in feed prior to use. This may be accomplished by preparing a Type B medicated feed prior to preparing the Type C medicated feed. Dosage is 1 gram of poloxalene per 100 pounds of body weight daily and continued during exposure to bloat producing conditions. If bloating conditions are severe, the dose is doubled. Treatment should be started 2 to 3 days before exposure to bloat-producing conditions. Repeat dosage if animals are exposed to bloat-producing conditions more than 12 hours after the last treatment. Do not exceed the higher dosage levels in any 24-hour period.

§ 558.465 Poloxalene liquid Type C medicated feed article.

(a) [Reserved]

(b) *Approvals.* Type A medicated feed articles: 99.5 percent to No. 000007 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use.* (1) For control of legume (alfalfa, clover) and wheat pasture bloat in cattle, use 7.5 grams of poloxalene per pound of liquid. Type C medicated feed (1.65-percent weight/weight). Each animal must consume 0.2 pound of Type C medicated feed per 100 pounds of body weight daily for adequate protection.

(2) For control of legume (alfalfa, clover) bloat in cattle grazing of prebloom legumes, use 10.00 grams of poloxalene per pound of liquid Type C medicated feed (2.2 percent weight/weight). Each animal must consume 0.15 pound of Type C medicated feed per 100 pounds of body weight daily for adequate protection. If consumption exceeds 0.2 pound of Type C medicated feed per 100 pounds of body weight daily, cattle should be changed to a Type C medicated feed containing 7.5 grams of poloxalene per pound.

(3) Poloxalene liquid Type A medicated feed must be thoroughly blended and evenly distributed into a liquid Type C medicated feed and offered to cattle in a covered liquid Type C medicated feed feeder with lick wheels. The formula for the liquid Type C medicated feed, on a weight/weight basis, is as follows: Ammonium polyphosphate 2.66 percent, phosphoric acid (75 percent) 3.37 percent, sulfuric acid 1.00 percent, water 10.00 percent, and molasses sufficient to make 100.00 percent, vitamins A and D and/or trace minerals may be added. One free-turning lick wheel per 25 head of cattle must be provided.

(4) The medicated liquid Type C medicated feed must be introduced at least 2 to 5 days before legume consumption to accustom the cattle to the medicated liquid Type C medicated feed and to lick wheel feedings. If the medicated feeding is interrupted, this 2- to 5-day introductory feeding should be repeated.

§ 558.485 Pyrantel tartrate.

(a) *Approvals.* Type A medicated articles containing pyrantel tartrate to firms identified by drug labeler codes in § 510.600(c) of this chapter for the specific usage indicated in paragraph (e) of this section:

(1) To 000069: 9.6, 19.2, and 80 grams per pound, paragraph (e)(1) through (3); 48 grams per pound, paragraph (e)(1) through (4).

(2) To 017800: 48 grams per pound, paragraph (e)(1) through (3).

(3) To 016968: 9.6 and 19.2 grams per pound, paragraph (e)(1) through (3).

(4) To 026186: 9.6 and 19.2 grams per pound, paragraph (e)(1) through (3).

(5) To 017790: 9.6 and 19.2 grams per pound, paragraph (e)(1) through (3).

(6) To 01803: 9.6 and 19.2 grams per pound, paragraph (e)(1) through (3).

(7) To 017255: 9.6 and 19.2 grams per pound, paragraph (c)(1) through (3).

(b) *[Reserved]*

(c) *Related tolerances.* See § 556.560 of this chapter.

(d) *Special considerations.* (1) Consult veterinarian before using in severely debilitated animals.

(2) Do not mix in Type B or C medicated feeds containing bentonite.

(e) *Conditions of use.* It is used for swine as follows:

(1) *Amount per ton.* 96 grams (0.0106 percent).

(i) *Indications for use.* Aid in the prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; aid in the prevention of establishment of nodular worm (*esophagostomum*) infections.

(ii) *Limitations.* Feed continuously as sole ration; withdraw 24 hours prior to slaughter.

(2) *Amount per ton.* 96 grams (0.0106 percent).

(i) *Indications for use.* For the removal and control of large roundworm (*Ascaris suum*) infections.

(ii) *Limitations.* Feed for 3 days as sole ration; withdraw 24 hours prior to slaughter.

(3) *Amount per ton.* 800 grams (0.0881 percent).

(i) *Indications for use.* For the removal and control of large roundworm (*Ascaris suum*) and nodular worm (*Oesophagostomum*) infections.

(ii) *Limitations.* As a single therapeutic treatment; feed at the rate of 1 lb. of Type C. medicated feed per 40 lb. of body weight for animals up to 200 lb. and 5 lb. of Type C medicated feed per head for animals 200 lb. or over; withdraw 24 hours prior to slaughter.

(4) *Amount per ton.* Pyrantel tartrate, 96 grams (0.0106 percent) and carbadox, 50 grams (0.0055 percent).

(i) *Indications for use.* For control of swine dysentery (vibrionic dysentery, bloody scours or hemorrhage dysentery); control of bacterial swine enteritis (salmonellosis or necrotic enteritis caused by *Salmonella choleraesuis*); aid in the prevention of migration and establishment of large

roundworm (*Ascaris suum*) infections, aid in the prevention of establishment of nodular worm (*Oesophagostomum*) infections.

(ii) *Limitations.* Do not feed to swine weighing over 75 pounds; do not feed within 10 weeks of slaughter; consult a veterinarian before feeding to severely debilitated animals; feed continuously as sole ration. Do not use in Type C medicated feed containing less than 15 percent crude protein.

§ 558.515 Robenidine hydrochloride.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 30 grams per pound to 010042 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Special considerations.* Type D medicated feed articles containing robenidine hydrochloride must be fed within 50 days days from the date of manufacture. Do not use in Type B or Type C medicated feeds containing bentonite.

(e) *Related tolerances.* See § 556.580 of this chapter.

(f) *Conditions of use.* It is used for chickens as follows:

(1) *For broiler and fryer chickens*—(i) *Amount per ton.* Robenidine hydrochloride, 30 grams (0.0033 percent).

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima, and E. necatrix.*

(*b*) *Limitations.* Do not feed to layers; feed continuously as the sole ration; withdraw 5 days prior to slaughter.

(ii) *Amount per ton.* Robenidine hydrochloride, 30 grams (0.0033 percent) plus roxarsone, 22.7–45.4 grams (.0025 percent).

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix* and increased rate of weight gain.

(*b*) *Limitations.* Do not feed to layers; feed continuously as the sole ration; withdraw 5 days prior to slaughter; as sole source of organic arsenic. Roxarsone provided by 017210 in § 510.600(c) of this chapter.

(iii) *Amount per ton.* Robenidine hydrochloride, 30 grams (0.0033 percent) plus chlortetracycline, 100 grams.

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix;* as an aid in the control of chronic respiratory disease (CFD) caused by *M. gallisepticum* susceptible to chlortetracycline; as an aid in the control of infectious synovitis caused by *M. synoviae* susceptible to chlortetracycline.

(*b*) *Limitations.* For broiler or fryer chickens only; withdraw 5 days prior to slaughter; do not feed to layers, feed continuously as sole ration; as chlortetracycline hydrochloride provided by 010042 in § 510.600(c) of this chapter.

(iv) *Amount per ton.* Robenidine hydrochloride, 30 grams (0.0033 percent) plus chlortetracycline, 200 grams.

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix;* as an aid in the treatment of infectious synovitis caused by *M. synoviae* susceptible to chlortetracycline; as an aid in the control of chronic respiratory disease (CRD) caused by *M. gallisepticum* susceptible to chlortetracycline.

(*b*) *Limitations.* Withdraw 5 days prior to slaughter; do not feed to layers; feed continuously as sole ration; as chlortetracycline hydrochloride provided by 010042 in § 510.600(c) of this chapter.

(v) *Amount per ton.* Robenidine hydrochloride, 30 grams (0.0033 percent) plus chlortetracycline, 500 grams.

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix;* as an aid in the reduction of mortality due to *E. coli* susceptible to chlortetracycline.

(*b*) *Limitations.* Withdraw 5 days prior to slaughter; do not feed to layers; not to be fed continuously for more than 5 days; as chlortetracycline hydrochloride provided by 010042 in § 510.600(c) of this chapter.

(vi) *Amount per ton.* Robenidine hydrochloride, 30 grams (.0033 percent) plus bacitracin, 4 to 50 grams (as bacitracin zinc).

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix* and, in the presence of 4 to 30 grams per ton of bacitracin, for increased rate of weight gain; in the presence of 27 to 50 grams per ton of bacitracin, for improved feed efficiency.

(*b*) *Limitations.* Feed continuously as sole ration; do not feed to laying chickens; withdraw 5 days prior to slaughter; as bacitracin zinc provided by 012769 in § 510.600(c) of this chapter.

(vii) *Amount per ton.* Robenidine hydrochloride, 30 grams (.0033 percent) plus bacitracin, 4 to 50 grams (as bacitracin methylene disalicylate).

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix,* and if in the presence of 4 to 30 grams per ton of bacitracin, for increased rate of weight gain or if in the presence of 27 to 50 grams per ton of bacitracin, for improved feed efficiency.

(*b*) *Limitations.* Feed continuously as sole ration; do not feed to laying chickens; withdraw 5 days prior to slaughter; as bacitracin methylene disalicylate provided by 046573 in § 510.600(c) of this chapter.

(viii) *Amount per ton.* Robenidine hydrochloride, 30 grams (0.0033 percent) plus lincomycin, 2 grams.

(*a*) *Indications for use.* For increase in rate of weight gain and improved feed efficiency and as an aid in prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix.*

(*b*) *Limitations.* Do not feed to laying hens; feed continuously as the sole ration; withdraw 5 days before slaughter; lincomycin as provided by 000009 in § 510.600(c) of this chapter; approval for this combination granted to 000009, § 510.600(c) of this chapter.

(2) *For broiler chickens*—(i) *Amount per ton.* Robenidine hydrochloride, 30 grams (0.0033) percent) plus oxytetracycline, 200 grams.

(ii) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix;* for the control of complicated chronic respiratory disease (CRD or air-sac infection) caused by *Mycoplasma gallisepticum* and *Escherichia coli.*

(iii) *Limitations.* Do not feed to laying chickens; feed continuously as sole ration; withdraw 5 days before slaughter; oxytetracycline as provided by 000069 in § 510.600(e) of this chapter.

§ 558.525 Ronnel.

(a) [Reserved]

(b) *Approvals.* (1) Type A medicated feeds: 18 and 40 percent to 025700 in § 510.600(c) of this chapter.

(2) Type C medicated feed: 5.5 percent in mineral mix to 021930 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Special considerations.* (1) Maximum level permitted in a Type C medicated feed is 6 percent.

(2) Type C medicated feed containing ronnel shall be thoroughly mixed with ground grain for top dressing or with complete ration.

(3) A statement that ronnel-Type C medicated feed is to be used as sole source of ronnel.

(4) "Warning-Ronnel is a cholinesterase inhibitor. Do not use this product in animals simultaneously or within a few days before or after

exposure to cholinesterase inhibiting drugs, pesticides, or chemicals."

(e) *Related tolerances.* See 40 CFR 180.177.

(f) *Conditions of use.* It is used for beef cattle and nonlactating dairy animals as follows:

(1) *Amount.* 0.00078 lb. (0.35 gram) per 100 lb. body weight per day for 14 days.

(i) *Indications for use.* Control of grubs.

(ii) *Limitations.* Feed for 14 days in Type C medicated feed containing not over 0.26 percent ronnel; withdraw from dairy animals 10 days before calving; if dairy cows or heifers freshen during feeding of Type C medicated feed, or if Type C medicated feed has not been withdrawn the required 10 days prior to freshening, milk must not be used for food for 10 days after the last treatment; withdraw 10 days prior to slaughter.

(2) *Amount.* 0.0018 lb. (0.82 gram) per 100 lb. body weight per day for 7 days.

(i) *Indications for use.* Control of grubs; aid in the reduction of cattle lice, when the drug is used for cattle grub control.

(ii) *Limitations.* Feed for 7 days in Type C medicated feed containing not over 6 percent ronnel; withdraw from dairy animals 10 days before calving; if dairy cows or heifers freshen during feeding of a Type C medicated feed, or if Type C medicated feed has not been withdrawn the required 10 days prior to freshening, milk must not be used for food for 10 days after the last treatment; withdraw 10 days prior to slaughter.

(3) *Amount.* 0.01375 lb. (6.24 gram) per 100 lb. body weight per month for not less than 75 days.

(i) *Indications for use.* Control of grubs and hornflies.

(ii) *Limitations.* Feed 0.25 lb. of a mineral Type C medicated feed in granular form containing 5.5 percent ronnel per 100 lb. of animal weight per month for not less than 75 days; withdraw from dairy animals 10 days before calving; if dairy cows or heifers freshen during feeding of a Type C medicated feed, or if Type C medicated feed has not been withdrawn the required 10 days prior to freshening, milk must not be used for food for 10 days after the last treatment; withdraw 10 days prior to slaughter.

(4) *Amount.* 0.0009 lb. (0.41 gram) per 100 lb. body weight per day for 14 days.

(i) *Indications for use.* Control of grubs.

(ii) *Limitations.* Feed for 14 days in Type C medicated feed containing 0.3 percent ronnel; withdraw from daily animals 10 days before calving, if dairy cows or heifers freshen during feeding of Type C medicated feed or if Type C mediated feed has not been withdrawn the required 10 days prior to freshening, milk must not be used for food for 10 days after the last treatment; withdraw 10 days prior to slaughter.

(5) *Amount.* 0.012 lb. (5.5 grams) per 100 lb. body weight per month for not less than 75 days.

(i) *Indications for use.* Control of grubs and hornflies.

(ii) *Limitations.* Feed 0.2 lb. of mineral Type C medicated feed containing 6 percent ronnel per 100 lb. of animal weight per month for not less than 75 days; withdraw from dairy animals 10 days before calving; if dairy cows or heifers freshen during feeding of Type C medicated feed, or if Type C medicated feed has not been withdrawn the required 10 days prior to freshening, milk must not be used for food for 10 days after the last treatment.

§ 558.526 Ronnel liquid Type C medicated feed.

(a) *Approvals.* To 025700 in § 510.600(c) of this chapter, use of 20 percent liquid Type A medicated articles for the manufacture of 0.72 percent liquid Type C medicated feed.

(b) [Reserved]

(c) *Related tolerances.* See 40 CFR 180.177.

(d) *Conditions of use.* (1) It is used as 0.72 percent liquid Type C medicated feed for beef cattle and nonlactating dairy animals for control of grubs.

(2) Both the 7 and 14-day feeding programs require 1.75 pounds of 0.72 percent liquid Type C medicated feed for each 100 pounds of body weight.

(i) Feed for 7 days, 0.25 pound of 0.72 percent liquid Type C medicated feed per 100 pounds of body weight per day.

(ii) Feed for 14 days, 0.25 pound of 0.72 percent liquid Type C medicated feed per 200 pounds of body weight per day.

(3) Must be evenly top-dressed over the grain portion of the ration or over the mixed total ration.

(4) Treat cattle as soon as possible after heel fly activity ceases, and before grubs reach the backs of the animals. Ronnel is not fully effective during the latter stages of grub development, when grubs have reached the backs of animals.

(5) Treat southern area cattle July through September (7 or 14-day treatment). Treat northern area cattle August through October (7-day treatment) or August through December (14-day treatment).

(6) Dairy animals should be treated early in their dry period but only if the dry period occurs between the end of the adult heel fly season and before grubs reach the back of the animal.

(7) Withdraw from dairy animals 10 days before calving. If animals freshen during feeding of a Type C medicated feed, or if Type C medicated feed has not been withdrawn 10 days prior to freshening, milk must not be used for food for 10 days after the last treatment.

(8) Withdraw 10 days prior to slaughter.

(9) Warning—Ronnel is a cholinesterase inhibitor. Do not use simultaneously or within a few days before or after treatment with or exposure to any cholinesterase inhibiting drugs, pesticides, or chemicals.

(10) Use as sole source of ronnel.

(11) Do not feed to animals that are sick, under stress (shipping, dehorning, castration), or that have been weaned within the preceding 3 weeks.

(12) [Reserved]

(13) This drug is toxic to fish. Keep out of lakes, streams, and ponds. Do not contaminate water by cleaning of equipment or disposal of wastes. Do not reuse empty container; destroy it by burning or burying in noncroplands away from water supplies.

§ 558.530 Roxarsone.

(a) *Approvals.* Type A medicated articles: 10.20, and 50 percent to 011801 in § 510.600(c) of this chapter.

(b) [Reserved]

(c) [Reserved]

(d) *Related tolerances.* See § 556.60 of this chapter.

(e) *Conditions of use.* It is used in Type D medicated feed articles for chickens and turkeys as follows:

(1) *Grams per ton.* Roxarsone 22.7 to 45.4 (0.0025 to 0.005 percent).

(2) *Indications for use.* For increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(3) *Limitations.* Withdraw 5 days before slaughter, as sole source of organic arsenic.

(4) *Permitted combinations.* It may also be used in combination with:

(i) Aklomide as in § 558.35.

(ii) Amprolium as in § 558.55.

(iii) Amprolium and ethopabate as in § 558.58.

(iv) Bacitracin methylene desalicylate as in § 558.76.

(v) Bacitracin zinc as in § 558.78.

(vi) Buquinolate as in § 558.105.

(vii) Chlortetracycline as in § 558.128.

(viii) Clopidol as in § 558.175.

(ix) Decoquinate as in § 558.195.

(x) Monensin as in § 558.355.

(xi) Nequinate as in § 558.365.

(xii) Nitromide and sulfanitran as in § 558.376.

(xiii) Robenidine hydrochloride as in § 558.515.

(xiv) Sulfadimethoxine, ormetoprim as in § 558.575.

(xv) Zoalene as in § 558.680.

(xvi) Penicillin and zoalene as in § 558.680.

(xvii) Bambermycins alone and in combination as in § 558.95.

(xviii) Nicarbazin as in § 558.366.

§ 588.565 Styrylpryidinium chloride, diethylcarbamazine (as base).

(a) [Reserved]

(b) *Approvals.* Type C medicated feed: 0.035 percent styrylpyridinium chloride, and 0.021 percent diethylcarbamazine (as base) to 010042 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) It is used for the control of hookworms *(Ancylostoma caninum)* and roundworms *(toxocara canis)* and for the prevention of heartworm disease *(Dirofilaria immitis)* in dogs.

(2) Type C medicated feeds administered to dogs as follows: Maximum stressed dogs are fed an amount of the Type C medicated feed in ounces equal to the dogs body weight in pounds divided by 4. Medium stressed dogs are fed an amount of the Type C medicated feed in ounces equal to the dogs body weight in pounds divided by 4.5. Low stressed dogs are fed an amount of the Type C medicated feed in ounces equal to the dogs body weight in pounds divided by 5. Underweight dogs are fed 10 percent more than the amounts specified in this paragraph. Overweight dogs are fed 10 percent less than the amounts specified in this paragraph, with adjustments made every 7 days until the desired body weight is obtained.

(3) Dogs with established heartworm infections should not be treated with the drug until they have been converted to a negative status. For the prevention of heartworm infestation, the drug should be administered before the mosquito season and as soon as young puppies are born. The drug should be administered continuously during periods of exposure to hookworm, roundworm, and heartworm infestations to control recurring burdens of hookworms and roundworms and prevent the maturation of immature heartworms (third stage infective larvae) into adults.

(4) Federal law restricts this drug to use by or on the order of a licenses veterinarian.

§ 558.575 Sulfadimethoxine, ormetoprim.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 25 percent of sulfadimethoxine and 15 percent of ormetoprim to 000004 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See §§ 556.490 and 556.640 of this chapter.

(e) *Conditions of use.* It is used as follows:

(1) *Broiler chickens*—(i) *Amount per ton.* Sulfadimethoxine, 113.5 grams (0.0125 percent) plus ormetoprim, 68.1 grams (0.0075 percent).

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by all *Eimeria* species known to be pathogenic to chickens, namely, *E. tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and bacterial infections due to *H. gallinarum* (infectious coryza), *E. coli* (colibacillosis) and *P. multocida* (fowl cholera).

(*b*) *Limitations.* Feed as sole ration; withdraw 5 days before slaughter.

(ii) *Amount per ton.* Sulfadimethoxine, 113.5 grams (0.0125 percent) plus ormetoprim, 68.1 grams (0.0075 percent) plus roxarsone, 22.7 grams (0.0025 percent).

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by all *Eimeria* species known to be pathogenic to chickens, namely *E. tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and bacterial infections due to *H. gallinarum* (infectious coryza), *E. coli* (colibacillosis) and *P. multocida* (fowl cholera); growth promotion and feed efficiency; improving pigmentation.

(*b*) *Limitations.* Feed as sole ration; withdraw 5 days before slaughter; as sole source of organic arsenic.

(2) *Replacement chickens*—(i) *Amount per ton.* Sulfadimethoxine, 113.5 grams (0.0125 percent) plus ormetoprim, 68.1 grams (0.0075 percent.

(ii) *Indications for use.* As an aid in the prevention of coccidiosis caused by all *Eimeria* species known to be pathogenic to chickens, namely *E. tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and bacterial infections due to *H. gallinarum* (infectious coryza), *E. coli* (colibacillosis) and *P. multocida* (fowl cholera).

(iii) *Limitations.* Feed as a sole ration; do not feed to chickens over 16 weeks (112 days) of age; withdraw 5 days before slaughter.

(3) *Turkeys.*—(i) *Amount per ton.* Sulfadimethoxine, 56.75 grams (0.00625 percent) plus ormetoprim, 34.05 grams (0.00375 percent).

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by all *Eimeria* species known to be pathogenic to turkeys, namely, *E. adenoeides, E. gallopavonis,* and *E. meleagrimitis* and bacterial infection due to *P. multocida* (fowl cholera).

(*b*) *Limitations.* Do not feed to turkeys producing eggs for food; withdraw 5 days before slaughter.

(ii) *Amount per ton.* Sulfadimethoxine, 56.5 grams (0.00625 percent) plus ormetoprim, 34.05 grams (0.00375 percent) plus ipronidazole, 56.75 grams (0.00625 percent).

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by all *Eimeria* species known to be pathogenic to turkeys, namely, *E. adenoeides, E. gallopavonis,* and *E. meleagrimitis* and bacterial infection due to *P. multocida* (fowl cholera); and blackhead (histomoniasis).

(*b*) *Limitations.* Do not feed to turkeys producing eggs for food; withdraw 5 days before slaughter.

§ 558.579 Sulfaethoxypyridazine.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 5.5 percent for swine, 5.5 and 11 percent for cattle, to 010042 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See § 556.650 of this chapter.

(e) *Conditions of use.* It is used as follows:

(1) *Swine.*—(i) *Amount.* 25 milligrams per pound body weight per day.

(ii) *Indications for use.* For treatment of bacterial scours, pneumonia, enteritis, bronchitis, septicemia accompanying *Salmonella choleraesuis* infection.

(iii) *Limitations.* Administer 1,000 grams per ton (0.11 percent) in Type C medicated feed for not less than 4 days nor more than 10 days; do not treat within 10 days of slaughter; as sole source of sulfonamide; for use by or on the order of a licensed veterinarian.

(2) *Cattle.*—(i) *Amount.* 25 milligrams per pound body weight per day.

(ii) *Indications for use.* For treatment of respiratory infections (pneumonia, shipping fever), foot rot, calf scours; as adjunctive therapy in septicemia accompanying mastits and metcemia accompanying mastitis and metritis.

(iii) *Limitations.* Administer as top dressing or in mixed feed for 4 days; do not treat within 16 days of slaughter; as sole source of sulfonamide; milk that has been taken from animals during treatment and for 72 hours (6 milkings) after latest treatment must not be used for food; for use by or on the order of a licensed veterinarian.

§ 558.582 Sulfamerazine.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles, 99 percent to 010042 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See § 556.660 of this chapter.

(e) *Conditions of use.* It is used for rainbow trout, brook trout, and brown trout as follows:

(1) *Amount.* 10 grams of sulfamerazine per 100 pounds of fish per day.

(2) *Indications for use.* Control of furunculosis.

(3) *Limitations.* Treat for not more than 14 days; do not treat within 3 weeks of marketing or stocking in stream open to fishing.

§ 558.615 Thiabendazole.

(a) [Reserved]

(b) [Reserved]

(c) *Approvals.* In dry Type A medicated articles: 22, 44.1, 66.1 percent. The 66.1 percent level is solely for the manufacture of cane molasses liquid Type C medicated feed article which is mixed in dry feeds. See 000006 in § 510.600(c) of this chapter.

(d) [Reserved]

(e) *Special considerations. Not to be used in Type B or Type C medicated feeds containing bentonite.*

(f) *Related tolerances.* See § 556.730 of this chapter.

(g) *Conditions of use.* It is used as follows:

(1) *Cattle.*—(i) *Amount.* 3 grams per 100 lb. body weight.

(a) *Indications for use.* Control of infections of gastrointestinal roundworms (*Trichostrongylus spp., Haemonchus spp., Ostertagia spp., Nematodirus spp., Oesophagostomum radiatum*).

(b) *Limitations.* Use 3 grams per 100 lb. body weight at a single dose; may repeat once in 2 to 3 weeks; do not treat animals within 3 days of slaughter; milk taken from treated animals within 96 hours (8 milkings) after the latest treatment must not be used for food.

(ii) *Amount.* 5 grams per 100 lb. body weight.

(a) *Indications for use.* Control of severe infections of gastrointestinal roundworms (*Trichostrongylus spp., Haemonchus spp., Ostertagia spp., Nematodirus spp., Oesophagostomum radiatum*); control of infections of *Cooperia spp.*

(b) *Limitations.* 5 grams per 100 lb. body weight as a single dose or divided into 3 equal doses, administered 1 dose each day, on succeeding days; may repeat once in 2 to 3 weeks; do not treat animals within 3 days of slaughter; milk taken from treated animals within 96 hours (8 milkings) after the latest treatment must not be used for food.

(2) *Goats.*—(i) *Amount.* 3 grams per 100 lb. body weight.

(ii) *Indications for use.* Control of severe infections of gastrointestinal roundworms (*Trichostrongylus spp., Haemonchus spp., Ostertagia spp., Cooperia spp., Nematodirus spp., Bunostomum spp., Strongyloides spp., Chabertia spp.*, and *Oesophagostomum spp.*).

(iii) *Limitations.* 3 grams per 100 lb. body weight at a single dose; do not treat animals within 30 days of slaughter; milk taken from treated animals within 96 hours (8 milkings) after the latest treatment must not be used for food.

(3) *Sheep and goats.*—(i) *Amount.* 2 grams per 100 lb. body weight.

(ii) *Indications for use.* Control of infections of gastrointestinal roundworms (*Trichostrongylus spp., Haemonchus spp., Ostertagia spp., Cooperia spp., Nematodirus spp., Bunostomum spp., Strongyloides spp., Chabertia spp.*, and *Oesophagostomum spp.*); also active against ova and larvae passed by sheep from 3 hours to 3 days after Type C medicated feed in consumed (good activity against ova and larvae of *T. colubriformis* and *axei, Ostertagia spp., Nematodirus spp., Strongyloides spp.*; less effective against those of *Haemonchus contortus* and *Oesophagostomum spp.*).

(iii) *Limitations.* Use 2 grams per 100 lb. body weight at a single dose; do not treat animals within 30 days of slaughter; milk taken from treated animals within 96 hours (8 milkings) after the latest treatment must not be used for food.

(4) *For swine.*—(i) *Amount.* 45.4–908 grams per ton (0.005–0.1 percent).

(ii) *Indications for use.* Aid in the prevention of infections of large roundworms (*Ascaris spp.*).

(iii) *Limitations.* Administer continuously Type C medicated feed containing 0.05–0.1 percent thiabendazole per ton for 2 weeks followed by Type C medicated feed containing 0.005–0.02 percent thiabendazole per ton for 8–14 weeks; do not treat animals within 30 days of slaughter.

§ 558.625 Tylosin.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles containing drug substance with diluent or Type B medicated feed containing drug substance with diluent plus vitamins, minerals, and/or other nutrient ingredients to sponsor(s) identified in § 510.600(c) of this chapter for the specific usage indicated in paragraph (f) of this section:

(1) To 000986: 40 and 100 grams per pound, paragraphs (f)(1)(ii) through (f)(1)(vi) of this section; 40 grams per pound, paragraph (f)(1)(i) of this section.

(2)–(4) [Reserved]

(5) To 017800: 40 grams per pound, paragraph (f)(1)(i) and (vi) *(a), (b), (c),* and *(d)* of this section.

(6)–(14) [Reserved]

(15) To 026186: 20 grams per pound; paragraph (f)(1)(vi)(*a*) of this section.

(16)–(26) [Reserved]

(27) To 020275: 40 grams per pound; paragraph (f)(1)(vi)(*a*) of this section.

(28)–(72) [Reserved]

(c) [Reserved]

(d) [Reserved]

(e) *Related tolerances.* See § 556.740 of this chapter.

(f) *Conditions of use.* It is used as follows:

(i) *For beef cattle—(a) Amount per ton.* 8–10 grams.

(b) Indications for use. For reduction of incidence of liver abscesses caused by *Sphaerophorus necrophorus* and *Corynebacterium pyogenes.*

(c) Limitations. As tylosin phosphate; each animal must receive not more the 90 milligrams per day and not less than 60 milligrams per day; feed continuously as sole ration.

(ii) *Broiler chickens.*—(*a*) *Amounts per ton.* Tylosin, 800–1000 grams.

(b) Indications for use. To aid in the control of chronic respiratory disease caused by *Mycoplasma gallisepticum.*

(c) Limitations. As tylosin phosphate; withdraw 5 days before slaughter; administer in Type C medicated feed to chickens 0 to 5 days of age, follow with second administration in Type C medicated feed for 24 to 48 hours at 3 to 5 weeks of age.

(iii) *Chickens—(a) Amounts per ton.* Tylosin, 4–50 grams.

(1) Indications for use. For increased rate of weight gain and improved feed efficiency.

(2) Limitations. As tylosin phosphate.

(b) [Reserved]

(iv) *Laying chickens—(a) Amount per ton.* Tylosin, 20–50 grams.

(b) Indications for use. For improved feed efficiency.

(c) Limitations. As tylosin phosphate.

(v) *Replacement chickens—(a) Amount per ton.* Tylosin, 1,000 grams.

(b) Indications for use. To aid in the control of chronic respiratory disease caused by *Mycoplasma gallisepticum.*

(c) Limitations As tylosin phosphate; withdraw 5 days before slaughter; administer in Type C medicated feed to chickens 0 to 5 days of age, follow with second administration in Type C medicated feed for 24 to 48 hours at 3 to 5 weeks of age.

(vi) *Swine—(a)—Amount per ton.* Tylosin, 10–100 grams.

(1) Indications for use. For increased rate of weight gain and improved feed efficiency.

(2) *Limitations.* As tylosin phosphate; continuous use as follows: *Grams per ton;* 20–100, prestarter or starter; 20–40, grower; 10–20, finisher.

(*b*) *Amount per ton.* Tylosin, 40–100 grams.

(*1*) *Indications for use.* Prevention of swine dysentery (vibrionic).

(*2*) *Limitations. Use 100 grams per ton for at least 3 weeks followed by 40 grams per ton until market weight; as tylosin phosphate.*

(*c*) *Amount per ton.* Tylosin, 40–100 grams.

(*1*) *Indications for use.* Treatment and control of swine dysentery (vibrionic).

(*2*) *Limitations.* Administer in Type C medicated feed as tylosin phosphate after treatment with tylosin in drinking water as tylosin base; 0.25 gram per gallon in drinking water for 3–10 days, 40–100 grams per ton in Type C medicated feed for 2–6 weeks.

(*d*) *Amount per ton.* Tylosin, 100 grams.

(*1*) *Indications for use.* Maintaining weight gains and feed efficiency in presence of atrophic rhinits.

(*2*) *Limitations.* As tylosin phosphate.

(2) [Reserved]

(2) Tylosin may also be used in combination with:

(i) Hygromycin B as in § 558.274.

(ii)–(iii) [Reserved]

(iv) Monesin as in § 558.355.

§ 558.630 Tylosin and sulfamethazine.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles containing drug substances with diluent, or Type B medicated feed containing drug substances with diluent plus vitamins, minerals, and/or other nutrient substances, the drug substances being a combination of equal amounts of tylosin and sulfamethazine, to sponsor(s) identified in § 510.600(c) of this chapter for the conditions of use indicated in paragraph (f) of this section:

(1) To 000986: 40 grams per pound each, paragraph (f)(2)(i) of this section.

(2)–(4) [Reserved]

(5) To 017800: 40 grams per pound each, paragraph (f)(2)(ii) of this section.

(6) To 017139: 20 grams per pound each, paragraph (f)(2)(ii) of this seciton.

(c)–(d) [Reserved]

(e) *Related tolerances.* See §§ 556.670 and 556.740 of this chapter.

(f) *Conditions of use.* It is used for swine as follows:

(1) *Amount per ton.* Tylosin, 100 grams plus sulfamethazine, 100 grams.

(2) *Indications for use.* (i) Maintaining weight gains and feed efficiency in the presence of atrophic rhinits; lowering the incidence and severity of *Bordetella bronchiseptica* rhinits; prevention of swine dysentery (vibrionic); control of swine pneumonias caused by bacterial pathogens (*P. multocida* and/or *C. pyogenes*); for reducing the incidence of cervical lymphadenitis (jowl abscesses) caused by Group E Streptococci. Only the sulfamethazine portion of this combination is active in controlling jowl abscesses.

(ii) Maintaining weight gains and feed efficiency in the presence of atrophic rhinits; lowering the incidence and severity of *Bordetella bronchiseptica* rhinits; prevention of swine dysentery (vibrionic); control of swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*).

(3) *Limitations.* As tylosin phosphate; withdraw 15 days before slaughter.

§ 558.635 Virginiamycin.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 2.2 percent virginiamycin activity (10 grams per pound), 11 percent virginiamycin activity (50 grams per pound), and 50 percent virginiamycin activity (227 grams per pound) to 000007 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See § 556.750 of this chapter.

(e) *Special considerations.* (1) Not for use in breeding swine over 120 pounds.

(2) Dilute Type A medicated article with at least 10 pounds of a feed ingredient prior to final mixing in 1 ton of feed.

(3)–(4) [Reserved]

(f) *Conditions of use.* It is used for swine as follows:

(1) *Amount per ton.* 100 grams for 2 weeks.

(i) *Indications for use.* Treatment of swine dysentery in nonbreeding swine.

(ii) *Animal weight.* Over 120 pounds.

(2) *Amount per ton.* 100 grams for 2 weeks, 50 grams thereafter.

(i) *Indications for use.* Treatment and control of swine dysentery.

(ii) *Animal weight.* Up to 120 pounds.

(3) *Amount per ton.* 25 grams.

(i) *Indications for use.* Aid in control of swine dysentery. For use in animals or on premises with a history of swine dysentery but where symptoms have not yet occurred.

(ii) *Animal weight.* Up to 120 pounds.

(4) *Amount per ton.* Administer 10 grams per ton from weaning to 120 pounds body weight followed by 5 grams per ton to market weight.

(i) *Indications for use.* Increased rate of weight gain and improved feed efficiency.

(ii) *Animal weight.* For continuous use from weaning to market weight.

(5) *Amount per ton.* Administer 10 grams per ton from weaning to 120 pounds body weight followd by 5 to 10 grams per ton to market weight.

(i) *Indications for use.* Increased rate of weight gain and improved feed efficiency for swine up to 120 pounds body weight; increased rate of weight gain for swine from 120 pounds to market weight.

(ii) *Animal weight.* For continuous use from weaning to market weight.

§ 558.680 Zoalene.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 25 percent to 017210 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See § 556.770 of this chapter.

(e) *Conditions of use.* (1) It is used for chickens and turkeys as follows:

Zoalene in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 36.3 to 113.5 (0.004% to 0.0125%).		Replacement chickens; development of active immunity to coccidiosis.	In grower Type C medicated feed; not to be fed to birds over 14 weeks of age; as follows—.	

Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
	Grams per ton	*Grams per ton*
Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
Light to moderate exposure	75.4–112.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%)

	Arsanilate sodium 90 (0.01%).	Replacement chickens; development of active immunity to coccidiosis; growth promotion and feed efficiency; improving pigmentation.	In grower Type C medicated feed; not to be fed to birds over 14 weeks of age; withdraw 5 d before slaughter; as sole source of organic arsenic; as follows—.	

Zoalene in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
		Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
			Grams per ton	*Grams per ton*
		Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
		Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).
	Arsanilic acid 90 (0.01%)	Replacement chickens; development of active immunity to coccidiosis; growth promotion and feed efficiency; improving pigmentation.	In grower Type C medicated feed; not to be fed to birds over 14 weeks of age; withdraw 5 d before slaughter; as sole source of organic arsenic; as follows—.	
		Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
			Grams per ton	*Grams per ton*
		Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
		Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).
	Arsanilic acid 90 (0.01%) plus erythromycin 4.6 to 18.5.	Replacement chickens; growth promotion and feed efficiency; development of active immunity to coccidiosis; improving pigmentation.	As erythromycin thiocyanate; in grower Type C medicated feed; not to be fed to birds over 14 weeks of age; withdraw 5 d before slaughter; as sole source of organic arsenic; as follows—.	
		Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
			Grams per ton	*Grams per ton*
		Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
		Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).
	Arsanilic acid 90 (0.01%) plus erythromycin 92.5.	1. Replacement chickens; as an aid in the prevention of chronic respiratory disease during periods of stress; development of active immunity to coccidiosis; growth promotion and feed efficiency; improving pigmentation.	Feed for 2 d before stress and 3 to 6 d after stress; as erythromycin thiocyanate; in grower Type C medicated feed; not to be fed to birds over 14 weeks of age; withdraw 5 d before slaughter; as sole source of organic arsenic; as follows—.	
		Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
			Grams per ton	*Grams per ton*
		Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
		Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).
		2. Replacement chickens; as an aid in the prevention of infectious coryza; development of active immunity to coccidiosis; growth promotion and feed efficiency; improving pigmentation.	Feed for 7 to 14 d; as erythromycin thiocyanate; grower Type C medicated feed; not to be fed to birds over 14 weeks of age; withdraw 5 d before slaughter; as sole source of organic arsenic; as follows—.	
		Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
			Grams per ton	*Grams per ton*
		Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
		Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).
	Arsanilic acid 90 (0.01%) plus erythromycin 185.	Replacement chickens; as an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease; growth promotion and feed efficiency; improving pigmentation and development of active immunity to coccidiosis.	Feed for 5 to 6 d; do not use in birds producing eggs for good purposes; withdraw 5 d before slaughter; as erythromycin thiocyanate; and as sole source of organic arsenic; as follows—.	
		Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
			Grams per ton	*Grams per ton*
		Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
		Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).
	Arsanilate acid 90 (0.01%) plus penicillin 2.4 to 50.	Replacement chickens; growth promotion and feed efficiency; development of active immunity to coccidiosis; improving pigmentation..	As procaine penicillin; grower Type C medicated feed; not to be fed to birds over 14 weeks of age; withdraw 5 d before slaughter; as sole source of organic arsenic; as follows—.	
		Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
			Grams per ton	*Grams per ton*
		Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
		Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).
	Bacitracin 100 to 500	Replacement chickens; treatment of chronic respiratory disease (air-sac infection); blue comb (nonspecific infectious enteritis); development of active immunity to coccidiosis.	As bacotracom zomc; growther Type C medicated feed; not to be fed to birds over 14 weeks of age; as follows—.	

Zoalene in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor

Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
	Grams per ton	*Grams per ton*
Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).

Chlortetracycline 100 to 200.

Replacement chickens; treatment of chronic respiratory disease (air-sac infection); blue comb (nonspecific infectious enteritis); development of active immunity to coccidiosis.

Not to be fed to laying chickens; as chlortetracycline hydrochloride; grower Type C medicated feeds; not to be fed to birds over 14 weeks of age; as follows—.

Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
	Grams per ton	*Grams per ton*
Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).

Chlortetracycline 200.

Replacement chickens; control of synovitis; development of active immunity to coccidiosis.

Not to be fed to laying chickens; as chlortetracycline hydrochloride; in grower Type C medicated feeds; not to be fed to birds over 14 weeks of age; as follows—.

Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
	Grams per ton	*Grams per ton*
Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).

Erythromycin 4.6 to 18.5.

Replacement chickens; growth promotion and feed efficiency; development of active immunity to coccidiosis.

As erythromycin thiocyanate; Grower Type C medicated feeds; not to be fed to birds over 14 weeks of age; as follows—.

Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
	Grams per ton	*Grams per ton*
Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).

Erythromycin 92.5.

1. Replacement chickens; as an aid in the prevention of chronic respiratory disease during periods of stress; development of active immunity to coccidiosis.

Feed for 2 d before stress and 3 to 6 d after stress; withdraw 24 h before slaughter; as erythromycin thiocyanate; grower Type C medicated feed; not to be fed to birds over 14 weeks of age; as follows—.

Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
	Grams per ton	*Grams per ton*
Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).

Replacement chickens; as an aid in the prevention of infectious coryza; development of active immunity to coccidiosis.

Feed for 7 to 14 d, withdraw 24 h before slaughter; as erythromycin thiocyanate; grower Type C medicated feed; not to be fed to birds over 14 weeks of age; as follows—.

Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
	Grams per ton	*Grams per ton*
Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).

Erythromycin 185.

Replacement chickens; as an aid in the prevention and reductions of lesions and in lowering severity of chronic respiratory disease; development of active immunity to coccidiosis.

Feed for 5 to 8 d; do not use in birds producing eggs for food purposes; withdraw 48 h before slaughter; in grower Type C medicated feed; not to be fed to birds over 14 weeks of age; as follows—.

Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
	Grams per ton	*Grams per ton*
Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).

Hygromycin B 8 to 12.

Replacement chickens; development of active immunity to coccidiosis; control of infestation of large round worms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*).

In grower Type C medicated feed; not to be fed to birds over 14 weeks of age; as follows:.

Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
	Grams per ton	*Grams per ton*
Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).

Penicillin 2.4 to 50 — Replacement chickens; growth promotion and feed efficiency; development of active immunity to coccidiosis. As procaine penicillin; grower Type C medicated feed; not to be fed to birds over 14 weeks of age; as follows—.

Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
	Grams per ton	*Grams per ton*
Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).

Penicillin 2.4 to 50 plus roxarsone 22.7 to 45.4 (0.0025% to 0.005%). Replacement chickens; growth promotion and feed efficiency; development of active immunity to coccidiosis; improving pigmentation. As procaine penicillin; grower Type C medicated feed; not to be fed to birds over 14 weeks of age; withdraw 5 d before slaughter; as sole source of organic arsenic; as follows—.

Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
	Grams per ton	*Grams per ton*
Severe exposure	113.5 (0.0125%)	75.4–113.5 (0.0083%–0.0125%)
Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).

Roxarsone 22.7 to 45.4 (0.0025% to 0.005%). Replacement chickens; development of active immunity to coccidiosis; growth promotion and feed efficiency; improving pigmentation. In grower Type C medicated feed; not to be fed to birds over 14 weeks of age; withdraw 5 d before slaughter; as sole source of organic arsenic; as follows—.

Growing conditions	Starter Type C medicated feed	Grower Type C medicated feed
	Grams per ton	*Grams per ton*
Severe exposure	113.5 (0.01125%)	75.4–113.5 (0.0083%–0.0125%).
Light to moderate exposure	75.4–113.5 (0.0083%–0.0125%)	36.3–75.4 (0.004%–0.0083%).

(i) 113.5 (0.0125%)	Broiler chickens; prevention and control of coccidiosis	
Arsanilate sodium 90 (0.1%).	Broiler chickens; prevention and control of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 days before slaughter; as sole source of organic arsenic.
Arsanilic acid 90 (0.01%)	Broiler chickens; prevention and control of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic.
Arsanilic acid 90 (0.01%) plus erythromycin 4.6 to 18.5.	Broiler chickens; growth promotion and feed efficiency; prevention and control of coccidiosis; improving pigmentation.	As erythromycin thiocyanate; withdraw 5 d before slaughter; as sole source of organic arsenic.
Arsanilic acid 90 (0.01%) plus erythromycin 92.5.	1. Broiler chickens; aid in the prevention of chronic respiratory disease during periods of stress; growth promotion and feed efficiency; improving pigmentation; control of coccidiosis.	do.
	2. Broiler chickens; prevention and control of coccidiosis; growth promotion and feed efficiency; improving pigmentation; aid in the prevention of infectious coryza.	do.
Arsanilic acid 90 (0.01%) plus erythromycin 185.	Broiler chickens; as an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease; prevention and control of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	Feed for 5 to 8 d; do not use in birds producing eggs for food purposes; as erythromycin thiocyanate; withdraw 5 d before slaughter; as sole source of organic arsenic.
Arsanilic acid 90 (0.01%) plus penicillin 2.4 to 50.	Broiler chickens; growth promotion and feed efficiency; prevention and control of coccidiosis; improving pigmentation.	As penicillin procaine, withdraw 5 d before slaughter; as sole source of organic arsenic.
Arsanilic acid 90 (0.01%) plus bacitracin 4 to 50.	Broiler chickens; prevention and control of coccidiosis; improving pigmentation; growth promotion and feed efficiency.	Withdraw 5 d before slaughter; as sole source of organic arsenic; as bacitracin methylene disslicylate.
Bacitracin 4 to 50	Broiler chickens; growth promotion and feed efficiency; prevention and control of coccidiosis.	As bacitracin methylene disalicylate, or bacitracin zinc.
Bacitracin 4 to 50 plus roxarsone 22.7 to 45.4 (0.0025% to .005%).	Broiler chickens; growth promotion and feed efficiency; prevention and control of coccidiosis; improving pigmentation.	As bacitracin methylene disalicylate, or bacitracin zinc; withdraw 5 d before slaughter; as sole source of organic arsenic.
Bacitracin 100 to 500	Broiler chickens; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis); prevention and control of coccidiosis.	As bacitracin zinc.
Chlortetracycline 100 to 200.	Broiler chickens; treatment of chronic respiratory disease (air-sac infection), blue comb (nonspecific infectious enteritis); prevention of synovitis; prevention and control of coccidiosis.	Not to be fed to laying chickens; as chlortetracycline hydrochloride.
Chlortetracycline 200	Broiler chickens; prevention and control of coccidiosis; control of synovitis.	Not to be fed to laying chickens; as chlortetracycline hydrochloride.
Erythromycin 4.6 to 18.5.	Broiler chickens; growth promotion and feed efficiency; prevention and control of coccidiosis.	As erythromycin thiocyanate.
Erythromycin 92.5	1. Broiler chickens; aid in the prevention of chronic respiratory disease during period of stress; prevention and control of coccidiosis.	Feed for 2 d before stress and 3 to 6 d after stress; withdraw 24 h before slaughter; as erythromycin thiocyanate.
	2. Broiler chickens; as an aid in the prevention of infectious coryza; prevention and control of coccidiosis.	Feed for 7 to 14 d; withdraw 24 h before slaughter; as erythromycin thiocyanate.
Erythromycin 185	Broiler chickens; as an aid in the prevention and reduction of lesions and in lowering severity of chronic respiratory disease; prevention and control of coccidiosis.	Feed for 5 to 8 d; do not use in birds producing eggs for food purposes; withdraw 48 h before slaughter; as erythromycin thiocyanate.

Zoalene in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
	Hygromycin B (8 to 12)	Broiler chickens; prevention and control of coccidiosis; control of infestation of large round worms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*).		
	Lincomycin 2	Broiler chickens; increase in rate of weight gain; improved feed efficiency; as an aid in the prevention and control of coccidiosis.	Do not feed to laying chickens; to be fed as the sole ration; as lincomycin hydrochloride monohydrate provided by 000009, in ; zoalene provided by 025700, in § 510.600(c) of this chapter.	
	Penicillin 2.4 to 50	Broiler chickens; growth promotion and feed efficiency; prevention and control of coccidiosis.	As penicillin procaine	
	Penicillin 2.4 to 50 plus roxarson 22.7 to 45.4 (0.0025% to 0.005%).	Broiler chickens; prevention and control of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic; as penicillin procaine.	
	Roxarsone 22.7 to 45.4 (0.0025% to 0.005%).	Broiler chickens; prevention and control of coccidiosis; growth promotion and feed efficiency; improving pigmentation.	Withdraw 5 d before slaughter; as sole source of organic arsenic	
(iii) 113.5 to 170.3 (0.0125% to 0.01875%).		Turkeys; prevention and control of coccidiosis	For turkeys grown for meat purposes only	
	Arsanilate sodium 90 (0.01%).	Turkeys; growth promotion and feed efficiency; improving pigmentation.	For turkeys grown for meat purposes only; withdraw 5 d before slaughter; as sole source of organic arsenic.	
	Arsanilic acid 90 (0.01%)	do	do	
	Carbarsone (Not U.S.P.) 227 to 340.5 (0.025% to 0.0375%).	Turkeys; prevention and control of coccidiosis; aid in the prevention of blackhead.	For turkeys grown for meat purposes only; feed continuously beginning 2 weeks before blackhead and coccidiosis are expected and continue as long as prevention of blackhead and prevention and control of coccidiosis is needed; withdraw 5 d before slaughter; as sole source of organic arsenic.	
	Roxarsone 22.7 to 45.4 (0.0025% to 0.005%).	Turkeys; growth promotion and feed efficiency; improving pigmentation.	Withdrawn 5 d before slaughter; as sole source of organic arsenic	

(2) *Permitted combinations.* It may be used in accordance with provisions of this section in the combinations provided as follows:

(i) Bambermycins in accordance with § 558.95.

(ii) Roxarsone in accordance with § 558.530.

Interested persons may, on or before April 9, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Dockets Management Branch (formerly the Hearing Clerk's office), Food and Drug Administration.

Dated: December 24, 1980.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 80-40845 Filed 12-31-80; 12:10 pm]

BILLING CODE 4110-03-M

federal register

Friday
January 9, 1981

Part III

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

None.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California:		
	CA80-5133	September 26, 1980.
	CA80-5135	October 3, 1980.
	CA80-5147	November 28, 1980.
North Dakota:		
	ND80-5102	February 1, 1980.
	ND80-5132	October 10, 1980.
Oregon:		
	OR80-5145	November 21, 1980.
Washington:		
	WA80-5136	October 17, 1980.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publications in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Kentucky: KY79–1167(KY81–1171), December 14, 1979

CANCELLATION OF GENERAL WAGE DETERMINATION DECISIONS

None.

Signed at Washington, D.C., this 2nd day of January 1981.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

DECISION NO. CA80-5133 - Mod. #1
(45 FR 64046 - September 26, 1980)
San Diego County, California

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
CARPENTERS:					
Carpenters	$15.11	.91	1.55		.07
Piledrivermen	15.36	.91	1.55		.07
Millwrights; Pneumatic Nailer; Hardwood Floor layers	15.61	.91	1.55		.07
*DIVERS:					
Divers	35.22	.91	1.55		.07
Stand-by Divers	17.61	.91	1.55		.07
Tender	16.61	.91	1.55		.07
DRYWALL INSTALLERS	16.60	.91	1.55		.07

Divers:*
Shall receive a minimum of 8 hours pay for any day or part thereof.

DECISION NO. CA80-5135 - Mod. #3
(45 FR 65867 - October 3, 1980)
Imperial, Inyo, Kern, Los-Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties, California

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Modification No. 1, in Vol. 45, Page No. 81953, of the Federal Register dated December 12, 1980, to read Modification No. 2					
SHEET METAL WORKERS:					
Area 2	$16.73	1.20	2.13		.04

DECISION NO. CA80-5147 - Mod. #2
(45 FR 79275 - November 28, 1980)
Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Luis-Obispo, Santa Barbara and Ventura Counties, California

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
SHEET METAL WORKERS:					
Area 2	$16.73	1.20	2.13		.04
Area 3	21.73	1.20	2.13		.04

DECISION #ND80-5102 - Mod #2 (45 FR 7463 - Feb. 1, 1980) Statewide North Dakota	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Line Construction:					
Group 1	$12.90	.45	4%		1/2%
Group 2	12.87	.45	4%		1/2%
Group 3	10.32	.45	4%		1/2%
Group 4	8.60	.45	4%		1/2%
Group 5	7.90	.45	4%		1/2%

DECISION NO. ND80-5132 - Mod #2 (45 FR 67525 - Oct. 10, 1980) Burleigh, Cass, Grand Forks, Morton, Richland, Steele, Traill, Walsh, and Ward Counties, North Dakota	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Drywall Tapers: Area 1	$11.20	.25	.50		
Electricians:					
Area 1:					
Zone A:					
Electricians	11.55	.50	3% + .80	6%	1%
Cable Splicers	12.13	.50	3% + .80	6%	1%
Zone B:					
Electricians	12.17	.50	3% + .80	6%	1%
Cable Splicers	12.75	.50	3% + .80	6%	1%
Zone C					
Electricians	13.05	.50	3% + .80	6%	1%
Cable Splicers	13.63	.50	3% + .80	6%	1%
Elevator Constructors	13.16	1.195	.82	a	.035
Millwrights	11.91	.80	.60		.02
Painters:					
Area 1:					
Brush, Roller, Paperhanger	10.30	.25	.50		.02
Sandblasting, Structural Steel Spray	11.05	.25	.50		.02
Area 3:					
Brush	9.75				
Spray	10.10				
Plumbers:					
Area 3	14.66	.75	.65		.04
Soft Floor Layers:					
Area 2	9.90	.25	.50		
OMIT:					
Carpenters:					
Area 2:					
Millwrights	11.91	.80	.60		.02
Area 4:					
Millwrights	9.86	.50	.50	.50	.02

DECISION NO. OR80-5145 - Mod #1
(45 FR 77321 - Nov. 21, 1980)
Statewide Oregon

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Bricklayers; Stonemasons:					
Area 2	$16.05	.95	1.00		.12
Electricians:					
Area 2					
Electricians	17.57	.95	3% + 1.30		.05
Cable Splicers	18.32	.95	3% + 1.30		.05
Area 3					
Electricians	19.05	.90	3% + 2.50		.04
Cable Splicers	20.95	.90	3% + 2.50		.04
Area 4					
Electricians	20.55	.90	3% + 1.00		.07
Lead Cable Splicers	22.61	.90	3% + 1.00		.07
Area 5					
Electricians	19.55	.90	3% + 2.00		.10
Cable Splicers	20.30	.90	3% + 2.00		.10

DECISION NO. WA80-5136 - Mod#4
(45 FR 69151 - Oct. 17, 1980)
Statewide Washington

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Asbestos Workers:					
Area 3	$16.69	.78	1.45		.04
Bricklayers; Marble Setters:					
Area 8	15.33	.80	1.55		.23
Carpenters:					
Area 2:					
Carpenters and Drywall applicators	14.93	.75	.95		.06
Carpenters on creosoted material	15.03	.75	.95		.06
Sawfilers; Stationary Power Saw; Floor Finisher; Floor Layer; Shingler; Floor Sander and other stationary power woodworking tools	15.06	.75	.95		.06
Millwrights and Machine erectors	15.43	.75	.95		.06
Electricians:					
Area 1					
Electricians	17.85	.95	3% + .40		.02
Cable Splicers	18.25	.95	3% + .40		.02
Area 2					
Electricians	17.57	.95	3% +1.30		.05
Cable Splicers	18.32	.95	3% +1.30		.05
Area 3					
Electricians	17.57	.95	3% +1.30		.05
Cable Splicers	19.33	.95	3% +1.30		.05
Area 5					
Electricians	19.55	.90	3% +2.00		.10
Cable Splicers	20.30	.90	3% +2.00		.10
Area 7					
Electricians	17.10	.95	3% +1.05	8%	.13
Cable Splicers	18.81	.95	3% +1.05	8%	.13
Terrazzo Workers, Tile Setter					
Area 1	13.50	.80	2.00		
Area 3	15.30	.80	1.00		.07
Area 6	15.25	.90	.80		

SUPERSEDEAS DECISION

STATE: Kentucky
COUNTIES: See below
DECISION NO. KY81-1171
DATE: Date of Publication
Supersedes Decision No. KY79-1167 dated December 14, 1979 in 44FR 72797
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS - includes single family homes and apartments up to and including four stories

Bracken, Mason, Nicholas, and Robertson	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Conditioning & Heating Mechanics	5.03				
Bricklayers	5.75				
Carpenters	5.24				
Cement Masons	5.24				
Drywall Hangers	5.31				
Drywall Finishers	5.31				
Electricians	5.10				
Insulation Installers	5.24				
Laborers	4.00				
Mason Tenders	4.00				
Painters	5.24				
Plumbers	5.00				
Roofers	5.37				
Sheet Metal Workers	5.03				
Soft Floor Layers	5.37				
Tile Setters	5.24				
Truck Drivers	4.85				
POWER EQUIPMENT OPERATORS					
Backhoe	5.81				
Bulldozer	6.33				
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii))					

[FR Doc. 81-581 Filed 1-8-81; 8:45 am]
BILLING CODE 4510-27-C

federal register

Friday
January 9, 1981

Part IV

Department of Energy

Office of Conservation and Solar Energy

Residential Conservation Service Program; Federal RCS plan

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Part 456

[Docket No. CAS-RM-80-123]

Residential Conservation Service Program; Federal RCS Plan

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) is issuing this Proposed Rule to implement section 219(a) of the National Energy Conservation Policy Act (NECPA) as amended by the Energy Security Act (ESA). Section 219 of NECPA directs the Secretary of Energy to promulgate a Federal Standby Plan which is to be used by regulated utilities in States which do not have approved Residential Conservation Service (RCS) Plans and by regulated utilities in States which have approved plans which are found not to be adequately implemented.

The purpose of the RCS program is to encourage the installation of energy conservation measures in existing houses by residential customers of larger gas and electric utilities. In developing this plan DOE has relied heavily upon the existing regulations that were promulgated to provide direction to those States and nonregulated utilities which elected to submit their own plans for approval (44 FR 64602, November 7, 1979). DOE has also incorporated in this proposed rulemaking the amendments made to the RCS program by ESA.

Pursuant to section 219(a) of NECPA, utilities will not be subject to the provisions of the Federal RCS Plan until such time as the plan is finalized and the Secretary issues an order directing the utility to offer a "utility program" to its residential customers.

DATES: Written comments must be received no later than February 23, 1981, 4:30 p.m., e.s.t., in order to ensure their consideration. (See "Comment Procedure" under Supplementary Information below.)

A national hearing will be held on January 29, 1981 in Washington, D.C. beginning at 9:00 a.m. A regional hearing will be held on January 26, 1981 in Kansas City, Missouri beginning at 9:00 a.m. Requests to speak at the hearings must be received no later than 4:00 p.m. on January 14, 1981.

ADDRESSES: All written comments and requests to speak at the Washington, D.C. hearing should be addressed to Carol A. Snipes (Hearing Procedures), U.S. Department of Energy, Office of Conservation and Solar Energy, Office of Hearings and Dockets, Mail Station 6B-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202-252-9319).

Requests to speak at the Kansas City, Missouri hearing should be addressed to: Dottie Doll, DOE Regional Office, Region VII, 324 East 11th Street, Kansas City, Missouri 64106 (816-374-5533).

The Washington, D.C. hearing will be held in Room 2105, 2000 M Street, N.W., Washington, D.C. The Kansas City hearing will be held in the Conference Room 140, Federal Building, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

James R. Tanck, Director, Building Conservation Services Division, Office of Conservation and Solar Energy, Department of Energy, 1000 Independence Avenue, S.W., Room GH-068, Washington, D.C. 20585, (202) 252-9161

Laura Rockwood, Office of General Counsel, Department of Energy, 1000 Independence Avenue, S.W., Room 6B-128, Washington, D.C. 20585, (202) 252-9519

I. Introduction.
II. Major Provisions.
III. Regulatory Analysis and Urban and Community Impact Assessment.
IV. Environmental Impact Statement.
V. Contractor Contribution to the Rulemaking.
VI. Shortened Comment Period.
VII. Comment Procedures.

I. Introduction

On November 7, 1979, the Department of Energy (DOE) published a Final Rule implementing the Residential Conservation Service (RCS) Program to encourage and facilitate the installation of energy conservation measures and renewable resource measures (44 FR 64602). DOE had approached the development of the program intending that it be a State initiated and directed activity as contemplated by Congress.

Nevertheless section 219(a) of the National Energy Conservation Policy Act (NECPA) (Public Law 95-619; 92 Stat 3206 *et seq.)* provides that if a State Plan is not approved within the allotted period or if the Secretary determines, after the notice and opportunity for a public hearing, that an approved plan is not being adequately implemented in such State, the Secretary shall promulgate a plan which meets the requirements of the Act.

Exercise of Federal Standby Authority will be required in at least four States that chose not to submit plans as well as in an undetermined number of States that may not adequately implement approved plans. Section 219 of NECPA specifically requires the Secretary by order require each regulated utility in such a State to implement the plan within 90 days, not 180 days, as is the case of utilities covered by RCS plans approved pursuant to section 212 of NECPA. By publishing the plan in proposed and final forms and allowing an opportunity for public comment, DOE intends to provide each standby-covered utility with adequate time within which to implement the Federal RCS Plan.

Section 219(a)(1) of NECPA requires that the Federal RCS Plan meet the requirements of section 213 for RCS Plans. There is, thus, a great degree of uniformity between the Federal RCS Plan and the RCS regulations concerning State Plans, 10 CFR 456, Subparts B and C. The basic difference between the two rules is that in the Federal RCS Plan the Secretary has assumed the role and responsibility otherwise delegated to the lead State agency under the Final Rule. This means that where the State or its delegate was the responsible party for an element of the program, for example, enforcement, listing, etc., the Secretary now has that responsibility. It also means that where the States were provided flexibility and discretion in the Final Rule regarding the implementation of a provision, for example, the requirements for eligibility of benefits, the Secretary now exercises such discretion.

In a number of cases, DOE proposes to exercise such discretion by providing utilities with options; (e.g.: the offering of audits and auditor qualification procedures). In other cases the utility is to establish its own procedures and inform the Secretary of them (e.g., the performance of audits).

DOE discusses below those provisions whereby it is exercising its discretion and whereby it is proposing to deviate from the provisions of the Final Rule. Those sections of the plan not discussed in the preamble are required specifically either by the RCS regulations or by NECPA. This Proposed Rule reflects the changes made to the RCS program pursuant to the Energy Security Act (ESA) (Title V, Subtitle B, Pub. L. 96-294, Stat 611 *et seq.).*

II. Major Provisions

A. Program Announcement—§ 456.1007

Most of the requirements for the program announcement in the Federal RCS Plan closely parallel those in the Final Rule, with two exceptions. First, the Federal RCS Plan specifies that savings estimates in the announcements

are to be expressed in *percentages of annual* energy bills. This format appears to provide the most reliable information. Secondly, DOE proposes to establish three options for offering program audits through the program announcement. Under the first option, the utility or participating home heating supplier would make an open or "unconditional" offer to provide an audit to any residential customer within 30 working days of the request. Under the second option, the program announcement would describe the audit and state that the utility will provide audits in one geographical section of its service area at a time. Following this "conditional" offer, the utility would send a second notice to the residents in each area to make an unconditional offer that any request for audits from that area would be honored within 30 calendar days. The utility would also send a third notice to confirm audit appointments. The utility would also be required to attempt to fill *any* audit request within 30 working days. The third option provides that an audit be performed not later than 90 days after a request. To balance the longer response time, this option requires that the utility make an extra effort to publicize the program by distributing program announcements every 6 months instead of every 2 years.

The three options are designed to accommodate each utility's need to plan its use of resources while still providing timely RCS audits. DOE believes that the longer a customer has to wait after requesting an audit, the less responsive he or she will be to the information provided during the audit. However, DOE also acknowledges that utilities will provide better and more reliable services when they are able to anticipate their demand. The time frames given for each option reflect information obtained during review of the RCS plans submitted by States and nonregulated utilities. DOE seeks comments on the feasibility of each option.

B. Requirements of Energy Audits—§ 456.1008

The requirements for energy audits under the Federal RCS Plan follow the Final Rule in most respects. However, DOE is interested in receiving comments on the following areas where it has exercised its discretion to be more explicit than the Final Rule. DOE proposes to require the cost and savings estimates be presented in ranges of dollars to reflect more accurately the wide variations in products available for each measure. To eliminate the burden of validating alternative audit procedures, DOE proposes that the model audit prepared by DOE in support of the RCS program be the audit format used under the Federal RCS Plan. In an effort to assure that the estimates of energy cost savings and installation costs reflect local energy rates and local prices, DOE proposes to require a semi-annual sample survey of contractors and suppliers. Finally, DOE has proposed to exclude the use of Class B, or "do-it-yourself", audits from the Federal RCS Plan. The legislative intent under NECPA was to promote on-site audits because of the higher quality of information they provide. DOE does not want to undermine the value of the program by encouraging less reliable audit formats.

C. Arranging Installation and Arranging Financing—Sections 456.1009 and 1010

DOE believes that the arranging services are critical to the success of the program and has designed its proposed requirements accordingly. As proposed, the arranging services must be provided within 10 working days of the request. The 10-day response time was established based on similar requirements proposed in State plans. The arranging installation service consists chiefly of the utility or home heating supplier sending requests for bids to three or more installers who provide all measures requested and to three or more installers who install less than all of the program measures. This provides the customer with the flexibility to choose between a general contractor and an installer who specializes in certain program measures. Utilities will also be required to assist customers in evaluating any bids submitted. DOE believes that both services are important in motivating customers to act on these audit recommendations. Unless the homeowner actually takes steps to improve the energy efficiency of his home, the RCS program will have fallen short of its target. The utility will also provide the customer with a job completion card to be returned to the utility upon completion of an installation in order to be eligible for program benefits.

DOE also proposes that utilities assist customers who wish to do their own installations. In particular, the utilities must offer to inspect any "do-it-yourself" installations for compliance with RCS installation standards. The utility may charge the customer a price not to exceed the cost of providing the inspection, which is to be used only for the benefit of the customer and is not part of any official reporting. These inspections should ensure higher customer confidence in the benefit to be obtained from installing measures.

The arranging financing service consists of providing the customer with specific information on the various lenders participating in the RCS program, answering any questions a customer may have on financing, making loan applications available, and supplying the lender, with customer permission, a copy of the audit performed by the utility on the customer's residence. DOE considered a more extensive arranging service. However, the proposed service is considered to be adequate to provide assistance to the customer. DOE requests comments on its approach to both arranging installation and arranging financing.

D. Accounting and Payment of Cost—§ 456.1011

DOE has proposed the necessary changes to reflect the ESA amendments to the treatment of the costs and the accounting requirements. As a result of these immediately effective amendments, a State regulatory authority may exercise its discretion in the manner of cost recovery for the amounts expended for general and administrative functions and project manager requirements, subject to a $15.00 maximum charge per dwelling unit. ESA removes the requirement in NECPA that customers be charged directly for labor and material for measures purchased or installed in their homes. In addition, the ESA removed the requirement that regulatory authorities find that expensing of costs, other than information costs, general and administrative costs, and project manager costs, will result in lower prices for utility service to rate-payers before permitting utilities to expense such costs. For these reasons, DOE has proposed a plan which does not mandate the manner of cost recovery.

E. List of Suppliers, Contractors, and Lenders—§ 456.1013

As the listing agency, DOE is responsible for the preparation and maintenance of the Master Record of all suppliers, contractors, and lenders who sell, install, or finance program measures and who wish to be included in the lists distributed under the program. In carrying out this responsibility DOE has proposed to establish a temporary delisting procedure (for a period of 30 days) for a limited number of violations. This temporary delisting will provide for immediate consumer protection while avoiding permanent harm to installers, etc. The temporary delisting will only

eliminate utility arranging with the installer during the 30-day period, while a case is established for either a permanent delisting or a relisting. DOE proposes to assign to the utilities the responsibility for such delistings. This is being proposed because DOE believes that quick action may be necessary and not possible on a national level of operation of RCS under Federal authority. The rule also provides for an extended delisting which will be the responsibility of the Secretary. Persons subject to delisting may be reinstated, provided all violations have been corrected and the person seeking reinstatement has agreed to pay for second inspections of all previously corrected violations. Persons subject to extended delistings may not be reinstated within 6 months after delisting. DOE believes that the lack of access to the RCS customers and business will be an effective deterrent for installers, etc.

For customers' protection, DOE has proposed that as a condition for inclusion on the list, the person seeking to be listed must either have sufficient liability insurance or a performance bond of at least $100,000, or agree to the withholding of payment until the installation has been inspected. The $100,000 level is comparable to levels set by the various States in their plans. Because the performance bond may prove difficult for some installers, DOE has provided an alternative of delaying payment until the job has passed an inspection. Such inspections should be given priority by the inspecting utility. DOE requests comments on this approach to listing.

F. Qualification Procedures for Auditors, Installers and Inspectors—§ 456.1015

In this rule DOE proposes to give the utilities three options in developing procedures to ensure the qualifications of their auditors and inspectors. First, the utility may provide a training program using the DOE model auditor training manual. Second, the utility may send its potential auditors and inspectors to a DOE-arranged training program. The utility would be expected to bear the cost of such training. Third, auditors and inspectors may take an appropriate qualification test which has been approved by DOE. DOE strongly urges utilities to provide adequate training for their energy auditors, and, therefore, proposes to review all training plans. DOE requests comments on the implementation of auditor, installer and inspector qualification procedures under this plan.

In addition, the rule proposes to require installers of furnaces to study the applicable standards in the DOE furnace efficiency manual and to take that portion of a DOE approved qualification test pertaining to furnace efficiency.

G. Complaints Processing Procedures—§ 456.1016

DOE proposes to require that each utility or participating home heating supplier contract with a neutral organization for the arbitration of disputes against such utility or supplier arising from an activity carried out under the Federal RCS Plan. DOE does not intend to supersede preexisting arbitration agreements. DOE solicits comments on the use of an independent arbitration association.

H. Procedures Which a Utility Must Report to the Secretary—§ 456.1022

DOE chose to leave utilities some flexibility in certain areas of the Federal RCS Plan. To ensure that the utilities and participating home heating suppliers select various procedures that are consistent with the overall plan, DOE considers it necessary to require those entities to report their selections prior to plan implementation. Because NECPA requires that utilities implement programs under Federal standby orders within 90 days of the order, DOE proposes that proposed utility procedures be filed with the Department no later than 30 days after issuance by the Secretary so that DOE can review the procedures before the 90 days has run. Recognizing that the turnaround time is short, DOE solicits comments on whether the utilities can meet their 30-day deadline. DOE's principal alternative to this requirement would be to eliminate the options offered to utilities under this Proposed Rule and prescribe specific procedures so that DOE review would not be needed before program implementation.

The following is a list of the more important procedures which are to be reported to DOE before program implementation:

1. Procedures for estimating cost and energy savings;
2. Procedures to describe the offering of a program audit;
3. Procedures for treatment of costs;
4. Procedures to assure the requisite inspection qualifications;
5. Procedures for handling the conciliation conference and redress; and
6. Procedures for qualifying auditors, inspectors and installers. DOE is particularly interested in receiving comments on the feasibility of obtaining timely determinations concerning cost recovery from the State utility regulatory authorities.

III. Regulatory Analysis and Urban and Community Impact Assessment

The President, by Executive Order 12044, has directed agencies of the executive branch to conduct a Regulatory Analysis of regulations they prepare that are likely to have major impact. Section 3(a) of the executive order directs the agencies to establish criteria to identify which regulations require regulatory analyses. DOE's implementing procedures are contained in DOE Order 2030 (44 FR 1032, January 3, 1979). In accordance with OMB A-116, an Urban and Community Impact Assessment should be prepared when the Proposed Rule is a major policy and program initiative. This assessment should be incorporated into the Regulatory Analysis.

DOE determined that the Residential Conservation Service Program, authorized under Title II, Part 1 of the National Energy Conservation Policy Act, was a major action and required preparation of a Regulatory Analysis and an Urban and Community Impact Assessment. Consequently, the Department prepared the two analyses in draft in conjunction with the publication of the Proposed Rule for the RCS program on March 19, 1979. (44 FR 16546). These analyses were finalized for publication in conjunction with the Final Rule which was published November 7, 1979 (44 FR 64602). As previously discussed, this rule was primarily developed by incorporating into the plan the applicable existing RCS provisions for which regulatory analyses were parpared. The major exception is the incorporation of the required Energy Security Act amendments into the plan. However, because those provisions of this Proposed Rule are generally limited to incorporated amendments to the RCS program as mandated by ESA and reflect only a minimal amount of administrative discretion, DOE believes that they do not constitute a significant regulation which will have a major impact. Therefore, for the reasons cited above a regulatory analysis is not required for this rulemaking.

IV. Environmental Impact Statement

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, DOE prepared an Environmental Impact Statement (EIS) for the entire Residential Conservation Service Program. A notice of availability of the Final Environmental Impact Statement was published in the Federal Register on November 7, 1979, (44 FR 64602). The

only aspects of the rulemaking which are not covered by the Environmental Impact Statement are those which reflect several recent changes in the RCS program mandated by the Energy Security Act. The changes in the program involve warranty requirements, utility cost and accounting provisions and amendments to the provision on utility supply, installation and financing of conservation and renewable resource measures. DOE has reviewed these program changes, and has determined that conclusions reached in the Environmental Impact Statement are unaffected by them. DOE has determined that the Energy Security Act Amendments to the RCS program do not represent "substantial changes in the proposed action that are relevant to environmental concerns", (40 CFR 1502.9(c)(1)(i)), and, therefore, a supplement to the Environmental Impact Statement is not required by NEPA and the applicable DOE regulations for compliance with NEPA.

V. Contractor Contribution to the Rulemaking

The following entity has made a contribution to the proposed rulemaking: Oak Ridge National Laboratories.

VI. Shortened Comment Period

Executive Order 12044 (43 FR 12661, March 23, 1978) generally requires agencies to provide the public with at least 60 days to comment on proposed significant regulations. DOE's implementing procedures are contained in DOE Order 2030 (44 FR 1032, January 3, 1979.) DOE feels that for the reasons listed below, it is reasonable to reduce the comment period to 45 days.

First, DOE previously provided for an extensive comment period on the vast majority of the provisions of this rulemaking during promulgation of the RCS Final Rule published on November 7, 1979. Secondly, the provisions not previously commented upon are not significant, because they do not reflect new policy concerns nor do they deviate substantially from positions aired by DOE in other contexts. Finally, the amendments made in response to the ESA will be subject to public review through the rulemakings necessitated by the Act. In the Federal RCS Plan, DOE has made a deliberate effort not to exercise wide discretion in adopting the ESA requirements.

VII. Comment Procedures

A. Written Comments—Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed procedures, requirements, and criteria. DOE is soliciting comments primarily on those areas where it has exercised its discretion otherwise accorded to participating States under the RCS. DOE does not wish to receive comments on issues already examined and resolved pursuant to the November 7, 1979, rules and its subsequent amendments. Comments should be submitted to the address indicated in the "Addresses" section of this preamble and should be identified on the envelope and on the documents submitted to DOE with the designation "Residential Conservation Service Program, Docket No. CAS-RM-80-123." Fifteen copies should be submitted. All written comments must be received by February 23, 1981, 4:30 p.m., e.s.t., to ensure considerations.

All written comments received on this Proposed Rule will be available for public inspection in the DOE Reading Room 1E-190, Forrestal Building 1000 Independence Avenue, S.W., Washington, D.C., between the hours 8:00 a.m., and 4:30 p.m., Monday through Friday. Any information or data considered by the person furnishing it to be confidential must be so identified and one copy submitted in writing. DOE reserves the right to determine the confidential status of the information or data and treat it according to its determination.

B. Hearing Request Procedures—The time and place of the public hearing is indicated in the "Hearing" section of this preamble. DOE invites any person who has an interest in the proposed rulemaking or who is a representative of a group or class of persons that has a interest in the proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address indicated in the "Public Hearings" section of this preamble and must be received before 4:00 p.m., on January 14, 1981. A request should be labeled both on the document and on the envelope "Residential Conservation Service Program," Docket No. CAS-RM-80-123.

The person making the request should briefly described the interest concerned; if appropriate, state why he or she is a proper representative of a group or class of persons that has an interest; give a concise summary of the proposed oral presentation, and provide a telephone number where he or she may be contacted through the day of the hearing.

Each person who, in DOE's judgment, proposes to present relevant material and information shall be selected to be heard and shall be notified by DOE of this participation before 4:30 p.m., on January 21, 1981.

Persons selected to appear at the hearing should bring 15 copies of his or her statement to the hearing site given in the "Public Hearings" section.

The hearing will begin at 9:00 a.m., c.s.t., on January 26, 1981, in Kansas City and at 9:00 a.m., e.s.t. on January 29 in Washington, D.C.

C. Conduct of Hearing—DOE reserves the right to arrange the schedule of presentations to be heard and to establish the procedures governing the conduct of the hearing. The length of each presentations may be limited, based on the number of persons requesting to be heard. A DOE official will be designated as presiding officer to chair the hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of the persons presenting statements.

Any participant who wishes to ask a question at the hearing may submit the question, in writing, at the registration desk. The presiding officer will determine whether the question is relevant and material, and whether the limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Authority: Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 96-619, 92 Stat. 3206 *et seq.*, amended by Title V, Subtitle B of the Energy Security Act Pub. L. 96-294, 794 Stat. 611 *et seq.*; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 *et. seq.*

In consideration of the foregoing, the Department of Energy proposes to amend Chapter II, Title 10 in Part 456 of the Code of Federal Regulations, as set forth below.

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

Maxine Savitz,

Deputy Assistant Secretary for Conservation, Conservation and Solar Energy.

10 CFR Part 456 is amended by adding to the Table of Contents the following:

Subpart J—Federal RCS Plan

Sec.

456.1000 Introduction.
456.1001 Definitions.
456.1002 Request for confidential treatment.
456.1003 Coverage of Federal RCS plan.
456.1004 Procedures for investigating and enforcing compliance with the Federal RCS Plan.
456.1005 Utility supply, installation, and financing.
456.1006 Scope of benefits.
456.1007 Program announcement.
456.1008 Requirements for energy audits.
456.1009 Arranging installation.
456.1010 Arranging financing.
456.1011 Accounting and payment of costs.
456.1012 Customer billing, repayment of loans, and termination of service.
456.1013 List of suppliers, contractors, and lenders.
456.1014 Postinstallation inspection.
456.1015 Qualification procedures for auditors, installers, and inspectors.
456.1016 Complaints processing procedures.
456.1017 Coordination.
456.1018 Home heating suppliers.
456.1019 Reporting and recordkeeping.
456.1020 Procedures for amendments of the Federal RCS plan.
456.1021 Utility and home heating supplier liability.
456.1022 Procedures which a utility must report to the secretary.

Part 456 is amended by adding the following new subpart:

Subpart J—Federal RCS Plan

§ 456.1000 Introduction.

The Federal RCS Plan specifies the procedures to be followed to ensure that eligible customers receive the services of the RCS Program when a State or nonregulated utility does not submit an acceptable RCS Plan within the necessary time or fails to implement adequately an approved plan.

This Plan sets forth the functions which the utilities, subject to the Federal RCS Plan, will be ordered to perform. The first of these functions calls for utilities to provide a marketing campaign to convince customers to take part in the RCS Program. At the core of this effort is the offer of an on-site energy audit of an eligible customer's residence. After the customer has received an analysis of the energy efficiency of his/her residence, the utility would provide related services, such as helping the customer locate conservation supplies, identifying qualified contractors, and contacting lenders for any necessary financing of this work.

§ 456.1001 Definitions.

The following definitions are used for purposes of the Federal RCS Plan:

(a) *Secretary.* The term "Secretary" means the Secretary for the U.S. Department of Energy.

(b) *Class B Energy Audit.* The term "Class B Energy Audit" means an energy audit in which the estimates of costs and savings associated with the installation of program measures are based on information collected by an eligible customer about his or her residential building and sent to a covered utility or participating home heating supplier for analysis.

(c) *Covered Utility.* The term "covered utility" means in any calendar year a public utility which during the second preceding calendar year had either:

(1) Sales of natural gas for purposes other than resale which exceeded 10 billion cubic feet, or

(2) Sales of electric energy for purposes other than resale which exceeded 750 million kilowatt-hours.

(d) *Eligible Customer.* The term "eligible customer" means a person who:

(1) Owns or occupies a residential building; and

(2) Receives a fuel bill from a covered utility or participating home heating supplier for fuel used in such residential building.

(e) *Energy Conservation Measures.* The term "energy conservation measures" means the following measures in a residential building:

(1) *Caulking.* The term "caulking" means pliable materials used to reduce the passage of air and moisture by filling small gaps including (i) at fixed joints on a building, (ii) underneath baseboards inside a building, (iii) in exterior walls at electric outlets, (iv) around pipes and wires entering a building, and (v) around dryer vents and exhaust fans in exterior walls. Caulking includes, but is not limited to, materials commonly known as "sealants," "putty," and "glazing compounds."

(2) *Weatherstripping.* The term "weatherstripping" means narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

(3) *Furnace Efficiency Modifications.* The term "furnace efficiency modifications" means:

(i) *Replacement Furnaces or Boilers.* The term "replacement furnaces or boilers" means a furnace or boiler, including a heat pump, which replaces an existing furnace or boiler of the same fuel type and which reduces the amount of fuel consumed due to an increase in combustion efficiency, improved heat generation or reduced heat losses.

(ii) *Furnace Replacement Burner (Oil).* The term "furnace replacement burner (oil)" means a device that atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture; that is an integral part of an oil-fired furnace or boiler including the combustion chamber; and that, because of its design, achieves a reduction in the oil used from that used by the device which it replaces.

(iii) *Flue-Opening Modification (Vent Damper).* The term "flue-opening modification (vent damper)" means an automatically operated damper installed in a gas-fired furnace (often called a vent damper) which:

(A) is installed downstream from the draft hood; and

(B) conserves energy by substantially reducing the flow of heated air through the chimney when the furnace is not in operation.

(iv) *Intermittent Pilot Ignition Device (IID).* The term "intermitten pilot ignition device (IID)" means a device which, when installed in a gas-fired furnace or boiler, automatically ignites the gas burner and replaces a gas pilot light.

(4) *Replacement Central Air Conditioner.* The term "replacement central air conditioner" means a central air conditioner which replaces an existing central air conditioner of the same fuel type and which reduces the amount of fuel consumed due to an increase in efficiency.

(5) *Ceiling Insulation.* The term "ceiling insulation" means a material primarily designed to resist heat flow which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roofs, the term "ceiling insulation" also applies to such material used between the underside and upperside of the roof. The term "ceiling insulation" also includes such material installed on the exterior of the roof.

(6) *Wall Insulation.* The term "wall insulation" means a material primarily designed to resist heat flow which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside.

(7) *Floor Insulation.* The term "floor insulation" means a material primarily designed to resist heat flow which is installed between the first-level conditioned area of a building and an unconditioned basement, a crawl space, or the outside beneath it. Where the first-level conditioned area of a building is on a ground-level concrete slab, the term "floor insulation" also means such material installed around the perimeter of or on the slab. In the case of mobile homes, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

(8) *Duct Insulation.* The term "duct insulation" means a material primarily designed to resist heat flow which is installed on a heating or cooling duct in an unconditioned area of a building.

(9) *Pipe Insulation.* The term "pipe insulation" means a material primarily designed to resist heat flow which is installed on a heating or cooling pipe in an unconditioned area of a building.

(10) *Water Heater Insulation.* The term "water heater insulation" means a material primarily designed to resist heat flow which is suitable for wrapping around the exterior surface of the water heater casing.

(11) *Storm Window.* The term "storm window" means a window or glazing material placed outside or inside an ordinary or prime window, creating an air space, to provide greater resistance to heat flow than the prime windows alone.

(12) *Thermal Window.* The term "thermal window" means a window unit with improved thermal performance through the use of two or more sheets of glazing material affixed to a window frame to create one or more insulated air spaces. It may also have an insulating frame and sash.

(13) *Storm or Thermal Door.* The term "storm or thermal door" means:

(i) A second door, installed outside or inside a prime door, creating an insulating air space.

(ii) A door with enhanced resistance to heat flow through the glass area by affixing two or more sheets of glazing material, or

(iii) A prime exterior door with an R-value of at least 2.

(14) *Heat Reflective and Heat Absorbing Window or Door Material.* The term "heat reflective and heat absorbing window or door material" means a window or door glazing material with exceptional heat-absorbing or heat-reflecting properties, or reflective or absorptive films and coatings applied to an existing window or door which thereby result in exceptional heat-absorbing or heat-reflecting properties.

(15) *Devices Associated with Electric Load Management Techniques.* The term "devices associated with electric load management techniques" means customer-owned or -leased devices that reduce the maximum kilowatt demand on an electric utility and which are either:

(i) Part of a radio, ripple or other utility-controlled load-switching system on the customer's premises;

(ii) Clock-controlled load-switching devices;

(iii) Interlocks and other load-actuated, load-limiting devices; or

(iv) Energy storage devices with control systems.

(16) *Clock Thermostat.* The term "clock thermostat" means a device which is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed, and that uses:

(i) A temperature control device for interior spaces incorporating more than one temperature control lever, and

(ii) A clock or other automatic mechanism for switching from one control level to another.

(f) *Energy Conserving Practices.* The term "energy conserving practices" means:

(1) Furnace Efficiency Maintenance and Adjustments, which means cleaning and combustion efficiency adjustment of gas or oil furnaces, periodic cleaning or replacement of air filters on forced-air heating or cooling systems, lowering the bonnet or plenum thermostats to 80°F on a gas or oil forced-air furnace, and turning off the pilot light on a gas furnace during the summer.

(2) Nighttime Temperature Setback, which means manually lowering the thermostat control setting for the furnace during the heating season to a maximum of 55° during sleeping hours;

(3) Reducing Thermostat Settings in Winter, which means limiting the maximum thermostat control setting for the furnace to 68°F during the heating season;

(4) Raising Thermostat Setting in Summer, which means setting the thermostat control for an air conditioner to 78°F or higher during the cooling season;

(5) Water Flow Reduction in Showers and Faucets, which means placing a device in a shower head or faucet to limit the maximum flow to three gallons per minute, or replacing existing shower heads or faucets with those having built-in provisions for limiting the maximum flow to three gallons per minute;

(6) Reducing Hot Water Temperatures, which means manually setting back the water heater thermostat setting to 120°F, and reducing the use of heated water for washing clothes;

(7) Reducing Energy Use When a Home Is Unoccupied, which means reducing the thermostat setting to 55°F when a home is empty for four hours or longer in the heating season, turning an air conditioner off in the cooling season when no one is home, and turning a water heater off when a home is vacant for two days or longer;

(8) Plugging Leaks in Attics, Basements, and Fireplaces, which means (i) installing scrap insulation or other pliable materials in gaps around pipes, ducts, fans, or other items which enter the attic or basement from a heated space, (ii) installing fireproof material to plug any holes around any damper in a fireplace, and (iii) adding insulation to an attic or basement door;

(9) Sealing Leaks in Pipes and Ducts, which means installing caulking in any leak in a heating or cooling duct, tightening or plugging any leaking joints in hot water or steam pipes, and replacement of washers in leaking water valves;

(10) Efficient Use of Shading, which means using shades or drapes (i) to block sunlight from entering a building in the cooling season, (ii) to allow sunlight to enter during the heating season, and (iii) to cover windows tightly at night during the heating season; and

(11) Such other low or no cost practices designed by DOE and approved by the Secretary in the Federal RCS Plan which (i) save energy; (ii) do not require the installation of energy conservation or renewable resource measures; and (iii) do not adversely impact the RCS Program.

(g) *Federal RCS Plan.* The term "Federal RCS Plan" means a plan developed pursuant to Subpart F of 10 CFR 456 and Section 219 of NECPA.

(h) *Governor.* The "Governor" means the Governor or chief executive officer of a State or his designee.

(i) *Home Heating Supplier.* The term "home heating supplier" means a person who sells or supplies home heating fuel (including No. 2 heating oil, kerosene, butane, and propane) to an eligible customer for consumption in a residential building.

(j) *Measures Warrants.* (1) The term "manufacturer's measure warranty" means, at a minimum, a written warranty by the manufacturer of an energy conservation or renewable resource measure to the eligible customer for whom the measure is installed, the installation contractor who installs the measure, and the supplier of the measure, that such manufacturer shall replace within a reasonable period of time and at no charge, parts or materials for those measures found within one year from the date of installation to be defective due to materials, manufacture, or design.

(2) The term "supplier's measure warranty" means, at a minimum, a written warranty equivalent to that required under § 456.1001(j)(1) by the supplier of an energy conservation or renewable resource measure provided to persons who purchase the measure from such supplier.

(3) The term "contractor's measure warranty" means, at a minimum, a written warranty by a contractor

installing an energy conservation or renewable resource measure that any defect in materials, manufacture, design, or installation found within one year from the date of installation shall be remedied without charge and within a reasonable period of time.

(k) *Participating Home Heating Supplier.* The term "participating home heating supplier" means a home heating supplier that has elected to participate in the Federal RCS Plan which includes home heating suppliers.

(l) *Program Announcement.* The term "program announcement" means the Residential Conservation Service Program information and offer of services required to be sent by a covered utility or participating home heating supplier to each eligible customer by § 456.306.

(m) *Program Audit.* The term "program audit" means an energy audit in which the estimates of costs and savings are based on an onsite inspection of the residence of an eligible customer by an auditor qualified according to the Federal RCS Plan.

(n) *Program Information.* The term "program information" means the program announcement and any information dissemination activities related to a Residential Conservation Service Program.

(o) *Program Measures.* The term "program measures" means those energy conservation or renewable resource measures which the Secretary has by rule determined to be appropriate by climatic region and building category and which are found in § 456, Appendix I.

(p) *Public Utility.* The term "public utility" means any person, State agency, or Federal agency which is engaged in the business of selling natural gas or electric energy, or both, to residential customers for use in a residential building.

(q) *Rate.* The term "rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to sales of electric energy or natural gas, any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sales of electric energy or natural gas.

(r) *Ratemaking Authority.* The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(s) *Renewable Resource Measure.* The term "renewable resource measure" means the following measures in or with respect to a residential building:

(1) *Solar Domestic Hot Water Systems.* The term "solar domestic hot water systems" means equipment designed to absorb the sun's energy and to use this energy to heat water for use in a residential building other than for space heating, including thermosiphon hot water heaters.

(2) *Active Solar Space Heating Systems.* The term "active solar space heating systems" means equipment designed to absorb the sun's energy and to use this energy to heat living space by use of mechanically forced energy transfer, such as fans or pumps.

(3) *Combined Active Solar Space Heating and Solar Domestic Hot Water System.* The term "combined active solar space heating and solar domestic hot water system" means equipment designed to perform both of the functions described in § 456.1001(s) (1) and (2).

(4) *Passive Solar Space Heating and Cooling Systems.* The term "passive solar space heating and cooling systems" means systems that make most efficient use of, or enhance the use of, natural forces—including solar insolation, winds, nighttime coolness, and opportunity to lose heat by radiation to the night sky—to heat or cool living space by the use of conductive, convective, or radiant energy transfer. Passive solar systems include only:

(i) *Direct Gain Glazing Systems.* The term "direct gain glazing systems" means the use of south-facing (+ or −45° of True South) panels of insulated glass, fiberglass, or other similar transparent substances that admit the sun's rays into the living space where the heat is retained. Glazing is either double-paned or single-paned equipped with movable insulation.

(ii) *Indirect Gain Systems.* The term "indirect gain systems" means the use of panels of insulated glass, fiberglass or other transparent substances that direct a sun's rays onto specially constucted thermal walls, ceilings, rockbeds, or containers of water or other fluids where heat is stored and radiated.

(iii) *Solaria/Sunspace Systems.* The term "solaria/sunspace systems" means a structure of glass, fiberglass, or similar transparent material which is attached to the southfacing (+ or −45° of True South) wall of a structure which allows for air circulation to bring heat into the residence, and which is able to be closed off from the residential structure during periods of low solar insolation.

(iv) *Window Heat Gain and/or Loss Retardants.* The term "window heat gain and/or loss retardants" means those mechanisms which significantly reduce summer heat gain or wintertime heat loss through windows by use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar or movable rigid insulation.

(5) *Wind Energy Devices.* The term "wind energy devices" means equipment that uses wind energy to produce energy in any form for personal residential purposes.

(6) *Replacement Solar Swimming Pool Heaters.* The term "replacement solar swimming pool heaters" means devices which are used solely for the purpose of using the sun's energy to heat swimming pool water and which replace a swimming pool heater using electricity, gas and other fossil fuel.

(t) *Residential Building.* The term "residential building" means any building used for residential occupancy which:

(1) Is not a new building to which final standards under Sections 304(a) and 305 of the Energy Conservation and Production Act apply;

(2) Has a system for heating, cooling, or both heating and cooling living spaces; and

(3) Contains at least one, but not more than four, dwelling units. Townhouses and rowhouses in rows of more than four separate houses are included in this definition, but garden apartment complexes which contain clusters of four or fewer apartment units are not.

(u) *Residential Conservation Service (RCS) Program.* The term "Residential Conservation Service (RCS) Program" means the program required to be implemented by covered utilities pursuant to the Federal RCS Plan.

(v) *State.* The term "State" means a State, the District of Columbia, and Puerto Rico.

(w) *State Agency.* The term "State Agency" means a State, a political subdivision thereof, or any agency or instrumentality of either.

(x) *State Regulatory Authority.* The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sales of electric energy or natural gas by any public utility (other than by such State agency)—except that in the case of a public utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

§ 456.1002 Request for confidential treatment.

(a) *Request.* If a party wishes to file a document with DOE in connection with the Federal RCS Plan claiming that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, or is otherwise exempt by law from public disclosure, and if that

party wishes to request that DOE not disclose such information, that party must comply with the DOE FOIA regulations set forth in 10 CFR 1004 (44 FR 1908, Jan. 8, 1979).

(b) *Disposition of Request.* DOE retains the right to make its own determination with regard to any claim of confidentiality. Notice of the decision by DOE to deny such claim, in whole or in part, and an opportunity to respond thereto, will be given to the person claiming confidentiality of the information no less than 7 days prior to the public disclosure of such information.

(c) *Document-by-Document Identification.* Each request for confidential treatment must be made with respect to each separately identified document and must be made at the time that document is first submitted to DOE.

§ 456.1003 Coverage of Federal RCS plan.

(a) *Regulated Utilities.* All regulated utilities providing utility service in a State where the Federal RCS Plan is ordered to be enforced and which meet the definition of "covered utility" in this Plan shall be subject ot the Federal RCS Plan.

(b) *Home Heating Suppliers.* The Federal RCS Plan includes home heating suppliers, in States where the Federal RCS Plan is ordered to be enforced, when 25% of the homes in that State are heated by oil, propane, butane, and/or kerosene.

§ 456.1004 Procedures for investigating and enforcing compliance with the Federal RCS plan.

(a) *Investigation and Enforcement.*

(1) The Secretary requires each utility and each participating home heating supplier subject to the Federal RCS Plan to comply with the Federal RCS Plan pursuant to the authority given the Secretary in Section 219 of the National Energy Conservation Policy Act (NECPA), in Pub. L. 95-619, November 9, 1978.

(2) Individuals or groups wishing to report possible noncompliance with this Plan may inform the covered utility or participating home heating supplier in their area and/or the Secretary. The Secretary may investigate any allegation of noncompliance, or any complaint concerning the RCS Program or this Plan, submitted to DOE, or on his own initiative may review the activities of utilities subject ot the Federal RCS Plan to determine compliance with the Plan.

(3) Utilities or participating home heating suppliers subject to the Federal RCS Plan shall notify the Secretary within a reasonable length of time from date of receipt of any reports of possible noncompliance with this Plan submitted in accordance with § 456.1004(a)(2).

(b) *Conflicts of Laws.* Each utility subject to the Federal RCS Plan shall petition the Secretary in accordance with § 456.102 whenever the utility believes it is prohibited by a State or local law or regulation from taking any action required to be taken under NECPA or any rule or Federal RCS Plan promulgated pursuant to NECPA, or whenever the utility believes it is required or permitted by a State or local law or regulation to take any action prohibited by NECPA or any rule or Federal RCS Plan promulgated pursuant to NECPA.

(1) This petition shall contain a copy of the applicable State or local laws or regulations and a description of the action the utility believes it is prohibited from taking or is permitted or required to take under such laws or regulations.

(2) The Secretary shall give notice of the petition to the Governor, State Energy Office, and State Regulatory Authority of the applicable State and such other persons as the Secretary deems appropriate. Any such person or entity may file comments with the Secretary with respect to such petition within 30 days of receipt of the notice.

(3) If the Secretary determines pursuant to such petition that a State or local law or regulation prohibits a utility from taking any action required to be taken under NECPA or any rule or plan promulgated pursuant to NECPA or permits or requires a utility to take any action prohibited by NECPA or any rule or plan promulgated pursuant to NECPA, the Secretary shall issue an order superseding such State or local laws or regulations to the extent inconsistent with NECPA or any rule or plan promulgated pursuant to NECPA. Such an order shall be effective with respect to all utilities otherwise subject to such State or local laws or regulations and shall moot any outstanding petitions under this Section by such utilities.

(4) Appeals.

(i) Any person aggrieved by any order, finding, or determination made under § 456.1004(b) may appeal that order, finding, or determination in accordance with 10 CFR, Subpart G of Part 205.

(ii) Any person so aggrieved has not exhausted his administrative remedies until an appeal has been filed under that Subpart and an order granting or denying the appeal has been issued.

§ 456.1005 Utility supply, installation, and financing.

(a) Except as provided in this section, no covered utility may supply or install any energy conservation or renewable resource measure.

(b) The prohibition in § 456.1005(a) shall not apply to the supply or installation of:

(1) Furnace efficiency modifications,

(2) Clock thermostats, and

(3) Devices associated with load management techniques.

(c) The prohibition contained in § 456.1005(a) shall not apply to any energy conservation or renewable resource measure supplied or installed by a public utility through contracts between such utility and independent suppliers or contractors where the customer requests such supply and installation and each supplier or contractor:

(1) Is on the list of suppliers and contractors referred to in § 456.1013;

(2) Is not subject to the control of the public utility, except as to the performance of such contract, and is not an affiliate or a subsidiary of such utility; and,

(3) If selected by the utility, is selected in a manner consistent with § 456.1005(d).

(d) Activities of a public utility under § 456.1005(c):

(1) May not involve unfair methods of competition;

(2) May not have a substantial adverse effect on competition in the area in which such activities are undertaken nor result in providing to any supplier or contractor an unreasonably large share of contracts for the supply or installation of residential energy conservation measures;

(3) Shall be undertaken in a manner that provides, subject to reasonable conditions the utility may establish to ensure the quality of supply and installation of residential energy conservation measures, that any financing by the utility of such measures shall be available for the supply or installation by any contractor on the lists referred to in § 456.1013 or for the purchase of such measures to be installed by the customer;

(4) Shall be undertaken, to the extent practicable and consistent with § 456.1005(d) (i), (ii), and (iii), in a manner that minimizes the cost of residential energy conservation measures to such customers; and

(5) Shall include making available upon request a current estimate of the average price of supply and installation of residential energy conservation measures subject to the contracts entered into by the public utility under § 456.1005(c).

(e) The prohibition in § 456.1005(a) shall not apply to any supply or

installation of any energy conservation or renewable resource measure that the covered utility was (1) engaged in on November 9, 1978, or (2) for which the covered utility had broadly advertised or completed substantial preparations, by November 9, 1978:

(i) During such time as applications for determinations with respect to such activities, filed in accordance with § 456.509, are pending; and

(ii) Upon a final determination that, on or by November 9, 1978, such energy conservation or renewable resource measure was being supplied or installed, had been broadly advertised, or for which substantial preparation had been completed, by the utility seeking such determination.

(f) The prohibition in § 456.1005(a) shall not apply to any supply or installation of any energy conservation or renewable resource measure:

(1) Which a State or local law or regulation required or explicitly permitted a covered utility to engage in; or

(2) Which the Attorney General of the appropriate State certifies in accordance with § 456.506(a)(2) was intended by a State law or regulation in effect on November 9, 1978, to be required or permitted.

(g) Each utility subject to the Federal RCS Plan must report to the Secretary any State or local law or regulation in effect on November 9, 1978, which requires or explicitly permits a covered utility to engage in any supply or installation of any energy conservation or renewable resource measures.

(h) A covered utility is exempt from any Federal requirement to include in its RCS program any supply, installation, or financing of any energy conservation or renewable resource measure in which it is engaged by reason of a State law or regulation in effect prior to November 8, 1978, permitting or requiring such activities. However, a covered utility that does include supplying and installing in its RCS program pursuant to the exemption in § 456.1005(f) shall be subject to all the requirements of the Federal RCS Plan with respects to those activities in the same manner as any other contractor, supplier, or lender, except that it shall be exempt from the requirements of § 456.1011 (Accounting and Payment of Costs) and § 456.1012 (Customer Billing, Repayment of Loans, and Termination of Service) with respect to such activities.

(i) The Secretary may waive any prohibition of § 456.1005(a) upon petition by a covered utility pursuant to § 456.509 and a finding that:

(1) The petition, in the case of a covered utility subject to the Federal RCS Plan, is supported by the Governor of the State subject to this Plan, and

(2) If such waiver were granted:

(i) Fair and reasonable prices and rates of interest would be charged, and

(ii) The otherwise prohibited activities would not involve or result in unfair methods of competition or unfair deceptive acts or practices.

(j) Whenever any public utility undertakes to finance a lending program for energy conservation or renewable resource measures through financial institutions, the utility shall (to the extent such utility determines feasible, consistent with good business practice, and not disadvantageous to its customers) seek funds for such financing from financial institutions located throughout the area covered by the lending program.

(k) Each utility subject to the Federal RCS Plan that supplies, installs, or finances any energy conservation or renewable resource measure and that wishes to so inform the eligible customer in the course of offering RCS services must be listed as such pursuant to § 456.1013 in the same manner and subject to the same requirements as any other supplier, installer, or lender.

(l) Each utility subject to the Federal RCS Plan that supplies, installs, or finances any energy conservation or renewable resource measure must notify the Secretary when such program becomes effective.

(m) Each utility subject to the Federal RCS Plan that supplies or installs, or finances the sale or installation of, energy conservation or renewable resource measures shall:

(1) Report semiannually to the Secretary the prices and interest rates charged in conjunction with the services offered pursuant to Sections 216 (b), (c), (d)(1), (d)(2), and (e) of NECPA, and the nature of the services provided; and

(2) Report semiannually to the Secretary the procedures used to select products to be supplied, installed, or financed and to select installers to perform utility-supported work, and report any steps the utility has taken to ensure that the activities have no adverse effect on competition.

(n) Notwithstanding § 456.1005 (b)–(f), no covered utility may supply, install, or finance the supply or installation of energy conservation or renewable resource measures if the Secretary has determined, after notice and opportunity for public hearing and after consultation with the Federal Trade Commission, that:

(1) Such loans are being made, or supply or installations carried out, by such utility at unreasonable rates or on unreasonable terms and conditions, or

(2) Such loans made, or supply or installations carried out, by such utility have a substantial adverse effect upon competition or involve the use of unfair, deceptive, or anticompetitive acts or practices or are being carried out in a manner that does not comply with § 456.1005 (c) and (d).

(o) Any covered utility conducting activities pursuant to the exemptions provided for in § 456.1005 (b), (c), and (e)(2) or the waiver provisions of § 456.1005(i) shall comply with the requirements of § 456.1011 (a), (b)(2) and (3), and § 456.1012 with respect to those activities. Any covered utility carrying out activities pursuant to the exemptions provided for in § 456.505 (e)(1) shall, within such reasonable time as the Secretary prescribes, comply with the requirements of § 456.1011 (a), (b)(2) and (3), and § 456.1012 with respect to such activities. There is no requirement that a utility conducting a financing program comply with the requirements of § 456.1011 (a), (b)(2) or (3) or § 456.1012 with respect to such financing program.

§ 456.1006 Scope of benefits.

(a) The benefits listed in § 456.1006(d) (1) through (7) below shall be made available to any eligible customer who takes the following actions:

(1) Requests the arranging of installation service as provided in § 456.1009(a):

(2) Signs a contract for the installation of a program measure with an installer listed in the Master Record; and

(3) Returns to the utility the card provided according to § 456.1009(b)(4).

(b) The benefits listed in § 456.1006(d) (5), (6), and (7) below shall be made available to any eligible customer who takes the following actions:

(1) Requests the arranging of financing service as provided in § 456.1010(a):

(2) Obtains a loan for the installation or purchase of a program measure from a lender listed in the Master Record.

(c) The benefits listed in § 456.1006(d) (1), (2), (5), (6), and (7) below shall be made available to any eligible customer who takes the following actions:

(1) Purchases any program measure from a supplier listed in the Master Record; and

(2) Receives some evidence from the supplier that the measure meets applicable material standards or carries the measures warranty.

(d) The benefits to which an eligible customer is entitled as a result of certain actions described in § 456.1006 (a) through (c) above are:

(1) The measure warranty, defined in § 456.1001(j)(1) and (2) with respect to any program measure:

(2) The measure warranty defined in § 456.1001(j) (1)–(3) with respect to any program measure;

(3) Supply or installation of a measure subject to the standards in 10 CFR 456, Subparts G, H, or I;

(4) Enforcement of installation standards through the mandatory inspections described in § 456.1014(a) and through inclusion in the pool from which random inspections will be made pursuant to § 456.1014(b);

(5) Billing of costs and repayment of loans as described in § 456.1012;

(6) Access to the conciliation conference and redress procedures described in § 456.1016, and

(7) The requirements placed on suppliers, lenders, and contractors by § 456.1013(b).

§ 456.1007 Program announcement.

(a) *Distribution and Content.* Each utility and participating home heating supplier subject to the Federal RCS Plan must send a copy of the Program Announcement to the Secretary no later than 30 days after issuance of an order to comply with the Federal RCS Plan by the Secretary. Each utility and participating home heating supplier subject to the Federal RCS Plan must send to each eligible customer no later than 90 days after the above-mentioned order is issued by the Secretary and every two years thereafter until January 1, 1985, a Program Announcement which shall, at a minimum:

(1) List the program measures for the category of residential buildings owned or occupied by such eligible customer,

(2) Include a range of estimates of the savings in energy costs, expressed in percentages, for a period of one year, which are likely to result from installation of each of the program measures in a typical building or buildings in such category;

(3) List the energy conserving practices and state that they are of low or no cost;

(4) Include a range of estimates of the savings in energy costs, expressed in percentages, for a period of one year, likely to result from the adoption of the practices, individually and as a group;

(5) For each of the services required to be offered under § 456.1008 (Program Audits), § 456.1009 (Arranging Installation), § 456.1010 (Arranging Financing), and § 456.1013(3) (List Distributed to Eligible Customers):

(i) Offer and describe the service using one of the following options.

(A) Each utility or participating home heating supplier subject to the Federal RCS Plan may send a Program Announcement meeting the requirements of this Plan to every eligible customer as a separate mailing, beginning no later than 90 days after the above-mentioned order to comply with the Federal RCS Plan and every two years thereafter until January 1, 1985, which includes the offer of a program audit to be provided within 30 working days after an eligible customer requests such an audit.

(B) Each utility and participating home heating supplier subject to the Federal RCS Plan may send a Program Announcement meeting the requirements of this Plan to every eligible customer on a separate mailing beginning no later than 90 days after the above mentioned order to comply with the Federal RCS Plan and every two years thereafter until January 1, 1985, which includes the offer of a program audit conditioned upon the serving of one geographic area at a time. Each utility and each participating home heating supplier subject to the Federal RCS Plan must define for the approval of the Secretary each geographic area, list how many customers are contained within each area and include a map of its entire service area. All customers who receive a conditional offer of a program audit must be recontacted with a separate mailing and receive an unconditional offer of a program audit within two years of receiving the conditional offer. The unconditional offer must state that the auditor will be in the customer's area within no more than 90 days for a period of 60 days and must relist the program benefits and again describe the audit and be subject to the same prohibitions as the Program Announcement. Within 30 days before the audit, the customer must be recontacted by a separate mailing, by phone, or by a bill stuffer to remind the customer of the audit. However, any customer who at any time requests an audit, regardless of his geographic area or the fact that his area may not be targeted for audits at the time of his request, must be scheduled for an audit. An auditor must attempt to schedule this customer for an audit within 30 working days of the request for an audit if at all possible or at the earliest possible date. If for any reason a utility or participating home heating supplier subject to the Federal RCS Plan cannot provide its eligible customers with the audits they request within 30 working days of the customer's request, that utility or participating home heating supplier may submit a written request to the Secretary for an extension of its response time to include an additional 30 days. The utility or participating home heating supplier must include in its written request for an extension of its response time the number of calls over 35 days old, the measures being taken to reduce the backlog, and an estimate of how long the utility or participating home heating supplier needs the 30 day extension to remain in effect.

(C) Each utility or participating home heating supplier subject to the Federal RCS Plan may send a Program Announcement meeting the requirements of this Plan to each eligible customer as a separate mailing, beginning no later than 90 days after the above-mentioned order to comply with the Federal RCS Plan and every 6 months thereafter until January 1, 1985, which includes the offer of a program audit to be conducted within 90 days after an eligible customer requests such an audit.

(ii) Explain that an eligible customer may request the services offered in the Program Announcement by telephone, by letter, or in person; and

(iii) List the direct costs, if any, of receiving the service, which are to be charged to the eligible customer.

(6) With respect to the benefits listed in § 456.1006(d)(4), describe the benefits and explain what action an eligible customer must take to qualify for them, as described in § 456.1006(a)–(c).

(7) Include the following disclosure: "Energy savings depend on many factors the estimates contained in this Program Announcement are based on estimates for typical houses which are defined in terms of: [define as in § 456.1007(b)(5) below]. Your costs and savings will be different if your house is a different size or is using a different fuel, if your family is a different size, or if your energy-using habits are different from those we assumed. The energy audit which we offer will provide more specific estimates for your home."

(8) Include a brief explanation of the benefits of the Federal energy tax credits as follows: "You may qualify for a Federal tax credit for part of what you spend on some of the improvements discussed in our program. Fifteen percent of investments you make in insulation, caulking and weatherstripping, storm windows, certain furnace improvements, and other items may be claimed as a credit. The maximum on this credit is $300. Forty percent of your costs for many solar and wind energy products may be claimed. The maximum on this credit is $2200. Not all improvements and not all homes quality for these credits. Our energy auditor can answer your questions. The Internal Revenue Service Publication 903, which is available from your local IRS, also is helpful." [Give the address and telephone number of the nearest branch of the Internal Revenue Service.]

(9) Include a brief explanation of the benefits of the Weatherization Assistance Program for Low Income Persons, 10 CFR Part 440, information on how to contact the office qualified to assist, and a brief description of who is eligible for assistance as follows: "If your family income is below 125% of the federally established poverty level for your family size, you may be eligible for help from the Weatherization Assistance Program. You may apply for a grant of up to $1000 to pay for insulation, weatherstripping, caulking, storm doors and windows, and other items. For more information, contact the appropriate agency listed below which has been assigned by the Governor to handle this program." [List the agency.]

(10) Not include any advertising for the sale, installation, or financing by any supplier, contractor, or lender (including the utility) of any energy conservation measure, renewable resource measure, or energy conserving practice; however, if the utility or participating home heating supplier subject to the Federal RCS Plan is a lender listed in accordance with § 456.1013(b)(3), the Program Announcement may so state.

(11) Not include any information regarding any product which is not an energy conservation measure, a renewable resource measure, or an energy conserving practice.

(b) *Calculation Procedures.* With respect to the estimates of the savings included in the Program Announcement, each utility or participating home heating supplier subject to the Federal RCS Plan shall:

(1) Describe in the Program Announcement the procedures by which such estimates shall be made as follows: "These are average high and average low savings estimates which were based on assumptions made about an average single-family residence and on the price of fuel in your area as of (date). Our energy advisor will calculate a table like this specially for your house.";

(2) Submit with the Program Announcement to the Secretary for his review proof that such estimates are based on prices for fuel which were in effect no more than 6 months prior to issuing the Program Announcement and on climate data which are representative of those for the location of each eligible customer;

(3) If any eligible customer is to receive two or more Program Announcements from different utilities or participating home heating suppliers subject to the Federal RCS Plan, submit to the Secretary, no later than 30 days after issuance of an order to comply with the Federal RCS Plan by the Secretary, a copy of each of the Program Announcements in question, to establish that the cost and savings estimates required in § 456.1007(a) of this section are the same; and

(4) Assure the Secretary that such estimates in Program Announcements distributed in different parts of the State are consistent. For the purposes of this Program, "consistent" means the same except for variations in the characteristics of typical homes and in the price and climate data applicable in the different parts of the State.

(5) Define a typical house for purposes of § 456.1007(b)(3) above in terms of: age, number of stories, type of construction, floor area in square feet, building length, width, and height, wall heights, building volume, attic area, attic end walls area, roof area, basement/crawl space/slab on grade area, length of exposed perimeter of slab on grade, door area, window area, amount of window area on south side, water heater location in a conditioned or unconditioned space, number of air changes per hour, type of heating system and its average seasonal efficiency, and type of cooling system and its EER number.

(c) *New Customer.* (1) A new customer is a person who becomes an eligible customer after the initial distribution of the Program Announcement but before January 1, 1985.

(2) Each utility and participating home heating supplier subject to the Federal RCS Plan shall send a Program Announcement which meets the requirements of this Section to each new customer within 60 days of such customer becoming a new customer.

(3) Within 60 days of becoming a new customer, each new customer shall be informed by the utilities and participating home heating suppliers subject to the Federal RCS Plan that, upon request, the customer may receive a copy of the results of any program audit of the cutomer's residence which the utility or participating home heating supplier may have performed pursuant to the Federal RCS Plan and upon such a request, such utility or home heating supplier shall provide such results.

§ 456.1008 Requirements for energy audits.

(a) *Timing and Preconditions.* (1) Each utility or participating home heating supplier subject to the Federal RCS Plan shall offer program audits according to one of the following options.

(i) Each utility or participating home heating supplier subject to the Federal RCS Plan that chooses to send the Program Announcement in accordance with § 456.1007(a)(5)(i)(A), shall provide a program audit to each eligible customer upon a request for such an audit within 30 working days of the receipt of such request.

(ii) Each utility or participating home heating supplier subject to the Federal RCS Plan that chooses to provide a conditional offer in accordance with § 456.1007(a)(5)(i)(B) must provide an unconditional offer of a program audit within two years of receipt of the conditional offer in the Program Announcement. The unconditional offer must state that the auditor will be in the customer's area within no more than 90 days for a period of 60 days. Then within 30 days before the audit, the customer must be recontacted by a separate mailing, by phone, or by a bill stuffer to remind the customer of the audit. However, any customer who at any time requests an audit, regardless of his geographic area or the fact that his area may not be targeted for audits at the time of his request, must be scheduled for an audit. An auditor must attempt to schedule this customer for an audit within 30 working days of the request for an audit if at all possible or at the earliest possible date. If for any reason a utility or participating home heating supplier subject to the Federal RCS Plan cannot provide its eligible customers with the audits they request within 30 working days of the customer's request, that utility or participating home heating supplier may submit a written request to the Secretary for an extension of its response time to include an additional 30 days. The utility or participating home heating supplier must include in its written request for an extension of its response time the number of calls over 35 days old, the measures being taken to reduce the backlog, and an estimate of how long the utility or participating home heating supplier needs the 30 day extension to remain in effect.

(iii) Each utility or participating home heating supplier subject to the Federal RCS Plan that chooses to send Program Announcments to its eligible customers every 6 months, in accordance with § 456.1007(a)(5)(i)(C), shall provide a program audit to each eligible customer upon a request for such an audit within 90 days of the receipt of such request.

(2) Each utility and participating home heating supplier subject to the Federal RCS Plan is prohibited from requiring as a precondition of providing a program audit to an eligible customer that such customer purchase or perform any other energy audit, including a Class B energy audit.

(3) Each utility and participating home heating supplier subject to the Federal RCS Plan is prohibited from

discriminating unfairly among eligible customers in providing program audits.

(b) *Contents of Program Audit.* Each utility and participating home heating supplier subject to the Federal RCS Plan shall provide to each eligible customer upon request a comprehensive program audit which addresses all energy conserving practices and all program measures.

(1) The auditor shall determine in each program audit which of the energy conserving practices would save energy in the residence, repeat the savings estimates which appear in the Program Announcement for the practices in § 456.1007(a)(4), explain such energy conserving practices to the eligible customer, emphasize the importance of these practices, and recommend that they be performed before installation of any measure.

(2) The auditor shall determine in each program audit the applicability of each program measure in that residence. If a program measure is not applicable, then the requirements of this paragraph to provide estimates of the cost and savings in a range of dollars for installation of such measure in such residence need not apply. A program measure is applicable in a residence if:

(i) The measure is not already present in the residence;

(ii) Installation of the measure is not a violation of Federal, State, or local law or regulations;

(iii) With respect to ceiling insulation, the difference between the effective R-value of any existing insulation and the program measure level for that residence is R–11 or more;

(iv) With respect to wind energy devices: (A) the estimated average annual wind resource in the vicinity of the site is 10 miles per hour, or greater, at 10 meters (33 feet) above ground level; and (B) there are no major wind obstructions over 55 feet high, greater than 30 feet wide, within 100 feet of a potential location for the wind energy device.

(v) With respect to active solar heating systems, or combined active solar systems, a site exists on or near the residence which is free of major obstruction to solar radiation and the residence has a space-heating system other than a steam heating, electric resistance radiant heating, or electric resistance baseboard heating system;

(vi) With respect to active domestic hot water systems, a site exists on or near the residence which is free of major obstruction to solar radiation;

(vii) With respect to flue-opening modifications, the furnace combustion air is taken from a conditioned area;

(viii) With respect to replacement furnaces or boilers, the existing furnace is approximately five years old or older;

(ix) With respect to replacement central air conditioners, the residential building has a central air conditioner that is approximately five years old or older;

(x) With respect to water heater insulation, the remaining useful life of the water heater appears to the auditor to be at least three years and space is available around the water heater to install insulation;

(xi) With respect to clock thermostats, either the residence currently has a thermostat or the existing furnace or central air conditioner is compatible with a clock thermostat;

(xii) With respect to replacement solar swimming pool heaters, there is an existing heated swimming pool and a site exists near the pool which is free of major obstruction to solar radiation;

(xiii) With respect to wall insulation, there is no insulation in a substantial portion of the exterior walls, and the building is not a mobile home;

(xiv) With respect to floor insulation, no floor insulation is present;

(xv) With respect to direct gain glazing systems and indirect gain systems, the living space of the residence has either a south-facing (+ or −45° of True South) wall or an integral south-facing (+ or −45° of True South) roof, which is free of major obstruction to solar radiation;

(xvi) With respect to solaria/sunspace systems, the living space of the residence has a south-facing ground-level wall, which is free of major obstructions to solar radiation;

(xvii) With respect to heat-absorbing or heat reflective window and door material, the residence has an existing central or room air conditioner.

(3) The auditor is required to give each estimate of energy cost savings and of installation costs provided as a result of a program audit based on actual measurements or inspections, as appropriate, performed on site by the auditor in accordance with the DOE model audit.

(4) Each utility and participating home heating supplier subject to the Federal RCS Plan shall survey a representative sample of contractors and suppliers every 6 months and report to the Secretary every 6 months the methods used to assure that the estimates of energy cost savings and of installation costs and any other economic calculation provided as a result of the program audit shall be based on typical recent local electricity rates, typical recent local fuel prices, typical recent local prices for materials and installation of program measures, and typical local climate data for the eligible customer's location.

(5) Each utility and participating home heating supplier subject to the Federal RCS Plan shall use as program audit procedures those contained in the DOE model audit. For the purposes of this paragraph, the term "program audit procedures" means the measurements or inspections which the auditor must make in a customer's residence and the calculations which must be performed in making energy cost savings estimates.

(6) The auditor is required to base any cost and savings estimate for any applicable furnace efficiency modification to a gas or oil furnace or boiler on an evaluation of the seasonal efficiency of such furnace or boiler. This seasonal efficiency shall be based on estimated peak (tuned-up) steady state efficiency corrected for cycling losses. In the case of an oil furnace, or a furnace which has been converted from burning oil or coal by installation of a gas burner, steady state efficiency shall be derived by a flue gas analysis of measured flue gas temperature and carbon dioxide content. In the case of a gas furnace, steady state efficiency shall be derived from manufacturer's design data and observation of the furnace components, or, alternatively, by a flue gas analysis of measured flue gas temperature and carbon dioxide content.

(c) *Results of Program Audit.* The auditor, in person, on site, is required to provide the following information in writing to each eligible customer who receives a program audit upon completion of the audit. If the eligible customer is not present or otherwise declines in-person presentation, the auditor is relieved of any obligation to deliver the results in person.

(1) An estimate of the total cost (materials and labor), expressed in a range of dollars, of installation by a contractor of each applicable program measure addressed in the program audit;

(2) An estimate of the total cost, expressed in a range of dollars, of installation by the customer of each applicable program measure, other than replacement central air conditioners, wall insulation, active solar space heating systems, and combined active solar space heating and solar domestic hot water systems, addressed in the program audit, except that any utility or participating home heating supplier subject to the Federal RCS Plan is prohibited from providing any estimate to any eligible customer of the cost of purchase of furnace efficiency modifications, devices associated with load management techniques, or wind

energy devices for installation by the eligible customer;

(3) An estimate of the savings in energy costs, expressed in a range of dollars, which would occur during the first year from installation of each applicable program measure addressed by the program audit;

(4) Clear indication to the eligible customer, through sample calculation and disclosure, that the total energy cost savings from the installation of more than one program measure may be less than the sum of energy cost savings of each measure installed individually. The following disclosure or its equivalent may be included: "If you install more than one of the measures we have analyzed for your house, the total savings will probably be less than the sum of the savings estimates we have given. As you install more measures, the amount of energy left to be saved by additional measures shrinks. For example, installing storm windows cuts down air infiltration and therefore makes it less important to install weatherstripping."

(5) The following disclosure or its equivalent: "The procedures used to make these estimates are consistent with DOE criteria for residential energy audits. However, the actual installation costs you incur and energy savings you realize from installing these measures may be different from the estimates contained in this audit report. Although the estimates are based on measurements of your house, they are also based on assumptions which may not be totally correct for your household."

(6) An estimate of the annual normal maintenance costs, if any, of each applicable program measure, as determined either from a survey of local contractors reviewed by DOE or from the DOE model audit;

(7) The possible economic benefits to the eligible customer of existing Federal tax incentives (and the State tax incentives, if applicable) with, at a minimum, one sample calculation of the effect of the tax benefit on the cost to the customer of installing one applicable energy conservation program measure and one applicable renewable resource program measure;

(8) With respect to a program audit addressing an applicable solar domestic hot water system or active solar space heating system, or combination thereof, a description of the solar system assumed by the auditor in preparing energy savings estimates which shall include the following information:

(i) Square feet of collector;

(ii) Collector characteristics, including glazing materials and other collector materials;

(iii) Any storage system needed, including the capacity of storage;

(iv) Any freeze protection needed;

(v) The estimated percent of the space and/or water heating load to be met by solar energy;

(vi) Any physical connections needed with existing heating systems;

(vii) Any site preparation needed; and

(viii) If the results are based on a simulation, the following disclosure or its equivalent: "The energy cost savings estimates you receive are based on systems which may be different from the ones you purchase. Also, these estimates were not determined using actual conditions but using simulated measurements. Therefore, the cost savings we have estimated may be different from the savings which actually occur."

(9) With respect to a program audit addressing an applicable passive solar space heating and cooling system:

(i) The generic designation and a pictorial description of the particular systems considered by the auditor;

(ii) The estimated percentage of the heating load to be met such system;

(iii) The approximate dimensions of such system;

(iv) Collection storage characteristics, including the recommended heat capacity of storage; and

(v) The disclosure provided in § 456.1008(c)(8)(viii).

(10) With respect to a program audit addressing an applicable wind energy device:

(i) Installation cost estimates, as required in § 456.1008(c)(1), based on commercially available wind devices of a kilowatt rating appropriate to the level of electricity consumption in the customer's residence;

(ii) Estimates of energy cost savings, as required in § 456.1008(c)(3), provided in the form of a function of average yearly wind speeds for the system used in § 456.1008(c)(10)(i);

(iii) The average yearly wind speed at the nearest qualified wind measurement station and the relationship between that data and the likely wind speeds at the residence. A qualified wind measuring station is one which meets the following minimum requirements:

(A) the anemometer is located no less than 10 meters (33 feet) above ground level;

(B) data used to determine the annual average wind speed have been collected for one year or more and contain at least one month's continuous hourly reading for every four-month period of time; and

(C) calibration of the data collection and recording instrument(s) had been certified by the instrument manufacturer(s) at the time of purchase; and

(iv) A description of the type of wind energy device used by the auditor in preparing the energy savings estimates.

(d) *Additional Information Required for Program Audits.* The auditor is required to present the following information to the eligible customer during, or upon completion of, the program audit.

(1) An explanation of the benefits and services listed in § 456.1006 and a brief description of how the eligible customer can qualify for such benefits and services;

(2) The lists of contractors, suppliers, and lenders developed pursuant to § 456.1013 for the applicable program measures, at a minimum; and

(3) An explanation of the benefits of the Weatherization Assistance Program for Low Income Persons, § 456.1007(a)(9), an explanation of the appropriate office to contact for more information, and a brif description of who is eligible for such assistance.

(e) *Prohibitions and Disclosure Required for Program Audits.*

(1) The auditor is prohibited from estimating, as part of any program audit provided pursuant to the Federal RCS Plan, the costs or energy cost savings of installing any product which is not an energy conserving practice or a program measure;

(2) Any auditor is prohibited from recommending any supplier, contractor, or lender who supplies, installs, or finances the sale or installation of any program measure if such recommendation would unfairly discriminate among such suppliers, contractors, or lenders. If the utility or participating home heating supplier subject to the Federal RCS Plan has arranged the audit and is itself a supplier, installer, or lender listed in accordance with § 456.1013(b), the auditor may so state;

(3) No utility or auditor may unfairly discriminate among program measures;

(4) Each energy auditor must provide the eligible customer with a written statement of any substantial interest which the person or the person's employer has, directly or indirectly, in the sale or installation of any program measures.

(f) *Program Audits of Furnaces.* In order for an auditor of a utility or participating home heating supplier subject to the Federal RCS Plan to provide cost and savings estimates for furnace efficiency modifications with respect to a furnace which uses as its

primary source of energy any fuel or source of energy other than the fuel or source of energy sold by that utility or participating home heating supplier, the eligible customer must request such audit by signing a form which includes the following statement:

If your home is heated by a source of fuel other than [state the type of fuel supplied by the utility or participating home heating supplier], only the supplier of the other fuel may audit your furnace unless you specifically request us to audit your furnace. Federal law requires that such a request be in writing. If you want us to audit your furnace, although we do not supply the fuel for it, please sign below.

(g) *Qualifications for Program Auditors.* Each auditor who performs a program audit pursuant to the Federal RCS Plan shall:

(1) Be qualified according to the applicable procedures in § 456.1015 of this Plan;

(2) Be under contract or subcontract to, be an employee of, or be an employee of a contractor or subcontractor to, a utility or participating home heating supplier subject to the Federal RCS Plan.

(h) *Class B Energy Audits.* Class B audits shall not be offered in conjunction with and RCS program carried out under the Federal RCS Plan.

§ 456.1009 Arranging installation.

(a) Each utility subject to the Federal RCS Plan shall arrange installation of any program measure within 10 working days of any eligible customer's request when the eligible customer:

(1) Requests arranging services at the time of the audit or

(2) Writes, calls, or visits the covered utility in the customer's service area to request arranging services.

(b) Each utility subject to the Federal RCS Plan shall arrange installation of any program measure within 10 working days of any eligible customer's request, by:

(1) Sending requests for bids to three or more installers in the Master Record who provide all program measures requested by the customer and to three or more installers in the Master Record who install less than all program measures for each of the specific program measures requested by the customer. The utility subject to the Federal RCS Plan will present the eligible customer with the list of installers from which the customer may select the ones to whom the customer's request for bids will be sent. This list of installers will be a specially prepared list of names of installers, in which the names will be presented in random order. A computer or other method may be used to prepare the special lists of installers and ensure that the names of the installers appear in random order on the lists. The lists will be revised every 6 months to alter the random order in which the names of the installers appear on the lists. A copy of the energy analysis, if any, for the eligible customer's residential building will be included in each request for bid.

(2) Explaining and performing the services described in § 456.1009(b)(1) of this section in the eligible customer's residential building at the time of the energy analysis by the auditor or, if the eligible customer requests, by a utility representative at some later time.

(3) Providing, upon the eligible customer's request, a consultation by phone or in person at the utility's office for evaluation of the bids obtained pursuant to § 456.1009(b)(1) in order to compare differences in, and number of, program measures to be installed under the various bids.

(4) Providing the eligible customer with a card to be filed out by the customer and to be returned to the utility by the customer upon completion of an arranged job, or upon the customer's receiving an arranged loan, in order to assure that the eligible customer receives the program benefits to which he/she is entitled. Such card should at least provide space to report information concerning the types of measure(s) installed, date of completion, and name, address, and telephone number of the customer.

(c) *Additional Services:* (1) Each utility subject to the Federal RCS Plan will provide its eligible customers with the current Master Record for their service area.

(2) Upon request, the utility subject to the Federal RCS Plan will furnish its eligible customers with a copy of the standards for program measures and explain these standards to the eligible customer.

(3) Upon request, the utility subject to the Federal RCS Plan will assist eligible customers who desire to install program measures themselves in the following manner:

(i) The utility subject to the Federal RCS Plan will provide the eligible customer with the list of suppliers in the Master Record.

(ii) If the customer has had a program audit conducted and if more than 90 days have lapsed since the program audit, the utility subject to the Federal RCS Plan will review the audit results to identify any changes in cost of materials, or changes in rates that would affect the calculated savings.

(iii) The utility subject to the Federal RCS Plan will inspect, upon request by any eligible customer, the completed program measure installations for conformance with the standards for program measures. This inspection will be available to all eligible customers who request them and will be for the eligible customer's information only and need not be reported to the Secretary. The utility may charge the eligible customer a price not to exceed the cost of providing the service.

(iv) The utility subject to the Federal RCS Plan may also conduct periodic workshops to instruct on the installation of program measures and may supply brochures on specific program measures.

(d) Upon the request by a lender making a loan to an eligible customer, each utility subject to the Federal RCS Plan will bill the eligible customer for the repayment of financing for the purchase or installation of a program measure as required in § 456.1012.

(e) *Prohibitions.* (1) No utility subject to the Federal RCS Plan will recommend, select, or provide information about any supplier or installer when such a recommendation would result in unfair discrimination among suppliers or installers. Further, no utility subject to the Federal RCS Plan will discriminate unfairly among customers, suppliers, installers, or program measures. However, a utility which is listed in accordance with § 456.1013(b) (1) or (2) may so state.

(2) No utility subject to the Federal RCS Plan may arrange installation with any supplier or installer unless such person is listed on the Master Record.

(3) No utility subject to the Federal RCS Plan may arrange installation of any measure that is not a program measure under the Federal RCS Plan.

§ 456.1010 Arranging financing.

(a) Each utility subject to the Federal RCS Plan shall arrange financing for the purchase or installation of any program measure within 10 working days of when the eligible customer:

(1) Requests arranging services at the time the auditor is at the eligible customer's residential building, or

(2) Writes, calls, or visits the utility subject to the Federal RCS Plan in his service area to request arranging services.

(b) Each utility subject to the Federal RCS Plan shall arrange the financing for the purchase or installation of a program measure within 10 working days of the request by any eligible customer, by:

(1) Answering any questions the eligible customer may have concerning the financing of the purchase or installation of program measures.

(2) Assuring that the eligible customer has a current list of lenders in the Master Record.

(3) Providing information concerning lender's loan programs, as provided by the respective lenders, including program measures the lenders will finance and information, in addition to the listing criteria for lenders to be included on the Master Record, about the terms and conditions upon which loans may be granted.

(4) Making available to the eligible customer a loan application form for each of the listed lenders selected by the customer.

(5) Supplying information to the eligible customer on the low income weatherization loan and tax incentive programs in accorance with § 456.1007(a) (8) and (9) (Program Announcement which may be applicable.

(6) Supplying the lenders to which the eligible customer applies for a loan with a copy of the eligible customer's audit results upon the request of the eligible customer.

(c) Upon the request of a lender making a loan to an eligible customer, each utility subject to the Federal RCS Plan will bill the eligible customer for the repayment of a loan as required in § 456.1012 (Customer Billing and Repayment of Loans).

(d) *Prohibitions.* (1) No utility subject to the Federal RCS Plan may recommend, select, or provide information about any lender when such a recommendation would result in unfair discrimination among lenders. When arranging financing, no utility subject to the Federal RCS Plan may discriminate unfairly among suppliers installers, lenders, or program measures. However, if the utility is listed in accordance with § 456.1013(b)(3) it may so state.

(2) No utility subject to the Federal RCS Plan may arrange financing for the purchase or installation of program measures with a lender unless the lender is listed in the Master Record.

(3) No utility subject to the Federal RCS Plan may arrange financing for the purchase of installation of any measure that is not a program measure under the Federal RCS Plan.

(4) No utility subject to the Federal RCS Plan may arrange financing for the purchase or installation of furnance efficiency modifications, devices associated with load management techniques, and wind energy devices for installation by the eligible customer unless such customer is qualified to perform such installation pursuant to § 456.1015(c).

§ 456.1011 Accounting and payment of costs.

(a) *Accounting.* Utilities subject to the Federal RCS Plan must use the following accounts and procedures:

(1) All amounts expended or received by a utility subject to the Federal RCS Plan which are attributable to the RCS Program, including any penalties paid under 10 CFR 456 Subpart F (Federal Standby Authority) shall be accounted for on the books and records separately from amounts attributable to all other activities of the utility.

(2) Utilities subject to the Federal RCS Plan and the jurisdiction of the Federal Energy Regulatory Commission (FERC) shall utilize the Uniform System of Accounts as prescribed in Title 18, CFR Parts 101, 104, 201 and 204. Covered rural electric cooperatives subject to the Federal RCS Plan shall utilize the Uniform Systems of Accounts as prescribed by the Rural Electrification Administration (REA) in Title 7, CFR Part 1701, Appendix A.

(i) All amounts expended by a utility subject to the Federal RCS Plan for the RCS Program shall be charged to subaccounts within Account 908, Customer Assistance Expenses, its equivalent or successor, or the appropriate account designated specifically by FERC or REA for program expenses. Appropriate records shall be maintained thereunder so as to allow ready identification of costs attributable to the following program elements:

(A) Program Information; and

(B) Program Audit;

(ii) Billed income attributable to the program shall be accounted for in subaccounts within Account 456, Other Electric Revenue (for electric utilities) or Account 495, Other Gas Revenue (for gas utilities), their equivalents or successors, or the appropriate account designated specifically by FERC or REA for program billed income.

(b) *Payments of Costs.* Utilities subject to the Federal RCS Plan shall treat costs as described below and shall specify how the costs described in § 456.1011 (b)(2), (c), and (d) will be treated.

(1) All amounts expended by a utility subject to the Federal RCS Plan for the Program Announcement and all public education and program promotion directly related to providing information about a utility's RCS Program shall be treated as a current expense of providing utility service and be charged to all ratepayers of the utility subject to the Federal RCS Plan in the same manner as other current operating expenses of providing such utility service.

(2) The following program elements shall be recovered in the manner specified by the State regulatory authority for all regulated utilities subject to the Federal RCS Plan except that the amount that may be recovered directly from a residential customer for whom the activities described in § 456.1011(b)(2)(ii) are performed shall not exceed $15 per dwelling unit, or the actual cost of such activities, whichever is less:

(i) Administrative and general expenses, including those associated with program audits, customer billing services, and arranging.

(ii) Project manager requirements, including:

(A) The providing of program audits;

(B) The arranging for a lender to make a loan to an eligible customer to finance the purchase and installation costs of energy conservation and renewable resource measures, including the costs of conducting conciliation conferences pursuant to § 456.1016(a);

(C) The arranging to have the program measures installed, including any costs of conducting postinstallation inspections pursuant to § 456.1014, and of conducting conciliation conferences pursuant to § 456.1016(a); and

(D) List distribution.

(3) In determining the amount to be recovered directly from customers as provided under subsection (2), the State regulatory authority shall take into consideration, to the extent practicable, the customers' ability to pay and the likely levels of participation in the utility program which will result from such recovery.

§ 456.1012 Customer billing, repayment of loans, and termination of service.

(a) *Customer Billing.* (1) Every charge, by a utility or participating home heating supplier subject to the Federal RCS Plan, to a customer for any portion of the costs of carrying out any activity pursuant to the Federal RCS Plan or for repayment of a loan made under the RCS Program, shall be listed individually on a bill, and the customer shall be permitted to include such payments in his payment for utility or fuel service; and

(2) When any portion of the costs of carrying out any activity pursuant to the Federal RCS Plan is included in a payment for utility or fuel service, or when repaying a loan made under the RCS Program in a payment for utility or fuel service, payments received for such bill shall be first charged to pay for the purchase of utility or fuel service and only the excess shall be credited to charges for the other costs or repayments, unless the eligible customer

requests an alternative distribution of payments.

(b) *Repayment of Loans.* (1) In the case of any loan arranged by a public utility pursuant to § 456.1006(b), the utility, at the request of the lender, shall permit repayment of the loan as part of the periodic utility bill. The utility may recover from the lender the cost incurred by the utility in carrying out such manner of repayment.

(2) In the case of any loan for the purchase or installation of program measures made by a participating home heating supplier subject to the Federal RCS Plan under the RCS Program, or under the circumstances described in § 456.1006(b), by a lender other than that participating home heating supplier,

(i) The participating home heating supplier shall permit the eligible customer to include repayment of that loan in such customer's payment of his periodic utility or fuel bill over a period of not less than three years, unless the eligible customer chooses a shorter repayment period. A participating home heating supplier subject to the Federal RCS Plan shall not be required to provide for monthly payments of less than five dollars.

(ii) A lump-sum payment of outstanding principal and interest may be required by the lender upon default (as determined under applicable law) in payment by the eligible customer.

(iii) No penalty shall be imposed by any home heating supplier or other lender arranged with by the home heating supplier under the Federal RCS Plan for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

(3) Each utility or participating home heating supplier subject to the Federal RCS Plan shall handle all customer complaints in accordance with the Fair Credit Act.

(c) *Termination of Service.* No utility or participating home heating supplier subject to the Federal RCS Plan shall terminate or otherwise restrict utility or fuel service to any customer for any default by such customer for payments due for any services under the RCS Program.

§ 456.1013 List of suppliers, contractors, and lenders.

(a) *Master Record.* The procedures for the preparation of a Master Record of all suppliers, contractors, and lenders who sell, install, or finance program measures, in a State subject to the Federal RCS Plan, and who wish to be included in the lists distributed pursuant to § 456.1013(c) are as follows:

(1) DOE is the Listing Agency which is responsible for the preparation and maintenance of the Master Record. The Secretary is responsible for the criteria for inclusion in and delisting from the Master Record as well as for retaining the ultimate responsibility for the Master Record. However, the Secretary assigns the duties of compiling and maintaining the Master Record to utilities subject to the Federal RCS Plan.

(2) Each utility subject to the Federal RCS Plan shall ensure that a reasonable attempt is made to inform all suppliers, contractors, and lenders who sell, install, or finance program measures in the State of the pending compilation of the Master Record and the intended use of the Master Record, and provide such suppliers, contractors, and lenders an opportunity through effective notice to apply for inclusion in the Master Record. At a minimum, the following methods of notice shall be used:

(i) Publication in newspapers of general circulation in the utility service area; and

(ii) Direct notification of appropriate trade associations.

(3) All persons, and only such persons, who agree to comply with the requirements of § 456.1013(b) below [unless on the basis of past experience, the Secretary determines that such person's agreement is not adequate assurance of compliance with the requirements of § 456.1013(b)], are included in the initial Master Record, and thereafter in the existing Master Record within a reasonable time after applying for inclusion.

(4) Criteria for delisting:

(i) Temporary delisting. Each utility subject to the Federal RCS Plan shall cease temporarily from arranging with any persons in the Master Record whom the Secretary has verified as failing to comply with the requirements of § 456.1013(b) below for a period of 30 days following this verification. That person, after being notified by the utility, may inquire about the case against him or her and may make restitution in accordance with § 456.1013(a)(5) (i) and (ii) below.

(ii) Extended delisting. After verification to the Secretary by the utility subject to the Federal RCS Plan of 3 violations of the listing requirements of § 456.013(b) below by a person in the first 6 months following the person's first arranged service to a customer or 3 violations in any successive 12-month period, any person found by the utility in violation shall, as ordered by the Secretary, not be considered as part of the Master Record or arranged with for a period of 6 months.

(iii) Each person proposed for extended delisting shall have:

(A) Written notice from the utility of the proposed removal and the grounds for such removal at least 30 days before the actual removal;

(B) An opportunity to respond in writing to the allegations contained in the notice described in § 456.1013(a)(4)(iv)(A), with at least 30 days notice; and

(C) With respect to installers, access to the records of the Listing Agency regarding the inspections of the work of such installer;

(iv) Each person removed from the Master Record shall have an opportunity to file a complaint through, and participate in, the redress proceeding described in § 456.1016 for the purpose of contesting such removal.

(5) Each utility subject to the Federal RCS Plan shall ensure that all persons deleted from the Master Record have an opportunity to be included anew in the Master Record, subject to the criteria that after being delisted for 6 months the delisted person has:

(i) Corrected all old violations; and

(ii) Agreed to pay for the second inspection of all of the previous violations.

(6) The Secretary will forward to the appropriate utility or home heating supplier subject to the Federal RCS Plan the name and address of any supplier, installer, or lender who has been added to or delisted from the Master Record, within 30 days of such additions or deletions.

(b) *Requirements for Inclusion in the Master Record.* (1) When installing program measures under the circumstances described in § 456.1005, all installation contractors included in the Master Record shall:

(i) Comply with any applicable installation standards found in 10 CFR 456 Subparts G and I and, with respect to materials for which there is an applicable standard in 10 CFR 456 Subpart G or H, install only materials labled as complying with DOE standards;

(ii) Install only measures covered by the measures warranty defined in:

(A) § 456.1001(j) (1) or (2), and

(B) § 456.1001(j)(3);

(iii) Furnish the customer with a written contract detailing the job to be performed and its cost certifying that any applicable Federal RCS Plan requirements for installation and material standards will be complied with;

(iv) Comply with any applicable qualification requirements set forth in § 456.1015 pursuant to § 456.314;

(v) Include in every contract a guarantee that the contractor will correct any violation of any installation standards in 10 CFR 456 Subparts G or I without cost to the customer;

(vi) Include in every contract for installation of a flue-opening modification, electrical or mechanical ignition devices, or wind energy devices a guarantee to correct any violation of the standard in 10 CFR 456 Subparts G through I, without cost to the customer, as soon as possible after notification of any such violation by an inspector pursuant to § 456.1014.

(vii) Select one of the following three options and agree to the inclusion of such information on the list given to the eligible customer: have liability insurance sufficient to indemnify itself against possible liability arising from installation of program measures; have a performance bond of at least $100,000; or agree that the eligible customer is not to pay the contractor until the job has been inspected no later than 7 working day from the date of completion of the job (as indicated by receipt by the utility of the job completion card from the customer);

(viii) With respect to an installer of vent dampers or intermittent ignition devices, have liability insurance sufficient to indeminfy itself against possible liability arising from installation when installing such measures under the circumstances described in § 456.1006 pursuant to § 456.305.

(ix) Comply with all applicable Federal, State, and local laws and regulations; and

(x) Agree of participate in good faith in the conciliation conference described in § 456.1016 when there is a complaint by an eligible customer against such person.

(2) When supplying program measures under the circumstances described by the Federal RCS Plan pursuant to § 456.1006, all suppliers included in the Master Record shall:

(i) With respect to the program measures the supplier is listed as carrying, supply program measures that carry the measure warranty defined in § 456.1001(j) (1) or (2);

(ii) With respect to the program measures the supplier is listed as carrying, if there is any applicable material standard found in 10 CFR 456 Subparts G or H, supply program measures that are labeled as complying with DOE standards;

(iii) Comply with all applicable Federal, State, and local laws and regulations;

(iv) Have a method for informing customers of those products supplied by the supplier that are program measures, that have a measures warranty and that meet any applicable DOE material standards pursuant to 10 CFR 456 Subparts G or H (as determined from a label stating that the product meets DOE standards); and

(v) Agree to participate in good faith in the conciliation conference described in § 456.1016(a) when there is a complaint by an eligible customer against such person.

(3) When financing the sale or installation of program measures under the circumstances described in § 456.1006, all lenders included in the Master Record shall:

(i) Not take security in real property that is used as the principal residence of the eligible customer, unless the eligible customer acknowledges in writing that he or she is aware of the consequences of default on the loan;

(ii) Comply with all applicable Federal, State, and local laws and regulations; and

(iii) Provide the appropriate utility subject to the Federal RCS Plan in the customer's service area with copies of the lenders' loan forms;

(iv) Agree to participate in good faith in the conciliation conference described in § 456.1016(a) when there is a complaint by an eligible customer against such person.

(c) *Lists Distributed to Eligible Customers.* Each utility and participating home heating supplier subject to the Federal RCS Plan shall provide, upon request to every eligible customer, lists of all suppliers, contractors, and lenders included in the Master Record who sell, install or finance program measures in their service area or a smaller area of the utility or participating home heating supplier's choosing, subject to the Secretary's approval.

(1) Each utility subject to the Federal RCS Plan shall publish these lists which shall include the following information in a fair, open, and nondiscriminatory manner:

(i) the name and address of each such supplier, contractor, and lender; and

(ii) A matrix of the suppliers, contractors, or lenders, organized by program measures and indicating which program measures they supply, install, or finance.

(2) Each utility subject to the Federal RCS Plan shall indicate in these lists which type of a program measure a supplier or contractor sells or installs but shall not include in these lists the brand names of any program measure. If the lists include information regarding one specific type of a program measure, then it shall include such information for all types of such measure. For example, if the lists indicate who sells wooden storm windows, then they must also indicate who sells aluminum or vinyl storm windows. the utility subject to the Federal RCS Plan shall provide the eligible customer in its service area with copies of these lists or a smaller area of the utility's choosing, subject to the Secretary's approval.

(3) Each utility subject to the Federal RCS Plan shall include in these lists in a clear and conspicuous manner the following information:

(i) the following statement or its equivalent: "The persons listed have agreed to comply with any applicable DOE standards and Federal RCS Plan procedures for the sale, installation, or financing of program measures under the circumstances described in § 456.1006";

(ii) A description of the circumstances under which such standards shall be met and what procedures shall be followed;

(iii) A description of the complaints processing procedures required in § 456.1016, including an explanation of who may have access to such procedures and how to gain access to such procedures; and

(iv) An invitation to all suppliers, contractors, and lenders not included on the lists to apply for inclusion.

(4) Each utility subject to the RCS Plan will send to the Secretary every 30 days any names it determines should be included or deleted from these lists. The Secretary will review the names and inform the appropriate utility of any names the Secretary authorizes to be included or deleted from these lists. Each utility subject to the Federal RCS Plan shall then distribute to each of its eligible customers these updated lists, at least every 30 days, reflecting the approved additions and deletions received pursuant to § 456.1013(a)(6) above.

§ 456.1014 Postinstallation inspection.

(a) *Mandatory Inspection of All Flue-Opening Modifications, Electrical or Mechanical Ignition Systems, and Wind Energy Devices.* Each utility subject to the Federal RCS Plan shall provide procedures for performing postinstallation inspections of all flue-opening modifications, electrical or mechanical ignition systems, and wind energy devices installed under the circumstances described in § 456.1006. These procedures shall, at a minimum, assure:

(1) That such inspection occur within one week of the installation;

(2) That the inspector performing these inspections:

(i) Meets the applicable qualifications of § 456.1014; and

(ii) Has no financial interest in the contractor who installed the measure unless such contractor is a utility or participating home heating supplier subject to the Federal RCS Plan;

(3) That such inspection examines compliance with the applicable installation standards found in 10 CFR 456 Subparts G and I; and

(4) That the results of such inspections are reported to:

(i) The customer, within 48 hours;

(ii) The installer, within 48 hours; and

(iii) The Listing Agency, within a reasonable time.

(b) *Random Inspection.* Each utility subject to the Federal RCS Plan shall:

(1) Conduct the following inspections with respect to program measures installed under the circumstances described in the Federal RCS Plan pursuant to § 456.1006:

(i) Four of the first ten installations by each contractor of:

(A) Ceiling insulation;

(B) Floor insulation;

(C) Wall insulation;

(D) Active solar water heating;

(E) Active solar space heating; and

(F) Combined active solar space heating and solar domestic hot water system.

(ii) Ten percent of all installations of each program measure listed in § 456.1014(b)(1)(i). In fulfilling this requirement, the inspections pursuant to § 456.1014(b)(1)(i) may be included in the ten percent calculation. The inspections required by this paragraph may be reduced in number at such time as the utility subject to the Federal RCS Plan demonstrates to the Secretary that a ten percent inspection is unnecessary to ensure safe and effective installation of these measures under the RCS Program;

(iii) At least one inspection during the life of the RCS Program of the work of every contractor that makes an installation, under the circumstances described in § 456.1006 for which there is an installation standard in 10 CFR 456 Subpart G or I; and

(iv) An additional inspection of each contractor inspected pursuant to § 456.1014(b)(1)(iii) above who has been found through such inspection to have violated any applicable standard of 10 CFR 456 Subparts G or I.

(2) Provide procedures for the Secretary's review to assure that the inspector performing these inspections:

(i) Meets the applicable qualifications of § 456.1015; and

(ii) Has no financial interest in the contractor who installed the program measures unless the utility is the installer, in which case the utility may subcontract to a neutral party for inspection (whose services may be reimbursed by the utility) and report the findings of those inspections to the Secretary.

(3) Provide procedures for the Secretary's review to assure that such inspection examines compliance with any applicable DOE installation standards pursuant to 10 CFR 456 Subparts G or I.

(4) Provide procedures for the Secretary's review to assure that the results of such inspections are reported within 3 weeks to:

(i) The customer;

(ii) The installer; and

(iii) The Listing Agency.

§ 456.1015 Qualification procedures for auditors, installers, and inspectors.

(a) *Auditor Qualification Requirements.* Each utility subject to the Federal RCS Plan must (1) provide an auditor training program for its potential RCS auditors using the DOE model auditor training manual; or (2) send its potential RCS auditors to a central location provided by the Secretary for the DOE auditor training program using the DOE model auditor training manual; or (3) provide the opportunity for its potential RCS auditors to take the DOE auditor qualification tests. In addition, a delegate of the Secretary will administer any DOE auditor qualification tests periodically in each State subject to the Federal RCS Plan. The Secretary will arrange for auditor training in States subject to the Federal RCS Plan upon request by any utility that can provide a sufficient number of attendants. Participating utilities must bear the cost of such arranged training. The person or persons who are to conduct the audits pursuant to § 456.1008, after attending the DOE model auditor training program and/or passing the DOE auditor qualification tests, will be considered qualified as RCS auditors. The utility shall submit its procedures for qualifying auditors to DOE within 30 days of issuance by the Secretary of an order to comply with the Federal RCS Plan.

(b) *Inspector Qualification Requirements.* Each utility subject to the Federal RCS Plan shall assure that inspectors of flue-opening modifications, electrical and mechanical ignition systems, wind energy systems, solar domestic hot water systems, active solar space heating systems, and combined active solar space heating and solar domestic hot water systems are able to inspect for compliance with any DOE installation standards for these measures. The utility shall submit its procedures for training and qualifying inspectors to DOE within 30 days.

(c) *Installer Qualification Requirements.* Each utility subject to the Federal RCS Plan shall assure that installers of flue-opening modifications, electrical and mechanical ignition systems, wind energy systems, solar domestic hot water systems, active solar space heating systems, and combined active solar space heating and solar domestic hot water systems are able to install these measures in compliance with any application DOE installation standards. Such procedures for installers of IIDs and vent dampers may include participation in training based on the DOE curriculum. The utility shall submit its procedures for qualifying installers to DOE within 30 days of issuance by the Secretary of an order to comply with the Federal RCS Plan.

(d) *Additional Requirements with Respect to Qualifying Procedures.* Each utility subject to the Federal RCS Plan is required by the Secretary to:

(1) Provide procedures for the Secretary's review which assure that persons are permitted, in a nondiscriminatory manner, to participate in the qualification procedures and describe how this will be done; and

(2) Identify the timetable for initial implementation of the qualification procedures and for subsequent implementation of such procedures. Such timetable shall, at a minimum, provide for initial implementation no later than 60 days following the issuance of the order to comply with the Federal RCS Plan.

§ 456.1016 Complaints processing procedures.

(a) *Conciliation Conference for Customer Complaints.* Each utility and participating home heating supplier subject to the Federal RCS Plan is required to make a conciliation conference available for the purpose of resolving complaints by eligible customers against persons who sell, install, or finance the sale or installation of program measures under the circumstances described in § 456.1006. For the resolution of complaints by eligible customers against the utility or participating home heating supplier subject to the Federal RCS Plan concerning any matter specific to the RCS Program, the utility or participating home heating supplier in question must contract the handling of the conciliation conference with a neutral party, subject to the approval of the Secretary.

(1) Each utility or participating home heating supplier subject to the Federal

RCS Plan must describe the procedures for conciliation conferences:

(i) The conciliation conference must be free of cost and easily accessible to the eligible customer making the complaint;

(ii) Participation in the conciliation conference by the eligible customer making the complaint must be voluntary; and

(iii) The conciliation conference must be conducted by an impartial conciliator who has no financial interest in any party involved in the complaint or in the outcome of the proceeding.

(2) Each utility or participating home heating supplier subject to the Federal RCS Plan shall permit the conciliation conference to be conducted by telephone.

(b) *Redress Proceedings.* (1) Each utility or participating home heating supplier subject to the Federal RCS Plan shall contract (and monitor such contract) with the American Arbitration Association, or its equivalent, to make available to, and handle a redress proceeding for, all persons alleging injury by such utility of participating home heating supplier arising from an activity carried out under the Federal RCS Plan or from a violation of the Federal RCS Plan.

(2) Each utility or participating home heating supplier subject to the Federal RCS Plan shall arrange upon request such arbitration proceedings in third party disputes arising from an activity carried out under the Federal RCS Plan or from a violation of the Federal RCS Plan.

(3) The Secretary may waive any of the requirements of this Subsection upon a showing from the utility or participating home heating supplier subject to the Federal RCS Plan that an adequate and substantially equivalent State procedure exists which accomplishes one or more of the requirements of § 456.1016 (b).

§ 456.1017 Coordination.

(a) *Other Programs.* The Secretary will contact annually the cognizant Federal, State, and local official responsible for energy conservation programs, within and affecting a State which is covered by the Federal RCS Plan, which shall include but not be limited to:

(1) Federal Energy Extension Service;

(2) Basic State Energy Conservation Program of the Department of Energy;

(3) Supplemental State Energy Conservation Program of the Department of Energy; and

(4) Weatherization Assistance Program for Low Income Persons.

(b) *Energy Suppliers.* Coordination of the RCS Program may be conducted among energy suppliers within a State which is subject to the Federal RCS Plan. Collusion on prices charged to eligible customers is not permitted.

(c) *State Regulatory Authority.* The Secretary has provided each State Regulatory Authority with a copy of this Plan and has requested each State Regulatory Authority to return its written comments on the Federal RCS Plan to the Secretary.

§ 456.1018 Home heating suppliers.

(a) *Participation and Withdrawal.* If 25% of the residences in a State subject to the Federal RCS Plan are heated with fuel oil, propane, butane, or kerosene, the Secretary will notify the appropriate persons and trade associations of his decision to include any home heating supplier in the RCS Program that wishes to participate and will implement a Plan for them. Any home heating suppliers wishing to participate may contact the Secretary. Any participating home heating supplier may request a waiver of requirements in this Plan which he considers beyond his limited resources (see § 456.1018(b) below). Any participating home heating supplier may withdraw voluntarily from the RCS Program by submitting to the Secretary a written request which contains written assurance from that participating home heating supplier that the names of its customers who have requested RCS services from them have been referred to the appropriate utility in the same service area. The participating home heating supplier withdrawing from the RCS Program must inform in writing the utility in the same service area of the eligible customer being transferred to the utility and of the RCS Program services pending, in progress, and completed for each eligible customer involved.

(b) *Waiver of Requirements.* (1) The Secretary will individually consider requests for waivers of RCS Program requirements from participating home heating suppliers on the basis of one or more of the following factors:

(i) Number of eligible customers of the participating home heating supplier;

(ii) Number of employees of the participating home heating supplier;

(iii) The participating home heating supplier's business volume; and

(iv) The participating home heating supplier's billing system.

(2) The Secretary will not waive the following requirement for any home heating supplier who chooses to participate in the program:

(i) 10 CFR § 456.303 (Procedures for Investigating and Enforcing Compliance with the Federal RCS Plan);

(ii) 10 CFR § 456.305 (scope of Benefits), in that any benefit to which any eligible customer is entitled by receiving a service from a utility subject to the Federal RCS Plan must also be available to any eligible customer who receives the same service from a participating home heating supplier;

(iii) 10 CFR § 456.306(d) (Calculation Procedures for the Program Announcement), if the participating home heating supplier provides a Program Announcement to its eligible customers;

(iv) 10 CFR § 456.307(b) (3) through (7) (Accuracy of Auditing Procedures), for those measures for which a participating home heating supplier performs program audits for its eligible customers;

(v) 10 CFR § 456.307(g) (Qualifications for Program Auditors);

(vi) Those sections which prohibit anticompetitive activities or unfair discrimination by utilities or participating home heating suppliers subject to the Federal RCS Plan, which are:

(A) 10 CFR § 456.306(a) (10) and (11) (Information Prohibited from the Program Announcement);

(B) 10 CFR § 456.307(a)(3) (Discrimination Among Customers in Providing Energy Audits);

(C) 10 CFR § 456.307(e) (Prohibitions and Disclosure in Auditing);

(D) 10 CFR § 456.307(f) (Furnace Audits);

(E) 10 CFR § 456.308(e) (Prohibitions of Discrimination in Arranging Installation);

(F) 10 CFR § 456.309(e) (Prohibitions of Discrimination in Arranging Financing);

(G) 10 CFR § 456.312(C) (1)–(4) (Content of Lists).

(vii) The following reporting and recordkeeping requirements:

(A) § 456.318(a)(1);

(B) § 456.318(a)(6), except that the Secretary may waive § 456.318(a)(6)(v) concerning the accounting of program costs; and

(C) § 456.318(b) (Recordkeeping).

§ 456.1019 Reporting and recordkeeping.

(a) *Reporting.* Each utility and participating home heating supplier subject to the Federal RCS Plan shall submit to the Secretary on July 1, 1981, and annually thereafter through July 1, 1986, a report containing the following information for the 12-month period ending the preceding April 1, except that the Secretary may waive any of the reporting requirements for a good cause:

(1) From any utility subject to the Federal RCS Plan, a brief description of the services offered pursuant to § 456.503 and of the nature of the exempted activity in which it is engaged;

(2) From any utility subject to the Federal RCS Plan, a brief description of the services offered pursuant to § 456.504 and of the nature of the exempted activity in which it is engaged;

(3) From any utility subject to the Federal RCS Plan, a brief description of the services offered pursuant to § 456.505 and of the nature of the exempted activity in which it is engaged;

(4) From any utility subject to the Federal RCS Plan, a brief description of the services for which the utility is petitioning for such a waiver pursuant to § 456.509;

(5) The approximate number of eligible customers and, if available, the percentage of those customers for whom the utility or heating supplier is the primary heating fuel supplier;

(6) A copy of the Program Announcement distributed to eligible customers;

(7) The number of eligible customers who have requested each service and the number of requests the utility or participating home heating supplier has fulfilled, including:

(i) The number of program audits performed;

(ii) The number of installations arranged by the utility or participating home heating supplier subject to the Federal RCS Plan;

(iii) The number of loans arranged by the utility or participating home heating supplier subject to the Federal RCS Plan;

(iv) The number of customers, if any, who are using the utility's billing service for repayment of loans;

(v) The number of installations, if any, of program measures which the utility or participating home heating supplier subject to the Federal RCS Plan supplied, installed, or financed;

(8) The number and function of people assigned to the utility's or participating home heating supplier's program, including part-time employees;

(9) The costs incurred by the utility or home heating supplier in providing each service under the Program, including separately those costs paid by individual customers for services received and those costs paid by all ratepayers;

(10) The number and nature of complaints by eligible customers against suppliers, contractors, and lenders which have been handled through the conciliation conference established under § 456.1016;

(11) A brief description of the status of activities carried out pursuant to § 456.1015 (Qualification Procedures for Auditors, Installers, and Inspectors) including whether sufficient qualified personnel are available for program needs, the reasons for any shortages, and the proposed resolution of any such shortage problem;

(12) The number of persons added to or removed from the list established according to § 456.1013 and reasons for removal of persons; and

(13) The number and results of post-installation inspections conducted according to § 456.1014.

(b) *Recordkeeping.* Each utility and participating home heating supplier subject to the Federal RCS Plan shall keep the following records for the periods indicated and make them available to the Secretary upon request, except that the Secretary may for good cause waive any of the recordkeeping requirements:

(1) The name and address of each eligible customer who receives a program audit, which shall be kept for five years from the date of such program audit;

(2) A copy of the data collected during the audit and a copy of the estimates of costs and savings presented to the customer, which shall be kept for five years from the date of such program audit;

(3) A copy of all requests furnished by eligible customers for furnace audits pursuant to § 456.1008(f), which shall be kept for five years from the date of such request;

(4) The name and address of each eligible customer for whom a utility or participating home heating supplier subject to the Federal RCS Plan arranges installation or financing of a program measure, which shall be kept for five years from the date of such arrangement;

(5) The amount and cost of fuel purchased each month or other billing period for the twelve months prior to and the twelve months following each program audit for each eligible customer, which shall be kept for two years from the date of such program audit; and

(6) The names of the individuals who have met the qualification criteria described in § 456.1015. These records shall be:

(i) Updated within a reasonable period of time following each implementation of the qualification procedures, and

(ii) Maintained separately for installers and inspectors of flue-opening modifications, electrical or mechanical ignition devices, and wind energy devices.

§ 456.1020 Procedures for amendments of the Federal RCS plan.

Amendments to this plan may be made in accordance with informal rulemaking requirements applicable to DOE.

§ 456.1021 Utility and home heating supplier liability.

A utility or home heating supplier subject to the Federal RCS Plan that arranges for a lender to make a loan to, or a contractor to perform work for, an eligible customer should not be held liable, by virtue of its role as project manager for the RCS Program, in any cause of action between such customer and such lender or contractor.

§ 456.1022 Procedures which a utility must report to the secretary.

Utilities subject to the Federal RCS Plan must report the following procedures to the Secretary, no later than 30 days after issuance by the Secretary of an order to comply with the Federal RCS Plan:

(a) Procedures for estimating the energy costs savings which are included in the Program Announcement [§ 456.1007(b)(4)].

(b) Procedures describing the offer of the program audit [§ 456.1008(a)(1)].

(c) Procedures for surveying the sample of contractors and suppliers for the estimate of energy costs savings [§ 456.1008(b)(4)].

(d) Procedures for the treatment of costs described in § 456.1011(b) (3) and (4).

(e) Procedures for performing post-installation inspections of all flue-opening modifications, electrical or mechanical ignition systems, and wind energy devices installed under the RCS Program [§ 456.1014(a)].

(f) Procedures to assure that the inspector is qualified and has no financial interest in the contractor installing program measures [§ 456.1014(b)(2)].

(g) Procedures to assure that the post-installation inspections examine compliance with applicable DOE installation standards [§ 456.1014(b)(4)].

(h) Procedures to assure that the results of post-installation inspections are reported within 3 weeks to the customer, the installer and the Listing Agency [§ 456.1014(b)(5)].

(i) Procedures to assure how nondiscriminatory participation is permitted for any person to qualify as an installer, auditor, or inspector [§ 456.1015(d)(1)].

(j) Procedures to identify the timetable for initial and subsequent implementation of the qualification procedures for auditors, inspectors, and installers [§ 456.1015(d)(2)].

(k) Procedures for handling the conciliation conference [§ 456.1016(a)(1)].

(l) Procedures for handling redress proceedings [§ 456.1016(b)].

(m) Procedures for handling auditor, inspector, and installer training [§ 456.1015].

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Part V

Environmental Protection Agency

Canned and Preserved Seafood Processing Point Source Category

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 408

[WH-FRL 1721-4]

Canned and Preserved Seafood Processing Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed response to petition for modification and amendment of regulations.

SUMMARY: The purpose of this notice is to amend the BPT and NSPS effluent limitations regulations affecting Alaskan subcategories of the Canned and Preserved Seafood Processing Point Source Category. This amendment results from EPA's proposed response to a petition for modification of BPT regulations, which also is being announced today.

The Petitions, submitted by a portion of the Alaskan seafood industry, request that the regulations cited in Section I, below, be modified to delete Anchorage, Cordova, Juneau, Ketchikan, and Petersburg from the "non-remote" Alaska subcategories. The practical effect of this modification would be to change the wastewater control technology from screening and solids handling to grinding for plants located in these areas. EPA proposes to grant the petition for the city of Juneau and to deny the petition for Anchorage, Cordova, Ketchikan and Petersburg. EPA also proposes to redefine the term "non-remote" for the Alaskan segment of the industry to eliminate the words "population center," and to include Ward's Cove as a "non-remote" area because of its proximity to the Ketchikan processing center. EPA is also considering and solicits comments on the addition of Dutch Harbor and the Kenai Peninsula to the list of "non-remote" processing centers.

DATES: A period of sixty days from the date of publication in the Federal Register will be allowed for submission of comments on this proposal. Comments must be received on or before March 10, 1981.

ADDRESS: Send comments in triplicate to: Mr. Daniel S. Lent, Effluent Guidelines Division, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, Attention: EGD Docket Clerk, Canned and Preserved Seafood Processing Industry, (WH-552). A copy of the supporting information and all public comments submitted in response to this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM-213 (EPA Library), 401 M St., S.W., Washington, D.C. 20460; EPA Region X, 1200 6th Avenue, Seattle, Washington, 98101; and the EPA Alaska Operations Office, 701 "C" Street, Anchorage, Alaska. The EPA's Public Information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained from Mr. Daniel S. Lent, at the address listed above, or call (202) 426-2707. Information concerning the economic analysis may be obtained from Mr. Arthur H. Berman, Office of Analysis and Evaluation (WH-586), Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, or call (202) 755-2484.

SUPPLEMENTARY INFORMATION: On May 19, 1980, the Environmental Protection Agency suspended the applicability of the "best practicable control technology currently available" (BPT) effluent limitation requirements for the "non-remote" cities of Anchorage, Cordova, Juneau, Ketchikan and Petersburg, Alaska. See 45 FR 32676, May 19, 1980. The effect of the suspension was to relieve seafood processing facilities in those cities from BPT requirements based on screening solids from their effluent streams and instead to subject the facilities to the less stringent BPT effluent limitations applicable in "remote" cities.

In those cities, BPT effluent limitations are based on grinding the solids in the process wastewater and discharging them into the navigable waters adjacent to the processing plant. The suspension was to be in effect until October 15, 1980, by which time EPA expected to respond to a complete petition for modification of BPT effluent limitations filed by various seafood processing facilities in the affected cities. Because of the time required to obtain complete information from the petitioners, to review the petition and the public comments thereon, and to conduct the Agency's technical and economic analyses of the petition, the Agency was unable to respond to the petition by the October 15 date. The suspension will remain in effect until EPA makes a final decision.

Petitioners Pacific Seafood Processors Association, Morpac, Inc., Nefco-Fidalgo Packing Company, North Pacific Processors, E. C. Phillips & Son, Inc., Washington Fish & Oyster Company, and Whitney-Fidalgo Seafoods submitted their original petition for modification to EPA on May 7, 1980. Pursuant to the schedule established in EPA's suspension notice, petitioners filed a supplemental petition on June 16, 1980. On July 16, 1980, EPA requested additional information, and petitioners responded to that request on August 15, 1980.

EPA has carefully reviewed the petition, supplemental petition, supplemental information, and other information available in the record. Based on this review, EPA today proposes to grant the petition to modify the BPT regulations to delete the city of Juneau, Alaska, from the "non-remote" Alaska subcategory. The Agency proposes to deny the petition to delete the cities of Anchorage, Cordova, Ketchikan and Petersburg from the group of "non-remote" subcategories. In addition, EPA proposes to revise the scope of the term "non-remote" so that the classification will be based solely on an area's character as a processing center; no area will be included solely by virtue of its being a population center. EPA proposes to amend BPT regulations for these subcategories by adding Ward's Cove (as part of Ketchikan) to the list of "non-remote" areas. EPA also is considering, but not proposing at this time, the addition of the Dutch Harbor and Kenai Peninsula as "non-remote" processing centers. The basis of EPA's proposal is explained below.

I. Statutory Requirements and the Current Regulations

The Clean Water Act, 33 U.S.C. 1251 *et seq.*, requires, among other things, that each point source, other than publicly owned treatment works (POTWs), must achieve, not later than July 1, 1977, effluent limitations based on the application of the best practicable control technology currently available ("BPT") as defined by the Administrator pursuant to Section 304(b) of the Act. Section 301(b)(1)(A). Section 304(b) requires the Administrator to publish regulations providing guidelines for effluent limitations. The factors relating to the assessment of BPT:

> Must include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and shall also take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate. Section 304(b)(1)(B).

The Administrator published effluent limitations guidelines for the seafood processing category on June 26, 1974 (39 FR 23134) and December 1, 1975 (40 FR

55770). The regulations provide for two groups of subcategories for Alaskan processors depending on whether the processor operates at a "remote" or a "non-remote" location. "Non-remote" facilities are those located in "population or processing centers." The regulations do not define that term but provide a non-exclusive list of cities deemed included. See 40 CFR 408.40, 408.60, 408.90, 408.162(b)(1), 408.165(a)(1), 408.172(b)(1), 408.175(a)(1), 408.200(b)(1), 408.202(b)(1), 408.205(a)(1), 408.292(b)(1), 408.295(a)(1), 408.312(b)(1), and 408.315(a)(1). In "non-remote" locations, BPT was based on screening the solids from the seafood processing wastewaters and disposing of the solids by some means other than discharge to navigable waters. In "remote" locations, by contrast, BPT was based merely on grinding the processing solids to reduce the size of the pieces, which could then be discharged into the navigable waters as a part of the facility's effluent.

The Association of Pacific Fisheries, a trade association representing processors in affected subcategories, and various processors including one of the present petitioners, challenged the EPA regulations in federal court. In those challenges, petitioners relied in large part on arguments similar to those put forward in the present petitions. The plaintiffs argued essentially that in evaluating BPT, EPA underestimated the costs and overestimated the benefits of using the screening rather than the grinding control technology. The United States Court of Appeals for the Ninth Circuit, exercising its original jurisdiction pursuant to section 509(b) of the Act, upheld the Agency BPT regulations in all respects challenged in the present petition. *Association of Pacific Fisheries* v. *EPA*, 615 F. 2d 794 (9th Cir. 1980). The Court found that "given the limitations the Agency faced when it adopted industry standards for the first time, * * * there was a sufficent basis for promulgating the regulations as an initial matter." *615* F. 2d *809*. The Court noted, however, that various avenues for reexamination of the regulations remained, including the possibility that the processors might file with EPA a petition for reconsideration in order to advance evidence as to whether the agency should review its original actions. The present petition followed that decision.

II. Contents of the Petition

The essence of the petitioners' claim is that the classification of Juneau, Anchorage, Cordova, Ketchikan, and Petersburg as population or processing centers is unlawful under section 304(b) in that the classification fails to reflect the statutory requirement that the Administrator consider the total cost of application of technology in relation to the effluent reduction benefits to be achieved. The petition noted that the Congress, in explaining the cost-benefit factor, stated:

> The balancing test between total cost and effluent reduction benefit is intended to limit the application of technology only where the additional degree of effluent reduction is wholy out of proportion to the cost of achieving such marginal level of reduction for any class or category of sources.

A Legislative History of the Water Pollution Control Act Amendments of 1972, Serial No. 93–1, 93d Cong. 1st Sess. (1973), Vol I. 170 ("Legis. Hist."). According to the petition, EPA erred in both its determination of compliance costs and its assessment of the effluent reduction benefits.

A. Costs

The major cost elements associated with screening, according to the petition, are the cost of the barge to remove screened wastes and dock construction needed to accommodate the barging operation. The petition showed that while the petitioners' cost figures for the actual waste screening and storage did not significantly differ from EPA's estimates, their calculations on the cost of barging and dock facilities for individual plants were much higher than EPA's analysis. EPA estimated that the average capital cost for barges would be $25,000 per plant; petitioners' estimates, in contrast, ranged from $225,000 to $485,000 in barge costs per plant, with an additional $90,000 to $172,000 required per plant for dock expansion.

The discrepancy in barging cost derives from the nature of the barges on which the estimates were based. EPA's July 16, 1980 letter requested information as to why large, elaborate, fully equipped and self-propelled barges were required to haul the wastes the relatively short distances—from one to five miles—which were contemplated, rather than using simple scows with tugs. Petitioners responded that the barges must be water tight, must be large enough to handle peak capacity waste volumes, and must be self-propelled for ease of operation and to assure crew and vessel safety in rough weather. Petitioners further asserted that cooperative barging is not desirable because a plant cannot be dependent on a competitor's equipment.

Petitioners' supplemental information also included materials on asserted dock construction requirements and costs. These consisted primarily of drawings of the plant sites showing the additions claimed to be necessary, and a brief synopsis, without costs, of four common piling types used as dock support in Alaskan waters, including a notation that creosote-treated fir bearing piles are normally used. The response to questions showed dock costs of $130.00 per square foot if concrete pilings are used and $100.00 per square foot if creosoted wood pilings are used. In the petition, all dock construction costs are based on using concrete pilings.

B. Effluent Reduction Benefits

Turning to the other half of the cost/benefit comparison, the processors' petition asserts that screening in Alaska, other than in the city of Kodiak, achieves no effluent reduction benefit.

The petition points out that the effluent from seafood processing plants includes only seafood residuals; nothing is added during the processing. The petition recognizes that "effluent reduction benefits" pursuant to the statute are not primarily water quality benefits but simply the reduction in pounds of waste discharged into the water. The petition asserts, however, that in all areas of Alaska other than Kodiak, screening achieves no effluent reduction benefit because the only practicable disposal method is to barge the wastes and to dispose of them in the ocean, so that the same number of pounds of seafood waste enter the water after the screening as would be discharged by only grinding and discharging at the dock. The petition contends that the effluent enters the food chain at a high level as a food source for birds, fish and crabs.

The petition acknowledges that processors in other areas of the United States have available various options, including landfill, discharge into municipal sewers, and the use of seafood waste reduction facilities for by-product recovery. It recognizes that some reduction facilities are operating in Alaska but denies that these form the basis of a feasible option for any of the petitioners. Thus, the petition notes that a reduction facility in Kodiak operates at a loss, even though the city has seventeen facilities and processes year round. The petition further states that the reduction facility in Petersburg is operated by a competitor of the Whitney Fidalgo, Petersburg, petitioner; it questions the capacity of that reduction facility, expresses concern about relying on a competitor's plant, and claims that the petitioner would incur high costs to use the facility because it would need to widen its dock to move the fish wastes to shore and through the center of Petersburg.

Another reduction facility operates at Seward, Alaska, about one hundred

miles down a paved, year-round road from Anchorage. Five smaller processors in Anchorage who did not join the present petition haul their wastes to the Seward reduction facility. The data submitted for petititoner Whitney-Fidalgo, Anchorage, indicates that use of this facility would cost the petitioner less than barging from the same location. Again, however, the petition contends that the plant cannot rely on its competitor's facility for its waste disposal; in addition, it states that the road between Anchorage and Seward may be impassible or subject to significant load limitations during early parts of the processing season.

The petition notes that an EPA contractor evaluated the possibility of developing reduction facilities at other locations, particularly Cordova and Ketchikan. The contractor concluded that facilities in those cities could operate at a profit. The petition, however, contends that this analysis erred both in overstating the percentage of raw waste material that could be recovered and in undersizing the proposed Cordova facility. As a result, petitioners contend that facilities in either location would not be profitable.

The final aspect of the petitioners' denial of effluent reduction benefits is that although the petition is not based on seafood wastes being environmentally innocuous, there is evidence in fact that the wastes are not harmful and may actually have beneficial environmental impacts.

C. Other Factors

Finally, the petition contends that the Administrator did not consider other significant factors in establishing BPT. Thus, it contends that screening and barging involves significant energy demands, that storage of seafood wastes may create unsanitary conditions barred by U.S. Food and Drug Administration and Alaska standards, and that the costly screening and barging requirements will adversely affect the ability of American processors to compete with foreign-owned floating processors, in conflict with policy statements contained in the legislative history of the 1978 amendments to the Fisheries Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

III. Framework for Decision

A. Cost of Technology and Effluent Reduction Benefits

The processors' petition for an EPA rulemaking to revise the "non-remote" classification of various Alaskan cities in connection with two groups of subcategories for the seafood processing industry in Alaska is a proper request for amendment of a rule under 5 U.S.C. P.O. Box553(e). The petition correctly states the controlling issue in this petition: that under section 304 of the Clean Water Act, the Administrator must consider "the total cost of application of technology in relation to the effluent reduction benefits to be achieved by such application." To decide the petition, the Administrator must analyze the relation of costs to effluent reduction benefits in each of the cities for which reclassification is requested. The Agency must apply a consistent framework to each city's analysis.

In contending that the BPT screening requirement will force processors to undergo unreasonably high costs, petitioners assert that certain barging and dock construction expenses would have to be incurred to dispose of the screened wastes. EPA is in general not persuaded by a number of the petitioners' assertions as to the type of barge and the extent and nature of dock improvements which would be necessary to sustain an adequate barging operation. The petitioners' rather general statements regarding the logistics of a barge and tug, numbers of trips and possible weather conditions are not sufficient to convince the Agency that only large, sophisticated, self-propelled barges could be used. Neither is EPA convinced that the indicated extent of dock expansion and quality of dock construction are necessary and the most cost-efficient means of handling the screened wastes, if barging is necessary.

More importantly, however, EPA questions the petition's premise that barging is in fact the appropriate disposal method for screened seafood wastes for facilities operating in most of the areas covered by the petition. Rather, EPA believes that in every area but Juneau, the number and size of the processors, the quantity of wastes produced, the length of the processing season and other factors, including, in some cases, the proximity of existing reduction facilities, make it possible to process the screened wastes at existing or feasible seafood waste reduction facilities. Thus, BPT effluent limitations can reasonably be based on a technology consisting of screening the wastes and disposing of the wastes through recycling in a reduction facility.

Where the cost of installing and operating a reduction facility is reasonable, definite effluent reduction benefits can be achieved because a lower total amount of pollutants will be disposed of in the water. EPA believes that the petition fails to take adequate account of this potential effluent reduction benefit associated with the screening technology. Therefore, applying as a test the question whether the costs of the technology are "wholly out of proportion" to the cost of achieving projected effluent reduction benefits (see *Legis. Hist.* cited above, see also *Association of Pacific Fisheries* v. *EPA*, 615 F.2d at 805), EPA concludes that the screening technology is BPT for seafood processors in any location where waste reduction facility costs are not unreasonable.

The petition challenges the EPA contractor's determination that processing centers in Cordova and Ketchikan could be profitable. EPA has performed an updated cost analysis reflecting petitioners' concerns. This analysis, described in the specific discussion of the Cordova area, below, found that whether the facility could be profitable depended upon prevailing fish meal prices. If fish meal prices are assumed to be $425.00 per ton, the costs of using a reduction facility in Cordova would not be unreasonably burdensome for Cordova processors. In any event, the potential profitability of the plant is not determinative of whether a reduction facility may constitute a reasonable waste treatment technique. There is no provision in the Clean Water Act holding that waste treatment methods may be considered only where EPA can prove that they will produce net revenues.

Of course, effluent limitations only prescribe discharge limitations. Individual point sources are free to achieve the limitations by any lawful means, and therefore a petitioner may choose to barge the wastes to an acceptable ocean disposal site rather than employing a separate or collective reduction facility. Even if barging is employed, it is not clear that no effluent reduction benefit would result. As the Ninth Circuit noted in *Association of Pacific Fisheries*, while it was reasonable for EPA to find that some plants would choose a land-based reduction center rather than barging, the Act also permits EPA to consider the improvement in near-shore water quality which would result from barging to be an effluent reduction benefit. 615 F.2d at 806–807. Analogously, the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* generally exempts from its permitting requirements the transportation for dumping or dumping of fish wastes, but not if the wastes are deposited in protected or enclosed waters or if the Administrator finds that the deposits

could have adverse effects. 33 U.S.C. 1412(d). Thus, the MPRSA also recognizes the benefit of relocating waste disposal from certain waters to other areas of the ocean.

The present petition does not make it clear that no adverse environmental effects have occurred from near-shore discharges. To the contrary, the petition itself acknowledges that, at least in the past, adverse conditions have occurred near the discharge points. Similarly the Ninth Circuit found that the record refers to such effects at Cordova, Petersburg, Kodiak, and Anchorage. 615 F.2d at 807. In addition, comments from the Fish and Wildlife Service, U.S. Department of the Interior, filed in response to EPA's notice of the present petition, refer to the accumulation of seafood wastes in the area of the discharges, the gathering of scavengers including bears, the presence of noxious conditions caused by odors, bacteria and decomposition, and the public health hazards present in tidal waters affected by seafood waste discharges. The Interior Department's comments also take issue with the claim that the seafood residual discharges constitute a valuable food source. Instead, the Department advises that high-volume discharge, through an outfall in areas where accumulation and deposition on the sea floor is likely, results in conditions not amendable to ready recycling of the waste into the food chain. The Municipality of Anchorage also commented that near-shore disposal is creating undesirable environmental impacts in that city. These are evidenced by the attraction of seagulls to the area, which is within one half mile of the central business district.

The Agency has also studied the environmental impact of seafood waste discharges, most recently updated and summarized in a report to the Congress as required by Section 74 of the Clean Water Act as amended in 1977. The *Section 74 Seafood Processing Study* identified adverse water quality impacts and associated nuisance problems in marine waters at locations in Alaska and the contiguous states. The degree to which these problems occurred depended on site-specific conditions such as the amount of waste discharged and the hydrological conditions of the receiving waters. For example, the most severe water quality impact was documented at the Dutch Harbor processing center where investigations in the areas of outfalls found accumulations of sludge and whole fish parts, generation of toxic hydrogen sulfide gas, depressed dissolved oxygen levels, and the absence of benthic life. Similar environmental impacts, although less severe, were noted in Cordova and Kenai.

Properly controlled barge disposal in more open waters where better dispersion can occur will eliminate these problems. Thus, at-sea disposal will result in near-shore effluent reduction benefits even for any processors in processing centers who prefer ocean disposal of the screened wastes.

Petitioners' other objections to imposition of the screening requirements are not persuasive. The petition refers to the high energy costs of barging. EPA does not believe that barging waste for distances of less than two miles will result in high energy costs, judging from the experience at one company which showed insignificant fuel use during a recent processing season. Furthemore, barging is not needed if a reduction facility is used. Next, the petition remarks on the potential sanitary problems of waste storage but fails to indicate the extent of storage that would be required, particularly if reduction facilities are used, nor to explain why the problem is more serious for the Alaskan "non-remote" processors than for other American seafood processors. The petitioners also fail to note that there are FDA approved methods which are in use in Alaska for storing such material at the plant site. See 42 FR 14338, March 15, 1977. Finally, petitioners suggest that screening costs will impair the competitive position of American processors, in contravention of Congressional pronouncements in connection with the Fisheries Conservation and Management Act amendment of 1978. EPA does not believe that the Congress intended that the 1978 legislative history excerpt quoted in the petition should be read to authorize inadequate waste treatment by American seafood processors in the name of protecting them from foreign competition.

In summary, in areas where seafood waste reduction facilities are available or can be installed, use of the reduction technology will result in a clear effluent reduction benefit in terms of a lower total quantity of pollutants discarded into the water. Further, where waste reduction facilities can be used, barging will not be necessary, unless a processor uses a barge to transport wastes to the reduction facility, so that the processors will not incur any barging expense as an incident of achieving BPT effluent limitations. However, even where barging is selected, the Agency concludes that effluent reduction benefits will result.

B. Other Statutory Factors

Section 304(b) requires the Administrator to consider various additional factors in assessing BPT. Under the statute, the Administrator must take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements) and other factors that the Administrator deems appropriate. EPA has considered these factors in the present proposal.

The age of seafood processing equipment and facilities, the type of process, engineering aspects of the application of various types of control techniques, and process changes are not at issue. An effluent screening device can readily be installed in each plant at the point of the facility's discharge. No complex engineering is required. The age of the facilities is not relevant, and no internal process change is required.

Further, the Agency believes that the non-water quality environmental impact of the technology will not be excessive. Reduction facilities should have no adverse air quality impact. Any odor problems associated with the operation of a reduction facility can be eliminated by proper plant location and operating procedures.

IV. Cost Analysis and Economic Impact Analysis

A. Introduction

Executive Order 12044 requires EPA and other agencies to perform Regulatory Analyses of certain regulations. See 43 FR 12661, March 23, 1978. EPA's proposed regulations for implementing Executive Order 12044 require a Regulatory Analysis for major or significant regulations involving annualized compliance costs of more than $100 million or meeting other specified criteria. See 44 FR 30988, May 29, 1979. Where these criteria are met, the proposed regulations require EPA to prepare a formal Regulatory Analysis, including an economic impact analysis and an evaluation of regulatory alternatives. The proposed changes in regulations for the canned and preserved seafood processing industry do not meet these criteria and thus do not require a formal regulatory analysis.

B. Cost Reasonableness

The cost for Alaska seafood processing plants in Anchorage, Cordova, Petersburg, and Ketchikan to implement individual screening and collective reduction range from $0.003 to

$0.025 per pound of waste removed. These costs of achieving BPT can be compared with other industries' costs of achieving BPT to provide a perspective on their reasonableness. In a portion of the fruits and vegetables processing industry, the average cost of wastewater treatment to meet BPT effluent limitations for a group of model plants was $0.10 per pound of conventional pollutants removed, with a range of $0.03 to $0.19. In the corn wet milling subcategory of the grain milling industry, the cost for a medium-sized model plant was $0.14 per pound of conventional pollutants removed. The cane sugar refining industry shows a cost of $0.14 per pound of conventional removed for a small model plant. These costs have been adjusted to 1980 dollars by a standard construction cost index. It is readily apparent that the projected BPT costs in these four Alaskan areas are substantially less than BPT costs for other industries and therefore entirely reasonable.

In Juneau, EPA projected that screening and reduction would cost $0.18 per pound. This figure is a major step higher than costs projected for the rest of the petitioners, because the collective treatment available in other areas cannot currently be implemented in Juneau. EPA does not believe that it is reasonable to promulgate effluent limitations that would impose a disproportionate cost on a discharger whose isolated Alaska processing location precludes the type of collective waste disposal that accounts for the lower costs elsewhere in Alaska.

C. Cost Analysis

EPA has analyzed the cost of reduction facilities for each area where reclassification has been requested. The Agency prepared an initial study pursuant to Section 74 of the Clean Water Act Amendments of 1977. Following receipt of the present petition, EPA updated that study. The updated study, *Market Feasibility Study of Seafood Waste Reduction in Alaska*, November 1980, analyzed the cost of individual and collective reduction facilities based on 1980 information regarding production data, costs, and fish meal and fish oil prices. Updated assumptions regarding inflation and interest rates were also used.

EPA's current analysis used a discounted cash flow model to determine the costs of reduction for each area in the petition. The Agency's approach is more fully described in the aforementioned report.

The 1980 EPA study indicates reduction costs per area as follows:

Table A

Area	Total pounds of waste removed per year	Reduction cost (dollars per ton)
Petersburg	10,000,000	[1] +8.08
Ketchikan	15,000,000	[2] 7.96
Cordova	12,000,000	22.71
Anchorage	2,800,000	[3] 64.91
Juneau	760,000	324.55

[1] Profit.
[2] Wastes from Ward's Cove are included in the analysis for Ketchikan.
[3] Anchorage processors have the option of hauling wastes to the reduction facility at Seward at a net cost of $8–12 per ton.

A sensitivity analysis of the EPA study indicates that the feasibility of reduction facilities is sensitive to changes in the price of fish meal. EPA recognizes that the price is fairly volatile, having ranged from a low of $318.00 to a high of $505.00 per ton between 1977 and 1980. The reduction costs reflected in Table A are based on an average fish meal price of $425.00 per ton. The Agency believes that this price fairly represents average market conditions for 1980. However, it must also be noted that increased finfish landings and more favorable fishmeal prices will further decrease the cost of reduction and potentially allow some of these facilities to become profitable. The Agency solicits comments and data on the factors which influence the economics of reduction.

D. Economic Impact Analysis

EPA has done an economic impact analysis for BPT and a draft analysis for soon-to-be-proposed BCT regulations for the seafood processing industry. These analyses are based on the costs of screening and barging for processors in all Alaskan subcategories, with both "remote" and "non-remote" status. Although the petitioners only challenge the cost/benefit relationship of the current BPT regulations and do not allege that adverse economic impacts result from the current requirements, EPA re-examined the BCT cost study in the interest of thoroughness. An economic impact analysis based on the costs of reduction facilities was not done due to time constrants.

The BCT study, *Draft Report: Economic Impact Analysis of Proposed Limitations Guidelines for the Canned and Preserved Seafood Processing Point Source Category, July 1980*, is more recent than the BPT report and is therefore based on more timely data. It confirms that screening and barging (as opposed to screening and collective reduction) have negligible impacts on Alaskan processors. In fact, the analysis shows that Alaskan processors are economically strong. Out of 164 plants analyzed throughout Alaska, EPA projected that only two plants might be forced to close as a result of proposed BCT cost burdens. These plant closures would result in an employment loss of 100 people.

The two projected closures are small processors in the mechanized salmon subcategory. All medium-sized and large-sized plants in this subcategory will remain economically viable after the imposition of treatment costs. The study further indicated that all plants in all other Alaskan seafood processing subcategories will remain economically viable after installing the required technologies.

The study was done on a model plant basis across subcategories, not specifically for plants at the locations in the petition. The impact analysis results were extrapolated from the model plants to qualitatively assess potential impacts. Thus the projected closures cannot be correlated with any of the petitoners' plants.

The most recent cost analysis and market feasibility study, referenced earlier, examines reduction and barging costs on a plant-by-plant basis as well as collectively for the five locations represented by petitioners. The results clearly indicate that economics of scale can be achieved in both collective reduction and collective barging.

In this study collective reduction was, in all but two cases, found to be less costly on a dollar per ton of waste basis than individual barging. Thus, one may reasonably infer that collective reduction will not have excessively adverse economic impact because individual barging causes minimal levels of economic impacts. Specific economic impact levels have not been analyzed for the costs of reduction facilities. Also, if barging in processing centers is organized on a collective basis, economic impacts, already judged to be low, should be further lessened.

V. Proposed Response to Petition and Amendment to Regulations

A. Summary

The Agency proposes to grant the petition for the city of Juneau and to deny the petition for Anchorage, Petersburg, Ketchikan, and Cordova. Under this proposal, Juneau's designation for BPT would change from "non-remote" to "remote." The other areas would remain "non-remote" for BPT purposes. EPA proposes to revise the scope of the term "non-remote" to eliminate the concept that a locality will be so classified solely on the basis of its character as a population center. The Agency also proposes to include Ward's Cove in the Ketchikan processing center.

Finally EPA proposes to amend the regulations providing new source performance standards in these subcategories to assure that new sources in areas classified as "non-remote" for BPT purposes will also employ the screening technology.

B. Feasibility of Reduction Facilities

EPA's BPT effluent limitations guidelines for the "non-remote" Alaska seafood processors subcategories are based on screening. In proposing to retain this technology for four of the cities named in the petiton, EPA examined the options for disposal of the screened waste. Where seafood waste reduction facilities may be available, implementation of the guidelines not only would result in removing the waste solids from the water but also in recovering for other uses a significant portion of the waste. EPA's proposed classification of the various localities as "non-remote" is based on the Agency's belief that each of these areas qualifies as a processing center and that collective reduction facilities can be operated in each locality.

The seafood commodities being processed at the petitioners' facilities command high prices in the market place. The screened waste solids are similar in character, yet they are discarded as valueless. Reduction facilities are a proven method of converting both finfish and shellfish waste into marketable products. Research indicates that promising avenues may exist to improve the economics of shellfish waste reduction in Alaska. Reduction facilities can process salmon, herring and bottom fish wastes into fish meal and fish oil.

Finfish reduction is a wet process. The wastes may or may not be chopped, depending on their size. The wastes are then cooked to denature flesh protein and break the cell walls to allow subsequent separation of solids from the oil and water liquor. The cooked fishmeal is strained and pressed, after which the presscake is shredded, dried, strained, ground, and packaged. Meanwhile, the press liquors are desludged, purified, deodorized and steamed to produce the fish oil. Solids removed from the fish oil production process are added to the fish meal. Thus, essentially no waste is created. Five tons of finfish waste, when processed, can produce approximately one ton of fish meal and 0.4 tons of fish oil. The remaining portion is predominantly water, most of which is removed by evaporation, with the balance added to the dried meal to improve its palatability to animals. These items can sell for over $400.00 per ton.

Fish meal is used as a protein source for animal feeds. It currently provides only about 10 percent of the total proteins used in animal feeds. It competes with other high-protein feed supplies, including oilseed meals such as soybeans, animal residues and grain proteins. Soybean meal is the largest competitor currently providing about 45 percent of the protein for processed feeds. EPA has ascertained that fish meal prices and soybean meal prices over the last thirty years show a high degree of association.

The reduction technology for shellfish wastes, such as shrimp or crab, usually consist of grinding, drying and packaging; cooking may also occur, depending on the character of the wastes. Shellfish meal has a lower protein content than fish meal and hence is less marketable, selling for about $125.00 per ton. However, the natural polymer chitin and its derivative, chitosan, can be derived from shellfish wastes.

Chitin and chitosan production and its variations currently remain in the pilot stage of development. Essentially, chitin and chitosan production involves mechanical separation of the adventitious protein, demineralization of the residual shell with dilute acid, deproteinization with a dilute alkali and deacetylation of the chitin with caustic soda to produce chitosan. Possible commerical applications of the product include use in textile, paper processing, wastewater treatment, photography, and pharmaceuticals.

Because shipment of needed chemicals to Alaska might be difficult, EPA's analysis of the feasibility of chitosan production assumed that the mechanical separation and stabilization of shellfish wastes would be completed in Alaska and the wastes would be transported to Seattle for the chemical processing. EPA's analysis was hampered by the pilot nature of existing facilities, the unavailability of confidential, proprietary information, lack of production of cost data regarding reported large-scale production in Japan, Poland and Russia, and by the variability of costs and marketability of chitin and chitosan depending on the specie, location and quality of source material employed. Nonetheless, EPA's analysis indicated that the process has a real potential for cost effective production.

The Agency realizes that further market development is necessary before large-scale chitin plants are feasible. Because of the uncertainties regarding chitin/chitosan production, EPA particularly solicits comments on this aspect of the present proposal. This information will be especially important in determining whether reduction can be profitable in the Dutch Harbor area where waste production is primarily from shellfish.

Finfish reduction technology has long been used in Europe. Proven systems now operating in this country are still supplied by European manufacturers. The European-manufactured equipment involves a high capital expense because of transportation costs and duties. However, several American made systems are currently marketed or planned for marketing in the near future. These systems show an approximately 20 percent lower capital cost than the European systems. The American-made reduction systems are also claimed to have lower energy requirements and therefore lower operating costs. Although EPA's analysis of the present petition used the cost of the European reduction systems to ensure that the cost of solids reduction would not be underestimated, it is likely that actual reduction facility costs may be lower than EPA estimates, if American equipment is used.

The petition raised the issue of reliance on a competitor for waste disposal. In areas where competitors own existing reduction facilities, the Agency feels that suitable long term contractual arrangements can be agreed upon between processors and competitors who operate facilities. EPA notes that the economic viability of the reduction facility depends on a supply of raw material, namely, the seafood wastes. The competitor therefore may have an incentive to contract for delivery of the petitioner's wastes. The contract can cover allocation of capacity during peak loads. Plant expansion may also be attractive to the competitor, if a petitioner's waste is known to be available for processing.

For areas where reduction facilities are not in operation, processors may choose not to operate their own reduction facilities. However, a facility might be constructed and operated by an independent entrepreneur under contract with the various potential users, as is currently the case in Kodiak. A nearby municipality might also be willing to construct a facility. Either of these options would avoid the question of competitive use of the plant. This arrangement could be employed whether or not the reduction operation was profitable. In Kodiak, for example, where the reduction facility operates at a loss because of the high volume of shellfish waste processed, the

processors using the facility subsidize its operation.

A key factor determining the feasibility of reduction or any other solids disposal option for processors in Alaska is the amount of processing waste available for the processing or joint disposal. EPA recognizes that a processor's location in a population center has no bearing on that question, and that the costs of solids disposal for an isolated processor might be considerably higher than for a processor that has access to a collective solids disposal operation. Therefore, EPA believes that the definitions of "remote" and "non-remote" need revision.

EPA intends the term processing center to cover any geographic area within which processors can reasonably achieve economies of scale by arranging for collective disposal of screened seafood wastes. Thus, under the proposed revision the term would not only include individual cities but would also cover any area where feasible highway or barge transportation would permit collective waste disposal.

The Agency proposes to remove the words "population center" from the definition of "non-remote" areas, in order to focus on processing centers, and to add Ward's Cove (as a part of Ketchikan) to the areas designated as "non-remote."

C. Revision of New Source Performance Standards

In addition to defining the limitations achievable by the application of BPT in the Alaska seafood processing subcategories of issue here, EPA regulations also provide new source performance standards ("NSPS") for processors in these locations, pursuant to section 306 of the Clean Water Act. EPA believes that any new sources in these locations, classified as "non-remote" for BPT purposes, should also be required to meet effluent limitations based on screening technology because new processors should be able to participate in collective waste disposal or reduction facilities employed by existing processors in these areas. Therefore, EPA proposes to amend the regulations to provide that all areas categorized as "non-remote" for purposes of BPT are also categorized as "non-remote" for purposes of NSPS.

D. City-by-City Analysis

This section analyzes each area in light of the information discussed above.

Juneau

EPA proposes to grant the petition to reclassify the City of Juneau as "remote." Granting of the petition for Juneau is based on the relatively high projected cost for screening and solids disposal as compared with costs in areas currently classified as "non-remote" and with the costs of the other petitioners. The Agency believes that because of the limited amount of waste generated in this area (under 800,000 pounds per year), and the distance to other processors, Juneau should not be classified as a processing center, notwithstanding its substantial population.

Because of the relatively low quantities of waste generated in Juneau, EPA analysis indicates that the cost of barging and ocean disposal per ton of waste would be more than three times as expensive as for other petitioners. The Agency also considered solids disposal options other than barging for the Juneau petitioner. The nearest reduction facility is 120 miles away in Petersburg. Access to this facility would be by barge, and the cost of transportation would be prohibitive. The limited amount of waste generated would make the cost of building and operating an on-site reduction facility in Juneau very high, $325.00 per ton of waste processed, compared with the costs of these facilities in processing centers. The city of Juneau has indicated a willingness to accept some seafood waste in its municipal wastewater treatment system in order to help promote greater efficiency in the systems' biological treatment units. However, the city would probably have difficulty in disposing of all the seafood wastes generated. Therefore, if the municipal treatment system was utilized, additional solids disposal would still be needed. In summary, EPA believes that Juneau should not be classified as a processing center. However, of course, any future significant changes in the amount of seafood processed in Juneau could require a change in the area's classification.

Anchorage

EPA proposes to deny the petition to reclassify Anchorage as "remote." The proposed denial is based on two factors. First, the Anchorage petitioner has reasonable access to a reduction facility located at Seward. In addition, the municipality of Anchorage, commenting on the petition, strongly urged denial.

The Seward reduction facility is about 100 miles from Anchorage and can be reached by paved road which is open year round. The general feasibility of hauling seafood wastes from Anchorage to Seward is attested to by five non-petitioner processors in Anchorage which have been using this method for the last two year. Some load restrictions may be imposed on road use during the winter, but since production declines during this period, EPA believes that load restrictions would not impair waste hauling. In any case, EPA notes that the Anchorage processors hauling to Seward have access to the Anchorage city landfill on an emergency basis, at a cost of $5.00 per ton.

EPA estimates hauling costs from Anchorage to the Seward facility at $20.00 per ton of waste, based on the experience of the five Anchorage processors who have been using the Seward facility. The Seward facility has been paying the processors from $8.00 to $12.00 per ton, depending on the type of waste. The net cost therefore is expected to be between $8.00 and $12.00 per ton.

As further support for the denial, EPA notes that the Municipality of Anchorage plans to build a small boat harbor within a few hundred feet of the petitioning cannery's outfall. The Municipality's comments on the petition state that the City has twice advised the cannery that any aesthetic, public health or navigation problems resulting from the operation must be avoided. The Municipality also indicated concern that serious water quality problems may arise if the suspension of EPA's screening requirements is continued. The Municipality's water quality concerns alone are not, of course, determinative of the question of available technology. However, they do further emphasize the significance for this location of the effluent reduction benefits which the technology can achieve.

Petersburg

EPA proposes to deny the petition to reclassify Petersburg as "remote." Denial is proposed because a reduction facility already exists in Petersburg, providing a viable alternative for disposal of petitioner's wastes at reasonable cost. Inclusion of the petitioner's wastes with those of other processors in the area would make this a profitable reduction facility. Acceptance of this petition could result in closure of this facility, if additional Petersburg processors turned to discharging their wastes. Unemployment from closing of the reduction facility and environmental damage could result.

EPA estimates that three round trips per day by a five ton flat bed truck would be adequate to carry the petitioning facility's peak production waste to be reduction plant. It appears that this can be arranged without a large dock addition. The Agency believes that long term contractual agreements could

be reached between the petitioner and the reduction facility that would minimize any problems that might be created by petitioner's reliance on a competitor's facility.

The Agency also believes that the existing collective reduction facility, with a capacity to process 100 metric tons per day of waste solids and with additional solids storage capacity, is large enough to handle waste supplied during peak waste generation, amounting to 53,000 pounds of waste solids per day from the petitioning facility.

Ketchikan and Ward's Cove

EPA proposes to deny the petition to reclassify the City of Ketchikan as "remote," and to add Ward's Cove as an additional "non-remote" location as a part of the Ketchikan processing center. This proposed action is based on consideration of the extent of seafood processing in the Ketchikan/Ward's Cove area. First, there are three processors in Ketchikan, accounting for roughly 11,000,000 pounds of waste per year. An additional processor operates at Ward's Cove, 3.2 miles by road from Ketchikan. This processor generates approximately 5,000,000 pounds of waste per year. EPA believes that the Ward's Cove and Ketchikan processors are sufficiently close that they could participate in a joint waste reduction facility and that their combined wastes are sufficient to justify such an undertaking. The proposed redefinition of "non-remote" focusing on processing centers would cover the Ketchikan/Ward's Cove area as a unit.

The inclusion of the Ward's Cove facility with the three other Ketchikan facilities increases the amount of waste produced in that area by approximately 40 percent, based on 1980 production data. A revised cost analysis shows that a collective reduction facility with a capacity of 250 metric tons per day of waste solids, could process the waste produced by all plants in this processing center for about $8.00 per ton of waste. This is based on conservative estimates—a 20 percent fish meal recovery rate and a fish meal price of $425.00 per ton. Should the actual average fish meal price be higher than $425.00 per ton, reduction facility operators would realize higher levels of revenue. Consequently, the net costs of solids disposal for the processors would be lower.

Projected increases in bottom fish processing should also help a Ketchikan reduction facility achieve a positive return. The hatcheries program in Cordova, if proven successful, might also be implemented in Ketchikan. This would tend to smooth out the cyclic nature of salmon production and related waste available for reduction.

Cordova

EPA proposes to deny the petition to reclassify the City of Cordova as "remote." The primary reason for the proposal is that four prosessors are located in Cordova and generate sufficient waste, on the order of 12,000,000 pounds per year, to make Cordova a viable site for a reduction facility. Also, a salmon hatchery program has been initiated in Cordova in an effort to smooth out the cyclic nature of the salmon runs. If this program proves successful, it should assure a more constant supply of salmon for the Cordova processors and hance a more certain supply of seafood processing wastes for a reduction facility in the city.

Petitioners argued that an EPA contractor's feasibility study for a Cordova reduction facility was based on erroneous assumptions. EPA's updated market feasibility study utilized a larger collection reduction facility with a capacity of 100 metric tons of waste solids, and considered a 20 percent, not 25 percent, fish meal recovery rate, consistent with the position taken in the Petition. The result, based on a fish meal price of $425.00 per ton and a shell fish meal price of $125.00 per ton, showed an average cost of reduction to be $22.71 per ton of waste. Here again, higher fish meal prices would result in lower net solids disposal costs for the processors. Furthermore, larger returns can also be expected if bottom fish processing increases or if there is any increase in salmon production.

EPA notes that the city of Cordova itself had commenced a feasibility study relating to installation of a reduction facility. This study was halted when EPA's suspension of Cordova's "non-remote" classification made it appear that processors would continue grinding and discharging, so that no wastes would be available for reduction. EPA is optimistic that this study may be resumed.

VI. Response to Comments

EPA received five comments on and recommended responses to the petition for modification. A summary of each of these submissions follows:

1. Comment: The Department of Interior, Fish and Wildlife Service, Anchorage, Alaska, stated generally that seafood wastes can generate water quality problems and that barging, if properly planned and implemented, can achieve an effluent reduction benefit. The commenter also pointed out that any relaxation of effluent standards will inhibit the development of recycling technologies. The Fish and Wildlife Service recommended denial of the petition.

Response: EPA proposes to follow the commenter's recommendation as to most petitioners.

2. Comment: The State of Maine, Department of Environmental Protection, also stated that discharge of seafood wastes can generate water quality problems. It asserted that the cost of screening and barging for the petitioners is not out of line with the amount spent for water pollution control by many other industries. According to this commenter, the Alaskan petitioners have been given an unfair economic advantage by not having to install BPT treatment by 1977, and recommended that screening be maintained as a minimum level of treatment for the petitioning seafood processors.

Response: EPA agrees with this recommendation as to most petitioners.

3. Comment: The Municipality of Anchorage indicated that the present outfall from the petitioning processor in Anchorage is located within a few hundred feet of a proposed site of a small boat harbor. Water quality and navigation problems may occur if present discharge practices continue. Any suspension of BPT beyond the 1981 season would be looked on very seriously by the Municipality. The Municipality of Anchorage thus recommended denial of the petition for the Municipality of Anchorage.

Response: EPA proposes to follow the Municipality's recommendation.

4. Comment: Chugach Natives, Inc., stated that it is hard for people, econmically affected, to understand technology-based regulations when the actual and apparent impact is negligible. There is no adequate basis in effluent reduction versus economic impact when barging or landfill are the only cost-effective solids disposal alternatives. The commenter recommended that EPA accept the petition, at least for Cordova.

Response: EPA proposes to deny the petition for Cordova. As explain some depth previously, EPA believes that a collective reduction facility can be operated in the Cordova processing area at reasonable economic cost or possibly even at a profit. Use of a reduction facility would prevent pollutants from being returned to the ocean and hence would result in a clear effluent reduction benefit.

5. Comment: Chugach Alaska Fisheries, Inc., explained that it processes seafood in the Cordova area and is affected by the Cordova suspension and offers many jobs and

processes the catches of many local fishermen. It states that although this facility is classified as part of the Cordova processing area, in fact the economics of scale do not apply. The commenter urges EPA to consider the results of new advances in grinding technology. It asserted that a fish meal plant in the Cordova area would not be a profitable venture. Therefore, it was recommended that EPA grant the petition for the Cordova area.

Response: EPA proposes to deny the petition for Cordova, for reasons set forth in the response to comment 4.

VII. Solicitation of Comments

The Agency, in revising the definition of "non-remote" to focus on processing centers, has identified two additional areas which can be considered as "non-remote." They include the Kenai Peninsula and Dutch Harbor.

The Agency particularly invites comments regarding inclusion of these two processing centers as "non-remote" for purposes of compliance with BPT regulations.

Alternatively these processing centers may be included as "non-remote" in the soon-to-be-proposed BCT regulations, which would allow processors at these locations until 1984 to comply with effluent limitations based on screening technology.

Kenai Peninsula

The Kenai Peninsula hosts many seafood processors within a relatively small geographical area. Their combined waste production in 1976 was greater than 6,800,000 pounds. The processors are dispersed around the perimeter of the peninsula in such municipalities as Kenai, Soldotna, Ninilchik, Homer, and Seward. Locations within the peninsula are linked with a modern paved road system. EPA believes the existing collective reduction facility at Seward is accessible to processors on the peninsula. The capacity of this plant, 150 metric tons per day, should be adequate to handle all the waste from processors on the Peninsula as well as the wastes from Anchorage's petitioning processor.

Dutch Harbor

The Dutch Harbor area has grown in recent years to be the second largest seafood processing port in the world, in terms of total fish landed. Data from 1976 show that over 27,500,000 pounds of waste are generated there per year.

The Agency is aware that seafood processing in Dutch Harbor is limited almost exclusively to shellfish, and that the economics of a reduction facility for shellfish wastes are less favorable than those for finfish wastes. EPA also recognizes that barging conditions in the Bering Sea can be difficult. The Agency is also aware that most processors in this area are located on boats which leaves little space for screening and solids collection. The Agency's initial cost analysis showed that reduction would be more costly in Dutch Harbor than in most other processing centers.

In light of the problems which may develop in attempting to dispose of screened seafood wastes in the Dutch Harbor area, EPA particularly solicits comments on this area in the "non-remote" classification.

The Agency also solicits comments, data, and information on the following:

(1) Feasibility of shellfish reduction and chitin/chitosan production and marketing, and the long-term economic prospects for these products.

(2) Possible increase in finfish landings and improved market conditions which result in more favorable conditions for implementing finfish reduction processes in Alaska, including the potential for improved, American-made reduction technologies.

(3) Finfish and shellfish landing projections and all related technical and economic factors which bear upon waste disposal and reduction in the Dutch Harbor and Kenai Peninsula areas, including:

a. transportation costs to Washington of by-products

b. present waste treatment equipment in place

(4) Information on the market for Alaskan seafood by-products such as:

a. factors affecting supply

b. demand trends

c. price trends

d. growth potential of the fish meal market

e. relationship with and future trends in competing soybean and oil markets

(5) Any information that would assist the Agency in assessing plant specific economic impacts of reduction facility costs for "non-remote" processors to include:

- production data
- financial data

(6) Possible use of seafood wastes as an energy source through methane production.

Dated: December 31, 1980.

Douglas M. Costle,

Administrator.

Subpart D—Non-Remote Alaskan Crab Meat Processing Subcategory

1. Section 408.40 is proposed to be revised to read as follows:

§ 408.40 Applicability; description of the non-remote Alaskan crab meat processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing, in non-remote Alaska, of dungeness, tanner, and king crab meat. The effluent limitations contained in this Subpart D are applicable to facilities located in processing centers including, but not limited to, Anchorage, Cordova, Ketchikan and Ward's Cove, Kodiak, and Petersburg.

Subpart F—Non-Remote Alaskan Whole Crab and Crab Section Processing Subcategory

2. Section 408.60 is proposed to be revised to read as follows:

§ 408.60 Applicability; description of the non-remote Alaskan whole crab and crab section processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing, in non-remote Alaska, of dungeness, tanner and king whole crab and crab sections. The effluent limitations contained in this Subpart F are applicable to facilities located in processing centers including, but not limited to, Anchorage, Cordova, Ketchikan, and Ward's Cove, Kodiak, and Petersburg.

Subpart I—Non-Remote Alaskan Shrimp Processing Subcategory

3. Section 408.90 is proposed to be revised to read as follows:

§ 408.90 Applicability; description of the non-remote Alaskan shrimp processing subcategory.

The provisions of this subpart are applicable to discharges resulting from the processing of shrimp in non-remote Alaska. The effluent limitations contained in this Subpart I are applicable to facilities located in processing centers including, but not limited to, Anchorage, Cordova, Ketchikan and Ward's Cove, Kodiak, and Petersburg.

Subpart P—Alaskan Hand-Butchered Salmon Processing Subcategory

4. Section 408.162(b)(1) is proposed to be revised to read as follows:

§ 408.162 [Amended]

* * * * *

(b) * * *

(1) Any hand-butchered salmon processing facility located in a processing center including, but not limited to, Anchorage, Cordova, Ketchikan and Ward's Cove, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per 1,000 kg of seafood)	
TSS	2.6	1.6
Oil and grease	0.31	0.19
pH—Within the range 6.0 to 9.0.		
	English units (pounds per 1,000 lb of seafood)	
TSS	2.6	1.6
Oil and grease	0.31	0.19
pH—Within the range 6.0 to 9.0.		

* * * * *

5. Section 408.165(a)(1) is proposed to be revised to read as follows:

§ 408.165 [Amended]

(a) * * *

(1) Any hand-butchered salmon processing facility located in a processing center including, but not limited to, Anchorage, Cordova, Ketchikan and Ward's Cove, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per 1,000 kg of seafood)	
TSS	2.3	1.4
Oil and grease	0.28	0.17
pH—Within the range 6.0 to 9.0.		
	English units (pounds per 1,000 lb of seafood)	
TSS	2.3	1.4
Oil and grease	0.28	0.17
pH—Within the range 6.0 to 9.0.		

* * * * *

Subpart Q—Alaskan Mechanized Salmon Processing Subcategory

6. Section 408.172(b)(1) is proposed to be revised to read as follows:

§ 408.172 [Amended]

* * * * *

(b) * * *

(1) Any mechanized salmon processing facility located in a processing center including, but not limited to, Anchorage, Cordova, Ketchikan and Ward's Cove, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per 1,000 kg of seafood)	
TSS	44	26
Oil and grease	29	11
pH—Within the range 6.0 to 9.0.		
	English units (pounds per 1,000 lb of seafood)	
TSS	44	26
Oil and grease	29	11
pH—Within the range 6.0 to 9.0.		

* * * * *

7. Section 408.175(a)(1) is proposed to be revised to read as follows:

408.175 [Amended]

(a) * * *

(1) Any mechanized salmon processing facility located in a processing center including, but not limited to, Anchorage, Cordova, Ketchikan and Ward's Cove, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per 1,000 kg of seafood)	
TSS	42	25
Oil and grease	28	10
pH—Within the range 6.0 to 9.0.		
	English units (pounds per 1,000 lb of seafood)	
TSS	42	25
Oil and grease	28	10
pH—Within the range 6.0 to 9.0.		

* * * * *

Subpart T—Alaskan Bottom Fish Processing Subcategory

8. Section 408.202(b)(1) is proposed to be revised to read as follows:

§ 408.202 [Amended]

* * * * *

(b) * * *

(1) Any Alaskan bottom fish processing facility located in a processing center including, but not limited to, Anchorage, Cordova, Ketchikan and Ward's Cove, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	(Metric units) kg/1kg of seafood	
TSS	3.1	1.9
Oil and grease	4.3	0.56
pH—Within the range 6.0 to 9.0.		
	(English units) lb/1,000 lb of seafood	
TSS	3.1	1.9
Oil and grease	4.3	0.56
pH—Within the range 6.0 to 9.0.		

* * * * *

9. Section 408.205(a)(1) is proposed to be revised to read as follows:

§ 408.205 [Amended]

(a) * * *

(1) Any Alaskan bottom fish processing facility located in a processing center including, but not limited to, Anchorage, Cordova, Ketchikan and Ward's Cove, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	(Metric units) kg/1kg of seafood	
TSS	1.9	1.1
Oil and grease	2.6	0.34
pH—Within the range 6.0 to 9.0.		
	(English units) lb/1,000 lb of seafood	
TSS	1.9	1.1
Oil and grease	2.6	0.34
pH—Within the range 6.0 to 9.0.		

* * * * *

Subpart AC—Alaskan Scallop Processing Subcategory

10. Section 408.292(b)(1) is proposed to be revised to read as follows:

§ 408.292 [Amended]

* * * * *

(b) * * *

(1) Any Alaskan scallop processing facility located in a processing center including, but not limited to, Anchorage, Cordova, Ketchikan and Ward's Cove, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	(Metric units) kg/kkg of seafood	
TSS	6.6	1.4
Oil and grease	7.7	0.24
pH—Within the range 6.0 to 9.0.		
	(English units) lb/1,000 lb of seafood	
TSS	6.0	1.4
Oil and grease	7.7	0.24
pH—Within the range 6.0 to 9.0.		

* * * * *

11. Section 408.295(a)(1) is proposed to be revised to read as follows:

§ 408.295 [Amended]

(a) * * *

(1) Any Alaskan scallop processing facility located in a processing center including, but not limited to, Anchorage, Cordova, Ketchikan and Ward's Cove, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per 1,000 kg of seafood)	
TSS	5.7	1.4
Oil and grease	7.3	0.23
pH—Within the range 6.0 to 9.0.		
	English units (pounds per 1,000 lb of seafood)	
TSS	5.7	1.4
Oil and grease	7.3	0.23
pH—Within the range 6.0 to 9.0.		

* * * * *

Subpart AE—Alaskan Herring Fillet Processing Subcategory

12. Section 408.312(b)(1) is proposed to be revised to read as follows:

§ 408.312 [Amended]

* * * * *

(b) * * *

(1) Any herring fillet processing facility located in a processing center including, but not limited to, Anchorage, Cordova, Ketchikan and Ward's Cove, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	(Metric units) kg/kkg of seafood	
TSS	32	24
Oil and grease	27	10
pH—Within the range 6.0 to 9.0		
	(English units) lb/1,000 lb of seafood	
TSS	32	24
Oil and grease	27	10
pH—Within the range 6.0 to 9.0.		

* * * * *

13. Section 408.315(a)(1) is proposed to be revised to read as follows:

§ 408.312 [Amended]

(a) * * *

(1) Any herring fillet processing facility located in a processing center including, but not limited to, Anchorage, Cordova, Ketchikan and Ward's Cove, Kodiak, and Petersburg shall meet the following limitations:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	(Metric units) kg/kkg of seafood	
TSS	23	18
Oil and grease	20	7.3
pH—Within the range 6.0 to 9.0		
	(English units) lb/1,000 lb of seafood	
TSS	23	18
Oil and grease	20	7.3
pH—Within the range 6.0 to 9.0.		

* * * * *

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Part VI

Environmental Protection Agency

Proposed Disposal Standards for Inactive Uranium Processing Sites; Proposed Rule and Extension of Comment Period

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 192

[AH-FRL 1610-4]

Proposed Disposal Standards for Inactive Uranium Processing Sites; Invitation for Comment

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule and extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) requests comments on proposed standards for disposal of residual radioactive materials (mainly tailings) from inactive uranium processing sites. EPA has developed these standards pursuant to Section 275(a) of the Atomic Energy Act, 42 U.S.C. Section 2022(a), as added by Section 206(a) of PL 95-604, the Uranium Mill Tailings Radiation Control Act of 1978. PL 95-604 requires the Department of Energy to conduct remedial actions for designated inactive uranium processing sites in accordance with standards promulgated by EPA.

The proposed standards apply to disposal of tailings which qualify for remedial actions under Title I of PL 95-604, and set limits on their radon release to the atmosphere and on water contamination. The standards also require tailings to be disposed of in a way that provides a reasonable expectation that these limits will be satisfied for at least one thousand years.

We have already proposed standards for the cleanup of open lands and buildings contaminated with residual radioactive materials from inactive uranium processing sites (45 FR 27370-27375, April 22, 1980). The cleanup standards were also made immediately effective as interim standards pending public review and promulgation of final standards (45 FR 27366-27368, April 22, 1980). We are hereby extending the comment period for the cleanup standards we proposed earlier so that it will coincide with the comment period for the disposal standards.

Additional background material for the proposed cleanup and disposal standards is given in a Draft Environmental Impact Statement (EIS) that EPA is issuing. Copies of an earlier version of the draft EIS were placed in the Docket and in Reading Rooms at EPA's Regional Offices when the cleanup standards were published. In addition to this request for written comments, the Agency will shortly announce the time and place of hearings at which interested persons may present comments on both the previously proposed cleanup standards and these disposal standards.

DATE: Comments on both the cleanup standards and the disposal standards should be received on or before May 11, 1981.

ADDRESS: Comments on the proposed cleanup and disposal standards should be submitted to Docket No. A-79-25, which is located in the Environmental Protection Agency, Central Docket Section, West Tower Lobby, 401 M Street SW., Washington, D.C. 20460. Single copies of the Draft Environmental Impact Statement (EPA Report 520/4-80-011) may be obtained by writing to the address given below.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley Lichtman, Criteria & Standards Division (ANR-460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460; telephone number 703-557-8927.

SUPPLEMENTARY INFORMATION:

I. Introduction

The proposed standards were developed by EPA at the direction of Congress in order to protect public health, safety, and the environment from uranium mill tailings produced at processing sites which are now inactive. There are two major parts of the remedial actions necessary for this protection: cleanup and disposal. The cleanup process reduces the potential health consequences of tailings which have been dispersed from their original location on a tailings pile or used in construction. Disposal is the operation which places the tailings themselves in a condition which will be safe for a long time. The disposal site may be at the original location of the tailings, or a new one. Standards are proposed here for the disposal aspects of the remedial actions.[1]

In order to carry out our responsibility under PL 95-604 to set generally applicable standards for uranium mill tailings, we have examined their potential public health and environmental impacts. This examination established the radiological and nonradiological characteristics of tailings which require control.

Tailings are hazardous primarily because: 1) breathing radon and its decay products exposes the lungs to alpha particles; 2) the body may be exposed to gamma rays; 3) radioactive materials and nonradioactive toxic elements from tailings may be swallowed with food and water. The radiation hazard from tailings lasts for many thousands of years, and nonradioactive toxic elements persist indefinitely. The longevity of these hazards played a major role in determining the proposed standards.

Although the available data are consistent with many models, we believe that a linear, nonthreshold dose-effect relationship is a reasonable basis for deriving estimates of radiation risk to the general public and for establishing regulations. This model assumes that any radiation dose presents some risk to humans and that the risk of low doses is directly proportional to the risk demonstrated at higher doses. We recognize, however, that the data preclude neither a threshold for some types of radiation below which there is no damage to people, nor the possibility that low doses may do more damage to people than the linear model implies.

The alpha particles from inhaled radon decay products can cause lung cancer. Also, gamma rays can cause cancers, teratogenic effects, and genetic damage. Our health risk estimates are based on our review of epidemiological studies conducted in the United States and other countries of underground miners of uranium and other metals who have been exposed to radon decay products, and on three reports: *The Effects on Population of Exposure to Low Levels of Ionizing Radiation* (1972) *Health Effects of Alpha Emitting Particles in the Respiratory Tract* (1976) by the Advisory Committee on the Biological Effects of Ionizing Radiation of the National Academy of Sciences (the BEIR Committee), and the report of the United Nations Scientific Committee on the Effects of Atomic Radiation entitled *Sources and Effects of Ionizing Radiation* (1977). Details of our risk estimates are provided in *Indoor Radiation Exposure Due to Radium-226*

[1] The cleanup standards (Subpart B and Subpart C) were proposed earlier (45 FR 27370-27375, April 22, 1980), and simultaneously also were declared immediately effective as interim standards (45 FR 27366-27368, April 22, 1980). We issued interim cleanup standards in order to have standards in effect as soon as possible, because some buildings have been found where tailings are causing radiation levels that are very hazardous to anyone exposed to them for long times. Public Law 95-604 precludes undertaking remedial action before EPA has promulgated standards. The interim cleanup standards permit the Department of Energy to clean up open lands and buildings under PL 95-604 to alleviate these problems. In addition to having issued interim cleanup standards, however, we are following the public review process contemplated by PL 95-604 for promulgating final cleanup standards.

In this notice we propose disposal standards and invite the public to comment on them. For the convenience of the reader, we are restating here some background material from our earlier notice proposing cleanup standards.

in Florida Phosphate Lands (EPA 520/4–78–013) and in the Draft Environmental Impact Statements (EIS) (EPA 520/4–80–011).

Data from studies of underground miners lead to uncertain risk estimates for exposure to radon and its decay products. This uncertainty is increased when the data are used to estimate the risk to the general population. Nevertheless, we believe the information is sufficient to give a basis for public health standards. For gamma ray exposure standards the data base is very large and good, but again involves extrapolation for application to tailings.

Oftentimes it is not possible to remove all the risk to people exposed to radiation or many other hazardous materials. In deciding how much we should attempt to reduce the risk, we considered the longevity, efficacy, and costs of remedial actions for uranium mill tailings as well as the level of risk. We also considered things which are not easily quantified, such as equity of risk distribution, and administrative difficulties. Finally, we considered the overall implementation costs and protection offered by alternative standards to determine those which are most reasonable.

EPA's mandate is to set standards which apply to any site and method of control. Therefore, our analyses of technology, costs, risk, and other pertinent factors emphasize the general characteristics of uranium mill tailings and their control. The law gives other agencies of Government the authority to decide how these standards will be satisfied at specific locations. They will issue site-specific Environmental Impact Statements where they are required under the National Environmental Policy Act, or an Environmental Assessment will be prepared to determine whether such an EIS is required.

The information, reasoning, and judgments which lead us to issue these particular proposed disposal standards for tailings piles at inactive uranium processing sites are summarized below. Additional background information and more complete presentations of our reasoning and judgments are given in the Draft Environmental Impact Statement.

II. Disposal of Tailings

In PL 95–604, the Congress stated its findings that tailings ". . . may pose a potential and significant radiation health hazard to the public, . . . and . . . that every reasonable effort should be made to provide for stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings." The Environmental Protection Agency was directed by Congress to set ". . . standards of general application for the protection of the public health, safety, and the environment . . ." for such materials. The legislative record also shows Congress intended that these standards not be site-specific.

The Committee report on the Uranium Mill Tailings Radiation Control Act expressed the intention that the technologies used for remedial actions should not be effective for only a short period of time. "The Committee does not want to visit this problem again with additional aid. The remedial action must be done right the first time," it stated (H.R. Rep. No. 1480, 95th Cong., 2nd Sess., page 40(1978)). Our proposed disposal standards are meant to ensure this long-lasting solution for those tailings piles at inactive processing sites that are covered by PL 95–604.

Pathways and Health Effects

Uranium mill tailings can effect people's health through four basic pathways. These are:

1. *Diffusion of radon-222, the noble gas decay product of radium-226, from the tailings to the air.* Breathing radon-222 and its short half-life decay products (principally polonium-218, bismuth-214, and polonium-214) exposes the lungs to alpha particles. Smaller additional doses to the lungs and other organs result from swallowing and breathing the long-lived radon-222 decay products (lead-210 and polonium-210).

2. *Small particles of tailings material in the air.* Wind erosion of unstabilized tailings piles results in airborne tailings material. Intake of thorium-230, radium-226, and lead-210 are the principal concerns from this pathway. The predominant doses are to the lungs from breathing these radionuclides and to the bones from eating foods containing them.

3. *Waterborne material.* Both wind and water flowing over or through the tailings can carry radioactive and other toxic materials to bodies of water. This could cause long-term contamination of surface and underground water, and human intake of toxic substances.

4. *External gamma radiation exposure from tailings.* A tailings pile emits gamma radiation, since many of the radioactive nuclei in it produce gamma rays along with their other decay products. The most important gamma emitters are lead-214 and bismuth-214.

The increase in cancer possibly caused by airborne substances from a pile can be estimated reasonably well by using general environmental transport models. However, the levels of waterborne contaminants and their effects are highly site-specific and we can only discuss them in general. The possible effects of direct gamma radiation from the piles are easy to estimate. They are small, except very close to the tailings piles.

EPA's analysis of the exposure pathways for uranium mill tailings piles relies on existing information provided by NRC and DOE and their contractors, and on earlier studies by EPA. [3] To significantly enhance this knowledge would require several years of intensive investigation. We believe this is unnecessary and that such a delay in promulgating standards would not be in the public interest.

Radiation Effects from Air Pathways

Based on the current U.S. population, we estimated the air-transmitted hazards of uranium mill tailings piles for people close to the pile (within several miles), in the surrounding region (within 50 miles, but not "close to the pile"), and in the remainder of the nation. Four sources of exposure were considered: inhaled short-lived radon decay products, the most important source of potential cancers; the long-lived radon decay products, principally lead-210; airborne tailings; and direct gamma radiation. Estimating the risk from exposure to the short-lived radon decay products and the gamma radiation is relatively straightforward. However, the pathways and dose calculations for long-lived radon decay products and airborne tailings depend very heavily on assumptions about the use and preparation of locally grown foodstuffs. Dose estimates for these pathways are given in the NRC Draft Generic Environmental Impact Statement on Uranium Milling (DGEIS). These estimates are likely to be high because of the assumptions made in regard to local foods. Nevertheless, the risks are small compared with those due to the short-lived radon decay products.

From our analysis we conclude:

1. Lung cancer caused by radon's short-lived decay products is the dominant radiation hazard from untreated uranium mill tailings piles on local, regional, and national scales. Effects of long-lived radon decay

[3] We analyzed 22 of the 25 tailings piles at inactive processing sites DOE has designated for remedial actions under PL 95–604. The other 3 piles were determined to be eligible for remedial actions only after our assessment was nearly completed. However, based on general descriptions of the 3 piles, we believe that including them in the assessment would not cause us to change our proposals for disposal standards that apply to all the designated sites.

products, of windblown tailings, and of direct gamma radiation from the piles are much less significant.

2. Individuals near a pile bear much higher radiation risks than those far away. For example, we estimate that individuals living continuously one mile from a large pile would have about 200 times as great a chance of a fatal lung cancer caused by radon decay products as persons living 20 miles away (7 in 10,000 versus 3 in 1,000,000). People even closer to some of the piles at inactive processing sites bear increased lifetime lung cancer risks as high as 4 chances in 100.

3. The total number of cancer deaths estimated to be caused by a uranium mill tailings pile depends strongly on the size and locations of the local populations.

4. Based on present population data, all the 22 piles at inactive sites we studied, taken together, may cause about 40 to 90 deaths from lung cancer per century among persons living 50 miles or more away from a pile. When local and regional rates are added to these, the estimated total national effect of all the 22 piles is about 200 premature deaths from lung cancer per century; i.e., about 2 deaths each year.

Part of the uncertainty in these estimates is due to necessary approximations in estimating the environmental radiation levels a tailings pile produces, and what dose people will receive. Additional uncertainty comes from our incomplete knowledge of the effects on people of these generally low exposures.

Our estimates are based upon current population sizes and geographical distributions. Overall increases in national population would raise the estimated national effects in approximate proportion. Development of new population centers near currently remote piles, and substantial growth of cities already near one, would increase these estimates proportionately to this growth.

Water Pathways

The water-transmitted hazards of uranium mill tailings are due both to radionuclides and to nonradioactive toxic substances, such as arsenic, lead, selenium, and molybdenum. Uranium, thorium, radium, and nonradioactive toxic substances can contaminate water resources and affect crops, animals, and people. A theoretical analysis of a model pile performed for NRC's DGEIS on Uranium Milling showed that ground water contamination by selenium, sulfate, manganese, and iron might exceed current drinking water standards over an area 2 kilometers wide and 8 to 30 kilometers long.

Tailing piles at inactive mill sites already have lost much of the water deposited in them during mill operation. The water evaporated, went underground, or ran out on the surface. Any future water contamination by the pile would be from erosion, rain, snow, or flooding. The quality of streams and lakes could be degraded by contaminated seepage from a pile, or by tailings which are carried to them by wind or water.

The movement of contaminants to ground water depends on a combination of complex chemical and physical properties of the underground environment, and on conditions such as precipitation and evaporation. Chemical and physical processes in the subsoil partly remove contaminants from water passing through it. However, some contaminants, such as selenium, arsenic, and molybdenum, can occur in forms which are not removed.

Future ground water contamination could be caused by either past or future releases of toxic substances from the piles. These substances are likely to move slowly through the ground. Ground water itself can move more slowly than a few feet per year, and only in coarse or cracked materials does the speed exceed one mile per year. For these reasons, pollutants from tailings may not affect the quality of nearby water supply wells for decades or longer after they are released. However, once polluted, the quality of such water supplies can not be quickly restored by eliminating the source. Even if a pile is covered so that there is no further run-off or seepage, it may take longer to restore the original water quality throughout the affected area than the time from the start of the pile to the first contamination of water supplies.

In the draft EIS for these proposed standards, we review the health problems that could arise from using water containing nonradioactive toxic substances from uranium mill tailings.

Control of Tailing Piles

The objectives of tailings disposal should be to control harmful substances so as to avoid their spread to the general environment and to people. The longevity or permanence of control methods is of prime concern. Because of the long lifetimes of the radioactive contaminants (thorium-230, for example, has a half-life [3] of about 80,000 years) and the presence of other toxic chemicals (which never decay), the potential for harming people will persist indefinitely. Many interrelated factors affect the long-term performance of tailings pile disposal methods. They include external natural phenomena, such as earthquakes, floods, windstorms, and glaciers, internal chemical and mechanical processes, and human activities. Predicitions of the stability of the piles become less certain as the time period increases. Beyond several thousand years, long-term geological processes and climatic change will determine the effectiveness of most "permanent" control methods.

Attempts to stabilize tailings piles at inactive sites by applying thin covers on them have had only limited and short-term control objectives, but the growing awareness of the hazards of tailings and passage of PL 95-604 in 1978 have led to increasing research on effective long-term control methods. Although several States and the NRC have begun regulating tailings at active mills, no disposal method has been tested sufficiently to establish its practicality or effectiveness over long periods of time. However, we believe the basic principles of effective long-term control methods are understood.

Radon release control methods range from a simple barrier between the tailings and the atmosphere to such ambitious treatments as embedding tailings in cement or processing them to remove the radon sources. Covering the tailings with permeable barriers, such as soil, slows down the radon passing through; less is released because some of the radon decays before it gets to the air. The more permeable the covering material, the thicker it must be for a given reduction in radon release. Maintaining the integrity of thin impermeable covers, such as plastic sheets, over periods as short as tens to hundreds of years, however, is highly uncertain under the likely range of chemical and physical stresses.

Methods that control radon (a gas) will also prevent releases of tailings particulates to the air or to surface water.[4] Similarly, permeable covers sufficiently thick for effective radon control will also absorb gamma radiation very well (although thin impermeable covers will not). Disruptions of the tailings by streams, floods, wind, or rain can be delayed by contouring the pile and its cover, and by

[3] A half-life is the time it takes for a given quantity of a radioactive isotope to decay to half that quantity.

[4] However, recent studies suggest that some processes occurring in tailings piles tend to carry dissolved contaminants upward, perhaps even through soil coverings. Disposal system designers must carefully consider this possibility. The Department of Energy currently is intensively investigating a variety of disposal methods.

stabilizing the surface (with stones, for example) to make it resistant to erosion. If necessary, erosion can be delayed by burying the tailings pile in a shallow pit or moving it away from a flood-prone or otherwise problematic site.

As an alternative to covering tailings on or just below the Earth's surface, nearly complete long-term control of contaminant releases to air and surface water could be achieved by burying them in deep mined cavities. In most cases, however, direct contact with ground water would be difficult to avoid. The potential hazards of tailings could also be reduced by chemically processing them to remove contaminants. Such processes have limited efficiencies, however, so the residual tailings would still require careful disposal. Furthermore, the extracted substances, radium and thorium, for example, would be concentrated and perhaps even more hazardous than before.

In the draft EIS we analyze the health and environmental protection benefits and the costs of several levels of controlling tailings, assuming a variety of potential control methods. We find that radon emission levels of an "average" pile can be reduced to approximately the levels characteristic of ordinary land by applying a soil cover at costs in a range of about 1 to 14 million (1979) dollars. The cost does not depend much on the degree of radon reduction. Rather, the range of costs mainly reflects the choices of materials for stabilizing the surface, the possible need for specific water protection features, and transportation and site preparation costs if a new site is needed. We estimate the costs for deep disposal to be about 8 to 63 million (1979) dollars; the lowest estimate assumes the availability of a suitable open-pit mine close to the tailings pile and other favorable circumstances. Disposal using chemical processing to extract radium and perhaps other substances would cost approximately 78 million (1979) dollars per pile.

Selection of Proposed Disposal Standards

Proposed Radon Emission Standards

From several perspectives, we find it reasonable to reduce radon emission rates from tailings at inactive processing sites from their current values of several hundred pCi/m^2 sec [5] to a range more characteristic of natural emission rates from ordinary land. Typical natural emission rates are from 0.5 to 1 pCi/m^2-sec, with variations up to several times these values not unusual.

After considering the alternatives, we have concluded that the numerical limit on pile emissions, following disposal, should be chosen in a range of about 0.5 to 2.0 pCi/m^2-sec. When this emission rate is added to that of a normal earth covering, the disposal site emission rate would still be within natural variations.

Several analyses [6] of controlling radon emission by covering piles with soil suggest that the required covering thickness rises sharply [7] near an emmision rate of about 1 pCi/m^2-sec. However, there has been no opportunity to test these analyses against full-scale field experience. If soil coverings should be less efficient in controlling radon than the analyses indicate, achieving a standard at the low end of the range could be much more difficult and expensive than we estimate. Yet, the health benefit so gained would be marginal. We therefore propose an allowed tailings emission rate of 2 pCi/m^2-sec, rather than a slightly lower figure, to allow for more technical flexibility in implementing the standards.

Higher control levels, say 10–40 pCi/m^2-sec, appear unjustified, because emission rates of that size can be lowered to 2 pCi/m^2-sec for about 10% additional cost.[8] With such elevated radon emissions, the probable need for land-use restrictions adjacent to the disposal site would place a continuing administrative burden on future generations.

We also find almost total control of radon release from the tailings unjustified. Incremental costs for achieving long-term emission rates lower than 2 pCi/m^2-sec rise rapidly relative to radon emission reduction and any health benefits that might be achieved. There is no need to restrict the use of land near the disposal site because of radon releases from the tailings for emission rates near 2 pCi/m^2-sec. We have not found any administrative or aesthetic advantages in further reductions.

We believe our approach is appropriate for the new and large-scale undertaking of tailing disposal. Typically, the proposed standard would reduce radon emissions and their possible effects by 99%. Measures that will cut down radon emissions this much for at least 1000 years (see below) will also eliminate blown tailings and excess gamma radiation. Therefore, implementing the radon control standard will virtually eliminate all the potential hazards except water pollution.

Proposed Ground Water Protection Standards

The proposed ground water protection standards provide that after tailings piles are disposed of the piles will not cause ground water concentrations of selected contaminants to exceed specified levels. We chose levels we believe are adequate to protect good quality ground water for direct human consumption and for a wide variety of other purposes. If upstream ground water already exceeds the specified concentration levels for causes other than tailings, then no further degradation is allowed.

Except as noted below, the specified concentration levels are the same as the maximum contaminant levels of the National Interim Primary Drinking Water Regulations (NIPDWR). We use these levels quite differently here, however, and our standards have no legal tie to the NIPDWR. Though fluoride levels are given in the NIPDWR, we are omitting them from the proposed standards because fluorides are not important constituents of tailings. Levels for molybdenum and uranium are not given in the NIPDWR, but we believe they are needed because of the abundance of these substances in tailings, their toxicity, and their likely mobility in ground water. We selected the proposed molybdenum level on the basis of avoiding toxic effects in humans. The proposed uranium level is the one for which our estimate of bone cancer risk is about the same as the estimated bone cancer risk from radium under the NIPDWR.

The contaminants we include in the proposed ground water standard cover the most hazardous tailings substances. Conditions that control these toxic substances will also control many other substances. We do not wish to complicate the task of demonstrating compliance with the standard by including nonessential requirements, such as a much-expanded list of covered contaminants. It is in this same spirit that we are proposing to allow minimal degradation of very good quality water. There is no clear need for stricter standards than we are proposing, and substantial additional resources could be required to meet them for some piles.

[4] pCi/m^2-sec stands for picocuries per square meter per second, a measure of the release rate of radioactivity from a surface. A curie is the amount of radioactive material that produces 37 billion nuclear transformations per second. A picocurie is a billionth of a curie. One picocurie produces a little more than two nuclear transformations per minute.

[5] These studies are cited in the draft EIS.

[7] Reducing the emission rate from 10 to 9 pCi/m^2-sec (a 10% reduction) requires about 1 cm of added soil; the same size reduction from 2 to 1 pCi/m^2-sec (50%) takes about 50 cm of added soil.

[8] This assumes that covering the tailings with soils and clay is a feasible method for radon control to an emission rate of about 2 pCi/m^2-sec.

There is evidence of limited ground water contamination at some of the inactive sites, but the prospects for long-term contamination have not been fully assessed. The proposed ground water protection standards, however, apply only to releases from tailings that may occur after disposal of the piles. It may sometimes be possible to improve the quality of an already-contaminated aquifer, but we believe a generally applicable requirement to meet pre-set standards is not feasible.

The Department of Energy will prepare Environmental Impact Statements or Environmental Assessment reports for each site to support the decisions it will reach, with NRC's concurrence, on necessary remedial action to satisfy the standards. We believe that disposal methods that satisfy the standards will avoid ground water problems caused by future releases from the piles for at least 1000 years (see below). We expect DOE to consider the need for and practicality of controlling contaminants that have already seeped under the tailings pile, and to apply technical remedies that are found justified. Institutional controls should also be applied, however. If tailings are found to be contaminating ground water that is being used, we would expect DOE to provide alternate water sources or other appropriate remedies. We note that PL 95-604 will terminate DOE's authority to do so as a remedial action seven years after we promulgate standards, unless Congress extends the period. However, PL 95-604 provides for Federal custody of the disposal sites under NRC licenses after the remedial action program is completed. The custodial agency is authorized to carry out such monitoring, maintenance, and emergency measures as the NRC may deem necessary to protect public health. We expect NRC's monitoring requirements will be sufficient to ensure detection of any contamination by the tailings of usable ground water near the disposal sites, and to cause the custodial agency to take necessary measures to avoid any significant public health problem.

The actions necessary to avoid future ground water contamination may increase disposal costs in some cases up to double the cost of radon control alone. Available information suggests that such measures often will not be needed because many tailings piles do not threaten ground water. Moreover, where the standards might be exceeded only in the immediate neighborhood of a pile, we do not believe the substantial costs and disruptions necessary to avoid the violation would be warranted. Therefore, when existing tailings sites are used for disposal, we propose that the ground water protection standards be applied 1.0 kilometer from the pile. If tailings are moved to a new disposal site for any reason, then site selection and preparation are possible. We propose that the standard for a new site be applied 0.1 kilometer from the pile.

EPA is developing a ground water protection strategy which, to the extent that various legislative authorities allow and it is practicable, will guide the development of consistent regulations for a number of its programs. These include programs for disposal of solid wastes under the Resource Conservation and Recovery Act, underground injection control under the Safe Drinking Water Act, wastewater sludge disposal under the Clean Water Act, and disposal of uranium mill tailings under the Uranium Mill Tailings Radiation Control Act. Persons wishing to comment on this issue (consistency) should refer to EPA's notice (45 FR 66816-23, October 8, 1980) discussing various approaches for protecting ground water from hazardous wastes at land disposal sites covered under Subtitle C of the Resource Conservation and Recovery Act.

We would be pleased to receive suggestions for alternative formulations of ground water standards for disposal of uranium mill tailings covered by Title I of PL 95-604. Should the standard contain limits on allowed degradation, or should it specify nondegradation (no increases in concentrations), or no releases? If degradation limits are used, as we propose, in what other ways might they be determined? Should the standards apply at different distances from the tailings for new disposal sites than for existing sites? What should these distances be? Are more substances needed in the list of covered contaminants, or are any of them superfluous? Comments on these issues will be most useful when supported by reasons and data.

Proposed Surface Water Protection Standards

Wind, rain, or floods can carry tailings into rivers, lakes, and reservoirs. Pollutants may also seep out of the piles and contaminate surface waters. However, implementing the radon emission limits and the ground water protection requirements will greatly reduce this. A pile with severely restricted radon releases will not be able to release particulates to wind or water. Similarly, the ground water protection requirements imply limited water flow through the pile, which limits flow to the surface as well as under the ground. Thus, we expect that the radon emission and ground water standards will protect surface water. However, to assure adequate protection, we propose to require that surface water not be degraded by tailings after disposal of the piles. This means that after disposal, any contaminant releases from the disposal site should not increase the concentration of any harmful substances in surface water.

Longevity of Disposal Standards

Congress recognized that uranium mill tailings are hazardous for a long time, and directed EPA to set reasonable standards for their long-term disposal. We propose requiring a reasonable expectation that the radon emission and water protection standards for disposal of tailings piles will be satisfied for at least 1,000 years.

Institutional control methods such as recordkeeping, maintenance, monitoring, and land-use restrictions are useful adjuncts to an adequate disposal system, to provide greater protection than the standards require, and to regulate deliberate disruptions of the tailings by people.* However, we do not believe they should be relied upon for periods longer than a century, and are inappropriate for long-term control. They should not replace use of adequate long-term physical disposal methods.

The choice of a 1,000-year period of application results from practical considerations. Based on existing knowledge of control methods and natural processes, we believe it unreasonable to *generally* require longer protection under this remedial action program, because adequate methods for demonstrating compliance are not clearly available and may be very costly. We consider it likely, however, that the implementers of the standards will require longer protection at some piles, based on site-specific evaluations of disposal methods and their costs.

We believe 1,000 years meets the Congressional criterion that "the remedial action must be done right the first time." This does not mean our concern for the future is limited to 1,000 years, but does reflect our judgment that the remedial actions must be practical. We would be pleased to receive comments on whether 1,000 years is the best choice.

*For example, Sec. 104(h) of PL 95-604 anticipates that subsurface minerals at a tailings disposal site may be used. However, it provides that any tailings disturbed by such use "will be restored to a safe and environmentally sound condition." Therefore, we propose to apply the disposal standards to the use of any subsurface mineral rights acquired under the provisions of Sec. 104(h)

III. Implementation

PL 95–604 requires the Secretary of Energy to select and perform remedial actions for uranium mill tailings from inactive processing sites in accordance with EPA's standards, with the full participation of any State that shares the cost. Remedial actions will be selected and performed with the concurrence of the Nuclear Regulatory Commission and in consultation, as appropriate, with affected Indian tribes and the Secretary of the Interior. The costs of the remedial actions will be borne by the Federal Government and the States as prescribed by law.

The disposal standards will be implemented by showing that the disposal method provides a reasonable expectation of satisfying the radon emission limits and water protection provisions of the standards for at least 1,000 years. We intend for this expectation to be founded upon analyses of the physical properties of the disposal system and the potential effects of natural processes over time. Computational models, theories, and expert judgment will be major tools in deciding that a proposed disposal system will satisfy the standard. Post-disposal monitoring can serve only a minor role in confirming that the standards are satisfied. Where measurements are necessary to determining compliance, they may be performed within the accuracy of available field and laboratory instruments used in conjunction with reasonable survey and sampling procedures.

Disposal of tailings piles from inactive processing facilities is a large scale undertaking for which there is very little experience. Although preliminary engineering assessments for the sites affected by these standards have been performed, specific engineering requirements and costs to meet the standards at each site have yet to be determined. We believe disposal costs averaging about 11 million (1979) dollars per tailings pile are most likely. This estimate includes some costs that will probably not always be incurred, because some piles will not need to be moved to a new site or buried in an excavated pit. For some sites, the disposal cost will be partly offset by recovered land values or by uranium or other minerals recovered through reprocessing the tailings prior to disposal.

Exceptions

We believe that our proposed standards are the strictest that are justified for general application at all the inactive uranium processing sites covered by PL 95–604. However, providing greater protection may be reasonable at specific sites. Therefore, we urge the implementers to lower the residual risk as far below the required level as is reasonably achievable.

On the other hand, the standards could be unreasonably strict for certain circumstances. Because the scale of material-moving activity is so great, the possibility of serious harm to both workers and the general public from accidents associated with transporting an entire tailings pile to a new disposal site deserves particular consideration. Relocating a pile should be considered whenever it may not be practical to satisfy all the disposal standards at the original location. However, circumstances might be such that one would not expect the standards to be greatly exceeded within a thousand years, and that substantial human exposure to any resulting pollution would not necessarily occur. If all practical transport methods would probably cause serious harm to people from accidents, and if this and other risks associated with the transportation system are large enough, the near-term endangerment may outweigh the additional long-term benefits of full rather than partial compliance with the standards. By carefully considering all these factors for each tailings pile where the issue arises, exceptions to the disposal standard could be justified because of the degree of unavoidable endangerment in attempting full compliance.

We do not consider the current remoteness of a pile from population centers sufficient by itself to justify relaxing the standards. Even small numbers of people nearby require protection, and the population of an area could increase considerably over the one thousand year period to which the standards apply. Furthermore, radon released from tailings piles travels over long distances.

In order to allow for reasonable implementation of PL 95–604, we are proposing criteria that may be used to determine whether particular circumstances justify exceptions to the disposal standards. In such exceptional cases, DOE, with the concurrence of NRC, may select and perform remedial actions that come as close to meeting the disposal standards as is reasonable. When doing so, DOE shall also inform EPA.

Note.—The costs and benefits of these standards are discussed in the Draft Environmental Impact Statement. However, our program to set remedial action standards for PL 95–604 does not require preparation of an economic analysis under Executive Order 12044. We expect the costs of the remedial action program in any calendar year to be less than the 100 million dollar criterion EPA has established (44 FR 30988–30998, May 29, 1979) for requiring an economic analysis.

Dated: December 31, 1980.

Douglas M. Costle,

Administrator.

Note.—Subparts B and C of the following were proposed earlier (45 FR 27370–27375, April 22, 1980) and are repeated here for the convenience of the reader.

The Administrator of the Environmental Protection Agency hereby proposes to add a Part 192, Subpart A, to Title 40 of the Code of Federal Regulations as follows:

PART 192—ENVIRONMENTAL PROTECTION STANDARDS FOR URANIUM MILL TAILINGS

Subpart A—Environmental Standards for the Disposal of Residual Radioactive Materials From Inactive Uranium Processing Sites

Sec.

192.01 Applicability.
192.02 Definitions
192.03 Standards.
192.04 Effective date.

Subpart B—Environmental Standards for Cleanup of Open Lands and Buildings Contaminated With Residual Radioactive Materials From Inactive Uranium Processing Sites

192.10 Applicability.
192.11 Definitions.
192.12 Standards.
192.13 Effective date.

Subpart C—Exceptions

192.20 Criteria for exceptions.
192.21 Remedial actions for exceptional circumstances.

Authority: Section 275 of the Atomic Energy Act of 1954, 42 U.S.C. 2022, as amended by the Uranium Mill Tailings Radiation Control Act of 1978, PL 95–604.

Subpart A—Environmental Standards for Disposal of Residual Radioactive Materials From Inactive Uranium Processing Sites

§ 192.01 Applicability.

This subpart applies to the disposal of residual radioactive material at any designated processing site or depository site as part of any remedial action conducted under Title I of the Uranium Mill Tailings Radiation Control Act of 1978 (PL 95–604), or following any use of subsurface minerals at such a site.

§ 192.02 Definitions.

(a) Unless otherwise indicated in this subpart, all terms shall have the same meaning as in Title I of the Uranium Mill

Tailings Radiation Control Act of 1978 and the Atomic Energy Act.

(b) *Remedial action* means any action performed under section 108 of the Uranium Mill Tailings Radiation Control Act of 1978.

(c) *Disposal* means any remedial action intended to assure the long-term, safe, and environmentally sound stabilization of residual radioactive materials.

(d) *Disposal site* means the region within the smallest practical boundaries around residual radioactive material following completion of disposal.

(e) *Depository site* means a disposal site selected under Section 104(b) or 105(b) of the Uranium Mill Tailings Radiation Control Act of 1978.

(f) *Aquifer* means a geologic formation, group of formations, or portion of a formation capable of yielding usable quantities of ground water to wells or springs.

(g) *Ground water* means water below the land surface in the zone of saturation.

(h) *Underground source of drinking water* means:

(1) An aquifer supplying drinking water for human consumption, or

(2) An aquifer in which the ground water contains less than 10,000 milligrams/liter total dissolved solids.

(i) *Curie* (Ci) means the amount of radioactive material which produces 37 billion nuclear transformations per second. One picocurie (pCi) = 10–12 Ci.

(j) *Surface waters* means "waters of the United States, including the territorial seas" ("navigable waters") as defined in the Federal Register Volume 44, page 32901, June 7, 1979. (*Comment:* This definition is taken from the Regulations for the National Pollutant Discharge Elimination System, 40 CFR 122.3(t). In essence, it includes all U.S. surface waters which the public may traverse, enter, or draw food from.)

§ 192.03 Standards.

Disposal of residual radioactive materials shall be conducted in a way that provides a reasonable expectation that for at least one thousand years following disposal—

(a) The average annual release of radon-222 from a disposal site to the atmosphere by residual radioactive materials will not exceed 2 pCi/m^2-sec.*

(b) Substances released from residual radioactive materials after disposal will not cause

(1) The concentration of that substance in any underground source of drinking water to exceed the level specified in Table A, or

(2) An increase in the concentration of that substance in any underground source of drinking water, where the concentration of that substance prior to remedial action exceeds the level specified in Table A for causes other than residual radioactive materials.

This subsection shall apply to the dissolved portion of any substance listed in Table A at any distance greater than 1.0 kilometer from a disposal site that is part of an inactive processing site, or greater than 0.1 kilometer if the disposal site is a depository site.

(c) Substances released from the disposal isite after disposal will not cause the concentration of any harmful dissolved substance in any surface waters to increase above the level that would otherwise prevail.

§ 192.04 Effective date.

The standards of this Subpart shall be effective 60 days after final promulgation of this rule.

Subpart B—Environmental Standards for Cleanup of Open Lands and Buildings Contaminated With Residual Radioactive Materials From Inactive Uranium Processing Sites

§ 192.10 Applicability.

This subpart applies to open lands and buildings which are part of any processing site designated by the Secretary of Energy under Public Law 95–604, Section 102. Section 101 of Public Law 95–604, states that "processing site" means—

(a) Any site, including the mill, containing residual radioactive materials at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971 under a contract with any Federal agency, except in the case of a site at or near Slick Rock, Colorado, unless—

(i) Such site was owned or controlled as of January 1, 1978, or is thereafter owned or controlled, by any Federal agency, or

(ii) A license (issued by the [Nuclear Regulatory] Commission or its predecessor agency under the Atomic Energy Act of 1954 or by a State as permitted under section 274 of such Act) for the production at such site of any uranium or thorium product derived from ores is in effect on January 1, 1978, or is issued or renewed after such date; and

(b) Any other real property or improvement thereon which—

(i) Is in the vicinity of such site, and

(ii) Is determined by the Secretary, in consultation with the Commission, to be contaminated with residual radioactive materials derived from such site.

Any ownership or control of an area by a Federal agency which is acquired pursuant to a cooperative agreement under this title shall not be treated as ownership or control by such agency for purposes of subparagraph (A)(i). A license for the production of any uranium product from residual radioactive materials shall not be treated as a license for production from ores within the meaning of subparagraph (A)(ii) if such production is in accordance with section 108(b).

§ 192.11 Definitions.

(a) Unless otherwise indicated in this subpart, all terms shall have the same meaning as defined in Title I of the Uranium Mill Tailings Radiation Control Act of 1978.

(b) *Remedial action* means any action performed under Section 108 of the Uranium Mill Tailings Radiation Control Act of 1978.

(c) *Open land* means any surface or subsurface land which is not a disposal site and is not covered by a building.

(d) *Working Level (WL)* means any combination of short-lived radon decay products in one liter of air that will result in the ultimate emission of alpha particles with a total energy of 130 billion electron volts.

(e) *Dose equivalent* means absorbed dose multiplied by appropriate factors to account for differences in biological effectiveness due to the type and energy of the radiation and other factors. The unit of dose equivalent is the "rem."

(f) *Curie (Ci)* means the amount of radioactive material which produces 37 billion nuclear transformations per second. One picocurie (pCi) = 10^{-12}Ci.

§ 192.12 Standards.

Remedial actions shall be conducted so as to provide reasonable assurance that—

(a) The average concentration of radium-226 attributable to residual radioactive material from any designated processing site in any 5 cm thickness of soils or other materials on open land within 1 foot of the surface, or in any 15 cm thickness below 1 foot, shall not exceed 5 pCi/gm.

(b) The levels of radioactivity in any occupied or occupiable building shall not exceed either of the values specified in Table B because of residual radioactive materials from any designated processing site.

*Note.—The radon emitted from a tailings site after disposal will come from the tailings and from materials covering them. Radon emissions from the covering materials should be estimated as part of developing a disposal plan for each site. These plans will be reviewed and concurred with by the Nuclear Regulatory Commission prior to disposal. After disposal, the radon emission standard is satisfied if the emission rate is less than or equal to 2 pCi/m^2-sec plus the emission rate expected from the disposal materials.

(c) The cumulative lifetime radiation dose equivalent to any organ of the body of a maximally exposed individual resulting from the presence of residual radioactive materials or byproduct materials shall not exceed the maximum dose equivalent which could occur from radium-226 and its decay products under paragraphs (a) and (b) of this section.

§ 192.13 Effective date.

The standards of this Subpart shall be effective 60 days after promulgation of this rule.

Subpart C—Exceptions

§ 192.20 Criteria for exceptions.

Exceptions to the standards may be justificable under any of the following circumstances:

(a) Public health or safety would be unavoidably endangered in attempting to meet one of more of the requirements of Subpart A or Subpart B.

(b) The goal of environmental protection would be better served by not satisfying cleanup requirements for open land, § 192.12(a) or the corresponding part of § 192.12(c), to justify an exception to these requirements there should be a clearly unfavorable imbalance between the environmental harm and the environmental and health benefits which would result from implementing the standard. The likelihood and extent of current and future human presence at the site may by considered in evaluating these benefits.

(c) The estimated costs of remedial actions to comply with the cleanup requirements for buildings, § 192.12(b) or the corresponding part of § 192.12(c), are unreasonably high relative to the benefits. Factors which may be considered in this judgment include the period of occupany, the radiation levels in the most frequently occupied areas, and the residual useful lifetime of the building. This criterion can only be used when the values in Table B are only slightly exceeded.

(d) There is no known remedial action to meet one or more of the requirements of Subpart A or Subpart B. Destruction and condemnation of buildings are not considered remedial actions for this purpose.

§ 192.21 Remedial actions for exceptional circumstances.

Section 108 of PL 95–604 requires the Secretary of Energy to select and perform remedial actions with the concurrence of the Nuclear Regulatory Commission and the full participation of any State which pays part of the cost, and in consultation, as appropriate, with affected Indian tribes and the Secretary of the Interior. Under exceptional circumstances satisfying one or more of the conditions § 192.20(a), (b), (c), and (d), the Department of Energy may select and perform remedial actions, according to the procedures of Section 108, which come as close to meeting the standard to which the exception applies as is reasonable under the exceptional circumstances. In doing so, the Department of Energy shall inform any private owners and occupants of affected properties and request their comments on the selected remedial actions. The Department of Energy shall provide any such comments to the parties involved in implementing Sec. 108 of Public Law 95–604. The Department of Energy shall also inform the Environmental Protection Agency of remedial actions for exceptional circumstances under Subpart C of this rule.

Table A

Milligrams/liter:	
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Molybdenum	0.05
Nitrogen (in nitrate)	10.0
Selenium	0.01
Silver	0.05
pCi/liter:	
Combined radium-226 and radium-228	5.0
Gross alpha particle activity (including radium-226 but excluding radon and uranium)	15.0
Uranium	10.0

Table B

Average Annual Indoor Radon Decay Product Concentration (including background) (WL)	0.015
Indoor Gamma Radiation (above background) (milliroentgens/hour)	0.02

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Part VII

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Policy and Criteria for de Minimis Exceptions to Full Compliance With Deinstitutionalization Requirement of Juvenile Justice and Delinquency Prevention Act

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Policy and Criteria for de Minimis Exceptions to Full Compliance With Deinstitutionalization Requirement of the Juvenile Justice and Delinquency Prevention Act, 1974, as Amended

AGENCY: Office of Juvenile Justice and Delinquency Prevention (OJJDP).

ACTION: Issuance of final policy.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601, et seq., (JJDP Act), is issuing a policy and criteria for determining full compliance with de minimis exceptions to the deinstitutionalization requirement of Section 223(a)(12)(A) of the JJDP Act, as amended.

SUPPLEMENTARY INFORMATION: Section 223(a)(12)(A) of the JJDP Act requires that states participating in the Formula Grant Program (Part B, Subpart I), of the JJDP Act "provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such non-offenders as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities." Section 223(c) of the Act further provides that failure to achieve compliance with the Section 223(a)(12)(A) requirement within the three-year limitation shall terminate a State's eligibility for formula grant funding unless a determination is made that the State is in substantial compliance, through achievement of deinstitutionalization of not less than 75 percent of such juveniles or through removal of 100 percent of such juveniles from secure correctional facilities and has made an unequivocal commitment to achieving full compliance within two additional years. The Agency's Office of General Counsel, in Legal Opinion 76–7, October 7, 1975, indicated that a State's failure to meet the full compliance requirement within the statutorily designated time-frame would result in future ineligibility for Formula Grants unless such failure was de minimis. The opinion further stated that such determinations would be made on a case-by-case basis.

OJJDP published in the August 14, 1980, Federal Register a proposed policy and criteria for de minimis exceptions to full compliance. That publication provided interested persons the opportunity to submit comments and recommendations on the proposed criteria. A total of 15 comments were received and analyzed. The responses included comments from 15 of the 50 states participating in the JJDP Act Formula Grant program. Appendix A provides additional information regarding the review and analysis of these comments. OMB Circular No. A–95, regarding State and Local Clearinghouse review of Federal and Federally-assisted programs and projects, is not applicable to the issuance of this policy. This policy is specifically applicable to Program No. 16.540, Juvenile Justice and Delinquency Prevention Allocation to States, within the Catalog of Federal Domestic Assistance.

Policy and Criteria for de Minimis Exceptions to Full Compliance With Section 223(a)(12)(A) of the JJDP Act

The following provides the Office of Juvenile Justice and Delinquency Prevention policy for the determination of State compliance with Section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 *et seq.*). The criteria presented below will be applied in determining whether a State has achieved full compliance, with de minimis exceptions, with the above cited deinstitutionalization requirement of the Juvenile Justice Act. Also specified is the information which each state must provide in response to each criterion when seeking from OJJDP a finding of full compliance with de minimis exceptions.

States requesting a finding of full compliance with de minimis exceptions should submit the request at the time the annual monitoring report is submitted or as soon thereafter as all information required for a determination is available. For those States that have participated in the formula grant program continuously since 1975 such a request, if needed, would be due December 31, 1980, because that is the first monitoring report due after five years of participation. States that had extremely low rates of institutionalization when they began participation in the program are eligible to request a finding of full compliance with de minimis exceptions after three years of participation in lieu of demonstrating a 75% reduction from the number of status and non-offenders institutionalized in their base year.

Background

Office of General Counsel Legal Opinion 76–7, October 7, 1975, establishes that a State's "good faith" effort to meet the (then) two year requirement for deinstitutionalization of status offenders would preclude the imposition of sanctions with regard to funds already granted to the State under the formula grant program. However, a State's "good faith" effort cannot be considered in determining whether the statutory minimum compliance level has been met. In terms of eligibility for funding the opinion concluded:

> A State's failure to met the Section 223(a)(12) requirement within a maximum of two years from the date of submission of the initial plan would result in future fund cut-off unless such failure was de minimis. These determinations would be made on a case-by-case basis.

Subsequent amendments to the Juvenile Justice Act in 1977 modified Section 223(a)(12) to require full compliance within three years. However, Section 223(c) was also amended to provide that if a State was in substantial compliance with the modified Section 223(a)(12)(A) provision at the end of three years, substantial compliance being defined as a 75 percent reduction in the number of status offenders held in juvenile detention or correctional facilities, then the State could be given up to two additional years to achieve full compliance.

Thus, this opinion provides the legal basis for the OJJDP to utilize the de minimis principle, i.e., by disregarding instances of non-compliance that are of slight consequence or insignificant, in making a dtermination regarding a state's full compliance with Section 223(a)(12)(A) of the Act.

Parameters

The legal concept of de minimus, meaning "the law cares not for small things," is generally applied where small, insignificant or infinitesimal matters are at issue. Whether a matter, such as the number of status offenders and non-offenders held in non-compliance with Section 223(a)(12)(A), can be characterized as de minimis cannot be determined by an inflexible formula. Therefore, OJJDP will consider each case on its merits based on criteria which take into consideration relative numbers, circumstances of non-compliance, and State law and policy. The establishment of these criteria is intended to achieve an equitable determination process. States reporting significant numbers of institutionalized status and non-offenders should not

expect a finding of full compliance with de minimus exceptions. In determining whether a State has achieved substantial compliance within three years, OJJDP must compare the number of status and non-offenders held in non-compliance with Section 223(a)(12)(A) at the conclusion of the three year period with the number of status and non-offenders held at the start of the three year period (the State's baseline figure). However, in determining whether a State is in full compliance with de minimis exceptions, OJJDP does not consider a comparison of the current situation to baseline to be relevant. Only data and information which accurately and completely portrays the current situation is relevant when demonstrating full compliance with de minimus exceptions.

Individual states must continue to show progress toward achieving 100 percent compliance in order to maintain eligibility for a finding of full compliance with de minimis exceptions.

Criteria and Required Information

The OJJDP has determined that the following criteria will be applied in making a determination of whether a State has demonstrated full compliance with Section 223(a)(12)(A) with de minimis exceptions. While States are not necessarily required to meet each criterion at a fully satisfactory level, OJJDP will consider the extent to which each criterion has been met in making its determination of whether the State is in full compliance with the minimis exceptions. The information following each criterion must be provided to enable OJJDP to make this determination.

Criterion A

The extent of non-compliance is insignificant or of slight consequence in terms of the total juvenile population in the State.

In applying this criterion OJJDP will compare the State's status offender and non-offender detention and correctional institutionalization rate per 100,000 population under age 18 to the average rate that has been calculated for eight states (e.g., two states from each of the four Bureau of Census regions). The eight states selected by OJJDP were those having the smallest institutionalization rate per 100,000 population *and* which also had an adequate system of monitoring for compliance. By applying this procedure and utilizing the information provided by the eight states' most recently submitted monitoring reports, OJJDP determined that eight states' average annual rate was 17.6 incidences of status offenders and non-offenders held per 100,000 population under age 18. In computing the standard deviation from the mean of 17.6, it was determined that a rate of 5.8 per 100,000 was one standard deviation below the mean and 29.4 per 100,000 was one standard deviation above the mean. Therefore, in applying Criterion A, states which have an institutionalization rate less than 5.8 per 100,000 population will be considered to be in full compliance with de minimis exceptions and will not be required to address Criteria B and C. Those states whose rate falls between 17.6 and 5.8 per 100,000 population will be eligible for a finding of full compliance with de minimis exceptions if they adequately meet Criteria B and C. Those states whose rate is above the average of 17.6 but does not exceed 29.4 per 100,000 will be eligible for a finding of full compliance with de minimis exceptions only if they full satisfy Criteria B and C. Finally, those states which have a placement rate in excess of 29.4 per 100,000 population are presumptively ineligible for a finding of full compliance with de minimis exceptions because any rate above that level is considered to represent an excessive and significant level of status offenders and non-offenders held in juvenile detention or correctional facilities.

However, OJJDP will consider requests from such States where the State demonstrates exceptional circumstances which account for the excessive rate. Exceptional circumstances are limited to situations where, but for the exceptional circumstance, the State's institutionalization rate would be within the 29.4 rate established above.

The following will be recognized for consideration as exceptional circumstances:

(1) Out of State runaways held beyond 24 hours in response to a want, warrant, or request from a jurisdiction in another State or pursuant to a court order, solely for the purpose of being returned to proper custody in the other State;

(2) Federal wards held under Federal statutory authority in a secure State or local detention facility for the sole purpose of affecting a jurisdictional transfer, appearance as a material witness, or for return to their lawful residence or country of citizenship; and

(3) A State has recently enacted changes in State law which have gone into effect and which the State demonstrates can be expected to have a substantial, significant, and positive impact on the State's achieving full compliance with the deinstitutionalization requirement within a reasonable time.

In order to make a determination that a State has demonstrated exceptional circumstances under (1) and (2) above, OJJDP will require that the State has developed a separate and specific plan under Criterion C which addresses the problem in a manner that will eliminate the non-compliant instances within a reasonable time.

OJJDP deems it to be of critical importance that all states seeking a finding of full compliance with de minimis exceptions demonstrate progress toward 100 percent compliance and continue to demonstrate progress annually in order to be eligible for a finding of full compliance with de minimis exceptions.

The following information must be provided in response to criterion A and must cover the most recent and available 12 months of data (calendar, fiscal, or other period) or available data for less than 12 months, projected to 12 months in a statistically valid manner. If data projection is used the state must provide the statistical method used, the actual reporting period by dates and the specific data used. States are encouraged to use and expand upon currently available monitoring data gathered for purposes of the annual monitoring report required by Section 223(a)(15).

1. Total number of *accused* status offenders and non-offenders held in secure detention facilities or secure correctional facilities in excess of 24 hours (per OJJDP monitoring policy).

2. Total number of *adjudicated* status offenders and non-offenders held in secure detention facilities or secure correctional facilities.

3. Total number of status offenders and non-offenders held in secure detention facilities or secure correctional facilities (i.e., sum of items 1 and 2).

4. Total juvenile population (under 18) of the State according to the most recent available U.S. Bureau of the Census data or census projections.

States may provide additional pertinent statistics that they deem relevant in determining the extent to which the number of non-compliant incidences is insignificant or of slight consequence. However, factors such as local practice, available resources, or organizational structure of local government will not be considered relevant by OJJDP in making this determination.

Criterion B

The extent to which the instances of non-compliance were in apparent

violation of State law or established executive or judicial policy.

The following information must be provided in response to criterion B and must be sufficient to make a determination as to whether the instances of non-compliance with Section 223(a)(12)(A) as reported in the State's monitoring report were in apparent violation of, or departures from, state law or established executive or judicial policy. OJJDP will consider this criterion to be satisfied by those States that demonstrate that all or substantially all of the instances of non-compliance were in apparent violation of, or departures from, state law or established executive or judicial policy. This is because such instances of non-compliance can more readily be eliminated by legal or other enforcement processes. The existence of such law or policy is also an indicator of the commitment of the State to the deinstitutionalization requirement and to future 100% compliance. Therefore, information should also be included on any newly established law or policy which can reasonably be expected to reduce the State's rate of institutionalization in the future.

1. A brief description of the non-compliant incidents must be provided with includes a statement of the circumstances surrounding the instances of non-compliance. (For example: Of 15 status offenders/non-offenders held in juvenile detention or correctional facilities during the 12 month period for State X, 3 were accused status offenders held in jail in excess of 24 hours, 6 were accused status offenders held in detention facilities in excess of 24 hours, 2 were adjudicated status offenders held in a juvenile correctional facility, 3 were accused status offenders held in excess of 24 hours in a diagnostic and evaluation facility, and 1 was an adjudicated status offender placed in a mental health facility pursuant to the court's status offenders jurisdiction.) Do not use actual names of juveniles.

2. Describe whether the instances of non-compliance were in apparent violation of State law or established executive or judicial policy.

A statement should be made for each circumstance discussed in item 1 above. A copy of the pertinent/applicable law or established policy should be attached. (for example: The 3 accused status offenders held in jail in excess of 24 hours were held in apparent violation of a State law which does not permit the placement of status offenders in jail under any circumstances. Attachment "X" is a copy of this law. The 6 status offenders held in juvenile detention were placed there pursuant to a disruptive behavior clause in our statute which allows status offenders to be placed in juvenile detention facilities for a period of up to 72 hours if their behavior in a shelter care facility warrants secure placement. Attachment "X" is a copy of this statute. A similar statement must be provided for each circumstance.)

Criterion C

The extent to which an acceptable plan has been developed which is designed to eliminate the non-compliant incidents within a reasonable time, where the instances of non-compliance either (1) indicate a pattern or practice, or (2) appear to be consistent with State law or established executive or judicial policy, or both.

If the State determines that instances of non-compliance (1) do not indicate a pattern or practice, *and* (2) are inconsistent with an in apparent violation of State law or established executive or judicial policy, then the State must explain the basis for this determination. In such case no plan would be required as a part of the request for a finding of full compliance under this policy.

The following must be addressed as elements of an acceptable plan for the elimination of non-compliance incidents that will result in the modification or enforcement of state law or executive or judicial policy to ensure consistency between the state's practices and the JJDP Act deinstitutionalization requirements.

1. If the instances of non-compliance are sanctioned by or consistent with State law or executive or judicial policy, then the plan must detail a strategy to modify the law or policy to prohibit non-compliant placement so that it is consistent with the Federal deinstitutionalization requirement.

2. If the instances of non-compliance were in apparent violation of State law or executive or judicial policy, but amount to or constitute a pattern or practice rather than isolated instances of non-compliance, the plan must detail a strategy which will be employed to rapidly identify violations and ensure the prompt enforcment of applicable State law or executive or judicial policy.

3. In addition, the plan must be targeted specifically to the agencies, courts, or facilities responsible for the placement of status offenders and non-offenders in non-compliance with Section 223(a)(12)(A). It must include a specific strategy to eliminate instances of non-compliance through statutory reform, changes in facility policy and procedure, modification of court policy and practice, or other appropriate means.

Implementation of Plan and Maintenance of Full Compliance

If OJJDP makes a finding that a State is in full compliance with de minimis exceptions based, in part, upon the submission of an acceptable plan under Criteria C above, the State will be required to include the plan as a part of its current or next submitted formula grant plan as appropirate. OJJDP will measure the State's success in implementing the plan by comparison of the data in the next monitoring report indicating the extent to which non-compliant incidences have been eliminated.

Determinations of full compliance status will be made annually by OJJDP following the submission of the monitoring report due by December 31st of each year. Any State reporting less than 100% compliance in any annual monitoring report would, therefore, be required to follow the above procedures in requesting a finding of full compliance with de minimis exceptions. An annual monitoring report will continue to be due by December 31st of each year.

FOR FURTHER INFORMATION CONTACT:
Mr. Doyle A. Wood, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW, Washington, DC 20531. (202) 724-8491.

Ira M. Schwartz,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

Appendix A—Supplemental Information: Review and Analysis of Comments in Response to Proposed Policy and Criteria

A total of 15 comments were received and included in the analysis. The response included comments from 15 of the 50 states participating in the formula grant program. All comments and recommendations were logged, reviewed and analyzed. The review and analysis consisted of recording each response as to whether or not a specific recommendation was presented. This recording effort was established to determine whether the respondent recommended each component of the policy and criteria to be: (1) retained, (2) eliminated, or (3) modified, or if no specific recommendation was made. The analysis also identified and recorded substantive responsea for consideration during the revision process.

The results are presented according to each component of the proposed criteria.

Criterion (a)

"The extent of non-compliance is insignificant or of slight consequence in terms of the total juvenile population in the State"

In applying this criterion, a state's status offender and non-offender institutionalization rate per 100,000 population under age 18 will be compared to the average rate calculated for eight states. The eight states represent

two states from each of the four Bureau of Census regions having the smallest institutionalization rate *and* which also had an adequate monitoring system. The institutionalization rate is based on the data contained in the 1979 monitoring reports. The proposed criteria were initially developed before all 1979 reports were finalized and approved. Thus a recalculation, based upon all final 1979 reports, is reflected in the final policy. This recalculation resulted in a change of the eight state average annual rate from 15.8 to 17.6 incidences of status offenders and non-offenders held per 100,000 population under age 18. Also, the standard deviation below and above the mean is changed to 5.8 and 29.4 respectively. The eight states used in calculating the average rate include Massachusetts, Pennsylvania, Iowa, Wisconsin, Virginia, West Virginia, New Mexico and Washington. These states include both urban and rural states, states having an out-of-state runaway population, and states having an illegal alien and native American population.

Several comments were received which recommended exceptional circumstances which would justify a finding of full compliance with de minimis exceptions for any state which exceeded the rate of one standard deviation above the mean. Generally, the situations which states indicated should be exceptional circumstances include (1) states having recent changes in State law which will have substantial, significant, and positive impact on achieving full compliance (2) states which can document they did not achieve full compliance with de minimis exception because juveniles were held in State/local facilities who were Federal wards being held pursuant to Federal Codes, and (3) states which can document they did not achieve full compliance with de minimis exceptions because out-of-state runaways were being held pending return to their state of residence. As a result of these comments, criterion A was modified to delineate the acceptable exceptional circumstances and the conditions which must exist to enable a finding of full compliance.

The comment that a comparison should be made between the number of status offenders held and the number of youth charged with status offenders was not considered as an appropriate change because such comparison would reward states for charging an excessive number of youth with status offenses. The comment that states which can document a consistent decline in the rate of institutionalization should be eligible for a finding of full compliance, regardless of the absolute number held, is inconsistent with the intent of Congress to totally remove status offenders and non-offenders from inappropriate facilities within 5 years.

Five of the fifteen responses indicated the criteria go too far in giving an advantage to states which hold status offenders in secure facilities by allowing an excessive number to be held and still maintaining eligibility for a finding of full compliance. Several responders felt it was critically important that OJJDP not establish a policy which creates the impression that less than 100% compliance will satisfy the statutory requirement. The OJJDP is committed to the Congressional mandate to remove all status offenders and non-offenders from secure detention facilities and secure correctional facilities and under no circumstances should the de minimis policy and criteria be construed as a lessening of OJJDP's commitment to complete deinstitutionalization of youth under Section 223(a)(12)(A) of the JJDP Act.

Criterion (b)

"The extent to which the instances of non-compliance were in apparent violation of State law or established executive or judicial policy."

The information to be provided in response to this criterion is to demonstrate whether the instances of non-compliance with Section 223(a)(12)(A) were in apparent violation of state law or established executive or judicial policy or constitutes a pattern or practice. There were no substantial comments or recommendations on this criterion, thus the criterion is unchanged.

Criterion (c)

"The extent to which an acceptable plan has been developed which is designed to eliminate the non-compliant incidents within a reasonable time, where the instances of non-compliance either (1) indicate a pattern or practice, *or* (2) appear to be consistent with state law or established executive or judicial policy, or both."

The few comments on this criterion generally stated that plan elements one and three should be combined into a single element. The criterion has been modified to reflect these comments by combining these two plan components. Other comments which were received but did not result in a modification were that "the criterion should require the development of a plan even when there is no pattern or practice and when violations are inconsistent with state law and (2) the state can always develop a plan but implementation may be difficult thus some agreement as to what is practicable must be reached between the state and OJJDP." The review of the plan developed in response to this criteria and the negotiation, if necessary, between the state and OJJDP as to the viability and practicability of the plan will result in a mutual agreement as to what is expected from both parties. OJJDP technical assistance resources and capability will be available to assist states in the implementation of the states plan for 100% compliance.

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Part VIII

Department of Justice

Office of Justice Assistance, Research, and Statistics

Planning and Coordination Grants to Develop and Support Model Comprehensive Programs for High-Risk Youth; Office of Juvenile Justice and Delinquency Prevention Draft Guideline; Request for Comments

DEPARTMENT OF JUSTICE

Office of Justice Assistance, Research, and Statistics

Office of Juvenile Justice and Delinquency Prevention Draft Guideline: Planning and Coordination Grants To Develop and Support Model Comprehensive Programs for High-Risk Youth; Request for Comments

AGENCY: Office of Juvenile Justice and Delinquency Prevention.

ACTION: Request for public comment.

SUMMARY: This draft guideline is a proposed addition to the National Priority Program and Discretionary Program Announcement, published in the **Federal Register** on February 15, 1980, (45 FR 10702) and as such will be subject to the same regulations which govern that manual. It will not in any way impact upon the programs or regulations presently set out in that announcemnt or affect the eligibility of those individuals applying for previously announced programs.

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the Juvenile Justice & Delinquency Prevention Act of 1974 as amended, is inviting interested comments on the proposed guideline: Planning & Coordination Grants to Develop and Support Model Comprehensive Programs for High-Risk Youths, and will consider such comments before the final publication of this guideline. The period for public comment on this draft guideline is February 9, 1981.

After publication of the final guideline, which is expected to be published in the **Federal Register** in February 1981, it is anticipated that applicants will have 30 days to develop applications. It is therefore recommended that all interested applicants should begin the development of their applications immediately.

FOR FURTHER INFORMATION CONTACT: Mr. William Modzeleski at (202) 724–7751, Office of Juvenile Justice & Delinquency Prevention, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

Ira M. Schwartz,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

Guidelines for Application for Planning and Coordination Grants To Develop and Support Model Comprehensive Programs for High-Risk Youth

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I. Executive Summary

These guidelines are the first step in developing a national demonstration to encourage comprehensive service programs for "high-risk youth." In this case the term "high-risk youth" (described more precisely in a later section) refers generally to those young people who are usually the hardest to reach and the hardest to serve well, in part because of their numerous needs and problems.

A key idea of this demonstration is to find new ways to replace piece-meal programming with comprehensive multi-purpose programs which provide, in effect, a one-stop shopping center for young people for whom single-purpose programs are simply not sufficient. The demonstration seeks to answer questions about the potential value of more comprehensive projects, as well as ways to implement them effectively.

To encourage the planning and development of effective, comprehensive demonstration projects for this population, funds will be distributed in a two-stage process: (1) the award of a limited number of small planning and coordination grants to organizations which can demonstrate the capacity to mount comprehensive programs effectively, and (2) the award of an even smaller number of demonstration grants (of varying sizes) to those organizations from among the planning and coordination grantees who produce the implementation plans which are evaluated as having the greatest demonstration potential.

These guidelines constitute the procedures for making application for funds in the first stage of the process, namely the planning and coordination phase. While a variety of agencies and organizations are *eligible* (see below) to apply for planning and coordination grants, it is clear from the selection criteria described in a subsequent section that organizations which *can demonstrate a very clear commitment, current capacities, current staff capabilities, recent experience, and other concrete factors bearing upon effectiveness will be given priority consideration for a planning and coordination grant.* Interested organizations should look first at the selection criteria involving current organizational capacity, recent demonstrated interest, staff background, etc. before deciding whether to submit an application.

For those who decide to submit an application, a typed double-spaced proposal of no more (and possibly less) than ten pages; a completed two page question and answer form; and a title page and budget sheet (all of which appear in the appendix) must be completed.

The background, objectives, and procedures of this demonstration effort are laid out in subsequent sections of these guidelines. Certain features of the process are, however, important to note from the outset:

1. This is a demonstration effort supported by several agencies of the federal government. The immediate purpose is to pool resources to encourage comprehensive programs, to reduce red tape, and to avoid duplication of services. The ultimate goal is to test whether and how comprehensive programs better serve young people's needs. Another goal is to encourage greater local initiative in the use of all possible resources to mount comprehensive youth service programs.

2. The demonstration is being implemented and coordinated by a private, non-profit corporation called Act Together, Inc. which is working in a unique partnership with the federal agencies and the private sector.

3. The notion of awarding planning and coordination grants before awarding demonstration grants is designed to ensure that sufficient

preparation time, energy, and assistance are available to organizations which might operate the demonstrations. During the coordination and planning period, grantees will need to demonstrate their ability to mount a comprehensive program, and to gain cooperation from state and local service agencies, organizations, and funding sources.

4. While the planning and coordination grants may cover all of the costs incurred in doing the planning and coordination for a demonstration, in no case will the demonstration grants for a program cover more than two-thirds of the costs of operating the comprehensive program.

5. Projects which receive demonstration grants will be expected to assume responsibility for working with Act Together to make information available about the program to other program operators around the country in a coordinated effort to help others learn from the successes of each project.

6. A key objective of this competition and demonstration is to serve youngsters with problems who may not be served by existing categorical or other programs. This process seeks to avoid the counterproductive situation in which a young person must have a certain label or stigma alienating himself or herself from society at large in order to qualify for service support.

7. Another key objective of the entire process is to simplify the application and reporting requirements for applicants and grantees, and determine whether such simplification aids the provision of comprehensive services.

8. Applicants will need to demonstrate previously proven effectiveness and local credibility in reaching and serving the proposed population, in harnessing local resources, and in operating projects efficiently and responsibly.

9. No funds will be available to maintain currently on-going projects in their present form.

10. The process is designated to encourage the development of comprehensive projects which will (a) become self-sustaining and outlive the demonstration, and (b) provide services which will bring participants to a point of substantially greater self-sufficiency and a reduced need for future government support.

In summary, this demonstration can show, if model programs prove effective, that opportunities for the development of a productive and self-sufficient lifestyle can be created for even those young people whose opportunities are currently most constricted, and that federal support agencies and local service agencies can act together to insure that enough of the right services are available, that the needs of the whole person are addressed, and that administrative obstacles to serving high-risk youngsters are overcome.

II. Questions and Answers

1. Why is the federal government focusing only on comprehensive programs for high-risk youths in this competition?

The federal government recognizes that this population is particularly hard-to-reach and hard-to-serve. These young people have multiple problems and they need comprehensive, multi-service programs to meet these needs. This is a deliberate attempt by the government to spur coordination of available resources at the federal, state, and local levels, and to develop programs which meet the diverse needs of these young people.

2. Why is the federal government funding only demonstration projects?

Though much has been accomplished in the past decade, much still needs to be learned about serving high-risk youths. The targeting of this money will help determine what services this population most needs and how these services can best be provided. It is hoped that the knowledge gained from these demonstration programs will be used to improve federal policy, to bring about greater cooperation among federal agencies serving youths in general, and improve coordination of existing regulations and audit requirements affecting youth-serving agencies.

3. Must programs focus exclusively on high-risk youths or may other young people be included?

These programs must focus on high-risk populations. Programs must focus on multiple (i.e., more than one) sub-group of this population (e.g., ex-offenders, high school drop-outs, or drug abusers). Programs are desired which serve youths with a variety of "labels" as well as no "labels".

4. What is meant by comprehensive programs?

Comprehensive programs include services from a range of different categories, such as health services, mental health and drug abuse-related services, employment and training services, recreational programs and educational activities. These programs are tailored to the multiple, concurrent needs of high-risk youth.

5. Who may apply for a Planning and Coordination Grant?

The competition is open to existing public or private youth-serving agencies of two types: (a) those now operating multi-service programs and (b) those which have planned extensively for comprehensive programs but have not yet begun to provide services. This includes, but is not limited to, juvenile justice projects, public schools, alternative schools, youth advocacy programs, State and local government agencies, and community development agencies.

In order for an agency to be eligible under (a) above, it must be providing already more than one category of service to high-risk youths; must be receiving funds from more than one source; and must have an exemplary administrative record.

In order for an agency to be eligible under (b) above, it must demonstrate that it has been in the process of planning a coordinated youth services program in its community for a substantial period of time (six months or more), that staff persons associated with the agency have demonstrated their effectiveness in serving high-risk youths in other capacities and that a Planning and Coordination grant will be instrumental in launching the new program.

6. Will some organizations have a better chance of getting funded than others?

Yes. Evaluators of applications will be looking for several important criteria, including a promising approach to coordination in comprehensive services; a demonstrated understanding of the needs of the population these organizations propose to serve; a good "track record"; knowledge of existing local resources; and the potential to serve as national models for replication. More specific information on criteria for selection is provided in Appendix D.

7. How much of the funding will the government provide for these demonstration programs?

The federal government, coordinating with Act Together as an intermediary, will provide all of the funds necessary for planning and coordination and up to two-thirds of the funds for operation of the demonstration programs. A minimum of one-third of the demonstration program costs must come from at least one other source, public or private.

8. Will an organization have to prepare a full-scale proposal in order to apply for a Planning and Coordination Grant?

No. The application for Planning and Coordination Grant funds consists of a title page, a narrative on the proposed program (not more than 10 typewritten pages, double spaced), a Question and Answer Form, and a Budget Sheet. These are all described in detail in this document. All applications for Planning and Coordination Grants must include an "Application for Federal Assistance."

9. How long will the selection process take?

Applications are due by March 12. A final decision on which applicants will receive Planning and Coordination Grants will take approximately six weeks.

10. What is the duration of the Planning and Coordination Grant and what is expected of the recipients during that time?

The planning and coordination period will be approximately 12 weeks. Much more than a plan for a comprehensive program is expected to result. New institutional connections should be made, staff identified—in other words, high levels of coordination, as well as planning, must occur. Act Together staff will be available to play an active role in assisting with these planning and coordination activities. Applicants must realize that all demonstration projects will be expected to begin no later than October, 1981. Applications for Planning and Coordination Grants should be written with this in mind.

11. Can these demonstration funds be used to pay wages to the youths who will be involved in a work experience?

No. However, programs are encouraged to offer paid work experiences and to seek funds for this purpose from local sources such as CETA and private organizations.

12. What laws and regulations will apply if several federal agencies are providing the funds?

Existing law must of course provide the basis for granting federal funds to worthy projects. However, it should be noted that the legal and regulatory bases for providing the funds under this competition allow for more coordination with less administrative burden. The laws and regulations to which applicants will want to give attention are referenced in the introduction.

It is most important to note that the federal agencies involved and Act Together are jointly pledged to reduce the amount of bureaucratic red tape involved. Act Together will play an active role in clarifying procedures for the programs funded and will work with federal agencies to simplify these procedures.

13. For how long a period will the demonstration grants be funded?

The demonstration period for program operation will run approximately 12 to 18 months.

14. Whom do I contact for more information?

Questions should be referred to Act Together. The mailing address is P.O. Box 19995, Washington, D.C. 20036. The telephone number is 202/833-2395.

III. Purpose and Objectives of the New Federal Initiative

Over the past two decades, the number of programs offering services to high-risk youth has increased dramatically. Almost without exception, these programs have grown out of the recognition of a service gap. Typically, each program has become the responsibility of a particular agency delivering a particular type of service within the general population. This service-oriented process of developing programs has led to duplication of services and crossed lines of responsibility. Without thorough exploration of the relationship between various youth needs, evidence suggests that some "fall through the cracks." In addition, overlapping regulations, funding mechanisms, eligibility criteria and reporting requirements emanating from the federal level can become barriers to the development of truly effective youth service programs.

This new federal initiative is designed to find ways to diminish these obstacles and stimulate innovative ways to coordinate services to meet the multiple needs of high-risk youths. A major objective, then, is not just to fund programs which will provide an interesting package of services to youth, but rather to fund programs which combine services in ways which can be studied and which enable federal policy makers to determine whether a comprehensive approach is more effective and under which circumstances.

The Planning and Coordination Grant is intended to give programs the time and money to actively develop appropriate linkages and to cement the working relationships that will eliminate the gaps in the local delivery system.

A related objective is to use the knowledge gained from these demonstration programs to prepare changes in federal policies and regulations, and to facilitate coordination of existing administrative requirements for youth programs among the various departments and agencies. The federal sponsors of this initiative are specifically interested, for example, in experimenting with the use of waiver authority to simplify service delivery at the local level, with the development of new criteria for local coordination and "linkaging" and with the role of legislatively mandated local bodies (e.g., CETA prime sponsors) in joint funding efforts.

Act Together, as an intermediary, will promote the flow of information from the local level to the federal agencies involved, consult with local program developers in the design and implementation of their programs, and assist them to draw out the policy implications of their program experiences.

IV. Background and Program Description

A. Origins of Act Together

The creation of Act Together, Inc., and the launching of this new national demonstration, had their origins with the creation of a federal executive branch Interagency Working Group on Youth in the Spring of 1979. The Working Group was composed of officials from the Law Enforcement Assistance Administration, the Department of Agriculture, the then Department of Health, Education and Welfare and the Department of Labor. The Group was chaired by the Office of Management and Budget.

This interagency group was organized because there was great concern that federal programs serving "troubled" or "high-risk" youths were not sufficiently coordinated, and that information about successful program initiatives or models was not being disseminated adequately. It was felt that greater coordination among federal agencies, and a counterpart increase in cooperation among agencies at the local level, could result in greatly increased program effectiveness, decreased costs and a sharp reduction in the paperwork which local youth serving agencies are required to prepare.

Deliberations of the Working Group focused on several key areas of concern:

(1) Promoting greater coordination among local agencies through changes in federal policy guidelines and regulations;

(2) Improving the management ability of local youth services, especially the management of integrated services; and

(3) Coordinating youth related research, development and evaluation activities.

One of the proposed mechanisms approved by the Working Group for achieving greater coordination among youth services was the creation of a new, national intermediary organization which could assist in identifying promising approaches throughout the country for coordinating youth services and which could work closely with the federal agencies in achieving its goals of streamlining youth policies, regulations and programs.

With the generous financial support of the Edna McConnell Clark Foundation, a private task-force was established to collaborate with the Working Group in creating the new intermediary. This joint private/public initiative led to the

creation of Act Together, Inc., a private not-for-profit organization governed by a Board of Directors made up of persons distinguished for their contributions to the youth field. Act Together subsequently entered into a Cooperative Agreement with the agencies represented in the Working Group. The Agreement calls for Act Together to assist the federal agencies to carry out the demonstration described herein.

B. Rationale for Planning and Coordination Grants

Act Together and the agencies involved wish to encourage and support a creative process of program development under this competition. The method most likely to accomplish this is one in which applicants are given the time, financial support, and technical assistance to produce carefully considered designs and to coordinate a broad range of resources. The initial emphasis on Planning and Coordination Grants is designed to do this.

Act Together will play an active role, working on-site with each recipient of a Planning and Coordination Grant. It will provide planning, networking, resource development, and technical assistance. The entire Planning and Coordination Grant process is structured to stimulate creative thinking about the complex agencies and organizations, and new ideas for cooperation and coordination of services at the national, state, and local levels. While Planning and Coordination Grants may range as high as $25,000, applicants are encouraged to conduct these activities less expensively whenever possible.

C. Role of the Intermediary

Act Together has the general responsibility to work with the federal agencies in identifying programs and strategies with the potential to serve as national models; to document and publicize the performance record of comprehensive program; to provide technical assistance and to work with the Federal Coordinating Council in making recommendations for improving youth policies and administrative practices. (The Coordinating Council on Juvenile Justice and Delinquency Prevention is established under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974 and amendments. Its purpose is to coordinate all Federal juvenile delinquency programs and to make recommendations annually to the President and Congress with respect to coordination of overall policy and development of objectives and priorities for all Federal juvenile delinquency programs.) This demonstration will provide valuable data and experience to the federal agencies and to Act Together, and will be used to shed light on the more important barriers to coordinating youth services.

Act Together's technical assistance to grantees will focus to the greatest extent on practical and high-priority matters: how to enhance the cooperation and contributions of other local resource agencies, how to reach out to others who may be interested in adapting program elements, how to reduce administrative problems in Washington, how to get local public officials an administrators to make things easier rather than more difficult, and how to document program activities in a way would be of interest to others. Act Together will actively seek a supportive role in helping funded projects to reduce barriers imposed by local and federal officials, to comprehensive service delivery and, where neccesary, help local persons obtain expeditious treatments of their concerns in Washington.

With regard to the competition itself, Act Together's role is:

1) To prepare and disseminate these guidelines, with prior government concurrence;

2) To receive applications for Planning and Coordination Grants and to provide for a proper review of all applications prior to recommendation to the Government;

(3) To recommend applicants to the federal agencies for Planning and Coordination Grants;

(4) To provide the recipients of these grants with technical assistance during the planning and coordination phase;

(5) To ascertain the local credibility of statements made by all successful applicants for Planning and Coordination Grants, during the planning and coordination phase;

(6) To receive and review all applications for demonstration grants;

(7) To make recommendations to the agencies for demonstration grants;

(8) To provide technical assistance and program monitoring services to grantees; and

(9) To develop and implement a program of learning and replication activities based on the demonstration projects.

D. Target Population

The youths served by this demonstration have been characterized as high-risk youths because the failure to provide a comprehensive approach to their needs now can result in the risk of long-term dependency, unproductive behavior, and costlier investments later.

These youths are the young people critically in need of basic academic skills, new vocational opportunities, mental health services, crisis counseling, and other support services tied together in some meaningful whole.

They are the young people who may be alienated from or cynical about schools, employers, families, and even traditional human service agencies. They may be young people whose only real choice at the moment is to make a dangerous living from the "streets." They may already be involved in the criminal justice system, or "abusers" of drugs or alcohol. They may live in the inner city, or in a remote rural area, isolated in either instance from any real opportunity.

Even where institutions reach out or profess to reach out to assist the poor, the disadvantaged, and the disaffected, for some reason or other these young people are not reached. Some of them are systematically excluded from the services of community agencies.

Some categories of "high-risk" youths are easier to identify than others: teenage parents whose prospects for future success and survival are already much pooer than their counterparts; youngsters who have serious behavioral problems; young urban dwellers from various minority groups, many of whose members drop out or are forced out of school prior to graduation; youthful offenders; or Hispanic youth whose past education has been consistently interrupted by the movement of migrant streams.

These young people often may have been rejected by their families or may be status offenders. Some may have a long history of incarceration, a transient family life, or may be from a family with a long history on the public assistance rolls. They might also have limited English-speaking ability, or be below even a fifth grade reading level. It is expected that the appropriate target population groups selected for this demonstration will be characterized by two, three, or more of these descriptive characterizations. They have been deprived of both educational and economic opportunities, and the services of agencies which commonly provide needed services to youth. They need, especially, programs which provide them with re-entry points into the service systems and which help prevent them from dropping off or dropping out again.

V. Essential Elements of Comprehensive Programs

A. Desired Characteristics of Sponsoring Agencies

One of Act Together's major objectives is to support existing agencies which are already serving high-risk youths effectively, and which can meet an ambitious start-up timetable for an expanded or better program. However this does not preclude the possibility that agencies which are not currently providing services but which show evidence of a long standing commitment to and planning for a comprehensive youth service delivery program may be funded. In evaluating applicants, these are some of the characteristics Act Together will be looking for:

1. Documented evidence of existing local service gaps and/or barriers to coordination at the local level.
2. Accurate data on the specific needs of the population which the sponsoring agency proposes to serve.
3. Evidence of previous staff experience and commitment in (a) managing grants and (b) developing effective linkages among community resources.
4. Evidence of ability to attract funds and other resources to support programs for young people who are hard-to-reach and hard-to-serve
5. Proven effectiveness of "entrepreneurial" ability in getting many local component programs to work together with the applicant.
6. An ability to manage and operate youth programs in accord with good management and auditing procedures.
7. The ability to make a small staff and limited resources go far in terms of services to high-risk youths and to avoid cumbersome bureaucracy.
8. An innovative and promising design for coordinating youth services which is based on local needs rather than a theoretical model. (Some applicants, for example, may want to design an advocacy process to "bargain" for services from existing agencies on behalf of neglected populations, providing a bargaining as well as a coordinating function.)

In order to experiment with the effectiveness of a variety of public and private agencies as leaders in local coordination efforts, several kinds of lead agencies will be eligible to participate. These include, but are not limited to juvenile justice projects, public schools, alternative schools, youth advocacy programs, community development agencies, and state and local agencies. In every instance, however, the applicant agency must be able to demonstrate a minimum threshold capacity for effective service, for careful management and budgeting practices, for immediate credibility in the community to be served, for attracting resources, cooperation and support from the schools, the courts, the CETA prime sponsor, and other local agencies, and for a continuing concern with the needs of neglected populations. Locally credible agencies proposing to provide new or expanded services to groups previously shut out from such services will have an advantage.

B. Desired Characteristics of Comprehensive Programs

The agencies selected to receive Planning and Coordination Grants must ultimately demonstrate that their comprehensive programs will represent a significant advance over the current state of fragmented youth programming at the local level. Applicants will be expected to demonstrate:

1. A capacity to develop comprehensive services tailored to the individual needs of high-risk youth, to include at least more than one sub-group of the total population of high-risk youths.
2. Specific ideas about what innovative approaches can be taken to integrate more efficiently existing local services.
3. An understanding of how to pull together a variety of funding sources (e.g., employment and training, special education, foster care, juvenile justice funds, etc.) to produce projects which are long-lasting and comprehensive rather than short-term and limited.
4. A serious commitment to design or redesign projects for maximum adaptability to other places, and to maintain the kind of documentation and on-going self-analysis deemed necessary to facilitate the replication of successful ideas.
5. Goals for the young people to be served which demonstrate thoughtful commitment to building their self-sufficiency and their capacity for independent living.
6. A willingness to graft innovative ideas and practices from around the country with what local agencies already know how to do well, to create valuable departures from current practice.
7. The specific ways in which they plan to get along with the people and agencies they will need to get along with, while insuring the accessibility of services to high-risk youth.

C. Mobilization of Additional Resources

This point will be re-emphasized by Act Together again and again. All model projects will be expected to mobilize a considerable proportion of additional resources through linkage with other local programs, the "blending" of other locally available funds, and the creative marshalling of an unusual combination of public and private funding sources. In the grant for program operation, Act Together will fund a maximum of two out of every three project dollars. Therefore, each project must be designed to obtain the maximum possible local and state support.

D. The Development of an Explicit Replication Strategy

Applicants should be aware that, during the Planning and Coordination Grant period, they will be expected to design a specific strategy for communicating to other youth program operators throughout the country what they might learn if awarded a demonstration grant.

VI. Requirements for the Planning and Coordination Grants Application

A. Statement of the Problem

Describe, as succinctly and specifically as possible, the nature of the problem(s) your program will address. This would include a description of the target population(s) your program would serve, the dimensions of the community to be served, the particular gap(s) or weakness(es) in present service delivery, and the main barriers to delivering adequate services.

B. Explanation of Local Rationale for a Comprehensive Program

This is an important statement, part philosophy, part cold, hard facts, justifying why a more comprehensive strategy is needed in your local area and explaining what you mean by a comprehensive program for the population you propose to serve. Discuss how the delivery of services could be improved for the target population; and how the current barriers to delivering services can be overcome.

C. Description of your Approach to Combining and Coordinating Local Resources to Provide Comprehensive Services

This section should describe how you propose to involve others during the planning and coordination phase in such a way that initial implementation of a comprehensive program could begin in the fall of 1981. The information you provide here should demonstrate a knowledge of possible funding sources and service providers, and your thoughts regarding your strategy for leveraging additional monies and influence. The

programs of those with whom you intend to work in the design and implementation of a comprehensive youth service project should be described. Describe the potential value and impact of the services you hope to provide.

D. Statement of Organizational Capacity

This is a statement of your organization's ability to manage the program based on the expertise of staff members and the recent administrative record of your organization. Describe your experiences in managing grants, developing effective linkages among community resources, and success in full serving high-risk youths. State specifically the resources which other local agencies have already been willing to pledge to the effort, and what additional commitments you will seek during the planning and coordination period.

E. Question and Answer Form

A Question and Answer Form (Appendix B) must be filled out by each project. It is designed to give us important information on each program in a uniform manner. *Answer each question on the form provided, using only the space allotted.*

F. Budget

Please provide all pertinent information in connection with the Budget Form included as Appendix C.

VII. Evaluation and Selection of Planning and Coordination Grants

All Planning and Coordination Grant applications will be evaluated by experienced outside reviewers, the Board of Directors of Act Together, Inc., and representatives of the federal agencies which are cooperating in this initiative. A standard Reviewer Form (Appendix D) will be used to evaluate these applications.

After the applications are submitted, they will be read and evaluated by outside reviewers in a two-stage process. The top 50 applications will be presented to the Act Together Board of Directors for its review. The Board will review these applications and recommend up to 20 applications to the federal government for Planning and Coordination Grant funding. The government will review these applications and make their final determination for funding. This procedure is expected to take two months. The planning and coordination period will run approximately 12 weeks.

In the course of considering applications for planning and coordination grants, a variety of factors will be taken into account in order to arrive at a funding of a mix of projects that will facilitate the analysis and replication function that is the chief thrust of this demonstration.

Such factors will include geographic distribution, target population emphasis, and funding sources, for example.

The criteria by which Planning and Coordination Grant applications will be judged should be clear from the areas of emphasis in these guidelines and, especially from the weighted scores of the various categories on the appended review form. The potential capacity of the proposing organization to deliver improved services to hard-to-serve youth and capacity to marshall local resources and support are two of the most important criteria, and these two qualities need to be demonstrated in as convincing a manner as possible. The capacity of project staff both to deal with the target population and to manage grants will count heavily. A clear and precise understanding of the population to be served is important, as are the potential effectiveness and ambitiousness of the combination of services to be provided. Programs which have the capacity to make useful and/or original contribution to disseminating useful ideas about comprehensive projects for high-risk youth will also gain some advantage.

VIII. Requirements for Submitting an Application

The procedure for submitting an Application for a Planning and Coordination Grant is as follows:

1. *Title Page*—Application for Federal Assistance (Standard Form 424).

A title page form is included as Appendix A. It should be completed and used as the cover page of the application.

2. *Length.*

The narrative description of the program should not exceed 10 typed pages, double-spaced. The Question and Answer Form (Appendix B) and the Budget Form (Appendix C) should be filled out from the back of this document and stapled to the narrative and the Title Page.

3. *Attachments.*

If you wish, you may include brief background material to support or document aspects of your application. However, reading the attachments should not be necessary for understanding the proposed project. Each attachment should be clearly designated (Attachment 1, Attachment 2, etc.) and all the attachments should total no more than 6 sheets of paper.

4. *Signatories.*

The original title page should bear the signature, in ink, of the director or other authorized representative of the organization which is submitting the proposal.

5. *Number of copies.*

Five copies of the Application (Title Page, Narrative, Question and Answer Form, Budget, and Attachments, if any) must be submitted.

6. *Deadlines and Mailing Address.*

To be considered, applications must be received on or before 5 p.m., March 12, 1981. Applications should be mailed to: Act Together, Inc., P.O. Box 19995, Washington, D.C. 20036. As soon as an application is received, Act Together will send an acknowledgement to the applicant.

7. *Notification.*

All applicants will be notified by mail of the action taken on their application.

8. *Copies of Application/ Notifications.*

a. Concurrent with submission of application, the applicant organization should notify or submit a copy of the application to the appropriate A–95 Clearinghouse(s) in accordance with A–95 requirements (28 CFR Part 30).

9. *Late Applications.*

Applications received after the deadline will be deemed ineligible and returned to the sender.

10. *Where to get Further Information.*

If you need further information write Act Together at the above mailing address or call 202/833–2395.

BILLING CODE 4410-18-M

APPENDIX A

OMB Approval No. 29-R0218

FEDERAL ASSISTANCE

SECTION I—APPLICANT/RECIPIENT DATA

1. TYPE OF ACTION (Mark appropriate box)
- ☐ PREAPPLICATION
- ☐ APPLICATION
- ☐ NOTIFICATION OF INTENT (Opt.)
- ☐ REPORT OF FEDERAL ACTION

2. APPLICANT'S APPLICATION — a. NUMBER; b. DATE (Year month day) 19

3. STATE APPLICATION IDENTIFIER — a. NUMBER; b. DATE ASSIGNED (Year month day) 19

Leave Blank

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name :
- b. Organization Unit :
- c. Street/P.O. Box :
- d. City :
- e. County :
- f. State :
- g. ZIP Code:
- h. Contact Person (Name & telephone No.) :

5. FEDERAL EMPLOYER IDENTIFICATION NO.

6. PROGRAM (From Federal Catalog) — a. NUMBER ☐☐•☐☐☐; b. TITLE

7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT

8. TYPE OF APPLICANT/RECIPIENT
A-State; B-Interstate; C-Substate District; D-County; E-City; F-School District; G-Special Purpose District; H-Community Action Agency; I-Higher Educational Institution; J-Indian Tribe; K-Other (Specify): _____
Enter appropriate letter ☐

9. TYPE OF ASSISTANCE
A-Basic Grant; B-Supplemental Grant; C-Loan; D-Insurance; E-Other
Enter appropriate letter(s) ☐☐

10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)

11. ESTIMATED NUMBER OF PERSONS BENEFITING

12. TYPE OF APPLICATION
A-New; B-Renewal; C-Revision; D-Continuation; E-Augmentation
Enter appropriate letter ☐

13. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

14. CONGRESSIONAL DISTRICTS OF: a. APPLICANT; b. PROJECT

15. TYPE OF CHANGE (For 11c or 11e)
A-Increase Dollars; B-Decrease Dollars; C-Increase Duration; D-Decrease Duration; E-Cancellation; F-Other (Specify): _____
Enter appropriate letter(s) ☐☐☐

16. PROJECT START DATE (Year month day) 19

17. PROJECT DURATION (Months)

18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY ▶ (Year month day) 19

19. EXISTING FEDERAL IDENTIFICATION NUMBER

20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT ▶
a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached:

	No responses	Responses attached
(1)	☐	☐
(2)	☐	☐
(3)	☐	☐

23. CERTIFYING REPRESENTATIVE — a. TYPED NAME AND TITLE; b. SIGNATURE; c. DATE SIGNED (Year month day) 19

SECTION III—FEDERAL AGENCY ACTION

24. AGENCY NAME

25. APPLICATION RECEIVED (Year month day) 19

26. ORGANIZATIONAL UNIT

27. ADMINISTRATIVE OFFICE

28. FEDERAL APPLICATION IDENTIFICATION

29. ADDRESS

30. FEDERAL GRANT IDENTIFICATION

31. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. DEFERRED
- ☐ e. WITHDRAWN

32. FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

33. ACTION DATE ▶ (Year month day) 19

34. STARTING DATE (Year month day) 19

35. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

36. ENDING DATE (Year month day) 19

37. REMARKS ADDED ☐ Yes ☐ No

38. FEDERAL AGENCY A-95 ACTION
a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made.

b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)

424-101

STANDARD FORM 424 PAGE 1 (10-75)
Prescribed by GSA, Federal Management Circular 74-7

SECTION IV—REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

Appendix B.—Question and Answer Form

Please fill in the answers to the questions below in the space provided.

1. Whom will your program serve?

2. What local services need the most improvement; which need to be expanded most desperately; and what are the most glaring local service omissions for this group?

3. What will be the major services your program will provide?

4. What's innovative about the way you propose to approach the problem?

5. What are two of your key goals?

6. What institutions do you hope to draw together during the planning period? What would be the most important commitments you could get from them?

7. Why is there a need in your case for more comprehensive services for the target population you propose to serve?

8. What changes would you hope to see in the young people involved in your program?

9. What other sources of funds would you seek to attract to your program?

10. What's especially innovative about the way your agency operates currently?

Appendix C.—Budget Form for Planning and Coordination Grant

(Provide Information on These and Any Other Applicable Categories)

Personnel
Fringe Benefits
Travel/Transportation
Equipment
Supplies
Indirect Charges (if any)

Appendix D.—Reviewer Form

Total=100 (Weightings in Parentheses)

1. Is the target population clearly defined and does the program undertaken show a sophisticated understanding of the population it proposes to serve? (10)

2. Does the organization offer convincing evidence that it can achieve a substantial improvement in terms of providing coordinated services to high-risk youths in the target area? (20)

3. Is there evidence that the program will be able to harness local-state or other resources to become self-supporting? Is there evidence of real depth in the current local support for the agency? (15)

4. Does the program design seem appropriate and effective? (10)

5. Does the organization show evidence that it has the capacity and necessary community acceptance necessary to build the linkages and network necessary for a comprehensive program? Does the program design integrate such linkages? (10)

6. Does the project staff have the demonstrated ability and experience to deal with high-risk youths? (10)

7. Does the project staff have the demonstrated ability and experience to manage grants? (10)

8. Is there evidence that the target population will see the proposed services as useful and meaningful? (5)

9. Will some of those involved at the level of staff, board, consultants, etc., come from the same community as the target group? (5)

10. Does the program plan demonstrate a commitment to cooperate with national replication efforts? (5)

Appendix E.—Intent To Submit Application

(Not a prerequisite for submission of an application)

If your agency is planning to submit a proposal under this initiative, please tear out this page and mail it by February 20, 1981 to: Act Together, Inc., P.O. Box 19995, Washington, D.C. 20036.

This will enable Act Together to estimate how many applications will be received and plan more accurately for the review process and not delay the grant awards.

Yes, I plan to submit an application under the

Name of organization: _____

Address: _____

[FR Doc. 81-874 Filed 1-8-81; 8:45 am]
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federal register

Friday
January 9, 1981

Part IX

Office of Personnel Management

Office of Government Ethics

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 738

Office of Government Ethics

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Title IV of the Ethics in Government Act of 1978 as amended (the Act), sets forth the responsibilities of the Director of the Office of Government Ethics in providing overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency. In carrying out these responsibilities the Director of the Office of Government Ethics (the Office) must not only provide consistent guidance to individuals and agencies but must develop guidelines for agency ethics programs. The Office of Personnel Management (OPM) is publishing final regulations setting forth the elements of an agency's ethics program, the responsibilities of an agency head with regard to that program and the duties of the designated agency ethics official as well as regulations establishing a formal advisory opinion service.

EFFECTIVE DATE: February 9, 1981.

FOR FURTHER INFORMATION CONTACT: Jane Ley at (202) 632-7642.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management ("OPM") is publishing final regulations (1) setting forth the elements of an agency's ethics program, the responsibilities of an agency head with regard to that program and the duties of a designated agency ethics official; and (2) establishing the formal advisory opinion service of the Office of Government Ethics. Proposed regulations were published in the **Federal Register** on July 29, 1980 (45 FR 50534–50537). Editorial revisions and other changes have been made in order to simplify and clarify the regulations.

The notice of proposed rulemaking provided a 60-day period for public comment. OPM received comments from 28 individuals, agencies, and other organizations including labor organizations and public interest groups. The following summarizes the comments received and changes made:

Subpart A

One comment indicated that the leadership role of the Office of Government Ethics in the ethics program within the executive branch was not highlighted adequately. The General policy statement was amended to emphasize that leadership role.

Subpart B

Several comments were received questioning the relationship of the alternate agency ethics official to the deputy ethics officials and the selection of the alternate agency ethics officials.

One comment suggested that the designated agency ethics official ("DAEO") be allowed to select his or her alternate. This was not incorporated because the primary purpose of having an alternate DAEO was to have an individual who could certify financial disclosure reports of nominees ("nominee statements") in the DAEO's absence. Such individual should, as is the DAEO, be selected by the head of the agency. This selection certainly could be as a result of the DAEO's recommendation.

Some commenters were concerned that the alternate agency ethics official could not also be a deputy ethics official. Language was added to make it clear that he or she could also serve as a deputy.

A number of comments were received about the various ethics program elements listed in § 738.203(b). One concern expressed was that a designated agency ethics official did not have "line" authority over all persons and divisions within an agency and therefore would not have the authority to carry out all of the listed program elements. Because this authority was not there, the DAEO could not "ensure" that all those elements were being carried out. The final regulation does not reflect any change in this portion of that section. The DAEO derives his or her authority for the ethics program directly from the head of the agency; he or she can therefore direct a program that does cut across organizational lines. While in many cases the DAEO simply will be monitoring or coordinating the actions of other offices within the agency, he or she could confer, if necessary, with the head of the agency to "ensure" that such action was taken. Ultimate responsibility would then rest with the agency head.

Some comments were received regarding the requirement that a DAEO or alternate personally *review* the financial disclosure reports of Presidential nominees. The final regulations require the DAEO or alternate personally *certify* these reports. He or she may seek assistance from others in the review process but must personally certify the report on behalf of the agency. One commenter incorrectly thought that this requirement was meant to include the review and certification of all incumbent Presidential appointees; the DAEO or alternate personally must certify only those reports of Presidential nominees who are awaiting confirmation hearings.

A number of comments questioned the scope of the statutory requirement that an agency publish a list of those circumstances or situations which have resulted or may result in non-compliance with ethics laws and regulations. The regulation was changed to reflect the fact that an agency need not publish such a list in the **Federal Register** but may use an internal publication system. Such lists would be available to the public upon request.

One comment stated that an agency's counseling and education programs should be considered separate elements of a total ethics program. The final regulation reflects this comment by discussing each program separately.

One comment indicated that these regulations had not made clear that the Inspector General within an agency has an integral part in an agency ethics program. The commenter's point was correct. These regulations now contain a paragraph dealing with the referral of matters to and acceptance of matters from an agency's Office of the Inspector General, if the agency has such an Office.

One comment questioned the requirement in the proposed regulations that certain deputy ethics officials file a confidential SF 278 if those officials were already required to file the confidential form required by that agency pursuant to Executive Order 11222. The special requirement for a deputy ethics official to file a financial disclosure report was deleted from the final regulation. Persons involved with an agency's ethics program will file any report which is already required of them by the Act or regulations promulgated pursuant to Executive Order 11222. They will not be required by these regulations to file an additional report.

Subpart C

One commenter requested that § 738.301(b) be changed so that only present employees could request and receive advice from their employing agencies. The commenter felt that it was not an agency's position to provide post-employment advice to those outside the government. OGE believes that post-employment advice for former *employees* is in fact a service which should be provided by an agency ethics program as well as by OGE. The final regulation remains unchanged.

The term "parties" has been substituted for "persons" in § 738.301(c) to reflect more accurately the statute

and legislative history. That section was also changed to make clear that, consistent with the Freedom of Information Act, the privacy of individuals is the subject of protection through deletion of identifying information.

One commenter suggested that there was an inconsistency between the statement concerning the issuance of opinions in § 738.301(b) and the acceptance of requests in § 738.302. These provisions are not inconsistent. The key term in § 738.301(b) is *issuance*. A request can be submitted by anyone; however, a request does not insure that an opinion will be issued.

Some commenters felt that the regulations should allow the DAEO to request an opinion on his or her own without waiting for a request to be generated by some other person. Section 738.302 has been clarified to make it more clear that DAEO's may make such requests.

A reference to the possible issuance of an informal letter opinion as an alternate to a formal advisory opinion was deleted because of the objections that OGE had proposed no guidelines on the use and weight of such letters.

One comment indicated that the proposed regulations would not allow OGE to seek additional information necessary to the issuance of an opinion from a source other than the person making the request without notifying that person. Since it is foreseen that it may be necessary to obtain such information, the final regulation has been amended to delete this specific notification requirement.

Two commenters objected to the procedures set forth in § 738.305(d) concerning OGE's consultation with the Criminal Division of the Department of Justice when a request indicated an actual or apparent violation of any conflict of interest law in 18 U.S.C. 202–209. This provision, however, is an integral part of a Memorandum of Agreement entered into on May 19, 1980 by OGE and the Department of Justice regarding Justice's agreement to allow OGE to issue binding advisory opinions interpreting criminal statutes.

A number of comments concerned the notice and comment procedure established for formal advisory opinion requests. One commenter felt such a procedure was unnecessary and counterproductive especially in instances where a timely answer was required. A number of commenters felt that notice at the Office of Government Ethics would not be adequate to notify interested persons, especially the agency involved. The final regulations have changed the availability of notice and comment to interested *parties* instead of persons. Generally, the DAEO of the agency involved will also receive a copy of a request.

The language change to interested parties rather than interested persons necessitated changes in the notice provisions of § 738.306 and the comment provisions of § 738.307.

One commenter suggested that the reference to OGE's consultation with Office of Legal Counsel, Department of Justice, before issuing an opinion involving 18 U.S.C. 202–209 but which did not involve an actual or apparent violation should be placed in § 738.308 rather than § 738.309. This change appears in the final regulation.

A number of commenters mistakenly believed that § 738.212(a) was a mandatory direction to refer requests to OGE. It was the intent of the regulation to make it mandatory that a DAEO consult with this Office before *referring* a request and not to make the referral itself mandatory. OGE does not want to receive referrals of requests that are more properly handled by the agency. Clarifying language was added to this section to reflect more adequately this procedure.

One commenter felt that a referral to OGE by a DAEO should require the permission of the requester who had originally sought the DAEO's advice. Language was added to § 738.312(a) to include this concept.

New Material

A new § 738.313 was added to the final regulations by OGE. The provision contained in this section is a rule of procedure and practice, and therefore has been incorporated into the final regulation without additional notice. The new section requests that a DAEO transmit to OGE copies of written opinions issued by him or her which involve the application of 18 U.S.C. 202–209.

The Office of Personnel Management has determined that this is a significant regulation for the purposes of Executive Order 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

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

(1) A new Part 738 is added to read as follows:

PART 738—OFFICE OF GOVERNMENT ETHICS

Subpart A—General Provisions

Sec.

738.101 Authority and purpose.
738.102 General policies.
738.103 Agency regulations.
738.104 Definitions.

Subpart B—Designated Agency Ethics Officials

738.201 In general.
738.202 Responsibility of agency head.
738.203 Duties of designated agency ethics official.
738.204 Deputy ethics official.

Subpart C—Formal Advisory Opinion Service

738.301 In general.
738.302 Who may request a formal advisory opinion.
738.303 Subject matter of formal advisory opinions.
738.304 Form of requests for formal advisory opinions.
738.305 Acceptance of requests for formal advisory opinions.
738.306 Notice of requests.
738.307 Written comment on requests.
738.308 Issuance.
738.309 Reliance on formal advisory opinions.
738.310 Public availability and publication of formal advisory opinions.
738.311 Copies of published formal advisory opinions.
738.312 Referral of requests.
738.313 Agency Opinions.

Authority: Titles II and IV of Pub. L. 95–521 (October 26, 1978), as amended by Pub. L. 96–19 (June 13, 1979) and Pub. L. 96–28 (June 22, 1979).

Subpart A—General Provisions

§ 738.101 Authority and purpose.

(a) *Authority.* The regulations of this part are issued pursuant to the authority of Titles II and IV of the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended) ("the Act").

(b) *Purpose.* These regulations supplement and implement Titles II, IV and V of the Act, set forth more specifically certain procedures provided in those titles, and furnish examples, where appropriate.

§ 738.102 General policies.

(a) The Office of Government Ethics ("the Office") provides overall direction and leadership concerning executive branch policies related to preventing conflicts of interest. The head of each agency has primary responsibility for the administration of the "ethics in government" program within his or her agency. The Office carries out its leadership role by:

(1) Providing information on and promoting ethical standards in executive agencies;

(2) Consulting with agencies regarding their agency ethics programs and assisting them in interpreting ethics rules and regulations;

(3) Developing rules and regulations pertaining to conflicts of interests and standards of conduct;

(4) Monitoring compliance with the public and confidential financial disclosure requirements;

(5) Establishing a formal advisory opinion service; and

(6) Evaluating the effectiveness of programs designed to prevent conflicts of interests.

§ 738.103 Agency regulations.

Each agency may, subject to the prior approval of the Office of Government Ethics, issue regulations not inconsistent with this part.

§ 738.104 Definitions.

For the purposes of this part:

"*Act*" means the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended).

"*Agency*" means any executive department, military department, Government corporation, independent establishment or agency, including the United States Postal Service and Postal Rate Commission.

"*Designated agency ethics official*" means an officer or employee who is designated by the head of the agency to coordinate and manage the agency's ethics program in accordance with the provisions of § 738.203 of this part.

"*Director*" means the Director of the Office of Government Ethics.

"*Executive branch*" includes each executive department, military department, Government corporation, independent establishment, and any other entity or administrative unit in the executive branch unless such agency, entity or unit is specifically included in the coverage of Title I (relating to the legislative branch) or Title III (relating to the judicial branch) of the Act.

"*Person*" includes an individual, partnership, corporation, association, government agency, or public or private organization.

Subpart B—Designated Agency Ethics Official

§ 738.201 In general.

Each agency shall have a designated agency ethics official who is the officer or employee designated by the head of the agency to administer the provisions of Title II of the Act within that agency, to coordinate and manage the agency's ethics program and to provide liaison to the Office of Government Ethics with regard to all aspects of such ethics program. The agency's ethics program shall be designed to implement Titles II, IV and V of the Act and regulations promulgated thereunder, Executive Order 11222 (relating to standards of conduct for officers and employees within the executive branch) and regulations promulgated thereunder, and other statutes and regulations applicable to agency ethics matters.

§ 738.202 Responsibilities of agency head.

(a) *In general.* The head of each agency is responsible for and shall exercise personal leadership in establishing, maintaining, and carrying out the agency's ethics program. He or she shall make available to the ethics program sufficient resources (including investigative, audit, legal, and administrative staff as necessary) to enable the agency to administer its program in a positive and effective manner.

(b) *Selection of a designated agency ethics official.* The head of each agency shall appoint an individual to serve as the designated agency ethics official and an individual to serve in an acting capacity in the absence of the primary designated agency ethics official (alternate agency ethics official). In selecting these two individuals the head of an agency should ensure that the experience of such appointees in administrative, legal, managerial, or analytical work demonstrates the ability to—

(1) Review the financial disclosure reports submitted by officers or employees within the agency, assessing the application of conflict of interest laws and regulations to the information reported and counseling those officers or employees with regard to resolving actual or potential conflicts of interests, or appearances thereof;

(2) Review the financial disclosure reports submitted by Presidential appointees for confirmation purposes and counsel those appointees with regard to resolving potential conflicts of interest, or appearances thereof, before the confirmation hearing;

(3) Counsel agency personnel concerning ethics standards and programs;

(4) Counsel departing and former agency officials on post-employment conflict of interest standards;

(5) Assist managers and supervisors in understanding and implementing agency ethics programs;

(6) Administer a system for periodic evaluation of the ethics program; and

(7) Select deputy ethics officials if necessary and manage the ethics program through them.

(c) *Designation.* The head of each agency shall formally delegate functional authority to coordinate and manage the ethics program as set forth in § 738.203 to the designated and alternate agency ethics officials. Within 30 days of any such delegation of authority the head of the agency shall submit to the Office of Government Ethics a formal written designation. The designation shall include:

(1) The names of the individuals so designated;

(2) The title of the position held by each designee; and

(3) A copy of the delegation of authority.

§ 738.203 Duties of the designated agency ethics official.

(a) *In general.* The designated agency ethics official shall coordinate and manage the agency's ethics program. The program consists generally of:

(1) Liaison with the Office of Government Ethics;

(2) Review of financial disclosure reports;

(3) Initiation and maintenance of ethics education and training programs; and

(4) Monitoring administrative actions and sanctions.

(b) *Program elements.* In carrying out this program on behalf of the head of the agency, the designated agency ethics official shall ensure that:

(1) Close liaison with the Office of Government Ethics concerning the agency's ethics program is developed and maintained;

(2) An effective system and procedure for the collection, filing, review, and, when applicable, public inspection of the financial disclosure reports as required by Title II of the Act, Executive Order 11222, and other applicable statutes and regulations is developed and properly administered;

(3) The financial disclosure reports of Presidential nominees to agency positions submitted prior to Senate confirmation hearings pursuant to § 734.604(c) of Part 734 are certified personally by him or herself or alternate designated agency ethics official in his or her absence;

(4) All financial disclosure reports submitted by employees and filed in bureaus and regional offices, as well as those submitted and filed at the agency's headquarters, are properly maintained and effectivelly and consistently reviewed for conformance with all applicable laws and statutes;

(5) A list of those circumstances or situations which have resulted or may result in noncompliance with ethics laws and regulations is developed, maintained and published within the agency as required by § 206(b)(7) of the Act and made available for public inspection;

(6) An education program for agency employees concerning all ethics and standards of conduct matters, including post employment matters, is developed and conducted in cooperation with the education program of the Office of Government Ethics;

(7) A counseling program for agency employees concerning all ethics and standards of conduct matters including post employment matters, is developed and conducted;

(8) Records are kept, when appropriate, on advice rendered;

(9) Prompt and effective action including administrative action is undertaken to remedy:

(i) Violations or potential violations, or appearances thereof, of the agency's standards of conduct including post employment regulations;

(ii) The failure to file a financial disclosure report or portions thereof;

(iii) Potential or actual conflicts of interests, or appearances thereof, which were disclosed on a financial disclosure report; and

(iv) Potential or actual violations of other laws governing the conduct or financial holdings of officers or employees of that agency, and

that a follow-up is made to ensure that actions ordered, including divestiture and disqualification, have been taken;

(10) The agency's standards of conduct regulations, financial disclosure systems, and post-employment enforcement systems are evaluated periodically to determine their adequacy and effectiveness in relation to current agency responsibilities;

(11) Information developed by internal audit and review staff, the Office of the Inspector General, if any, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations;

(12) The services of the agency's Office of the Inspector General, if any, are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office;

(13) A list of those persons to whom delegations of authority are made pursuant to § 738.204(a) is maintained and made available to the Office of Government Ethics, upon request; and

(14) Information required by the Act or requested by the Office of Government Ethics in the performance of its responsibilities is provided in a complete and timely manner.

§ 738.204 Deputy ethics official.

(a) *Functions.* A designated agency ethics official may, if necessary, delegate to one or more deputy ethics officials any of the duties referred to in § 738.203, except for those functions set forth in § 734.604(c)(2) of Part 734 and referred to in § 738.203(b)(3) (certification of nominee statements). A deputy ethics official shall work under the supervision of the designated agency ethics official in carrying out such delegated functions.

(b) *Dual status.* A deputy ethics official may also be designated pursuant to § 738.202 to serve as the alternate agency ethics official. During the absence of the designated agency ethics official a deputy ethics official who has also been designated as the alternate ethics official shall perform the functions set forth in § 734.604(c)(2) of Part 734 and referred to in § 738.203(b)(3).

Subpart C—Formal Advisory Opinion Service

§ 738.301 In general.

(a) The Director of the Office of Government Ethics has the authority and responsibility to render formal advisory opinions pursuant to Section 402(b)(8) of the Act. This service is available to any person who has a question about a matter over which the Office of Government Ethics has jurisdiction. Formal advisory opinions will be issued when a two-pronged test is met. First, the person making the request must meet the requirements of § 738.302 and, second, the subject matter of the request must meet the criteria set forth in § 738.303.

(b) Normally, formal advisory opinions will not be issued to individuals who wish to obtain general advice concerning their own specific present or proposed activities or financial transactions. Such questions should be directed to the designated ethics official of the agency in which the individual will serve, serves or served. If a designated agency ethics official receives a request which he or she believes should be answered by the Office of Government Ethics, a referral procedure is available.

(c) The Office of Government Ethics will provide interested parties, to the extent practicable, with an opportunity to comment on any question which will be the subject of a formal advisory opinion issued by the Office. These opinions will be published in a form which will not identify specific individuals unless necessary to the understanding of the opinion. Copies will be sent to the designated ethics officials of each agency and be available at the Office of Government Ethics in that same form.

§ 738.302 Who may request a formal advisory opinion.

Any person (as defined in § 738.104) may request an opinion with respect to a situation in which that person is directly involved. A designated agency ethics official, representative, or attorney may request an opinion on behalf of the person. Notwithstanding this direct involvement requirement, a designated agency ethics official may always request an opinion concerning a situation about which he or she has knowledge.

§ 738.303 Subject matter of formal advisory opinions.

Formal advisory opinions will be rendered on matters of general applicability or on important matters of first impression concerning the application of the Act, Executive Order 11222 and regulations promulgated pursuant to such Act and Executive Order, and the laws embodied in 18 U.S.C. 202–209. The Director will respond to those requests which in his or her discretion fall within this category taking into consideration:

(a) The unique nature of the question and its precedential value,

(b) The potential number of officers or employees throughout the Government affected by the question,

(c) The frequency with which the question arises, and

(d) The likelihood or presence of inconsistent interpretations on the same question by different agencies.

Except in unusual circumstances, opinions will not be rendered with respect to hypothetical situations posed in requests. Opinions may be rendered, however, on proposed activities or transactions.

§ 738.304 Form of requests for formal advisory opinions.

(a) A request for a formal advisory opinion should be directed to the Director, Office of Government Ethics, 1900 E Street, NW, Room 436H, Washington, D.C. 20415.

(b)(1) A request should be in writing and signed by the individual making the request or by a representative of that person. A request shall state all material facts necessary for the Director to render a complete and correct opinion.

(2) In addition, it should also include the following information:

(i) the name, mailing address, and daytime telephone contact of the individual making the request, and

(ii) a copy of the position, description of the position involved, if available.

(c) If the request is submitted by a representative, he or she must show his or her representative status, list a mailing address and daytime telephone contact.

§ 738.305 Acceptance of requests for formal advisory opinions.

(a) Subject to the provisions of paragraph (d) of this section, the Director shall review each request for a formal advisory opinion and take one of the following actions:

(1) If the Director determines that the person making the request meets the requirements of § 738.302 and that the subject matter of the request qualifies under the criteria established in § 738.303, he or she shall assign an identifying number to the request and notify the person that a formal advisory opinion will be rendered; or

(2) If the Director determines that the person making the request is not a person who is eligible to receive a formal advisory opinion as provided in § 738.302, or that the subject of the request is not a matter upon which the Office issues formal advisory opinions as outlined by § 738.303, he or she shall so notify the person making the request. When a formal advisory opinion will not be rendered, the Office of Government Ethics may provide other informational assistance to the person as appropriate. (See also § 738.312.)

(b) If at any time after receipt of a request for a formal advisory opinion, the Director believes that additional relevant information is needed, he or she may seek such information directly from the person requesting the opinion or from other sources which may include the agency involved.

(c) The person requesting the opinion may furnish the Office of Government Ethics with legal memoranda or other material relevant to the opinion requested.

(d)(1) In the case of a request which involves an actual or apparent violation of any conflict of interest law embodied in 18 U.S.C. 202–209, the Director shall consult with the Criminal Division of the Department of Justice.

(2) If after such consultation the Criminal Division determines that a criminal investigation will be undertaken, the Director shall take no further action with regard to that request pending a determination by the Criminal Division not to prosecute.

(3) Upon receipt of a determination by the Criminal Division not to prosecute, the Director shall then follow the procedures for all other requests for formal advisory opinions set forth in this part.

§ 738.306 Notice of requests.

The Director shall provide notice to interested parties identified in a request which will be the subject of a formal advisory opinion that such an opinion will be rendered. Generally, the designated agency ethics official of the agency involved shall be notified of the request.

§ 738.307 Written comment on requests.

(a) To the extent practicable, the Director shall provide interested parties with an opportunity to submit written comment on a request for a formal advisory opinion. A time by which the comment should be received to be considered will be indicated with the notice that the request has been made.

(b) Additional time in which to comment may be granted upon written request or at the discretion of the Director. Such requests and all written comments shall be sent to the Office of Government Ethics, 1900 E Street, NW, Room 436H, Washington, D.C. 20415.

§ 738.308 Issuance.

(a) A formal advisory opinion,

(1) Which involves the application of any conflict of interest law embodied in 18 U.S.C. 202–209 to a transaction or activity which does not raise a question of an actual or apparent violation of this law but which raises an important matter of first impression, or

(2) Which is issued following the procedure set forth in § 738.305(d), requires consultation by the Office of Government Ethics with the Office of Legal Counsel of the Department of Justice before it is issued.

(b) An advisory opinion shall be considered issued when it is dated, numbered, and signed by the Director. Unless released by the person who made the request, the opinion will not become publicly available until information which identifies individuals involved and which is unnecessary to the complete understanding of the opinion has been deleted from the opinion and this version of the opinion is placed in a public reading file at the Office of Government Ethics. (See § 738.310)

§ 738.309 Reliance on formal advisory opinions.

(a) Any formal advisory opinion referred to in § 738.308(a) or any provisions or finding of a formal advisory opinion involving the application of the Act, Executive Order 11222 and the regulations promulgated pursuant to the Act or Executive Order, may be relied upon by:

(1) Any person directly involved in the specific transaction or activity with respect to which such advisory opinion has been rendered, and

(2) Any person directly involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion was rendered.

(b) Any person who relies upon any provision or finding of any formal advisory opinion in accordance with paragraph (a) of this section and who acts in good faith in accordance with the provisions and findings of such opinion, shall not, as a result of such act, be subject to prosecution under 18 U.S.C. 202–209 or, in the case where the opinion is exculpatory, be subject to any administrative adverse action or civil action based upon legal authority cited in that opinion.

§ 738.310 Public availability and publication of formal advisory opinions.

(a) The Director shall make sufficient deletions in any formal advisory opinion so that unless necessary to the complete understanding of the opinion, the identity of any person involved is not disclosed. No deletion shall in any way affect the substance of the opinion.

(b) A copy of this version of the opinion shall then be make available for public inspection within 10 working days after the issuance of the opinion at the Office of Government Ethics, 1717 H Street, NW, Room 436, Washington, D.C.

(c) The Director shall thereafter publish this version of the opinion.

§ 738.311 Copies of published formal advisory opinions.

Each designated agency ethics official shall receive a copy of each published opinion. Copies will also be available to the public from the Office of Government Ethics upon request at no more than cost.

§ 738.312 Referral of requests.

(a) If a designated agency ethics official receives a request for advice from a person and determines that the request may come within the criteria set forth in § 738.303, he or she shall contact the Office of Government Ethics concerning the request before referring the request to the Office. If after such consultation the Office of Government Ethics determines that the request should be the subject of a formal advisory opinion, the designated agency

ethics official shall notify the person making the request of that determination and request the person's permission to refer the request to the Office of Government Ethics.

(b) If the Director receives a request for an opinion which does not fulfill the criteria set forth in § 738.303, he or she may:

(1) Furnish informational assistance to the person as provided in § 738.305(a), or

(2) Refer the request to the appropriate designated agency ethics official.

(c) In all instances covered by paragraphs (a) and (b) of this section, a referral will not be made in the case of questions regarding possible future employment plans of an individual making the request unless he or she is first notified and gives his or her consent or the request itself indicates that such a referral may be made.

§ 738.313 Agency opinions.

If the designated agency ethics official issues a written opinion concerning the application of 18 U.S.C. 202–209, he or she shall transmit a copy of that opinion to the Office of Government Ethics.

[FR Doc. 81-816 Filed 1-8-81; 8:45 am]

BILLING CODE 6325-01-M

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Friday, January 9, 1981

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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.

AGRICULTURE DEPARTMENT

Foreign Agricultural Service—

83191 12-18-80 / Export sales, reporting of peanuts

GENERAL SERVICES ADMINISTRATION

81202 12-10-80 / ADP and telecommunications management; Federal Conversion Support Center, software conversion assistance; temporary

Rules Going Into Effect on Sunday, January 11, 1981

POSTAL RATE COMMISSION

83222 12-18-80 / Expediated procedures for experimental classification requests

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

A complete listing for the second session of the 96th Congress is published in the Reader Aid section of the issue of January 7, 1981