AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

9-30-81
Vol. 46 No. 189
Pages 47747-48096

federal register

Wednesday
September 30, 1981

Highlights

47938 **Incorporation by Reference** OFR approves certain materials in Titles 17, 40 and 42 through 50. (Part II of this issue)

48010–48032 **Medicare** HHS/HCFA announces cost limits for payments to hospitals, home health agencies and nursing homes. (3 documents) (Parts VII, VIII and IX of this issue)

47964, 47976, 47996, 48006 **Medicaid** HHS/HCFA amends rules on reimbursement and eligibility and publishes interim rule and proposed changes on reduced Federal payments to States. (4 documents) (Parts III, IV, V and VI of this issue)

47788 **Child Welfare** HHS/Office of Child Support Enforcement implements new computerized child support enforcement system provisions.

47784 **Computer Technology** HHS/SSA increases Federal Financial Participation for certain costs of approved application processing and information retrieval systems in the Aid to Families With Dependent Children Program.

47810 **Equal Educational Opportunity** ED requests comments on proposed annual operating plan for fiscal year 1982 for the Office for Civil Rights.

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

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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

48092 **Grant Programs—Education** ED proposes to revise assistance awards regulations under the Fund for the Improvement of Postsecondary Education. (Part XIV of this issue)

47871 HHS/PHS announces availability of National Health Service Corps Scholarship Program awards for 1981–82 school year.

47764 **Nuclear Power Plants and Reactors** NRC amends review procedures for power reactor operating licenses.

48034 **Revenue Sharing** Treasury/RSO publishes regulation amendments. (Part X of this issue)

47907 **Treasury Notes** Treasury invites tenders for Series F–1988.

47766–47770 **Air Carriers** CAB liberalizes rules on "wet leases" between airlines. (4 documents)

48074 **Campaign Funds** FEC requests comments on joint fundraising activity and collecting agents. (Part XI of this issue)

48078, 48086 **Equal Access to Justice** Occupational Safety and Health Review Commission and NLRB adopt procedural rules. (2 documents) (Parts XII and XIII of this issue)

47907 **Boycotts** Treasury publishes current list of countries which may require participation in, or cooperation with an international boycott.

47762 **Loan Programs—Agriculture** USDA/FmHA changes interest rate for certain types of loans.

47757 **Peanuts** USDA/CCC changes sales policy for peanuts sold for domestic edible use.

47773 **Indians—Business and Finance** Interior/BIA establishes internal accounting procedures.

47804 **Antidumping** Commerce/ITA issues final results of administrative review of findings on carbon steel plate from Japan.

47909 **Sunshine Act Meetings**

00 **Separate Parts of This Issue**

47938 **Part II, OFR**
47964–48032 **Part III–IX, HHS/HCFA**
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Rules and Regulations

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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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and General Officers of the Department of Agriculture to reflect the establishment of new agencies and positions, the realignment of functions within the Department of Agriculture, and the assignment of new functions. It has been determined that this action will enable the Department to better carry out its responsibilities and serve the public.

EFFECTIVE DATE: September 30, 1981.

FOR FURTHER INFORMATION CONTACT: Robert Siegler, Deputy Assistant General Counsel, Office of the General Counsel, Department of Agriculture, Washington, D.C. 20250 (202) 447-6035.

SUPPLEMENTARY INFORMATION: In order to give added emphasis to responsibility placed on the Secretary to administer the Packers and Stockyards Act, 1921, and enforce the provisions of the Consumer Credit Protection Act with respect to activities subject to the Packers and Stockyards Act, 1921, currently administered by the Agricultural Marketing Service, it has been determined that those activities should be administered by a Packers and Stockyards Administration, to be headed by an Administrator.

It has been further determined that the inspection activities of the Food Safety and Quality Service, are principally regulatory in nature and are more logically related to the Department's packers and stockyards, grain inspection, and other regulatory programs. Accordingly, the Food Safety and Quality Service now reporting to the Assistant Secretary for Food and Consumer Services will henceforth report to the Assistant Secretary for Marketing and Transportation Services. In connection with such realignment, the title of the Assistant Secretary for Marketing and Transportation Services has been changed to Assistant Secretary for Marketing and Inspection Services.

It has further been determined that those functions relating to grading and standardization activities and egg inspection currently administered by the Food Safety and Quality Service are more logically associated with other marketing functions and, therefore, should be administered by the Agricultural Marketing Service. In connection with such alignment, the name of the Food Safety and Quality Service has been changed to the Food Safety and Inspection Service.

In addition, at present the Assistant Secretary for Economics is delegated authority to identify cases of undue price enhancement by associations of producers and to issue complaints under section 2 of the Capper-Volstead Act. The Economics and Statistics Service is delegated authority to conduct research and carry out other activities related to marketing practices of associations of producers to support the Assistant Secretary in his responsibility. It has been determined that the responsibility currently assigned to the Assistant Secretary for Economics would be better carried out by a committee composed of the Assistant Secretary for Economics serving as Chairman, with the General Counsel and the Assistant Secretary for Marketing and Inspection Services serving as members. The Chairman will be authorized to utilize the services of USDA employees to support the functions of the newly established Capper-Volstead Act Committee.

Also, when public notice was given of the establishment of the position of Assistant Secretary for Economics, it was stated that the purpose of the action was to give added emphasis to the economic concerns facing farmers. In order to give further support to that action, it has been decided to separate the functions currently performed by the Economics and Statistics Service into two new program agencies, the Economic Research Service and the Statistical Reporting Service. Management support services for the two agencies as well as the World Food and Agricultural Outlook and Situation Board, which has been renamed the World Agricultural Outlook Board to better reflect its responsibilities, will be carried out by a new staff unit, the Economics Management Staff.

It has been further determined that the consumer affairs function of the Department should be assigned to the Assistant Secretary who has responsibility for the Department's feeding and nutrition programs. Accordingly, the Office of Consumer Affairs will report to the Assistant Secretary for Food and Consumer Services and has been renamed the Office of the Consumer Advisor.

It has also been determined that the functions currently performed by the Consumer Nutrition Center, the Dietary Guidance and Nutrition Education Staff, and the Food and Nutrition Information Center of the Science and Education Administration should likewise be transferred to the Assistant Secretary for Food and Consumer Services, and be administered by a Human Nutrition Information Service, to be headed by an Administrator. Management support services for the Human Nutrition Information Service will be provided by the Food and Nutrition Service.

It has also been determined that the Office of Environmental Quality should be abolished. The functions performed by that Office will be transferred to appropriate USDA agencies so that they may be better integrated with other aspects of the Department's ongoing programs.

In the Science and Education area, it has been decided to delegate greater authority to administrators of major SEA programs to strengthen program effectiveness and promote overall operational efficiency. Accordingly, the Science and Education Administration has been separated into the Agricultural Research Service, the Cooperative State Research Service and the Extension Service, headed by Administrators, and the National Agricultural Library, headed by a Director. In addition, reporting to the Director of Science and Education will be two agencies to support Science and Education programs: (1) The Science and Education Program Staff composed of Science Advisors, the Joint Council and

Users Advisory Board Staff, the Science and Education Coordination Office, the Information Staff, and the Office of Higher Education, and (2) the Science and Education Management Staff which will provide management support activities for the Office of the Director of Science and Education and the agencies reporting to the Director of Science and Education.

It has also been determined that management support activities currently performed by the Agricultural Marketing Service on behalf of the Office of Transportation, the Federal Grain Inspection Service, and the Agricultural Cooperative Service should be performed by a Marketing and Inspection Management Staff, to be headed by a Director. The Marketing and Inspection Management Staff will also provide management support services for the Packers and Stockyards Administration.

Also, to better reflect its responsibilities, the Office of Budget, Planning and Evaluation has been renamed the Office of Budget and Program Analysis.

It has further been determined that the functions performed by the Deputy Under Secretary for International Affairs and the Deputy Under Secretary for Commodity Programs should be performed by a Deputy Under Secretary for International Affairs and Commodity Programs.

In addition, delegations of authority are made to the Director of Science and Education and the Administrators of the Agricultural Research Service, the Cooperative State Research Service and the Extension Service to carry out selected activities under the Honeybee Act, as amended, the Animal Cancer Research Act, and the National Aquaculture Act of 1980.

Also, the Assistant Secretary for Natural Resources and Environment is delegated authority to exercise the functions of the Secretary of Agriculture contained in the Alaska National Interest Lands Conservation Act.

Lastly, minor editorial changes have been made.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Lastly, this action is not a rule as defined by Pub. L. 96-354, the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

Subpart A—General

1. Section 2.4 is revised to read as follows:

§ 2.4 General officers.

The work of the Department is under the supervision and control of the Secretary who is assisted by the following general officers: The Deputy Secretary; the Under Secretary for International Affairs and Commodity Programs; the Under Secretary for Small Community and Rural Development; the Assistant Secretary for Natural Resources and Environment; the Assistant Secretary for Food and Consumer Services; the Assistant Secretary for Marketing and Inspection Services; the Assistant Secretary for Governmental and Public Affairs; the Assistant Secretary for Economics; the General Counsel; the Assistant Secretary for Administration; the Inspector General; the Judicial Officer; the Director of Science and Education; and the Director, Office of Budget and Program Analysis.

2. Section 2.5 is amended by revising paragraph (b) to read as follows:

§ 2.5 Order in which Officers of the Department shall act as Secretary.

* * * * *

(b) In the case of the absence, sickness, resignation, or death of the Secretary, the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs and the Under Secretary for Small Community and Rural Development, the Assistant Secretary for Natural Resources and Environment, the Assistant Secretary for Food and Consumer Services, the Assistant Secretary for Marketing and Inspection Services, the Assistant Secretary for Governmental and Public Affairs, and the Assistant Secretary for Economics shall act as Secretary in the order in which they have taken office as an Assistant Secretary. In the event that any two or more Assistant Secretaries shall have taken office on the same date, they shall act as Secretary in the order in which they are listed herein.

* * * * *

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

3. Section 2.15 is amended by removing paragraph (a), by redesignating paragraph (b) as paragraph (a), by redesignating paragraphs (c) and (d) as (d) and (e) respectively, by adding new paragraphs (b) and (c), and by revising paragraph (e) as redesignated to read as follows:

§ 2.15 Delegations of authority to the Assistant Secretary for Food and Consumer Services.

* * * * *

(b) *Related to human nutrition information.* (1) Assemble and collect food and nutrition education materials, including the results of nutrition research, training methods, procedures, and other materials related to the purpose of the National Agricultural Research, Extension, and Teaching Policy Act of 1977; maintain such information; and provide for the dissemination of such information and materials on a regular basis to State educational agencies and other interested parties (7 U.S.C. 3126).

(2) Appraise the nutritive content of the U.S. food supply.

(3) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public to improve the nutritional quality of American diets.

(4) Develop family and food plans at different costs for use as standards by families of different sizes, sex-age composition and economic levels.

(5) Develop suitable and safe preparation and management procedures to retain nutritional and eating qualities of food served in homes and institutions.

(6) Develop materials to aid the public in meeting dietary needs, with emphasis on food selection for good nutrition and appropriate costs, and food preparation to avoid waste, maximize nutrient retention, minimize food safety hazards, and conserve energy.

(7) Develop food plans for use in establishing food stamp benefit levels, and assess the nutritional impact of Federal programs.

(8) Design and carry out periodic nationwide food consumption surveys to provide a measure of household food consumption of individual household

members and by region; analyze data from such surveys to provide a basis for dietary standards; and consult with Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding food consumption, dietary intake and adequacy, and implications of the surveys on public policy regarding food and nutrition-related programs.

(9) Coordinate nutrition education and information projects within the Department.

(c) *Related to consumer advise.* (1) Develop and implement USDA policy and procedural guidelines for carrying out the Department's Consumer Affairs Plan.

(2) Advise the Secretary and other policy level officials of the Department on consumer affairs policies and programs.

(3) Coordinate USDA consumer affairs activities and monitor and analyze agency procedures and performance.

(4) Represent the Department at conferences, meetings and other contacts where consumer affairs issues are discussed, including liaison with the White House and other governmental agencies and departments.

(5) Work with the office of Budget and Program Analysis and the Office of Governmental and Public Affairs to ensure coordination of USDA consumer affairs and public participation programs, policies and information, and to prevent duplication of responsibilities.

(6) Serve as a consumer ombudsman and communication link between consumers and the Department.

(7) Approve the designation of agency Consumer Affairs Contacts.

* * * * *

(e) *Related to defense.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. 2251 App. 2251 *et seq.*), concerning food stamp assistance.

§ 2.16 [Amended]

4. Section 2.16 is amended by redesignating paragraph (b) as paragraph (a).

5. Section 2.17 is amended by adding new paragraphs (a)(3)(xxxiii) and (f)(4), by redesignating paragraphs (g) and (h) as (h) and (i) respectively, by revising paragraph (i) as redesignated, and by adding a new paragraph (g) to read as follows:

§ 2.17 Delegations of authority to the Assistant Secretary for Marketing and Inspection Services.

The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Marketing and Inspection Services:

(a) *Related to agricultural marketing.*

* * *

(3) * * *

(xxxiii) Egg Products Inspection Act (21 U.S.C. 1031–1056).

* * * * *

(f) *Related to cooperatives.* * * *

(4) Serve as a member of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restrain of trade (7 U.S.C. 292).

(g) *Related to food safety and inspection.* (1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to voluntary inspection of poultry and edible products thereof; voluntary inspection and certification of technical animal fat; certified products for dogs, cats, and other carnivora; voluntary inspection of dairy products; voluntary inspection of fresh and processed fruits and vetegables and related products; voluntary inspection of rabbits and edible products thereof, and voluntary inspection and certification of edible meat and other products.

(2) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(i) Act of May 23, 1908, regarding inspection of dairy products for export (21 U.S.C. 693).

(ii) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470).

(iii) Federal Meat Inspection Act, as amended, and related legislation excluding section 12–14, and also excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–611, 615–624, 641–645, 661, 671–680, 691–692, 694–695).

(iv) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in administration of the Federal Meat Inspection Act and the Poultry Products Inspection Act.

(v) Humane Slaughter Act (7 U.S.C. 1901–1906).

(vi) Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation except functions which are otherwise assigned relating to the domestic distribution and donation of agricultural commodities and products thereof following the procurement thereof.

(vii) Procurement of agricultural commodities and other foods under section 6 of the National School Lunch Act of 1946, as amended (42 U.S.C. 1755).

(viii) In carrying out the procurement functions in paragraphs (g)(2) (vi) and (vii) of this section, the Assistant Secretary for Marketing and Inspection Services shall, to the extent practicable, use the commodity procurement, handling, payment and related services of the Agricultural Stabilization and Conservation Service.

(ix) Process or Renovated Butter Act (26 U.S.C. 4817–4818).

* * * * *

(i) *Related to defense.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*), concerning protection of livestock, poultry and crops and products thereof from biological and chemical warfare; the wholesomeness of meat and poultry and products thereof; inspection of eggs and egg products, and utilization or disposal of livestock and poultry exposed to radiation.

6. Section 2.19 is amended by revising paragraph (b) and by adding a new paragraph (d)(20) to read as follows:

§ 2.19 Delegations of authority to the Assistant Secretary for Natural Resources and Environment.

* * * * *

(b) *Related to environmental quality.* (1) Administer the implementation of the National Environmental Policy Act for the Department of Agriculture.

(2) Provide representation for the Department on the National Response Team on hazardous spills pursuant to Pub. L. 92–500 and section 4 of Executive Order 11735.

(3) Represent the Department in contacts with the U.S. Environmental Protection Agency, the Council on Environmental Quality and other organizations or agencies on matters related to assigned responsibilities.

(4) Formulate and promulgate Departmental policy relating to environmental activities and natural resources.

(5) Provide staff support for the Secretary in the review of environmental impact statements.

(6) Provide leadership in Department for general land use activities including implementation of Executive Orders

11988, Flood Plain Management, and 11990, Protection of Wetlands.

* * * * *

(d) * * *

(20) Exercise the functions of the Secretary of Agriculture contained in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

* * * * *

§ 2.21 [Amended]

7. Section 2.21 is amended by removing the term "Assistant Secretary for Food and Consumer Services" in paragraphs (b)(28) and (d)(2) and adding in lieu thereof the term "Assistant Secretary for Marketing and Inspection Services"; by removing the citation "§ 2.15(b)" in paragraphs (b)(27) and (b)(28) and adding in lieu thereof the citation "§ 2.15(a)"; by removing the citation "§ 2.27(b)(15)" in paragraph (b)(34) and adding in lieu thereof the citation "§ 2.27(a)(15)"; by removing the term "Assistant Secretary for Marketing and Transportation Services" in paragraphs (b)(30) and (d)(7) and adding in lieu thereof the term "Assistant Secretary for Marketing and Inspection Services"; and by removing the term "Director, Science and Education" in paragraph (d)(2) and adding in lieu thereof the term "Under Secretary for International Affairs and Commodity Programs".

§ 2.27 [Amended]

8. Section 2.27 is amended by removing the term "Agricultural Research Service" in paragraph (a)(5) and adding in lieu thereof the term "Office of International Cooperation and Development", and by removing the words "Federal Reports Act" and the citation "44 U.S.C. 3501–3511" in paragraph (a)(8) and adding in lieu thereof the words "Paperwork Reduction Act of 1980" and the citation "44 U.S.C. 3501–3520" respectively.

9. Section 2.27 is further amended by revising paragraph (a)(7) and adding paragraph (a)(13) to read as follows:

§ 2.27 Delegations of authority to the Assistant Secretary for Economics.

(a) *Related to economic research and statistical reporting.* * * *

(7) Take such security precautions as are necessary to prevent disclosure of crop or livestock report information prior to the scheduled issuance time approved in advance by the Secretary of Agriculture and take such actions as are necessary to avoid disclosure of confidential data or information supplied by any person, firm, partnership, corporation, or association (18 U.S.C. 1902, 1903, and 2072).

* * * * *

(13) Serve as Chairman of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade. The Chairman is authorized to call upon any agency of the Department for support in carrying the functions of the Committee (7 U.S.C. 292).

* * * * *

10. Section 2.29 is amended by adding a new paragraph (d)(9) to read as follows:

§ 2.29 Delegations of authority to the Assistant Secretary for Governmental and Public Affairs.

* * * * *

(d) *Related to intergovernmental affairs.* * * *

(9) Administer the implementation of the National Historic Preservation Act of 1966, Executive Order 11593, and regulations of the Advisory Council on Historic Preservation, 26 CFR Part 800, for the Department of Agriculture with authority to name the Secretary's designee to the Advisory Council on Historic Preservation.

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

11. Section 2.31 is amended by adding a new paragraph (p) to read as follows:

§ 2.31 Delegations of authority to the General Counsel.

* * * * *

(p) Serve as a member of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade (7 U.S.C. 292).

12. Section 2.36 is amended by revising the section heading and introductory paragraph to read as follows:

§ 2.36 Director, Office of Budget and Program Analysis.

The following delegations of authority are made by the Secretary of Agriculture to the Director, Office of Budget and Program Analysis:

* * * * *

13. Section 2.39 is amended by removing "(other than statistical and economic research but including consumer and food economic research)" in paragraph (a)(9) and adding in lieu thereof "(other than statistical and economic research but including research related to family use of resources)" and by adding new paragraphs (a)(63) through (a)(67) to read as follows:

§ 2.39 Delegations of authority to the Director of Science and Education.

* * * * *

(a) *Related to science and education.* * * *

(63) Coordinate Departmental policies under the Toxic Substances Control Act (15 U.S.C. 2601–2629).

(64) Coordinate USDA policy relative to Federal Insecticide, Fungicide, and Rodenticide Act and coordinate the Department's integrated pest management program and the pesticide assessment program (7 U.S.C. 136–136y).

(65) Conduct research on the control of undesirable species of honeybees in cooperation with specific foreign governments (7 U.S.C. 284).

(66) Conduct a program of basic research on cancer in animals and birds (7 U.S.C. 3902).

(67) Perform research, development and extension education in aquaculture (16 U.S.C. 2804, 2806).

14. The heading for Subpart F is revised to read as follows:

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

15. Section 2.49 is revised to read as follows:

§ 2.49 Deputy Assistant Secretary for Marketing and Inspection Services.

(a) *Delegations.* Pursuant to § 2.17, subject to reservations in § 2.18, and subject to policy guidance and direction by the Assistant Secretary, the following delegation of authority is made by the Assistant Secretary for Marketing and Inspection Services to the Deputy Assistant Secretary for Marketing and Inspection Services, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Marketing and Inspection Services.

16. Section 2.50 is amended by removing the words "and (e)" in paragraph (a) and adding in lieu thereof the words "and (i)", by removing paragraphs (a)(7) through (a)(10), and by adding new paragraphs (a)(3)(xxxiv) and (a)(7) to read as follows:

§ 2.50 Administrator, Agricultural Marketing Service.

(a) * * *

(3) * * *

(xxxiv) Egg Products Inspection Act (21 U.S.C. 1031–1056).

* * * * *

(7) Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2551 *et seq.*), relating to inspection of eggs and egg products.

* * * * *

17. Section 2.50 is further amended by removing the term "Assistant Secretary for Marketing and Transportation Services" in paragraphs (a) and (b) and adding in lieu thereof the term "Assistant Secretary for Marketing and Inspection Services".

18. Section 2.50 is further amended by removing the citation "§ 2.68(a)(10)" in paragraphs (a)(3) (ix), (xxiv), (xxvii), (xxix), (xxxi), (xxxii), and (xxxiii) and adding in lieu thereof the citation "§ 2.68(a)(29)".

§ 2.51 [Amended]

19. Section 2.51 is amended by adding after the citation "§ 2.17(b)" in paragraph (a) the words "and (i)", and by removing the term "Assistant Secretary for Marketing and Transportation Services" in paragraph (a) and adding in lieu the term "Assistant Secretary for Marketing and Inspection Services".

§ 2.52 [Amended]

20. Section 2.52 is amended by removing the term "Assistant Secretary for Marketing and Transportation Services" in paragraph (a) and adding in lieu thereof the term "Assistant Secretary for Marketing and Inspection Services".

§ 2.53 [Amended]

21. Section 2.53 is amended by removing the term "Assistant Secretary for Marketing and Transportation Services" in paragraphs (a) and (c) and adding in lieu thereof the term "Assistant Secretary for Marketing and Inspection Services".

§ 2.54 [Amended]

22. Section 2.54 is amended by removing the term "Assistant Secretary for Marketing and Transportation Services" in paragraph (a) and adding in lieu thereof the term "Assistant Secretary for Marketing and Inspection Services".

23. A new § 2.55 is added to read as follows:

§ 2.55 Administrator, Food Safety and Inspection Service.

(a) *Delegations.* Pursuant to § 2.17 (g) and (i), the following delegations of authority are made by the Assistant Secretary for Marketing and Inspection Services to the Administrator, Food Safety and Inspection Service:

(1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to voluntary inspection of poultry and edible products thereof; voluntary inspection and certification of technical animal fat; certified products for dogs, cats, and other carnivora; voluntary inspection of dairy products; voluntary inspection of fresh and processed fruits and vegetables and related products; voluntary inspection of rabbits and edible products thereof; and voluntary inspection and certification of edible meat and other products.

(2) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(i) Act of May 23, 1908, regarding inspection of dairy products for export (21 U.S.C. 693).

(ii) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470).

(iii) Federal Meat Inspection Act, as amended, and related legislation excluding section 12–14, and also excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–611, 615–624, 641–645, 661, 671–680, 691–692, 694–695).

(iv) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in administration of the Federal Meat Inspection Act and the Poultry Product Inspection Act.

(v) Humane Slaughter Act (7 U.S.C. 1901–1906).

(vi) Section 32 of the Act of August 23, 1935 (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation except functions which are otherwise assigned relating to the domestic distribution and donation of agricultural commodities and products thereof following the procurement thereof.

(vii) Procurement of agricultural commodities and other foods under section 6 of the National School Lunch Act of 1946, as amended (42 U.S.C. 1755).

(viii) In carrying out the procurement functions in paragraphs (a)(2) (vi) and (vii) of this section, the Administrator, Food Safety and Inspection Service shall, to the extent practicable, use the commodity procurement, handling, payment and related services of the Agricultural Stabilization and Conservation Service.

(ix) Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2551 *et seq.*), relating to wholesomeness of meat and poultry and products thereof.

24. Section 2.56 is redesignated as § 2.59 under Subpart G and a new § 2.56 is added under Subpart F to read as follows:

§ 2.56 Administrator, Packers and Stockyards Administration.

(a) *Delegations.* Pursuant to §2.17(e), the following delegations of authority are made by the Assistant Secretary for Marketing and Inspection Services to the Administrator, Packers and Stockyards Administration:

(1) Administer the Packers and Stockyards Act, 1921, as amended and supplemented.

(2) Enforce provisions of the Consumer Credit Protection Act (15 U.S.C. 1601–1665, 1681–1681t), with respect to any activities subject to the Packers and Stockyards Act, 1921, as amended and supplemented.

25. A new § 2.57 is added under Subpart F to read as follows:

§ 2.57 Director, Marketing and Inspection Management Staff.

(a) *Delegations.* Pursuant to §§ 2.7 and 2.17, the following delegation of authority is made by the Assistant Secretary for Marketing and Inspection Services to the Director, Marketing and Inspection Management Staff:

(1) Provide to the agencies reporting to the Assistant Secretary for Marketing and Inspection Services mutually agreed upon management support services. As used herein, management support services shall include:

(i) Administrative Services with authority to take actions required by law or regulation concerning procurement and contracting, real and personal property management, paperwork management, management analysis, matters arising under the Freedom of Information Act and the Privacy Act, and related functions.

(ii) Budget and Financial Management Services with authority to take actions required by law or regulation to discharge the budget and related financial management functions.

(iii) Personnel Services with authority to take actions required by law or regulation concerning staffing, organization, position management and classification, employee relations, employee development, and related functions.

(iv) Equal Opportunity and Civil Rights Services with authority to take actions required by law or regulation concerning Affirmative Action Program development and implementation, EEO

discrimination complaint processing, civil rights compliance, and related functions.

Subpart G—Delegations of Authority by the Assistant Secretary for Natural Resources and Environment

§ 2.58 [Removed]

26. Section 2.58 is removed.

27. Section 2.60 is amended by revising the introductory text of paragraph (a), and by adding a new paragraph (a)(20) to read as follows:

§ 2.60 Chief, Forest Service.

(a) Pursuant to § 2.19 (b), (d), and (i), the following delegations of authority are made by the Assistant Secretary for Natural Resources and Environment to the Chief of the Forest Service:

* * * * *

(20) Represent the Department on the National Response Team on hazardous spills pursuant to Pub. L. 92–500 and section 4 of Executive Order 11735.

* * * * *

28. Section 2.62 is amended by revising the introductory text of paragraph (a), and by adding a new paragraph (a)(12) to read as follows:

§ 2.62 Administrator, Soil Conservation Service.

(a) Pursuant to § 2.19 (b), (f), and (i), subject to reservations in § 2.20(f), the following delegations of authority are made by the Assistant Secretary for Natural Resources and Environment to the Administrator, Soil Conservation Service:

* * * * *

(12) Monitor actions and progress of the Department in complying with Executive Orders 11988 and 11990 regarding management of floodplains and protection of wetlands; monitor Agency efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Land Use Committee.

* * * * *

Subpart H—Delegations of Authority by the Under Secretary for International Affairs and Commodity Programs

29. Section 2.63 is revised to read as follows:

§ 2.63 Deputy Under Secretary for International Affairs and Commodity Programs.

(a) *Delegations.* Pursuant to § 2.21, subject to reservation in § 2.22, and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for International Affairs and Commodity Programs to the Deputy Under Secretary for International Affairs and Commodity Programs, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for International Affairs and Commodity Programs.

§ 2.65 [Amended]

30. Section 2.65 is amended by adding after the citation "§ 2.21(b)" in paragraph (a) the words "and (f)", by removing the citation "§ 2.15(b)" in paragraphs (a)(27) and (a)(28) and adding in lieu thereof the citation "§ 2.15(a)", by removing the term "Assistant Secretary for Marketing and Transportation Services" in paragraph (a)(30) and adding in lieu thereof the term "Assistant Secretary for Marketing and Inspection Services", and by removing the term "Food Safety and Quality Service" in paragraph (a)(28) and adding in lieu thereof the term "Food Safety and Inspection Service".

§ 2.68 [Amended]

31. Section 2.68 is amended by adding after the citation "§ 2.21(d)" in paragraph (a) the words "and (f)", by removing the terms "Assistant Secretary for Marketing and Transportation Services" and "Director of Science and Education" in paragraph (a)(5) and adding in lieu thereof the terms "Assistant Secretary for Marketing and Inspection Services" and "Administrator, Office of International Cooperation and Development" respectively, and by removing the term "Assistant Secretary for Marketing and Transportation Services" in paragraph (a)(7) and adding in lieu thereof the term "Assistant Secretary for Marketing and Inspection Services."

Subpart I—Delegations of Authority by the Under Secretary for Small Community and Rural Development

§ 2.70 [Amended]

32. Section 2.70 is amended by revising the citation "§ 2.23 (a) and (g)" in paragraph (a) to read "§ 2.23 (a), (e), and (g)".

§ 2.72 [Amended]

33. Section 2.72 is amended by adding after the citation "§ 2.23(c)" in paragraph (a) the words "and (e)".

Subpart K—Delegations of Authority by the Assistant Secretary for Economics

34. A new § 2.84 is added to read as follows:

§ 2.84 Administrator, Economic Research Service.

(a) *Delegations.* Pursuant to § 2.27 (a) and (c), subject to reservations in § 2.28(a), the following delegations of authority are made by the Assistant Secretary for Economics to the Administrator, Economic Research Service:

(1) Conduct economic research on matters of importance to cooperatives as authorized by the Agricultural Marketing Act of 1945 (7 U.S.C. 1621–1627).

(2) Conduct economic and social science research and analyses relating to (i) food and agricultural situation and outlook; (ii) the production, marketing and distribution of food and fiber products (excluding forest and forest products), including studies of the performance of the food and agricultural sector of the economy in meeting needs and wants of consumers; (iii) worldwide economic analyses and research on supply, demand, and trade in food and fiber products and the effects on the U.S. food and agriculture system; (iv) natural resources, including studies of the use and management of land and water resources, the quality of these resources, resource institutions, and watershed and river basin development problems; and (v) rural people and communities, as authorized by Title I and Title II of the act of August 14, 1946, as amended (7 U.S.C. 427, 1621–1627).

(3) Perform economic and other social science research under section 104(b) (1) and (3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, with funds administered by the Foreign Agricultural Service and the Office of International Cooperation and Development (7 U.S.C. 1704).

(4) Investigate and make findings as to the effect upon the production of food and upon the agricultural economy of a proposed action pending before the Administrator of the Environmental Protection Agency for presentation in the public interest, before said Administrator, other agencies, or before the courts.

(5) Review economic data and analyses used in speeches by Department personnel and in materials prepared for release through the press, radio and television.

(6) Conduct a study of the feasibility of establishing a system to monitor foreign direct investment in agricultural, rural, and urban real property, including the feasibility of establishing a nationwide multipurpose land data system (22 U.S.C. 3101 *et seq.*).

(7) Work with institutions and international organizations throughout the world in the fields of agricultural economics research. Such work may be carried out by:

(i) Exchanging materials and results with such institutions or organizations,

(ii) Engaging in joint or coordinated research, or

(iii) Stationing representatives at such institutions or organizations in foreign countries (7 U.S.C. 3201).

(8) Prepare for transmittal by the Secretary to the President and both Houses of Congress, an analytical report under section 5 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504) concerning the effect of holdings, acquisitions, and transfers of U.S. agricultural land by foreign persons.

(9) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*), concerning estimates of supplies of agricultural commodities and evaluation of requirements therefor, and food and agricultural aspects of economic stabilization and economic research.

(b) *Reservations.* The following authority is reserved to the Assistant Secretary for Economics:

(1) Review all proposed decisions having substantial economic policy implications.

35. Section 2.85 is revised to read as follows:

§ 2.85 Administrator, Statistical Reporting Service.

(a) *Delegations.* Pursuant to § 2.27 (a) and (c), subject to reservations in § 2.28(a), the following delegations of authority are made by the Assistant Secretary for Economics to the Administrator, Statistical Reporting Service:

(1) Prepare crop and livestock estimates and administer reporting programs including estimates of production, supply, price and other aspects of the U.S. agricultural economy, collection of statistics, conduct of enumerative and objective measurement surveys, construction and maintenance of sampling frames, and related activities. Prepare reports of the Crop Reporting Board of the Department of Agriculture covering official state and national estimates (7 U.S.C. 411(a), 475, 476, and 951).

(2) Take such security precautions as are necessary to prevent disclosure of crop or livestock report information prior to the scheduled issuance time approved in advance by the Secretary of Agriculture and take such actions as are necessary to avoid disclosure of confidential data or information supplied by any person, firm, partnership, corporation, or association (18 U.S.C. 1902, 1905, and 2072).

(3) Review, clear, coordinate, and improve statistics in the Department including review of all statistical forms, survey plans, and reporting and record keeping requirements originating in the Department and requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980; liaison with OMB and other Federal agencies for coordination of statistics, general improvement of statistical methods and techniques in the Department (44 U.S.C. 3501–3520).

(4) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*), concerning coordination of damage assessment, and food and agricultural aspects of agricultural statistics.

(b) *Reservations.* The following authority is reserved to the Assistant Secretary for Economics:

(1) Review all proposed decisions having substantial economic policy implications.

36. Section 2.86 is amended by revising the section heading, the introductory text of paragraph (a) and paragraph (a)(1)(ii) to read as follows:

§ 2.86 Chairman, World Agricultural Outlook Board.

(a) *Delegations.* Pursuant to § 2.27(a), (d), (e), and (f), subject to reservations in § 2.28(a), the following delegations of authority are made by the Assistant Secretary for Economics to the Chairman, World Agricultural Outlook Board:

(1) * * *

(ii) Oversee and clear for consistency of analytical assumptions and results all estimates and analyses which significantly relate to international and domestic commodity supply and demand, including such estimates and analyses prepared for public distribution by the Foreign Agricultural Service, the Economic Research Service, or by any other agency or office of the Department.

* * * * *

37. A new § 2.87 is added to read as follows:

§ 2.87 Director, Economics Management Staff.

(a) *Delegations.* Pursuant to §§ 2.7 and 2.27, the following delegations of authority are made by the Assistant Secretary for Economics to the Director, Economics Management Staff:

(1) Provide to the agencies reporting to the Assistant Secretary for Economics mutually agreed upon management support services. As used herein, management support services shall include:

(i) Administrative Services with authority to take actions required by law or regulation concerning procurement and contracting, real and personal property management, paperwork management, management analysis, matters arising under the Freedom of Information Act and the Privacy Act, and related functions.

(ii) Budget and Financial Management Services with authority to take actions required by law or regulation to discharge the budget and related financial management functions.

(iii) Personnel Services with authority to take actions required by law or regulation concerning staffing, organization, position management and classification, employee relations, employee development, and related functions.

(iv) Information Services with authority to take actions required by law or regulation concerning public information functions.

(v) Equal Opportunity and Civil Rights Services with authority to take actions required by law or regulation concerning Affirmative Action Program development and implementation, EEO discrimination complaint processing, civil rights compliance, and related functions.

Subpart L—Delegations of Authority by the Assistant Secretary for Food and Consumer Services

38. Section 2.92 is revised to read as follows:

§ 2.92 Administrator, Human Nutrition Information Service.

(a) *Delegations.* Pursuant to § 2.15(b), the following delegations of authority are made by the Assistant Secretary for Food and Consumer Services to the Administrator, Human Nutrition Information Service:

(1) Assemble and collect food and nutrition education materials, including the results of nutrition research, training methods, procedures, and other

materials related to the purpose of the National Agricultural Research, Extension, and Teaching Policy Act of 1977; maintain such information; and provide for the dissemination of such information and materials on a regular basis to State educational agencies and other interested parties (7 U.S.C. 3126).

(2) Appraise the nutritive content of the U.S. food supply.

(3) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public to improve the nutritional quality of American diets.

(4) Develop family food plans at different costs for use as standards by families of different sizes, sex-age composition and economic levels.

(5) Develop suitable and safe preparation and management procedures to retain nutritional and eating qualities of food served in homes and institutions.

(6) Develop materials to aid the public in meeting dietary needs, with emphasis on food selection for good nutrition and appropriate cost, and food preparation to avoid waste, maximize nutrient retention, minimize food safety hazards, and conserve energy.

(7) Develop food plans for use in establishing food stamp benefit levels, and assess the nutritional impact of Federal food programs.

(8) Design and carry out periodic nationwide food consumption surveys to provide a measure of household food consumption of individual household members and by region; analyze data from such surveys to provide a basis for dietary standards; and consult with Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding food consumption, dietary intake and adequacy, and implications of the surveys on public policy regarding food and nutrition-related programs.

(9) Coordinate nutrition education and information projects within the Department.

39. Section 2.93 is amended by revising the introductory text of paragraph (a), and adding paragraph (a)(7) to read as follows:

§ 2.93 Administrator, Food and Nutrition Service.

(a) *Delegations.* Pursuant to §§ 2.7 and 2.15(b) and (e), subject to reservations in § 2.16(b), the following delegations of authority are made by the Assistant Secretary for Food and Consumer Services to the Administrator, Food and Nutrition Services:

* * * * *

(7) Provide to the Human Nutrition Information Service mutually agreed upon management support services. As used herein, management support services shall include:

(i) Administrative Services with authority to take actions required by law or regulation concerning procurement and contracting, real and personal property management, paperwork management, management analysis, matters arising under the Freedom of Information Act and the Privacy Act, and related functions.

(ii) Budget and Financial Management Services with authority to take actions required by law or regulation to discharge the budget and related financial management functions.

(iii) Personnel Services with authority to take actions required by law or regulation concerning staffing, organization, position management and classification, employee relations, employee development, and related functions.

(iv) Information Services with authority to take actions required by law or regulation concerning public information functions.

(v) Equal Opportunity and Civil Rights Services with authority to take actions required by law or regulation concerning Affirmative Action Program development and implementation, EEO discrimination complaint processing, civil rights compliance, and related functions.

40. A new § 2.94 is added to read as follows:

§ 2.94 Director, Office of the Consumer Advisor.

(a) *Delegations.* Pursuant to § 2.15(c), the following delegations of authority are made by the Assistant Secretary for Food and Consumer Services to the Director, Office of the Consumer Advisor:

(1) Develop and implement USDA policy and procedural guidelines for carrying out the Department's Consumer Affairs Plan.

(2) Advise the Secretary and other policy level officials of the Department on consumer affairs policies and programs.

(3) Coordinate USDA consumer affairs activities and monitor and analyze agency procedures and performance.

(4) Represent the Department at conferences, meetings and other contacts where consumer affairs issues are discussed, including liaison with the White House and other governmental agencies and departments.

(5) Work with the Office of Budget and Program Analysis and the Office of Governmental and Public Affairs to ensure coordination of USDA consumer affairs and public participation programs, policies and information, and to prevent duplication of responsibilities.

(6) Serve as a consumer ombusdman and communication link between consumers and the Department.

(7) Approve the designation of agency Consumer Affairs Contacts.

41. A new Subpart N is added to read as follows:

Subpart N—Delegations of Authority From the Director of Science and Education

42. New §§ 2.105 through 2.110 are added to read as follows:

§2.105 Associate Director of Science and Education.

(a) *Delegations.* Pursuant to § 2.39, subject to reservations in § 2.40(a), and subject to policy guidance and direction by the Director, the following delegation of authority is made by the Director of Science and Education to the Associate Director of Science and Education: Acts and performs all the duties and exercise all the powers which are now or which may hereafter be delegated to the Director of Science and Education. In addition, the Associate Director serves as Director of the Science and Education Program Staff.

§ 2.106 Administrator, Agricultural Research Service.

(a) *Delegations.* Pursuant to § 2.39(a), subject to reservations in § 2.40(a), the following delegations of authority are made by the Director of Science and Education to the Administrator, Agricultural Research Service:

(1) Conduct research concerning domestic animals and poultry, their protection and use, causes of contagious, infectious, and communicable diseases and means for the prevention and cure of the same (7 U.S.C. 391).

(2) Conduct research related to the dairy industry and dissemination of information for the promotion of the dairy industry (7 U.S.C. 402).

(3) Conduct research and demonstrations at Mandan, ND, and Lewisburg, TN, concerning dairy livestock breeding, growing, and feeding, and other problems pertaining to the establishment of dairy and livestock industries (7 U.S.C. 421–422).

(4) Conduct research on new uses for cotton and on cotton ginning and processing (7 U.S.C. 423–424).

(5) Conduct research into the basic problems of agriculture in its broadest aspects, including, but not limited to, production, marketing (other than statistical and economic research but including research related to family use of resources), distribution, processing, utilization of plant and animal commodities, problems of human nutrition, development of markets for agricultural commodities, discovery, introduction, and breeding of new crops, plants, animals both foreign and native, conservation development, and development of efficient use of farm buildings, homes, and farm machinery, including the application of electricity and other forms of power and research and development related to uses of solar energy with respect to farm buildings, farm homes, and farm machinery (7 U.S.C. 427, 1621–1627, 2201, 2204).

(6) Conduct research on varietal improvement of wheat and feed grain to enhance their conservation and environmental qualities (7 U.S.C. 428b).

(7) Advance the livestock and agricultural interests of the United States including the breeding of horses suited to the needs of the United States (7 U.S.C. 437).

(8) Enter into agreements with and receive funds from any State or political subdivision, organization, or person for the purpose of conducting cooperative research projects (7 U.S.C. 450a).

(9) Make research grants to eligible institutions having a demonstrable capacity in food and agricultural research (7 U.S.C. 450i).

(10) Conduct research related to soil and water conservation, engineering operations and methods of cultivation to provide the control and prevention of soil erosion (7 U.S.C. 1010, 16 U.S.C. 590a).

(11) Maintain four regional research laboratories and conduct research at such laboratories to develop new scientific, chemical, and technical uses and new and extended markets and outlets for farm commodities and products and by-products (7 U.S.C. 1292).

(12) Conduct a special cotton research program designed to reduce the cost of producing upland cotton in the United States (7 U.S.C. 1441 note).

(13) Conduct research in tropical and subtropical agriculture for the improvement and development of tropical and subtropical food products for dissemination and cultivation in friendly countries as provided by the Food for Peace Act of 1966 (7 U.S.C. 1736(a)(4)).

(14) Conduct research to develop and determine methods of humane slaughter of livestock (7 U.S.C. 1904).

(15) Administer a national food and human nutrition research program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3171–3177).

(16) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research activities (7 U.S.C. 3291).

(17) Maintain a National Arboretum for the purpose of research concerning tree and plant life; accept and administer gifts or devices of real and personal property for the benefit of the National Arboretum; and order disbursements from the Treasury (20 U.S.C. 191–195).

(18) Conduct research on foot-and-mouth disease and other animal diseases (21 U.S.C. 113a).

(19) Conduct research on control and eradication of cattle grubs (screwworms) (21 U.S.C. 114e).

(20) Conduct research activities related to farm dwellings and other buildings for the purpose of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(21) Conduct research on losses of livestock in interstate commerce due to injury or disease (45 U.S.C. 71 note).

(22) Administer the Virgin Islands agricultural research program (48 U.S.C. 1409m–o).

(23) Conduct research related to the use of domestic agricultural commodities for the manufacture of any material determined to be strategic and critical or substitute therefor, under section 7(b) of the Strategic and Critical Material Stock Piling Act (50 U.S.C. 98f).

(24) Control within the Department of Agriculture the acquisition, use and disposal of material and equipment which may be a source of ionizing radiation hazard.

(25) Administer a program of research at regional solar energy research and development centers (7 U.S.C. 3271, 3281–3282).

(26) Pursuant to authority delegated by the Administrator of the General Services Administration to the Secretary of Agriculture in 34 FR 6406, 36 FR 1293, 36 FR 188440, and 38 FR 23838, appoint uniformed armed guards and special policemen, make all needful rules and regulations, and annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318(c)), as will insure their enforcement, for the protection of persons, property, buildings, and grounds of the Arboretum, Washington, D.C.; the U.S. Meat Animal Research Center, Clay Center, NE; the Agricultural Research Center, Beltsville, MD, and the Animal Disease Center, Plum Island, NY, over which the United States has exclusive or concurrent criminal jurisdiction, in accordance with the limitations and requirements of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended, the Act of June 1, 1948 (62 Stat. 181) as amended, and policies, procedures and controls prescribed by the General Services Administration. Any rules or regulations promulgated under this authority shall be approved by the Director of the Office of Operations and Finance and the General Counsel prior to issuance.

(27) Conduct research on the control of undesirable species of honeybees in cooperation with specific foreign governments (7 U.S.C. 284).

(28) Conduct a program of basic research on cancer in animals and birds (7 U.S.C. 3902).

(29) Perform research and development in aquaculture (16 U.S.C. 2804).

(30) Perform food and agricultural research in support of functions assigned to the Department under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*).

§ 2.107 Administrator, Cooperative State Research Service.

(a) *Delegations.* Pursuant to § 2.39(a), subject to reservations in § 2.40(a), the following delegations of authority are made by the Director of Science and Education to the Administrator, Cooperative State Research Service:

(1) Cooperate with the States for the purpose of encouraging and assisting them in carrying out research related to the problems of agriculture in its broadest aspects under the Hatch Act, as amended (7 U.S.C. 361a–361i).

(2) Support agricultural research at eligible institutions in any State through Federal-grant funds to help finance physical facilities (7 U.S.C. 390–390k).

(3) Administer a program of competitive, special, and facilities grants to State agricultural experiment stations, colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations and individuals to promote research in food, agricultural and related areas (7 U.S.C. 450i).

(4) Administer in cooperation with the States a cooperative rural development and small farm research program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2668, 2670).

(5) Make grants to colleges and universities for research on the production and marketing of alcohols and industrial hydrocarbons from agricultural commodities and forest products and agriculture chemicals and other products from coal derivatives (7 U.S.C. 3154).

(6) Conduct a program of grants to States to support continuing animal health and disease research programs under the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3191–3193, 3195–3201).

(7) Support continuing agricultural and forestry research at 1890 land-grant colleges including Tuskegee Institute (7 U.S.C. 3222).

(8) Administer in relation to uses of solar energy (i) a competitive research grants program, (ii) a solar energy research information system, (iii) a cooperative program with the States on model farms projects, and (iv) a program of research at regional solar energy research and development centers (7 U.S.C. 3241, 3251, 3261–3263, 3281–3282).

(9) Cooperate and work with the national and international institutions and other persons throughout the world in the performance of agricultural research activities (7 U.S.C. 3291).

(10) Administer grants for basic research on cancer in animals and birds (7 U.S.C. 3902).

(11) Cooperate with the States for the purposes of encouraging and assisting them in carrying out programs of forestry research (16 U.S.C. 582a–582a–7).

(12) Administer grants related to research and development in aquaculture (16 U.S.C. 2806).

(13) Coordinate research by cooperating State research institutions in support of functions assigned to the Department under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*).

§ 2.108 Administrator, Extension Service.

(a) *Delegations.* Pursuant to § 2.39(a), subject to reservations in § 2.40(a), the following delegations of authority are made by the Director of Science and Education to the Administrator, Extension Service:

(1) Administer a cooperative agricultural extension program related to agriculture, uses of solar energy with respect to agriculture, and home economics under the Smith-Lever Act, as amended (7 U.S.C. 341–349).

(2) Administer a cooperative agricultural extension program related to agriculture, uses of solar energy with respect to agriculture, and home economics in the District of Columbia (D.C. Code Section 31–1719).

(3) Conduct educational and demonstration work related to the distribution and marketing of agricultural products under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627).

(4) Administer in cooperation with the States a cooperative rural development and small farm extension program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2668, 2670).

(5) Administer a cooperative extension program under the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3004).

(6) Administer a national food and human nutrition extension program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3171–3177).

(7) Support continuing agricultural and forestry extension at 1890 land-grant colleges including Tuskegee Institute (7 U.S.C. 3221).

(8) Administer in relation to uses of solar energy a cooperative program with the States on model farms and demonstration projects, and a program of extension and demonstration at regional solar energy research and development centers (7 U.S.C. 3261–3263, 3271, 3281–3282).

(9) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural extension activities (7 U.S.C. 3291).

(10) Conduct educational and demonstration work in cooperative farm forestry programs (16 U.S.C. 568).

(11) Provide for an expanded and comprehensive extension program for forest and rangeland renewable resources (16 U.S.C. 1671).

(12) Administer extension education programs in aquaculture (16 U.S.C. 2804, 2806).

(13) Authorize the use of 4H Club name and emblem (18 U.S.C. 707).

(14) Conduct demonstration and promotion activities related to farm dwellings and other buildings for the purpose of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(15) Provide leadership and direct assistance to the Cooperative Extension Service in planning, conducting, and evaluating extension programs under a memorandum of agreement with the Bureau of Indian Affairs dated May 1956.

(16) Exercise responsibilities of the Secretary under regulations dealing with Equal Employment Opportunity in the Cooperative Extension Service (pt. 18 of this subtitle).

(17) Administer through the Cooperative Extension Service, education and information services assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*).

§ 2.109 Director, National Agricultural Library.

(a) *Delegations.* Pursuant to § 2.39(a), subject to reservations in § 2.40(a), the following delegations of authority are made by the Director of Science and Education to the Director, National Agricultural Library:

(1) Accept gifts and order disbursements from the Treasury for the benefit of the National Agricultural Library or for carrying out any of its functions (7 U.S.C. 2264–2265).

(2) Develop and maintain library and information systems and networks and facilitate cooperation and coordination for the agricultural libraries of colleges, universities, Department of Agriculture, and their closely allied information gathering and dissemination units in close conjunction with private industry and other research libraries (7 U.S.C. 2201, 2204, 3126).

(3) Assure the acquisition, preservation and accessibility of all information concerning food and agriculture by providing leadership to and coordination of the acquisition programs and related activities of the library and information systems, and the agencies of USDA, other Federal departments and agencies, State agricultural experiment stations, colleges and universities, and other research institutions and organizations.

(4) Formulate, write and/or prescribe bibliographic and technically related standards for the library and information systems of USDA.

(5) Determine by survey and other appropriate means the information needs of the Department's scientific, professional, technical and administrative staffs, its constituencies and the general public in the areas of food, agriculture, the environment, and solar energy.

(6) Represent the Department on all library and information science matters before Congressional Committees and appropriate commissions, and provide representation to the coordinating committees of the Federal and State governments concerned with library and information science activities.

(7) Represent the Department in international organizational activities

and on international technical committees concerned with library and information science activities.

(8) Prepare and disseminate computer bibliographic files, indexes and abstracts, bibliographies, reviews and other analytical information tools.

(9) Arrange for the consolidated purchasing and dissemination of indexes, abstracts, journals and other widely used information publications and services.

(10) Provide assistance and support to professional organizations concerned with library and information science matters and issues.

(11) Copy and deliver on demand selected articles and other materials from its collections by photographic reproduction or other means within the permissions, constraints and limitations of sections 106, 107, and 108 of the Copyright Act of October 19, 1976 (Title 17 U.S.C.).

§ 2.110 Director, Science and Education Management Staff.

(a) *Delegations.* Pursuant to §§ 2.7 and 2.39, subject to reservation in § 2.40(a), the following delegations of authority are made by the Director of Science and Education to the Director, Science and Education Management Staff:

(1) Provide to the Office of the Director of Science and Education and agencies reporting to the Director of Science and Education, management support services. As used herein, management support services shall include the following, with authority to take actions required by law or regulation:

(i) Budget, financial management and related functions.

(ii) Procurement, contracting, real and personal property management, directives and paperwork management and related functions.

(iii) Grants administration.

(iv) Position management and classification, recruitment and employment, employee relations, employee development and related functions.

(v) Organizational structures, organizational development, management analysis and related functions.

(2) Administer the Department's Patent Program except as delegated to the General Counsel in § 2.31(g).

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

For Subparts A, C, and D.

Dated: September 22, 1981.

John R. Block,

Secretary of Agriculture.

For Subpart F.

Dated: September 22, 1981.

C. W. McMillan,

Assistant Secretary for Marketing and Inspection Services.

For Subpart G.

Dated: September 21, 1981.

John B. Crowell, Jr.,

Assistant Secretary for Natural Resources and Environment.

For Subpart H.

Dated: September 22, 1981.

Seeley G. Lodwick,

Under Secretary for International Affairs and Commodity Programs.

For Subpart I.

Dated: September 22, 1981.

Frank W. Naylor, Jr.,

Under Secretary for Small Community and Rural Development.

For Subpart K.

Dated: September 22, 1981.

William G. Lesher,

Assistant Secretary for Economics.

For Subpart L.

Dated: September 16, 1981.

Mary C. Jarratt,

Assistant Secretary for Food and Consumer Services.

For Subpart N.

Dated: September 21, 1981.

Anson B. Bertrand,

Director of Science and Education.

[FR Doc. 81-28167 Filed 9-29-81; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 947

Irish Potatoes Grown in Modoc and Siskiyou Counties in California and in All Counties in Oregon Except Malheur County; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This continuing regulation requires fresh market shipments of potatoes grown in Modoc and Siskiyou Counties in California and in All Counties in Oregon Except Malheur County to be inspected and meet minimum grade, size, cleanness, pack and maturity requirements. The regulation will promote orderly marketing of such potatoes and keep less desirable sizes and qualities from being shipped to consumers.

EFFECTIVE DATE: October 16, 1981.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447-2615. The Final Impact Statement relating to this final rule is available from him.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures and Executive Order 12291 and has been classified "not significant" and not a major rule.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would not measurably affect costs for the directly regulated 47 handlers.

Marketing Agreement No. 114 and Order No. 947, both as amended, regulate the handling of potatoes grown in designated counties of Oregon and California. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Oregon-California Potato Committee, established under the order, is responsible for its local administration.

This regulation is based upon recommendations made by the committee at its public meeting in Lincoln City, Oregon, on June 23, 1981.

The grade, size, maturity, pack, cleanness and inspection requirements specified herein are generally similar to those issued during the last season. They are necessary to prevent potatoes of low quality or undesirable sizes from being distributed to fresh market outlets. These specific requirements would benefit consumers and producers by standardizing and improving the quality of the potatoes shipped from the production area, thereby promoting orderly marketing and will tend to effectuate the declared policy of the act.

The committee recommends that all varieties be at least U.S. No. 2 grade. Minimum sizes would be: For export—1⅛ inches in diameter; Districts No. 1-4, 1⅞ inches for all varieties; and District No. 5—2 inches or 4 ounces for all varieties.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements are inappropriate or unreasonable.

Inspection requirements are modified for certain handlers whose facilities are located far enough from major production areas to cause a substantial financial burden in maintaining a full-time Federal-State inspector.

A specified quantity of potatoes is exempt from maturity requirements in

order to permit growers to make test diggings without loss of the potatoes so harvested.

Shipments are permitted to certain special purpose outlets without regard to minimum grade, size, cleanness, maturity, pack and inspection requirements, provided that safeguards are met to prevent such potatoes from reaching unauthorized outlets. Certified seed is exempt, subject to the safeguard provisions only when shipped outside the district where grown.

Shipments for use as livestock feed within the production area or to specified adjacent areas are exempt; a limit to the destinations of such shipments is provided so that their use for the purpose specified can be reasonably assured. Shipments of potatoes between Districts 2 and 4 for planting, grading, and storing are exempt from requirements because these two areas are homogenous and have no natural division. Other districts are more clearly separated and do not have this problem. For the same reason, potatoes grown in District 5 may be shipped without regard to the aforesaid requirements to the counties of Adams, Benton, Franklin and Walla Walla in the State of Washington, and Malheur County, Oregon, for grading and storing. since no purpose would be served by regulating potatoes used for charity purposes, such potatoes are exempt. Also potatoes for most processing uses are exempt under the legislative authority for this part.

Requirements for export shipments differ from those for domestic markets. While the standard quality requirements are desired in foreign markets, smaller sizes are more acceptable. Therefore, different requirements are set forth for export shipments.

These requirements contained in this handling regulation, effective October 16, 1981, will continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. Heretofore, regulations issued under the marketing order were made effective for a single marketing season. The change to issuing regulations which will continue in effect from marketing season to marketing season reflects the fact that regulations change infrequently from season to season and it is believed unnecessary to issue them for only a single season. In addition, this action will result in a reduction in operational costs to the committee and the government. Although this final regulation is effective for an indefinite period, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee will submit to the Secretary a marketing policy for the season in accordance with § 947.50 of the order, including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250, before June 1 each year. The Department will evaluate committee recommendations and information submitted by the committee, comments filed, and other available information, and determine whether modification, suspension, or termination of the regulations on shipments of Oregon-California potatoes would tend to effectuate the declared policy of the act.

Findings

After considering all relevant matters, including the proposal in the notice, it is found that the following handling regulation will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of this regulation until 30 days after its publication in the **Federal Register** (5 U.S.C. 553) in that (1) shipments of potatoes grown in the production area have already begun, (2) to maximize benefits to producers, this regulation should apply to as many shipments as possible during the marketing season, (3) notice was given in the July 28, 1981, **Federal Register** (46 FR 38521) allowing interested persons until August 27, 1981, in which to file comments and none was filed, and (4) compliance with this regulation, which is similar to regulations issued during previous seasons, requires no special preparation by handlers subject to it which cannot be completed by the effective date.

Information collection requirements (reporting or record keeping) under this part are subject to clearance by the Office of Managemeent and Budget and are in the process of review. These information requirements shall not become effective until such time as clearance by the OMB has been obtained.

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIF., AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

Section 947.339 (45 FR 60404, September 12, 1980) is hereby removed and a new § 947.340 is added as follows:

§ 947.340 Handling regulation.

On and after October 16, 1981, no person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a) through (f) of this section or unless such potatoes are handled in accordance with paragraphs (g) and (h), or (i) of this section.

(a) *Grade requirements.* All varieties—U.S. No. 2, or better grade.

(b) *Minimum size requirements.* (1) For Export: All varieties—1½ inches in diameter.

(2) For Districts No. 1 through 4: All varieties—1⅞ inches in diameter.

(3) For District No. 5: All varieties—2 inches in diameter or 4 ounces in weight.

(c) *Cleanness requirements.* All varieties and grades—As required in the United States Standards for Grades of Potatoes, except that U.S. Commercial may be no more than "slightly dirty."

(d) *Maturity (skinning) requirements.* (1) Round and White Rose varieties: not more than "moderately skinned."

(2) Other Long Varieties (including but not limited to Russet Burbank and Norgold): not more than "slightly skinned."

(3) Not to exceed a total of 100 hundredweight of potatoes may be handled during any seven day period without meeting these maturity requirements. Prior to shipment of potatoes exempt from the above maturity requirements, the handler shall obtain from the committee a Certificate of Privilege.

(e) *Pack.* Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better, except that potatoes that fail to meet the U.S. No. 1 grade only because of hollow heart and/or internal discoloration may be shipped provided the lot contains not more than 10 percent damage by hollow heart and/or internal discoloration, as identified by USDA Color Photographs 121 and 123 (U.S. No. 1—Maximum Allowed), USDA Visual Aid POT–L–1, January 1981, or not more than 5 percent serious damage by internal defects.

(f) *Inspection.* (1) Except when relieved by paragraphs (g) and (h), or (i) of this section and subparagraph (2) of this paragraph, no person shall handle potatoes without first obtaining

inspection from an authorized representative of the Federal-State Inspection Service.

(2) Handlers making shipments from facilities located in an area where inspection costs would otherwise exceed one and one-half times the current per-hundredweight inspection fee, are exempt from on-site inspection provided such handler has made application to the committee for inspection exemption on forms supplied by the committee, and provided further that such handler signs an agreement with the committee to report each shipment on a daily basis and pay the committee a sum equal to the current inspection fee.

(3) For the purpose of operation under this part each required inspection certificate is hereby determined, pursuant to § 947.60(c) to be valid for a period of not to exceed 14 days following completion of inspection as shown on the certificate. The validity period of an inspection certificate covering inspected and certified potatoes that are stored in mechanically refrigerated storage within 14 days of the inspection shall be 14 days plus the number of days that the potatoes were held in refrigerated storage.

(4) Any lot of potatoes previously inspected pursuant to § 947.60 and certified as meeting the requirements of this part is not required to have additional inspection under § 947.60(b) after regrading, resorting, or repacking such potatoes, if the inspection certificate is valid at the time of regrading, resorting, or repacking of the potatoes.

(g) *Special purpose shipments.* The minimum grade, size, cleanness, maturity, pack and inspection requirements set forth in paragraphs (a) through (f) of this section shall not be applicable to shipments of potatoes for any of the following purposes:

(1) Certified seed, subject to applicable safeguard requirements of paragraph (h) of this section.

(2) Livestock feed: However, potatoes may not be handled for such purposes if destined to points outside of the production area, except that shipments to the counties of Benton, Franklin and Walla Walla in the State of Washington and to Malheur County, Oregon, may be made, subject to the safeguard provisions of paragraph (h) of this section.

(3) Planting in the district where grown: Further, potatoes for this purpose grown in District No. 2 or District No. 4 may be shipped between those two districts.

(4) Grading or storing under the following provisions:

(i) Between districts within the production area for grading or storing if such shipments meet the safeguard requirements of paragraph (h) of this section.

(ii) Potatoes grown in District No. 2 or District No. 4 may be shipped for grading or storing between those two districts without regard to the safeguard requirements of paragraph (h) of this section.

(iii) Potatoes grown in District No. 5 may be shipped for grading and storing to points in the counties of Adams, Benton, Franklin and Walla Walla in the State of Washington, or to Malheur County, Oregon, without regard to the safeguard provisions of paragraph (h) of this section.

(5) Charity: Except that shipments for charity may not be resold if they do not meet the requirements of the marketing order, and that shipments in excess of 5 hundredweight per charitable organization shall be subject to the safeguard provisions of paragraph (h) of this section.

(6) Starch manufacture.

(7) Canning, freezing, prepeeling, and "other processing" (except starch manufacturing), as hereinafter defined (including storage for such purposes).

(h) *Safeguards.* (1) Each handler making shipments of certified seed outside the district where grown pursuant to paragraph (g) of this section shall obtain from the committee a Certificate of Privilege, and shall furnish a report of shipments to the committee on forms provided by it.

(2) Each handler making shipments of potatoes pursuant to subparagraphs (2), (4)(i), and (5) of paragraph (g) of this section shall obtain a Certificate of Privilege from the committee, and shall report shipments at such intervals as the committee may prescribe in its administrative rules.

(3) Each handler making shipments pursuant to subparagraph (7) of paragraph (g) of this section may ship such potatoes only to persons or firms designated as manufacturers of potato products by the committee, in accordance with its administrative rules.

(i) *Minimum quantity exemption.* Any person may handle not more than 19 hundredweight of potatoes on any day without regard to the inspection requirements of § 947.60 and to the assessment requirements of § 947.41 of this part except no potatoes may be handled pursuant to this exemption which do not meet the requirements of paragraphs (a), (b), (c), (d) and (e) of this section. This exemption shall not apply to any part of a shipment which exceeds 19 hundredweight.

(j) *Definitions.* (1) The terms "U.S. No. 1," "U.S. Commercial," "U.S. No. 2," "moderately skinned" and "slightly skinned" shall have the same meaning as when used in the U.S. Standards for Grades of Potatoes (7 CFR 2851.1540–2851.1566) including the tolerances set forth therein.

(2) The term "slightly dirty" means potatoes that are not damaged by dirt.

(3) The term "prepeeling" means the commercial preparation in a prepeeling plant of clean, sound, fresh potatoes by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 2852.2422, United States Standards for Grades of Peeled Potatoes (7 CFR 2852.2421–2852.2433).

(4) The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, or starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing."

(5) Other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 114, as amended, and this part.

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

Dated September 24, 1981; to become effective October 16, 1981.

D. S. Kuryloski,

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

[FR Doc. 81-28396 Filed 9-29-81; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1446

[Amdt. 3]

General Regulations Governing 1979 and Subsequent Crops; Peanut Warehouse Storage Loans and Handler Operations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the sales policy for additional peanuts sold for domestic edible use. It also allows the Southwestern Peanut Growers

Association (SWPGA), with the prior agreement of the producer, to deduct up to $1 per ton from price support advances to conduct peanut activities outside the price support program. The rule further provides that under certain circumstances, the Executive Vice President, Commodity Credit Corporation (CCC) or his designee, may waive or reduce the liquidated damages assessed against a person who causes ineligible peanuts to be placed in the loan program. This rule also provides that producers who file erroneous reports of crop acreage will be ineligible for quota price support, except under certain conditions.

EFFECTIVE DATE: September 25, 1981.

FOR FURTHER INFORMATION CONTACT: David Kincannon, (202) 447-6734. The Final Regulatory Impact Analysis describing the options considered in developing the final rule and the impact of implementing each option is available upon request.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures and Executive Order 12291 and Secretary's Memorandum No. 1521-1 and has been classified as "not major." It has been determined that this rule will not: (1) result in an annual effect on the economy of $100 million or more, or a major increase in costs or prices for consumers, industries, Federal, State or local governments, or geographical region; or (2) have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this proposed rule applies is: 10.051, as found in the Catalog of Federal Domestic Assistance. This proposed action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

A notice that the Department was preparing to make determinations with respect to the subject matter of this final rule was published in the **Federal Register** on August 17, 1981 [46 FR 4152]. The comment period ended September 3, 1981.

Minimum Sales Price

Section 359(j) of the Agricultural Adjustment Act of 1938, as amended, provides that additional peanuts placed under loan shall be offered by the producer association for sale for domestic edible use at prices not less than those required to cover all costs incurred with respect to such peanuts for such items as inspections, warehousing, shrinkage, and other expenses, plus: (1) 100 percent of the loan value of quota peanuts if the additional peanuts are sold and paid for during the harvest season upon delivery by the producer (the "immediate buyback" provision); or (2) 105 percent of the loan value of quota peanuts if the additional peanuts are sold after delivery by the producer but not later than December 31 of the marketing year; or (3) 107 percent of the loan value of quota peanuts if the additional peanuts are sold later than December 31 of the marketing year.

The current regulations, as originally codified at 7 CFR 1446.7, provide that a handler has the right to purchase additional peanuts from the additional loan pool for domestic edible use at the time of delivery of such peanuts at buying points owned or controlled by such handler. The regulations establish the sales price at 100 percent of the quota loan value of such peanuts plus handling charges. These regulations were intended to create a priority between handlers as to the right to purchase additional peanuts at a particular buying point.

Through the 1979 crop year, the quota loan rate established, in effect, the domestic market price. Under these conditions, the regulations provided an equitable method of selling peanuts under the "immediate buyback" provision, with a minimum of confusion. In 1980, however, the domestic market price of peanuts increased substantially above the quota support level, thus permitting certain handlers to purchase additional peanuts from the loan program at prices below the market price. It was, therefore, proposed that these regulations be amended to specify that the price (100 percent of the loan value of quota peanuts plus costs) of additional peanuts purchased by handlers from the loan program at time of delivery of such peanuts for loan is only a minimum price. Under the proposed rule, producer associations would be permitted to charge handlers in excess of 100 percent of the quota loan rate plus costs for additional peanuts purchased under the "immediate buyback" provision.

Sixteen respondents favored the change in minimum sales price as stated in the proposed rule. Thirty-eight respondents opposed the procedure which required that the premiums paid in excess of the quota support rate plus handling charge be paid to the producer associations. These respondents, were generally in agreement that the price of peanuts purchased under the "immediate buyback" provision should be allowed to reflect current market prices, but suggested that any premiums paid in excess of the quota support rate plus costs should be paid directly to producers. Many pointed out that the producers should realize all benefits of their marketing efforts and that involvement of the associations in handling such premiums would place an unnecessary hardship on producers by causing delays in the producers receiving the benefits of such premiums, since pool proceeds are not distributed by the associations until the end of the marketing year. Also, objections were raised to the associations setting the sales price.

After careful consideration of the comments submitted, it has been determined that the objective of establishing a *minimum* sales price for "immediate buyback" at the quota loan value of the peanuts plus costs is appropriate. However, the final rule permits, as explained below, premiums for the delivery of additional peanuts to the handler to be paid directly to producers. Under this rule, handlers will be permitted to exercise the "immediate buyback" option only with respect to those peanuts which the producer has approved as being eligible for "immediate buyback". Such approval will be indicated by the producer's signature in the remarks section of the applicable grading and settlement document (the MQ-94). This procedure will permit the producer to negotiate, and immediately receive, a premium for the delivery to the handler of additional peanuts which will be eligible for "immediate buyback".

Thus, the producer delivering additional peanuts to a handler for "immediate buyback" will receive, upon delivery, the amount of the additional peanut price support loan advance plus any premium negotiated with the handler. The handler will transmit the MQ-94 signed by the producer and an amount equal to the quota loan value of the peanuts plus costs to the association. The peanuts then become the property of the handler and may be used for domestic edible use. The proceeds received by the association are included in the additional loan pool, the

profits of which are distributed to producers at the end of the marketing year based on their participation in the pool.

Deduction for SWPGA

Since 1964, the Southwestern Peanut Growers Association (SWPGA) has been authorized by its members to deduct an amount not to exceed 50 cents from the price support loan advance to finance activities outside the price support program. The activities so funded include formulating and recommending legislative proposals, operating peanut quality control programs, developing improved disease and drought control programs, developing improved disease and drought resistant varieties, improving cultural practices, and for funding water utilization and herbicide use studies. In the Southeast and Virginia-Carolina areas, these activities are carried on by the State-established peanut grower groups.

However, in the Southwest area, charters for the State-established grower groups prohibit the groups from undertaking any political activities. Legislative activity is therefore carried out by the area association, SWPGA.

The 50-cent assessment has not been increased since 1964, although inflation has considerably decreased the value of the assessment. It was, therefore, proposed to increase the amount of the deduction to not more than $1.

There were 12 responses to this proposed rule. All respondents were in favor of the proposal. However, it was pointed out that it is political activity in which the State-established grower groups from the Southwest area are prevented from participating, and that the supplementary information in the proposed rule did not reflect this fact.

After careful consideration of all comments, the proposed rule is adopted.

Assessment of Liquidated Damages

Current regulations provide that liquidated damages shall be assessed against any person who causes ineligible peanuts to be placed in the loan program. The regulations provide for liquidated damages to prevent peanuts containing excess moisture, foreign material, and other contaminants from being placed in the loan program, since these peanuts lower market prices for other peanuts in the same storage place. Also, the provisions for liquidated damages were included in the regulations in order to prevent ineligible producers from improperly obtaining price support.

These liquidated damages have been successful in preventing ineligible peanuts from being placed into the loan program. However, in some cases the assessment of liquidated damages through the use of an inflexible formula has resulted in certain inequities. In a number of instances, it was determined after harvest and after a producer had been issued nonrestrictive marketing cards that the producer was out of compliance with acreage limitations by small margins. Technically, therefore, the producer was ineligible to receive price support. By that time, however, the producer's peanuts were already pledged as collateral for a price support loan and disposed of by the producer association. In addition to the marketing penalty, such producers would be subjected to excessive liquidated damages in instances where the actual program harm was minimal.

It was proposed to amend the regulations to permit the Executive Vice President, CCC, or his designee, to waive or reduce the assessment of liquidated damages based upon the following factors: (1) whether the person causing ineligible peanuts to be placed in the loan program made a good faith effort to ensure that ineligible peanuts were not pledged as collateral for a loan; (2) whether the program damage or potential program damage warrants the full or partial assessment of such liquidated damages; (3) the nature and circumstances relating to the violation; (4) the extent of the violation, and (5) any other pertinent information. Amending the regulations in the manner prescribed will permit CCC to reduce or waive the assessment of liquidated damages in certain cases and still maintain adequate controls to prevent misuse of the loan program.

There was only 1 response to this proposal. The respondent favored the proposal as presented. After consideration of the response it has been determined that the proposed rule be adopted.

Acreage Certifications

For the 1980 and prior crop years, acreages for all marketing quota crops, including peanuts, were determined by the county Agricultural Stabilization and Conservation Service office based upon actual measurements of the field or from aerial photographs. In addition, producers were required to file a report of crop or land use acreage.

In determining whether there has been compliance with acreage allotments, under the peanut program, it is presently contemplated that beginning with the 1981 crop, reliance will generally be placed on reports filed by producers as to crop or land use acreage. To assure compliance with acreage allotments, only a random sample of such certifications will be checked for accuracy by using actual ground measurements or aerial photographs.

Accurate certifications are thus necessary to ensure that all producers comply with acreage allotments. Therefore, it was proposed to amend the regulations to provide that producers will be ineligible for price support if the producer has filed an erroneous report of crop or land use acreage unless: (1) the determined acreage does not differ from the reported acreage by more than the tolerances established by Part 718 of this title: or (2) the county Agricultural Stabilization and Conservation (ASC) committee determines that the producer acted in good faith in reporting crop or land use acreage.

There was only 1 response to this proposal. The respondent favored the proposal as presented. After consideration of the response it has been determined that the proposed rule be adopted.

Final Rule

PART 1446—PEANUTS

Accordingly, the regulations at 7 CFR Part 1446 are amended as follows:

1. Section 1446.7 is revised to read as follows:

§ 1446.7 Use of additional peanuts as domestic edible peanuts.

(a) *"Immediate Buyback" Purchase.* During harvest season, a handler shall have the right to purchase additional peanuts from the association for domestic edible use at buying points owned or controlled by such handler at prices equal to 100 percent of the quota loan value of such peanuts plus handling charges. The purchase (i.e., the "immediate buyback purchase") may be made only from the association and only on the date such peanuts were offered by producers to the association as collateral for a price support loan. The "immediate buyback" purchase shall be valid and accepted by the association only if the producer has signed the applicable MQ-94 in the remarks section indicating such peanuts are eligible for "immediate buyback." The handler shall: (1) as an agent for the association, advance to the producer price support for the peanuts at the additional loan rate; (2) pay to the producer any agreed premiums for the delivery of such peanuts by the producer to the handler; and (3) forward to the association a check payable to CCC for the peanuts in an amount equal to the quota loan value of the peanuts, as well as any handling charges. The check and

applicable MQ–94 will identify the peanuts as additional peanuts that may be used as domestic edible peanuts and must be transmitted to the association (as evidenced by a postmark) not later than the third work day (excluding Saturdays, Sundays, and Federal holidays) following the day the peanuts were inspected. The association shall credit such receipts to the additional loan pool for such peanuts. If the accompanying MQ–94 has not been signed by the producer, the association shall return the check to the handler and the peanuts so identified will be considered to have remained under price support loan.

(b) *Purchases Subsequent to Delivery.* Handlers may also purchase additional peanuts from the loan pool for domestic edible use after delivery by producers to the associations, under terms and conditions approved by CCC. The minimum price for such purchases shall be the applicable carrying charges plus (a) not less than 105 percent of the quota loan value of the peanuts if purchased not later than December 31 of the marketing year; or (b) not less than 107 percent of the quota loan value if purchased after December 31 of the marketing year.

2. Section 1446.10 is amended by revising paragraphs (g) and (i) to read as follows:

§ 1446.10 Availability of warehouse storage loans.

* * * * *

(g) *Advance to producer.* For each lot of peanuts delivered for loan, the association will make a price support advance to the producer in an amount equal to the support value of such peanuts, except that in addition to marketing quota penalties and the deductions specified in § 1446.12, the Association will deduct from such advances and pay over to the proper State authorities, any assessments or excise taxes imposed by State law. In addition SWPGA may, upon the prior agreement of the producer, deduct from such advance an amount approved by CCC, not to exceed $1 per net weight ton of peanuts upon which such advance was made, to be used in financing its peanut related activities outside the price support program.

* * * * *

(i) *Ineligible Peanuts.* Any person who causes ineligible peanuts, as defined in § 1446.14, to be placed in the loan program shall pay to CCC, as liquidated damages, the amount by which the average quota or additional loan rate (whichever is applicable) for that type of peanuts exceeds the market price for such type for crushing, as determined by CCC. Such person shall pay such amount to CCC promptly upon demand. The Executive Vice President, CCC, or his designee may reduce or waive the liquidated damages as otherwise provided for in this subsection based upon a consideration of the following factors: (1) whether the person causing ineligible peanuts to be placed in the loan program made a good faith effort to ensure that ineligible peanuts were not pledged for loan, (2) the degree of damage or potential damage to the price support program; (3) the nature and circumstances of the violation; (4) the extent of the violation; and (5) any other pertinent information.

* * * * *

3. Section 1446.14 of the regulations is amended by revising paragraph (a) to read as follows:

§ 1446.14 Eligible producer.

* * * * *

(a) *Requirements.* An eligible producer is an individual, partnership, association, corporation, estate, trust, or other legal entity, and whenever applicable, a State, political subdivision of a State or any agency thereof, producing peanuts as a landowner, landlord, tenant, or sharecropper on a farm. No producer on a farm for which the farm operator fails timely to file a report of crop or land use acreage as required by Part 718 of this title shall be eligible for price support at the quota loan rate unless the late-filed report was accepted by the county ASC committee. In addition, no producer shall be eligible for price support at the quota loan rate if the producer has filed an erroneous report of crop or land use acreage unless: (1) the determined acreage does not differ from the reported acreage by more than the tolerance established by Part 718 of this title, or (2) the county ASC committee determines that the producer acted in good faith in reporting crop or land use acreage.

* * * * *

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 108, 401, 63 Stat. 1051, as amended (7 U.S.C. 1359); and sec. 359, 93 Stat. 81 (7 U.S.C. 1359 note))

Signed in Washington, D.C. on September 25, 1981.

C. Hoke Leggett,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-28237 Filed 9-25-81; 11:01 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Parts 1810 and 1942

Implementation of Omnibus Budget Reconciliation Act of 1981; Interest Rates

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: This action amends Farmers Home Administration (FmHA) regulations regarding the rate of interest to be charged for certain types of loans. The Omnibus Budget Reconciliation Act of 1981 requires the interest rate for community facility and water and waste disposal loans to be set based on current yields of municipal obligations with a special rate for loans for facilities required to meet health or sanitary standards in certain areas. It also requires an additional interest charge for certain loans involving the use of prime or unique farmland. The intended effect of this action is to amend FmHA regulations to implement the provisions of the legislation.

EFFECTIVE DATE: October 1, 1981. Comments must be received on or before November 30, 1981.

ADDRESSES: Submit written comments in duplicate to the Chief, Directives Management Branch, Farmers Home Administration, Room 6348, South Agriculture Building, 14th and Independence Avenue, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Loan Officer, Community Facilities Loan Division, Farmers Home Administration, Room 6306, South Agriculture Building, Washington, DC 20250, telephone: (202) 382–1490, or Wallis B. McArthur, Loan Officer, Water and Waste Disposal Loan Division, Farmers Home Administration, Room 6318, South Agriculture Building, Washington, DC 20250, telephone: (202) 447–5717.

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 which implements Executive Order 12291 and has been determined to be nonmajor.

The Regulatory Flexibility Act is not applicable and therefore no analysis has been prepared. The changes in loan interest rates are mandated by

legislative action for the affected programs.

This action requires no change in recordkeeping or reporting requirements imposed upon the public.

Emergency Basis

Current regulations do not comply with the Omnibus Budget Reconciliation Act of 1981, which amended the Consolidated Farm and Rural Development Act, and was signed into law on August 13, 1981. The Omnibus Budget Reconciliation Act of 1981 provides that the amendments will apply to loans approved after September 30, 1981. FmHA has determined that an emergency situation exists which warrants publication without opportunity for a prior public comment period on this final action. No loans can be approved under the affected programs after September 30, 1981, until these amendments to the regulations are put into effect.

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

Clearinghouse Review

Community facility, water and waste disposal and insured business and industry projects are subject to State and local clearinghouse review, in the manner delineated in FmHA Instruction 1901–H.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Programs Affected

CFDA No. 10.423, Community Facilities Loans; No. 10.418, Water and Waste Disposal Systems for Rural Communities; No. 10.406, Farm Operating Loans; No. 10.407, Farm Ownership Loans; No. 10.413, Recreation Facility Loans; No. 10.416, Soil and Water Loans; and No. 10.422, Business and Industrial Loans.

The only CFR Parts that require change are 7 CFR Part 1942 and 7 CFR Part 1810 because the regulations for all the other affected programs are currently cross-referenced to 7 CFR Part 1810.

Background

The current FmHA regulations for Community Facility and Water and Waste Disposal Loans, in 7 CFR Part 1942, Subpart A, provide the interest rate for such loans will be five percent per annum. The interest rates for these and other FmHA loan programs are also listed in FmHA Instruction 440.1, Exhibit B. This exhibit is not published in the **Federal Register** but is available to the public on request from any FmHA office. (See 7 CFR Part 1810, Subpart A.) The Omnibus Budget Reconciliation Act of 1981 requires the interest rate for community facility and water and waste disposal loans to be set by the Secretary, not to exceed the current market yield for outstanding municipal obligations. This will require frequent changes in the rate. Preparing a **Federal Register** document each time there is a change would be a costly administrative burden. This action, therefore, removes the specific interest rate for water and waste disposal and community facility loans from the published regulations. The prevailing rate will be maintained in FmHA Instruction 440.1, Exhibit B. Interested parties may obtain the rate from any FmHA office. This rate will be established quarterly using the Bond Buyer Index as it is a readily available impartial indicator of the current yields of municipal obligations, published weekly.

The Omnibus Budget Reconciliation Act of 1981 also provides that the interest rate will not exceed five percent for community facility and water and waste disposal loans for facilities required to meet health or sanitary standards in areas where the median family income is below the poverty line established by the Office of Management and Budget (OMB) as adjusted under Section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d) and other low income areas the Secretary may designate. The poverty line used will be the guideline for nonfarm families with a family unit size of 4, as prescribed by OMB, because the majority of the users of facilities financed by the programs are non-farm and the National average family size exceeds 3.5. This provision is inserted in the FmHA published regulations without specifying the amount of the poverty line. FmHA will inform its field offices of the amount of the poverty line by Memorandum or Administrative Notice. The amount of the poverty line will be available to the public from any FmHA office. FmHA has determined the poverty line established by OMB is an adequate indicator of need for interest subsidy and has elected not to develop additional criteria at this time.

The Omnibus Budget Reconciliation Act of 1981 also requires that the interest rate on community facility loans, insured farm ownership loans for recreation or non-farm enterprises, insured farm operating loans for recreation enterprises, soil and water loans from recreation purposes, individual recreation loans, and insured business and industry loans will be increased two per centum per annum if the loan will involve the use of, or construction on, prime or unique farmland. FmHA is including this provision in FmHA Instruction 440.1, Exhibit B, which may be obtained upon request at any FmHA office, and in the Code of Federal Regulations at 7 CFR Part 1810, Subpart A.

Accordingly, Subpart A of Part 1810 and Subpart A of Part 1942, Chapter XVIII, Title 7, Code of Federal Regulations are amended as follows:

PART 1810—INTEREST RATES, TERMS, CONDITIONS, AND APPROVAL AUTHORITY

Subpart A—Interest Rates, Amortization, Annual Charge, and Fixed Period

1. Subpart A of Part 1810 is amended by adding a new § 1810.2 to read as follows:

§ 1810.2 Adjustment of interest rates for certain loans involving use of or construction on prime or unique farmland.

(a) For essential community facility loans, insured farm ownership loans for recreation or non-farm enterprises, insured farm operating loans for recreation enterprises, soil and water loans for recreation purposes, individual recreation loans, and insured business and industry loans, the interest rate will be increased by two per centum per annum if the project being financed will involve the use of, or construction on, prime or unique farmland. Prime or unique farmland is as defined in § 657.5 (a) and (b) of Title 7, Code of Federal Regulations (1980).

(b) The two per centum interest rate increase will not apply if the applicant/borrower is a public body or Indian tribe and has demonstrated to FmHA that there are no suitable options for locating the proposed essential community

facility project on land that is not prime or unique farmland.

(c) For each essential community facility loan and insured business and industry loan the District Director, after consultation with the Soil Conservation Service (SCS), will determine whether the proposed project will involve the use of, or construction on, prime or unique farmland. For each insured farm ownership loan for a recreation or non-farm enterprise, insured farm operating loan for a recreation enterprise, soil and water loan for a recreational purpose, or individual recreation loan, the County Supervisor, after consultation with SCS, will determine whether the proposed project will involve the use of, or construction on, prime or unique farmland. The determination will be documented by FmHA and made a part of the official case file.

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

2. In § 1942.17, paragraph (f) is amended by renumbering the existing subparagraph (2) to (4).

3. In § 1942.17, paragraph (f) is amended by revising subparagraph (1) and adding new subparagraphs (2) and (3) to read as follows:

§ 1942.17 Appendix A—Community facilities.

* * * * *

(f) *Rates and terms.* (1) The interest rate to be charged on each loan will be entered in item 26, Form FmHA 1940–1, "Request for Obligation of Funds," on the date the applicant is notified of loan approval. The interest rate for each loan will be established on the date the loan is approved and the applicant notified. Each loan will bear interest at the rate prescribed in FmHA Instruction 440.1, Exhibit B, except as provided in paragraph (f)(2) and (3) of this section. The interest rate will be set by FmHA at least for each quarter of the fiscal year, using as guidance the average of the Bond Buyer Index for the four weeks prior to the first Friday of the last month before the beginning of the quarter. The rate will be adjusted to the nearest one-eighth of one per centum.

(2) The interest rate will be five per centum per annum for loans for which the loan approval official determines the following conditions exist:

(i) The primary purpose of the loan is to upgrade existing facilities or construct new facilities required to meet applicable health or sanitary standards. Documentation will be obtained from the appropriate regulatory agency with jurisdiction to enforce the standard, to verify that a bona fide standard exists, what that standard is, and that the proposed improvements are needed and required to meet the standard; and,

(ii) The median family income of the service area is below the poverty line for a nonfarm family of four, as prescribed by the Office of Management and Budget (OMB) as adjusted under Section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971 d).

(A) The median income of the service area will be determined by the District Director from the U.S. Department of Commerce, Bureau of the Census, Publication PC (1)—C Series, or from unpublished Bureau of Census data for individual enumeration districts; or,

(B) If there is reason to believe that the census data is not an accurate representation of the median income within the area to be served, the applicant may furnish, or FmHA may obtain, additional information regarding such median income in the form of:

(*1*) Reasons why census data is not accurate; and,

(*2*) Reliable data from local, regional, State, or Federal sources or the results of a survey conducted by a reliable impartial source.

(3) For essential community facilities loans, the rate indicated by paragraph (f)(1) or (2) of this section will be increased by two per centum per annum if the project being financed will involve the use of, or construction on, prime or unique farmland in accordance with FmHA Instruction 440.1, Exhibits B and J. Exhibits B and J are available to the public from any FmHA Office.

* * * * *

(7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70)

Dated: September 23, 1981.

Charles W. Shuman,

Administrator.

[FR Doc. 81-28308 Filed 9-29-81; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Commission Review Procedures for Power Reactor Operating Licenses; Immediate Effectiveness Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its recently adopted final rule on review procedures for Licensing Board decisions granting power reactor operating license applications, 46 FR 28627 (May 28, 1981). The Commission will retain to itself the decision as to whether or not a plant will be allowed to go into commercial operation, i.e. receive a full power license. However, the rule is being modified so as to delete the requirement that the Commission conduct an effectiveness review prior to fuel loading and low-power testing, and to make other clarifying changes. The reconsideration is prompted by Commission experience in reviewing several recent cases.

EFFECTIVE DATE: September 23, 1981.

FOR FURTHER INFORMATION CONTACT: Martin G. Malsch, Deputy General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (telephone: 202–634–1465).

SUPPLEMENTARY INFORMATION: In the aftermath of the accident at Three Mile Island, the Nuclear Regulatory Commission had suspended in part its so-called immediate effectiveness rule which permitted favorable Licensing Board decisions to go into effect notwithstanding the filing of administrative appeals, and imposed in its stead a special *sua sponte* Commission review process designed to assure that no decision authorizing issuance of a nuclear power reactor construction permit or operating license could become effective without prior Commission review. *See* 44 FR 58559 (October 10, 1979), 44 FR 65049 (November 9, 1979), 10 CFR Part 2, Appendix B (1980 ed.). On May 28, 1981, after consideration of numerous public comments in response to a notice of proposed rulemaking, 46 FR 20215 (April 3, 1981), the Commission replaced the special review procedure for operating licenses with new procedures designed to reduce unnecessary delays. 46 FR 28627 (May 28, 1981). A more complete explanation of the background, purpose, and effect of this rulemaking proceeding can be found in the notices of proposed and final rulemaking cited above. The new procedures still called for Commission review prior to issuance of any power reactor operating license, including a license for fuel loading and low power testing.

The Commission has reconsidered whether it must, as a policy matter, complete a review of favorable Licensing Board decisions prior to fuel loading and low power testing (up to 5 percent of rated power), and commercial operation (full power). The Commission has concluded that it must retain the authorization of the full power license in order to fulfill the responsibilities of the Commission. These are the fundamental licenses granted by the NRC. However,

the Commission has concluded that such review is not necessary for fuel loading and low power testing. First such activities involve minimal risk to the public health and safety, in view of the limited power level and correspondingly limited amounts of fission products and decay heat, and greater time available to take any necessary corrective action in the event of an accident.

Second, in operating license cases since the Three Mile Island accident the Commission has generally conducted its effectiveness review on a two-stage basis, first reviewing a fuel loading and low power testing license and then reviewing a full power license. Commission experience has been that in no case has fuel loading and low power testing prejudiced the later full power decision.

Accordingly, the Commission is reconsidering the review procedures adopted on May 28, 1981 so as to, in effect, reinstate the immediate effectiveness rule to the limited extent of allowing nuclear power reactor fuel loading and low power (up to 5 percent of rated power) testing based on favorable Licensing Board decisions notwithstanding the filing of exceptions. The Commission will retain the power to authorized full power operation. Also, language has been added to 10 CFR 2.764 to preserve Commission *sua sponte* authority to, in effect, suspend the immediate effectiveness rule in any case where special circumstances indicate this to be sound policy. This *sua sponte* authority is not intended to serve as a parallel avenue for parties to seek and obtain stays. 10 CFR 2.788 should be used for this purpose.

Thus, in a typical case the Director of Nuclear Reactor Regulation may issue a license within ten days from the date of issuance of a full power decision,[1] unless a stay motion was granted under 10 CFR 2.788, or there were some uncontested matters still requiring resolution. The same would hold true for low power decisions.

Finally, the new review procedures, as well as the old procedures adopted in 1979, are intended to apply only to nuclear power reactors, and the new rule has been clarified to this effect.

These rule changes will be applied prospectively, i.e., to initial decisions issued after the rule changes' effective date. Thus, they will not apply to cases like Diablo Canyon where the decisions were issued before the effective date, and the rules, as amended on May 28, 1981, will still apply to such cases. Also, these rule changes will not apply to the Three Mile Island Unit 1 restart cases where special effectiveness procedures are in effect or to any other case which involves extraordinary circumstances.

The review procedures addressed in this rulemaking apply only to contested operating license cases. Uncontested operating license cases are governed by a policy statement, issued in October 1979, 44 FR 58559 (October 10, 1979), which prohibited NRC staff from issuing any power reactor operating license without prior Commission review. The Commission, in this same issue of the **Federal Register**, is conforming its practice in uncontested cases to the rule changes herein by revising the earlier policy statement so as to delegate to the staff the authority to permit fuel loading and low power testing in uncontested cases without prior Commission review. *See* Table of Contents for this issue of the **Federal Register.**

The new rule is a variation on one of the proposals submitted for comment in the Commission's recent rulemaking proceeding. Indeed, many commenters urged the full reinstatement of the immediate effectiveness rule. Thus the new rule raises no policy considerations that were not raised in the earlier rulemaking. The change is also procedural in nature. It does not in any way modify any of the Commission's substantive standards for issuance of nuclear power reactor operating licenses and it has no significant effect on the participatory rights of parties to contested operating license hearings. The procedure and standards for parties to seek and obtain stays of adjudicatory decisions are set forth in 10 CFR 2.788 and remain unchanged and fully in effect. For these reasons the Commission believes that further notice of proposed rulemaking and public comment is unnecessary.

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that these rule changes will not have a significant economic impact on a substantial number of small entities. These rule changes would affect the Commission's procedures by permitting expedition of the licensing process. Because these rule changes relate solely to procedural matters and serve to remove procedural restrictions on licensees, the Commission has determined to make them effective upon publication in the **Federal Register.** Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that the following amendments to 10 CFR Part 2 are published as a document subject to codification.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 reads as follows:

Authority: Secs. 161p and 181, Pub. L. 83–703, 68 Stat. 950 and 953 (42 U.S.C. 2201(p) and 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, as amended, Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841); 5 U.S.C. 552; unless otherwise noted. Sections 2.200–2.206 also issued under sec. 186, Pub. L. 83–703, 68 Stat. 955 (42 U.S.C. 2236) and sec. 206, Pub. L. 93–438, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.800–2.808 also issued under 5 U.S.C. 553.

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.[1]

2. In both paragraphs (a) and (b) of 10 CFR 2.764, the opening phrase "Except as provided in paragraphs (c) through (f) of this section," is revised to read "Except as provided in paragraphs (c) through (f) of this section, or as otherwise ordered by the Commission in special circumstances,".

3. The title of paragraph (e) of 10 CFR 2.764 is revised to read *"Nuclear power reactor construction permits".*

4. Paragraph (f) of 10 CFR 2.764 is amended by revising the heading, (f)(1)(i), and (f)(2) to read as follows:

* * * * *

(f) *Nuclear power reactor operating licenses*—(1) *Atomic Safety and Licensing Boards.* (i) Atomic Safety and Licensing Boards shall hear and decide all issues that come before them, indicating in their decisions the type of licensing action, if any, which their decision would authorize. A Board's decision authorizing issuance of an operating license (including a fuel loading and low power testing license) shall not become effective insofar as it authorizes operating at greater than 5 percent of rated power until the Commission actions outlined below in paragraph (f)(2) of this section have taken place. Insofar as it authorizes operation up to 5 percent, the decision shall become effective and the Director shall issue the appropriate license in accordance with paragraph (b) of this section.

* * * * *

[1] The Commission expects that in the usual case of a favorable full power Licensing Board decision the Director of Nuclear Reactor Regulation would be able to issue the license using the format of a full power license but with the special added condition that operation beyond 5 percent of rated power is not allowed. This eliminates the need to prepare two separate license documents, one for low power and one for full power, but has no substantive effect on the activities authorized.

(2) *Commission.* (i) Reserving the power to step in at an earlier time, the Commission will, upon receipt of the Licensing Board decision authorizing issuance of an operating license, other than a decision authorizing only fuel loading and low power (up to 5 percent of rated power) testing, review the matter on its own motion to determine whether to stay the effectiveness of the decision. An operating license decision will be stayed by the Commission, insofar as it authorizes other than fuel loading and low power testing, if it determines that it is in the public interest to do so, based on a consideration of the gravity of the substantive issue, the likelihood that it has been resolved incorrectly below, the degree to which correct resolution of the issue would be prejudiced by operation pending review, and other relevant public interest factors.

(ii) For operating license decisions other than those authorizing only fuel loading and low power testing consistent with the target schedule set forth below, the parties may file brief comments with the Commission pointing out matters which, in their view, pertain to the immediate effectiveness issue. To be considered, such comments must be received within 10 days of the Board decision. However, the Commission may dispense with comments by so advising the parties. No extensive stay shall be issued without giving the affected parties an opportunity to be heard.

(iii) The Commission intends to issue a stay decision within 30 days of receipt of the Licensing Board's decision. The Licensing Board's initial decision will be considered stayed pending the Commission's decision insofar as it may authorize operations other than fuel loading and low power (up to 5 percent of rated power) testing.

(iv) In announcing a stay decision, the Commission may allow the proceeding to run its ordinary course or give instructions as to the future handling of the proceeding (for example, it may direct the Appeal Board to review the merits of particular issues in expedited fashion; furnish policy guidance with respect to particular issues; or decide to review the merits of particular issues itself, bypassing the Appeal Board). Furthermore, the Commission may in a particular case determine that compliance with existing regulations and policies may not longer be sufficient to warrant approval of a license application and may alter those regulations and policies.

(v) In operating license cases, the Commission's review under this section is without prejudice to Appeal Board or other Commission decisions, including decisions on stay requests filed under 10 CFR 2.788.

Dated at Washington, D.C. this 24th day of September 1981.

For the Nuclear Regulatory Commission.

Samuel L. Chilk,

Secretary of the Commission.

[FR Doc. 81-28446 Filed 9-29-81; 8:45 am]

BILLING CODE 7590-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 207

[Economic Reg. ER-1248 Amdt. No. 32 to Part 207; Docket No. 39616]

Liberalized Regulation of Wet Lease Agreements

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB liberalizes its rules on wet leases (leases of aircraft with crew) between airlines, to eliminate unnecessary barriers to competitive opportunities. Supplementary information about this change appears in ER-1247, issued along with this rule.

DATES: Adopted: September 15, 1981. Effective: November 23, 1981; however, the effectiveness of the changes in reporting requirements is subject to OMB review. The Board will publish a notice of OMB's decision.

FOR FURTHER INFORMATION CONTACT: Mark Schwimmer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5442.

PART 207—CHARTER TRIPS AND SPECIAL SERVICES

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 207, *Charter Trips and Special Services*, as follows:

1. The authority for Part 207 is:

Authority: Secs. 101(3), 102, 204, 401, 403, 404, 407, 411, 416, 418, 1002, Pub. L. 85-726, as amended, 72 Stat. 737, 740, 743, 754, 758, 760, 766, 769, 771, 788, 91 Stat. 1284; 49 U.S.C. 1301, 1302, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1388, 1482.

2. In the Table of Contents, § 207.10, *Reports of emergency commercial charters for other direct carriers*, is retitled as *Prior authorization of long-term wet leases to foreign air carriers.*

3. A new definition is added to § 207.1, *Definitions*, as follows:

§ 207.1 [Amended]

* * * * *

"Long-term wet lease" means a lease by which the lessor provides both an aircraft and its crew, which either (a) lasts more than 60 days, or (b) is part of a series of such leases that amounts to a continuing arrangement lasting more than 60 days.

4. Section 207.10, *Reports of emergency commercial charters for other direct carriers*, is retitled and revised to read:

§ 207.10 Prior authorization of long-term wet leases to foreign air carriers.

(a) A direct air carrier shall not perform any flights for a direct foreign air carrier under a long-term wet lease unless it has obtained a statement of authorization under this section.

(b) Applications for a statement of authorization shall be submitted in letter form in three copies to the Civil Aeronautics Board, addressed to the Director, Bureau of International Aviation. A copy of the application shall also be served on the Federal Aviation Administration, addressed to the Director of Flight Operations, and on each certificated air carrier that is authorized to serve the same general area in which the proposed transportation is to be performed.

(c) The application shall describe the purpose and terms of the wet lease agreement. It shall also include documentation to establish the extent to which the country of the lessee's nationality deals with United States air carriers on the basis of reciprocity for similar wet leases, if such wet leases are not subject to a bilateral agreement and—

(1) The Board has not established that the country accords reciprocity,

(2) The Board has found reciprocity defective in the most recent prior approval application involving the country; or

(3) Changes in reciprocity have occurred since the most recent Board finding for the country in question.

(d) Applications for a statement of authorization under this section shall be filed at least 45 calendar days before the date of the first proposed flight.

(e) Any party in interest may file a memorandum supporting or opposing an application. Three copies of each memorandum shall be filed within 7 business days after service of the application, and a copy shall be served on the applicant air carrier. Each memorandum shall set forth the reasons why the application should be granted or denied, accompanied by whatever data, including affidavits, the Board is requested to consider.

(f)(1) Unless otherwise ordered by the Board, each application and memorandum filed in response will be available for public inspection at the Regulatory Affairs Division of the

Bureau of International Aviation immediately upon filing. Notice of the filing of all applications will be published in the Board's Weekly List of Applications Filed.

(2) Any person objecting to public disclosure of any information in an application or memorandum must state the grounds for the objection in writing. If the Board finds that disclosure of all or part of the information would adversely affect the objecting person, and that the public interest does not require disclosure, it will order that the injurious information be withheld.

(g) The Board will issue a statement of authorization if it finds that the proposed wet lease is in the public interest. Statements of authorization may be conditioned or limited. In determining the public interest the Board will consider (but not be limited to) the following factors:

(1) The extent to which the authority sought is covered by and consistent with bilateral agreements to which the United States is a party, or should be so covered;

(2) The extent to which the foreign country involved deals with United States carriers on the basis of substantial reciprocity; and

(3) Whether the applicant (lessor) or its agent has previously violated the provisions of this part, or the lessee or its agent has previously violated the provisions of Part 212 or 218 of this chapter.

(h) The Board will publish notice of its actions on applications for statements of authorization in the Status of Charter Applications attachment to the Weekly List of Applications Filed. Interested persons may upon request obtain copies of letters advising applicants of action taken on their applications.

5. In § 207.11, paragraphs (a)(2)(i) and (c) are revised to read:

§ 207.11 Charter flight limitations.

(a) Passenger charter flights (trips) in air transportation shall be limited to the following:

* * * * *

(2) Air transportation * * * where * * * an aircraft has been engaged * * *

(i) By a person for his or her own use, including a direct air carrier or a direct foreign air carrier, except that long-term wet leases to foreign air carriers are subject to prior authorization under § 207.10.

* * * * *

(c) Cargo charter flights in air transportation are permitted without limitation, except that long-term wet leases to foreign air carriers are subject to prior authorization under § 207.10. charter cargo may be transported both on scheduled flights carrying individually-ticketed and/or individually-waybilled traffic and on flights carrying charter traffic only.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-28362 Filed 9-29-81; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 208

[Economic Regulations ER-1249; Amendment No. 32 to Part 208; Docket 39616]

Liberalized Regulation of Wet Lease Agreements

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB liberalizes its rules on wet leases (leases of aircraft with crew) between airlines, to eliminate unnecessary barriers to competitive opportunities. Supplementary information about this change appears in ER-1247, issued along with this rule.

DATES: Adopted: September 15, 1981. Effective: November 23, 1981; however, the effectiveness of the changes in reporting requirements is subject to OMB review. The Board will publish a notice of OMB's decision.

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

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN CHARTER AIR TRANSPORTATION

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 208, *Terms, Conditions and Limitations of Certificates to Engage in Charter Air Transportation, as follows:*

1. The authority for Part 208 is:

Authority: Secs. 101(3), 102, 204, 401, 403, 404, 407, 411, 416, 417, 1002, Pub. L. 85-726, as amended, 72 Stat. 737, 740, 743, 754, 758, 760, 766, 769, 771, 788, 76 Stat. 145; 49 U.S.C. 1301, 1302, 1324, 1371, 1373, 1374, 1377, 1381, 1386, 1387, 1482.

2. In the Table of Contents, § 208.5, *Reports of emergency commercial charters for other direct carriers,* is retitled as *Prior authorization of long-term wet leases to foreign air carriers.*

3. In § 208.3, a new paragraph (w) is added, to read:

§ 208.3 Definitions.

* * * * *

(w) "Long-term wet lease" means a lease by which the lessor provides both an aircraft and its crew, which either (1) lasts more than 60 days, or (2) is part of a series of such leases that amounts to a continuing arrangement lasting more than 60 days.

4. Section 208.5, *Reports of emergency commercial charters for other direct carriers,* is retitled and amended to read:

§ 208.5 Prior authorization of long-term wet leases to foreign air carriers.

(a) A direct air carrier shall not perform any flights for a direct foreign air carrier under a long-term wet lease unless it has obtained a statement of authorization under this section.

(b) Applications for a statement of authorization shall be submitted in letter form in three copies to the Civil Aeronautics Board, addressed to the Director, Bureau of International Aviation. A copy of the application shall also be served on the Federal Aviation Administration, addressed to the Director of Flight Operations, and on each certificated air carrier that is authorized to serve the same general area in which the proposed transportation is to be performed.

(c) The application shall describe the purpose and terms of the wet lease agreement. It shall also include documentation to establish the extent to which the country of the lessee's nationality deals with United States air carriers on the basis of reciprocity for similar wet leases, if such wet leases are not subject to a bilateral agreement and—

(1) The Board has not established that the country accords reciprocity,

(2) The Board has found reciprocity defective in the most recent prior approval application involving the country; or

(3) Changes in reciprocity have occurred since the most recent Board finding for the country in question.

(d) Applications for a statement of authorization under this section shall be filed at least 45 calendar days before the date of the first proposed flight.

(e) Any party in interest may file a memorandum supporting or opposing an application. Three copies of each memorandum shall be filed within 7 business days after service of the application, and a copy shall be served on the applicant air carrier. Each memorandum shall set forth the reasons why the application should be granted or denied, accompanied by whatever data, including affidavits, the Board is requested to consider.

(f)(1) Unless otherwise ordered by the Board, each application and memorandum filed in response will be available for public inspection at the Regulatory Affairs Division of the Bureau of International Aviation immediately upon filing. Notice of the filing of all applications will be published in the Board's Weekly List of Applications Filed.

(2) Any person objecting to public disclosure of any information in an application or memorandum must state the grounds for the objection in writing. If the Board finds that disclosure of all or part of the information would adversely affect the objecting person, and that the public interest does not require disclosure, it will order that the injurious information be withheld.

(g) The Board will issue a statement of authorization if it finds that the proposed wet lease is in the public interest. Statements of authorization may be conditioned or limited. In determining the public interest the Board will consider (but not be limited to) the following factors:

(1) The extent to which the authority sought is covered by and consistent with bilateral agreements to which the United States is a party, or should be so covered;

(2) The extent to which the foreign country involved deals with United States carriers on the basis of substantial reciprocity; and

(3) Whether the applicant (lessor) or its agent has previously violated the provisions of this part, or the lessee or its agent has previously violated the provisions of Part 212 or 218 of this chapter.

(h) The Board will publish notice of its actions on applications for statements of authorization in the Status of Charter Applications attachment to the Weekly List of Applications Filed. Interested persons may upon request obtain copies of letters advising applicants of action taken on their applications.

5. In § 208.6, paragraphs (a)(2) (i) and (c) are revised to read:

§ 208.6 [Amended]

(a) Passenger charter flights (trips) in air transportation shall be limited to the following:

* * * * *

(2) Air transportation * * * where * * * an aircraft has been engaged * * *

(i) By a person for his or her own use, including a direct air carrier or a direct foreign air carrier, except that long-term wet leases to foreign air carriers are subject to prior authorization under § 208.5.

* * * * *

(c) Cargo charter flights in air transportation are permitted without limitation, except that long-term wet leases to foreign air carriers are subject to prior authorization under § 208.5. Charter cargo may be transported both on scheduled flights carrying individually-ticketed and/or individually-waybilled traffic and on flights carrying charter traffic only.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-28382 Filed 9-29-81; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 212

[Economic Regulations ER-1247; Amendment No. 42 to Part 212; Docket 39616]

Liberalized Regulation of Wet Lease Agreements

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB liberalizes its rules on wet leases (leases of aircraft with crew) between airlines, to eliminate unnecessary barriers to competitive opportunities.

DATES: Adopted: September 15, 1981. Effective: November 23, 1981; however, the effectiveness of the changes in reporting requirements is subject to OMB review. The Board will publish a notice of OMB's decision.

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

SUPPLEMENTARY INFORMATION: In EDR-426, 46 FR 28383, May 26, 1981, the Board proposed to substantially liberalize its rules on wet leases between airlines. We are now adopting the changes as proposed.

A "wet lease" of aircraft is an agreement under which the lessor provides both the aircraft and the crew. When the lessor is an airline, the wet lease is technically a charter performed by the lessor. The lessor must have authority to perform charters between the points in question, and the wet lease is also subject to the specific limitations on charter flights that appear in the Board's rules (14 CFR Parts 207, 208, and 212). The lessee might itself be an airline, using the aircraft for either scheduled or charter service, in which case it must also have authority from the Board for whatever service it is providing.

Parts 207, 208, and 212 up to now have contained an elaborate scheme of prior approval requirements for wet leases performed by U.S. route air carriers, U.S. charter air carriers, and foreign air carriers, respectively. There are exceptions only for emergencies, which must be reported to the Board after the fact. The scheme is described in detail in EDR-426. It was part of a scheme of pervasive regulation of air service, when routes were awarded only sparingly.

Under current pro-competitive policies, however, the Board is avoiding interference in management decisions unless it finds a specific need for the interference. The existing scheme unnecessarily limits the ability of carriers to meet the immediate needs of the public. In EDR-426, we proposed to eliminate the prior approval requirements and emergency reporting requirements for all wet leases between U.S. air carriers, and for all short-term wet leases involving a foreign air carrier (as lessor, lessee, or both). Only long-term wet leases—those lasting more than 60 days or part of a continuing arrangement lasting more than 60 days—that involved a foreign air carrier would continue to require Board approval. The proposal cited two reasons for retaining oversight of such arrangements. One was to make sure that a wet lease is not used to circumvent bilateral agreements. For example, where an agreement limits market participation by the carriers of each country, a long-term wet lease could thwart the limitations to the detriment of U.S. carriers. The second reason cited was to enable the Board to step in when a foreign carrier's homeland does not afford adequate reciprocity.

World Airways filed the only comment on EDR-426. It supported the proposed liberalization, and recommended that the board go a step further by limiting the prior approval requirement to long-term wet leases where both carriers are foreign. World stated that, in contrast with bilateral and foreign government restrictions imposed on charters in general, it has encountered no such problems with wet leases between it and foreign carriers. This might be explained, it suggested, by the fact that if a foreign government imposed restrictions on such wet leases, that government would be injuring its own carrier as well as the U.S. carrier. World argued that routine prior approval of such wet leases is unnecessary because bilateral and reciprocity concerns can be addressed more easily and effectively through bilateral discussions, *ad hoc* prior

approval requirements, or, in extreme cases, some type of action under the International Air Transportation Competition Act.

We have decided to adopt final rules liberalizing oversight of wet leases as proposed, for the reasons set forth in EDR-426. We are not persuaded by World's argument that we should go further than the proposal. Even if foreign government actions presented no problems for World, they could still be injurious to other U.S. carriers operating in the same markets or to U.S. foreign policy or negotiating policy in general. And the alternative methods of addressing such problems that World suggested are impractical and potentially cumbersome. Moreover, continuation of the prior approval requirements for long-term wet leases between a U.S. and foreign carrier will not significantly burden the carriers. As in the past, we expect to issue statements of authorization freely when the foreign carrier is from a country with which we have no or few bilateral aviation problems.

World also suggested that, if we retain prior approval requirements for wet leases between U.S. and foreign carriers, we limit the term "wet lease" in the rules to those leases that involve operation of aircraft in interstate, overseas, or foreign air transportation. World apparently seeks assurance that the rules will not apply to wet leases for service between foreign countries that is outside of "foreign air transportation" as defined in the Federal Aviation Act because the traffic has no connection with the United States. Such service is not "air transportation" and so is outside our jurisdiction and not covered by the rules. No change in the term "wet lease" is needed, however, because §§ 207.11 and 208.6 are limited by their own terms to air transportation, and § 212.3 is similarly limited to foreign air transportation.

This amendment of Part 212 also allows wet lease applications to be submitted in letter form instead of on CAB Form 433, which is still required for other statement of authorization requests but not well suited to wet leases. The requirements for contents of applications (§ 212.5(c)) and criteria for issuing statements of authorization (§ 212.6(b)) are revised to refer to *lessee* carriers and the reciprocity afforded by their homelands as well as lessor carriers. ER-1248 and 1249, issued along with this rule, amend Parts 207 and 208 to add a statement of authorization procedure for long-term wet leases from a U.S. carrier to a foreign one. The procedure is modeled on the one in Part 212, and replaces the previous prohibitions on all but emergency wet leases, under which permission was, as a technical matter, obtained by waiver of the emergency requirement. ER-1250, also issued along with this rule, makes conforming changes in Part 218, *Lease by Foreign Air Carrier or Other Foreign Person of Aircraft With Crew*, as described in EDR-426.

We are also clarifying the provision in § 212.3(c) that authorizes cargo charters by foreign air carriers in foreign air transportation "without limitation." That language was originally adopted in ER-1192, 45 FR 53364, August 11, 1980. It was designed to eliminate the previous restrictions on charterworthiness for cargo service, but was never intended to change the prior approval requirements for wet leases or other charters, whether for passengers or cargo. This rule therefore adds to § 212.3(c) an explicit reference to the prior approval requirements of § 212.4.

We remind carriers that, although prior approval will no longer be required for most wet leases, anticompetitive wet lease agreements will continue to be subject to full scrutiny under the antitrust laws. Also, carriers must still have underlying authority to provide the air transportation in question. For example, a carrier that is restricted by its certificate to North American operations would need an exemption to wet lease an aircraft to another carrier for transatlantic service. And a short-term wet lease for service between the United States and a country other than a foreign carrier lessor's home country, although it would need no prior approval as a wet lease, would still need a statement of authorization under § 212.4(b)(1) as a series of fifth freedom charter flights.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, the Board certifies that these rules will not have a significant economic impact on a substantial number of small entities. Although some of the carriers that are subject to Parts 207, 208, 212, and 218 are small businesses, they are not the ones that will be the most significantly affected by this lessening of restrictions on wet leasing.

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 212, *Charter Trips by Foreign Air Carriers*, as follows:

1. The authority for Part 212 is:

Authority: Secs. 101(3), 102, 204, 401, 402, 403, 404, 407, 411, 416, 1002, Pub. L. 85-726, as amended, 72 Stat. 737, 740, 743, 754, 757, 758, 760, 766, 769, 771, 788; 49 U.S.C. 1301, 1302, 1324, 1371, 1372, 1373, 1374, 1377, 1381, 1386, 1482.

2. The Table of Contents is amended by removing § 212.13, *Reports of emergency commercial charters for other direct carriers.*

3. A new definition is added to § 212.2, *Definitions*, to read:

§ 212.2 [Amended]

* * * * *

"Long-term wet lease" means a lease by which the lessor provides both an aircraft and its crew, which either (a) lasts more than 60 days, or (b) is part of a series of such leases that amounts to a continuing arrangement lasting more than 60 days.

4. In § 212.3, paragraphs (a)(1)(i) and (c) are revised to read:

§ 212.3 Charter flight limitations.

(a) Passenger charter flights by foreign air carriers in foreign air transportation shall be limited to the movement of persons or their baggage * * *

(1) Where * * * an aircraft has been engaged * * *

(i) By a person for his or her own use, including a direct air carrier or a direct foreign air carrier whether or not the charter is a wet lease for the carriage of commercial traffic;

* * * * *

(c) Cargo charter flights in foreign air transportation by a foreign air carrier are permitted without limitation, except as set forth in § 212.4. Charter cargo may be transported both on scheduled flights carrying individually-ticketed and/or individually-waybilled traffic and on flights carrying charter traffic only.

5. In § 212.4, paragraph (b)(2) is revised and paragraph (c) is removed, so that the section reads:

§ 212.4 Prior authorization requirements.

* * * * *

(b) Foreign air carriers shall obtain a statement of authorization for each—

* * * * *

(1) * * *

(2) Long-term wet lease to a direct air carrier or direct foreign air carrier, or

(3) * * *

(c) [Reserved]

* * * * *

6. In § 212.5, paragraphs (a), (b), (c), and (d)(2) are revised to read:

§ 212.5 Application for authorization.

(a) Application for a statement of authorization shall be submitted on CAB Form 433 (Appendix C), except that for

long-term wet leases the application may be submitted in letter form and shall describe the purpose and terms of the wet lease agreement. Applications shall be submitted in three copies to the Civil Aeronautics Board, addressed to the Director, Bureau of International Aviation. Upon a showing of good cause, the application may be transmitted by cablegram or telegram or may be made by telephone.

(b) A copy of the application for a long-term wet lease to a direct air carrier or direct foreign air carrier shall also be served on the Federal Aviation Administration, addressed to the Director of Flight Operations, and on each certificated air carrier that is authorized to serve the same general area in which the proposed transportation is to be performed.

(c) The application shall include documentation to establish the extent to which the country of the applicant's nationality (and, in the case of a long-term wet lease, the country of the lessee's nationality) deals with United States air carriers on the basis of reciprocity for similar flights, if such flights are not subject to a bilateral agreement and—

(1) The Board has not established that the country accords reciprocity,

(2) The Board has found reciprocity defective in the most recent prior approval application involving the country, or

(3) Changes in reciprocity have occurred since the most recent Board finding for the country in question.

(d)(1) * * *

(2) Applications for a long-term wet lease to a direct air carrier or direct foreign air carrier shall be filed at least 45 days before the date of the first proposed flight.

* * * * *

7. In § 212.6, paragraphs (b)(2) and (b)(4) are revised so that the paragraph reads:

§ 212.6 Issuance of authorization.

* * * * *

(b) In determining the public interest the Board will consider (but not be limited to) the following factors.

(1) The extent to which the authority sought is covered by and consistent with bilateral agreements to which the United States is a party.

(2) The extent to which the country of the carrier's nationality (and, in the case of a long-term wet lease, the country of the lessee's nationality) deals with United States air carriers on the basis of substantial reciprocity.

(3) Whether the foreign air carrier or its agent or the charterer or its agent has previously violated the provisions of this part.

(4) Where the application concerns a long-term wet lease—

(i) Whether the foreign air carrier or its agent or the lessee (charterer) or its agent has previously violated the provisions of Part 207, 208, or 218 of this chapter.

(ii) Whether, because of the nature of the arrangement and the benefits involved, the authority sought should be the subject of a bilateral agreement.

(iii) To what extent the applicant owns or controls the lessee, or is owned or controlled by the lessee.

§ 212.13 [Removed]

8. Section 212.13, *Reports of emergency commercial charters for other direct carriers*, is removed.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-28301 Filed 9-29-81; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 218

[Economic Regulations ER-1250; Amendment No. 1 to Part 218 Docket 39616]

Liberalized Regulation of Wet Lease Agreements

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB liberalizes its rules on wet leases (leases of aircraft with crew) between airlines, to eliminate unnecessary barriers to competitive opportunities. Supplementary information about this change appears in ER-1247, issued along with this rule.

DATES: Adopted: September 15, 1981. Effective: November 23, 1981.

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

PART 218—LEASE BY FOREIGN AIR CARRIER OR OTHER FOREIGN PERSON OF AIRCRAFT WITH CREW

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 218, *Lease by Foreign Air Carrier or Other Foreign Person of Aircraft with Crew*, as follows:

1. The authority for Part 218 is:

Authority: Secs. 204(a), 402, Pub. L. 85-726, as amended, 72 Stat. 743, 757; 49 U.S.C. 1324, 1372.

§ 218.2 [Amended]

2. The last two sentences of § 218.2, *Applicability*, are removed.

3. In § 218.3, paragraph (a) is revised to read:

§ 218.3 Prohibition against unauthorized operations employing aircraft leased with crew.

(a) No foreign air carrier, or other person not a citizen of the United States, shall lease an aircraft with crew to a foreign air carrier for use by the latter in performing foreign air transportation unless either—

(1) The lessor holds a foreign air carrier permit issued under section 402 of the Act and any statement of authorization required by Part 212 of this chapter; or

(2) The Board has issued an exemption under section 416 of the Act specifically authorizing the lessor to engage in the foreign air transportation to be performed under the lease; or

(3) The Board has issued an order under § 218.6 disclaiming jurisdiction over the matter.

* * * * *

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-28355 Filed 9-29-81; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 935 and 936

Channel Islands and Point Reyes-Farallon Islands National Marine Sanctuaries; Partial Suspension of Regulations

AGENCY: Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The Office of Coastal Zone Management within NOAA is continuing the suspension until March 30, 1982, of those provisions of the regulations issued pursuant to the designations of the Channel Islands and Point Reyes-Farallon Islands National Marine Sanctuaries which would directly prohibit or have the effect of prohibiting hydrocarbon development within each Sanctuary insofar as they apply to such development. NOAA is reconsidering the regulations in accordance with Executive Order 12291.

This reconsideration involves preparation of a formal regulatory impact analysis which is not yet complete. The continued suspension will not result in any substantive impact on either sanctuary.

DATE: The provisions in §§ 935.6, 935.7 and 936.6 which would directly prohibit or have the effect of prohibiting hydrocarbon development insofar as they apply to such development are suspended until March 30, 1982.

ADDRESS: Sanctuary Programs Office, Office of Coastal Zone Management, NOAA, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: John Epting, (202) 634–4236.

SUPPLEMENTARY INFORMATION: The majority of the regulations issued pursuant to the designation of the Channel Islands and Point Reyes-Farallon Islands National Marine Sanctuaries became effective on March 30, 1981, and April 5, 1981, respectively.

On March 30, 1981 (46 FR 19227), NOAA suspended those portions of the regulations which would directly prohibit or have the effect of prohibiting hydrocarbon development within each Sanctuary for a period of 30 days during which it considered whether to suspend them for an additional period of up to 6 months, and on April 29, 1981 (46 FR 23924), suspended such portions of the regulations until September 30, 1981, while it reconsidered their substantive impact in accordance with Executive Order 12291.

Executive Order 12291 directs Federal agencies to reconsider pending "major" regulations in accordance with the objectives of the Executive Order and prepare a Regulatory Impact Analysis. A major regulation is defined as one likely to result in:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

3. Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

NOAA has awarded a contract for the preparation of a formal regulatory impact analysis, a major element of the reconsideration. This analysis will not be completed prior to September 30, 1981. NOAA will need an adequate period of time to review its options with respect to the regulations.

Therefore, on September 8, 1981 (46 FR 44765), NOAA proposed to further continue suspension of those portions of the regulations under reconsideration to complete the Regulatory Impact Analysis and fully consider its recommendations. As to other activities the regulations remain effective.

Only a very limited number of comments have been received most from commentators who have continuously objected to any suspension of the hydrocarbon regulations. NOAA appreciates the underlying concern of these commentators for the resources of the sanctuaries. However, no lease sales involving either Sanctuary have been held since designation and none will be held during the period of the continued suspension. The next lease sale which could impact either Sanctuary, Sale #68, which contains 37 tracts in the Channel Islands Sanctuary, is not scheduled until April, 1982. No activities which could impact either sanctuary substantively will result from this continued suspension. Since this suspension action will not result in any practical effect on either Sanctuary, NOAA finds no advantage to having the regulations become effective on an interim final basis during the review and therefore elects to continue the suspension.

Conversely, the continued suspension will not restrict or prohibit any activity and the Administrator has determined therefore that the suspension is not a "major" rule under Executive Order 12291, nor will it have a significant economic impact on small entities under the Regulatory Flexibility Act.

Since the current suspension will expire on September 30, 1981, at which time the provisions of the regulations under review would become effective prior to completion of the Regulatory Impact Analysis, it has been impracticable to follow the review procedures set forth in Executive Order 12291, and the 60 day notice provisions set forth in Department of Commerce Administrative Order 218.7 and NOAA Directive 21–24 for this rule continuing the suspension. Consequently, this notice is being published in accordance with the emergency procedure of Section 8 of Executive Order 12291.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: September 24, 1981.

William Matuszeski,

Acting Assistant Administrator for Coastal Zone Management.

§§ 935.6, 935.7, 936.6 [Suspended]

Accordingly, the provisions in §§ 935.6, 935.7 and 936.6 which would directly prohibit or have the effect of prohibiting hydrocarbon development insofar as they apply to such development are suspended until March 30, 1982.

[FR Doc. 81-28521 Filed 9-29-81; 8:45 am]

BILLING CODE 3510-08-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[PH–FRL–1945–1; FAP OH5268/R85]

Cyano (3-Phenoxyphenyl)Methyl-4-Chloro-Alpha-(1-Methylethyl) Benzeneacetate; Establishment as a Feed Additive

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule

SUMMARY: This rule establishes a feed additive regulation permitting residues of the insecticide cyano(3-phenoxyphenyl)-methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate in or on soybean hulls at 1.0 part per million (ppm). This regulation was requested by Shell Oil Company.

EFFECTIVE DATE: Effective on: September 30, 1981.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A–110), 401 M. St., SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Agency, Rm. 400, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the Federal Register of August 15, 1980 (45 FR 54426) that Shell Oil Co., 1025 Connecticut Ave., NW, Washington, DC 20036, had submitted a feed additive petition (FAP OH5268) to the EPA. The petition proposed that 21 CFR Part 561 be amended by establishing a regulation permitting residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha(1-methylethyl)-benzeneacetate in or on soybean hulls at 0.1 ppm.

The petitioner subsequently amended the petition by submitting a revised Section F petition, proposing that the tolerance be increased from 0.1 ppm to 1.0 ppm. The amended notice of filing published in the Federal Register of September 23, 1981 (46 FR 47009).

No comments or request for referral to an advisory committee were received in response to this notice of filing.

A related document which appears elsewhere in this issue of the **Federal Register** (PP OF2375/R346) establishes tolerances for residues of the insecticide in or on soybeans at 0.05 ppm; fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and milk fat at 0.1 ppm. For detailed toxicological information in support of this feed additive regulation on soybean hulls at 1.0 ppm, see the related notice establishing tolerances for the subject chemical in or on the above raw agricultural commodities. The tolerances for the fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep and milk fat are adequate to cover any secondary residues which may result from the use of the subject insecticide on soybean hulls.

It is concluded that the pesticide may be safely used in the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA, as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) *et seq.*). The pesticide is considered useful for the purpose for which the feed additive regulation is sought. Therefore, 21 CFR Part 561 is amended as set forth below.

Any person adversely affected by this regulation may, on or before October 30, 1981, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A–110), 401 M St., SW, Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this rule from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945). Effective on: September 30, 1981.

(Sec. 409(c)(1), 72 Stat. 1786; (21 U.S.C. 346 (c)(1)))

Dated: September 30, 1981.

James M. Conlon,

Acting Deputy Assistant Administrator for Pesticide Programs.

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR Part 561 is amended by adding § 561.97 to read as follows:

§ 561.97 Cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate.

A regulation is established permitting residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate at 1.0 part per million in or on soybean hulls.

[FR Doc. 81-28394 Filed 9-29-81; 8:45 am]

BILLING CODE 6560-32-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. R-81-932]

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation for the Fayetteville, Fort Smith, Jonesboro, Little Rock, and Texarkana, Arkansas Market Areas; Section 8 Projects; Request for Comments

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule; request for comments.

SUMMARY: HUD is amending the schedules of Section 8 Fair Market Rents applicable to new construction and substantial rehabilitation for the Fayetteville, Fort Smith, Jonesboro, Little Rock, and Texarkana, Arkansas market areas. These proposed rents will take effect without another publication unless HUD determines that further revision is appropriate.

DATES: This interim rule is effective on November 16, 1981. Comments are due on or before October 15, 1981.

ADDRESS: Comments should be sent to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755–7603. This is not a toll-free number. Each person submitting a comment should include his/her name and address and refer to the document by the docket number indicated by the headings, and give reasons for any recommendation. Copies of all written comments will be available for examination by interested persons in the Office of the Rules Docket Clerk at the address listed above. In order to expedite consideration of comments, an information copy of your comment should be forwarded to the Little Rock Area Office having jurisdiction for the market areas involved.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Multifamily Housing Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755–5743. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Recent submissions have been received from the Little Rock Area Office indicating an immediate need to amend the Fair Market Rents for Section 8 newly constructed and substantially rehabilitated rental projects for the Fayetteville, Fort Smith, Jonesboro, Little Rock, and Texarkana, Arkansas market areas.

The last Annual Revision of all Fair Market Rents for all market areas was published at 45 FR 58040 on August 29, 1980.

It has been determined that prior notice and public procedure would be contrary to the public interest in this instance because there is an urgent need to correct the existing Fair Market Rent schedules for these market areas. The schedules are out of date due to rapidly changing economic conditions, and corrections are badly needed to maintain the viability of essential housing projects. However, a 15-day public comment period is being provided prior to the effective date of this rule. If evaluation of comments submitted during this period indicates a need to change the corrected Fair Market Rent schedules, this rule will be withdrawn and corrected. Otherwise these Fair Market Rent schedules will, without further publication, become effective on the date indicated above.

HUD has made a Finding of No Significant Impact with respect to the environment in accordance with HUD

regulations in 24 CFR Part 50, which implements Section 102(2)(c) of the National Environmental Policy Act of 1969. A copy of this Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk at the address set forth above.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

The Catalog of Federal Domestic Assistance Program number is 14.156.

Accordingly, Schedule A of Part 888 is amended as set forth below:

(Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C., August 3, 1981.

Philip D. Winn,

Assistant Secretary for Housing—Federal Housing Commissioner.

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation (Including Housing Finance and Development Agencies Program)

These schedules of Fair Market Rents have been trended ahead to October 1, 1982, to update the current Fair Market Rent schedules which these revised rent schedules will replace.

Note.—The Fair Market Rents for (1) dwelling units designed for the elderly or handicapped are those for the appropriate size units, not to exceed 2 bedrooms for the elderly, multiplied by 1.05 rounded to the nearest whole dollar, (2) congregate housing dwelling units are the same as for noncongregate units, and (3) single room occupancy dwelling units are those for zero bedroom units of the same type.

Area Office—Little Rock, Arkansas; Region VI—Dallas

Market area	Structure type	Number of bedrooms				
		0	1	2	3	4 or more
Little Rock	Detached			450	526	592
	Semi-detached/row	312	366	433	507	565
	Walkup	291	345	391	462	525
	Elevator-2-4 sty	319	379	432		
	5 + sty	374	430	504		
Fayetteville	Detached			419	510	577
	Semi-detached/row	290	345	402	493	534
	Walkup	282	336	392	481	521
	Elevator-2-4 sty	308	367	430		
	5 + sty	371	426	509		
Fort Smith	Detached			388	472	549
	Semi-detached/row	267	314	386	459	514
	Walkup	247	293	356	432	472
	Elevator-2-4 sty	274	325	385		
	5 + sty	376	429	509		
Jonesboro	Detached			399	479	541
	Semi-detached/row	271	319	387	464	520
	Walkup	251	298	359	436	477
	Elevator-2-4 sty	278	332	398		
	5 + sty	369	413	497		
Texarkana	Detached			414	507	571
	Semi-detached/row	285	334	398	488	545
	Walkup	265	314	362	463	504
	Elevator-2-4 sty	292	346	421		
	5 + sty	374	428	492		
	Detached					
	Semi-detached/row					
	Walkup					
	Elevator-2-4 sty					
	5 + sty					

[FR Doc. 81-28226 Filed 9-29-81; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 103a and 103b

Indian Moneys, Proceeds of Labor; Special Deposits

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior hereby adds a new part to its regulations to establish two new internal accounting procedures. Part 103a establishes regulations dealing with the source, deposit, investment, and use of federal moneys classified as "Indian Moneys, Proceeds of Labor." Part 103b prescribes policies governing the handling of "Special Deposits" by the Bureau.

EFFECTIVE DATE: September 30, 1981.

FOR FURTHER INFORMATION CONTACT: Thomas A. Stangl, Chief, Division of Program Development & Implementation, Bureau of Indian Affairs, Room 303, 1951 Constitution Avenue, N.W., Washington, D.C. 20245, telephone number (202) 343-6342.

SUPPLEMENTARY INFORMATION: On November 3, 1980 there were published in the **Federal Register** (45 FR 72699) proposed regulations for *Indian Moneys, Proceeds of Labor and Special Deposits.* Comments were received from six Bureau of Indian Affairs field offices, one Indian Tribe and one law firm on behalf of the Indian Tribes it represents. All comments received with respect to the proposed rules were carefully considered. The comments on Part 103a "Indian Moneys, Proceeds of Labor" were primarily of an editorial rather than a substantive nature, with the exception that some of the wording in § 103a.6(b) has been revised and a portion of the section has been deleted. These changes have been made to restrict IMPL funding to only those programs and projects authorized, and for which funding has been appropriated by the Congress in the current fiscal year. Most of the comments received related to Part 103b and were critical of the sections dealing with the method described for computing distributions of interest. For example, one commented that "The $500/60 day limitation would be such an awkward and cumbersome task to accomplish manually by any means other than a computer. Even then, the computer processing time to calculate the interest would be excessive". Another commented that the $500/60 day limitation could be inequitable. For example, a large deposit could be made on February 15 and disbursed on May 15, and not draw any interest because it was not on deposit for 60 calendar days during any interest period. Another criticism concerned the proposed policy not to invest special deposit funds which are (1) deposited solely for the purpose of guaranteeing

performance, or (2) subject to immediate return on demand of the depositor. One commenter provided an example as follows: "A timber purchaser or an oil company deposits funds with the intent that these will be refunded after the land is restored to the approved condition. Under the proposed regulations, these would be in non-interest-bearing account. However, often, for various reasons, these funds are forfeited and distributed to the Indian owners of the land. In those cases, under the proposed regulations, the owners would not receive any interest. Since the failure of utility firms to pay interest on deposits has recently been the subject of court decisions resulting in changes in the companies' methods, we assume that failure to pay interest on performance deposits to account holders when it is paid on other SD accounts could also be subject to legal challange".

To satisfy the criticisms which were received, and after consulting further with the commenters and the members of the Task Force who drafted the proposed regulations, Part 103b has been revised as follows:

Part 103b, *Special Deposits*, has been revised to delete the references to "eligible principal account" and to change the method of crediting interest to special deposit accounts.

Section 103b.2(b) has been deleted and § 103.2 (c), (d), (e) and (f) have been renumbered as § 103.2 (b), (c), (d) and (e).

Section 103b.3 has been revised to provide for the investment of funds deposited for the purpose of guaranteeing performance. This change was made because of comments we received to the effect that there is often no way to know for certain at the time of deposit, which deposits will be returned to the depositor and which will go to an Indian individual or tribe. Comments also were received to the effect that we expect contractors to be more willing to make deposits guaranteeing performance and to make a greater effort to assure that the performance bonds are not forfeited if these funds earn interest. Thus, the ultimate beneficiaries are the Indian individuals and tribes. Section 103b.3(b)(2) has been deleted as unnecessary because no demand funds are placed in this account.

Section 103b.4 has been rewritten to provide for a different method of crediting interest on special deposits, correcting a procedure about which many negative comments were received. Many complained about the unnecessarily burdensome procedure which would create a tremendous increase in workload without benefits commensurate with the unavoidable deterioration of other services to individual account holders. These sections as rewritten, will also correct certain inequities under the draft regulations, wherein a deposit, made on February 15 and disbursed on May 15, would not be entitled to any interest because it was not on deposit for 60 calendar days during any interest period.

Parts 103a and 103b basically apply only to the internal operations of the Bureau. Part 103a deals with the source, deposit, investment, and use of federal moneys classified as "Indian Moneys, Proceeds of Labor". Part 103b deals with deposit, investment, and distribution of interest on special deposit funds. Therefore, the 30-day deferred effective date is dispensed with under the exception provided in subsection (d)(3) of 5 U.S.C. 553 (1970). Accordingly, these regulations will become effective upon the date of publication in the **Federal Register**, except that Part 103b will also apply to interest accruing from April 1, 1981.

The primary author of this rule is Thomas A. Stangl (address as above).

This final rule is published in excercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Department of the Interior has determined that this document is not a major rule under the criteria established by Exective Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act.

Subchapter J of Chapter I of Title 25 of the Code of Federal Regulations is amended by the addition of two parts to read as follows:

PART 103a—INDIAN MONEYS, PROCEEDS OF LABOR (IMPL)

Sec.

103a.1 Purpose and scope.
103a.2 Definitions.
103a.3 Sources of IMPL funds.
103a.4 Collection and deposit of IMPL funds.
103a.5 Investment of IMPL funds.
103a.6 Expenditure and use of IMPL funds.
103a.7 Development and approval of IMPL use plans.
103a.8 Limitations on use of IMPL funds.

Authority: 25 U.S.C. 2; 25 U.S.C. 9; 25 U.S.C. 155.

§ 103a.1 Purpose and scope.

The purpose of these regulations is to set forth the conditions governing the receipt, deposit, investment, and use of miscellaneous revenues derived from BIA agencies and schools under the Act of March 3, 1883, as amended (25 U.S.C. 155). These regulations apply only to income belonging to the federal government and not to tribal funds or moneys belonging to individual Indians.

§ 103a.2 Definitions.

(a) "Agency" means any field office of the Bureau officially designated as an Indian agency and which provides direct services at the local level to Indians and Indian tribes, who are recognized by the Bureau as eligible for federal services to Indians because of their status as Indians.

(b) "Agency Superintendent" means the Bureau official in charge of a Bureau agency.

(c) "Bureau" of "BIA" means the Bureau of Indian Affairs, Department of the Interior.

(d) "Enterprise operation" means an economic activity operated at a Bureau agency or school which is designated to provide goods or services where such goods or services are not available or are not provided in an effective or satisfactory manner, or which has as its primary purpose enhancement of the educational experience of Indian students and is only incidentally commercial in nature.

(e) "IMPL funds" means all miscellaneous revenues included within the definition of IMPL receipts under section 103a.3 of this Part which are covered into the U.S. Treasury as federal trust funds under Account 14X8500, Indian Moneys, Proceeds of Labor.

(f) "Pub. L. 638" means the Indian Self-Determination Act, Act of January 4, 1975, Title I, Public Law 93-638 (25 U.S.C. 450 et seq.).

(g) "Project basis" means a short-term Bureau program at an agency or school aimed at a specific objective which can usually be accomplished within one year's time, and which supplements on-going Bureau programs of a more permanent nature.

(h) "School" includes any school operated directly by the Bureau of by an Indian tribe or organization pursuant to a Pub. L. 638 contract except that tribally controlled previously private contract schools are not included within the term "school" for the purpose of § 103a.3(a)(1) of this Part.

(i) "School Supervisor" means the Bureau official in charge of a Bureau school.

§ 103a.3 Sources of IMPL funds.

(a) IMPL receipts include—

(1) All miscellaneous revenues collected on behalf of the Bureau through Bureau agencies and schools as income from the sale of goods or services by the Bureau, gross receipts from leases, rentals, permits, licenses, and fees for the use of federal lands, facilities, and property and revenues from other Bureau activities, including gross receipts from activities financed by appropriated funds, except as otherwise provided by federal statute superseding 25 U.S.C. 155; and

(2) Interest from the investment of IMPL funds.

(b) IMPL receipts do not include—

(1) Special deposits and interest on special deposits except to the extent provided under Part 103b;

(2) Funds belonging to individual Indians or Indian tribes;

(3) Fees collected under 25 U.S.C. 413 to cover the cost of work performed by the Bureau of Indian Affairs for Indian tribes or individual Indians;

(4) Fees collected under 40 U.S.C. 490 (k) as charges for space and services in Bureau facilities not in excess of actual operating and maintenance costs of providing such space or services; or

(5) Fees collected from the lease of federal buildings or the sale of supplies, equipment, or services to other government bureaus and departments under 31 U.S.C. 686 (b) or 40 U.S.C. 303b.

§ 103a.4 Collection and deposit of IMPL funds.

IMPL receipts will be handled in accordance with the procedures set forth in Chapter 3—Collections, Title 7 Fiscal Procedures, General Accounting Office Policy and Precedures Manual for Guidance of Federal Agencies. IMPL receipts will be deposited to appropriate income codes for Activity 2660, "IMPL", as contained in the Bureau Financial Management Acounts Handbook, as revised.

§ 103a.5 Investment of IMPL funds.

IMPL funds not immediately required for expenditure will be invested by the Bureau as part of its regular investment program and will remain invested until notice is given that the funds are being allotted from the trust account for expenditure under an approved program plan.

§ 103a.6 Expenditure and use of IMPL funds.

(a) IMPL funds may be used only for the benefit of the agency or school for which such receipts were collected, and in accordance with an approved program plan under § 103a.7.

(b) IMPL funds may only be expended for a program or project at an agency or school for which the Bureau has statutory authority to operate and for which funding has been appropriated in the current fiscal year. They can not be used to fund programs or projects specifically reduced or disallowed by the Congress. IMPL funds may be expended directly by the Bureau or pursuant to a Pub. L. 93–638 contract covering tribal operation of an authorized agency or school program or project.

§ 103a.7 Development and approval of IMPL use plans.

(a) Each agency superintendent, school supervisor, or other Bureau official responsible for a Bureau school or agency shall submit an annual IMPL program plan for the expenditure of IMPL funds held for, and IMPL receipts accruing to, such agency or school. Program plans will be developed within the budget cycle and will utilize guidelines, formats, exhibits, justifications, costs principles, and other procedures developed within the Bureau's financial management system.

(b) Each program plan shall be reviewed and approved or disapproved by the Bureau official having direct line authority over such agency superintendent, school supervisor, or other appropriate Bureau official.

(c) All expenditures of IMPL funds shall be in accordance with such program plan and any amendments or revisions thereto. Expenditures under "IMPL" use plans are subject to the same audit, review, and investigation as expenditures of appropriated funds under other Bureau programs.

§ 103a.8 Limitations on use of IMPL funds.

(a) IMPL funds may not be expended as part of a Pub. L. 638 grant, but may be expended under a separate Pub. L. 638 contract which supplements a program pursuant to a Pub. L. 638 grant.

(b) IMPL funds will not be expended for the construction or major alteration and improvement of federal facilities, except as specifically authorized in the Bureau's annual budget or in case of emergency approved by the Commissioner of Indian Affairs.

(c) IMPL funds may not be expended to acquire lands for tribes or for the construction of tribal facilities, or for the operation and maintenance of tribal facilities except where such expenditure represents a portion of Bureau program costs in situations where such costs are paid by the Bureau in lieu of rent.

(d) IMPL funds may not be expended for any other use which, from time to time, may be excluded by executive order or by administrative limitations issued by the Secretary of the Interior, or his authorized representative.

PART 103b—SPECIAL DEPOSITS

Sec.

103b.1 Purpose and scope.
103b.2 Definitions.
103b.3 Investment of special deposit funds.
103b.4 Payment and distribution of interest on special deposit funds.

Authority: 25 U.S.C. 2; 25 U.S.C. 9.

§ 103b.1 Purpose and scope.

The purpose of these regulations is to set forth the conditions governing the deposit, investment, and distribution of interest on funds held by the Bureau in special deposits.

§ 103b.2 Definitions.

(a) "Bureau" or "BIA" means the Bureau of Indian Affairs, Department of the Interior.

(b) "IMPL account" means Account 14X8500, Indian Moneys, Proceeds of Labor, U.S. Treasury.

(c) "Principal account" means each separate payment or deposit of money to the Bureau which is held as a special deposit.

(d) "Proportionately" means in the same proportion that the amount of each principal account bears to the total amount of all principal accounts.

(e) "Special deposit" means any suspense account used for the temporary deposit of funds which cannot be credited to specific accounts or readily distributed, including, but not limited to, (1) advance deposits required when bidding on and awaiting approval of mining leases on trust or restricted Indian lands, including oil, gas, coal, and other minerals, (2) advance deposits on other leases and permits for such Indian lands, (3) advance payments and advance deposits required on sales of timber and other natural resources from such Indian lands, (4) deposits for rights of way over such Indian lands and anticipated right-of-way damages held until such damages are determined, and (5) deposits for grazing fees on such Indian lands.

(f) "Special deposit funds" means those funds held in special deposits.

§ 103b.3 Investment of special deposit funds.

It is the policy of the Bureau to invest all special deposit funds which have been paid to the Bureau on behalf of Indians or Indian tribes pending the eventual payment for the sale, lease, or other transfer of tribal or individual Indian property and funds which are deposited solely for the purpose of guaranteeing performance.

§ 103b.4 Payment and distribution of interest on special deposit funds.

(a) It is the general policy of the Bureau that interest and earnings from the investment of special deposit funds be credited to the principal accounts upon which the interest was earned. Therefore, interest and earnings from special deposit funds will not be deposited into the Bureau's IMPL account, except as expressly provided in this section.

(b) At the time that a withdrawal is made from a special deposit account, the interest earned by the principal account being withdrawn will be computed and withdrawn from the account as a part of the same transaction. The interest earned by the subject principal amount will be computed into two parts:

(1) The portion of interest credited during the prior interest period which was attributable to this principal; and

(2) The portion of interest which has been earned by this principal amount but has not yet been credited to the account because the interest period is not complete. This will be computed by using the month-end balances since the last interest period times the last period's factor.

(c) Interest earned from the investment of funds on special deposit accounts which have less than the minimum average month-end balances as determined by the Division of Accounting Management will be credited to the Agency's IMPL account.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 81-29460 Filed 9-29-81; 8:45 am]

BILLING CODE 4310-02-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules; Restatement and Clarification

AGENCY: National Labor Relations Board.

ACTION: Final rule; correction.

SUMMARY: The National Labor Relations Board is making a technical correction to its restatement and clarification of procedural rules which was published in the **Federal Register** of September 15, 1981, at 46 FR 45922–45924.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, National Labor Relations Board, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570, Telephone (202) 254–9430.

Correction of Publication

In FR document 81–26823, appearing in the Tuesday, September 15, 1981, issue of the **Federal Register**, make the following changes:

1. In the first column of page 45923, the amendatory language in item 2 should read:

"2. Section 102.69 is amended by revising paragraphs (a), (c), (d) and (g) to read as follows:"

2. The line of 3 stars which appear after paragraphs (c), (g) and (g)(1) on page 45923, should be removed.

Dated: Washington, D.C., September 25, 1981.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 81-28420 Filed 9-29-81; 8:45 am]

BILLING CODE 7545-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 209, 290, 291, 292, 293, 294, 295, and 393

Internal Water Resources Planning; Cancellation of Regulations

AGENCY: Army Corps of Engineers, DOD.

ACTION: Final rule; revocation.

SUMMARY: On March 27, 1981, the Civil Works Planning Division, Office of the Chief of Engineers completed an audit of all of its internal water resources planning regulations as a first phase of a Regulation Reform Action Program (RRAP). The objectives of RRAP are to streamline and consolidate planning guidance. As a result of the work accomplished in Phase II, the U.S. Army Corps of Engineers, DOD hereby gives notice that its regulations covering the multiobjective planning process, plan development stages, public meetings, and the system of accounts are revoked and removed.

EFFECTIVE DATE: September 30, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. James F. Johnson, Planning Division, Directorate of Civil Works, US Army Corps of Engineers, HQ, USACE (DAEN-CWP), WASH, DC 20314, telephone (202) 272–0146.

SUPPLEMENTARY INFORMATION: 33 CFR Part 290, Planning Process; Multiobjective Planning Framework provides guidance for conducting feasibility studies. This subject is adequately covered by Water Resources Council procedures, 18 CFR Part 711. A Corps regulation is not required.

33 CFR Part 291, Plan Development Stages, provides guidance for carrying out a staged planning process. Plan development stages are no longer required as part of the planning process.

33 CFR Part 292, Problem Identification, provides guidance for carrying out the problem identification element of multiobjective planning. This subject is adequately covered by Water Resources Council procedures, 18 CFR Part 711. A Corps regulation is no longer required.

33 CFR Part 293, Formulation of Alternatives provides guidance for formulating alternative plans. This subject is adequately covered by Water Resources Council procedures, 18 CFR Part 711. A Corps regulation is no longer required.

33 CFR Part 294, Impact Assessment, provides guidance on the assessment of impacts of alternative plans. The subject is covered by Water Resources Council procedures, 18 CFR Part 711. A Corps regulation is no longer required.

33 CFR Part 295, Evaluation, provides guidance on the evaluation of alternative plans. The subject is covered by Water Resources Council procedures, 18 CFR Part 711. A Corps regulation is no longer required.

33 CFR Part 209.405, Public Meetings, provides guidance for holding public meetings as part of the planning process. Public meetings are no longer specifically required. They will be used, as appropriate, in accordance with overall public involvement policy. A regulation is no longer required.

33 CFR Part 393, Feasibility Reports: System of Accounts, provides guidance for displaying the results of plan evaluation. The subject is covered by Water Resources Council procedures, 18 CFR Part 711. A Corps regulation is no longer required.

PARTS 290, 291, 292, 293, 294, 295, AND 393 [RESERVED]

§ 209.405 [Removed]

Therefore, 33 CFR Parts, 290, 291, 292, 293, 294, 295, 209.405 and 393 are hereby removed, revoked, and reserved.

Dated: September 18, 1981.

For the Chief of Engineers.

Richard T. Robinson,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

[FR Doc. 81-28310 Filed 9-29-81; 8:45 am]

BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL-1829-8]

Approval of Revisions of the Delaware State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA approves amendments submitted by the State of Delaware to Regulations I (Definitions), XXIV (Control of Volatile Organic Compounds Emissions), and XXV (Requirements for Preconstruction Review). The purpose of these amendments is to correct conditionally approved portions of Delaware's Part D nonattainment plan. EPA also approves an extension of the date by which Delaware must submit elements of its inspection and maintenance (I/M) program.

EFFECTIVE DATE: September 30, 1981.

ADDRESSES: Copies of the materials submitted by the State of Delaware are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region III, Curtis Building, Tenth Floor 6th and Walnut Streets, Philadelphia, PA 19106, ATTN: Patricia Sheridan;
Public Information Reference Unit, EPA Library, Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Harold A. Frankford (3AH12), Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106, Telephone Number: (215) 597-8392.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, 43 FR 8962, and September 12, 1978, 43 FR 40512, pursuant to Section 107 of the Clean Air Act (the Act), the Administrator designated the New Castle County, Delaware portion of the Metropolitan Philadelphia Interstate Air Quality Control Region (AQCR), as a nonattainment area for ozone (O_3). As a consequence, the State of Delaware was required to develop, adopt, and submit to EPA revisions to its SIP for this nonattainment area.

On May 3, 1979, the State of Delaware submitted revisions of its State Implementation Plan in response to the requirements of Part D of the Act. The Plan consisted of amendments to Regulations I (Definitions), new Regulations XXIV (Control of Volatile Organic Compounds Emissions), and XXV (Requirements for Preconstruction Review), transportation control measures, a motor vehicle inspection/maintenance (I/M) program, and commitments to implement the necessary transportation control and I/M measures. This Part D nonattainment plan was proposed as a revision of the Delaware SIP on July 25, 1979, 44 FR 43490, and approved in part as a plan revision on March 6, 1980, 45 FR 14551. Portions of Delaware's submission were approved on the condition that certain elements of the plan that did not fully meet the criteria for approval be revised by the State, proposed for public comment by the State at a public hearing, and submitted to EPA within a timely fashion. EPA requested public comment on the acceptability of a February 29, 1980 submittal date (June 30, 1980 for certain elements, including emission standards to be used in Delaware's inspection/maintenance (I/M) program), for revisions to the deficient portions of Regulations I, XXIV, and XXV, 45 FR 14606 (1980).

On March 19, 1980, the State of Delaware formally submitted amendments to Regulations I, XXIV and XXV. The State also provided proof that public hearings were held on December 11, 1979 and December 12, 1979 in accordance with the requirements of 40 CFR § 51.4. The amendments consist of the following changes:

Regulation I—Definitions

In response to EPA's conditional approval action, 45 FR 14551, Delaware has revised Regulation I by adding a definition for "emulsified asphalt" and revising the definitions for "lowest achievable emission rate" and "vapor tight".

Regulation XXIV—Control of Volatile Organic Compounds Emissions

1. In response to EPA's conditional approval action, Delaware has submitted the following amendments:

a. Sections 4.1A, 4.2D, 6.1, 6.2D, 7.1B, 8.4 and 10.4 are amended to specify a categorical compliance schedule including increments of progress toward achieving compliance with the applicable emission standards. At the same time, Sections 1.6, 1.7 and 1.8 are added to provide for alternative compliance schedules which include increments of progress.

b. Sections 5.4, 7.1A, and 11.5 are added to provide test procedures for determining compliance with regulations covering delivery vessels (Section 5.1), bulk gasoline terminals (Section 7.1), cold cleaning facilities (Section 11.1A(3)(iv)), open top vapor degreasers (section 11.1B(3)(iv)), and conveyorized degreasers (Section 11.3B(1)(ii)).

c. Section 12.2 is added to require that the solvent constitution of emulsified asphalt shall not exceed 7.0% by volume as determined by ASTM Distillation Test D-244.

d. Section 9.2 is amended to state that the 40 pounds per day exemption (VOC emissions) for surface coating operations apply to the total emission rate from all coating lines within a stationary source.

2. Delaware has submitted the following additional amendments:

a. Section 1.5 is amended to clarify the requirements for submitting a permit application by any person subject to the final compliance dates provided in Regulation XXIV.

b. Section 4.2B5 is amended to control displaced gasoline vapors during the loading of any stationary storage vessels (rather than any stationary vessel located above ground).

c. Sections 4.3B, 6.2B6, 7.2F, and 9.4 are amended to make clarifying wording changes.

d. The provision of Sections 4.2B1, 4.2B3, and 4.2B5 are moved to Section 5.3.

e. Additional amendments to Section 5 (Delivery Vessels) revise the final compliance date, outline the permit application procedures, and prohibit the release of any volatile organic vapors from any vapor tight delivery vessel.

f. Section 9.3 (which refers to the Chart in Table 1) is revised. The 2.8 pounds per gallon emission limitation for surface coatings becomes effective in 1985. An interim emission limitation of 3.0 pounds per gallon becomes effective in 1980. The 4.8 pounds per gallon emission limitation for final repair becomes effective in 1985. An interim emission limitation of 6.5 pounds per gallon becomes effective in 1982.

g. Section 11 is amended by requiring a carbon adsorption system rather than a carbon absorption system. Section 11.1A(3)(iv) is amended to specify a ventilation rate for the carbon adsorption system. In addition, the requirements of Sections 11.2C(5) and 11.3B(5), referring to certain equipment specifications, are deleted. The effective dates of the provisions of Section 11.2, previously specified in Section 11.2B and 11.2C, are now specified in Section 11.4.

Regulation XXV—Requirements for Preconstruction Review

Section 2E—The definition of "reconstruction" is expanded to include facilities as well as sources. In addition,

a reconstructed source must apply the lowest achievable emission rate (LAER) in nonattainment areas.

Transportation Measures—An additional condition for approval required the State to submit a specific commitment to use available grants and funds to establish, expand, and improve public transportation to meet basic transportation needs. In response to this condition, the Delaware Transportation Authority submitted this "basic transportation needs" commitment on August 15, 1979.

Submittal of Public Comments

On September 4, 1980, 45 FR 58599, EPA acknowledged receipt of these amendments, proposed them as revisions of the Delaware State Implementation Plan, and provided for a 30-day public comment period, ending October 6, 1980. During this period, no comments were received.

EPA Evaluation

The amendments to Regulations I, XXIV and XXV conform with the requirements set out in the Administrator's notice of conditional approval, 45 FR 14551 (1980):

(1) The definitions "vapor tight", "lowest achievable emission rate", and "reconstruction" are acceptable as revised, thus meeting the requirements of 40 CFR 52.433(a).

(2) The amendments to Section 9.2 meet the requirements of 40 CFR 52.433(b).

(3) The test procedures provided by Sections 5.4, 7.1 and 11.5 of Regulation XXIV to determine compliance with Sections 5.1, 7.1, 11.1A(3)(iv) and 11.3B(1)(ii) as adopted March 12, 1980, meet the requirements of 40 CFR 52.433(c).

(4) The categorical compliance schedules contained in Sections 4.1A, 4.2D, 6.1, 6.2D, 7.1B, 8.4 and 10.4 of Regulation XXIV meet the requirements of 40 CFR 52.433(d).

(5) The submittal by WILMAPCO of the "basic transportation needs" and conformity commitments meet the requirements of 40 CFR 52.433(f).

(6) The 7.0% by volume VOC content emulsified asphalt specified in Section 12.2 of Regulation XXIV meet the requirements of 40 CFR 52.433(g).

An additional requirement in 40 CFR 52.433 (§ 52.433(e)) requires the adoption of emission standards for Delaware's inspection/maintenance (I/M) program, in order to insure that the program would be adequate to provide a 25% overall reduction of hydrocarbon emission from light duty vehicles by December 31, 1987. On March 6, 1980, 45 FR 14606, EPA requested comments on whether June 30, 1980 would be an acceptable date by which Delaware must submit such emission standards. During the public comment period, the Delaware Department of Natural Resources and Environmental Control submitted comments indicating that additional time would be needed before the State could submit the final I/M emission standards because of scheduling changes necessitated by the lack of funding for the voluntary program. On September 10, 1980, after formal notice and public hearing, the State of Delaware submitted to EPA a revised I/M schedule, according to which the State will submit the I/M emission standards by September 30, 1981. This date is adequate to ensure final implementation of the I/M program by January 1, 1982. Delaware's I/M program, as revised by the September 10, 1980 submittal, is approved on the condition that the September 30, 1981 date for submission of the emission standards is met. Today's action is not intended, nor should it be interpreted, as final approval of Delaware's total I/M program. Final action on Delaware's I/M program will be determined in the 1982 SIP process.

In addition, 40 CFR 52.433(h) provides that WILMAPCO was to submit a commitment not to give its approval to any project, program, or plan which does not conform to the SIP. The notice of proposed rulemaking, 45 FR 14606 (1980), solicited comments as to the acceptability of a June 30, 1980 date for submitting such commitment. Although no comments were received, the Administrator believed that an extension was justified such guidance was issued by EPA on July 24, 1980. Accordingly, WILMAPCO submitted the required commitment on June 4, 1981 thus satisfying the requirement of 40 CFR 52.433(h).

The remainder of the amendments in Sections 1, 4, 5, 6, 7, 9, and 11 of Regulation XXIV serve to clarify ambiguous language and correct typographical errors found at the time that Delaware first submitted this regulation as a portion of the Part D nonattainment SIP (May 3, 1979). Although in EPA's notice of final rulemaking, 45 FR 14551 (1980), EPA did not consider these changes to be substantive, the State still intended to submit corrections for consideration as a revision of the Delaware SIP. The changes are considered by EPA to be approvable.

EPA Actions

In view of the above evaluation, EPA approves the amendments to Regulations I, XXIV and XXV, as well as the revised schedule for submitting I/M emission standards and the transportation commitments, as revisions to Delaware's Part D nonattainment plan. In conjunction with the Administrator's approval action, 40 CFR 52.420 (Identification of Plan) of Subpart I (Delaware) is amended to incorporate these approved regulatory amendments into the approved Delaware SIP. Concurrently, paragraphs (a)–(d) and (f)–(h) of 40 CFR 52.433 (Approval Status) are revoked, since the revisions of the Delaware SIP approved by this rulemaking action satisfy the conditions outlined in 40 CFR 52.433. Section 52.433 of 40 CFR remains in effect, however, because full approval of Delaware's Part D nonattainment plan is conditioned on the fact that Delaware submit I/M emission standards to EPA by September 30, 1981, and that WILMAPCO submit the transportation plan conformity commitments by June 30, 1981.

EPA finds that good cause exists for making this action immediately effective. EPA has a responsibility to take final action on these revisions as soon as possible in order to lift growth sanctions in those areas for which the State of Delaware has submitted adequate plans in accordance with Part D requirements.

Under Section 307(b)(1) of the Clean Air Act, judicial review of (this action) is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12291, EPA also must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This rule is not "major". This action only approves State actions, and imposes no new requirements of its own.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Note.—Incorporation by reference provisions approved by the Director of the Federal Register on July 1, 1981.

(42 U.S.C. 7401–7642)

Dated: September 19, 1981.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Part 52 of the Code of Federal Regulations is revised as follows:

1. In § 52.420, paragraphs (c) (18), (19) and (20) are added as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(18) Amendments to Regulations I (Definitions), XXIV (Control of Volatile Organic Compounds Emissions) and XXV (Requirements for Preconstruction Review) submitted on March 19, 1980 by the Secretary, Delaware Department of Natural Resources and Environmental Control.

(19) A commitment to use available grants and funds to establish, expand, and improve public transportation to meet basic transportation needs, submitted on August 15, 1979 by the Delaware Transportation Authority.

(20) A revised schedule for implementation of Delaware's inspection and maintenance program submitted by September 10, 1980 by the Secretary, Delaware Department of Natural Resources and Environmental Control.

2. In § 52.433, paragraphs (a), (b), (c), (d), (f), (g), and (h) are removed. Paragraph (e) is revised and redesignated as paragraph (a) to read as follows:

§ 52.433 Control Strategy: Ozone (hydrocarbons).

The Delaware Plan is approved provided that the following conditions are satisfied.

(a) Inspection/maintenance emission standards are adopted by September 30, 1981 to support Delaware's commitment to a program adequate to provide a 25% overall reduction of hydrocarbon emissions from light duty vehicle emissions by December 31, 1987.

[FR Doc. 81-28067 Filed 9-29-81; 8:45 am]

BILLING CODE 6560-38-M

AGENCY

40 CFR Part 52

[A-2-FRL 1904-4]

Approval and Promulgation of Implementation Plans; Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces Environmental Protection Agency approval of a revision to the New Jersey State Implementation Plan (SIP). The State has made certain changes to its regulation entitled "Control and Prohibition of Open Burning" and is requesting that they be incorporated into the New Jersey SIP. The revision permits open burning, under certain conditions, to clear new land which is to be devoted to agriculture.

This action will be effective on November 30, 1981, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

EFFECTIVE DATE: This action is effective November 30, 1981.

ADDRESSES: All comments should be addressed to: Richard T. Dewling, Acting Regional Administrator, Region II Office, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278.

Copies of the SIP revision are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

New Jersey Department of Environmental Protection, Bureau of Air Pollution Control, Room 1108, Labor and Industry Building, John Fitch Plaza, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1005, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION: On May 11, 1981, the Environmental Protection Agency (EPA) received a proposed revision to the New Jersey State Implementation Plan (SIP). The State's submittal consisted of a revised State regulation entitled "Control and Prohibition of Open Burning" (Subchapter 2 of Chapter 27, Title 7, New Jersey Administrative Code (N.J.A.C. 7:27–2.1 *et seq.*.)), an Order of Adoption signed by the Commissioner of the New Jersey Department of Environmental Protection, a Report of Public Hearing and the Basis for the Proposed Amendments.

The proposed SIP revision changes Subchapter 2 in the following ways:

- A new Section 2.4, "General Provisions," formerly "Exceptions," contains provisions which generally apply to the entire regulation. Subsections 2.4 (a) and (b) clarify and emphasize that permit holders may not burn indiscriminately and must honor the provisions of their permits. A permit system has been developed to allow warranted open burning, under controlled conditions, in certain specified circumstances.
- The duration of short-term, "single event" hazardous materials open burning permits is being extended from one to seven days in order to provide the permit holder with greater flexibility in selecting a day having suitable meteorological and air quality conditions. The State also will grant long-term permits for a period not to
- Hedgerows and cullings have been added to the materials allowed to be burned and a longer term for permits for burning herbaceous plant life, hedgerows, orchard prunings and cullings has been allowed.
- A new section 2.11, "Land Clearing," dealing with open burning for the purpose of clearing land intended for agricultural purposes has been added to encourage the addition of new land for agriculture.
- A new section for special permits has been added to provide a regulatory mechanism for dealing with imminent threats to the public health, welfare, or safety.
- The section on fees has been revised in order to update and expand the fee schedule for open burning permits.

The majority of the amendments to Subchapter 2 are related to changes in procedures or clarification of definitions and will not affect air quality. The potential exception to this lies in Section 2.11, "Land Clearing." To avoid violating air quality standards during the burning of wastes from land cleared for agricultural use, burning will be allowed only under conditions which minimize pollutant emissions and maximize atmospheric dispersion of the air contaminants. In addition, burning will

not be permitted in or near sensitive areas in which an additional pollution burden cannot be tolerated.

A regulatory revision in Section 2.11 prohibits burning within six kilometers of particulate matter nonattainment areas or the Brigantine Wildlife Refuge, which has been designated as a Class I area for Prevention of Significant Deterioration (PSD) purposes. However, the State's air quality modelling analysis does indicate that open burning under the new "Land Clearing" provisions may cause a violation of the 24-hour particulate matter national ambient air quality standard in an area immediately downwind of the fire, if proper precautions are not taken. In this regard, to insure that no violations will occur beyond the property line, the State has defined a minimum distance within the property line beyond which open burning may not occur. These conditions are not incorporated into the regulation, however.

The State does require that permits to burn for land clearing be issued "in accordance with a plan approved by and under the control and supervision of the Bureau of Forest Fire Management." According to the State, since the Bureau will issue permits under Section 2.11 only when the field has been prepared properly and when the weather conditions will provide for adequate dilution of the plume, no air quality problems as a result of the issuance of these permits are expected to occur.

Based on EPA's analysis of the State's revisions to Subchapter 2, EPA finds that the proposed changes to the New Jersey SIP will not cause a violation of the national ambient air quality standards or PSD increments, and is therefore approving the State's SIP revision request.

This notice is issued as required by Section 110 of the Clean Air Act, as amended. The Administrator's decision regarding approval of this proposed plan revision was based on its meeting the requirements of Sections 110 and 172 of the Clean Air Act and Part 51 of the Code of Federal Regulations (CFR). This current SIP revision request was submitted to EPA in accordance with Sections 110 and 172 of the Clean Air Act and with the appropriate requirements at Part 51 of the CFR.

EPA is approving this SIP revision request without prior proposal because it is viewed as noncontroversial and no adverse comments are anticipated. The public should be advised that this action will be effective on November 30, 1981. However, if notice is received within 30 days that someone wishes to submit adverse or critical comment, this action will be withdrawn and subsequent notices will be published before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities (46 FR 8709; January 27, 1981). The attached rule constitutes a SIP approval under Sections 110 and 172 within the terms of the January 27, 1981 certification. This action approves only State actions. It imposes no new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major because it merely proposes to revise a State regulation which has been approved by EPA as part of the New Jersey SIP.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

(Secs. 110, 172 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, 7601))

Dated: September 21, 1981.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of New Jersey was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations, is amended as follows:

Subpart FF—New Jersey

1. Section 52.1570 is amended by adding new paragraph (c)(30) as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(30) A supplementary submittal dated April 27, 1981, from the New Jersey Department of Environmental Protection consisting of newly adopted revisions to a regulation concerning the Control and Prohibition of Open Burning, N.J.A.C. 7:27–21 *et seq.*, an Order of Adoption, the Report of Public Hearing, and the Basis for the Proposed Amendments.

* * * * *

[FR Doc. 81-28340 Filed 9-29-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 81

[A-5-FRL 1880-1]

Designation of Areas for Air Quality Planning Purposes: Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This rulemaking changes the attainment status relative to the total suspended particulate (TSP) National Ambient Air Quality Standard (NAAQS) for Lorain County, Ohio. On September 26, 1980, (45 FR 63887) the U.S. Environmental Protection Agency (EPA) proposed to enlarge both the primary and secondary TSP nonattainment areas. The Ohio Environmental Protection Agency requested EPA to take this action because of TSP ambient air monitoring data collected during 1978 and 1979 which indicated violations of the primary and secondary NAAQS. This notice responds to the public comments and announces EPA's decision to approve the redesignation.

EFFECTIVE DATE: This final rulemaking becomes effective on October 30, 1981.

ADDRESSES: Copies of the redesignation request, public comments on the Notice of Proposed Rulemaking (45 FR 63887), and EPA's evaluation and response to comments are available for inspection during normal business hours at the following address: Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Copies of the submittal are also available at:

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460.

Ohio Environmental Protection Agency, P.O. Box 1049, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendment of 1977 added Section 107(d) to the Clean Air Act (the Act) which directed each state to submit to the Administrator of EPA a list of the NAAQS attainment status for all areas within the state. The Administrator was required to promulgate the state lists, with any necessary modifications. The Administrator published these lists in the **Federal Register** on March 3, 1978 (43 FR 8962), and made necessary amendments in the **Federal Register** on October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

As defined in both the March 3, 1978 and October 5, 1978 promulgations, Lorain County contained a primary TSP nonatfainment area consisting of the portion of the City of Lorain north of State Route 611 and a secondary TSP nonattainment area consisting of the City of Lorain east of State Route 58, and Sheffield Township, excluding the primary nonattainment areas. The remainder of Lorain County was designated as attaining the TSP NAAQS.

On February 1, 1980, the Ohio Environmental Protection Agency (OEPA) requested that the current TSP primary and secondary nonattainment areas within Lorain County be enlarged. The basis for OEPA's redesignation request is TSP ambient air monitoring data collected during 1978 and 1979 from five TSP ambient air monitors located in and surrounding the current nonattainment area which showed violations of the TSP primary and secondary NAAQS. Four of these monitors were EPA special purpose monitors (SPM's) located adjacent to U.S. Steel Corporation's Lorain works and one monitor was a State of Ohio monitor located in Avon Lake.

EPA reviewed the available TSP air monitoring data and the proposed redesignation boundaries and on March 31, 1980 requested a clarification from the OEPA regarding the proposed TSP primary nonattainment northeastern boundary. After reviewing EPA's comments, OEPA on June 18, 1980 submitted a modified redesignation request. The modified nonattainment areas are as follows: Primary TSP nonattainment area—the City of Lorain bordered on the west by State Route 58; on the south by State Route 611, Elyria Avenue, and East 28th Street through to East River Road (Sheffield Elyria Road) and, on the east by East River Road (Sheffield Elyria Road), State Route 611, and Harris Road; Secondary TSP nonattainment area—the City of Lorain, east of Route 58, the incorporated communities of Sheffield, Sheffield Lake, and Avon Lake plus the remainder of Sheffield Township excluding the primary TSP nonattainment area. The remainder of Lorain County would be designated as attaining the TSP NAAQS.

Based upon the review of the modified redesignation boundaries and the OEPA's request, on September 26, 1980 (45 FR 63887) EPA proposed approval of the enlarged primary and secondary TSP nonattainment areas and invited public comment. One firm, U.S. Steel Corporation, submitted comments on the proposed redesignation. This section of the notice discusses the comments received and EPA's response.

Public Comment: The commentor objects to the use of data from four EPA SPMs adjacent to U.S. Steel for the proposed redesignation. The commentor argues that the SPMs, particularly the monitor located at Steele Tire Service, do not satisfy the State and Local Air Monitoring Station (SLAMS) and National Air Monitoring Stations (NAMS) requirements contained in 40 CFR Part 58 and its appendices. The commentor contends that unless these requirements are satisfied, the monitoring data cannot be used to support a redesignation. Further, the commentor believes that the monitors do not represent actual air quality in the area because of their siting. The commentor also expressed concern about the effect of particulate deposition during passive non-sampling periods, and of a large background TSP level. The commentor contends that if the data from the SPMs are dismissed, then data from the remaining Ohio monitor do not justify the proposed enlargement of the TSP nonattainment area.

EPA Response: EPA believes that the use of data from the four SPMs adjacent to U.S. Steel to support the proposed redesignation is appropriate. The SPMs met all necessary requirements, although they did not meet all of the requirements in 40 CFR Part 58 for NAMS and SLAMS. The provisions of 40 CFR 58.14 state that data from SPMs can be used as part of a control strategy demonstration or as support for a plan revision if the stations meet the SLAMS requirements in 40 CFR 58.22. Section 58.22 requires each station to meet the monitoring methodology requirements of Appendix C. EPA believes that the data from the four SPMs adjacent to U.S. Steel satisfy Appendix C since they were collected using reference methodology. Further, EPA believes that these SPMs also satisfy the quality assurance requirements of Appendix A and the probe siting criteria of Appendix E.

EPA disagrees with the commentor's assertion that the monitors do not represent actual air quality in the area. Although the monitored values reflect air quality at only a few selected points in the County, these points are expected to be in the area of the actual high TSP concentration levels. Since it is not possible to define the exact air quality at every point in the County with monitored data, it is reasonable to examine the high concentration areas.

In response to the commentor's concern about particulate deposition during passive non-sampling periods, EPA reviewed the procedure for obtaining samples. Filters were placed in the hi-volume samplers on the day prior to sampling and were collected on the day following sampling. Therefore, EPA believes that the probability of significant particulate deposition during off-sampling periods was low.

Finally, the commentor indicated, but did not document, that a large TSP background level exists which is not attributable to U.S. Steel. Consequently, the commentor believes that the monitors are incorrectly positioned. As discussed above, the monitors are correctly positioned in accordance with the applicable requirements of 40 CFR Part 58. Further, nonattainment designations are based on the quality of air in an area rather than on which source or combination of sources cause the problem. Thus, the issue of a high background concentration is immaterial to this rulemaking action.

EPA Final Determination: After reviewing the State's recommendation, the monitoring data, and the public comments received, EPA has determined that the enlargement of the primary and secondary TSP nonattainment area is justified. Therefore, pursuant to Section 107 of the Clean Air Act, EPA approves the redesignation submitted by OEPA as proposed in the Notice of Proposed Rulemaking on September 26, 1980 at 45 FR 63887. The redesignation is effective October 30, 1981.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate

circuit within 60 days of date of final rulemaking. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12291 (Order), EPA must judge whether a regulation is "major" and, therefore subject to the requirements of a regulatory impact analysis. Today's action does not constitute a major regulation because it only changes an area's air quality designation and imposes no regulatory requirements. Any regulatory requirement which may occur as a result of this action will be dealt with in a separate notice. This action was submitted to the Office of Management and Budget (OMB) for review as required by the Order.

(Sec. 107, Clean Air Act as amended (42 U.S.C. 7407))

Dated: September 19, 1981.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart C—Section 107 Attainment Status Designations

Section 81.336 of Part 81 of Chapter I, Title 40, Code of Federal Regulations is amended. In the table for "Ohio—TSP" the entry for Lorain County is revised to read as follows:

§ 81.336 Ohio.

Ohio—TSP

	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Ohio Counties:				
* * *	*	*	*	*
Lorain:				
The City of Lorain bordered on the west by State Route 58; on the south by State Route 611, Elyria Avenue, and East 28th Street through to East River Road (Sheffield Elyria Road) and, on the east by East River Road (Sheffield Elyria Road), State Route 611, and Harris Road.	X			
The City of Lorain, east of Route 58, the incorporated communities of Sheffield, Sheffield Lake, and Avon Lake plus the remainder of Sheffield Township excluding the primary TSP nonattainment area.		X		
The remainder of Lorain County				X
* * *	*	*	*	*

[FR Doc. 81-28347 Filed 9-29-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 180

[PH-FRL-1944-8; PP OF2375/R346]

Cyano(3-Phenoxyphenyl)Methyl-4-Chloro-Alpha-(1-Methylethyl) Benzeneacetate; Establishment of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate in or on certain raw agricultural commodities. The regulation was requested by Shell Oil Company. This rule establishes the maximum permissible level for residues of the subject insecticide in or on these commodities.

EFFECTIVE DATE: Effective on September 30, 1981.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A-110), 401 M St., SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 401, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7028).

SUPPLEMENTARY INFORMATION: In a letter of June 10, 1980, Shell submitted a request for establishment of the tolerance for soybeans at 0.05 ppm and a feed additive regulation permitting residues of the insecticide on soybean hulls at 0.10 ppm. A review of the petitions by the agency indicated that a revised section F petition was needed to cover the higher residues of the insecticide in soybean hulls (1.0 ppm). As a result of the increase in the level of residues in soybean hulls, an increased tolerance to 0.05 ppm would also be needed in or on the fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep and to 0.1 ppm for milk fat.

New section F petitions were submitted proposing tolerances for cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)-benzeneacetate in or on soybeans at 0.05 ppm: fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and milk fat at 0.1 ppm, and a feed additive regulation for soybean hulls at 1.0 ppm.

EPA issued a notice that published in the **Federal Register** of August 15, 1980 (46 FR 54426) that Shell Oil Co., 1025 Connecticut Ave., NW., Washington, DC 20036, had filed a pesticide petition (PP OF2375) with EPA. The petition proposed that 40 CFR 180.379 be amended by establishing a tolerance for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate in or on the raw agricultural commodity soybeans at 0.05 ppm.

A related document which appears elsewhere in this issue of the **Federal Register** [FAP OH 5268/R85] established a feed additive regulation for residues of the insecticide in or on soybean hulls at 1.0 part million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included an acute oral rat toxicity study with a median lethal dose (LD_{50}) of 1-3 grams (g)/kilogram (kg) of body weight (bw) (water vehicle) and 450 milligrams (mg)/kg of bw (dimethylsulfoxide (DMSO) vehicle); a 90-day dog feeding study with a no-observable-effect-level (NOEL) of 500 ppm (highest dose tested); a 90-day rat feeding study with a NOEL of 125 ppm; and an 18-month mouse feeding study with a NOEL of less than 100 ppm with no oncogenic effects at the highest level fed (3,000 ppm); a 24-month mouse feeding study with a NOEL of 10-50 ppm for males and 50-250 ppm for females (no oncogenic effects were noted at 1,250 ppm, the highest dose tested); a 24-month rat feeding study that demonstrated no oncogenic effects at 1,000 ppm (only level tested) (significantly decreased body weight was observed at this dose level); a 2-year rat feeding study with a NOEL of 250 ppm (highest level fed)—no oncongenic effects were observed; three generation rat reproduction study with a

NOEL of 250 ppm (highest level fed); teratology studies (in mice and rabbits, both negative at the highest dose of 50 mg/kg of bw/day); and the following mutagenicity studies: mouse dominant lethal (negative at 100 mg/kg of bw, which was the highest level fed), mouse host-mediated bioassay (negative at 50 mg/kg of bw, which was the highest level fed); AMES test in vitro (negative), and bone marrow cytogenic study in the Chinese hamster (negative at 25 mg/kg of bw). The following studies assessing neurological effects were performed: a hen study negative at 1.0 g/kg of bw for 5 days, repeated at 21 days; a rat (8-day) acute study with a NOEL of 200 mg/kg of bw; a 15-month rat feeding study which resulted in a systemic NOEL of 500 ppm and a NOEL of 1,500 ppm with respect to nerve damage.

The acceptable daily intake (ADI) is calculated to be 0.1250 mg/kg/day based on the 2-year rat feeding study and using a 100-fold safety factor. The maximum permissible intake (MPI) has been calculated to be 7.5000 mg/day. Approval of the tolerance for soybeans would result in a theoretical maximum residue contribution (TMRC) of 0.1934 and utilize 2.58 percent of the ADI.

The metabolism, of the insecticide is adequately understood for this use, and adequate analytical methods (gas chromatography) are available for enforcement purposes. There are currently no regulatory actions pending against the registration of this pesticide. The tolerance for residues in or on the meat, fat, (including milk fat), and meat byproducts of cattle, goats, hogs, horses, and sheep are adequate to cover secondary residues resulting from the proposed uses as delineated in 40 CFR 180.6(a)(2), and there is no reasonable expectation of residues in poultry and eggs as delineated in 40 CFR 180.6(a)(3).

The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that the tolerances established by amending 40 CFR Part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, on or before October 30, 1981, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708, (A-110), 401 M St., SW, Washington, DC 20460. Such objections must be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirement of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that the regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950). Effective on: September 30, 1981.

(Sec. 408(d)(2), 68 Stat. 512, 21 U.S.C. 346a(d)(2))

Dated: September 16, 1981.

James M. Conlon,

Acting Deputy Assistant Administrator for Pesticide Programs.

Therefore, 40 CFR 180.379 is amended by alphabetically inserting the following raw agricultural commodities to read as follows:

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

§ 180.379 Cyano(3-phenoxyphenyl)methyl-4-choloro-alpha-(1-methylethyl)benzeneacetate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, mbyp	0.05
Goats, fat	0.05
Goats, meat	0.05
Goats, mbyp	0.05
Hogs, fat	0.05
Hogs, meat	0.05
Hogs, mbyp	0.05
Horses, fat	0.05
Horses, meat	0.05
Horses, mbyp	0.05
* * * * *	
Milk, fat	0.1
* * * * *	
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, mbyp	0.05
* * * * *	
Soybeans	0.05

[FR Doc. 81-28393 Filed 9-29-81; 8:45 am]

BILLING CODE 6560-32-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 14

Internal Rulemaking Procedures; Repeal

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior is repealing those portions of 43 CFR Part 14 that contain the internal rulemaking procedures of the Department and will incorporate those provisions in the Department's administrative manual. The section of 43 CFR Part 14 that governs petitions for rulemaking is being published as a final rule.

EFFECTIVE DATE: September 30, 1981.

FOR FURTHER INFORMATION CONTACT: Jim Douglas, Office of Policy Analysis, 202-343-8501; Deborah Ryan, Office of the Solicitor, 202-343-5216; Lois Paull, Office of Information Resources Management, 202-343-6191.

SUPPLEMENTARY INFORMATION: On December 13, 1978 (43 FR 58295), the Department of the Interior issued a final rule to implement Executive Order 12044, "Improving Government Regulations." The final rule established internal rulemaking procedures for the Department. On December 24, 1980 (45 FR 85376), the Department issued an interim rule revising the internal rulemaking procedures to incorporate the requirements of the Regulatory Flexibility Act (Pub. L. 96-354). On February 17, 1981, the President issued Executive Order 12291, "Federal Regulation," which repealed Executive Order 12044 and imposed new rulemaking requirements on Federal agencies.

The Department is repealing those portions of 43 CFR Part 14 that contain the internal rulemaking procedures of the Department and publishing as a final rule only the section entitled *Petitions for Rulemaking*, which is required to be published in the Federal Register by the Freedom of Information Act (5 U.S.C. 552(a)(1)(C)). The internal rulemaking procedures will be revised to reflect the requirements of Executive Order 12291 and will be incorporated into the sections of the Department's administrative manual that currently contain supplemental rulemaking requirements (318 Departmental Manual). Comments received on the interim rule published December 24, 1980 will be considered in revising the rulemaking procedures. The

Departmental Manual is indexed and is available for inspection and copying in accordance with the Freedom of Information Act (5 U.S.C. 552(a)(2)(C)).

The Department is taking this action as a means of both eliminating unnecessary rules from the Code of Federal Regulations and of consolidating all rulemaking requirements for the Department in one logical place, the Departmental Manual. Because the rulemaking procedures govern only internal actions of the Department and the public will continue to have the opportunity to comment on the substance of rules proposed by the Department, this action is not expected to affect the public. The public will continue to have the opportunity to submit petitions for rulemaking to the Department under the revised rule as required by the Administrative Procedure Act.

The Department has determined that notice and public comment on the rule are unnecessary because the Department, by repealing a rule that reflects Executive Order 12044, is simply recognizing the issuance of Executive Order 12291. Further, as discussed above, the action is not expected to affect the public. In addition, the Department has determined that good cause exists for waiving the usual 30-day waiting period before the rule becomes effective because the Office of the Federal Register will revise Title 43 of the Code of Federal Regulations as of October 1, 1981. If the final rule did not become effective by September 30, 1981, the Office of the Federal Register would reprint the obsolete interim rule published on December 24, 1980, rather than the final rule published today in the **Federal Register.**

The primary authors of this document are Jim Douglas, Office of Policy Analysis (343-8501); John D. Trezise and Deborah Ryan, Office of the Solicitor (343-5216); Lois W. Paull, Office of Information Resources Management (343-6191).

The Department of the Interior has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291 because the rule is procedural and has no economic effect on the public. The Department has also determined that the rule will not have a significant economic effect on a substantial number of small entities and does not require a flexibility analysis under the Regulatory Flexibility Act.

Dated: September 22, 1981.

Richard R. Hite,

Deputy Assistant Secretary, Policy, Budget and Administration.

Accordingly, 43 CFR Part 14 is retitled and revised to read as follows:

PART 14—PETITIONS FOR RULEMAKING

Sec.

14.1 Scope.
14.2 Filing of petitions.
14.3 Consideration of petitions.
14.4 Publication of petitions.

Authority: 5 U.S.C. 553(e).

§ 14.1 Scope.

This part prescribes procedures for the filing and consideration of petitions for rulemaking.

§ 14.2 Filing of petitions.

Under the Administrative Procedure Act, any person may petition for the issuance, amendment, or repeal of a rule (5 U.S.C. 553(e)). The petition will be addressed to the Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240. It will identify the rule requested to be repealed or provide the text of a proposed rule or amendment and include reasons in support of the petition.

§ 14.3 Consideration of petitions.

The petition will be given prompt consideration and the petitioner will be notified promptly of action taken.

§ 14.4 Publication of petitions.

A petition for rulemaking may be published in the **Federal Register** if the official responsible for acting on the petition determines that public comment may aid in consideration of the petition.

[FR Doc. 81-28522 Filed 9-29-81; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 205

General Administration—Public Assistance Programs; Federal Financial Participation in the Cost of a Statewide Mechanized Claims Processing and Information Retrieval System in the Aid to Families With Dependent Children Program

AGENCY: Social Security Administration (SSA), HHS.

ACTION: Interim final rules.

SUMMARY: These interim final rules at 45 CFR Part 205 implement the new Statewide mechanized claims processing and information retrieval system, hereafter referred to as an automated Application Processing and Information Retrieval System (APIRS), provisions in section 406 of Pub. L. 96-265. These interim rules increase Federal Financial Participation (FFP) to 90 percent for the costs of the planning, design, development, or installation of an approved APIRS. They also specify that FFP is available at the 90 percent rate for the purchase or rental of related equipment and software used in the operation of an APIRS. The interim rules also add a new State plan requirement to Part 205 which specifies the requirements which an APIRS must meet in order to be eligible for Federal matching at the 90 percent rate. In addition, the interim rules: (1) Specify criteria for approving an Advance Planning Document (APD) for a system funded at 90 percent FFP; (2) state that an approved APIRS funded at 90 percent FFP must be reviewed and evaluated by SSA on a continuing basis; and (3) describe the conditions under which SSA will suspend approval of APD's for systems funded at 90 percent FFP. An APIRS developed under these interim rules is expected to result in improved program operations.

We have determined that none of the criteria specified in Executive Order 12291 for a major regulation are met.

EFFECTIVE DATE: July 1, 1981. Comments received on or before November 30, 1981, will be considered and appropriate changes will be made in the regulations.

ADDRESSES: Send your written comments to: Social Security Administration, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203.

FOR FURTHER INFORMATION CONTACT: Mr. James Trainor, Social Security Administration, Office of Family Assistance, Office of State Systems Management, 330 C Street, SW., Room 2110, Washington, D.C. 20201, Telephone Number (202) 426-7640.

SUPPLEMENTARY INFORMATION:

Statutory Requirements

Section 406 of Pub. L. 96-265 amends title IV-A of the Social Security Act regarding an AFDC APIRS. First, the amendment provides a new paragraph 403(a)(3)(B) in the Act which requires the Secretary to provide Federal funding at the 90 percent rate for costs attributable to the planning, design, development, or installation of an APIRS that meets the requirements in section 402(a)(30) also added to the Act by this amendment. One of the

conditions in the new section 402(a)(30) provides States with the option to amend their State plans to establish a APIRS in accordance with an APD approved under section 402(e)(1) of the Act.

The submission process to amend the State plan will be the same as that explained in 45 CFR 201.3. The amendment also adds section 402 (e)(2)(A) to the Act which requires SSA to review the development and operation of an APIRS funded at 90 percent FFP to determine whether it meets the requirements specified in an approved APD and the other conditions for an approvable system specified in paragraph 402(a)(30) of the Act. The amendment also adds section 402(e)(2)(B) to the Act which requires SSA to suspend approval of any APD for a system funded at 90 percent FFP if SSA determines that the APIRS fails to comply substantially with the requirements in the APD. Finally, the amendment adds section 413 to the Act, which requires SSA to provide technical assistance considered necessary to assist the States in developing, implementing and providing security for any approved APIRS. All of these amendments have an effective date of July 1, 1981.

Regulatory Provisions

These regulations: (1) Make FFP available at the 90 percent rate for the costs of planning, design, development or installation of an APIRS that meet the requirements in the regulations, including the purchase or rental of computer equipment and software; (2) specify criteria SSA will use in determining whether to approve an initial and annually updated APD so that the system will receive 90 percent FFP; (3) specify that SSA must review any approved APIRS funded at 90 percent FFP on a continuing basis; and (4) specify the conditions under which SSA will suspend approval of an APD for systems funded at 90 percent FFP. To implement this new statute we are amending SSA regulations by adding the following new sections.

45 CFR 205.35 contains definitions of technical terms used in the automated data processing field. These definitions are compatible with definitions used by other programs within the Department of Health and Human Services.

45 CFR 205.36 permits the State to amend its State plan to establish an APIRS that meets certain specified requirements. In order to receive 90 percent operational Federal funding for an APIRS, a State must elect to amend its State plan as specified in 45 CFR 205.36.

The regulation at 45 CFR 205.36(a) requires each APIRS funded at 90 percent FFP to control and account for all the eligibility and payment factors under the State plan.

We would like to point out a very important provision that is found in 45 CFR 205.36(a)(1)(i)(A) and (B) which states that the APIRS must assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether an individual is or has been receiving benefits from more than one jurisdiction.

Another important provision requires interface with certain other programs. 45 CFR 205.36(b) requires that the system be designed so that appropriate State officials of child support, food stamp, social services and medical assistance programs approved under title XIX can be notified whenever a case/recipient becomes ineligible for aid or services or the amount of aid or services is changed.

45 CFR 205.37 makes FFP available at the 90 percent rate in expenditures for the planning, design, development, or installation of an APIRS that meets the requirements in an approved APD and certain other conditions found in this section. We wish to emphasize that despite the fact that a system complies substantially with an approved APD, FFP is not available for any expenditures which are inconsistent with an approved APD. Consistent with the congressional intent in enacting section 406 of Pub. L. 96–265, 90 percent FFP includes the purchase or rental of computer equipment and software directly required for and used in the operation of this system.

45 CFR 205.38 contains the requirements which the initial and updated APD for a 90 percent federally funded APIRS must meet in order to be approvable.

45 CFR 205.38(a)(1) requires the APD to show how the results of the requirements analysis study will be incorporated into the proposed system design, development, or installation. A requirements analysis is an essential first step in the development of a computerized data system. A requirements analysis defines the scope of a proposed system and sets forth the functions it would perform. It is, in essence, a needs assessment. This requirement is included because, in the environment of a specific State's AFDC program, an effective systems development effort must be based on and be consistent with a requirements analysis in order to meet the needs of the State program that it will serve. This will encourage States to use the results of the requirements study in determining the kind of system they propose, which is the purpose of such a study.

45 CFR 205.38(a)(4) requires the APD to contain a projected resource requirements study that includes estimates of expenditures anticipated for systems at 90 percent FFP. We consider a projected requirements study necessary in assessing the reasonableness of the State's overall system plan. As discussed below, the APD budget figures will also be used by SSA to determine the relative merits of developing or installing the proposed APIRS. If cost projections outlined in the approved APD should change, a modified APD must be submitted for approval.

45 CFR 205.38(a)(5) requires the APD to contain a cost benefit analysis describing any alternative systems considered, as well as the advantages of the proposed system over the alternatives. The purpose of the proposed requirement is to provide States with the opportunity to present arguments in favor of the system desired and, conversely, to show why other systems or approaches would be less desirable. The alternatives discussed must include any State system identified by SSA for consideration, and any system already in place in the State that might be enhanced to meet the requirements for 90 percent FFP. We believe this process will help States to make sounder judgments concerning their proposed APIRS activity. In addition, the APD should indicate the period of time the system will be operated to justify the funds invested.

45 CFR 205.38(a)(6) states that the APD must specify the basis for determining direct and indirect costs of the APIRS both during development and operations. We believe this is necessary to ensure that costs associated with the APIRS can be derived and apportioned appropriately.

45 CFR 205.37(b)(5)(iii) specifies that the State IV–A agency must agree to use the system for a period of time consistent with the APD. This requirement will protect both Federal and State government from paying for systems that are not cost-effective and will ensure an adequate return on Federal and State dollars invested.

45 CFR 205.38(b) specifies that SSA will, on a continuing basis, review, assess, and inspect the planning, design, and operation of an APIRS to determine whether the system continues to meet the requirements of the approved APD.

45 CFR 205.38(c) prescribes that SSA will suspend approval of an APD if a system funded at 90 percent FFP fails to comply substantially with criteria,

requirements, and other undertakings, prescribed by this approved advance automated data processing planning document. In this case, the suspension of approval of an APD will result in the termination of FFP at the 90 percent rate with respect to the APIRS involved. The State will be given written notice of the suspension. This notice will state the reason for the suspension, the actions required for future Federal funding, and the effective date of the suspension. During the suspension period a State may qualify for 50 percent FFP if it meets the conditions under Part 95 of this title.

To implement Section 413 of the Act, SSA will make staff available to assist State agencies in: (1) Planning, designing, developing, or installing an APIRS; and (2) providing security for an APIRS.

Requests for technical assistance must be submitted by the State IV-A agency to: Mr. James Trainor, Social Security Administration, Office of Family Assistance, Office of State Systems Management, 330 C Street SW., Room 2110, Washington, D.C. 20201.

SSA has prepared a title IV-A (AFDC) Automated Application Processing and Information Retrieval System Guide that will be distributed to assist States in applying for higher level matching under this regulation. The guide does not impose any new major requirements beyond those mandated by the statute. The guide translates the statutory requirements into data processing systems functions.

In addition, SSA has prepared and distributed a general systems design called the Family Assistance Management Information System (FAMIS) as a model to assist the State agencies in meeting the basic functional requirements of the law.

Interim Final Regulations

These amendments to the regulations are being published in interim final form. The Administrative Procedure Act, 5 U.S.C. 533(b)(B) provides that, if the Department for good cause finds that an NPRM is unnecessary, impracticable or contrary to the public interest, it may dispense with the NPRM if it incorporates a brief statement in the interim final regulations of the reasons for doing so.

The Department find that there is good cause to dispense with an NPRM with respect to these changes. We find that publication of these regulations in proposed form would be impracticable and contrary to the public interest for the following reasons. First, there was not sufficient time after enactment of Pub. L. 96-265 to permit development of required policy, implementation of normal proposed rulemaking procedures, and the subsequent development and publication of final regulations by the July 1, 1981 statutory effective date. We believe that the States interested in receiving the new 90 percent Federal match would prefer to have clear Federal policy established as close to the July 1 effective date as possible so that they can complete the complex and difficult advance planning which is a requirement if an APIRS is to qualify for 90 percent matching. We believe this is especially true with respect to these provisions that specify the consequences of a State's failure to develop an APRIS consistent with an approved APD, which is loss of increased FFP. Second, States have already had an opportunity to informally review and comment on the general provisions of these regulations at regional State conferences with SSA. Representatives of State and local IV-A agencies from 45 States attended these regional conferences. The comments received on the regulatory provisions at that time were favorable and we do not therefore anticipate a need for major substantive revisions of these regulations.

Third, the new 90 percent FFP rate for systems development is an optional provision for those States which choose to use it and imposes no new requirements on States which do not choose to receive 90 percent FFP for systems development. Fourth, we recognize that States need as much lead time as possible to develop their APD's so as to begin to receive the higher rate of FFP within the July quarter. We thus believe that it is in the public interest for these interim final rules to be published immediately so as to enable interested States to complete their systems planning.

Office of Management and Budget Review

The information the States must submit in their advance planning documents to obtain approval for the 90 percent Federal matching funds falls within the general scope of the Department of Health and Human Services regulation governing FFP in the costs of automatic data processing equipment and services (45 CFR Part 95, Subpart F). The content and process for submission of advance planning documents specified in that regulation have been approved by the Office of Management and Budget under 0990-0058.

We certify that these regulations do not have an adverse impact on small entities because these provisions are optional rather than mandatory for States. Consequently, we have determined that a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act of 1980, is not necessary.

(Secs. 402, 403, and 1102, Social Security Act, as amended; 49 Stat. 647, as amended; 49 Stat. 628, as amended; 53 Stat. 1398, as amended; (42 U.S.C. 602, 603, 1302), and sec. 406 of Pub. L. 96-265, 94 Stat. 465))

(Catalog of Federal Domestic Assistance Program No. 13.808, Public Assistance-Maintenance Assistance (State Aid))

Dated: July 2, 1981.

John A. Svahn,

Commissioner of Social Security.

Approved: July 27, 1981.

Richard S. Schweiker,

Secretary of Health and Human Services.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Chapter II, Title 45, Part 205 of the Code of Federal Regulations is amended by adding §§ 205.35 through 205.38 to read as follows:

Sec.

205.35 Mechanized claims processing, and information retrieval systems; definitions.
205.36 State plan requirements.
205.37 Federal financial participation (FFP) for establishing a statewide mechanized system.
205.38 Responsibilities of the Social Security Administration (SSA).

§ 205.35 Mechanized claims processing and information retrieval systems; definitions.

Section 205.35 through 205.38 contain State plan requirements for an automated statewide management information system, conditions for FFP and responsibilities of the Social Security Administration (SSA). For purposes of §§ 205.35 through 205.38—

"A *mechanized claims processing and information retrieval system*", hereafter referred to as an automated "application processing and information retrieval system" (APIRS), or the "system", means a system of software and hardware used:

(a) To introduce, control and account for data items in providing public assistance under the Aid to Families with Dependent Children (AFDC) State plan; and

(b) To retrieve and produce utilization and management information about such aid and services as required by the single State agency and Federal government for program administration and audit purposes.

"Hardware" means automatic data processing equipment used for an application processing and information retrieval system. This equipment accepts data input, stores data, performs calculations and other processing steps and prepares information output. This equipment includes—

(a) Electronic digital computers;

(b) Peripheral or auxiliary equipment used in support of electronic computers whether selected and acquired with the computer or separately;

(c) Data transmission or communications equipment that is selected and acquired solely or primarily for use with a configuration of automatic data processing equipment which includes an electronic digital computer; and

(d) Key to disk, key to tape, or other automated equipment used to enter data into a computer based system.

"Software" means computer programs, procedures and associated documentation used to operate the hardware.

"Planning" means—

(a) The preliminary project activity to determine the requirements necessitating the project, the activities to be undertaken, and the resources required to complete the project;

(b) The preparation of an APD;

(c) The preparation of a detailed project plan describing when and how the computer system will be designed and developed; and

(d) The preparation of a detailed implementation plan describing specific training, testing, and conversion plans to install the computer system.

"Design" or "system design" means a combination of narrative and diagrams describing the structure of the automated APIRS.

"Development" means the detailing of system and program specifications, programming, and testing.

"Installation" means the conversion, and turnover to operational status.

"Operations" means the automated processing of AFDC applications, payments, and reports on a continuing basis for use by AFDC agency personnel in carrying out functions covered under approved State plans. This includes, but is not limited to, such elements as intake processing, eligibility determinations, verification procedures, WIN program referral, title IV-D program interface, the issuance of warrants, reconciliation of warrants, fiscal budgeting and reporting, quality control processing, and management reporting. Operations include the use of purchased or rented computer equipment and software directly required for and used in the operation of the automated system. Pilot testing and parallel processing for test purposes shall not be considered as operations.

§ 205.36 State plan requirements.

A State plan under title IV-A of the Social Security Act shall, at the option of the State, provide for the establishment and operation, in accordance with an (initial and annually updated) advance automatic data processing planning document approved by SSA, of an automated statewide management information system designed effectively and efficiently, to assist management in the administration of an approved AFDC State plan. The submission process to amend the State plan is explained in § 201.3. This system must be designed:

(a) To automatically control and account for—

(1) All the factors in the total eligibility determination process under the plan for aid, including but not limited to:

(i) Identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses, and mailing addresses (including postal ZIP codes), of all applicants and recipients of AFDC and the relative with whom any child who is an applicant or recipient is living)).

(A) To assure sufficient compatibility among the systems of different jurisdictions, and

(B) To permit periodic screening to determine whether an individual is or has been receiving benefits from more than one jurisdiction,

(ii) Checking records of applicants and recipients of such aid on a periodic basis with other agencies, both intra and inter-state, for eligibility determination, verification and payment as required by other provisions of the Social Security Act.

(2) The costs, quality, and delivery of funds and services furnished to applicants for and recipients of such aid.

(b) To notify the appropriate State officials of child support, food stamp, social service, and medical assistance programs approved under title XIX whenever a case/recipient for aid and services becomes ineligible or the amount of aid or services is changed.

(c) To provide for security against unauthorized access to, or use of, the data in the system.

§ 205.37 Federal financial participation (FFP) for establishing a statewide mechanized system.

(a) Effective July 1, 1981, FFP is available at 90 percent of expenditures incurred for planning, design, development or installation of a statewide automated application processing and information retrieval system which are consistent with an approved APD. The 90 percent FFP includes the purchase or rental of computer equipment and software directly required for and used in the operation of this system.

(b) SSA will approve the system provided the following conditions are met—

(1) SSA determines that the system is likely to provide more efficient, economical, and effective administration of the AFDC program.

(2) The system is compatible with the claims processing and information retrieval systems used in the administration of State plans approved under title XIX, and State programs where there is FFP under title XX.

(3) The system meets the requirements referred to in § 205.36.

(4) The system meets criteria established in the title IV-A (AFDC) Automated Application Processing and Information Retrieval System Guide issued by SSA and which provides specific standard requirements for major functions, such as automated eligibility determination, grant computation, verification, referral, management control, compatibility, and data security.

(5) The State agency agrees in writing that—

(i) The State will have all ownership rights in software or modifications thereof and associated documentation designed or developed with 90 percent FFP under this section, except that the Department of Health and Human Services reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for Federal government purposes, such software, modifications, and documentation;

(ii) Methods and procedures for properly charging the cost of all systems whether acquired from public or private sources shall be in accordance with Federal regulations in Part 74 of this title and the applicable SSA title IV-A (AFDC) Automated Application Processing and Information Retrieval System Guide;

(iii) The complete system planned, designed, developed, installed, and hardware acquired, with FFP under these regulations will be used for a period of time which is consistent with the advance planning document as approved, or which SSA determines is sufficient to justify the Federal funds invested;

(iv) Information in the system will be safeguarded in accordance with applicable Federal law; and

(v) Access to the system in all of its aspects, including design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, shall be made available to the Federal Government by the State at intervals deemed necessary by SSA to determine whether the conditions for approval are being met and to determine its efficiency, economy and effectiveness.

(c) If SSA suspends approval, as described in § 205.38, of the advance automated data processing planning document and/or system, FFP at the higher matching rate shall not be allowed for any costs incurred, until such time as the conditions for approval are met.

§ 205.38 Responsibilities of the Social Security Administration (SSA).

(a) SSA shall not approve the initial and annually updated advance automatic data processing planning document unless the document, when implemented, will carry out the requirements of the law and the objectives of the title IV–A (AFDC) Automated Application Processing and Information Retrieval System Guide. This document must include—

(1) A requirements analysis, including consideration of the program mission, functions, organization, services, constraints and current support relating to such system;

(2) A description of the proposed statewide management system, including the description of information flows, input data formats, output reports and uses;

(3) The security and interface requirements to be employed in such statewide management system;

(4) A description of the projected resource requirements including staff and other needs; and the resources available or expected to be available to meet these requirements;

(5) A cost benefit analysis of alternative systems designs, data processing services and equipment in terms of qualitative and quantitative measures. The alternative systems considered should include the advantages of the proposed system over the alternatives and should indicate the period of time the system will be operated to justify the funds invested;

(6) A plan for distribution of costs, containing the basis for rates, both direct and indirect, to be in effect under such a statewide management system;

(7) An implementation plan with charts of development events, testing description, proposed acceptance criteria, and backup and fallback procedures to handle possible failure of a system; and

(8) Evidence that the State's system will be compatible with those of the SSA to facilitate the exchange of data between the State and Federal system.

(b) SSA shall on a continuing basis, review, assess, and inspect the planning, design, and operation of, statewide management information systems, with a view to determining whether, and to what extent, these systems meet and continue to meet the requirements under these regulations.

(c) If SSA finds that any statewide management information system referred to in § 205.37 fails to comply substantially with criteria, requirements, and other undertakings, prescribed by the approved advance automatic data processing planning document, approval of such document shall be suspended. The State will be given written notice of the suspension. The notice of suspension will state the reason for the suspension, the actions required for future Federal funding, and the effective date of the suspension. The suspension shall be effective as of the date that the system failed to comply substantially with the approved APD. The suspension shall remain in effect until SSA makes a determination that such system complies with prescribed criteria, requirements, and other undertakings for future Federal funding.

(d) SSA shall provide technical assistance to States as is deemed necessary to assist States to plan, design, develop, or install and provide for the security of the management information systems.

(e) Approvals of the systems by SSA under the provisions of this section will be undertaken only as a result of State applications for increased matching. The submission process will be the same as that defined in 45 CFR 95.600.

[FR Doc. 81-28339 Filed 9-29-81; 8:45 am]

BILLING CODE 4110-07-M

Office of Child Support Enforcement

45 CFR Parts 302, 303 and 304

Child Support Enforcement Program; Computerized Child Support Enforcement System

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Interim final rules.

SUMMARY: These interim final rules amend OCSE regulations at 45 CFR Parts 302, 303, and 304 to implement the new computerized child support enforcement system (CSES) provisions in Section 405 of Pub. L. 96–265. The amendments to Part 304 increase Federal financial participation (FFP) to 90 percent for the costs of developing and enhancing certain approved CSESs. They also specify when FFP is available at the 75 percent rate for CSESs. These regulations also add a new State plan requirement to Part 302 that specifies requirements which a CSES must meet in order to be eligible for Federal matching at the 90 percent rate. In addition, these regulations amend Part 303 as follows: they specify criteria OCSE must determine exist prior to approving an advance planning document (APD) for a system funded at 90 percent FFP; they specify that approved CSESs funded at 90 percent FFP must be reviewed and evaluated by OCSE on a continuous basis; and they specify the conditions under which OCSE will suspend approval of APDs for systems funded at 90 percent FFP. The CSESs developed under these amendments are expected to result in improved program operations.

DATES: Effective date: July 1, 1981. Comments received on or before November 30, 1981, will be considered and appropriate changes will be made in the regulations.

ADDRESS: Address comments to: Deputy Director, Office of Child Support Enforcement, Department of Health and Human Services, 10th Floor, 6110 Executive Blvd., Rockville, Maryland 20852, ATTN: Policy Branch. Agencies and organizations are requested to submit comments in duplicate. The comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., in Room 1010 of the Department's offices at the above address.

FOR FURTHER INFORMATION CONTACT: Michael Fitzgerald, Policy Branch, OCSE, telephone (301) 443–5350.

SUPPLEMENTARY INFORMATION:

Statutory Requirements

Section 405 of Pub. L. 96–265 amends Title IV–D of the Social Security Act (the Act) regarding computerized child support enforcement systems (CSESs). First, the amendment adds paragraph 455(a)(3) to the Act which requires the Secretary to provide Federal funding at the 90 percent rate for costs attributable to the planning, design, development, installation or enhancement of an automatic data processing and

information retrieval system that meets the requirements in paragraph 454(16), also added to the Act by this amendment. The new paragraph 454(16) provides States with the option to amend their State plans to establish, in accordance with an advance planning document (APD) approved under Section 452(d) of the Act, a system that meets certain specified requirements. The amendment adds paragraph 452(d)(1) to the Act which specifies criteria and requirements that an APD must satisfy in order for the Secretary to approve a CSES for 90 percent FFP. The amendment also adds paragraph 452(d)(2)(A) to the Act which requires the Office of Child Support Enforcement (OCSE) to review the development and operation of CSESs funded at 90 percent FFP to determine whether they meet the requirements specified in the approved APDs and the conditions for an approvable system specified in paragraph 454(16) of the Act. The amendment also adds paragraph 452(d)(2)(B) to the Act which requires the Secretary to suspend approval of any APD for a system funded at 90 percent FFP if the Secretary determines that the CSES fails to comply substantially with the requirements in the APD. Finally, the amendment adds paragraph 452(e) to the Act, which requires the Secretary to provide any technical assistance considered necessary to assist the States in developing, implementing and providing security for CSESs funded at 90 percent FFP. Section 405 has an effective date of July 1, 1981.

Regulatory Provisions

These regulations: (1) make FFP available at the 90 percent rate for the costs of developing and enhancing CSESs that meet the requirements in the regulations; (2) specify criteria OCSE will use in determining whether to approve an initial and annually updated APD so that the system will receive 90 percent FFP; (3) specify that OCSE must review approved CSESs funded at 90 percent FFP on a continuous basis; and (4) specify the conditions under which OCSE will suspend approval of an APD for systems funded at 90 percent FFP. These regulations also make explicit the conditions under which FFP is available at the 75 percent rate for CSESs.

1. Computerized Child Support Enforcement Systems Eligible for 90 Percent FFP

To implement paragraph 454(16) of the Act, we have amended OCSE regulations to add a new 45 CFR 302.85, Computerized child support enforcement systems eligible for 90 percent FFP. The new regulation at § 302.85(a) contains definitions of several technical terms used in the automated data processing field. We believe that these definitions are compatible with definitions used by other programs within the Department of Health and Human Services. The definitions apply to each regulation contained in these interim final rules.

The new regulations at § 302.85(b) permit the State to elect in its State plan to provide for the establishment of a CSES that will meet certain specified requirements and assist State and local IV–D agencies in the administration of the approved State plan. In order to receive 90 percent Federal funding for a CSES, a State must elect to amend its State plan as specified in § 302.85.

The regulation at § 302.85(c)(1) requires a system developed under this optional State plan amendment to be planned, designed, developed, installed or enhanced in accordance with an APD approved under § 303.65. (See discussion under the heading "Approval of Advance Planning Documents for CSESs Funded at 90 Percent FFP" below.)

The regulation at § 302.85(c)(2) requires each CSES funded at 90 percent FFP to control, account for, and monitor all the factors in the child support collection and paternity determination processes under the State plan. That provision lists the minimum items that a CSES must control, account for, and monitor. The regulation at § 302.85(c)(2)(i) requires a State to assure compatibility with the systems of different jurisdictions to permit periodic screening to determine whether an individual is paying or is obligated to pay child support in more than one jurisdiction. The requirement is established by the new section 454(16) of the Act.

The regulations further require interface with the Aid to Families with Dependent Children (AFDC) program. Section 302.85(c)(2)(ix) requires the system to accept case referrals and update information from the State's AFDC program and to use the information to identify and manage the State's child support enforcement cases. It is essential that a comprehensive CSES funded to control and monitor all the factors in the collection and paternity determination processes be able to perform this basic function.

The regulation at § 302.85(c)(2)(x) requires each CSES funded at 90 percent FFP to interface with records of the State's AFDC program so that, at a minimum, the State AFDC agency will be able to use child support collection records in redetermining a family's eligibility for assistance under the AFDC program.

These items are based on those in paragraph 454(16) of the Act and are not intended to be an exhaustive list of system functions. OCSE will issue guidelines consistent with these regulations which will specify in detail the criteria a CSES developed under § 302.85 must meet to ensure that the system assists in the administration of the State plan.

2. State and Local Computerized Child Support Enforcement Systems Eligible for 90 Percent FFP

The new regulations at § 302.85(a) make provision for 90 percent FFP for State and local components of a CSES by defining a computerized child support enforcement system as a system of hardware and software that may have State and local components. Each initial and annually updated APD for a system funded at 90 percent FFP must address both State and any local level components of the system to the extent that local components play a role in the State's APD. The administration of the State's child support enforcement program may require the distribution of critical operations between the State and local levels. Therefore, we envision six types of design alternatives to be approvable for 90 percent FFP. They could be used in various combinations within a State. These are: (1) State management system with local components performing major functions; (2) comprehensive State system with little or no local automated functioning other than data transmission; (3) comprehensive local system meeting all functional requirements and developed under the State APD as a component of a State system; (4) local feeder system performing limited functions for State system; (5) improvement of an existing State system; and (6) improvement of an existing local system. For any system funded at 90 percent FFP, the IV–D agency's APD, as annually updated, must reflect a system that is projected to meet all functional requirements of the regulations and that is planned to encompass all political subdivisions in the State, within a reasonable period of time.

3. Approval of Advance Planning Documents for CSESs Funded at 90 Percent FFP

To implement paragraph 452(d)(1) of the Act, we have amended OCSE regulations to add a new 45 CFR 303.65, Approval of advance planning documents for computerized child support enforcement systems eligible for

90 percent FFP. This regulation establishes requirements which an initial and updated APD must contain in order to be approvable for 90 percent Federal funding. These requirements include specifying how the objectives of the system discussed above will be met. Further, this regulation requires that the APD must represent the sole systems effort being undertaken by the State in accordance with 45 CFR 302.85.

Some of the APD content requirements in our regulations are not contained in Section 405 of Pub. L. 96–265, but have been added to the regulations under the authority of Section 452(a)(1) of the Act, which requires the Secretary to establish standards to assure that the IV–D program will be effective, and Section 452(d)(1)(G) of the Act, which permits the Secretary to require any other information in the APD which is deemed necessary. In addition, these requirements will improve the efficiency of the administration of the IV–D program and, therefore, they are within the Secretary's rulemaking authority as defined in Section 1102 of the Act. We believe these added requirements are necessary for effective OCSE review of the proposed system. These requirements are similar to provisions of the approval criteria used by the Department in reviewing APDs submitted under Part 95, Subpart F of this title.

Section 303.65(b)(4) requires the APD to show how the results of the requirements analysis study will be incorporated into the proposed system design, development, installation or enhancement. A requirement analysis is an essential first step in the development of a computerized data system. A requirements analysis defines the scope of a proposed system and sets forth the functions it would perform. It is, in essence, a needs assessment. This requirement is being included because, in the environment of a specific State's child support program, an effective systems development effort must be based on and be consistent with a requirements analysis in order to meet the needs of the State program that it will serve. This will encourage States to use the results of the requirements study in determining the kind of system they propose, which is the purpose of such a study. The new § 303.65(b)(9) requires the APD to contain a budget that includes estimates of expenditures anticipated for systems at 90 percent FFP, as well as for systems at 75 percent FFP. We consider a budget necessary in assessing the reasonableness of the State's overall system plan. As discussed below, the APD budget figures will also be used by OCSE to determine the relative merits of developing, installing or enhancing the proposed CSES compared to the Model CSES. (See discussion at end of this preamble section.) The new § 303.65(b)(11) requires the APD to describe any alternative systems considered, as well as the advantages of the proposed system over the alternatives. The purpose of this requirement is to provide States with the opportunity to present arguments in favor of the system desired and, conversely, to show why other systems or approaches would be less desirable. The alternatives discussed must include the Model CSES, any State system identified by OCSE for consideration, and any system already in place in the State that might be enhanced to meet the requirements for 90 percent FFP. This process will help States to make sounder judgments concerning the proposed CSES activity. The new § 303.65(b)(13) states that the APD must specify the basis for determining direct and indirect costs of the CSES, both during development and operations. This requirement is necessary to ensure that costs associated with the CSES can be derived and apportioned appropriately. Finally, the new § 303.65(b)(14) requires the APD to specify the period of time the State expects to use the proposed CSES. The requirement parallels one in 45 CFR 95.605, which applies to APDs other than those for systems funded at 90 percent FFP. The purpose of this requirement is to provide a framework for assessing the cost effectiveness of the proposed system.

OCSE recognizes that, in many cases, it will take several years to implement CSESs which meet the objectives in the new § 302.85. Although the initial APD would have to meet all the requirements in § 303.65(b), to minimize the effort involved in preparing the annual APD update that is required for these systems, we require at § 303.65(c) that an updated APD meet only those requirements of § 303.65(b) that are prescribed by instructions issued by OCSE. Information will have to be submitted on items that are affected by the amount of progress made in designing, developing and implementing the system over the year, such as changes in estimates of the costs of the system, changes in the time it will take to implement the system, and new developmental activites that are planned. The Office of Child Support Enforcement will issue guidelines on the approval of APDs. These guidelines will discuss in detail each item found in § 303.65.

We are establishing an additional requirement in § 303,65(d), specifying when the APD budget must be updated in advance of a cost overrun. The new regulation at § 303.65(d)(1) requires the State to update the APD budget any time it determines that a cost overrun is expected to exceed the total APD budget resulting in the need for additional Federal funding. In addition, the new § 303.65(d)(2) requires the State to update the APD budget if the Federal share of the total APD budget exceeds $100,000 and the overrun would result in a direct cost category overrun that is expected to exceed 5 percent of the total budget. OCSE believes that these provisions are consistent with OMB Circular A–102, Subpart K. Although we require only that the State must update the budget according to the requirements of § 303.65(d) that are described above, as a guideline, we would also suggest that States inform OCSE when the State has incurred costs equal to 80 percent of an APD budget item for which an overrun is expected to occur. This will enable the State and OCSE to work together to avert APD suspension and to provide OCSE with an opportunity to approve or disapprove FFP for overrun expenses before the expenses are incurred by updating the APD.

Section 303.65(d) has been added because the budget is an essential element of the APD, and when a State has a cost overrun, this is a deviation from the approved APD which could result in suspension of the APD if it is viewed as substantial. In addition, to the extent that claims exceed the amount budgeted in an approved APD they would be costs incurred that are not consistent with an approved APD and therefore, subject to disallowance. In reviewing a revised budget for an anticipated overrun, we will consider the relationship of the new budget to the APD, the factors that brought about the projected overrun, and the reasonableness of the new budget figures in terms of the benefits to be gained from the additional expenditures. (See the preamble discussion below in item 6 regarding the regulations at § 304.90(f) on treatment of cost overruns and at § 304.90(b)(3) on expenditures not incurred in accordance with an approved APD.)

The recently developed Model CSES will play a significant role in the evaluation of APDs. The Model CSES is an efficient, technically sophisticated, comprehensive computer system that is cost-effective and readily and

economically transferable to a particular State's or local jurisdiction's environment. In reviewing APDs for CSESs funded at 90 percent FFP, OCSE will check to see whether the proposed CSES will provide a level of capability similar to that provided by the Model CSES at a competitive cost. Costs that will be compared are costs of the proposed CSES development and installation versus costs of Model CSES development and installation in the State. APDs submitted for proposed CSESs that fail to provide a like capability and fail to be competitive in cost with the Model CSES will not be approved. In these situations, OCSE will normally recommend that the State install a Model CSES. States are urged to contact the Office for additional information about the Model CSES.

4. Review of Computerized Child Support Enforcement Systems Funded at 90 Percent FFP

To implement paragraph 452(d)(2)(A) of the Act, we have amended OCSE regulations to add a new 45 CFR 303.66, Review of computerized child support enforcement systems eligible for 90 percent FFP. This regulation specifies that OCSE will review, assess and inspect on a continuous basis the planning, design, development, installation, enhancement and operation of CSESs funded at 90 percent FFP. OCSE plans to set up a schedule that provides for the periodic review, assessment and inspection of each approved CSES funded at 90 percent FFP and to assign staff to perform this function on a continuous basis.

5. Suspension of Approval of Advance Planning Documents for CSESs Funded at 90 Percent FFP

To implement paragraph 452(d)(2)(B) of the Act, we have amended OCSE regulations to add a new 45 CFR 303.67, Suspension of approval of advance planning documents for computerized child support enforcement systems eligible for 90 percent FFP. This new regulation at § 303.67(b) prescribes that the Office will suspend approval of an APD as of the date the system ceases to comply substantially with the approved APD specifications. With regard to the concept of substantial compliance, OCSE envisions the following example as representative of the inadequacies of a systems effort which could result in a determination that the effort failed to comply substantially with the APD. An APD calls for several essential modules to be developed which when operating in conjunction with each other will produce a comprehensive CSES. In reviewing the State's performance against the APD, OCSE determines that only one of the modules is being fully developed and the others have been dealt with in a cursory manner. At the same time State expenditures being claimed for the effort are at or close to the level budgeted for the development of all the modules. In this situation, OCSE would determine that the State had failed substantially to comply with the approved APD. As a result, the approved APD would be suspended. Upon suspension, FFP will be disallowed as of the date of substantial noncompliance and all future FFP with respect to this APD will be terminated. The written notice of APD suspension will give the reasons for and effective date of the suspension and specify the actions required for the State to receive Federal funding in the future.

The new regulation at § 303.67(c) provides that if OCSE determines that a State has taken actions, as provided in the notice of suspension, that will qualify its systems effort for FFP at the 90 percent or 75 percent rate, as appropriate, Federal funding will resume as appropriate. (See discussion below under the heading "FFP Rates for Computerized Child Support Enforcement Systems" for more details regarding this matter and information on the availability of FFP under a new or revised APD.)

6. FFP Rates for Computerized Child Support Enforcement Systems

To implement paragraph 455(a)(3) of the Act, we have amended OCSE regulations to add a new 45 CFR 304.90, Federal financial participation at the 90 percent rate for computerized child support enforcement systems. The new § 304.90(b) makes FFP available at the 90 percent rate in expenditures for the planning, design, development, installation or enhancement of approved CSESs that meet the requirements found in § 302.85. As with all other costs eligible for Federal funding under the IV-D program, costs of developing a CSES can be matched only to the extent that a CSES is carrying out activities specified in a State's title IV-D State plan. (See the definition of a CSES in § 302.85.) As noted in § 304.90(c), FFP at the 90 percent rate is not available in expenditures for the rental or purchase of hardware or proprietary software (e.g., software used to manage the data in the system) except to the limited extent that the hardware or proprietary software is used for the planning, design, development, installation or enhancement of a CSES as described in § 302.85. It is not our intent to support all costs of hardware and proprietary software "dedicated" to the child support enforcement program during these early stages of CSES activity. Rather, we will reimburse only the program-related hardware or proprietary software depreciation expenses attributable to the period of system planning, design, development, installation or enhancement as computed in relation to the estimated useful life of the hardware or the proprietary software.

It should be noted that OCSE regulations at 45 CFR 304.24 cover conditions for FFP in costs of non-expendable personal property. These regulations as currently written cover capitalization and depreciation of property reimbursed at the 75 percent FFP rate because that was the only rate at which expenditures were matched at the time this regulation was adopted. OCSE will apply capitalization and depreciation requirements to property reimbursed at the 90 percent FFP rate as well.

The Department published a notice of proposed rule making (46 FR 38280 on July 24, 1981) to revise 45 CFR 304.24 to cross-reference new proposed regulations on nonexpendable personal property that will be published at 45 CFR Part 95. These Departmental regulations will cover property reimbursed at both the 75 percent and 90 percent FFP rates under the child support enforcement program. For this reason, OCSE has not revised § 304.24 in this document.

The new § 304.90(b)(3) specifies that only expenditures that OCSE determines are consistent with an APD approved under § 303.65 are eligible for FFP at the 90 percent rate. The purpose of this section is to clarify that Federal funding at the 90 percent rate will be disallowed not only when an approved APD is suspended, in which case all expenditures will be disallowed (see below), but also when expenditures are claimed that are not consistent with the approved APD, in which case only those expenditures not consistent with the APD will be disallowed. We believe that this requirement is mandated by sections 455(a)(3) and 454(16) of the Act. Section 455(a)(3) provides 90 percent Federal funding for systems efforts that meet the requirements of section 454(16) of the Act. One of the requirements of section 454(16) is that a State systems effort be undertaken in accordance with an approved APD. Costs incurred in the development of a system that are not for activities specified in an approved APD or are not incurred in the manner provided in the approved APD do not meet the requirements of section 454(16) and, therefore, are not eligible for

Federal funding under section 455(a)(3) of the Act. States are required by § 304.90(g)(3) to obtain approval from OCSE prior to incurring costs for activities not covered in an approved APD by amending their APD. This will enable a State to continue its systems effort without running the risk of losing any Federal funding.

The new § 304.90(b)(5) specifies that the State IV–D agency must agree to use the system for a period of time consistent with the APD, unless OCSE approves a shorter time period. This requirement will protect both Federal and State governments from paying for systems that are not cost-effective and will ensure an adequate return on Federal and State dollars invested.

The new regulation at § 304.90(e) establishes the consequences of suspension of an APD for a system funded at 90 percent FFP. It specifies that, in conjunction with suspending approval of an APD, OCSE shall disallow all FFP as of the date the State failed to comply substantially with the approved APD. Because an APD under these regulations must cover a comprehensive system that is statewide in scope and must represent the sole systems effort being undertaken by the State at the 90 percent matching rate, the consequences of APD suspension are serious. If suspension takes place, the result is termination of all 90 percent matching within the State for systems activities. This effect is required by statutory design, since 90 percent funding is available only for a comprehensive, statewide system that is being planned, developed or enhanced within the State under a single approved APD. This view of the statewide system as a unit, rather than on a component by component basis, forces OCSE to withdraw all 90 percent funding within a State upon suspension of an APD, even though some components of the system might be under development in an efficient and effective manner in accordance with the approved APD.

OCSE believes that this result most accurately reflects the intent of Congress in enacting these provisions. The statute makes it clear that only systems developed consistent with an approved APD can be funded at the 90 percent rate of FFP. The statute also requires that an approved APD must be suspended when a systems effort fails to comply substantially with an approved APD. Suspension of approval of an APD removes the condition essential to receiving Federal funding. Therefore, OCSE would have no choice, once it has formally determined that the systems effort deviated substantially from the approved APD, but to disallow all funding related to that APD from the point at which the deviation occurred.

Not only is this policy based on an analysis of the specific statutory provisions involved but also the intent of these provisions when viewed in their entirety. The scheme established in the various provisions of Section 405 of Pub. L. 96–265 indicates that Congress was attempting to provide an incentive, in terms of increased funding, for the development and implementation of a comprehensive computerized system meeting certain specified requirements. The increased funding depends not only on meeting requirements regarding the functions that the system must perform but also requirements for the way in which the system was developed; i.e. in accordance with an approved APD. A substantial failure to comply with an approved APD indicates that a comprehensive CSES is not being developed by a State as envisioned by the statute. This departure from the standards that must be met to receive the increased funding requires that the incentive provided by the statute be terminated since the intent of Congress is not being carried out. OCSE believes that this result must apply to any expenditures incurred once a State has failed substantially to comply with an approved APD whether or not those expenditures were incurred prior to the date of the notice of suspension. At the point there is a substantial failure to comply with the approved APD, a comprehensive CSES meeting the requirements of the law is no longer being developed.

Furthermore, this section makes it clear that FFP at the 90 percent rate is no longer available for future expenditures incurred under the suspended APD. Should OCSE determine that the State has taken the necessary actions as specified in the notice of termination, it will notify the State that 90 percent FFP is again available for its systems efforts. This clarification is necessary in order to make States aware that 90 percent funding can once again be secured and to encourage them to focus their resources on the development of a comprehensive child support enforcement system which would be eligible for this higher rate of FFP.

The new regulation at § 304.90(f) specifies that FFP is available in cost overrun expenditures described in § 303.65(d) only if the expenditures are approved by OCSE. To initiate the approval process, States must update their APD budgets in advance of the cost overrun. (See discussion above at the end of preamble section 3.) If a State incurs overrun expenses as described in § 303.65(d) without prior OCSE approval, the overrun expenditures will be disallowed.

The new regulation at § 304.90(g)(1) requires APDs for CSESs established under § 302.85 to be signed and approved by the State IV–D Director and the appropriate State official.

The new § 304.90(g)(2) requires the State IV–D agency to submit annual updates to the APD for a system funded at 90 percent FFP at least 60 days before the beginning of the month that coincides with the month in which the initial APD was approved. This requirement is necessary in order to allow sufficient time to approve the updated APD before the expiration of the existing approval. We encourage States to submit updates to ADPs at the earliest possible date, so that if OCSE has any problem with the document, corrective action may be taken before the existing approval expires and States will know that expenditures are covered by the APD and therefore eligible for FFP.

Currently, costs of developing, enhancing and operating computerized systems that meet the requirements of Part 95, Subpart F of this title are reimbursed at the 75 percent rate to extent that the systems provide services to State and local child support enforcement programs. Reimbursement is made under 45 CFR 304.20, which provides for FFP in costs incurred for the administration of the State IV–D plan. Congress in Senate Report No. 96–408, page 68 indicates that FFP in the costs of operating all CSESs is to remain at the 75 percent rate. Since current OCSE regulations do not make specific reference to funding of CSESs at the 75 percent rate, we are adding a new regulation at § 304.91 which specifies that: (1) FFP is available at the 75 percent rate for the operation of CSESs described in § 302.85, if the conditions of § 303.65 are met; and (2) FFP is available at the 75 percent rate in expenditures for CSESs approved under 45 CFR Part 95, Subpart F. Furthermore, this regulation makes clear that 75 percent funding may be secured both retroactively and prospectively for a systems effort which was determined to fail to comply substantially with an APD which had been approved for 90 percent funding. Therefore, should it be determined that a systems effort failed to meet the requirements for 90 percent funding, the expenditures disallowed in regard to that effort may become eligible for 75 percent funding if the States applies for funding under the requirements of Part

95, Subpart F of this title and is granted approval from OCSE to secure this reduced funding. Future funding for this same effort could also be granted by OCSE in the same fashion.

7. Technical Assistance

To implement subsection 452(e) of the Act, OCSE will make staff available to assist State and local IV-D agencies in: (1) planning, designing, developing, installing or enhancing CSESs, including the preparation of APDS; (2) providing security for new or enhanced CSESs; and (3) taking the corrective action necessary to reinstate suspended APDs.

Requests for technical assistance must be submitted by the State IV-D agency to: Office of Child Support Enforcement, ATTN: Information and Management Systems Division, Room 900, 6110 Executive Blvd., Rockville, Maryland 20852. Local IV-D agencies must submit their requests for technical assistance to their State IV-D agency. The State IV-D agency may provide the technical assistance itself, or forward the request to OCSE at the above address. OCSE will issue guidelines that will include instructions regarding requests for technical assistance.

Rulemaking

These regulations are being published in final form with a comment period. The Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, if the Department for good cause finds that a notice of proposed rulemaking is unnecessary, impracticable or contary to the public interest, it may dispense with the notice if it incorporates a brief statement in the final regulations of the reasons for doing so.

The Department finds that there is good cause to dispense with proposed rulemaking procedures with respect to these changes. We find that publication of these regulations in proposed form would be inpracticable and contrary to the public interest for the following reasons. First, there was not sufficient time after the enactment of Pub. L. 96-265 to permit development of required policy, implementation of normal proposed rulemaking procedures and the subsequent development and publication of final regulations, by the July 1, 1981 statutory effective date. We believe that the States interested in receiving the new 90 percent Federal match would prefer to have clear Federal policy established as close to the July 1 effective date as possible rather than proceeding under proposed instructions. We believe this is especially true with respect to those provisions that specify the consequences of a State's failure to develop a CSES consistent with an approved APD. These consequences are not clearly specified in the statute. Second, the major provisions of these regulations, including the six combinations of State and local initiatives eligible for 90 percent funding, the requirements for the APD, the role of the Model Systems in evaluating APDs, and the procedures for review and suspension of APDs, were presented at the opening session of the Fourth Annual Information Systems Workshop sponsored by OCSE in Dallas, Texas on December 2-6, 1980. Representatives of State and local IV-D agencies from 32 States attended this session on December 3. The comments received on the regulatory provisions at that time were generally favorable and we do not therefore anticipate a need for major substantive revisions of these regulations. Third, the new 90 percent FFP rate for systems development is an optional provision for those States which choose to use it, and imposes no new requirements on States which do not choose to receive 90 percent FFP for systems development. Fourth, we recognize that States need as much lead time as possible to develop their APDs in order to begin to receive the higher rate of FFP within the July quarter. We thus believe that it is in the public interest for these regulations to be published immediately as final rules with a comment period so as to enable interested States to complete their systems planning.

OMB Review

The information the States must submit in their advance planning documents to obtain approval for the 90 percent Federal matching funds falls within the general scope of the Department of Health and Human Services regulation governing FFP in the costs of automatic data processing equipment and services (45 CFR Part 95, Subpart F). The content and process for submission of advance planning documents specified in that regulation have been approved by the Office of Management and Budget under 0990-0058.

The new 45 CFR 302.85(c)(2)(iii) requires the State's CSES to maintain data elements necessary to meet Federal reporting requirements on a timely basis as prescribed by OCSE to quality for the 90 percent matching funds. OCSE will only require the States to maintain data elements necessary to complete the OCSE-3, OCSE-34, and the OCSE-41. These reports have been approved by OMB under OMB approval numbers 72-R1058, 0960-0238, and 0960-0235.

PART 302—STATE PLAN REQUIREMENTS

1. 45 CFR Part 302 is amended by adding a new § 302.85 to read as follows:

§ 302.85 Computerized child support enforcement systems eligible for 90 percent FFP.

(a) *Definitions.* (1) "Advance planning document" or "APD"—The definition of this term found in § 95.605 of this title also applies to this secton. (See § 303.65 of this chapter for specific requirements that APDs must meet for appropriate system costs to be funded at 90 percent Federal financial participation.)

(2) "Computerized child support enforcement system" means a system of software and hardware (that may have State and local components) which:

(i) Introduces, processes, accounts for and monitors data used by the child support enforcement program in carrying out activities under the State plan; and

(ii) Produces utilization and management information about child support enforcement services as required by the State IV-D agency and Federal government for program administration and audit purposes.

(3) "Design" or "system design" means a combination of narrative and diagrams describing the structure of the computerized child support enforcement system.

(4) "Development" means the detailing of system and program specifications, programming, and testing.

(5) "Enhancement" means modifying or adding to an existing computerized child support enforcement system.

(6) "Installation" means the integrated testing of programs and subsystems, system conversion, and turnover to operational status, including pilot testing and data validation.

(7) "Operation" means the automated processing of (i) data associated with the provision of child support enforcement services and collections (including the distribution and payment of incentives) and (ii) reports on a continuous basis. Operation includes the use of supplies, software, hardware and personnel directly involved in the daily functioning of computerized child support enforcement systems.

(8) "Planning" means:

(i) The preliminary project activity to determine the requirements necessitating the project, the activities to be undertaken, and the resources required to complete the project;

(ii) The preparation of an APD;

(iii) The preparation of a detailed project plan describing when and how the computer system will be designed and developed; and

(iv) The preparation of a detailed implementation plan describing specific training, testing, and conversion plans to install the computer system.

(9) "Requirements analysis" means determining and documenting the information needs and the functional and technical requirements the proposed computerized system must meet.

(10) "Software"—The definition of this term found in § 95.605 of this title also applies to this section.

(b) *Optional State plan amendment.* The State plan may provide for the establishment of a computerized child support enforcement system funded at 90 percent Federal financial participation that meets the requirements in paragraph (c) of this section.

(c) *System requirements.* At a minimum, each State's computerized child support enforcement system established under this section must be:

(1) Planned, designed, developed, installed or enhanced in accordance with an initial and annually updated APD approved under § 303.65;

(2) Planned, designed, developed, installed or enhanced to control, account for, and monitor all the factors in the child support collection and paternity determination processes under the State plan. At a minimum this must include:

(i) Maintaining identifying information such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal zip codes) on individuals against whom child support obligations are sought to be established or enforced and on individuals to whom child support obligations are owed, and other data as required by the Office, and assuring compatibility with the systems of different jurisdictions to permit periodic screening to determine whether an individual is paying or is obligated to pay child support in more than one jurisdiction;

(ii) Periodically verifying the information on individuals referred to in paragraph (c)(2)(i) with Federal, State and local agencies, both intrastate and interstate;

(iii) Maintaining data necessary to meet Federal reporting requirements on a timely basis as prescribed by the Office;

(iv) Maintaining information pertaining to:

(A) Delinquency and enforcement activities;

(B) Intrastate, interstate and Federal location of absent parents;

(C) The establishment of paternity; and

(D) The establishment of child support obligations;

(v) Collecting and distributing both intrastate and interstate child support payments;

(vi) Determining, collecting and distributing both intrastate and interstate incentive payments;

(vii) Maintaining accounts receivable on all amounts owed, collected, and distributed;

(viii) Maintaining costs of all services rendered, either directly or by interfacing with State financial management and expenditure information;

(ix) Accepting case referrals and update information from the State's Aid to Families with Dependent Children (AFDC) program and using that information to identify and manage child support enforcement cases;

(x) Interfacing with records of the State's AFDC program in order to determine whether a collection of child support causes a change in eligibility for, or the amount of aid under, the AFDC program;

(xi) Providing security to prevent unauthorized access to, or use of, the data in the system; and

(xii) Providing management information on all IV–D cases, both AFDC and non-AFDC, under the State plan from initial referral or application through collection and enforcement.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302) and sec. 454(16) of the Social Security Act (42 U.S.C. 654(16))

PART 303—STANDARDS FOR PROGRAM OPERATION

2. 45 CFR Part 303 is amended by adding new §§ 303.65, 303.66, and 303.67 to read as follow:

§ 303.65 Approval of advance planning documents for computerized child support enforcement systems eligible for 90 percent FFP.

(a) *Definitions.* The definitions found in § 302.85 of this chapter also apply to this section.

(b) *Conditions for initial approval.* In order to be approvable, an initial APD for a computerized child support enforcement system described under § 302–85 of this chapter must meet the following requirements:

(1) The APD must represent the sole systems effort being undertaken by the State in accordance with § 302.85 of this chapter;

(2) The APD must specify how the objectives of the computerized child support enforcement system in § 302.85 of this chapter will be carried out throughout the State; this includes a projection of how the proposed system will meet the functional requirements of § 302.85 of this chapter and how the system will encompass all political subdivisions in the State within a reasonable period of time;

(3) The APD must assure the feasibility of the proposed effort and provide for the conduct of a requirements analysis study which addresses all system components within the State and includes consideration of the program mission, functions, organization, services, constraints, and current support related to the computerized child support enforcement system;

(4) The APD must indicate how the results of the requirements analysis study will be incorporated into the proposed system design, development, installation or enhancement;

(5) The APD must contain a description of each component within the proposed computerized child support enforcement system as required by § 302.85 of this chapter and must describe information flows, input data, and output reports and uses;

(6) The APD must describe the security requirements to be employed in the proposed computerized child support enforcement system;

(7) The APD must describe the intrastate and interstate interfaces set forth in § 302.85 to be employed in the proposed computerized child support enforcement system;

(8) The APD must describe the projected resource requirements for staff, hardware, and other needs and the resources available or expected to be available to meet the requirements;

(9) The APD must contain a proposed budget including a description of estimated expenditures by category and amount for:

(i) Items that are eligible for Federal funding at the 90 percent rate; and

(ii) Items related to operating the system that are eligible for Federal funding at the 75 percent rate;

(10) The APD must contain an implementation plan and backup procedures to handle possible failures in system planning, design, development, installation or enhancement;

(11) The APD must describe each alternative system considered including the advantages of the proposed system over the alternatives; if a Model CSES or a State system that the Office has identified for consideration by State IV–D agencies is not proposed, these systems must be among the alternatives

considered; if a system that is already in place in the State could be enhanced to meet the requirements for 90 percent FFP, that system must be among the alternatives considered;

(12) The APD must contain a cost benefit analysis of the proposed computerized child support enforcement system that describes the proposed improvements to the IV–D program in both qualitative and quantitative terms;

(13) The APD must specify the basis for determining direct and indirect costs of the computerized child support enforcement system during development and operation, including the methodology for determining costs of planning, design, development, installation or enhancement that are eligible for 90 percent Federal funding versus costs of operations that are eligible for 75 percent Federal funding;

(14) The APD must contain a statement indicating the period of time the State expects to use the proposed computerized child support enforcement system.

(c) *Conditions for approval of annual update.* The APD for a computerized child support enforcement system described under § 302.85 of this chapter must be updated annually. In order to be approvable, the annual update of an APD for a computerized child support enforcement system described under § 302.85 of this chapter must meet only those requirements of paragraph (b) of this section that are prescribed by instructions issued by the Office.

(d) *Periodic update of APD budget.* The budget required under paragraph (b)(9) of this section must be updated any time a cost overrun is anticipated if as a result of the cost overrun:

(1) The total APD budget will be exceeded resulting in the need for additional Federal funding; or

(2) Where the Federal share of the total APD budget exceeds $100,000, the increase of a direct cost category is expected to exceed 5 percent of the total budget. (See § 304.90(f) of this chapter on treatment of cost overruns.)

§ 303.66 Review of computerized child support enforcement systems eligible for 90 percent FFP.

(a) *Definitions.* The definitions found in § 302.85 of this chapter also apply to this section.

(b) *Office review.* The Office will on a continuous basis review, assess and inspect the planning, design, development, installation, enhancement and operation of computerized child support enforcement systems developed under § 302.85 to determine the extent to which such systems:

(1) Meet the requirements found in § 303.65 of this part; and

(2) Meet the conditions in § 302.85 of this chapter.

§ 303.67 Suspension of approval of advance planning documents for computerized child support enforcement systems eligible for 90 percent FFP.

(a) *Definitions.* The definitions found in § 302.85 of this chapter also apply to this section.

(b) *Suspension of approval.* (1) The Office will suspend approval of the APD for a computerized child support enforcement system approved and developed under § 302.85 as of the date that the system ceases to comply substantially with the criteria, requirements, and other provisions in the APD. Federal funding will be disallowed as described in § 304.90(e) of this chapter.

(2) The Office will immediately notify the State in writing of the decision to suspend approval of the APD. The notice will give the reasons for and effective date of the suspension and specify the actions required for the State to receive Federal funding in the future for its systems activities.

(c) *Duration of suspension.* The suspension of approval of an APD under paragraph (b) shall remain in effect until the Office determines that actions required for Federal funding in the future, as specified in the notice of suspension, have been taken and the Office so notifies the State.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302) and sec. 452(d) and (e), (42 U.S.C. 652(d) and (e)))

PART 304—FEDERAL FINANCIAL PARTICIPATION

3. 45 CFR Part 304 is amended by adding new §§ 304.90 and 304.91 to read as follows:

§ 304.90 Federal financial participation at the 90 percent rate for computerized child support enforcement systems.

(a) *Definitions.* The definitions found in § 302.85 of this chapter also apply to this section.

(b) *Conditions that must be met for FFP.* Federal financial participation (FFP) is available at the 90 percent rate in expenditures for the planning, design, development, installation or enhancement of a computerized child support enforcement system as described in § 302.85 of this chapter if:

(1) The Office has approved an APD in accordance with § 303.65 of this chapter;

(2) The Office determines that the system meets the requirements specified in § 302.85 of this chapter;

(3) The Office determines that the expenditures incurred are consistent with the approved APD;

(4) The Office determines that the computerized child support enforcement system is designed effectively and efficiently and will improve the management and administration of the State IV–D Plan;

(5) The State IV–D agency agrees in writing to use the system for a period of time which is consistent with the APD approved by the Office, or for any shorter period of time which the Office determines is sufficient to justify the Federal funds invested; and

(6) The State or local government has ownership rights in software, software modifications and associated documentation that is designed, developed, installed, or enhanced with 90 percent FFP under this section subject to the Department of Health and Human Services license specified in paragraph (d) of this section.

(c) *Limitation on reimbursement of hardware and proprietary software.* FFP at the 90 percent rate is not available in expenditures for the rental or purchase of hardware or proprietary software except to the limited extent that the hardware or proprietary software is used for the planning, design, development, installation or enhancement of a computerized child support enforcement system as described in § 302.85 of this chapter. (See § 304.91 regarding reimbursement at the 75 percent rate.)

(d) *HHS rights to software.* The Department of Health and Human Services reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal government purposes, software, software modifications, and documentation developed under § 302.85. This license would permit the Department to authorize the use of software, software modifications and documentation developed under § 302.85 in another project or activity funded by the Federal government. (Also see 45 CFR 95.617.)

(e) *Consequences of suspension of the APD.* If the Office suspends approval of an APD in accordance with § 303.67 of this chapter during the planning, design, development, installation, enhancement or operation of the system:

(1) The Office shall disallow FFP as of the date the State failed to comply substantially with the approved APD; and

(2) FFP at the 90 percent rate will not be available in any expenditures incurred under the APD after the date of

the suspension unless the Office determines that the State has taken the actions specified in the notice of suspension described in § 303.67(b)(2) of this chapter. The Office will notify the State in writing upon making such a determination.

(f) *Treatment of cost overruns.* FFP is available in cost overrun expenditures described in § 303.65(d) only if the expenditures are approved by the Office. (See § 303.65 of this chapter for procedure for initiating approval process.)

(g) *Submittal of advance planning document.* The State IV–D agency must:

(1) Submit an advance planning document for a computerized child support enforcement system, approved and signed by the State IV–D Director and the appropriate State official;

(2) Submit annual updates of the APD at least 60 days before the beginning of the month that coincides with the month in which the initial APD was approved; and

(3) Obtain approval from the Office before incurring costs for activities not covered under an approved APD by amending the APD.

§ 304.91 Federal financial participation at the 75 percent rate for computerized child support enforcement systems.

(a) *Definitions.* The definitions found in § 302.85 of this part also apply to this section.

(b) *Conditions that must be met for FFP.* Federal financial participation (FFP) at the 75 percent rate is available only in computerized child support enforcement system expenditures for:

(1) The operation of systems described in § 302.85 of this chapter if the conditions in § 303.65 are met; and

(2) Systems approved in accordance with Part 95, Subpart F of this title. This may include expenditures for a system which were disallowed by the Office because the system failed to comply substantially with an APD approved under § 303.65 of this chapter.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302) and sec. 455(a) of the Social Security Act (42 U.S.C. 655(a))

(Section 1102 of the Social Security Act (42 U.S.C. 1302) and Section 452 (d) and (e), 454(16), 455(a), of the Social Security Act (42 U.S.C. 652 (d) and (e), 654(16) and 655(a).

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Note 1.—The Secretary has determined that this document is not a major rule as described by Executive Order 12291, because it does not meet any of the criteria set forth in Section 1 of the Executive Order.

Note 2.—The Secretary certifies that because these regulations apply to States and will not have a significant economic impact on a substantial number of small entities, they do not require a regulatory flexibility analysis as provided in P.L. 96–354, the Regulatory Flexibility Act of 1980.

Dated: July 14, 1981.

John A. Svahn,

Director, Office of Child Support Enforcement.

Approved: July 27, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81–28417 Filed 9–29–81; 8:45 am]

BILLING CODE 4110–07–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 78–308; RM–2869]

Radio Broadcast Services; Amendment To Permit the Transmission of Program Related Signals in the Vertical Blanking Interval of the Standard Television Signal; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects several inadvertent deletions in the text of the amended rules relating to the television broadcast station transmission standards which were published 8–6–81 (46 FR 40024).

FOR FURTHER INFORMATION CONTACT: Stanley Schmulewitz, Broadcast Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.682 of the Commission's Rules To Permit the Transmission of Program Related Signals in the Vertical Blanking Interval of the Standard Television Signal (BC Docket No. 78–308; RM–2869) Erratum.

Released: September 17, 1981.

The *Report and Order* in the above entitled matter adopted July 16, 1981, and released July 29, 1981, 46 FR 40024, published 8–6–81 made changes to § 73.682(a)(21) and inadvertantly deleted § 73.682(a)(21)(i)–§ 73.682(a)(21)(iv). These deletions are restored and made to conform to revised paragraph § 73.682(a)(21) as indicated in the attached Appendix.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 73—RADIO BROADCAST SERVICES

In Part 73 of the Commission's Rules, § 73.682 is amended by revising paragraph (a)(21) to read as follows:

§ 73.682 Transmission standards.

(a) *Transmission standards.*

* * * * *

(21) The interval beginning with line 17 and continuing through line 20 of the vertical blanking interval of each field may be used for the transmission of test signals, cue and control signals, and identification signals, subject to the conditions and restrictions set forth below. Test signals may include signals designed to check the performance of the overall transmission system or its individual components. Cue and control signals shall be related to the operation of the TV broadcast station. Identification signals may be transmitted to identify the broadcast material or its source, and the date and time of its origination. Figures 6 and 7 of § 73.699 identify the numbered lines referred to in this subparagraph.

(i) Modulation of the television transmitter by such signals shall be confined to the area between the reference white level and the blanking level, except where test signals include chrominance subcarrier frequencies, in which case positive excursions of chrominance components may exceed reference white, and negative excursions may extend into the synchronizing area. In no case may the modulation excursions produced by test signals extend beyond peak-of-sync, or to zero carrier level.

(ii) The use of such signals shall not result in significant degradation of the program transmission of the television broadcast station, nor produce emission outside of the frequency band occupied for normal program transmissions.

(iii) Such signals may not be transmitted during that portion of each line devoted to horizontal blanking.

(iv) Regardless of other provisions of this subparagraph, line 19, in each field, may be used only for the transmission of the reference signal described in Figure 16 of § 73.699.

* * * * *

[FR Doc. 81–28356 Filed 9–29–81; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte 230 (Sub-5)]

Improvement of TOFC/COFC Regulation; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Correction to final rule.

SUMMARY: In a document published at 46 FR 14348, February 27, 1981, the Commission exempted rail and truck service provided by rail carriers in connection with trailer on flatcar (TOFC) and container on flatcar (COFC) service from Title 49, Subchapter IV of the U.S. Code. In that document, on page 14351, a new § 1039.11 entitled "Rail intermodal transportation exemption" was added to Title 49 of the CFR. That section was incorrectly numbered as § 1039.11 and that section number is being corrected to read § 1039.13. A proposed rule amending the section and also carrying the incorrect section number was published at 46 FR 14365, February 27, 1981 and is being corrected elsewhere in this issue. A subsequent clarification to the final rule, published at 46 FR 32257, June 22, 1981 did not make specific mention of the section number involved, and so, does not require correction.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, 202–275–7656.

SUPPLEMENTARY INFORMATION: On page 14351 in the issue of February 27, 1981, the section heading at the top of column 3 should be corrected to read as follows:

§ 1039.13 Rail intermodal transportation exemption.

* * * * *

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28291 Filed 9-29-81; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Correction of the U.S. Lists of Endangered and Threatened Wildlife and Plants; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule, correction.

SUMMARY: The Service hereby corrects certain technical errors in the U.S. Lists of Endangered and Threatened Wildlife and Plants.

DATE: This rule becomes effective September 30, 1981.

ADDRESSES: Comments concerning this final rule should be sent to the Director (OES), Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240.

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

SUPPLEMENTARY INFORMATION: The lists incorporate species officially listed as Endangered or Threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), and 50 CFR Part 424. Since the corrections are purely to accurately inform the reader, this document is not a rule as defined in 43 CFR 14.2(e). For the same reasons there are no impacts on small entities under the Regulatory Flexibility Act or effects on the public under Executive Order 12291. In addition, the Service finds for good cause that this document shall be effective immediately and that notice and public comment are unnecessary.

The scientific names have been updated to reflect current usage. In making this determination, the Service relies to the extent practicable on the *International Code of Zoological Nomenclature* and the *International Code of Botanical Nomenclature*, and the scientific community.

To avoid ambiguity in cases in which more than one name are commonly used for a taxon, synonyms have been provided. Such synonyms are expressed in parentheses with the name itself preceded by an (=) sign.

Historic ranges for some listed taxa have been updated. These ranges indicate the general known distribution of the species or subspecies as reported in the scientific literature.

Regulations Promulgation

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, the Service amends Part 17 of Title 50 of the Code of Federal Regulations as follows:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; and Pub. L. 96–159, 93 Stat. 1241 (16 U.S.C. 1531, et seq.).

§ 17.11 [Amended]

Amend § 17.11(h) by revising the following entries:

2. Revise the scientific name of "Armadillo, giant" to read: *Priodontes maximus* (=*giganteus*).

3. Revise the scientific name of "Ass, African wild" to read: *Equus africanus* (=*asinus*).

4. Revise the scientific name of "Banteng" to read: *Bos javanicus* (=*banteng*).

5. Revise the historic range of "Bat, Virginia big-eared" to read: U.S.A. (KY, WV, VA).

6. Revise the scientific name of "Camel, Bactrian" to read: *Camelus ferus* (=*bactrianus*).

7. Revise the scientific name of "Cat, Iriomote" to read: *Felis* (=*Mayailurus*) *iriomotensis*.

8. Revise the scientific name of "Fox, Simien" to read: *Canis* (=*Simia*) *simensis*.

9. Revise the scientific name of "Langur, Pagi Island" to read: *Nasalis* (=*Simias*) *concolor*.

10. Revise the historic range of "leopard" to read: Africa, Southern and Eastern Asia.

11. Revise the historic range of "Marmoset, cotton-top" to read: Colombia.

12. Revise the scientific name of "Monkey, Tonkin snub-nosed" to read: *Pygathrix* (=*Rhinopithecus*) *avunculus*.

13. Revise the scientific name of "Otter, Cameroon clawless" to read: *Aonyx* (=*Paraonyx*) *congica* (=*microdon*).

14. Revise the scientific name of "Rhinoceros, Sumatran" to read: *Dicerorhinus* (=*Didermoceros*) *sumatrensis*.

15. Revise the scientific name of "Zebra, mountain" to read: *Equus zebra zebra*.

16. Revise the common name of "Parakeet, paradise" to read: Parakeet, paradise (=beautiful).

17. Revise the common name of "Parakeet, scarlet-chested" to read: Parakeet, scarlet-chested (=splendid).

18. Revise the common name of "Parakeet, turquois night" to read: Parakeet, turquoise.

19. Revise the scientific name of "Gecko, day" to read: *Phelsuma edwardnewtoni*.

20. Revise the scientific name of "Iguana, Fiji crested" to read: *Brachylophus vitiensis*.

21. Revise the scientific name of "Lizard, blunt-nosed leopard" to read: *Gambelia* (=*Crotaphytus*) *silus*.

22. Revise the scientific name of "Lizard, Island night" to read: *Xantusia* (=*Klauberina*) *riversiana*.

23. Revise the scientific name of "Turtle, Plymouth red-bellied" to read:

Pseudemys (=*Chrysemys*) *rubriventris bangsi*.

24. Revise the common name of "Turtle, South American river [no common name]" with the scientific name *Podocnemis expansa* to read: Tartaruga. Insert entire entry alphabetically after "Snake, San Francisco, garter."

25. Revise the common name of "Turtle, South American river [no common name]" with the scientific name *Podocnemis unifilis* to read: Tracaja. Insert entire entry alphabetically after "Tortoise, radiated."

26. Revise the historic range of "Pearly mussel, pale lilliput" to read: U.S.A. (AL, TN).

27. Revise the historic range of "Pearly mussel, turgid-blossom" to read: U.S.A. (AL, TN).

28. Revise the common name of "Pearly mussel, white cat's eye" to read: Pearly mussel, white cat's paw.

§ 17.12h [Amended]

Amend § 17.12(h) by revising the following entries:

29. Revise the scientific name of "San Clemente Island broom" under "*Fabaceae*—Pea family" to read: *Lotus dendroideus* (=*scoparius*) ssp. *traskiae*.

30. Revise the common name of "Hawaiian wild broad bean" under "*Fabaceae*—Pea family" to read: Hawaiian vetch.

Dated: September 24, 1981.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-28465 Filed 9-29-81; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 46, No. 189
Wednesday, September 30, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Administrative Rules and Regulations Governing Quality Control

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given of a proposal to change the quality control provisions of the administrative rules and regulations established under the Federal marketing order for California almonds. The change would improve the quality of almond shipments by lowering the tolerance for inedible almonds from one and one-half percent to one percent.

DATE: Comments must be received by October 16, 1981.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447-5697.

SUPPLEMENTARY INFORMATION: This proposal has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated 24 handlers.

J. S. Miller has determined that this proposal should be published with less than a 60-day comment period. It is intended that the final regulation apply to 1981 crop almonds which handlers will be receiving and processing in volume soon. Therefore, handlers need to know as soon as possible what the basis will be for determining their weight obligations so that they can plan their processing and marketing operations accordingly.

Information collection (reporting and recordkeeping) under this part are subject to clearance by the Office of Management and Budget and are in the process of review. These information requirements shall not become effective until such time as clearance by the OMB has been obtained.

This proposal would revise § 981.442(a)(4) of Subpart—Administrative Rules and Regulations (7 CFR 981.401—981.474). Section 981.442(a)(4) is issued under § 981.42 of the marketing agreement and Order No. 981 (7 CFR 981), both as amended, regulating the handling of almonds grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposal was recommended unanimously by the Almond Board of California, hereinafter referred to as the Board, which works with USDA in administering the order.

Section 981.442(a)(4) currently requires the weight of inedible kernels in each variety in excess of one and one-half percent of the kernel weight received by handlers to be reported to the Board. This weight constitutes a handler's disposition obligation which must be accumulated during processing and delivered to the Board or Board-accepted crushers, feed manufacturers, or feeders.

The proposal is to revise § 981.442(a)(4) so that the quantity of inedible kernels in each variety in excess of one percent, instead of the current one and one-half percent, would constitute a handler's disposition obligation.

The almond industry believes that a tolerance of one percent would best accomplish its long-term objective of providing an increasingly higher quality product to almond users and consumers. This action would allow for stricter quality control while still maintaining ample supplies of almonds to meet trade demand. The industry has the capability of implementing such stricter control due to improvements in crop quality and in almond processing equipment.

PART 981—ALMONDS GROWN IN CALIFORNIA

§ 981.442 [Amended]

Therefore, it is proposed to revise § 981.442(a)(4) of Subpart—Administrative Rules and Regulations (7 CFR 981.401-981.474) by changing "one and one-half percent" to "one percent".

Dated: September 25, 1981.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 81-29419 Filed 9-29-81; 8:45 am]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Amendment To Provide Exception From Procedural Rules for Adjudications Involving Conduct of Military or Foreign Affairs Functions

AGENCY: Nuclear Regulatory Commission.

ACTION: Reconsideration of Rule.

SUMMARY: The Commission is reconsidering that part of its "Rules of General Applicability" for the conduct of adjudicatory proceedings in 10 CFR Part 2 which provides an exception from those rules for adjudications involving the conduct of military or foreign affairs functions. The rule under reconsideration permits the Commission to exercise greater flexibility under the exception stated in the Administrative Procedure Act (APA) at 5 U.S.C. 554(a)(4). This exception would assist in fashioning procedures for proceedings involving military or foreign affairs functions.

DATE: November 16, 1981.

ADDRESSES: Written comments concerning the reconsidered rule should be submitted to the Secretary of the Commission, Nuclear Regulatory Commission, Washington, D.C. 20555, Attention Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT: Marjorie S. Nordlinger, Office of the General Counsel, Nuclear Regulatory Commission, Washington, D.C. 20555; phone 202-634-3214.

SUPPLEMENTARY INFORMATION: The Commission is reconsidering that part of its rules governing procedures for

adjudications in subpart G of 10 CFR Part 2 which provides an exception from those procedures for proceedings to the extent that there is involved the conduct of military or foreign affairs functions.

On June 26, 1980 the Commission by a 3–2 vote adopted such an exception as an immediately effective rule without public notice and opportunity for comment. See 45 FR 45253 (July 3, 1980). It then by the same majority applied the rule to a proceeding on a proposed amendment to the special nuclear material license of the Nuclear Fuel Service's facility at Erwin, Tennessee (NRC Docket No. 70–143). Anticipating that the proceeding would involve highly sensitive materials and policy decisions involving the military function of the United States, the Commission wished to have more flexibility in establishing hearing procedures. See Memorandum and Order CLI–8–27, 11 NRC 799 (1980).

Natural Resources Defense Council, a participant in the NFS Erwin matter, sought review in the United States Court of Appeals for the District of Columbia of the Commission's decisions to issue the rule without notice and comment and to apply it to the NFS Erwin proceeding. (D.C. Circuit Docket Nos. 80–1863 and 1864) On September 29, 1980 the court enjoined the effectiveness of the amendment and the Commission decisions applying it to the NFS Erwin proceeding until further order.

Subsequent to the Commission's June 26 decisions the terms of two members of the 3–2 majority on the Erwin decision expired and new members were appointed in their place. The Commission now wishes to reconsider its decision to (1) adopt a military functions exception to the Commission's procedural rules, and (2) apply that rule change in the NFS proceeding.

Most particularly comment is sought on the issue of whether the rule if adhered to should only be applied prospectively or whether it should also be applied to a matter where a hearing has already been requested, i.e., to the NFS Erwin proceeding.

If adopted after reconsideration the rule would conform the NRC's procedural rules to the exception stated in the Administrative Procedure Act (APA) at 5 U.S.C. 554(a)(4) in order to provide some measure of flexibility in fashioning procedures where military or foreign affairs functions are involved. The military and foreign affairs exception would serve the same purposes in our rules as it does in the APA. It would ensure that delays often associated with the adjudicatory process will not encumber the military or foreign affairs functions of the United States. It would also serve better to protect the highly sensitive information associated with both military and foreign affairs functions. Finally, it would enable the Commission to reserve to itself consideration of military and foreign policy issues which only it can resolve and to approach such matters in an informal procedural framework suited to consideration of these issues.

Separate Views of Commissioner Bradford

It is difficult to imagine a greater waste of time than this rulemaking. Neither this agency nor its predecessor (which really did have military functions) has ever needed to use the military affairs exception to the Administrative Procedure Act.

The sole reason for seeking comment at this time is to shore up the court prospects of the Commission's dubious actions in the NFS Erwin matter (discussed in detail at 11 NRC 799, 809) in June, 1980. Instead of taking up space in the **Federal Register** and the time of prospective commenters, the Commission would be better advised to hold the adjudicatory hearings that it offered to the Natural Resources Defense counsel in this matter in February, 1980. Had that proceeding been conducted as it should have been, this rulemaking and the attendant litigation would be unnecessary.

Regulatory Flexibility Statement

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule change would not have a significant economic impact on a substantial number of small entities. The rule change would affect the Commission's procedures by permitting informal procedures where military functions of the United States are involved. Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 552, 553, and 554 of Title 5 of the United States Code, notice is hereby given that the Commission is reconsidering its now stayed adoption of the following amendment to Title 10, Chapter 1, Code of Federal Regulations, Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161p and 181, Pub. L. 83–703, 68 Stat. 950 and 953. (42 U.S.C. 2201(p) and 2231); sec. 191, as amended, (Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, as amended) Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841); 5 U.S.C. 552; unless otherwise noted. Sections 2.200–2.206 also issued under sec. 186, Pub. L. 83–703, 68 Stat. 955 (42 U.S.C. 2236) and sec. 206, Pub. L. 93–438, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.700a is also issued under Pub. L. 89–554, 80 Stat. 384 (5 U.S.C. 554). Sections 2.800–2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and Sec. 29, as amended, Pub. L. 85–256, 71 Stat. 579, and Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039).

2. Section 2.700a is revised to read as follows:

§ 2.700a Exceptions.

(a) consistent with 5 U.S.C. 554(a)(4) of the Administrative Procedure Act, the Commission may provide alternative procedures in adjudications to the extent that there is involved the conduct of military or foreign affairs functions.

(b) This rule shall apply to proceedings in progress where hearings have already been requested or ordered.

Or in the Alternative:

§ 2.700a Exceptions.

(a) Consistent with 5 U.S.C. 554(a)(4) of the Administrative Procedure Act, the Commission may provide alternative procedures in adjudications to the extent that there is involved the conduct of military or foreign affairs functions.

(b) Thus rule shall not apply to proceedings in progress where hearings have already been requested or ordered.

Dated at Washington, D.C., this 24 day of September 1981.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81–28445 Filed 9–29–81; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 1981–10]

Communications by Corporations and Labor Organizations

AGENCY: Federal Election Commission.

ACTION: Announcement of Public Hearing Date.

SUMMARY: On September 8, 1981, the Federal Election Commission published a Notice of Proposed Rulemaking on Communications by Corporations and Labor Organizations (46 FR 44964). The Commission will hold a public hearing on these proposed rules on October 26, 1981, at 10:00 a.m. The hearing will be held at the Federal Election Commission, 1325 K Street N.W., Washington, D.C.

If necessary, the hearing will be continued on October 28 and October 30, 1981. Persons or organizations

wishing to testify at the hearing should so indicate in their written comments on the proposed rules. Comments are due on or before October 8, 1981.

FOR FURTHER INFORMATION CONTACT: Susan E. Propper, Assistant General Counsel, (202) 523–4143.

Dated: September 25, 1981.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 81-28314 Filed 9-29-81; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[Gen. Docket No. 80-135; RM-3378]

Revision to Permit Inland Assignment of Frequencies In a Certain MHz Band for Non-Government Radiolocation; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: The Commission is granting a 30 day extension of time for filing comments and replies in Gen. Docket 80–135, *Revision of the Commission's Rules to permit inland assignment of frequencies in a certain MHz band for non-Government radiolocation.* This is a modified extension supported by the original petitioner who opposed a 90 day extension request filed by another petitioner.

DATES: Comments must be received by October 21, 1981 and reply comments by November 21, 1981.

ADDRESS: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Sam Tropea/Office of Science and Technology, (202) 653–8167.

SUPPLEMENTARY INFORMATION:

[General Docket No. 80-135; RM–3378 (46 FR 39185; 7–31–81)]

Order Extending Time to File Comments

Adopted: September 21, 1981.

Released: September 22, 1981.

In the matter of revision of Parts 2 and 90 of the Commission's rules and regulations to permit inland assignment of frequencies in the 420–450 MHz band for non-Government radiolocation.

1. The Southern California Repeater and Remote Base Association (SCRRBA), an association of amateur radio operators, has requested an additional ninety day extension of time to file comments on the above-captioned Further Notice of Proposed Rulemaking which resulted from a petition filed by Del Norte Technology, Inc. SCRRBA states that the additional time is needed to inform and receive member responses and to retain professional engineering counsel in the preparation of their comments. Del Norte Technology, Inc., by its attorney, has filed its opposition to the requested ninety day extension but has no objection to a thirty day extension of time.

2. The instant proceeding is a Further Notice and the issues under consideration have been available for public evaluation and comment since May 10, 1979, when the petition was originally filed. Accordingly, the Commission is not persuaded that a ninety day extension is warranted. However, because of the importance of this proceeding and in the interest of having the most definitive responses possible, we are granting an additional thirty day extension of time, as supported by Del Norte, to allow final evaluation and submission of data and comments. Therefore, an extension of time from September 21, 1981 to October 21, 1981 for filing comments and from October 21, 1981 to November 21, 1981 for filing reply comments is hereby ordered pursuant to § 0.241(d) of the Commission's rules.

S. J. Lukasik,

Chief Scientist.

[FR Doc. 81-28385 Filed 9-29-81; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte 230 (Sub-No. 5)]

Improvement of TOFC/COFC Regulation; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Correction to proposed rule.

SUMMARY: In a document published at 46 FR 14348, February 27, 1981, the Commission exempted rail and truck service provided by rail carriers in connection with trailer on flatcar (TOFC) and container on flatcar (COFC) service from title 49, Subchapter IV of the U.S. Code. That document incorrectly gave the section being added the number 1039.11. In a subsequent proposed amendment to that final rule, the section in question was also given the incorrect number of § 1039.11. That section number is being corrected to read § 1039.13.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, 202–275–7656.

SUPPLEMENTARY INFORMATION: On page 14365 in the issue of February 27, 1981, the section heading at the top of column 3 should be corrected to read as follows:

§ 1039.13 [Amended]

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28291 Filed 9-29-81; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1104A

[Ex Parte No. MC–129 [1]]

1977–78 Platform Study of Class I and Class II Motor Common Carriers of General Freight Subject to Accounting Instruction 27

AGENCY: Interstate Commerce Commission.

ACTION: Notice to participants in proposed rulemaking.

SUMMARY: By Notice of Proposed Rulemaking served September 10, 1979 (44 FR 53190, September 13, 1979), we initiated a rulemaking to determine whether, and to what extent, the results and proposals in the 1977–1978 study of motor common carriers platform handling costs should be adopted by the Commission. In that notice, we invited public comment and opinion on the study. A number of comments were received and are under consideration. We are issuing this notice in response to a petition filed by ten rate bureaus requesting expedited handling of the proceeding. This notice is intended to inform participants that the proceeding is under active consideration and that a decision will be issued in the near future.

FOR FURTHER INFORMATION CONTACT: Jane Mackall, (202) 275–7656.

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking served September 10, 1979 (44 FR 53190, September 13, 1979), we initiated a rulemaking to determine whether, and to what extent, the results and proposals in the 1977–1978 study of motor common carriers platform handling costs [2] should be adopted by the Commission. In that notice, we invited public comment and opinion on the study. Comments were received from a number of sources including motor carrier rate bureaus, traffic leagues, and shipper associations.

[1] Formerly docketed as No. 36388.

[2] *1977–1978 Motor Carrier Platform Study*, Statement No. 2S1–79, July, 1979.

The primary purpose of the platform study was to determine differences in direct platform handling time, for individual shipments, related to the characteristics of each shipment, e.g., weight, volume, number of pieces, etc. The results of the study were intended to be incorporated into formulas to determine how the expenses assigned to platforming should be allocated among the various shipments.

Under current costing procedures, platform handling time is presumed to be directly proportional to the weight of the shipment. However, results of the platform study indicate that platform handling time is a function of weight and the number of pieces in a shipment, rather than weight alone. Nevertheless, because information regarding number of pieces per shipment is not now reported to the Commission, it would be impossible to immediately implement a costing procedure which reflects both weight and piece factors. Accordingly, the study proposes implementation of a "short" procedure relying on a "weight alone" formula until such time as the data necessary for the use of the "long" procedure, relying on weight and number of pieces, can be gathered.

On July 20, 1981, the motor carrier rate bureaus listed below,[3] on behalf of their motor common carrier members, filed a pleading in this proceeding styled an administrative appeal. The pleading can more accurately be called and will be treated as a request for expedited handling of this proceeding. The National Small Shipment Traffic Conference, Inc., and the Drug and Toilet Preparation Traffic Conference, Inc. have filed a joint reply.

Since the receipt of the comments in this proceeding, the Commission has been re-evaluating the study in light of the issues raised by the comments. While a few of the comments supported the study, the majority criticized both the study and its proposals. Many of the comments questioned the completeness of the data collected, the validity of the statistical analysis used, and the truth of some of the underlying assumptions on which the study recommendations were based.

Thoughtful consideration of the comments received in this proceeding has taken a significant amount of time. We understand the importance of the issues involved to both shippers and motor common carriers and we recognize the need for prompt implementation of a reasonable method of cost allocation. By the same token, the Commission obviously cannot simply ignore the serious questions raised as to the validity of the 1977–1978 platform study. The Commission is handling this proceeding as expeditiously as possible and we expect to issue a final decision in this proceeding in the near future.

Decided: September 23, 1981.

By the Commission, Chairman Taylor, Vice Chairman Clapp, Commissioners Gresham and Gilliam.

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28257 Filed 9-29-81; 8:45 am]

BILLING CODE 7035-01-M

[3] Rocky Mountain Motor Tariff Bureau, Inc.; Central & Southern Motor Freight Tariff Association, Inc.; Central States Motor Freight Bureau, Inc.; Eastern Central Motor Carriers Association, Inc.; Middle Atlantic Conference; Middlewest Motor Freight Bureau; The New England Motor Rate Bureau, Inc.; Niagara Frontier Tariff Bureau, Inc.; Pacific Inland Tariff Bureau; and Southern Motor Carriers Rate Conference, Inc.

Notices

Federal Register
Vol. 46, No. 189
Wednesday, September 30, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Judicial Review; Meeting

Pursuant to the Federal Advisory Committee Act (pub. L. No. 92–463), notice is hereby given of a meeting of the Committee on Judicial Review of the Administrative Conference of the United States, to be held at 1:30 p.m. Thursday, October 15, 1981 at the office of Covington & Burling, Main Conference Room (11th Floor), 1201 Pennsylvania Avenue, N.W., Washington, D.C.

The Committee will meet to discuss currently pending Federal legislative proposals concerning the amount of deference to be afforded agency determinations on judicial review.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting contact Mary Candace Fowler, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, D.C. (Telephone: 202–254–7065.) Minutes of the meeting will be available on request.

Richard K. Berg,
General Counsel.

September 25, 1981.

[FR Doc. 81–28418 Filed 9–29–81; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tonto National Forest Grazing Advisory Board; Meeting

The Tonto National Forest Grazing Advisory Board will meet November 10, 1981, at 10:00 a.m. at the Payson Ranger Station Office in Payson, Arizona. The purpose of this meeting is to cover the following agenda items:

1. Review expenditures of Range Betterment Funds in Fiscal Year 1981 as authorized by Pub. L. 94–579. Also discuss planned expenditure for Fiscal Years 1982 and 1983.
2. General review including Board recommendations concerning development of Allotment Management Plans.
3. Presentation by Forest officers of progress in developing the Forest Land Management Plan and other items of general interest.
4. Field trip to the Payson Goat Study currently being conducted by Rocky Mountain Forest and Range Experiment Station.

The meeting will be open to the public. Persons who wish to attend should notify James L. Kimball, Supervisor, Tonto National Forest, 102 South 28th Street, Phoenix, Arizona 85038, telephone (602) 261–3205. Written statements may be filed with the Board before or after the meeting.

Oral statements may be made by public attendance when recognized by the Chair.

James L. Kimball,
Forest Supervisor.

September 23, 1981.

[FR Doc. 81–28348 Filed 9–29–81; 8:45 am]
BILLING CODE 3410–11–M

Soil Conservation Service

Bone Creek Watershed, Nebr.; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Albert E. Sullivan, State Conservationist, Soil Conservation Service, Federal Building, Room 345, 100 Centennial Mall North, P.O. Box 82502, Lincoln, Nebraska 68508, telephone 402–471–5300.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bone Creek Watershed, Butler County, Nebraska.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Albert E. Sullivan, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This watershed plan describes a plan of accelerated land treatment and small grade stabilization structures, debris basins, and erosion control dams. Measures of the plan will reduce soil depletion by sheet and rill erosion, increase production, reduce voiding and depreciation of land by gully erosion, reduce flood plain deposition, improve water quality, and reduce sediment yields to the mouth of the watershed and the Platte River.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Albert E. Sullivan. The FNSI has been sent to various Federal, State, and local agencies, and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until October 30, 1981.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: September 18, 1981.

David G. Unger,

Associate Chief, Soil Conservation Service.

[FR Doc. 81-28236 Filed 9-29-81; 8:45 am]

BILLING CODE 3410-16-M

Lower Otter and Dead Creeks Watershed, Vt.; Authorization of Federal Assistance in Installation of Works of Improvement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of authorization of Federal assistance in the installation of works of improvement.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Titchner, Acting State Conservationist, Soil Conservation Service, 1 Burlington Square, Suite 205, Burlington, Vermont 05401, telephone 802-951-6795.

SUPPLEMENTARY INFORMATION: Federal assistance in the installation of works of improvement under the authority of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001-1008) has been authorized for the Lower Otter and Dead Creeks Watershed, Vermont.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Pub. L. 83-566, 16 U.S.C. 1001-1008. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: September 16, 1981.

David G. Unger,

Associated Chief, Soil Conservation Service.

[FR Doc. 81-28230 Filed 9-29-81; 8:45 am]

BILLING CODE 3410-16-M

Moss Neck Watershed, N.C.; Authorization of Federal Assistance in Installation of Works of Improvement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of authorization of Federal assistance in the installation of works of improvement.

FOR FURTHER INFORMATION CONTACT: Mr. Coy A. Garrett, State Conservationist, Soil Conservation Service, 310 New Bern Avenue, Federal Building, Room 544, Raleigh, North Carolina 27611, telephone (919) 755-4210.

SUPPLEMENTARY INFORMATION: Federal assistance in the installation of works of improvement under the authority of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001-1008) has been authorized for the Moss Neck Watershed, North Carolina.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: September 17, 1981.

David G. Unger,

Associate Chief.

[FR Doc. 81-28231 Filed 9-29-81; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee on Agriculture Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), notice is hereby given that the Census Advisory Committee on Agriculture Statistics will convene on October 29, 1981, at 9:15 a.m. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

This Committee was established in 1962 to advise the Director, Bureau of the Census, concerning the kind of information that should be obtained from respondents associated with agricultural production; to prepare recommendations regarding the contents of agricultural reports; and to present the views and needs for data of major agricultural organizations and their members, and other suppliers of agricultural statistics.

The Committee is composed of 20 members appointed by the presidents of the nonprofit organizations having representatives on the Committee, and a representative from the U.S. Department of Agriculture.

The agenda for the meeting, which is scheduled to adjourn at 4:00 p.m. is: (1) introductory remarks by the Director, Bureau of the Census; (2) current Census Bureau activities and legislative budget situation; (3) 1978 Census of Agriculture update; (4) the 1982 Census of Agriculture, including (a) proposed final content and test results, (b) publication program, (c) economic/agriculture data linkage study, and (d) public relations program; and (5) Committee recommendations.

The meeting will be open to the public, and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Mr. Arnold L. Bollenbacher, Chief, Agriculture Division, Bureau of the Census, Room 3015, Federal Building 4, Suitland, Maryland, (Mail address: Washington, D.C. 20233). Telephone (301) 763-5230.

Dated: September 25, 1981.

Daniel B. Levine,

Acting Director, Bureau of the Census.

[FR Doc. 81-28313 Filed 9-29-81; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-588-067]

Carbon Steel Plate From Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On May 7, 1981, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on carbon steel plate from Japan. The review covered the six known manufacturers of carbon steel plate and generally consecutive periods from July 1, 1977 through March 31, 1980.

Interested parties were given an opportunity to submit written comments or request a hearing on these preliminary results. At the request of two interested domestic parties the Department held a hearing on June 19, 1981. Based on comments presented at the hearing and written comments received from Japanese plate producers and domestic interested parties, the Department has clarified the scope of the finding and made adjustments which result in reduced weighted-average margins for three of the plate producers.

EFFECTIVE DATE: September 30, 1981.

FOR FURTHER INFORMATION CONTACT: John Nolan, Alfredo Montemayor, or William L. Matthews, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. (202-377-4347).

SUPPLEMENTARY INFORMATION:

Background

On May 30, 1978, a dumping finding with respect to carbon steel plate from Japan was published in the **Federal Register** as Treasury Decision 78-150 (43

FR 22937). On May 7, 1981, the Department of Commerce ("the Department") published in the **Federal Register** a notice of the preliminary results of its administrative review of the antidumping finding (46 FR 25498). The Department has now completed its administrative review of that finding.

Scope of the Review

Imports covered by this review are shipments of hot rolled carbon steel plate, 0.1875 inches or more in thickness, over 8 inches in width, not in coils, not pickled, not coated or plated with metal, not clad, and not cut, pressed or stamped to non-rectangular shape. Such merchandise is currently classifiable under item 607.6615 of the Tariff Schedules of the United States Annotated (TSUSA).

This review does not include certain heat treated plate manufactured to Caterpillar Tractor Company's proprietary specifications "1E682, 1E893, and 1E1032." On the basis of comments submitted by interested parties, we conclude that plate manufactured to these specifications does not fall within the industry's commonly accepted definition of carbon steel plate and such plate is not within the scope of the finding.

The Department knows of a total of six Japanese firms, identified below, which are engaged in the manufacture and export of carbon steel plate to the United States. This review covers five of them for consecutive time periods from July 1, 1977 through March 31, 1980, and the one other firm for the period April 1, 1978 through March 31, 1980, except certain firms' entries with purchase dates during the period April 1, 1977 through June 30, 1977. These entries will be covered in the next administrative review of the finding.

The preliminary notice incorrectly stated the review included sales of Kansai Steel Ltd. for the period July 1977 through March 1978. In fact, the Customs Service, in accordance with the Antidumping Act of 1921 and part 153 of the Customs Service Regulations, had analyzed Kansai's sales during that period, calculated a weighted-average margin of 7.9%, and issued appraisement instructions in January 1979. The current administrative review for Kansai therefore includes only those sales during the period April 1978 through March 1980.

Analysis of Comments Received

As a result of comments submitted by foreign producers as well as the Department's own analysis, we have adjusted the margins cited in the preliminary notice for 3 of the 6 producers. For Kansai we corrected a clerical error in the preliminary deduction of lighterage and export declaration charges from the purchase price, and revised the freight costs deducted from the foreign market value to reflect more accurately such costs on home market sales of the most similar merchandise. This resulted in a reduction of the final weighted-average margin. For Nippon Kokan the correction of a clerical error in the listing of purchase prices and in the calculation of the credit cost adjustment reduced the final weighted-average margin. Also for Nippon Kokan we reduced the final margin by deleting an adjustment for similar merchandise inappropriately included in the preliminary calculations. Corrections of clerical errors in the preliminary calculations of Sumitomo's weighted-average home market prices altered slightly those prices with an insignificant effect on the final weighted-average margin calculation.

One foreign producer objected that the Department's calculation of weighted-average margins on the basis of quantity was inconsistent with prior administrative practice of calculating on the basis of value. We agree. This formula reduces by approximately 0.5 percent the weighted-average margins stated in the preliminary results.

Certain foreign producers objected to the Department's method of calculating the circumstance of sale adjustment due to differences in credit costs. They claimed the interest earned by the producer on that portion of the export sales price prepaid by the trading company at the time of order placement should be offset only by the amount of interest the producer paid to the trading company in exchange for the prepayment. We disagree with that argument, because it does not fully account for the producer's credit costs. Interest earned by the producer on the prepaid portion of the sales price must be offset not only by the interest the producer pays the trading company for the use of the trading company's money prior to shipment of the order, but also by the interest the producer must pay to finance the balance of the sale which is not prepaid. The Department's method results in a slightly smaller net subtraction from foreign market value than that claimed.

One foreign producer objected to the Department's exclusion in its calculation of foreign market value of Muki grade steel when comparing sales of most similar merchandise in the home market to sales of grade A–36 in the United States. We conclude that grade SS41 is most similar to grade A–36. In cases where sales of grade SS41 exist in sufficient quantities to calculate foreign market value, the Department rejects the suggestion that Muki grade also be included as most similar to grade A–36 sold to the U.S. Muki grade is not as similar as SS41 because Muki is generally not as fully processed as either SS41 or A–36 and, therefore, not "approximately equal in commercial value".

One foreign producer objected to the use of the full time period from July 1977 to June 1978 by the Commerce Department in calculating the weighted-average margin. The producer argued the weighted-average margin and cash deposit rate should be computed based on only the most recent sales during the period. The producer also claimed the lack of margins on those most recent sales, together with the Department's monitoring of all steel product imports under the Trigger Price Mechanism ("TPM"), should provide the Department sufficient assurance that the dumping of carbon steel plate has ceased and is not likely to be resumed in the future. The Department rejects this argument because selected sales, as proposed, do not provide an adequate basis for computing weighted-average margins. The TPM, though useful as a signal to the Department of the likelihood of sales at less than fair value, does not replace the Department's obligation to conduct administrative reviews of all antidumping duty findings, pursuant to section 751 of the Tariff Act of 1930 ("the Tariff Act").

The domestic parties commented that the Department should not allow various adjustments claimed for differences in circumstances of sale. The domestic parties argued that the Department's allowance of claims for adjustments to foreign market value due to differences in credit costs and warranties is impermissible because the Department did not establish a direct causal relationship between the alleged differences in circumstances of sale and any difference between the United States price and foreign market value. In their view, the Department must require proof not only that there are quantifiable differences in circumstances of sale but also that these differences affect the price differential to the extent of the claimed adjustment. With regard to differences in warranties, the domestic parties also stated that the one foreign producer claiming this adjustment established neither the existence of such differences nor their amount. We disagree. All adjustments were made in accordance with

§ 353.15(d) of the Commerce Regulations which states reasonable allowances will be made for the *costs* to the seller of any differences in circumstances of sale. This regulation is consistent with section 773(a)(4) of the Tariff Act, which states that an allowance will be made for any price difference "wholly or partly" due to differences in circumstances of sale. We conclude that the differences in cost constitute a reasonable indication of the differences in price. The Department verified the amounts of warranty and credit costs and considers the claims valid.

The domestic parties disagreed with deductions from foreign market prices for foreign inland freight. The Department maintains that it must deduct freight charges included in delivered home market prices when comparing them with United States prices from which it has deducted all included freight charges.

The domestic parties argued that the Department should use constructed value for four of the respondents, in accordance with section 773(b) of the Tariff Act, because so many sales in the home market were made at less than the cost of production. The argument is predicated entirely upon a private marketing research report commissioned by the domestic parties. The Department's comparison of home market selling prices to the best available cost information indicated sufficient quantities of plate were sold above cost in the home market in all cases.

The Department used as best available cost information an average cost for all producers, developed in the TPM program, adjusted by a factor, derived from the interested domestic parties' market research report, for indexing individual producer's costs in relation to the average cost figure. The Department used data derived from the TPM rather than data from the market research report because the latter lacked sufficient source documentation and explanation of how its estimates of production costs for plate were derived from its cost estimates for producing all steel products. The Department chose to use data from the market research report to determine the indexing factors because the market research report is the only available information on individual company costs. In the absence of any other information, the market research report's estimates of the relative cost experience of each producer appear reasonable.

The Department disagrees with claims by a foreign producer that the Department may not use any portion of the market research report because the report is not properly part of the official record. Those portions of the report used to index individual producer's cost of production in relation to all producers' average cost of production were submitted in a timely fashion and in proper form, with an adequate non-confidential summary, and they are part of the official record.

Final Results of the Review

As a result of adjustments made based on comments received and our subsequent analysis, we determine that the following margins exist:

Manufacturer	Time period	Margin (percent)
Nippon Steel	7/1/77-6/30/78	0
	7/1/78-3/31/80	[1] 0
Nippon Kokan	7/1/77-6/30/78	2.81
	7/1/78-3/31/80	[1] 2.81
Kawasaki	7/1/77-6/30/78	0
	7/1/78-3/31/80	[1] 0
Kobe Steel Ltd	7/1/77-6/30/78	[1] 0
	7/1/78-3/31/80	0
Sumitomo Metal	7/1/77-6/30/78	2.30
	7/1/78-3/31/80	[1] 2.30
Kansai, Ltd	4/1/78-3/31/80	.93

[1] No shipments during the period.

The Department shall determine, and the U.S. Customs Service shall assess, duties on all entries made by these firms, if appropriate, with purchase dates during the periods involved. Individual differences between purchase price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions separately on each exporter directly to the Customs Service.

Further, as required by § 353.48(b) of the Commerce Regulations, a cash deposit based on the most recent of the margins calculated above shall be required on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results. For any shipment from a new exporter not covered in this administrative review, unrelated to any covered firm, a cash deposit shall be required at the highest rate for responding firms with shipments during the most recent period. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department intends to conduct the next administrative review by the end of May 1982.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Leonard M. Shambon,

Director, Office of Compliance.

September 23, 1981.

[FR Doc. 81-28244 Filed 9-29-81; 8:45 am]

BILLING CODE 3510-25-M

Parts for Self-Propelled Bituminous Paving Equipment From Canada; Clarification of Scope and Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Clarification of Scope and Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: The Department of Commerce is clarifying the scope of the antidumping finding on parts for self-propelled bituminous paving equipment from Canada, and has conducted an administrative review of that finding. Clarification is necessary due to confusion as to whether the finding includes attachments to such paving equipment and whether it applies only to parts sold for replacement purposes. The review covers six of the seven known exporters of this merchandise to the United States for various periods through August 31, 1980. The review indicates the existence of dumping margins in particular periods for certain exporters.

As a result of this review, the Department has preliminary determined to assess dumping duties for individual exporters equal to the calculated differences between United States price and foreign market value on each of their shipments during the periods of review. The Department also determined a deposit rate for the seventh firm, a new shipper, whose shipments have occurred after August 31, 1980.

Where company-supplied information was inadequate or no information was received, the Department has used the best information available. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 30, 1981.

FOR FURTHER INFORMATION CONTACT:

Mr. Brian Kelly or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, (202-377-2923/2657).

SUPPLEMENTARY INFORMATION:

Procedural Background

On September 7, 1977, the Treasury Department published in the **Federal Register** (42 FR 44811) an antidumping finding with respect to "parts for self-propelled bituminous paving equipment from Canada" (T.D. 77-222). On January 1, 1980, the provisions of title I of the Trade Agreements Act of 1979 became effective. Title I replaced the provisions of the Antidumping Act of 1921 ("the 1921 Act") with a new title VII to the Tariff Act of 1930 ("the Tariff Act"). On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Department of the Treasury to the Department of Commerce ("the Department"). The Department published in the **Federal Register** of March 28, 1980 (45 FR 20511-20512) a notice of intent to conduct administrative reviews of all outstanding dumping findings. As required by section 751 of the Tariff Act, the Department has conducted an administrative review of the finding on parts for self-propelled bituminous paving equipment ("paver parts") from Canada. The substantive provisions of the 1921 Act and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Clarifications

The Department's decision as to whether a particular imported product is of the class or kind covered by an antidumping duty order may be based on several factors, including general physical characteristics, the expectations of the ultimate purchaser, the channels of trade in which the merchandise moves, the manner in which the merchandise is advertised and displayed, and the ultimate use of the merchandise in question.

The first clarification concerns attachments to bituminous paving equipment. Components which could be attached to a completed machine, and which were not vital to the machine's functioning, were not considered at the time of the original fair value investigation for there were no imports of such merchandise from Canada; attachments were not included in the parts lists submitted to the Treasury Department and the International Trade Commission ("the ITC") by the petitioner. The Treasury Department and the ITC based their subsequent determinations only on parts integral to completed machines.

Attachments serve a different function from such integral parts, enhancing the performance of a completed machine rather than forming part of the original machine. The motivation for purchasing an attachment therefore differs from that for purchasing integral parts, the latter being necessary to keep a machine operating. This difference in function, together with the limitation of the fair value investigation to parts included in the original equipment, leads us to exclude attachments from the class or kind of merchandise covered by the finding. Attachments shall be defined as merchandise not generally included in original equipment at the time of entry of the attachment, not necessary to the operation of the completed machine, and attachable to the completed machine without extensive machine disassembly. The Department shall determine on a case-by-case basis whether a particular component is an attachment, and inform the Customs Service in each instance of an exclusion from the finding.

The second clarification involves integral parts other than replacement parts for existing machines, that is, parts used in original equipment manufacture or sample parts. The antidumping petition, brought by an original equipment manufacturer and a parts distributor, was titled "Replacement Parts for Bituminous Paving Equipment Exported from Canada". The product description was entirely for replacement parts, and the petition noted the "request is directed to original equipment replacement parts". The scope of the investigations by the Treasury Department and the ITC was determined by the manufacturer's list of replacement parts.

Throughout the investigation the terms "parts" and "replacement parts" were used interchangeably, and the record suggests that neither the Treasury Department nor the ITC considered the possibility of parts being imported for incorporation into original equipment.

The ultimate uses of the merchandise are clearly differentiable between replacement of parts on existing machines and other uses, such as original equipment manufacture. The original petition sought relief only for the replacement parts industry, and the original investigations considered only the possibility of less-than-fair-value sales of replacement parts and injury of replacement parts manufacturers. The Department concludes that the class or kind of the merchandise is restricted to replacement parts. Therefore, the word "replacement" shall be included in the definition of paving equipment parts subject to this antidumping finding in order to describe more accurately the scope of the investigation and the administrative determination. The title of the finding shall be "Replacement parts for bituminous paving equipment from Canada."

Scope of the Review

Imports covered by this review are shipments of replacement parts for self-propelled bituminous paving equipment.

The Department knows of a total of 7 Canadian firms engaged in the manufacture and exportation of paver parts to the United States. For 6 firms this review covers various periods through August 31, 1980.

For one firm, a new shipper, we have determined a cash deposit rate based on its shipments in the period February 1, 1981, through May 31, 1981. The firms and review periods are listed below.

Two exporters failed to provide sufficient information to allow evaluation of their entries. For these firms we have proceeded to use the best information available to determine the assessment and estimated deposit rates. The best information available is the highest current rate among all responding firms with shipments, which is 13.73%.

Two firms indicated that they exported no replacement parts during the review period, but did export parts for original equipment manufacture. In requiring a cash deposit on future shipments of paver parts, the U.S. Customs Service will not be able to distinguish among parts by final use. For these two firms, the Customs Service shall withhold appraisement pending publication of the final results of our next section 751 review. However, we are waiving the requirement for cash deposit for these two firms. This waiver of deposit shall remain in effect until the next administrative review.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price, as defined in section 772 of the Tariff Act or section 203 or 204 of the 1921 Act, as appropriate.

Purchase price was based on the packed price to an unrelated purchaser in the United States. Exporter's sales price was based on the packed price to the first unrelated purchaser in the United States. Where applicable, deductions were made for U.S. and foreign inland freight, brokerage charges, U.S. duty, discounts, commissions to unrelated parties, and selling expenses, in accordance with § 353.10 of the Commerce Regulations. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, or constructed value when sufficient sales did not exist in the home market or to purchasers in third countries, all as defined in section 773 of the Tariff Act or section 205 or 206 of the 1921 Act. The foreign market values were adjusted, where applicable, for inland freight, discounts, commissions paid to unrelated parties, and other selling expenses to offset U.S. selling expenses, in accordance with § 353.15 of the Commerce Regulations and § 153.10 of the Customs Regulations.

Constructed values were calculated as the sum of materials, fabrication costs, general expenses, and profit. The amount added for general expenses constituted at least ten percent of the sum of material and fabrication costs. Profit was calculated at eight percent of the sum of all general expenses and cost.

In calculating the constructed value for this preliminary notice the Department used the general expenses reported by S. F. Tubing Ltd. Prior to issuing the final determination the Department will clarify certain issues relating to these expenses.

Preliminary Results of the Review

As a result of our comparison of United States price with foreign market value, we preliminarily determine that the following margins exist:

Manufacturer or exporter	Time period	Margin (percent)
Anvil Manufacturing Co	7/1/78-8/31/80	13.73
Babcock Allatt, Ltd	12/1/78-8/31/80	0
Barber-Greene Canada Ltd	4/1/77-8/31/80	[1]0
General Construction Equipment Manufacturing Ltd	4/1/77-8/31/80	[1]0
Parker Hannifin	7/1/78-8/31/79	[1]0
	9/1/79-8/31/80	13.73
S. F. Tubing, Ltd	7/1/78-8/31/80	13.73

[1] No exports of replacement parts during the review period.

Interested parties may submit written comments on these preliminary results on or before October 30, 1981, and may request disclosure and/or a hearing on or before October 15, 1981. Any request for an administrative protective order must be made on or before October 5, 1981. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, duties on all entries made with purchase dates or export dates as appropriate, during the time periods involved.

Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions separately on each exporter directly to the Customs Service.

Further, as required by § 353.48(b) of the Commerce Regulations a cash deposit based upon the most recent of the margins calculated above shall be required on all shipments by these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. Because the paving parts exported by Barber-Greene and General Construction are outside the scope of the finding, the Department shall not require cash deposits on their shipments. The deposit rate for the new exporter, National Paver Parts, shall be 1.05%, based on our analysis of shipments made between February 1, 1981, and May 31, 1981. Any duties due on these shipments shall be determined in the next administrative review. For any shipment from a new exporter not covered in this administrative review, unrelated to any covered firm, a cash deposit shall be required at the highest rate for responding firms with shipments during the most recent period. This requirement, and the waiver for Barber-Greene and General Construction, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with § 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

September 18, 1981.

[FR Doc. 81-28245 Filed 9-29-81; 8:45 am]

BILLING CODE 3510-25-M

Fourth Quarter Steel Trigger Price Mechanism Price Manual Corrections

AGENCY: International Trade Administration, Commerce.

ACTION: Corrections in the stainless steel wire coverage as published in the Fourth Quarter, 1981 TPM Price Manual.

SUMMARY: The Department of Commerce publishes a quarterly price manual for steel products covered by the trigger price mechanism (TPM) as well as Federal Register notices announcing coverage changes. This notice is to correct errors in the coverage for stainless steel wire in the *Fourth Quarter, 1981 TPM Price Manual.*

FOR FURTHER INFORMATION CONTACT: Stanley P. Gustafson, Agreements Compliance Division, Office of Compliance, Room 1001, Department of Commerce, Washington, D.C. 20230, (202) 377-3529.

SUPPLEMENTARY INFORMATION: On August 20, 1981 (46 FR 42316) the Department announced trigger prices for the fourth quarter of 1981. This notice incuded copies of pages 16-20 through 16-30 from the price manual covering stainless steel wire. The prices listed in that notice were correct. The prices announced in the notice were then incorporated into the *Fourth Quarter, 1981 TPM Price Manual* available to the public from the Publications Sales Branch, Room 1617, U.S. Department of Commerce, Washington, D.C., 20230 for $10.00. The stainless steel wire prices on pages 16-20 through 16-30 in the published manual are in error. Please refer to the August 20, 1981 Federal Register notice for the proper pricing.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 81-28357 Filed 9-29-81; 8:45 am]

BILLING CODE 3510-25-M

Steel Trigger Price Mechanism Product Coverage

AGENCY: International Trade Administration, Commerce.

ACTION: Announcement of the Department of Commerce's action on requests for expansion and deletion of trigger price coverage.

SUMMARY: The Department of Commerce announces that two requests to delete trigger price coverage have been denied. The requests applied to galvanized sheets and coils in thicknesses less than .015 inches and over 42 inches wide, and hot rolled sheet and band less than 76 inches wide.

FOR FURTHER INFORMATION CONTACT: Joda C. Taylor, Agreements Compliance Division, Office of Compliance, Room 1001, Department of Commerce, Washington, D.C. 20230, (202) 377-5287.

SUPPLEMENTARY INFORMATION: The Department of Commerce has announced requests for changes in trigger price product coverage on October 21, 1980 (45 FR 69527), November 20, 1980 (45 FR 76722), January 27, 1981 (46 FR 8637), June 16, 1981 (46 FR 31461), and September 14, 1981 (46 FR 45665). The Department is hereby announcing decisions on two of the requests in the June 16, 1981, notice.

I. Deletion of Coverage on Galvanized Sheets and Coil in Widths Over 42 Inches and in Thicknesses Less Than 0.015 Inches.

A consumer and importer of galvanized sheets and coils stated that trigger prices had the effect of raising costs of such products which were not available from U.S. manufacturers. Comments opposing the proposal received by the Department indicated that such a product was available from U.S. manufacturers and the trigger price coverage was effective in allowing the development of similar competitive products. No comments favoring the proposal were received.

The Department feels that the information presented in the comments has merit. Our inquiries verify that such products are available in the domestic market. We are also aware that at least one U.S. producer has developed and is now beginning to market a product competitive with the lighter gauges of galvanized sheet and coils.

The request the TPM price coverage for galvanized sheets and coil in widths over 42 inches and in thicknesses less than 0.015 inches be deleted is therefore denied.

II. Deletion of Coverage on Hot Rolled Sheet and Band Less Than 76 Inches Wide.

A foreign manufacturer and shipper of these products to the United States states that they are not aware of U.S. production in widths over 76" so the possibility of injury does not exist. Opposing commenters indicate that such a product is produced in the U.S., and the ease of slitting flat rolled products into narrow widths make acceptance of the proposal tantamount to deletion of all coverage in these product lines. No comments favoring the proposal were received.

Because the Department feels the arguments opposing deletion have merit, it is denying the request that TPM price coverage for hot rolled sheet and band less than 76 inches wide.

Dated: September 24, 1981.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 81-28356 Filed 9-29-81; 8:45 am]

BILLING CODE 3510-25-M

President's Export Council; Inaugural Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended 5 U.S.C. App. (1976), notice is hereby given that a business meeting of the President's Export Council will be held on Thursday, October 15, after a swearing-in ceremony for the newly appointed members at the White House. The meeting will be at 1:00 p.m., in Room 4830, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. the President's Export Council was established by Executive Order 11753 of December 20, 1973. The Council was reconstituted by Executive Order 12131 of May 4, 1979 and continued by Executive Order 12258 of December 31, 1980. The Council's purpose is to advise the President on matters relating to United States export trade.

The agenda of the meeting is as follows:

Opening Comments, Welcoming Remarks—Chairman, J. Paul Lyet; Vice Chairman, Anna C. Chennault
Remarks on current trade situation and Administration's Program—Secretary of Commerce, Malcolm Baldridge.
Presentation on status of previous Council recommendations—Executive Director and Under Secretary, Lionel H. Olmer
Organizational Business, Establishment of Executive Committee
Establishment of subcommittees
General discussion of topics to be addressed during the council's tenure
Closing comments, announcements and plans for next meeting.

The meeting is open to the public with a limited number of seats available on a first come, first served basis. The public may file written statements with the Council before and after the meeting. To the extent time permits, oral statements and comments by the public will be welcomed at the end of the meeting.

Copies of the minutes of the meeting and further information concerning the President's Export Council may be obtained from Ms. Elizabeth Ruskin or Mr. Jeffrey Jackson, Room 1215, U.S. Department of Commerce, Washington, D.C. 20230. Telephone (202) 377-1125.

Dated: September 24, 1981.

Donald V. Earnshaw,

Deputy Assistant Secretary for Export Development, U.S. Department of Commerce.

[FR Doc. 81-28280 Filed 9-29-81; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Receipt of Permit Modification Request

Notice is hereby given that Mr. Brent Stewart, Field Biologist, Hubbs Sea World Research Institute, 1700 South Shores Road, Mission Bay, San Diego, California 92109, has requested a modification to Scientific Research Permit No. 341 issued to him on June 4, 1981 (46 FR 30679), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the taking and Importing of Marine Mammals (50 FR Part 216).

Mr. Stewart is requesting a modification to his permit to authorize the following additional activities and animals:

1. To tag as well as bleach or paint mark the 1,000 Northern elephant seals presently authorized to be marked.

2. To tag an additional 3,800 Northern elephant seals on San Nicolas Island.

3. To tag an additional 3,800 Northern elephant seals on San Miguel Island.

4. To tag a total of 800 Northern elephant seals on San Clemente, Santa Rosa, Santa Cruz, and Santa Barbara Islands.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, on or before October 30, 1981. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application and modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above request are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: September 24, 1981.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 81-28402 Filed 9-29-81; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Withdrawal of Automated Data Processing and Keyboarding From Schedule of Reviews

Notice is hereby given pursuant to Office of Management and Budget (OMB) Circular A-76, paragraph 9cl, Calculating Cost of Government Operations, and paragraph D of Chapter 1 of Supplement No. 1, that the National Technical Information Service (NTIS) intends to remove Automated Data Processing and Keyboarding from its schedule of reviews published in the Federal Register July 25, 1980.

Factors influencing this removal are the joint effort to consolidate the NTIS computer operation facility with the facilities of the Office of the Secretary and the Census Bureau, and a management improvement plan to change from keyboarding data in a batch-oriented operation in a single location to an on-line keying operation spread throughout NTIS. These actions will significantly change the structure and operating methods of the functions involved. For further information contact Martin Snyderman, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Phone (703) 487-4610.

Melvin S. Day,

Director.

[FR Doc. 81-28246 Filed 9-29-81; 8:45 am]

BILLING CODE 3510-04-M

DELAWARE RIVER BASIN COMMISSION

Applications for Approval of Projects; Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Tuesday, October 6, 1981, commencing at 1:30 p.m. The hearing will be a part of the Commission's regular October business meeting, which is open to the public. Both the hearing and the meeting will be held in the Reidy Room at the Shawnee Inn, Shawnee-on-Delaware, Pennsylvania. The subject of the hearing will be applications for approval of the following projects as amendments to the Comprehensive Plan pursuant to Article 11 of the Compact and/or as project approvals pursuant to Section 3.8 of the Compact.

1. *Washington Township Municipal Utilities Authority (D-80-60 CP).* A well water supply project to serve a portion of Washington Township, Gloucester County, New Jersey. Well No. 9, with a capacity of 1.4 million gallons a day, would be used to supplement supplies from existing wells to serve the increasing population in the Township.

2. *Borough of Orwigsburg (D-81-12 CP).* A well water supply project to augment public water supplies in the Borough of Orwigsburg, Schuylkill County, Pennsylvania. Designated as Well No. 2, the new facility is expected to yield approximately 216,000 gallons per day. The new well will replace an existing reservoir supply which must be abandoned.

3. *Elizabethtown Water Company (D-81-17 CP).* An increased water allocation for the Company's service area in West Windsor, Plainsboro and Lawrence Townships, Mercer County, New Jersey. Withdrawals from two existing wells, designated as Wells Nos. 1 and 2, will be increased from the present 300,000 gallons per day to about 1.7 million gallons per day.

4. *Charles J. Huether—Pine Brook Development and Greater Pottsville Industrial Development Corporation (D-80-69 Revised).* A sewage treatment project to serve the Pine Brook Development and the Greater Pottsville Industrial Development park in the Township of West Brunswick, Schuylkill County, Pennsylvania. The facility will provide approximately 88% removal of BOD from a wastewater flow of about 120,000 gallons per day. Treated effluent will discharge to Pine Creek, a tributary of the Schuylkill River.

5. *American Argo Corporation (D-81-13).* A well water supply project to provide a new water supply at the company's Willow Lake plant in Schuylkill Haven, Schuylkill County, Pennsylvania. Designated as Wells Nos. 3 and 5, the new facilities will be utilized to provide about 230,000 gallons per day for use in plant operations. The project will serve as a standby water supply source to be used if supplies from Schuylkill Haven Borough are curtailed due to drought conditions.

6. *Stone Bridge Sewer Company, Inc. (D-81-47).* A sewage treatment project to serve the Stone Bridge residential development in Bedminster Township, Bucks County, Pennsylvania. Sewers, two pumping stations and a treatment plant will be constructed to handle a sewage flow of about 100,000 gallons per day. About 90%, of BOD will be removed. Treated effluent will discharge to Deep Run, which enters Tohickon Creek downstream of Nockamixon State Park.

7. *Rolling Green Golf Club (D-81-59).* A golf course irrigation project involving increased surface water withdrawals from Lake Iliff, Andover Township, Sussex County, New Jersey. Withdrawals from the lake would be limited to 10.9 million gallons per month and to periods when the flow from the lake is in excess of 135 gallons per minute.

Documents relating to the above-listed projects may be examined at the Commission's offices. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the date of the hearing.

W. Brinton Whitall,

Secretary.

September 22, 1981.

[FR Doc. 81-28233 Filed 9-29-81; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Office for Civil Rights

Annual Operating Plan for Fiscal Year 1982

AGENCY: Department of Education.

ACTION: Request for comments on annual operating plan for fiscal year 1982.

SUMMARY: The Secretary of Education invites comments on the proposed FY 1982 Annual Operating Plan for the Office for Civil Rights.

DATE: Interested persons are invited to submit comments, suggestions, and objections regarding the proposed plan on or before November 16, 1981.

ADDRESS: Written comments should be addressed to Clarence Thomas, Assistant Secretary for Civil Rights, Department of Education (Room 5000, Switzer Building), 400 Maryland Avenue SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Judith Moss Daidy, (202) 426-6917.

SUPPLEMENTARY INFORMATION: The basic purpose of the Office for Civil Rights (OCR) is to ensure that no person is unlawfully discriminated against by recipients of Federal education funds in the delivery of services or the provision of benefits on the basis of race, national origin, handicap, sex or age. The jurisdictional authorities under which OCR operates include Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

Covered under these authorities are 50 State education agencies, 16,000 local education agencies, 3,200 institutions of higher education, 50 State rehabilitation agencies and their sub-recipients, as well as other institutions such as libraries and museums which receive financial assistance from the Department of Education (ED). The job of protecting the civil rights of 12 million

minority group members, 4 million handicapped persons and 26 million women who attend public schools or postsecondary institutions rests almost exclusively with OCR, as does the responsibility of guaranteeing these rights for future students.

OCR's strategy to ensure compliance with Federal civil rights statutes involves two basic types of activities: compliance activities and technical assistance activities. Nearly all of OCR's compliance activities (complaint investigations, compliance reviews, *Lau* plan monitoring, and monitoring State higher education system desegregation) are required by various statutes, regulations and court orders. OCR has some discretion, however, as to where it will conduct its compliance review activities and what issues those reviews will cover. OCR concentrates these investigative activities on those recipients which are believed to be in serious noncompliance with major civil rights requirements, primarily identified by OCR civil rights compliance survey data.

Through the transfer of information, material and skills, OCR encourages recipients to voluntarily comply with, and beneficiaries to understand their rights under, Federal civil rights statutes. OCR staff, including headquarters staff and the Regional Technical Assistance Staff, ED program office staff and contracted personnel are the major vehicles used by OCR to deliver technical assistance.

It should be noted that the activities planned by OCR in FY 1982 and outlined below are activities consistent with the FY 1982 ED budget as it exists at the time this plan is being prepared. Action on the FY 1982 ED budget has not been completed by Congress and should events change, resulting in the need to revise this plan, such revisions will be shown in OCR's final FY 1982 Annual Operating Plan to be published before December 31, 1981.

The following narrative and tables describe the activities that OCR plans for FY 1982.

I. Regional Investigatory Activities

A total of 371 investigative staff years will be assigned to compliance and enforcement work in FY 1982 as follows:

	Investigator time	
	Staff years	Percentage
Complaint investigations	285	77
Compliance reviews	53	14
Lau monitoring	10	3
Adams monitoring	18	5
Other monitoring	5	1
Total	371	100

A. Complaint Investigations

Table 1, below, shows projected complaint receipts, closures, and opening and ending inventories by jurisdiction. In order to determine the level of investigative staff resources required to process these complaints, the following projections were made.

—OCR will have a pending caseload of 1,800 complaints as of October 1, 1981.

—During FY 1982, OCR will receive 3,592 complaints.

—During FY 1982, OCR will close 3,592 complaints.

—OCR will have a pending caseload of 1,800 complaints as of October 1, 1982.

Based on these projections, 285 investigator years will be allocated to complaints.

B. Compliance Reviews

A total of 53 investigator years will be available to conduct compliance reviews in FY 1982. This activity will include completing reviews started in previous years and initiating new reviews.

The issues to be covered in the reviews conducted during fiscal year 1982 are presented in Table 2, below. These issues were identified on the basis of survey results, findings from previous complaint investigations and compliance reviews, and related research findings. Table 2 also indicates the number of investigator years to be assigned to each issue. Shortly after the beginning of each quarter of fiscal year 1982, OCR will make available to the public, upon request, information on the specific types of compliance reviews it will initiate during that quarter.

C. Monitoring Activities

During fiscal year 1982, OCR will review recipients to determine whether they are complying with the terms of compliance agreements. These activities will include *Adams* higher education desegregation and *Lau* plan monitoring.

1. *Adams* Higher Education Desegregation Plan Monitoring—OCR is currently monitoring higher education desegregation plans of six States. In fiscal year 1982, 18 investigator years will be allocated to monitoring the desegregation activities of 15 States.

2. *Lau* Plan Monitoring—OCR is required to monitor the implementation of *Lau* plans by recipients. In fiscal year 1982, 10 investigator years will be allocated to monitoring approximately 50 such plans.

3. Other Monitoring—OCR will pursue other monitoring activities in fiscal year 1982 which include reviewing the oversight activities of 56 States and Territories concerning the civil rights compliance of their vocational education sub-recipients. OCR will also monitor remedial action plans resulting from its own investigations and reviews conducted in previous years. It is projected that these activities will consume five investigator years.

D. Summary

Table 3 summarizes the allocation of investigator years by recipient group. Table 4 summarizes the allocation by jurisdiction.

II. Technical Assistance Activities

Over 20,000 education institutions which receive Federal funds must comply with a number of complex civil rights requirements. Because of the numbers involved, OCR is unable to investigate the policies or practices of each recipient. In order to encourage these institutions to voluntarily comply with the law, OCR, either through headquarters or regional staff, provides technical assistance to recipients and works with ED program staff to help recipients understand their civil rights obligations. These assistance activities serve as an integral part of OCR's compliance activities by extending the range of OCR's impact beyond those recipients who are directly covered by an OCR investigation and by enabling OCR to accomplish its mission more efficiently and effectively. By combining a forceful compliance review program with an effective assistance program, OCR will be able to make substantial progress toward achieving broad compliance with civil rights statutes.

During fiscal year 1982, OCR will plan and coordinate efforts to implement expanded technical assistance activities with State and local education agencies. Our intent is to increase the States' capacity to address civil rights compliance concerns; to provide accurate compliance related information; to utilize innovative techniques, planning the training; and to foster voluntary compliance on civil rights matters among its local education agencies. OCR believes that this strategy will greatly increase the impact of its technical assistance program. OCR also expects to work very closely with State officials or their delegated agencies to increase the States' ability to participate in compliance negotiations. OCR will also solicit the support of ED program offices, professional organizations, educational associations, civil rights groups and consumer agencies in this effort.

III. Program Management Activities

In order to effectively carry out its compliance, enforcement and technical assistance activities, OCR conducts a comprehensive legal, management and evaluation program that includes:

—Formulating regulations, policies and investigation manuals;

—Providing technical guidance on cases and reviews referred from regional offices;

—Conducting hearings before Administrative Law Judges on the compliance of Federal fund recipients with civil rights requirements;

—Monitoring State higher education desegregation and *Lau* plans;

—Meeting with school district representatives, college and university officials, complainants and civil rights groups to discuss OCR activities;

—Conducting OCR national surveys and data collection projects to obtain information on recipients and beneficiary populations;

—Operating a data base management system to assure that complaint processing time frames are met;

—Providing basic training to new investigators as well as training on policy initiatives for experienced investigators and legal staff; and

—Conducting systematic on-site reviews of technical assistance contractors' activities.

Table 1.—*Fiscal Year 1982 Annual Operating Plan*

[Projected Fiscal Year 1982 Complaint Workload]

	Title VI—Race/National Organization	Title IX	Section 504	Age	Total
Pending October 1, 1981	342/72	504	864	18	1,800
Fiscal Year 1982 Projected Receipts	682/144	575	2119	72	3,592
Fiscal Year 1982 Closures (total)	754/144	647	2011	36	3,592
Pending October 1, 1982	270/72	432	972	54	1,800

Note.—The 10/1/81 projected pending complaint caseload was distributed in proportion to the complaint distribution existing as of 3/31/81. Projected FY 1982 receipts were distributed according to the proportions each jurisdiction represented in the complaints received from 10/1/80 to 3/31/81. Similarly, the projected FY 1982 closures were distributed according to the proportions each jurisdiction represented in the closures occurring between 10/1/80 and 3/31/81.

Table 2.—*Fiscal Year 1982 Annual Operating Plan*

Compliance Reviews Scheduled

Issue	Description of violation	Investigator years planned
ELEMENTARY AND SECONDARY EDUCATION		
Within School Discrimination: Classroom Assignments, Tracking and Ability Grouping, Special and Physical Education and Secondary School Athletics.	Discriminatory assignment of students on the basis of race, national origin, sex, and/or handicap to courses (including industrial arts and home economics), classrooms, special programs, ability groups, and physical education programs. (Special programs would include those for the educable mentally retarded as well as those for the gifted or talented, e.g., advanced mathematics or science.) This issue would also cover biased counseling and appraisals of students as well as unequal opportunities involving athletics.	13
Vocational Education: Access, Admissions and Job Placement	Discrimination on the basis of race, national origin, sex and/or handicap in vocational education programs and courses.	4
Special Purpose Schools: Program Availability and Least Restrictive Environment.	Discrimination in admissions, accessibility, treatment or employment in State administered special purpose schools on the basis of race, national origin, sex and/or handicap.	4
Unserved Special Education	Discrimination in the provision of a free and appropriate education on the basis of handicap	3
School Segregation	Discriminatory assignment of students to schools on the basis of race or national origin	2
Identification of and Services to Limited English Proficient (LEP) Children.	Discrimination against non-English speaking (NES) or limited English proficient (LEP) Children	4
School Discipline: Expulsions and Suspensions	Discriminatory disciplinary treatment of students on the basis of race, national origin, sex and/or handicap	2
POSTSECONDARY EDUCATION		
Program Accessibility for the Handicapped	Lack of Program accessibility and accommodations for handicapped students in postsecondary school programs.	3
Graduate and Professional Schools: Admissions	Discrimination on the basis of sex, race and/or national origin in admissions to graduate and professional schools.	5
Intercollegiate Athletics: Overall Program Equality	Lack of comparable intercollegiate athletic facilities and programs for women based on their interests and abilities.	1
Vocational Education: Access, Admissions and Job Placement	Discrimination on the basis of race, national origin, sex and/or handicap in vocational education programs and courses.	4
Student Services	Discriminaton on the basis of race, national origin, sex and/or handicap in the provision of services such as financial aid, housing, counseling and tutorial services, health services and insurance benefits, and/or student employment and placement services.	4
Vocational Rehabilitation Services	Discrimination in the provision of services and benefits to severely mentally and physically handicapped individuals, and/or discrimination on the basis of race, national origin and/or sex in the provision of educational services and benefits.	4

Table 3.—*Fiscal Year 1982 Annual Operating Plan*

[Investigator years allocated to each type of recipient]

Type of recipient	Complaints	Compliance reviews	Monitoring			Total	Percent
			Adams	Lau	Other		
Elementary and secondary schools	200	32	0	10	3	245	66
Postsecondary education institutions	85	21	18	0	2	126	34
Total	285	53	18	10	5	371	100

Table 4.—*Fiscal Year 1982 Annual Operating Plan*

[Investigator years allocated to each jurisdiction]

Jurisdiction	Complaints	Compliance reviews	Monitoring			Total	Percent
			Adams	Lau	Other		
Title VI:							
Race	60	8	18	0	1	87	23
National origin	11	11	0	10	1	33	9
Title IX	51	15	0	0	2	68	19
Section 504	160	19	0	0	1	180	48
Age	3	0	0	0	0	3	1
Total	285	53	18	10	5	371	100

IV. Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed plan. Written comments and recommendations may e sent to the address given at the beginning of this document. All comments received on or before the end of the comment period will be considered in the development of the final plan.

All comments submitted in response to the proposed plan will be available for public inspection, during and after the comment period, at the Department of Education, Room 4094 Switzer Building, 330 C Street, S.W., Washington, D.C., between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday of each week except Federal holidays.

Dated: September 24, 1981.

T. H. Bell,

Secretary of Education.

[FR Doc. 81-28259 Filed 9-29-81; 8:45 am]

BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Industry Advisory Board to the International Energy Agency; Meeting

Notice is hereby provided of a meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA), which will be held on October 7 and 8, 1981, at the offices of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning at 10:00 a.m. on October 7. The purpose of this meeting is to permit representatives of members of the IAB to consult with representatives of IEA Participating Country Governments and representatives of the IEA Secretariat concerning IEA preparedness for supply disruptions. Participation of IAB members at this meeting has been requested by the Chairman of the IEA Governing Board and the Executive Director of the IEA, and is regarded as valuable by the Departments of State and Energy.

The agenda for the meeting is under the control of the IEA and the IEA Participating Governments. It is expected that the following subjects will be discussed:

1. Monitoring for periods of market tension.
2. Information systems.
3. Stand-by measures for a sub-crisis.
4. Emergency reserve requirements.
5. Crude oil pricing under disrupted supply.
6. Government-industry relations.

This meeting will not be open to the public.

Issued in Washington, D.C., September 24, 1981.

Craig S. Bamberger,

Assistant General Counsel, International Trade and Emergency Preparedness.

[FR Doc. 81-28373 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Fletcher Oil and Refining Co., Inc.; Action Taken on Consent Order; Correction

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on consent order—correction.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces notice of a correction to the **Federal Register** Notice published on August 28, 1981, which gave notice of a Consent Order issued as signed.

DATE: September 23, 1981.

FOR FURTHER INFORMATION CONTACT: Stanley S. Mills, Program Manager for Entitlements, Office of Enforcement, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-3548.

SUPPLEMENTARY INFORMATION: On July 10, 1981, 46 FR 35727 (1981), the Office of Enforcement of the ERA published notification in the **Federal Register** that is had executed a Consent Order with Fletcher Oil and Refining Company, Inc. (Fletcher) on June 1, 1981. Interested persons were invited to submit comments concerning the terms, conditions or procedural aspects of the Consent Order.

On August 28, 1981, the Office of Enforcement of the ERA erroneously published notification in the **Federal Register**, "Although interested persons were invited to submit comments regarding the Consent Order, no comments were received." One comment, however, was received. The commentor recommended that the refunds be distributed pursuant to the special refund procedures, 10 CFR Part 205, Subpart V. The commentor further suggested that the Fletcher refunds be aggregated with other crude oil refunds and be distributed on a volumetric basis to all consuming groups. The Office of Enforcement has carefully reviewed the commentor's recommendations, but has not yet made a determination concerning the disposition of the Fletcher refunds. Since the comments do not address the terms or conditions of the Fletcher Consent Order, but recommend subsequent action to be taken, the Office of Enforcement has determined that the settlement with Fletcher should not be disturbed.

Issued in Washington, D.C., on the 23rd day of September, 1981.

Robert D. Gerring,

Director, Program Operations Division, Economic Regulatory Administration.

[FR Doc. 81-28248 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP81-137-000]

Algonquin Gas Transmission Co.; Change Pursuant to Rate Schedule STB Provision

September 22, 1981.

Take notice that on September 2, 1981, Algonquin Gas Transmission Company

tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Third Revised Sheet No. 10–C
First Alternate Third Revised Sheet No. 10–C
Second Alternate Third Revised Sheet No. 10–C
Third Alternate Third Revised Sheet No. 10–C
Second Revised Sheet No. 32
First Alternate Second Revised Sheet No. 32
Second Alternate Second Revised Sheet No. 32
Third Alternate Second Revised Sheet No. 32

Algonquin Gas states that Sheet No. 10–C is being filed to reflect in its Rate Schedule STB Rates increased Alternative Rate Schedule SS–II Rates filed by its supplier, Texas Eastern Transmission Corporation, ("Texas Eastern") in Docket No. RP81–109.

Algonquin Gas states that Sheet No. 32 is being filed to reflect in Section 5.4 of Algonquin Gas' Rate Schedule STB the Basic Withdrawal Quantity Adjustment required under Texas Eastern's Alternative SS–II rates.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before Oct. 6, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81–28281 Filed 9–29–81; 8:45 am]

BILLING CODE 6450–85–M

[Docket Nos. CI60–108–000, et al.]

Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

September 22, 1981.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 30, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or the participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000ft.[3]	Pressure base
CI60–108–000, D, July 24, 1981	Getty Oil Company, P.O. Box 1404, Houston, Texas 77001.	West Texas Gathering Company, S. M. Halley No. 35, SW/4 Section 6, Block B–11, PSL, Winkler County, Texas; S. M. Halley No. 260, SW/4 Section 8, Block B–11, PSL, Winkler County, Texas.	(1)	
CI61–316–000, D, July 24, 1981	General American Oil Company of America, Meadows Building, Dallas, Texas 75206.	United Gas Pipe Line Company, Hollywood Field, Terrebonne Parish, Louisiana.	(2)	
CI62–568–000, D, July 21, 1981	Gulf Oil Corporation, Post Office Box 2100, Houston, Texas 77001.	El Paso Natural Gas Company, North Puckett Ellenburger Field, Pecos County, Texas.	(2)	
CI65–604–000, D, July 24, 1981	Getty Oil Company, P.O. Box 1404, Houston, Texas 77001.	West Texas Gathering Company, S. M. Halley No. 3, NE/4 Section 25, Block B–11, PSL, Winkler County, Texas; S. M. Halley No. 303, SE/4 Section 16, Block B–11, PSL, Winkler County, Texas.	(4)	
CI74–519–000, C, July 20, 1981	Mitchell Energy Offshore Corporation, 2001 Timberloch Place, The Woodlands, Texas 77380.	Natural Gas Pipeline Company of America, Block 176–S Field, Offshore Texas.	(4)	14.65
CI81–435–000 D	Coastal Oil & Gas Company, The Coastal Tower, Nine Greenway Plaza, Houston, Texas 77046.	Cities Service Company, Flying "M" Field, Lea County, New Mexico.	(5)	
CI81–436–000 (G–6947), B July 17, 1981.	Conoco Inc., P.O. Box 2197, Houston, Texas 77001	Texas Gas Transmission Corporation, East Carthage Field, Panola County, Texas.	(6)	

[1] Well is insufficient to permit delivery of gas into the purchaser's gathering system against the operation pressure maintained, therein.
[2] Although there was never any gas produced which was attributable to General American's interest from the leases which expired and reverted to the lessor, the deletion of acreage requested does not qualify for the Southland exclusion because General American retained its right to explore for, develop, produce, and sell natural gas after May 31, 1978. Other acreage which does qualify for the Southland exclusion expired prior to May 31, 1978. Deletion of this expired acreage is requested by amendment to certificate.
[3] The only well on the lease has ceased to produce and the lease expired by its own terms on approximately March 31, 1981.
[4] Applicant is filing under Gas Purchase Contract dated March 1, 1974, amended by Supplemental Gas Purchase Contract dated June 9, 1980.
[5] The acreage has been deleted from the Cities Service contract and production from that acreage will instead be sold to Warren Petroleum Company.
[6] All of Conoco's leasehold interests in properties committed to the subject contract and Rate Schedule were sold and assigned to Alfred C. Glassell, Jr., effective January 1, 1970. Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 81–28295 Filed 9–29–81; 8:45 am]

BILLING CODE 6450–01–M]

[Docket Nos. CP68-139, CP77-525 and CP77-529]

B-V Gas Gathering System, Inc.; Inapplicability of Exemption

September 24, 1981.

Take notice that on August 31, 1981, B-V Gas Gathering System, Inc. (Applicant), Fidelity Union Tower, Dallas, Texas 75201, filed in Docket Nos. CP68-139, CP77-525 and CP77-529 a notice pursuant to § 152.5 of the Commission's Regulations under the Natural Gas Act (18 CFR 152.5) so as to advise of the change in operations which makes its exemption pursuant to Section 1(c) of the Natural Gas Act no longer applicable effective August 7, 1981, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is a wholly-owned subsidiary of Texas Oil and Gas Corporation (TXO) and that it owns and operates the Blessing-Victoria System, an intrastate pipeline system in the State of Texas.

It is submitted that by order issued March 12, 1968,[1] in Docket No. CP68-139 Delhi Gas Pipeline Corporation (Delhi), a wholly-owned subsidiary of TXO, was granted an exemption pursuant to Section 1(c) of the Natural Gas Act for the Blessing-Victoria System for transportation of certain volumes of natural gas for the account of Lo-Vaca Gathering Company which service terminated in July 1975.

Applicant further submits that on July 22, 1977, Delhi and United Gas Pipe Line Company (United) entered into an agreement permitting the seasonal exchange of natural gas by means of the Blessing-Victoria System. It is stated that such exchange was authorized by order dated December 15, 1979, and that initial deliveries were made by Delhi on June 6, 1978, and ended on December 8, 1978. Applicant states that on December 26, 1978, it acquired from Delhi the facilities comprising the Blessing-Victoria System and the right to receive redelivery from United of the imbalance volume of gas.

Applicant submits that by order issued November 19, 1979,[1] the Commission substituted Applicant as the exempted person in Docket No. CP68-139 and recognized Applicant as the certificate holder in Docket Nos. CP77-525 and CP77-529 stating that its jurisdiction would persist over the uncompleted exchange until redelivery by United of the outstanding imbalance under the exchange occurred and, further, that its jurisdiction would not extend to the Blessing-Victoria facilities after completion of redelivery of the outstanding imbalance.

Applicant states that redelivery by United of the outstanding imbalance volumes began on July 8, 1980, and was completed on August 7, 1981. Applicant asserts that the Blessing-Victoria facilities would not be used in the future to receive or deliver volumes of interstate gas except to the extent permitted by the Natural Gas Policy Act of 1978 relative to operations by an intrastate pipeline, and, therefore, its exemption pursuant to Section 1(c) of the Natural Gas Act is no longer applicable.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 16, 1981, file with the Federal Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28277 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[1] These proceedings were commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), they were transferred to the Commission.

[Docket No. ER81-763-000]

Central Illinois Public Service Co.; Filing

September 23, 1981.

The filing Company submits the following:

Take notice that on September 14, 1981, Central Illinois Public Service Company tendered for filing Modification No. 14 to the Interconnection Agreement dated June 1, 1968, between Central Illinois Public Service Company (CIPS) and American Electric Power Service Corporation on behalf of Indiana and Michigan Electric Company (I&M).

The Commission has previously designated this Interconnection Agreement as I&M Rate Schedule FERC No. 67 and CIPS Rate Schedule FERC No. 62.

Section 1, Article 7 of Modification No. 14 provides for changes in billing and payment procedure to reflect current interest rates for late payment of bills.

Section 2 cancels Service Schedule E—short Term Power and substitutes a new Service Schedule E—short Term Power, attached to Modification No. 14 as Appendix I. The new service schedule adds provisions for daily as well as weekly transactions between the parties.

Copies of this filing were served upon the American Electric Power Service Corporation, Indiana & Michigan Electric Company, the Illinois Commerce Commission, the Public Service Commission of Indiana, and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 14, 1981.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28278 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 5296-000]

Champlain Narrows Improvement Co.; Application for Preliminary Permit

September 22, 1981.

Take notice that Champlain Narrows Improvement Company (Applicant) filed on August 31, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5296 to be known as the Champlain Spinners Project located on Champlain Lock C-12 in the town of Whitehall, Washington County, New York. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed

to: Mr. Stephen F. Burke, J. Kenneth Fraser and Associates, P.C., Consulting Engineers, 620 Washington Avenue, Rennselaer, New York 12144.

Project Description—The proposed project would utilize surplus flows from the existing Champlain Canal at Lock C-12 and would consist of: (1) the existing 90-foot long, 7 to 13 foot high concrete dam; (2) the 240 acre Champlain Canal flow impoundment above the dam at elevation 109.82 (USGS Datum); (3) the existing headrace siphon-spillway, headgates and forebay at the east dam abutment; (4) two or three turbine generators operating under 15.5 feet of head with a total rated capacity of up to 600 kW located in the existing mill building; (5) a tailrace channel; and (6) appurtenant facilities. The project powerhouse and water rights are owned by the Applicant and the dam, canal and navigation lock is owned by the New York State Department of Transportation. The project would generate up to 3,100,000 kWh annually.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license. Applicant has requested a preliminary permit term of 24 months. Applicant has estimated that the cost of studies under the preliminary permit would be $45,000.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 30, 1981, either the competing application itself [See 18 CFR 4.33 (a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33 (b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before November 30, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28293 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP76-94-014]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 22, 1981.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 4, 1981, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective August 4, 1981:

Seventy-Fourth Revised Sheet No. 16
and
Twenty-Second Revised Sheet No. 16A

Columbia states that the foregoing tariff sheets are being filed pursuant to Article VI-B of Columbia's Stipulation and Agreement in Docket No. RP76-94, *et al.*, which was approved by Commission Order issued March 16, 1978. Said Article VI-B provides that Columbia shall place reduced rates into effect, effective on the first day following receipt of a federal income tax refund which recognizes Columbia's and Columbia Gulf Transmission Company's (Columbia Gulf) claim of higher depreciation rates for the years 1971 and 1972. The instant tariff filing reflects refunds applicable to tax years 1975 and 1976. Refunds applicable to the tax years 1971 through 1974 were reflected in Columbia's filing of March 2, 1981 at Docket No. RP76-94, *et al.* Columbia further states that as required by said Article VI-B, Columiba's reduced rates reflect the cost of service impact of the net adjustment to Account 282, Accumulated Deferred Income Taxes, including the impact on Columbia's affiliate, Columbia Gulf. The rate adjustment being filed herewith provides for a reduction in Columbia's annual cost of service of $146,610.

It is stated that Article VI-B of the subject Stipulation and Agreement also provides that all interest received relating to the issue, less interest due the U.S. Treasury as of the date the subject refund is received, shall be refunded without additional interest within 30 days from the date such refund is received, by crediting Account 191, Unrecovered Purchased Gas Costs. Columbia advises that net interest of $315,611 applicable to Columbia and Columbia Gulf was credited to Columbia's Account 191 in August 1981.

Columbia requests a waiver of the Notice requirements of Section 154.22 of the Commission's regulations so that the subject tariff sheets may become effective August 4, 1981, as specified by the terms of the settlement agreement at Docket No. RP76-94, *et al.*

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR, 1.8 and 1.10). All such petitions or protests should be filed on or before October 6, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28293 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3924-001]

Consulting Associates, Inc.; Application for Preliminary Permit

September 23, 1981.

Take notice that Consulting Associates, Inc. (Applicant) filed on May 26, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for Project No. 3924 to be known as the Malad High Drop Project located on the Malad River in Gooding County, Idaho. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Vernon Ravenscroft, President, Consulting Associates, Inc., P.O. Box 893, Boise, Idaho 83701.

Project Description—The proposed project would consist of: (1) two existing 8-foot high, 100-foot long concrete diversion dams owned by the Justice and Thorpe Ditch Companies on the two branches of the Malad River; (2) an enlargement of an existing canal approximately 0.5 mile long; (3) 2.7 miles of additional canal; (4) a 48-inch diameter, 1,850-foot long penstock; (5) a powerhouse containing two 2,000-kW generating units; and (6) associated electrical and transmission equipment. Applicant estimates that the project would have an average annual generation of 35,742 MWh.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant would conduct a comprehensive study to determine the economic, technical, financial and environmental feasibility of the proposed project. Applicant estimates that its studies would cost approximately $40,000.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 30, 1981, either the competing application itself [See 18 CFR 4.33(a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33(b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before November 30, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28280 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-759-000]

Edison Sault Electric Co.; Notice of Filing

September 23, 1981.

The filing Company submits the following:

Take notice that Edison Sault Electric Company (Edison) on September 9, 1981, tendered for filing a Supplemental Agreement, No. 3, dated June 1, 1981, to a Transmission Coordination Agreement, dated May 1, 1977, as supplemented, between Edison and Cloverland Electric Cooperative Inc. (Cloverland), which Supplemental Agreement No. 3 will provide current operating and desirable billing changes to the transmission Coordination Agreement.

Copies of the filing were served upon Cloverland Electric Cooperative, Inc. and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 9, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28284 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-765-000]

Florida Power & Light Co.; Notice of Filing

September 23, 1981.

The filing company submits the following:

Take notice that Florida Power & Light Company (FPL) on September 11, 1981, tendered for filing documents entitled "Exhibit I to Service Agreement for Interchange Transmission Service Implementing Specific Transactions Under Service Schedules A (Emergency Service), B (Short Term Firm Service), C (Economy Interchange Service) and D (Firm Service) of Contracts for Interchange Service." this filing is proposed to amend FERC Electric Tariff Original Volume II (Sheet Nos. 1–19).

FPL states that under the Exhibit I, FPL will transmit power and energy for the Jacksonville Electric Authority (Jacksonville) as is required by Jacksonville in the implementation of its interchange agreement with Tampa Electric Company.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Exhibit be made effective immediately. FPL states that copies of the filing were served on the Managing Director of Jacksonville Electric Authority.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of

Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before October 14, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28281 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4347-000]

Georgia-Pacific Corp.; Application for Preliminary Permit

September 22, 1981.

Take notice that Georgia-Pacific Corporation (Applicant) filed on March 16, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 4347 to be known as the Day Creek Hydroelectric Project located on Day Creek, Carry Creek, and Rock Creek in Skagit County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Georgia-Pacific Corporation, P.O. Box 1236, Bellingham, Washington 98227.

Project Description—The proposed project would consist of: (1) a 10-foot high by 1,000-foot long earth-filled dam which would increase the surface area of the existing natural Day Lake from 120 acres to 170 acres, increasing its depth by 3 feet; (2) two reinforced concrete diversion weirs; (3) a 4.5-mile long water conduit; (4) a surge tank; (5) a 3,000-foot long penstock; (6) a powerhouse to contain four Pelton-type, turbine-generating units with a total rated capacity of 26 MW; (7) a switchyard; and (8) a 4-mile long, 115-kV transmission line to connect to an existing Puget Sound Power and Light Company line.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to study the feasibility of constructing and operating the project. Applicant states that no new road construction would be required to conduct the feasibility studies. Applicant anticipates no major adverse environmental impact to the area during the studies.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 30, 1981, either the competing application itself [See 18 CFR 4.33 (a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33 (b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before November 30, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28294 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP81-18]

High Island Offshore System; Settlement Conference

September 22, 1981.

Take notice that on September 28, 1981, at 2:00 p.m., a settlement conference of all interested parties will be convened concerning the issues involved in the above-referenced proceeding. All parties should come prepared to discuss all the remaining issues in this case and be prepared to make commitments relating thereto. The conference will be held in a room to be designated for such purposes at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28265 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES81-86-000]

Idaho Power Co.; Application

September 23, 1981.

Take notice that on September 17, 1981, Idaho Power Company (Applicant) filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking authority to negotiate the placement of not more than 1,500,000 shares of Common Stock.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 16, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28266 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-762-000]

Iowa-Illinois Gas and Electric Co.; Filing

September 23, 1981.

The filing Company submits the following:

Take notice that Iowa-Illinois Gas and Electric Company (Iowa-Illinois) on September 14, 1981, tendered for filing a Facilities Agreement dated September 4, 1981, with Interstate Power Company (Interstate).

Iowa-Illinois states the Agreement preserves and reflects the current facilities arrangements between the parties and provides a vehicle for perpetuation of existing arrangements and additional future facilities arrangements as may be mutually agreed from time to time. Iowa-Illinois states the facilities arrangements with Interstate originated in antecedent interchange agreements between them, but that the interchange functions are duplicative of the service schedules of the multiparty Mid-Continent Area Power Pool (MAPP) Agreement to which both Iowa-Illinois and Interstate are a party. Iowa-Illinois states that no new or modified jurisdictional facilities are proposed or necessary to effectuate the Agreement. An effective date of January 1, 1982, is proposed.

Iowa-Illinois states copies of the filing have been mailed to Interstate, the Iowa State Commerce Commission, the Illinois Commerce Commission, and the Minnesota Public Utilities Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 9, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28267 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-14-001 (PGA 81-3(a))]

Lawrenceburg Gas Transmission Corp.; Proposed Change in FERC Gas Tariff

September 22, 1981.

Take notice that on September 8, 1981 Lawrenceburg Gas Transmission Corporation (Lawrenceburg) tendered for filing two (2) substitute gas tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, all of which are dated as issued on September 4, 1981, proposed to be effective August 1, 1981, and identified as follows:

Substitute Twenty-Fifth Revised Sheet No. 4

Substitute Twenty-Third Revised Sheet No. 18

Lawrenceburg states that its substitute tariff sheets were filed to reflect a reduction in its cost of gas purchased from Texas Gas Transmission Corporation which occurred subsequent to its PGA filing made on July 1, 1981. The Commission by letter order issued July 27, 1981 had accepted Lawrenceburg's PGA filing subject to revisions to reflect decreases in its cost of gas purchased from Texas Gas.

Copies of this filing were served upon Lawrenceburg's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 6, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28268 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA81-74-000]

Marlex Oil & Refining, Inc.; Filing of Petition for Review

September 23, 1981.

Take notice that Marlex Oil & Refining, Inc. on September 18, 1981 filed a Petition for Review under 42 U.S.C. 7194(b) ((1977) supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before Oct. 8, 1981, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before October 8, 1981, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28269 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 5306-000]

Mega Hydro Inc.; Application for Preliminary Permit

September 23, 1981.

Take notice that Mega Hydro Incorporated (Applicant) filed on August 31, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5306 to be known as the Mega Hydro #1 Power Project located on Clover Creek in Shasta County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Fred Castagna, Mega Hydro Incorporated, 1646 East Street, Redding, California 96001.

Project Description—The proposed project would consist of: (1) a 60-foot long, 4-foot high diversion structure on Clover Creek; (2) a 6700-foot long, 30-inch diameter diversion conduit; (3) a 3630-foot long, 30-inch diameter penstock; (4) a powerhouse with a total installed capacity of 1151 kW; and (5) a 0.5-mile long 12.5kV transmission line from the powerhouse to an existing Pacific Gas & Electric Company transmission line. The Applicant estimates that the average annual energy production would be 2.96 million kWh.

Proposed Scope of Studies under Permit—A preliminary permit, if issued,

does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which it would conduct technical, environmental and economic studies, and also prepare an FERC license application. No new roads would be needed for conducting these studies. The Applicant estimates that the cost of undertaking these studies would be $47,000.

Competing Application—Anyone desiring to file a competing application must submit to the Commission, on or before November 30, 1981, either the competing application itself [See 18 CFR 4.33 (a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33 (b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before November 30, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28282 Filed 9-29-81: 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-495-000]

Mississippi River Transmission Corp.; Application

September 24, 1981.

Take notice that on August 31, 1981, Mississippi River Transmission Corporation (Applicant), P.O. Box 14521, St. Louis, Missouri 63178, filed in Docket No. CP81-495-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, operation and relocation of gathering lines and related minor facilities necessary to convert three existing storage field observation wells to storage injection/withdrawal wells and to connect such wells to the existing field gathering systems in Applicant's East and West Unionville Storage Fields, Lincoln Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to install gathering lines and appurtenant facilities and to perform minor related well work as may be necessary to convert three storage field observation wells in Applicant's existing East and West Unionville Storage Fields to storage injection/withdrawal wells and to connect such wells to the existing field gathering systems. Applicant specifically proposes to construct and operate approximately 4,000 feet of new 4½-inch O.D. gathering line, to relocate, install and operate approximately 4,500 feet of existing 4½-inch O.D. gathering line which is not needed in its present location in the East Unionville Field, to install and operate meters and related metering facilities, and to perform minor well work such as acidizing and reperforating as might be required to convert the three wells to storage injection/withdrawal wells.

It is stated that the storage observation wells which Applicant proposes herein to convert for use for injection/withdrawal purposes are the 0-10 and 0-11 wells in the West Unionville Storage Field and the EO-1 well in the East Unionville Storage Field. Applicant submits that the conversion of the EO-1 well in the East Unionville Field and its connection to the field gathering system would permit withdrawal of gas from an area of the field from which withdrawals cannot now be made. Applicant also maintains that the conversion and connection of the 0-10 and 0-11 wells in the West Unionville Field to the field gathering system would permit the withdrawal of gas and thereby provide deliverability with respect to gas which migrates into the area.

Applicant states that the connection of the EO-1 well to the existing gathering system of East Unionville Field would involve the installation of approximately 3,200 feet of 4½-inch O.D. gathering line. Furthermore, Applicant asserts that connecting the 0-10 and 0-11 wells in West Unionville Field would require the installation of approximately 5,300 feet of identically-sized gathering line. To effect these connections, Applicant proposes to install 4,000 feet of new gathering line and to remove and reuse approximately 4,500 feet of existing line which presently runs from a point southwest of the ES-5 well to the ES-15 well in the East Unionville Field.

It is asserted that inadequate sand development has precluded effective use of the ES-15 well in the East Unionville Field as an injection/withdrawal well. However, because of its location near the eastern boundary of the field, the ES-15 well has been and would continue to be used as an observation well, it is stated.

The total cost of the facilities and operations is estimated to be approximately $488,000 which would be financed from available funds and/or short-term borrowings.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 16, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal

Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28283 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M]

[Project No. 5258-000]

Modesto Irrigation District; Application for Preliminary Permit

September 22, 1981.

Take notice that Modesto Irrigation District (Applicant) filed on August 20, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5258 to be known as the Beaver Creek Mendocino Power Project located on Beaver Creek, in Mendocino County, near Covelo, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. A. Lee DeLano, Modesto Irrigation District, 1231 11th Street, P.O. Box 4060, Modesto, California 95352.

Project Description—The proposed project would consist of: (1) a 5-foot high by 338-foot long diversion structure on Beaver Creek; (2) a 3,300-foot long, 80-inch diameter water conduit; (3) a 5-foot high by 60-foot long diversion stucture on Buck Rock Creek; (4) a 1,700-foot long, 42-inch diameter water conduit; (5) a 1,300-foot long, 50-inch diameter steel penstock; (6) a powerhouse with an installed capacity of 5 MW; and (7) an 11-mile long, 12-kV transmission line to connect to an existing Pacific Gas and Electric Company transmission line.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 24-month preliminary permit to study the feasibility of constructing and operating the proposed project.

Competing Applications—This application was filed as a competing application to the Beaver Creek, Mendocino Power Project No. 4330 filed on March 12, 1981, by Consolidated Hydroelectric, Inc. under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 29, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28296 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 5302-000]

Modesto Irrigation District; Application for Preliminary Permit

September 22, 1981.

Take notice that Modesto Irrigation District (Applicant) filed on August 31, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5302 to be known as the Rush Creek Feather River Power Project located on Rush Creek, in Plumas County, near the Town of Quincy, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. A. Lee DeLano, Modesto Irrigation District, 1231 11th Street, P.O. Box 4060, Modesto, California 95352.

Project Description—The proposed project would consist of: (1) a 5-foot high by 70-foot long diversion structure; (2) a 10,250-foot long, 26-inch diameter water conduit; (3) a 2,550-foot long, 20-inch diameter steel penstock; (4) a powerhouse with an installed capacity of 935 kW; and (5) a 0.1-mile long, 12-kV transmission line to connect to an existing Pacific Gas and Electric Company transmission line.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 24-month preliminary permit to study the feasibility of constructing and operating the proposed project.

Competing Applications—This application was filed as a competing application to the Rush Creek Feather River Power Project No. 5127 filed on July 24, 1981, by Mega-Hydro, Inc., under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent for Project No. 5127 is December 7, 1981.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to

intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or petitions to intervene must be received on or before October 29, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary

[FR Doc. 81-28297 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 5257-000]

Modesto Irrigation District; Application for Preliminary Permit

September 22, 1981.

Take notice that Modesto Irrigation District (Applicant) filed on August 20, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5257 to be known as the Deep Hole Creek Project located on Deep Hole Creek, in Mendocino County, near Covelo, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. A. Lee DeLano, Modesto Irrigation District, 1231 11th Street, P.O. Box 4060, Modesto, California 95352.

Project Description—The proposed project would consist of: (1) a 5-foot high by 150-foot long diversion structure; (2) a 4,800-foot long, 66-inch diameter water conduit; (3) an 1,800-foot long, 42-inch diameter steel penstock; (4) a powerhouse with an installed capacity of 4.5 MW; and (5) a 13-mile long, 12-kV transmission line to connect to an existing Pacific Gas and Electric Company transmission line.

Proposed scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 24-month preliminary permit to study the feasibility of constructing and operating the proposed project.

Competing Applications—This application was filed as a competing application to the Deep Hole Creek, Project No. 4338 filed on March 13, 1981, by Consolidated Hydroelectric, Inc. under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 29, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28298 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 5008-001]

Modesto Irrigation District; Application for Preliminary Permit

September 22, 1981.

Take notice that Modesto Irrigation District (Applicant) filed on July 28, 1981, and application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791 (a)–825(r)] for Project No. 5008 known as the Corral and Gates Creeks Power Project located on Corral and Gates Creeks in Trinity County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. A. Lee DeLano, Modesto Irrigation District, 1231 11th Street, P.O. Box 4060, Modesto, California 95352.

Project Description—The proposed would consist of:

(1) A 5-foot high, 25-foot long diversion structure on Corral Creek diverting water into a 7,300-foot long 72-inch diameter conduit;

(2) A 5-foot high, 30-foot long diversion structure on Gates Creek diverting water into a 700-foot long, 24-inch diameter conduit;

(3) A 1,060-foot long, 66-inch diameter penstock;

(4) A powerhouse with a total installed capacity of 4,700 kW; and

(5) A 1.2-mile long, 12-kV transmission line interconnecting with an existing Pacific Gas and Electric Company transmission line.

The Applicant estimates that the average annual energy output would be 41 million kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months during which it will conduct engineering, hydrological, economic and environmental studies; survey the project boundary; apply for State water rights permit and an FERC license; and negotiate with Pacific Gas and Electric Company for sale of the power generated. No new roads would be needed to conduct these studies which are estimated to cost $45,000.

Competing Applications—This

application was filed as a competing application to the Corral and Gates Creek Project No. 4095 filed on January 10, 1981, by Consolidated Hydroelectric, Inc. Under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the appliction may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to interven in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 29, 1981.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "PROTESTS", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28299 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 5252-000]

Modesto Irrigation District; Application for Preliminary Permit

September 22, 1981.

Take notice that Modesto Irrigation District (Applicant) filed on August 19, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5252 to be known as the Big East Fork Canyon Creek Trinity Power Project located on the Big East Fork Canyon Creek, in Trinity County, near Dedrick, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. A. Lee DeLano, Modesto Irrigation District, 1231 11th Street, P.O. Box 4060, Modesto, California 95352.

Project Description—The proposed project would consist of: (1) a 5–foot high, by 48–foot long diversion structure; (2) a 5,400–foot long, 39-inch water conduit; (3) a 1,000-foot long, 28-inch diameter steel penstock; (4) a powerhouse to contain one impluse-type, turbine generating unit with a rated capacity of 1,220 kW; and (5) a 0.5-mile long, 12-kV transmission line to connect to an existing Pacific Gas and Electric Company transmission line.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 24-month preliminary permit to study the feasibility of construction and operating the proposed project.

Competing Applications—This application was filed as a competing application to the Big East Fork Canyon Creek, Project No. 4326 filed on March 12, 1981, by Consolidated Hydroelectric, Inc. under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petitions to intervene must be received on or before October 29, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28300 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3166-001]

National Fiber Insulation Co., Inc.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

September 23, 1981.

Take notice that on June 22, 1981, National Fiber Insulation Company, Inc. (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 3166–001) would be located on the Swift River at the Towns of Belchertown and Palmer, in Hampshire and Hampden Counties, Massachusetts. Correspondence with the Applicant should be directed to: Mr. Benjamin Surner, Jr., National Fiber Insulation Company, Inc., 60 Shumway Street, Amherst, Massachusetts 01002.

Project Description—The proposed run-of-the-river project would consist of existing project works including: (1) the National Lower Dam (Mass. I.D. Number

2903), a free overfall granite masonry structure about 180 feet long and 15 feet high; (2) a reservoir of negligible storage capacity at surface elevation 342.6 feet m.s.l.; (3) a headgate structure and headrace canal; and new project works consisting of (4) a millrace, 29 feet long and 10 feet wide; leading to (5) a generating facility with an installed capacity of 75.7 kW; (6) a short tailrace; (7) a step-up transformer substation; (8) a 13-kV transmission line about 1,000 feet long; and (9) other appurtenances. Applicant estimates average annual generation would be 506,000 kWh.

Purpose of Project—Project energy would be partially utilized by the National Fiber Insulation Company with the remainder being sold to the Massachusetts Electric Company.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Massachusetts Division of Fisheries and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before November 16, 1981, either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments protests, or petitions to intervene must be received on or before November 16, 1981.

Filing and Service of Responsive Documents—Any filings, must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, 825 North Capitol Street, NE., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28282 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-16-002]

National Fuel Gas Supply Corp.; Proposed Tariff Change

September 22, 1981.

Take notice that on September 4, 1981, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Thirty-Sixth Revised Sheet No. 4, proposed to be effective August 1, 1981.

National states that the purpose of this revised tariff sheet is to comply with Commission Order dated August 3, 1981, requiring that National Fuel reflect the proper rate of Texas Eastern Transmission Corporation. National further states that Substitute Thirty-Sixth Revised Sheet No. 4 reflects a decrease in National's rates of 2.61¢.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before Oct. 6, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants party to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28270 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. CP74-260-004, CP75-269-003]

Natural Gas Pipeline Co. of America; Petition to Amend

September 24, 1981.

Take notice that on August 31, 1981, Natural Gas Pipeline Company of America (Petitioner), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket Nos. CP74-260-004 and CP75-269-003 a joint petition to amend the orders issued July 18, 1975[1] as amended, and August 29, 1975,[1] as amended, respectively, in the instant dockets pursuant to Section 7(c) of the Natural Gas Act so as to increase the quantity of natural gas per day which Petitioner is authorized to sell to certain of its existing winter service customers under its Rate Schedules WS-1 and WS-2, all as more fully set forth in the petition to amend which is on file with

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

the Commission and open to public inspection.

Petitioner states that pursuant to an advance payment agreement dated April 19, 1971, between Petitioner and Shell Oil Company (Shell) it received the right to purchase most of the natural gas produced from reserves underlying nine blocks in offshore Louisiana which were owned by Shell. Petitioner explains that each of its 17 participating customers which reimbursed Petitioner for a portion of the advanced payment received the right to purchase from Petitioner during the winter season the customer's proportionate share of deliverable gas from the Shell reserves. It is stated that Petitioner subsequently offered winter service to those of its customers not originally participating in the Shell funding arrangement. It is further stated that customers participating in funding the Shell advances received service under Petitioner's Rate Schedule WS–1 and the seven non-funding customers received service under Petitioner's Rate Schedule WS–2 which bore a rate consisting of the WS–1 rate plus a surcharge reflecting the financing cost associated with the reimbursed portion of the Shell advances.

Petitioner states that by order issued July 18, 1975, it was authorized to sell and deliver 47,846 Mcf of gas per day to its WS–1 customers and 4,786 Mcf of gas per day to its WS–2 customers from the Shell reserves during 100 of the 120 winter days between December 1 and March 31 yearly. Petitioner indicates that by order issued on August 29, 1975, it was authorized to sell and deliver an additional 147,368 Mcf of gas per day to certain of its WS–1 and WS–2 customers and to construct facilities necessary therefor. The order issued November 22, 1978, authorized an increase in the number of days from 100 to 120 for which Petitioner's existing Rate Schedule WS–1 and WS–2 daily winter service quantities could be delivered to eight of its winter service customers for the 1978–79 winter period only, it is said. Petitioner further explains that by a subsequent order issued November 23, 1979, it was authorized to sell and deliver an additional 10,000 Mcf of gas per day to thirteen of its existing winter service customers for the 120 days of the 1979–80 and 1980–81 winter periods.

Petitioner states that under the terms of the existing agreements Petitioner's participating customers are entitled to receive winter service based on the highest sustainable 100,000 Mcf per day increment in deliverability from the Shell reserves as such increments become available. It is asserted that deliverability from such reserves would permit Petitioner to deliver 25,000,000 Mcf of gas in each of the 1981–82 and 1982–83 winter periods to its participating customers.

Petitioner submits that it has offered to all of its winter service customers daily quantities for the 1981–82 and 1982–83 winter periods at the same level as those quantities previously authorized for the 1979–80 and 1980–81 winter periods. After an assessment of its customers' desires Petitioner proposes an increase in its Rate Schedule WS–1 and Rate Schedule WS–2 daily winter service quantities which can be sold and delivered to nine of its existing winter service customers for the 1981–82 and 1982–83 winter periods and to extend the number of days from 100 to 120 for which this increased winter service quantity can be delivered to eight of these customers.

Petitioner projects that the additional service would commence December 1, 1981, and that it would provide an additional 3,015,400 Mcf of gas supply to the electing customers for each of the next two winter periods.

Petitioner proposes to render service to the nine electing customers as follows:

Company	Proposed winter service quantities	
	Daily	Season total
	120 day service	
RATE SCHEDULE WS–1		
Associated Natural Gas Co	271	32,520
Northern Illinois Gas Co	74,508	8,940,960
Northern Indiana Public Service Co	28,438	3,412,560
Wellman, Iowa, town of	50	6,000
RATE SCHEDULE WS–2		
Interstate Power Co	1,855	222,600
Iowa-Illinois Gas & Electric Co	11,377	1,365,240
Mississippi River Transmission Corp	2,825	339,000
Perryville, Mo., city of	151	18,120
	100 day service	
RATE SCHEDULE WS–1		
Illinois Power Co	7,988	798,800
Total	127,363	15,125,800

Petitioner states that the additional service would have no impact on currently certificated winter service quantity customers or on the ability of Petitioner to deliver current entitlement volumes to all of its customers.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 16, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28289 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 5196–000]

Village of Newport, New York and Essex Development Associates, Inc.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

September 23, 1981.

Take notice that on August 7, 1981, the Village of Newsport, New York and Essex Development Associates, Inc. (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 5196) would be located on West Canada Creek in Herkimer County, New York. Correspondence with the Applicant should be directed to: Mr. Richard A. Norman, Essex Development Associates, Inc., Six Essex Street, Lawrence, Massachusetts 01840.

Project Description—The proposed redeveloped project would consist of: (1) an existing concrete dam, 8 feet high and 242 feet long; (2) a 23-acre impoundment with negligible storage; (3) a redeveloped power canal 125 feet long; (4) an existing 54 by 25-foot powerhouse containing three new generators with a total capacity of 1500 kW operating under a head of 11.5 feet; (5) two tailraces, one existing and one to be constructed; (6) an existing 4.16-kV transmission line 100 feet long and (7) appurantent facilities.

Purpose of Project—The 6.2 million kWh of electrical energy generated at the site would be sold to Niagara Mohawk Power Corporation.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the New York State Department of Environmental Conservation, are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the

date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—This application was filed as a competing application to the Newport Hydroelectric Power Corporation Project No. 4247 filed on February 23, 1981, by the Long Lake Energy under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no futher competing applications will be accepted for filing.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protests, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before November 9, 1981.

Filing and Service of Responsive Documents—Any filings, must bear in all capital letters the title "COMMENTS", PROTEST", or PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Application Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28289 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP81-137-000]

Pacific Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 22, 1981.

Take notice that Pacific Gas Transmission Company ("PGT"), on September 17, 1981 tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. The proposed changes would increase PGT's return by $11,064,478 annually, based on the twelve month period ending May 31, 1981, as adjusted. PGT has requested a rate of return on equity of 22 percent. PGT proposes to use a single, overall cost of capital for all pipeline services. The initial overall rate of return will be 18.72 percent. PGT also has requested a tariff modification to track changes in its cost of debt and capital structure.

PGT has requested that the increased rates and tariff modifications be made effective on October 17, 1981.

PGT states that the requested rate increases are due to the increase in all costs of capital and increased risks to the PGT investor and are necessary (1) to provide investor confidence in PGT's credit and financial integrity; (2) provide it with the requisite flexibility to attract debt and equity capital at reasonable and competitive rates; and (3) provide a fair and reasonable return to PGT's common shareholders in relation to that available from other investments with comparable risks.

PGT states that copies of this filing were served on the Company's jurisdictional customers and affected state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 7, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28271 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-28-003]

Panhandle Eastern Pipe Line Co.; Change in Tariff

September 22, 1981.

Take notice that on September 8, 1981, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Fortieth Revised Sheet No. 3-A
First Substitute Seventeenth Revised Sheet No. 3-B
First Substitute Fifth Revised Sheet No. 3-C.1
First Substitute Fifth Revised Sheet No. 3-C.2
First Substitute Fifth Revised Sheet No. 3-C.3

An effective date of September 1, 1981 is proposed.

Panhandle states that by order dated August 31, 1981 the Commission accepted for filing with certain conditions, tariff sheets filed by Panhandle which reflect:

(1) A DCA Commodity Surcharge Adjustment; and

(2) A Rate Adjustment reflecting a proposed Pipeline Supplier rate adjustment; and

(3) A PGA Rate Adjustment reflecting the current cost of gas and recovery of amounts in the deferred purchased gas cost account; and

(4) An Advance Payment Tracking Adjustment; and

(5) A Purchased Gas Transmission and Compression and Transportation Revenue Tracking Adjustment.

The subject tariff sheets were approved to become effective September 1, 1981, subject to refund. The Commission's Order required Panhandle to file revised tariff sheets reflecting any downward adjustment in the rates of its pipeline supplier, Trunkline Gas Company, as a result of the Commission's Order issued August 31, 1981 in Trunkline's Docket No.

TA81-2-30-001. Trunkline filed concurrently revised rates effective September 1, 1981 in its Docket No. TA81-2-30-001 to reflect the elimination of costs attributable to its purchases from Trunkline LNG Company, which deliveries had not commenced as of September 1, 1981.

Therefore, in accordance with paragraph (B) of the Commission's Order dated August 31, 1981 Panhandle submits for filing six (6) copies each of First Substitute Fortieth Revised Sheet No. 3-A, First Substitute Seventeenth Revised Sheet No. 3-B, and First Substitute Fifth Revised Sheet Nos. 3-C.1, 3-C.2, and 3-C.3, to its FERC Gas Tariff Original Volume No. 1, such tariff sheets to be effective September 1, 1981. These substitute revised tariff sheets reflect the downward adjustment in the rates of Trunkline in Docket No. TA81-2-30-001 to reflect the elimination of Trunkline's cost of gas purchased from Trunkline LNG Company.

These tariff sheets are filed without prejudice to subsequent filing of superceding rates to recover the increased cost of gas from Trunkline attributable to its obligation to Trunkline LNG Company.

Panhandle states that copies of its filing are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 6, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28272 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-392-000]

Pennsylvania Power & Light Co.; Order Granting Rehearing for Purposes of Further Consideration

September 21, 1981.

On August 21, 1981, Pennsylvania Power and Light Company (PP&L) filed an application for rehearing of a Commission order issued on July 24, 1981, in this docket. That order accepted for filing a rate increased tendered by PP&L on March 31, 1981, and made those rates effective on June 11, 1981, subject to refund. Also on August 21, 1981, a group of PP&L's affected customers [1] filed an application for rehearing of the July 24 order.

In addition, on August 21, 1981 PP&L filed a motion requesting that the Commission defer consideration of the applications for rehearing. The motion states that the parties to this proceeding have reached an agreement in principle resolving all issues. PP&L states that an order deferring consideration of the applications for rehearing will maintain the *status quo* while the Commission considers the settlement agreement expected to be filed by the parties. The customers do not oppose PP&L's motion and, for similar reasons, they request that the Commission defer consideration of their application for rehearing.

Upon consideration of these pleadings, we shall grant rehearing of the May 29, 1981 order for the limited purpose of further consideration.

The Commission orders:

(A) Rehearing of the May 29, 1981 order is hereby granted for the limited purpose of further consideration.

(B) As provided in section 1.34(d) of the Commission's Rules of Practice and Procedure, no answer to the application for rehearing will be entertained by the Commission since the order does not grant rehearing upon any substantive issue.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-28301 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. EC81-18-000]

Public Service Company of New Hampshire; Central Maine Power Co.; Re-Notice of Filing

September 22, 1981.

The filing companies submit the following:

Take notice that on July 31, 1981, Public Service Company of New Hampshire (PSNH) and Central Maine Power Company (Central Maine) submitted a joint application for permission for PSNH to sell and Central Maine to purchase certain transmission line facilities and associated land rights in Maine and certain related facilities in New Hampshire.

PSNH and Central Main's joint filing states the facilities include two 15 kV• submarine cables from PSNH's Daniel Street substation to Badger's Island substation and one 15 kV submarine cable from Badger's Island substation to Kittery substation, a 12.4 kV (34 kV construction), three phase line from Bolt Hill substation to Kittery substation, and a 12.4 kV (partial 34 kV construction), three phase tap to Kittery Point substation. The transaction also encompasses other facilities and land rights associated with the aforementioned circuits. The selling price of the facilities is original cost less accrued depreciation at the time the sale is consummated. If the sale had taken place on December 31, 1980, the selling price would have been $143,876.

The sale to Central Maine of the facilities is proposed to enable PSNH to concentrate on complying with the retail regulatory requirements of one state commission (New Hampshire). Central Maine can assume operation of the facilities with relatively little burden. After the sale, PSNH will furnish wheeling service for the portion of Central Maine's service area affected by this transaction.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 30, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28302 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

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[1] These customers include the Boroughs of Watsonton, Duncannan, Blakely, Weatherly, Schuykill Haven, Perkasie St. Clair, Catawasisa, Ephrata, Lehighton, Olyphant, Hatfield, and Quakertown, Pennsylvania.

[Project No. 5328-000]

L. MacRae Rood; Application for Preliminary Permit

September 22, 1981.

Take notice that L. MacRae Rood (Applicant) filed on September 4, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5328 to be known as the Moretown Project located on the Mad River in the Town of Moretown, Washington County, Vermont. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: L. MacRae Rood, Box 142, Warren, Vermont 05674–0142.

Project Description—The proposed project would consist of: (1) an existing partially breached 15-foot high, 50-foot long timber-crib dam to be rebuilt; (2) a reservoir with no storage capacity; (3) an existing forebay; (4) a new 5-foot diameter, 150-foot long steel penstock; (5) a new powerhouse containing two turbine-generators with a total rated capacity of 350 kW; and (6) appurtenant facilities. Energy from the project would be sold to Green Mountain Power Corporation. The project would produce up to 1,460,000 kWh annually. The project site is owned by Holly Ward of Moretown, Vermont.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $59,000. Applicant has proposed a preliminary permit term of 36 months.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 30, 1981, either the competing application itself [See 18 CFR 4.33 (a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33 (b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rule of Practice and Procedure, 18 CFR 1.8 and 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before November 30, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretry, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28303 filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 5316-000]

San Juan Hydro, Inc.; Application for Preliminary Permit

September 23, 1981.

Take notice that San Juan Hydro, Inc. (Applicant) filed on September 3, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5316 known as the El Dorado Project located on the Walnut River in the town of El Dorado, Butler County, Kansas. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Kenneth T. Meredith, President, San Juan Hydro, 120 Valdivia Drive, Santa Barbara, California 93110.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers El Dorado flood control dam and reservoir and would consist of a new powerhouse containing turbine generator units with a total rated capacity of 1.5 MW, a tailrace channel and a transmission line. Energy produced at the project would be sold to Kansas Power and Light Company. The project would generate up to 3,000,000 kWh annually.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, coordination with the Corps to determine appropriate operating schedules, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. The Applicant has estimated that the cost of studies under the permit would be $11,200. Applicant has requested a preliminary permit term of 12 months.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 30, 1981, either the competing application itself [See 18 CFR 4.33 (a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33 (b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a

party to the proceeding. Any comments, protest, or petitions to intervene must be received on or before November 30, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28285 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 5218-000]

City of San Luis Obispo; Application for Exemption of Small Conduit Hydroelectric Facility

September 23, 1981.

Take notice that on August 11, 1981, City of San Luis Obispo (Applicant) filed an application under Section 30 of the Federal Power Act (Act) [16 U.S.C. 823(a)], for exemption of a proposed hydroelectric project from requirements of Part I of the Act. The proposed San Luis Obispo Small Conduit Hydroelectric Project (FERC Project No. 5218) would be located on the existing San Luis Obispo City Water Supply Pipeline, San Luis Obispo County, California. Correspondence with the Applicant should be directed to: Mr. David Romero, Public Services Department, City Hall, 990 Palm Street, San Luis Obispo, California 93406.

Purpose of Project—The power generated by the proposed project would be sold to the Pacific Gas and Electric Company.

Project Description—The proposed project would consist of: (1) the existing 5133-foot long, 18-inch diameter Salinas Pipeline; (2) the existing 4068-foot long, 12-inch diameter San Luis Obispo City Pipeline which will serve as penstock; (3) a powerhouse with total installed capacity of 620 kW and (4) a 70-foot long transmission line which would connect the powerhouse to the existing Pacific Gas and Electric Company line. The Applicant estimates that the average annual energy production would be 2.3 million kWh.

Agency Comments—The Fish and Wildlife Service and the California Department of Fish and Game are requested, pursuant to Section 30 of the Federal Power Act, to submit within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. If no comments are filed within this time period, an agency will be presumed to have determined that no terms or conditions to the exemption are necessary. Other Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide any comments they may have in accordance with their duties and responsibilities. Comments are due within 45 days from the date of issuance of this notice. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. One copy of an agency's comments must also be sent to the Applicant's representative.

Comments, Protests, or Petitions To Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceedings. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protests, or petitions to intervene must be received on or before November 9, 1981. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28279 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 5270-000]

Scott Paper Co.; Application for Preliminary Permit

September 22, 1981.

Take notice that Scott Paper Company (Applicant) filed on August 24, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5270 to be known as the Jordan Creek Hydroelectric Project located on Jordan Creek in Skagit County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: James Short, Scott Paper Company, P.O. Box 925, Everette, Washington 98206.

Project Description—The proposed project would consist of: (1) a 5-foot high, 50-foot long diversion structure; (2) a 2-mile long diversion conduit; (3) a 4700-foot long penstock; (4) a powerhouse with a total rated capacity of 5000 kW; and (5) a 15-mile long, 34-kV transmission line from the powerhouse to an existing Puget Power & Light Company. The Applicant estimates that the average annual energy output would be 28 million kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which it would conduct technical, environmental and economic studies, and also prepare an FERC license application. The Applicant estimates that the cost of undertaking these studies would be $150,000.

Competing Application—Anyone desiring to file a competing application must submit to the Commission, on or before November 29, 1981, either the competing application itself [See 18 CFR 4.33 (a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33 (b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file

comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before November 29, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28304 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. RP81-105-001 et al.]

Southern Natural Gas Co., et al.; Filing of Pipeline Refund Reports and Refund Plans

September 22, 1981.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before October 7, 1981. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
Sept. 2, 1981	Southern Natural Gas Company	RP81-105-001	Report.
Sept. 4, 1981	Southern Natural Gas Company	RP81-105-002	Report.
Sept. 4, 1981	National Fuel Gas Supply Corporation	RP81-135-011	Report.
Sept. 14, 1981	Tennessee Gas Pipeline Company	RP81-38-003	Report.
Sept. 15, 1981	Transcontinental Gas Pipe Line Corporation	G-5258-000	Report.

[FR Doc. 81-28273 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 2100-018]

State of California Department of Water Resources; Application for Amendment of License

September 23, 1981.

Take notice that on August 21, 1981, the State of California Department of Water Resources (Licensee) filed an application for amendment of its license for the existing Feather River Project No. 2100, located on the Feather River in Butte County, California. Correspondence with the Applicant should be directed to: Mr. Ronald B. Roble, Director, Department of Water Resources, P.O. Box 388, Sacramento, California 95802.

Licensee seeks authorization to construct, operate and maintain: (a) 10-foot long, 18-inch diameter penstock connecting the existing Palermo Canal outlet works of the Project's Lake Oroville to; (b) a powerhouse on the north bank of the canal to be called Palermo Outlet Powerplant, containing a single generating unit with a rated capacity of 500 kW, discharging into the canal; and (c) three 800-foot long, 15-kV transmission cables connecting the proposed powerplant with the existing Hyatt Powerplant Switchyard.

The Licensee estimates the average annual output of the proposed powerhouse at 1.51 million kWh. The energy would be used in meeting the pumping requirements of the Licensee's State Water Project. The Licensee estimates the capital cost of the proposed action to be $1,145,000.

Agency Comments—Federal, State and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before November 9, 1981.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28286 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 2100-017]

State of California Department of Water Resources; Application for Amendment of License

September 23, 1981.

Take notice that on June 4, 1981, the State of California Department of Water Resources (Licensee) filed an application for amendment of its license for the existing Feather River Project No. 2100, located on the Feather River in Butte County, California. Correspondence with the Applicant should be directed to: Mr. Ronald B. Robie, Director, Department of Water Resources, P.O. Box 388, Sacramento, California 95802.

Licensee seeks authorization to construct, operate and maintain: (1) a 50-foot long penstock connecting the existing 60-inch diameter outlet in the east abutment of the project's existing Thermalito Diversion Dam with; (2) a powerhouse containing a single generating unit with a rated capacity of 3,000 kW; (3) a 300-foot long tailrace channel to the Feather River; and (4) a 12-kV, 800-foot long transmission line connecting the powerhouse to an

existing Pacific Gas and Electric Company's line, east of the powerhouse.

The estimated annual generated energy of 19.7 million kWh by the proposed powerplant would be used to meet the pumping requirements of the Licensee's State Water Project. The Licensee estimates the cost of the proposed action to be $5.8 million.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before November 9, 1981.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28274 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 5268-000]

Tehama County Flood Control & Water Conservation District; Application for Preliminary Permit

September 23, 1981.

Taken notice that Tehama County Flood Control & Water Conservation District (Applicant) filed on August 24, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5268 to be known as the Beegum Creek Hydroelectric Power Project located on Beeum Creek in Tehama County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Lawrence A. Coleman, Director of Water Resources, Route 1 Box 4, Gerber, California 96035.

Project Description—The proposed project would consist of: (1) a diversion structure; (2) a 2.0-mile long diversion conduit; (3) a 600-foot long, 48-inch diameter penstock; (4) a powerhouse containing one generating unit with a rated capacity of 3400 kW; and (5) a 3.5-mile, 12 kV transmission line. The Applicant estimates that the average annual energy output would be 17.1 million kWh.

Proposed Scope of Studies under Permit— A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would conduct engineering, environmental, economic, and feasibility studies, and prepare an FERC license application. No new roads would be required to conduct the studies. The cost of the work to be performed under the preliminary permit is estimated to be $80,000 to $140,000.

Competing Applications—This application was filed as a competing application to the Beegum Creek Hydroelectric Power Project No. 4185 filed on February 11, 1981, by Consolidated Hydroelectric, Inc. under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1981). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petition to intervene must be received on or before October 23, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28287 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-17-004]

Texas Eastern Transmission Corp.; Proposed Changes In FERC Gas Tariff

September 22, 1981.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 4, 1981 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

Substitute Sixtieth Revised Sheet No. 14
Substitute Sixtieth Revised Sheet No. 14A
Substitute Sixtieth Revised Sheet No. 14B
Substitute Sixtieth Revised Sheet No. 14C
Substitute Sixtieth Revised Sheet No. 14D

These sheets are being issued pursuant to Ordering Paragraph (D) of the Commission's Order Accepting For Filing and Suspending Proposed Tariff Sheets Subject to Refund and Conditions, issued July 31, 1981 in Docket No. TA81-2-17-002 (PGA81-2, IPR81-2, DCA81-2, LFUT81-3, TT81-2) and also subject to the Commission's orders in Docket No. RM78-23 and pursuant to § 154.38(d)(4)(iv) of the Commission's Rules and Regulations.

The changes proposed consist of:

(1) A net reduction in rates based on revisions in underlying pipeline supplier rates, consisting of a $.121/dth increase in monthly demand rates offset by 1.43¢/dth decrease in commodity rates;

(2) A temporary reduction of 17.89¢/dth to reflect elimination of amounts attributable to a proposed purchase from Northwest Pipeline Corporation which gas had not been connected to Texas Eastern's system as of August 1, 1981, the effective date of Texas Eastern's PGA filing. As stated, the reduction is temporary only, and is proposed to terminate as described below; and

(3) Elimination of a negative surcharge of 0.23¢/dth to reflect Texas Eastern's reduction to zero of the balance in the Louisiana First Use Tax Deferred Account. Pursuant to the Commission's Order No. 10-D in Docket No. RM78-23 issued on July 17, 1981, Texas Eastern effective as of August 1, 1981 cleared the balance from its LFUT Deferred Account by refunding such balance to the

customers on August 31, 1981, making further collections unnecessary.

The proposed effective date of the above tariff sheets is August 1, 1981.

On April 28, 1981 Northwest Pipeline Corporation filed in Docket No. CP81–307 for authorization to commence a sale to Texas Eastern and Transwestern Pipeline Company of certain volumes of natural gas. Although it was anticipated that this source of supply would be connected to Texas Eastern's system by August 1, 1981, the issuance of the certificate has been delayed to the extent that these volumes remain unconnected to this date. For this reason Texas Eastern hereby proposes to eliminate from its PGA filing amounts attributable to the Northwest sale until such time as deliveries commence thereunder. At such time as deliveries from Northwest commence, Texas Eastern proposes to reinstate amounts attributable thereto in its PGA, so that Revised Substitute Sixtieth Revised Sheet Nos. 14, 14A through 14D, submitted herewith for filing, will become effective on the first day of the month following the date of first delivery to Texas Eastern under the Northwest contract. Amounts of undercollection could be substantial if current recovery of costs were not permitted, to the detriment of both Texas Eastern and its customers. Texas Eastern's proposal will enable Texas Eastern to track the Northwest costs on a current basis and will protect Texas Eastern's customers from the effects of a later inflated unit rate and the additional costs of associated carrying charges if recovery of such amounts were delayed until a subsequent PGA filing. Therefore, Texas Eastern requests the Commission to grant waiver of Section 154.38(d)(4)(iv) of its Rules and Regulations to permit Revised Substitute Sixtieth Revised Sheet Nos. 14, 14A through 14D to become effective on the first day of the month following the commencement of deliveries to Texas Eastern of the Northwest volumes.

Billing for deliveries during the month of August will be based upon the rates established in Texas Eastern's July 2 filing, as accepted by Commission order of July 31, 1981; provided, however, that adjustments will be made in the September bills as necessary to reflect changes in the revised tariff sheets filed herewith, effective back to August 1, 1981.

By its filing, Texas Eastern requests the Commission to grant waiver of its Rules and Regulations as may be necessary to allow these tariff sheets to become effective as proposed.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 6, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28275 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-18-004]

Texas Gas Transmission Corp.; Proposed Change in FERC Gas Tariff

September 22, 1981.

Take notice that on September 4, 1981, Texas Gas Transmission Corporation (Texas Gas) tendered for filing one substitute gas tariff sheet to its FERC Gas Tariff, Third Revised Volume No. 1, which is dated as issued on September 4, 1981, and identified as follows: Substitute Thirty-Fourth Revised Sheet No. 7.

Texas Gas states that the substitute tariff sheet was filed to reflect downward modifications in the rates of two of Texas Gas' pipeline suppliers, Texas Eastern Transmission Corporation (Texas Eastern) and United Gas Pipe Line Company (United). The Commission's Order issued July 30, 1981, in Docket No. TA81–2–18–004 has accepted Texas Gas' August 1, 1981 PGA rates subject to the condition that they reflect any downward modifications of the Texas Eastern and United PGA rates.

Copies of this filing were served upon Texas Gas' jurisdictional customers, interested state commissions and parties of record in this proceeding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 7, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28276 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-2-30-003]

Trunkline Gas Co.; Change in Tariff

September 23, 1981.

Take notice that on September 8, 1981, Trunkline Gas Company (Trunkline) tendered for filing First Substitute Thirty-Seventh Revised Sheet No. 3–A and First Substitute Fifth Revised Sheet No. 3–B to its FERC Gas Tariff, Original Volume No. 1, such sheets proposed to be effective September 1, 1981.

Trunkline states that by order dated August 31, 1981 the Commission accepted for filing, with certain conditions, tariff sheets filed by Trunkline which reflect a PGA Rate Adjustment for increases in the current cost of gas and recovery of amounts in the deferred purchased gas cost account. The subject tariff sheets were approved to become effective September 1, 1981, subject to refund. The Commission's order required Trunkline to file revised tariff sheets reflecting the elimination of all costs associated with gas purchases from Trunkline LNG Company which were not flowing by September 1, 1981.

On September 1, 1981 Trunkline LNG Company had not yet commenced deliveries to Trunkline. Therefore, in accordance with paragraph (B) of the Commission's Order dated August 31, 1981, Trunkline submits for filing, six (6) copies each of First Substitute Thirty-Seventh Revised Sheet No. 3–A and First Substitute Fifth Revised Sheet No. 3–B to its FERC Gas Tariff, Original Volume No. 1, such tariff sheets to be effective September 1, 1981.

Trunkline states that these substitute revised tariff sheets reflect increases in the current cost of gas, exclusive of any cost associated with purchases from Trunkline LNG Company, and recovery of amounts in the deferred purchase gas cost account.

Trunkline filed these revised tariff sheets in compliance with Ordering paragraph (B) of the Commission's Order of August 31, 1981, without

prejudice to Trunkline's position with respect to its right to recover costs attributable to its obligation to Trunkline LNG Company, as well as its right to seek rehearing of the condition contained in Ordering paragraph (C) of the Commission's Order, or to make subsequent PGA filings applicable to this item.

Trunkline states that copies of its filing are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protest should be filed on or before October 8, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28288 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4754-000]

Hershel L. Webster; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

September 22, 1981.

Take notice that on May 28, 1981, Hershel L. Webster (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project Project No. 4754-000 would be located on White Creek near Cleveland, in White County, Georgia. Correspondence with the Applicant should be directed to: James O. Banks, Route 3, Box 460, Elberton, Georgia 30635.

Project Description—The proposed project would consist of: (1) an existing earthfill dam approximately 339 feet long and 17 feet high with an ungated spillway about 150 feet long; (2) an existing reservoir of approximately 21 acres and a maximum storage capacity of approximately 171 acre-feet; (3) a proposed approach channel approximately 1000 feet long and 8 feet wide at the bottom; (4) a proposed 3-foot diameter steel penstock 355 feet long; (5) a proposed powerhouse containing a single generating unit with a capacity of 375 kW; (6) a proposed 14.4 kV transmission line, 2 miles long; and (7) appurtenant facilities. The proposed project would be operated on a peaking or run-of-creek basis, depending on power requirements.

Purpose of Project—All energy generated would be used by the Applicant for sale to Oglethorpe Power Corporation. The average annual energy generation is estimated to be 1.5 GWh.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Georgia Dept. of Natural Resources Game & Fish Division 270 Washington Street SW., Atlanta, Georgia 30334 are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before November 9, 1981 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c)(1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d)(1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before November 9, 1981.

Filing and Service of Responsive Documents—Any filings, must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28305 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-761-000]

West Texas Utilities Co.; Filing

September 23, 1981.

The filing Company submits the following:

Take notice that on September 11, 1981, West Texas Utilities Company (WTU) submitted for filing two (2) executed Delivery Point and Service Specifications sheets providing for changes in conditions of service under a Service Agreement between WTU and Southwest Texas Electric Cooperative, Inc. The changes provide for an increase

in stated maximum contract demand at each of two existing delivery points, Arrott and Big Lake.

WTU proposes an effective date of September 1, 1981, and requests waiver of the notice requirements to allow such effective date.

WTU states that copies of the filing have been sent to the Public Utility Commission of Texas and Southwest Texas Electric Cooperative, Inc.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 14, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28290 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4903-000]

Western Montana Electric Generating and Transmission Cooperative, Inc.; Application for Preliminary Permit

September 22, 1981.

Take notice that Western Montana Electric Generating & Transmission Cooperative, Inc. (Applicant) filed on June 18, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 4903 to be known as the Swift Dam Hydroelectric Project located on Birch Creek in Pondera County, Montana. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. James A. Sewell, James A Sewell & Associates, P.O. Box 160, Newport, Washington 99156.

Project Description—The proposed project would consist of: (1) an existing concrete arch dam approximately 565 feet long and 200 feet high; (2) an existing reservoir with a surface elevation of 4,883.50 feet above m.s.l. The surface area is approximately 446 acres and the reservoir has a usable storage capacity of 29,980 acre-feet; (3) a proposed powerhouse to be located just downstream of the dam and containing 2 generators with a total rated capacity of 4.6 MW; (4) a proposed transmission line 11.25 miles in length to be interconnected to an existing network; and (5) appurtenant facilities. The proposed project is not located on Federal lands. The Applicant estimates that the average annual energy output would be 11.7 GWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months during which time studies would be made to determine the engineering, environmental and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, State, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $47,000.

Competing Applications—This application was filed as a competing application to the Swift Dam Hydroelectric Project No. 3725 filed on November 12, 1980, by Mitchell Energy Company, Inc. under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If any agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 23, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28306 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-179-000]

Arizona Public Service Co.; Order Denying Rehearing

Issued: September 24, 1981.

On July 30, 1981, Citizens Utilities Company (Citizens) filed an application for rehearing of an order the Commission issued in these proceedings on July 2, 1981.[1] The limited procedural history relevant to Citizens' application is as follows.[2] These proceedings commenced when Arizona Public Service Company (APS) tendered for filing, pursuant to Section 205 of the Federal Power Act, revised rates for Citizens and for other customers. In its petition to intervene, Citizens argued that APS' contract with Citizens did not permit APS to make unilateral rate changes effective as to Citizens under Section 205 of the Federal Power Act. According to Citizens, under the relevant contractual provisions, the rates for services to Citizens may be changed only by an order of the Commission after hearing pursuant to Section 206 of the Act.

The sole question addressed by the July 2, 1981 order was whether the contracts permitted APS to make a unilateral rate change pursuant to Section 205. To resolve this issue the Commission first analyzed a series of contractual provisions which clearly demonstrated that APS and Citizens

[1] On August 28, 1981, the Commission issued an order granting rehearing for the limited purpose of further consideration.

[2] A more complete procedural history is detailed in the Commission's July 2, 1981 order.

intended that the following wording, and only this wording, governed the rights of APS or Citizens to seek a change in rates:

> After the end of the first year of the agreement, either party may file for a change in rates, terms and conditions contained in the Agreement.[3]

The Commission then determined that this wording (hereafter "governing language") permits APS to unilaterally file changes in rates under Section 205.

In its application for rehearing, Citizens requests that the Commission reverse this determination. In doing so, it presents several arguments which we have previously rejected. We believe that only one argument merits further response.

Specifically, Citizens contends that the governing language does not permit APS to make a unilateral change pursuant to Section 205 because the language "either party may file" refers exclusively to an action available to both parties under Section 206 rather than a rate change under Section 205 which would be available only to APS.[4] As support for this argument, Citizens cites the decision of the United States Court of Appeals for the District of Columbia Circuit in *Papago Tribal Utility Authority and Arizona Electric Power Cooperative, Inc.* v. *Federal Energy Regulatory Commission* (hereafter "*Papago*").[5] According to Citizens, the *Papago* decision construed a clause analogous to the governing language in determining that the involved utility was precluded from making a unilateral rate change.[6]

Citizens' interpretation of the governing language is unduly restrictive. There is no reasonable basis to believe that the parties did not simply intend to reserve their respective options under Sections 205 as well as 206 of the Act to seek a change in rates. The governing language appears deliberately open-ended and invokes Section 205 as readily as any other procedure.[7]

Similarly, Citizens' reliance on the *Papago* decision is ill-founded. In the passage cited by Citizens, the *Papago* court was construing an ambiguous second clause of a contractual provision to harmonize it with a first clause which the court found to be clear in its intention to impose limits on the utility's right to put rates into effect.[8] In contrast, in these proceedings, the governing language has no such limiting first clause. Rather, by explicit agreement of APS and Citizens, it stands alone.[9] We reaffirm out interpretation that, by itself, this language "permits APS to unilaterally file changes in rates under Section 205."[10]

The Commission orders:

(A) The Application for Rehearing filed by Citizens on July 30, 1981, is hereby denied.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-28452 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[3] July 2, 1981 Commission Order, mimeo at 2-4.

[4] Citizens' Application for Rehearing, p. 7.

[5] *Papago*, 610 F.2d 914 (D.C. Cir. 1979).

[6] Citizens' Application for Rehearing, p. 7.

[7] *Cf., City of Oglesby* v. *F.E.R.C.*, 610 F.2d 897, 912 (D.C. Cir. 1979).

[8] *Papago, supra*, 610 F.2d at 928.

[9] July 2, 1981, Commission Order, mimeo, at 2-4.

[10] *Id.* at 5.

[Docket No. CP81-513-000]

Cities Service Gas Co.; Application

September 25, 1981.

Take notice that on September 14, 1981, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP81-513-000 an application pursuant to Section 7(b) of the Natural Gas Act and § 157.7(e) of the Commission's Regulations thereunder (18 CFR 157.7 (e)) for permission and approval to abandon, during the calendar year 1982, direct sale service and facilities no longer required for deliveries of natural gas to Applicant's customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in abandoning service and removing direct sales measuring, regulating and related facilities. Applicant states that it would, abandon service and facilities only when deliveries to any one direct sales customers would not have exceeded 100,000 Mcf of natural gas during the last year of service.

The application further states that Applicant would not abandon any service unless it would have received a written request or written permission from the customer to terminate service. In the event such request or permission could not be obtained, a statement certifying that the customer has no further need for service would be filed with the Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 16, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28453 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-488-000]

Colorado Interstate Gas Co.; Application

September 24, 1981.

Take notice that on August 28, 1981, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP81-488-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities to increase its transmission system capacity, all as more fully set forth in the application

which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to construct and operate a new 1,500 horsepower compressor station on its Wind River Lateral in Fremont County, Wyoming, a new 3,300 horsepower compressor station adjacent to its existing Rawlins Compressor Station in Carbon County, Wyoming, and to recylinder two compressor units at the existing Elk Basin Compressor Station in Park County, Wyoming. Applicant also proposes to install and operate approximately 1.7 miles of 12-inch pipeline in the Elk Basin area to connect Applicant's system with the system of Montana-Dakota Utilities Company (MDU), approximately 70 miles of 16-inch pipeline loop on the Wind River Lateral and approximately 110 miles of 30-inch pipeline from the Cheyenne Compressor Station in Weld County, Colorado, to the Latigo Junction in Elbert County, Colorado.

It is stated that Applicant entered into a gas sales agreement with MDU to purchase gas produced from certain of MDU's supply sources for a period of 15 years. Applicant avers that in the past two years MDU has negotiated contracts to purchase gas at the tailgates of the McKenzie Plant in McKenzie County, North Dakota, the Little Knife Plant in Billings County, North Dakota, and the TR Plant in Billings County, North Dakota. Applicant asserts that MDU has determined that residue gas received from these plants is excess to its system requirements. It is submitted that MDU has therefore contracted to sell certain volumes of gas attributable to these processing plants to Applicant. Applicant maintains that MDU would assign the purchase cost of the gas directly to Applicant and that the total negotiated purchase cost includes MDU's recovery of transportation costs and a rate of return.

It is asserted that under the agreement MDU would transport, store and deliver certain volumes of natural gas from certain specified sources for each of three consecutive five-year periods. Applicant alleges that the parties may agree to assign other specific sources of supply to the Agreement. During the first period, up to 17,000 Mcf per year would be delivered on a firm basis, it is asserted. Applicant states that during each year of the second five-year period MDU would deliver up to 8,175,000 Mcf to Applicant on a best-effort basis. Applicant avers that if during the first ten years of the agreement excess gas supplies become available to MDU, Applicant would be notified of such additional supplies and would have the right of first refusal. Applicant contends that it be allowed the option to use additional MDU system surpluses as they occur provided that Applicant requires such supplies and Applicant's transmission system could accommodate them. Applicant asserts that during the third five-year period MDU would deliver to Applicant those volumes from the previously dedicated sources of supply which are determined to be in excess of MDU's system requirements. These volumes as agreed upon annually by MDU and Applicant would be delivered to Applicant on a firm basis for two-year periods, it is stated.

Applicant maintains that the agreement initially provides for delivery of up to 98,120 Mcf to Applicant's system on a winter day. It is averred that of this total 16,900 Mcf per day would be delivered by MDU to MIGC, Inc. (MIGC) at Recluse and be transported to Applicant's Powder River Lateral. Applicant submits that the remaining 81,220 Mcf per day would be delivered directly to the Wind River Lateral. Applicant states that MDU would deliver the subject gas to four locations in Fremont, Park, and Campbell Counties, Wyoming. At the Recluse delivery point in Campbell County, Wyoming, MDU would deliver gas for Applicant to MIGC and MIGC would transport the gas to the point of interconnection with Applicant's system in Converse County, Wyoming.

Applicant submits that its daily system requirements are considerably greater during the heating season than during the remainder of the year and that the structure of the agreement's delivery schedule approximately conforms to the pattern of the demand on Applicant's system. The annual delivery schedule is divided into three distinct periods, October, November through March, and April through September, it is asserted. Applicant maintains that deliveries would be made to MIGC at the Recluse delivery point throughout the year and that deliveries would be made at the Elk Basin and/or the Madden delivery points in Fremont County and Park County, Wyoming, respectively, only during the October and the November through March periods for the initial five years and from November through March thereafter. Deliveries to the Elk Basin Storage delivery point in Park County, Wyoming, would occur in the October and the April through September periods for injection into MDU's Elk Basin Storage Field, it is averred. Applicant submits that deliveries from the Storage field to Applicant at the Elk Basin Storage delivery point would occur during the November through March period.

It is stated that from the inception of sales under the agreement and continuing to March 31, 1982, MDU would use its own compressor facilities to inject gas for Applicant's account into MDU's Elk Basin Storage Field. Applicant asserts that beginning on April 1, 1982, and continuing for the remainder of the term of the agreement MDU would deliver the gas to be stored to Applicant at the Elk Basin Storage delivery point and Applicant avers that it would compress these volumes and redeliver them to MDU for injection into the storage field. The Elk Basin Storage delivery point would be used to transfer gas purchased by Applicant to and from MDU's Elk Basin Storage Field, it is submitted.

Applicant asserts that under the agreement it would pay MDU the rate contained on Sheet No. 10 of MDU's FERC Gas Tariff which is initially approximately $3.68 per Mcf for gas delivered directly from MDU's transmission system and $3.79 per Mcf for gas delivered from the Elk Basin Storage Field. Applicant submits that the purchase agreement is advantageous for Applicant and its system customers in view of the favorable cost of the gas and the storage service to be provided by MDU. Furthermore, Applicant asserts that this agreement is beneficial to MDU and its customers because it would relieve MDU of substantial volumes of excess gas. Applicant also contends that the schedule of deliveries from MDU under the agreement provides Applicant and its customers with peak day supply benefits unavailable from most traditional sources of supply.

Applicant states that the facilities proposed in the instant application would expand Applicant's system to accommodate up to 98,120 Mcf of gas per day to be delivered by MDU during the heating season. Applicant asserts that the facilities would also provide access to MDU's Elk Basin Storage Field and afford Applicant increased flexibility in the use of the Wyoming Interstate Company (WIC) segment of Trailblazer system.

Applicant submits that the facilities are proposed as follows:

Elk Basin Pipeline—Approximately 1.7 miles of 12-inch pipeline required to interconnect MDU's and Applicant's systems. This pipeline would be used to both inject into and withdraw from MDU's Elk Basin Storage Field.

Elk Basin Compressor Station Modification—Two units at the existing

Elk Basin Compressor Station would be recylindered to permit compression of the purchase gas into Applicant's transmission system and during the injection season to permit compression of the gas to be stored in MDU's Elk Basin Storage Field.

Lost Cabin Compressor Station—A new 1,500-horsepower compressor station in Fremont County, Wyoming, would be required to compress the gas flowing in the Wind River Lateral to reach Rawlins at the design pressure of 652 p.s.i.a.

Wind River Lateral Loop—In conjunction with the proposed Lost Cabin Compressor Station 70 miles of 16-inch pipeline loop south of the new station would be necessary to attain design pressures and volume flows. The 16-inch loop would be installed adjacent to Applicant's existing Wind River Lateral.

Sinclair Compressor Station—To allow the delivery of up to 80,269 Mcf of gas per day to the WIC segment of Trailblazer at the design pressure of 1,012 p.s.i.a., a new 3,300-horsepower compression facility would be installed. The new station would be located adjacent to Applicant's existing Rawlins Compressor Station. This station would provide Applicant access to available transmission capacity on the WIC segment and would permit optimum utilization of the installed facilities on both systems.

Cheyenne-to-Latigo Junction Pipeline—The 110 mile 30-inch pipeline proposed herein would enable Applicant to maximize the use of its existing facilities to flow gas to its major markets in the Denver area during the heating season and would facilitate the delivery of gas to storage during periods of lower demand. This proposal also obviates the requirement to install new facilities in the populous metropolitan Denver area and would avoid the disruption caused by crossing several miles of irrigated crop land south of Cheyenne.

It is stated that the cost of the proposed construction is $85,700,000 to be financed from Applicant's funds on hand, internally generated cash from operations, and additional funds from external sources as may be required.

Applicant proposes to place the facilities in service on or before September 30, 1982.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 16, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28454 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-433-001]

Columbia Gas Transmission Corp.; Amendment to Application

September 24, 1981.

Take notice that on September 9, 1981,[1] Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP81-433-001 an amendment to its application filed pursuant to Section 7 of the Natural Gas Act so as to reflect the sale of natural gas under certain revised service agreements and to reflect construction, operation and abandonment of certain pipeline and compressor facilities in the event that Applicant's Cove Point facility is not in operation for the 1982-1983 winter period, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is stated that in the application filed July 28, 1981, Applicant proposed to sell natural gas to certain of its existing wholesale customers beginning with the 1982-1983 winter period under revised service agreements which result in a net increase in the total daily entitlement of these customers. Furthermore, Applicant asserts that Columbia Gas of Pennsylvania, Inc. (CPA), one of its wholesale customers, has requested increased deliveries within its existing total daily entitlement at existing points of delivery supplied via Applicant's 1804 system. Applicant submits that it proposed to construct and operate certain pipeline and compressor facilities required to increase the capability of its 1804 system between Waynesburg and Eagle Compressor Stations, the Port Jervis between Eagle Compressor Station and New York, and the A-5 system between the Port Jervis system and Nyack, New York. Applicant also proposed to construct and operate compressor facilities required to increase Applicant's capabilities to deliver exchange volumes to Transcontinental Gas Pipe Line Corporation (Transco) at the Easton and Renovo Compressor Stations.

Applicant states that the 1982-1983 service levels proposed in the application are conditioned on the availability of Applicant's Cove Point supply for the 1982-1983 winter period. Applicant asserts that in April 1980 the delivery of liquefied natural gas from Algeria, the source of Applicant's Cove Point supply, was interrupted until such time as the pricing provisions related to the liquefied natural gas sale were renegotiated. It is averred that renegotiations are in progress but it is possible that Applicant's Cove Point supply would not be available for the 1982-1983 winter period. Applicant submits that in the event that the Cove Point facility is not operating additional pipeline and compressor facilities would be necessary to serve the requested 1982-1983 service levels.

Applicant maintains that as an alternative to constructing additional facilities which could duplicate facilities when the Cove Point facility is returned to service Applicant would serve its Eastern Market Area customers previously requested 1981-1982 service; levels (Alternate 1982-1983 service levels) beginning with the 1982-1983 winter period. Applicant also states that it would construct only such facilities as are required to supply this level of service. Applicant now proposes to

[1] The amendment was initially tendered for filing on September 9, 1981; however, the fee required by Section 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until September 15, 1981; thus, filing was not completed until the latter date.

construct and operate only the following in the event that the Cove Point facility is not in operation for the 1982–1983 winter period:

(1) 103.7 miles of 24-inch pipeline loop in six sections located in Bedford, Greene, Fayette, Somerset, Fulton, Franklin, Adams and York Counties, Pennsylvania, and Washington County, Maryland;

(2) A 1,160 horsepower compressor unit at Artemas Compressor Station in Bedford County, Pennsylvania;

(3) Two 1,350 horsepower compressor units at the Eagle Compressor Station in Chester County, Pennsylvania;

(4) A 1,160 horsepower unit at Easton Compressor Station in Northampton County, Pennsylvania;

(5) A 375 horsepower unit at Renovo Compressor Station in Clinton County, Pennsylvania.

Applicant states that the estimated investment cost of the construction projects proposed in the instant amendment is $67,624,500.

Furthermore, Applicant proposes to abandon an 880 horsepower compressor unit and a 500 horsepower compressor unit at the Eagle Compressor Station in the event the Cove Point facility is not in operation for the 1982–1983 winter period.

In the event the Cove Point facility is not in operation for the 1982–1983 winter period Applicant also proposes to serve Columbia Gas of Ohio, Inc., Columbia Gas of West Virginia, Inc., and Waterville Gas and Oil Company under revised service agreements. Moreover, Applicant proposes to render service to its customers under the following revised service agreements reflecting alternate 1982–1983 service levels:

(1) A revised service agreement with Baltimore Gas and Electric Company effectuating an increase in its contract demand under Rate Schedule CDS of 10,000 dekatherms (dt) equivalent per day from 360,000 dt equivalent per day to 370,000 dt equivalent per day and a reduction in its winter contract quantity under Rate Schedule WS of 460,000 dt equivalent from 8,280,000 dt equivalent to 7,820,000 dt equivalent in Zone 2.

(2) A revised service agreement with Bluefield Gas Company effectuating an increase in its contract demand under Rate Schedule CDS of 300 Mcf per day from 5,600 Mcf per day to 5,900 Mcf per day in Zone 1.

(3) A revised service agreement with Commonwealth Gas Pipeline Corporation effectuating an increase in its contract demand under Rate Schedule CDS of 11,504 dt equivalent per day from 213,496 dt equivalent to 225,000 dt equivalent per day in Zone 2.

(4) A revised service agreement with Orange and Rockland Utilities, Inc. effectuating an increase in its contract demand under Rate Schedule CDS of 3,000 dt equivalent per day from 42,100 dt equivalent per day to 45,100 dt equivalent per day in Zone 7.

(5) A revised service agreement with Pennsylvania Gas and Water Company effectuating an increase in its contract demand under Rate Schedule CDS of 12,000 dt equivalent per day from 39,700 dt equivalent per day to 51,700 dt equivalent per day in Zone 6.

(6) A revised service agreement with UGI Corporation effectuating an increase in its maximum daily quantity under Rate Schedule WS of 15,000 dt equivalent per day from 50,000 dt equivalent per day to 65,000 dt equivalent per day. In addition, UGI has requested an increase in its winter contract quantity under Rate Schedule WS of 750,000 dt equivalent from 2,500,000 dt equivalent to 3,250,000 dt equivalent in Zone 6.

(7) A revised service agreement with Washington Gas Light Company effectuating an increase in its contract demand under Rate Schedule CDS of 27,000 dt equivalent per day from 408,900 dt equivalent per day to 435,900 dt equivalent per day in Zone 2.

Applicant submits that all of the aforementioned service agreements would have an effective date of November 1, 1982, with the exception of the service agreements with Commonwealth Gas Pipeline Corporation and Washington Gas Light Company which would be effective on December 1, 1982.

Applicant avers that the instant amendment does not propose any change in the 1982–1983 service levels requested in the application for Applicant's non-Eastern Market Area customers or in the increased level of deliveries to CPA from the 1804 system beginning with the 1982–1983 winter period.

It is stated that Applicant was authorized to construct certain facilities to increase the capabilities of its 1804 system and B system during 1981 which would enable Applicant to supply the 1980–1981 service levels of its Eastern Market Area customers beginning with the 1981–1982 winter period without the Cove Point facility in operation. Applicant states that in addition to using the increased B system capabilities to offset the loss of Cove Point in Zone 2 the increased 1804 system capabilities permitted a reduction from 70,000 Mcf to 55,000 Mcf of natural gas in the design day and average winter day volumes scheduled for delivery from Zone 2 and Zone 6 on the suction side of the Downingtown Compressor Station. Furthermore, Applicant estimates that approximately 9,000 Mcf of natural gas would be delivered on the design day from the 1804 system to Consolidated System LNG for transportation to the Loudoun Compressor Station which is the receipt point for Applicant's Cove Point supply. Applicant avers that on the design day during the 1981–1982 winter period it was projected that a total of 24,000 Mcf per day would be made available in the Loudoun area from the 1804 system by a combination of displacement and direct transportation. Applicant maintains that the level transportation from Zone 6 to Zone 2 by Consolidated System LNG was reflected to be approximately 60,000 Mcf on an average winter day.

To supply the alternate 1982–1983 service levels of Eastern Market Area customers without the Cove Point facility in operation, Applicant proposes to continue the same mode of operation approved by the Commission for the 1981–1982 winter period.

It is asserted that the facilities proposed in the instant amendment would increase the capabilities of the 1804 and Port Jervis systems and enable these systems to supply the alternate 1982–1983 service levels of Applicant's Eastern Market Area customers. Applicant submits that continuation of the 1981–1982 mode of operation would result in the scheduled peak day deliveries from Zone 2 to Zone 6 on the suction side of the Downingtown Compressor Station being reduced from 70,000 Mcf per day to 52,000 Mcf per day. Moreover, Applicant estimates that on a design day approximately 55,000 Mcf of natural gas would be delivered from the 1804 system to Consolidated System LNG for transportation to the Loudoun Compressor Station. Therefore, Applicant states that on a design day during the 1982–1983 winter period a total of 73,000 Mcf per day would be made available in Zone 2 from the 1804 system. Applicant maintains that the increase of an additional 49,000 Mcf per day being made available to Zone 2 via the 1804 system during the 1982–1983 winter period compared to the 1981–1982 winter period is approximately equal to the Zone 2 total daily entitlement increases at the Alternate 1982–1983 service levels.

Applicant submits that the facility construction proposed to be required on the 1804 system is the same with or without the Cove Point facility in operation. Applicant states that the reduction in required facilities on the Port Jervis and A–5 systems and at Renovo Compressor Station reflect the reduced level of requirements being served from these systems at the alternate 1982–1983 service levels. Specifically, Applicant avers that without the Cove Point facility in operation the proposed construction and operation in the application of 7.3 miles of 16-inch pipeline loop in Orange County, New York, a 375 horsepower compressor unit at the Easton

Compressor Station in Northampton County, Pennsylvania, and one of the two 375 horsepower compressor units at the Renovo Compressor Station in Clinton County, Pennsylvania, would not be necessary.

Applicant avers that the supplies presently attached or committed to applicant are fully adequate to serve its full annual and peak day requirements during the contract years 1981 through 1984. Applicant states that because of its far-ranging supply acquisition program it is confident that additional supplies for the contract year 1985 and thereafter could be obtained. Applicant asserts that its problem is the timing of supply acquisitions to avoid short-term take-or-pay problems.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before October 14, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28455 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. ER78-517; ER78-360]

Connecticut Light & Power Co. and Connecticut Yankee Atomic Power Co.; Order Denying Rehearing and Denying Flow-Through of Refunds

Issued: September 23, 1981.

On August 24, 1981, the Second Taxing District of the City of Norwalk, the Third Taxing District of the City of Norwalk and the Town of Wallingford, Connecticut (Cities) filed a petition for rehearing of our order of July 23, 1981, in Docket No. ER78-517. The Cities urge reconsideration of our acceptance of Connecticut Light & Power Company's (CL&P) compliance filing in that docket.

The Cities raise two specifications of error in their application for rehearing. They urge the Commission to require CL&P to refund revenues collected under the compliance rates prior to acceptance, and they urge the Commission to require CL&P to file compliance rates consistent with the theory of the approved rate.

Cities' application for rehearing does not raise anything new. Their petition is essentially a restatement of arguments previously considered and rejected by the Commission. In our judgment no new facts or principles of law have been shown which would warrant modification of our order of July 23, 1981.

On July 9, 1981, the Cities also filed, in Docket No. ER78-360, a petition for refunds. The Cities urge the Commission to require CL&P to refund to the Cities a portion of the refund received by CL&P from Connecticut Yankee Atomic Power Company (Connecticut Yankee) as a result of the Commission's Opinion No. 102. The Cities argue that, since they are wholesale customers of CL&P, they should receive an allocable share of the refund paid by Connecticut Yankee to CL&P.

The effective date of Connecticut Yankee's rate increase filing in Docket No. ER78-360 was November 5, 1978. Our review indicates that since that date the rates under which CL&P has served the Cities were determined by a cost of service study that did not include the effect of any proposed increase requested by Connecticut Yankee. Accordingly, the Cities are not entitled to any flow-through of refunds made to CL&P by Connecticut Yankee as a result of Opinion No. 102. In reaching this decision, the Commission concludes that Cities' petition in Docket No. ER78-360 should not result in any further refunds in Docket No. ER78-517.

The Commission orders:

(A) The Cities' request for rehearing of the Commission's order of July 23, 1981, in Docket No. ER78-517 is denied.

(B) The Cities' petition for an order requiring CL&P to flow-through to the Cities a portion of the refunds received by CL&P in Docket No. ER78-360 is denied.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28456 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. EL81-11-000]

Kansas Municipal and Cooperative Electric Systems; Order Granting Intervention, Granting In Part and Denying In Part Requested Relief, and Consolidating Dockets

Issued: September 24, 1981.

On March 19, 1981, Kansas Municipal and Cooperative Electric Systems (Petitioners),[1] submitted a petition for a declaratory order stating that Kansas City Power & Light Company (KCPL) has been improperly including in its monthly fuel cost adjustments certain reclamation expenses associated with surface coal mines.

In support of their request, Petitioners have provided transcript excerpts of testimony presented in Docket Nos. ER80-315 and ER80-450[2] wherein KCPL's witnesses stated that reclamation costs associated with coal purchases from a non-affiliated supplier, Arch Mineral Company (Arch), are recovered through KCPL's fuel adjustment clause. It appears that, by agreement between KCPL and Arch, reclamation costs are billed to KCPL based on estimates made by Arch, although KCPL is not obligated to tender payment to Arch until reclamation costs actually are incurred. In the interim, KCPL bills its customer for estimated reclamation costs associated with the monthly kWh sold and retains the related revenues, accounting for them on its books as a miscellaneous current accrued liability.

Petitioners contend that inclusion of reclamation expenses in fuel adjustment clause computations violates section 35.14 of the Commission's regulations. According to Petitioners, Account 151 of the Uniform System of Accounts does not expressly apply to reclamation costs and should be construed narrowly so as to preclude recovery of such amounts through the fuel clause. In addition, Petitioners suggest that federal policies regarding reclamation activity may be changing, that KCPL's coal supplier may not be required to reclaim lands already mined or mined in the future, and that the reclamation accruals are speculative

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[1] The Petitioners constitute an *ad hoc* group of 12 wholesale customers of KCPL. The municipal customers include Baldwin City, Gardner, Garnett, Osawatomie, Ottawa, and Pomona, Kansas; Higginsville, Salisbury, Salter, and Marshall, Missouri. The cooperative customers, located in Kansas, are Coffey County Rural Electric Cooperative and United Electric Cooperative.

[2] These dockets concern proposed increased rates for firm power service to KCPL's wholesale municipal and cooperative customers. Hearings in the proceedings have been completed and the parties have filed briefs before the presiding administrative law judge.

in nature. Thus, Petitioners request that the Commission order KCPL to refund, with interest, all reclamation expenses recovered through fuel adjustment clause billings since January, 1978, and enjoin KCPL from further including such costs in future fuel adjustment clause calculations.

On April 27, 1981, KCPL filed a protest and petition to intervene [3] requesting that the Commission deny the relief sought by Petitioners or, in the alternative, defer consideration of the petition pending the resolution of related issues in Docket Nos. ER80–315 and ER80–450.[4] KCPL acknowledges that the reclamation costs in question are being billed through its fuel adjustment clause, but the company claims that such expenditures are legitimate components of Account 151. These costs, according to the company, are properly included in the total cost of coal despite the agreement between KCPL and Arch to "unbundle" the costs for billing purposes. Furthermore, KCPL agues that the current method of accounting is less speculative than the long-range estimates which would be necessary to include reclamation costs in the invoice price of coal purchases. Finally, KCPL expresses its opinion that the policies of the federal government may shift certain regulatory responsibilities to the states without necessarily affecting Arch's obligation to reclaim the surface mines.

Discussion

Section 35.14 of the Commission's regulations identifies the fuel costs which may be included in a utility's fuel adjustment clause. That section provides, in part, that:

> (2) Fuel costs (F) shall be the cost of:
> (i) Fossil and nuclear fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants.

The regulations further state that the costs of fossil fuel shall include no items other than those listed in Account No. 151 of the Commission's Uniform System of Accounts.[5] Account No. 151 includes the invoice price of fuel, expenses incurred in transporting the fuel from the point of acquisition to the unloading point, excise taxes, purchasing agents' commissions, insurance, and "other expenses directly assignable to the cost of fuel."

In view of the fact that coal mine land reclamation is presently required by law, the Commission finds that the legitimate cost of reclaiming surface mines should be considered an appropriate expense incurred by a coal producer. Insofar as the coal supplier actually collects such a charge as a component of the unit cost of fuel, the reclamation costs, in turn, would qualify as "other expenses directly assignable to the cost of fuel" for purposes of fuel clause treatment by a jurisdictional utility.[6]

Under the unique arrangement at issue in the instant docket, however, Arch provides to KCPL only an estimate of reclamation costs attributable to the coal supplied to the utility. As indicated by KCPL, such charges are not immediately paid to Arch but, instead, are delayed until actual reclamation costs are incurred by Arch. Nonetheless, KCPL uses the estimate of future reclamation costs to develop its own current per unit charge for reclamation costs to be recovered through the fuel clause. Thus, KCPL has direct control over the determination of the amount of charges passed through the fuel clause to recover prospective reclamation costs. However, despite the estimated nature of KCPL's billings, the company has not provided for any adjustment to fuel clause charges in the event that actual costs differ from the estimated costs. Neither has the company submitted the estimated unit charge for reclamation costs used in the monthly fuel adjustment calculation to the Commission for approval. The fuel adjustment clause has never been intended as a carte blanche to recover unreviewed estimated costs where no mechanism exists to correct for erroneous estimates.[7] Therefore, KCPL will be ordered to discontinue fuel clause pass through of charges for coal land reclamation costs. Such directive, however, will be without prejudice to the filing of an estimated charge, supported by appropriate cost data, together with a provision to adjust for differences between estimates and actual costs.

Notwithstanding this conclusion, we shall deny, without prejudice, Petitioners' request for refunds of reclamation costs already collected through the fuel adjustment clause. The amount of reclamation cost revenues collected from KCPL's wholesale customers that have not been or may not be paid to Arch cannot be determined from presently available information. Furthermore, any refund requirement will directly affect the cost of service at issue in Docket Nos. ER80–315 and ER80–450. We find, therefore, that the most appropriate manner in which to proceed is to refer this matter to the presiding judge in Docket Nos. ER80–315 and ER80–450 and to expand the scope of those proceedings to hear the limited issue of the appropriate refunds, if any, of reclamation revenues which should be made to KCPL's wholesale customers.[8]

The Commission orders

(A) KCPL's petition to intervene is granted, subject to the rules and regulations of the Commission; *Provided, however,* That participation by the intervenor shall be limited to matters set forth in its petition to intervene; and *Provided, further,* that the admission of the intervenor shall not be construed as recognition by the Commission that it might be aggrieved by any order or orders by the Commission entered in this proceeding.

(B) Petitioners' request for declaratory order is granted in part and denied in part. KCPL is hereby ordered to immediately cease billing estimated reclamation costs to its wholesale customers through the fuel adjustment clause, without prejudice to a filing by KCPL, supported by appropriate cost data, to include reclamation costs in the wholesale fuel adjustment calculation if an appropriate mechanism is included in KCPL's rates to correct for differences between billed and actual costs.

(C) Docket No. EL81–11–000 is hereby consolidated with Docket Nos. ER80–315 and ER80–450 for purposes of hearing and decision. The pending proceeding

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[3] Notice of the filing was issued on March 30, 1981, with comments, protests, or petitions to intervene due on or before April 27, 1981.

[4] In that proceeding, the intervenors have advocated elimination of reclamation expenses from KCPL's cost of service or reduction of rate base by the amounts recovered from customers but not yet disbursed to Arch.

[5] "The cost of fossil fuel shall include no items other than those listed in Account 151 of the Commission's Uniform System of Accounts for Public Utilities and Licensees." 18 CFR 35.14(a)(6).

[6] Petitioners rely on the Commission's recent declaratory order in *Electric Cooperatives of Kansas*, Docket No. EL81–2–000 (February 20, 1981), in support of their petition. In Docket No. EL81–2–000, we found that the costs of pollution control materials such as limestone were not "other expenses directly assignable to the cost of fuel" which could be included in fuel adjustment clause computations, noting that "policy considerations support a narrow construction of the expenses listed in Account No. 151." The instant case is distinguishable, however, because the reclamation costs are charges which are added directly to the cost of purchased fuel and which could have been added to the original invoice price of the coal.

[7] *cf. Public Service Company of New Hampshire*, Docket No. ER76–285, Opinion No. 790, issued March 21, 1977, (mimeo at 15); *aff'd Public Service Company of New Hampshire v. FERC*, 600 F.2d 944 (D.C. Cir. 1979).

[8] Petitioners have not requested that the Commission now decide the question of the appropriate cost of service treatment of those revenues received for reclamation costs but not yet paid to the coal producer. That issue has been litigated in the proceedings in Docket Nos. ER80–315 and ER80–450.

shall be expanded to address the limited refund issue as described in this order.

(D) The administrative law a judge previously designated to preside in Docket Nos. ER80-315 and ER80-450 shall determine the appropriate procedures necessary to accommodate consolidated of Docket No. EL81-11-000 with the existing proceeding.

(E) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-28459 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-491-000]

Midwestern Gas Transmission Co.; Application

September 25, 1981.

Take notice that on August 31, 1981, Midwestern Gas Transmission Company (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP81-491-000 an application pursuant to Section 3 of the Natural Gas Act for authorization to extend the period for which it is authorized to import natural gas from Canada pursuant to the terms and provisions of Applicant's contract No. 1 dated April 4, 1960, with TransCanada PipeLines Limited (TransCanada), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant purchases natural gas from TransCanada under four gas purchase contracts which gas is purchased and imported at a point on the United States-Canadian international boundary near Emerson, Manitoba, where the Northern System of Applicant interconnects with the facilities of TransCanada. Applicant submits that TransCanada and Applicant have agreed to amend their contract No. 1 to extend its terms to and including October 31, 1994, with all other terms remaining the same.

Applicant asserts that contract No. 1 and the related Canadian Export License Nos. GL-1 and GL-60 provide Applicant with the largest maximum day purchase entitlement of 222,360 Mcf per day and the largest annual purchase entitlement of 74,000,000 Mcf of any of the four gas purchase contracts. It is stated that this contract terminates on December 15, 1985. Applicant avers that TransCanada was originally authorized to export the volumes of gas subject to contract No. 1 pursuant to the provisions of License No. GL-1 which expired on May 14, 1981. It is asserted that the license was issued subject to the condition that the folume of gas which could be exported during the term of the license be limited to 1,410,000,000 Mcf. Applicant submits that the total volume authorized for export was reached in early 1981.

Applicant states that Canadian Export License GL-60 issued on December 7, 1979, authorized TransCanada to export natural gas during the balance of the term of contract No. 1. Applicant maintains that under this license TransCanada was authorized to continue to export the maximum daily and annual volumes provided for in contract No. 1 until November 1, 1984; however, TransCanada's export authorization was reduced to a maximum daily quantity of 167,249 Mcf per day and an annual total of 55,000,000 Mcf for the period extending from November 1, 1984, through October 31, 1985, and further reduced to a maximum daily quantity of 111,502 Mcf per day and a total of 4,907,000 Mcf during the period extending from November 1, 1985, through December 14, 1985. Applicant asserts that the agreement to amend contract No. 1 to extend the term thereof to and including October 31, 1994, serves to offset the declining availability of gas under the terms of contract No. 1 commencing in November 1984 as limited by the provisions of License No. GL-60 and the ultimate termination thereof in December 1985. It is stated that under the amendment the daily and annual volumes of gas originally and currently available to Applicant under contract No. 1 would continue to be available during the period November 1, 1984, through October 31, 1994.

Applicant alleges that the gas proposed to be imported for the extended period herein is part of TransCanada's system supply and is not to be purchased and produced from specific fields for resale to Applicant. Applicant therefore requests waiver of Section 153.3(d) of the Commission's Regulations requiring field names, locations and reserve estimates on a field by field basis.

Applicant submits that unless it is authorized to continue to import the same daily and annual volumes of gas as are currently available to it under contract No. 1 for the additional ten-year period as proposed herein it is certain that after October 31, 1984, it would be unable to continue to serve the requirements of its Northern System customers at the same level as those requirements are being served today. Applicant maintains that due to geographical location of its Northern System and its lack of extensions to domestic producing areas it has no practical alternative sources of domestic supply or synthetic fuels available to serve the needs of its Northern System customers.

Any person desiring to be heard or to made any protest with reference to said application should on or before October 16, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28458 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-477-000]

MIGC, Inc.; Application

September 25, 1981.

Take notice that on August 24, 1981, MIGC, Inc. (Applicant), 10880 Wilshire Boulevard, Suite 1600, Los Angeles, California 90024, filed in Docket No. CP81-477-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation for and exchange of natural gas with Colorado Interstate Gas Company (CIG) and for permission and approval to abandon a transportation service for CIG, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant specifically requests authority for the transportation and exchange of natural gas pursuant to a gas transportation and exchange agreement dated May 28, 1981, between Applicant and CIG. Applicant states that said agreement provides for a term of 15 years from the date of commencement of deliveries by either party to the other and from year to year thereafter.

It is stated that the transportation and exchange of gas would be from all sources of supply which are acquired by Applicant or CIG which are committed for a delivery period of at least five

years and can be economically and feasible connected to a party's transmission system. Applicant states that the gas transported and exchanged would not be limited to current existing delivery points. Applicant submits that a maximum quantity of 60,000 Mcf per day would be transported by it for CIG and that CIG would not transport more than 30,000 Mcf per day for Applicant.

Applicant proposes to construct facilities necessary to connect sources of supply to the parties' existing or future pipeline systems under budget-type authority or separate certificate authority if the facility costs exceed budget limits. It is stated that Applicant would file an annual tariff revision on January 31 to detail the delivery points for all sources of gas transported and exchanged.

Applicant avers that the parties would compensate each other for fuel usage and unaccounted-for gas to the extent reasonable. It is stated that imbalances would be corrected during the following month at the Powder River Basin Station pipeline interconnection in Wyoming between Applicant and CIG. It is stated that during the period December 1 through April 30 of each year Applicant may request from CIG up to 10,000 Mcf per day in excess of the exchange volumes otherwise transported to Applicant; however, such excess deliveries made by CIG during the winter season may not exceed an exchange gas imbalance created during the previous March 1 through November 30 period by Applicant foregoing receipt of exchange volumes otherwise due Applicant. It is asserted that the summer season imbalance would not exceed 1,000,000 Mcf at any time.

Applicant submits that if the thermal equivalent of gas delivered from supply sources should be exactly equal no balancing deliveries would be required and no transportation charges would apply. However, it is stated that if Applicant's deliveries from its various supply sources to CIG thermally exceed CIG's deliveries to Applicant, CIG would make balancing deliveries to Applicant at the Powder River Station. In that event Applicant would pay transportation charges to CIG equal to the appropriate transportation rate multiplied by the volume of balancing deliveries, it is explained. Similarly if CIG's supply deliveries exceed Applicant's, Applicant would make balancing deliveries to CIG at the Powder River Station and CIG would pay Applicant the appropriate transportation charges, it is stated. Applicant submits that transportation charges were 22.24 cents per Mcf for CIG's system and 25.61 cents per million Btu for Applicant's system as of May 28, 1981. It is also asserted that said transportation charges are to reflect each party's transmission system transportation rate exclusive of the cost of service attributable to its gathering and storage systems and exclusive of the cost of service attributable to gas used in the operation and maintenance of the transmission system.

Applicant further proposes to abandon service under a gas transportation agreement dated September 5, 1973, between Applicant and CIG. It is stated that by authorization granted November 26, 1976, in Docket No. CP74-92, Applicant was authorized to receive natural gas from Mountain Fuel Supply Corporation (Mountain Fuel) through CIG for CIG's account at various points along Applicant's pipeline in the Powder River Basin of Wyoming and then redeliver thermally equivalent volumes to CIG at a point of interconnection between Applicant's pipeline and the facilities of CIG. The agreement provided that the gas Mountain Fuel delivered to Applicant would come from specific acreage in the Spearhead Ranch production area in the Powder River Basin and that 40 percent of the volume of gas purchased by CIG from Mountain Fuel from a defined area in Spearhead Ranch and delivered by CIG through Applicant's pipeline would be available for purchase by Applicant during the period between July 15, 1976, and the closing date of a pipeline sale agreement. Applicant maintains that the transportation agreement was terminated effective September 5, 1978; however, Applicant has continued to render gas transportation services to CIG under its currently effective Rate Schedule X-1. Applicant proposes to abandon this service as it is incorporated and superseded by the gas transportation proposed in the instant application.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 16, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28459 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP75-23-010]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Petition To Amend

September 25, 1981.

Take notice that on September 4, 1981, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP75-23-010 a petition to amend the order issued March 7, 1977,[1] as amended, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas from new points of receipt for the account of Tenneco Oil Company (TOC) and the deletion of certain previously authorized receipt points, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it was authorized by order issued March 7, 1977, in the instant docket to transport natural gas for TOC from specified receipt points to a point of interconnection with Creole Gas Pipeline Corporation near Yscloskey,

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

Louisiana, for delivery to Air Products and Chemicals, Inc. Petitioner now proposes to establish additional new receipt points from TOC and delete certain authorized receipt points.

Specifically, Petitioner proposes to establish a new receipt point for deliveries of gas from TOC's interests in certain uncommitted reserves in the Four Isle Dome Field, Terrebonne Parish, Louisiana, which include but are not limited to reserves from previously authorized sources of supply for transportation from Terrebonne Land Development, *et al.*, Well Nos. 1, 2, and A–2 in Terrebonne Parish, Louisiana.

Petitioner states that a receipt point for the Terrebonne Land Development, *et al.*, Well No. 1 supply source was authorized by order issued March 7, 1977. It is stated that a receipt point for Terrebonne Land Development, *et al.*, Well No. 2 supply source was authorized by order issued July 27, 1978. It is also asserted that a receipt point at side valve 522A–102 on Petitioner's line No. 522A–10 in Terrebonne Parish, Louisiana, for Terrebonne Land Development, *et al.*, Well No. A–2 supply source was authorized by order issued June 29, 1979. Petitioner submits that in an amendment dated October 31, 1980, to their transportation agreement, Petitioner and TOC agreed to delete the existing authorized receipt points for the Terrebonne Land Development, *et al.*, Well Nos. 1, 2, and A–2 and provide for a new central receipt point for the Four Isle Dome source. Petitioner avers that deliveries of gas from the Four Isle Dome source would be made by TOC to Petitioner at Superior Oil Company's Four Isle Dome Plant in Terrebonne Parish, Louisiana. Petitioner maintains that as the previously authorized receipt points listed above would no longer be used it proposes to delete them as authorized receipt points from TOC.

Petitioner also proposes to establish an additional receipt point for deliveries of gas from TOC's interests in certain uncommitted reserves in the Matias Garcia Survey A–116, Nueces County, Texas (Agua Dulce source). It is stated that a receipt point at side valve ID–102 on Petitioner's Plomo Line No. ID–100, Nueces County, Texas, for the Agua Dulce source of supply was authorized by order dated June 29, 1979. Petitioner asserts that by the October 31, 1980, amendment to their transportation agreement Petitioner and TOC agreed to establish an additional point of receipt for the Agua Dulce source. Petitioner alleges that deliveries of gas from the Agua Dulce source would be made by TOC to Petitioner at TGP–400E–102 on the Elmer McCoy, *et al.*, 160 Acre Tract in the north end of Share 3 of Share 2 of the Palo Alto Partition of W. B. Chapman Lands in the Matias Garcia Grant, Abstract 116, Nueces County, Texas, and/or the previously authorized receipt point.

It is averred that the October 31, 1981, amendment to the transportation agreement between Petitioner and TOC also provides for the balancing of receipts and deliveries of gas under the agreement every sixty days in accordance with FERC Opinion 10–A, issued July 21, 1978, and for clarification of rate provisions.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 16, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28460 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-485-000]

Texas Eastern Transmission Corp., Application

September 24, 1981.

Take notice that on August 26, 1981, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP81–485–000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for The Brooklyn Union Gas Company (Brooklyn Union), all as more fully set forth in the application which is on file with the Commission and open to public inspection

Applicant states that Brooklyn Union has arranged for natural gas, purchased from a joint venture group consisting of Fuel Resources, Inc., a subsidiary of Brooklyn Union, Kepco, Inc., a subsidiary of Equitable Gas Company (Equitable), and Sterling Drilling and Production Company, to be received by Equitable for the account of Brooklyn Union and for said gas to be delivered by displacement to Applicant at the existing interconnection between Applicant and Equitable located at Applicant's meter Station 355 in Westomoreland County, Pennsylvania, or at other mutually agreeable existing points in Applicant's Zone C. Applicant proposes to transport up to 5,000 dekatherms equivalent of gas per day, less quantities retained for applicable shrinkage, and to deliver such quantities to Brooklyn Union at meter Station 058 in Richmond County, New York, or at other mutually agreeable existing points of delivery for a term of one year from the date of initial delivery and thereafter until terminated by either party upon 30 days prior written notice. It is said that Brooklyn Union would pay Applicant under Applicant's presently applicable effective TS–1 basis rate schedule a rate of 13.98 cents per dekatherm equivalent delivered by Applicant to Brooklyn Union. Applicant states that Brooklyn Union would pay Applicant, under Applicant's presently applicable effective TS–1 excess rate, 16.02 cents per dekatherm equivalent of gas delivered which, when added to quantities delivered by Applicant to Brooklyn Union under its Rate Schedules TS and SS–II and other transportation agreements exceed the combined total curtailment of natural gas sales to Brooklyn Union under Applicant's firm sales rate schedules. Applicant further states that it would retain, for its applicable shrinkage, an amount of gas equal to 3 percent of the quantities transported for the period April 16 through November 15 of each year and 6 percent for the period November 16 through April 15 of each year. Applicant explains that applicable shrinkage is retained for use by Applicant in providing the transportation service herein proposed and Applicant should have the right to increase the amount of applicable shrinkage from time to time in order to insure that Applicant retains a quantity of gas sufficient to meet its requirements in providing such transportation service.

Applicant states that the proposed service would not adversely affect or displace capacity for services to high priority users.

Applicant also requests the permission to retain transportation revenues and to terminate the proposed service at the option of either party on 30 days prior written notice after the initial one-year term.

Any person desiring to be heard or to make any protest with reference to said

application should on or before October 16, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28461 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-513-001]

Texas Gas Transmission Corp.; Petition to Amend

September 25, 1981

Take notice that on August 25, 1981, Texas Gas Transmission Corporation (Petitioner), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP80-513-001 a petition to amend the order issued March 25, 1981, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to extend the existing authorization to transport natural gas for Owens-Corning Fiberglas Corporation (Owens-Corning) for an additional year from August 27, 1981, until 8 a.m. August 28, 1982, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by order issued August 27, 1980, as amended, it was authorized to transport and redeliver on an interruptible basis for Owens-Corning's account up to 1,000 Mcf of natural gas per day to its existing point or points of delivery with Jackson Utility Division (Jackson) or to divert all or a portion of the volumes up to 1,000 Mcf per day to be transported and delivered to Jackson and instead deliver such volumes to Transcontinental Gas Pipe Line Corporation (Transco) for ultimate delivery to Owens-Corning's Anderson, South Carolina, plant for a period of one year from the date of initial delivery which was August 27, 1980. It is asserted that by the same order Transco was authorized to transport up to 1,000 Mcf per day for use at Owens-Corning's Anderson, South Carolina, plant for a period of two years from the date of initial delivery. Petitioner proposes herein to extend the transportation service for an additional year from August 27, 1981, until 8 a.m. August 28, 1982, pursuant to a letter agreement between Petitioner and Owens-Corning dated August 19, 1981. Applicant maintains that in no event would it be obligated to deliver on any day an aggregate volume of more than 34,370 Mcf of natural gas through all points of delivery to Jackson. Furthermore, Applicant submits that Jackson has agreed to accept volumes of natural gas on an interruptible basis for the account of Owens-Corning. Applicant asserts that it would retain as makeup for compressor fuel and line loss 2.83 percent of those volumes delivered to Jackson and 0.32 percent of those volumes delivered to Transco.

It is averred that Applicant would collect a rate of 21.30 cents per Mcf for those volumes delivered to Jackson and 6.92 cents per Mcf for those volumes delivered to Transco.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 16, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28462 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-475-000]

Transcontinental Gas Pipe Line Corp.; Columbia Gulf Transmission Co.; Application

September 24, 1981.

Take notice that on August 21, 1981, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP81-475-000 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline and appurtenant facilities in the offshore Texas area, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is said that Applicants or their affiliates have the right to purchase gas to be produced from certain reserves in the Brazos Area, Blocks A-19, A-20 and A-23, offshore Texas. In order to attach new sources of gas supply from Blocks A-19 and A-20, Applicants propose to construct jointly as co-owners a pipeline lateral consisting of approximately 2.82 miles of 24-inch pipeline which would connect Shell Oil Company's (Shell) "A" production platform in Brazos Block A-20 to its production platform "C" in Brazos Block A-19, and 1.14 miles of 10-inch pipeline connecting the Brazos Block A-19 "C" platform to the Shell "JA" platform in Brazos Block A-20. Applicants also propose to construct metering, regulating and other appurtenant facilities at Shell's "C" platform in Brazos Block A-19.

It is stated that Transco would own 50 percent and Columbia Gulf would own 50 percent of the proposed facilities based on their or their affiliates' ownership of the subject gas pursuant to gas purchase contracts with Shell. It is further stated that such facilities would be constructed and operated by Transco and would have a maximum capability of 250,000 Mcf per day.

Such facilities are estimated to cost $13,502,940 which would be financed initially through revolving credit arrangements, short-term loans or available funds with permanent

financing to be undertaken as a part of Applicants' respective overall long-term financing programs at later dates.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 16, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28463 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-450-000]

Union Electric Co.; Order Denying Rehearing

September 24, 1981.

On August 3, 1981, the W-3 Defense Group ("WDG"), a group comprised of eight customers served by Union Electric Company (Union) under its W-3 wholesale tariff, filed a petition for rehearing of the Commission's order of July 2, 1981, in this docket. In that order, the commission, *inter alia*, granted summary disposition with respect to three components of Union's cost of service, directed Union to file revised rates reflecting the summary dispositions within thirty days, and ordered that the revised rates, as modified, be suspended for one day to become effective as of July 9, 1981, subject to refund.[1] The company satisfied the refiling requirement on July 30, 1981.

In the petition for rehearing, WDG challenges the underlying Commission order in several respects. Initially, WDG contends that the effective date designated by the Commission for Union's modified rates results in a violation of the "filed rate doctrine" and the 60-day notice requirement of the Federal Power Act. WDG asks that the Commission stay the effective date until we conclude that Union's modified rates comply with the July 2 order. In addition, WDG argues that the Commission improperly refused to grant summary dispostion with respect to: (1) Union's allocation of its Ashley Plant between steam and electric operations; (2) Union's inclusion in cash working capital of a separate allowance for prepayments and cash bank balances; (3) Union's cost of service treatment of contributions to charitable trusts; and (4) Union's change in depreciation rates for certain equipment. Finally, WDG contests the one-day suspension ordered with respect to Union's rates.

In order to afford additional time to consider the merits of WDG's contentions, the Commission granted rehearing for the limited purpose of further consideration by order issued on September 2, 1981.

Discussion

As noted, WDG argues that the Commission's July 2 order is inconsistent with the "filed rate doctrine." WDG correctly states that under sections 205(c) and (d) of the Federal Power Act, a utility may only charge "filed rates."[2] WDG contends, however, that by allowing the rates, as modified by the Commission, to go into effect on July 9, 1981, rather that the date on which the compliance rates were filed (July 30, 1981), the Commmission allowed Union to charge rates that were not yet filed with the Commission. We disagree. The Commission's order stated specifically:

> Union's revised *rates, as modified* by summary disposition are hereby *accepted for filing* and suspended for one day from 60 days after filing to become effective, subject to refund, on July 9, 1981. (Emphasis added.)

Further, in *City of Cleveland* v. *FPC*, 525 F.2d 845, 854 (D.C. Cir. 1976), the court indicated:

> The considerations underlying the filed rate doctrine are preservation of the agency's primary jurisdiction over reasonableness of rates and the need to insure that regulated companies *charge only those rates of which the agency has been made cognizant.* (Emphasis added.)[3]

It is incorrect to claim that Union has been charging the rates from July 9, 1981, of which the Commission was not cognizant. On the contrary, as is common practice in the case of summary disposition, the Commission directed the company to make certain discrete and ascertainable adjustments to its claimed cost of service and tendered rates. As so modified, the rates being charged by Union are those which the Commission expressly accepted for filing and suspended to become effective as the "filed rates" on July 9, 1981.

WDG also contends that since "significant" adjustments to Union's cost of service and rates resulted from the Commission's July 2 order, Union could not have satisfied section 205(d) of the Federal Power Act which requires 60-days notice to the Commission and the public of any changes in rates. Again, we disagree. On May 8, 1981, Union submitted its proposed rates for filing. At that time, Union sought to make the rates effective approximately 60 days later. As a result, both the Commission and Union's affected customers were provided with the requisite notice of the full rate increase proposed by Union. The company did not thereafter request any change in its proposed rate level. Rather, the Commission summarily ordered those rates to be reduced and established an effective date following the 60-day notice period. Whether summary disposition is ordered at the initial stages of a proceeding or at a later date, the Commission's resolution of certain issues does not effect a new "change in rates" requiring an additional notice period. Neither has the filing utility taken action which would extend the original notice period or trigger a new notice requirement.

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[1] Union was required to refile its cost of service and rates to reflect summary disposition of the following issues: (1) interest synchronization for tax purposes; (2) rate base reduction of accumulated deferred income taxes associated with normalization of AFUDC and capitalized taxes and pensions; and (3) exclusion of post-test year wage increases from the Period II cost of service.

[2] WDG cites *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 251 (1951), where the court indicated that "[a utility] can claim no rate as a legal right that is other than the filed rate. . . ."

[3] *See also Arkansas Louisiana Gas Co.* v. *Hall, et al.*, Sup. Ct. No. 78-1789 (July 2, 1981); *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp., et al.*, 350 U.S. 332, 341-42 (1956).

Concerning WDG's challenge to the one-day suspension imposed in this docket, no new facts or arguments have been raised to suggest that modification of our earlier conclusion is warranted. As noted in the July 2 order, the intervenors raised substantive issues requiring further evaluation on the basis of a hearing record. However, by means of summary disposition, the Commission reduced the revenue level at issue by several million dollars. Considering this rate reduction, our preliminary analysis suggested that the resulting rates could be expected to yield revenues which are not substantially excessive. Under these circumstances, we continue to believe that an extended suspension period is unnecessary and inappropriate.

Because we find no merit to WDG's contentions in opposition to the July 9, 1981 effective date for Union's rates, we shall deny the request for rehearing. furthermore, we are not persuaded that any basis exists upon which to entertain WDG's request for a stay of the designated effective date.

We shall also deny rehearing with respect to WDG's arguments concerning summary dispostion. In each instance, we have concluded on the bais of the pleadings and existing precedent that there are outstanding questions of fact or law to be resolved at a hearing. As to two issues (allocation of Ashley common plant and cash working capital computations), WDG contends that Opinion No. 94, *Union Electric Company* (September 2, 1980) must be considered controlling in favor of WDG's position. WDG also argues that Commission precedent not specific to Union requires summary disposition as to cash working capital and Union's contributions to a charitable trust.[4] According to WDG, summary disposition is also warranted with regard to Union's depreciation rates on certain environmental equipment and spare parts inasmuch as Union has provided inadequate cost support under section 35.13 of the Commission's regulations.

In the instant proceeding, we do not believe that applicable Commission precedent mandates summary disposition of the issues raised by WDG. Although Opinion No. 94 adopted WDG's proposed allocation of Ashley common plant, the underlying initial decision (issued August 7, 1979) observed that the hearing record was not as complete as it might have been and that the conflicting allocation methods each suffered from certain deficiencies. Under these circumstances, the public interest will best be served by a fuller examination of this issue at hearing. We are not willing to resolve the working cash issue simply on the basis of the company's evidentiary presentation. Whether or not an allowance for prepayments and minimum bank balances is appropriate may depend upon whether the Commission ultimately relies upon the 45-day convention in this proceeding or upon a specific study advanced by one or more parties. Similarly, at the present time, the record contains insufficient information on which to resolve the question of Union's charitable contributions.

Finally, we do not agree that Union has failed to comply with the regulations regarding its depreciation allowance. It appears that union has installed additional equipment (largely environmental) at existing generating facilities and has proposed to depreciate such equipment over the remaining life of the existing plant. In so doing, Union has not sought to change its depreciation rate or plant life in such a way as to require further cost support under § 35.13 of the regulations.

The Commission orders:

(A) WDG's August 3, 1981 application for rehearing is hereby denied.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-28464 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[4] We note that WDG did not request summary disposition of the charitable contribution issue prior to its application for rehearing.

[Docket No. CP81-493-000]

United Gas Pipe Line Co.; Application

September 25, 1981.

Take notice that on August 31, 1981, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP81-493-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing service to the City of Brewton, Alabama, the Town of Flomaton, Alabama, (Brewton-Flomaton) and the Utilities Board for the City of Atmore, Alabama, (Atmore) pursuant to Rate Schedule G-N in lieu of Rate Schedule DG-N, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant was authorized in Docket No. G-893 to serve Brewton-Flomaton and Atmore under Applicant's Rate Scehdule DG-N pursuant to a single service agreement dated July, 6, 1979. Applicant now proposes to provide natural gas service for the distribution systems of Brewton-Flomaton and Atmore, Alabama, under Applicant's Rate Schedule G-N pursuant to such cities' base requirements and two new superseding service agreements between Applicant and Atmore and between Applicant and Brewton-Flomaton.

Applicant submits that on August 10, 1981, Atmore and Applicant and Brewton-Flomaton and Applicant entered into new superseding service agreements whereby Applicant would deliver and sell to the cities their natural gas requirements for resale and distribution pursuant to Applicant's Rate Schedule G-N.

Applicant submits that the maximum daily quantity for Brewton-Flomaton and Atmore under the old service agreement and the new service agreements would remain the same. Applicant states that the maximum daily quantities for these agreements are as follows:

Service agreement dated July 6, 1979	Maximum daily quantity (Mcf)
Brewton-Flomaton-Atmore	8,731
Total	8,731
Service agreement dated August 10, 1981:	
Brewton-Flomaton	5,378
Atmore	3,353
Total	8,731

Any person desiring to be heard or to make any protest with reference to said application should on or before October 16, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the

Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-28465 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-492-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application

September 18, 1981.

Take notice that on August 31, 1981, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP81-492-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 33 small volume sales measuring stations for the sale and delivery of additional volumes of natural gas in the states of Minnesota, Iowa, Nebraska, Kansas, Oklahoma and Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to provide service to right-of-way grantors whose easements provide for the contractural right to gas service as partial consideration for the easement to construct and operate pipeline facilities across their property. It is stated that such service would be made to small volume [1] industrial, commercial and residential customers.

Applicant proposes to install and operate 28 delivery stations in Minnesota, Iowa, Nebraska, Kansas and Texas for deliveries of gas to be resold by People's Natural Gas Company, Division of InterNorth, Inc. (People's) from People's presently authorized contract demand.

Applicant also states that it sells and delivers natural gas in Oklahoma to the Southern Union Gas Company (So. Union) pursuant to Applicant's Rate Schedule X-46 for resale by So. Union to Applicant's right-of-way grantors and others for use as irrigation engine fuel, residential and other high priority uses. Appliant proposes to provide natural gas service to 4 of its right-of-way grantors located in So. Union's service areas in Oklahoma which would result in an increase of 1,200 Mcf in annual sales to So. Union.

Applicant further requests authority to install and operate one small volume measuring station in Iowa which is required to make sale of natural gas to a customer through North Central Public Service Company (NCPS). It is asserted that the firm volumes to be delivered would be provided from NCPS's presently authorized contract demand.

The small volume sale measuring stations including location, estimated peak day and annual sales, and use are more fully described in the appendix hereto.

Applicant estimates the cost of the proposed facilities to be $78,396 which would be financed by cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 9, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure 918 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] As defined in Applicant's Gas Tariff, customers with maximum daily gas requirements under 200 Mcf are considered small volume customers.

Appendix

Right-of-way grantor	Location of facilities (County-State)	Est. sales-Mct		Primary end-use	Estimated facility costs
		Peak day	Annual		
Peoples Natural Gas Co., Division of InterNorth, Inc.:					
Ag Distilleries	Dodge-NE	60.0	19,800	Feed Process	$25,000
Ahrens, H. G.	do	1.5	162	Res. Heat	1,776
Annis, Daryl	Carver-MN	10.0	1,142	do	1,573
Benson, Willy	Grundy-IA	2.4	207	do	1,511
Brown, Kenneth	Washington-MN	52.0	1,714	CropDrying	2,659
Carver County	Carver-MN	3.0	310	Shop Heat	1,573
Colgrove, Dwight	Washington-KS	1.5	191	Res. Heat	850
Cox, Bur R.	Stevens-KS	2.2	160	do	2,000
Crane, Charles F.	do	1.5	180	do	774
Devney, John	Dakota-MN	36.0	3,660	Irrigation	1,734
Diercks, Lavern	Bremer-IA	4.0	620	Res. Heat	1,511
Elmore, Glenard	Lipscomb-TX	1.2	158	do	853
Do	do	31.2	3,220	Irrigation	1,222
Fields-Edward	Anoka-MN	3.0	200	Res. Heat	1,350

Appendix—Continued

Right-of-way grantor	Location of facilities (County-State)	Est. sales-Mct		Primary end-use	Estimated facility costs
		Peak day	Annual		
Harris, Wesley D. & Helen	Lipscomb-TX	31.2	3,220	Irrigation	1,222
Henry, Donald A.	Benton-MN	3.0	200	Res Heat	730
Iowa State University	Buena Vista-IA	35.0	1,090	CropDryer	1,964
Johnson, T. Ray	Fillmore-MN	84.0	2,070	do	2,116
Jueneman, John	Washington-KS	1.5	132	Res. Heat	850
Krein, J. W.	Lancaster-NE	2.5	176	do	1,700
Krobiin, Allen	Bremer-IA	20.0	1,482	CropDryer	2,955
Marek, Rodney F.	LeSueur-MN	2.0	188	Res. Heat	1,573
McGarrough, Banks	Ochiltree-TX	1.2	158	do	853
McKenzie, MaryLouise	Lipscomb-TX	31.2	3,220	Irrigation	1,222
Pankonin, David	Cass-NE	14.0	1,200	Com. Heat	2,200
Pottorff, Evelyn	Finney-KS	180.0	52,800	Ind. Gasohol	3,200
Prater, Verneal E.	Hemphill-TX	1.2	158	Res. Heat	2,262
Young, James	Sac-IA	36.0	1,765	CropDryer	1,964
Southern Union Gas Company:					
Baggerly, Jerry	Beaver-OK	1.0	300	Res. Heat	1,618
Culbertson, Roland	Texas-OK	1.4	300	do	2,000
Miller, Robert C.	Ellis-OK	1.0	300	do	1,618
Walters, Jimmie	do	1.0	300	do	1,618
North Central Public Service:					
Arthur P. Elbert	Kossolt-IA	105.0	1,545	CorpDryer Heating	2,345
Totals, all projects		761.7	102,258		78,396

[FR Doc. 81-27941 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-85-M

Office of Hearings and Appeals

Cases Filed; Week of August 28 through September 4, 1981

During the week of August 28 through September 4, 1981, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Dated: September 23, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of August 28 through September 4, 1981]

Date	Name and location of applicant	Case No.	Type of Submission
Aug. 28, 1981	Young Refining Corporation, Washington, D.C	BFA-0736	Appeal of Information Request Denial. If granted: The July 29, 1981 Information Request Denial issued by the Office of Hearings and Appeals would be rescinded, and Young Refining Corporation would receive access to certain DOE information.
Aug. 31, 1981	Dixon R-1 Schools, Dixon, Missouri	BEE-1586	Request for Exception. If granted: Dixon R-1 Schools would be permitted to freely allocate among three energy conservation projects which it has already initiated, the funds received pursuant to the provisions of 10 CFR Part 455, Subpart D.
Aug. 31, 1981	Exxon Company, U.S.A., Houston, Texas	BRR-0159	Request for Modification/Rescission. If granted: The August 13, 1981 Decision and Order (Case No. BRD-0177) issued to Exxon Company, U.S.A. by the Office of Hearings and Appeals would be modified regarding the firm's Motion for Discovery.
Aug. 31, 1981	Gulf States Oil & Refining Company, Washington, D.C	BEN-0065	Request for Interim Order. If granted: Gulf States Oil & Refining Company would receive exception relief on an interim basis pending a final determination on its Application for Exception (Case No. BEE-1616).
Aug. 31, 1981	Keller, Fernald & Harkey, Oklahoma City, Oklahoma	BFA-0737	Appeal of Information Request Denial. If granted: The August 20, 1981 Information Request Denial issued by the Economic Regulatory Administration would be rescinded, and Keller, Fernald & Harkey would receive access to an investigative report relating to Eagle Gas Company.
Aug. 31, 1981	OE/Century Refining Company, Washington, D.C	BEF-0077	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, in connection with the January 29, 1980 Consent Order entered into by Century Refining Company.
Sept. 1, 1981	OE/Alta Loma Oil Company, Dallas, Texas	BEF-0080	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, in connection with the August 13, 1979 Consent Order entered into by Alta Loma Oil Company.
Sept. 1, 1981	OE/Eastern of New Jersey, Inc., Jersey City, New Jersey	BEF-0078	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, in connection with the October 9, 1979 Consent Order entered into by Eastern of New Jersey, Inc.
Sept. 1, 1981	OE/Olin Corporation, New Haven, Connecticut	BEF-0079	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, in connection with the April 3, 1981 Consent Ordered entered into by Olin Corporation.
Sept. 2, 1981	Ashland Oil, Inc., Ashland, Kentucky	BEA-0738	Appeal of Entitlements Notice. If granted: The January 1981 Entitlements Notice would be modified with respect to Ashland Oil, Inc.'s entitlements purchase obligations.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of August 28 through September 4, 1981]

Date	Name and location of applicant	Case No.	Type of Submission
Sept. 2, 1981	Diamond Shamrock Corporation, Amarillo, Texas	BEE-1690	Exception from Entitlements Program. If granted: Diamond Shamrock Corporation would receive an exception from the provisions of 10 CFR § 211.69 which would permit the firm to file an amended Refiners Monthly Report (Form ERA-49) for the month of June 1980.
Sept. 3, 1981	Diamond Shamrock Corporation, Amarillo, Texas	BEL-1680	Request for Temporary Exception. If granted: Diamond Shamrock Corporation would receive a temporary exception from the provisions of 10 CFR § 211.69, permitting the firm to file an amended Refiner's Monthly Report (Form ERA-49) for the month of June 1980.
Sept. 4, 1981	OE/Ada Resources, Inc., Washington, D.C.	BEF-0066	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, in connection with the October 16, 1979 Consent Order entered into by Ada Resources, Inc.
Sept. 4, 1981	OE/Anadarko Production Company, Washington, D.C.	BEF-0065	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, in connection with the March 13, 1980 Consent Order entered into by Anadarko Production Company.
Sept. 4, 1981	OE/Benson-Montin-Greer Drilling Corp., Washington, D.C.	BEF-0087	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, in connection with the January 8, 1981 Consent Order entered into by Benson-Montin-Greer Drilling Corp.
Sept. 4, 1981	OE/BTA Oil Producers, Washington, D.C.	BEF-0083	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, in connection with the June 20, 1979 Consent Order entered into by BTA Oil Producers.
Sept. 4, 1981	OE/Clark & Clark, Washington, D.C.	BEF-0084	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, in connection with the June 7, 1979 Consent Order entered into by Clark & Clark.
Sept. 4, 1981	OE/Connally Oil Company, Washington, D.C.	BEF-0082	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, in connection with the June 19, 1979 Consent Order entered into by Connally Oil Company.
Sept. 4, 1981	OE/Nordstrom Oil Company, Washington, D.C.	BEF-0081	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, in connection with the September 24, 1979 Consent Order entered into by Nordstrom Oil Company.

[FR Doc. 81-28374 Filed 9-29-81; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of August 3 Through August 7, 1981

During the week of August 3 through August 7, 1981, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Armour Oil Company, August 3, 1981, BFA-0704

Armour Oil Company filed an Appeal from a denial by the District Manager for the Office of Enforcement, Western District, of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the District Manager had failed to prepare an adequate index of responsive documents in response to Armour's request. Moreover, the DOE found that the District Manager had not adequately shown that the burden associated with responding to the firm's request was unreasonable. The DOE therefore remanded the matter to the District Manager for the preparation of an index consistent with the principles enunciated in *Leonard L. Kleinman*, 8 DOE ¶ ——, No. —— BFA-0599 (April 9, 1981).

Federal Document Retrievals, Inc., August 3, 1981, BFA-0701

Federal Document Retrievals, Inc. filed an Appeal from a denial by the Director of the Resource Control and Administration Divison of the DOE Office of Procurement Management of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In its Request, the firm sought copies of all submissions in response to a request for proposal for subcontracts issued by a DOE contractor. In considering the Appeal, the DOE found that the documents sought by the firm did not constitute "agency records" subject to disclosure under the FOIA. Accordingly, the Federal Document Retrievals FOIA Appeal was denied. An important issue that was considered in the Decision and Order was whether records produced by a DOE contractor in the course of fulfilling its contractual responsibilities, but which had not been acquired by the DOE itself, are "agency records" and therefore subject to disclosure under the FOIA.

Fenix & Scisson, Inc., August 3, 1981, BFA-0703

On July 6, 1981 Fenix & Scisson, Inc. (Fenix) filed an Appeal from a partial denial by the Acting Inspector General, Office of the Inspector General of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that certain portions of a document which were withheld under exemption 5 should not be released to the public. Accordingly, the Appeal filed by Fenix was denied.

Miller & Chevalier, August 3, 1981, BFA-0705

The law firm of Miller & Chevalier filed an appeal from a determination issued to it on June 4, 1981, by the Assistant General Counsel for Interpretations. In its request the firm sought copies of all agency records relating to Ruling 1976-4, which determined that the DOE allocation and price regulations were not applicable to crude oil substitutes. In considering the appeal, the DOE held that the Assistant General Counsel correctly determined that the five documents which she identified as responsive to the request are exempt from mandatory public disclosure under Exemption 5 of the Freedom of Information Act. The DOE also held that release of the documents would likely be injurious to the future course of governmental decisionmaking and therefore contrary to the public interest. The appeal was therefore denied.

Jerry Wells, August 3, 1981, BFA-0698

Jerry Wells filed an Appeal from a denial by the Director of the Office of Military Application (the Director) of a request for information which Mr. Wells had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the Los Alamos Primer, LA-1 (the Primer), the document requested by Mr. Wells, was not properly exempt from mandatory disclosure pursuant to Exemptions 2 and 5 of the FOIA. However, the DOE also determined that the claims of

the Director regarding the national security implications of the Primer's release require that the matter be remanded for further findings. Accordingly, the DOE determined that the Wells Appeal should be granted in part and instructed the Director to promptly either release the Primer to Mr. Wells or issue a determination to Mr. Wells containing findings which convincingly demonstrate that release of the Primer would do grave damage to the national security.

Remedial Orders

Leo's-Winstead's, Inc., August 3, 1981, DRO–0232

Leo's-Winstead's, Inc. filed a Statement of Objections to a Proposed Remedial Order that was issued to it by the ERA's Central Enforcement District. The DOE concluded that none of Leo's objections were meritorious and consequently the PRO was issued as a final order of the DOE. Among the important issues discussed in the Decision were: (i) the proper method of calculating weighted average unit cost of product in inventory; (ii) whether the DOE should be estopped from maintaining the action due to prior audits; (iii) transportation costs incurred in paying a common carrier for delivery of product were product or non-product costs.

Requests for Exception

Ted Collins, Jr., August 5, 1981, BEE–1668

Ted Collins, Jr., Victoria M. Collins and Patricia Collins Massad (CCM) filed an Application for Exception from the provisions of 10 CFR 212.131 in which CCM sought permission to classify as "tertiary incentive crude oil" the crude oil produced from the North Cowden Grayburg Unit during the month of January 1981. In considering the exception application, the DOE determined that CCM had made a convincing showing that it had acted promptly and reasonably to comply with the certification requirements of Section 212.131, and that the strict application of the certification provisions in this case would result in a gross inequity to CCM. Accordingly, the exception application was granted.

Placid Refining Company, August 4, 1981, BEE–1352

Placid Refining Company filed an Application for Exception from the provisions of 10 CFR 211.67 in which the firm sought relief from the regulatory burdens associated with initial crude oil purchases to establish a working inventory at its Mont Belview refinery. In considering the request, the DOE found that the firm had failed to justify the 16-month lag between its initial crude oil purchases and the filing of its exception application. Accordingly, the application was evaluated under the criteria governing the approval of retroactive exception relief. Since the firm had failed (i) to show compelling reasons which would warrant the approval of retroactive relief, or (ii) to demonstrate that it would experience a severe and irreparable injury in the absence of retroactive relief, exception relief was denied.

Western Oil Sales Co., August 3, 1981, BEE–1667

Western Oil Sales Co. filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA–9A. In considering the request, the DOE found that the difficulties the firm faced in completing the form were no greater than those faced by other firms that were required to complete the form. Moreover, the DOE noted that Form EIA–9A provides it with important information. Accordingly, exception relief was denied.

Requests for Modification and/or Rescission

Exxon Co., U.S.A., 8/4/81; BER–0123

Exxon Co., U.S.A. filed an Application for Modification in which the firm sought a modification of the Decision and Order issued to Exxon on April 1, 1981, to require an additional search for documents responsive to its Freedom of Information Request. In considering the request, the DOE found that most of the documents which Exxon claimed were missing were identified in the index provided to Exxon. In the few instances where documents were not listed, but apparently existed as evidence by other documents, the DOE granted the firm's request and ordered a search for those specific documents.

Office of Enforcement, 8/3/81, BMR–0147, BMR–0148

The Office of Enforcement of the Economic Regulatory Administration (ERA) filed a Motion for Modification of a Decision and Order issued to Moraga Union and Moraga Shell, to motor gasoline retailers. In that Decision and Order, the Office of Hearings and Appeals considered the firms' objections to Proposed Remedial Orders issued to them and determined that the PRO's should be issued as final Remedial Orders. The OHA also determined that the interest rate on overcharges received by the firms should be increased from 6 percent per year simple interest, as set forth in the PRO, to the prime rate compounded quarterly for the period commencing April 10, 1981, until all overcharges have been repaid. In considering the Office of Enforcement's Motion for Modification, the OHA noted that the ERA's interest policy currently imposes interest on overcharges received by motor gasoline retailers at a rate of 12 percent per year simple interest. The OHA therefore granted the Motion and Modified the Decision issued to Moraga Union and Moraga Shell to conform to the current ERA interest policy.

Motion for Evidentiary Hearing

Plaquemines Oil Sales Corporation, 8/5/81; BRH–1320

Plaquemines Oil Sales Corporation (POSC) filed a Motion for Evidentiary Hearing in connection with a Statement of Objections which POSC filed in opposition to Proposed Remedial Order which was issued to the firm on September 19, 1980. In considering the Motion, the DOE determined that POSC had failed to establish that there were disputed issues of fact that could best be resolved at an evidentiary hearing. Accordingly, the Motion for Evidentiary Hearing was denied.

Supplemental Orders

Masonite Corporation, Uncle Ben's Foods, Inc., 8/3/81; BEX–0223, BEX–0222

On its own motion, the DOE rescinded the June 12, 1981 Decision and Order issued to Masonite Corporation and Uncle Ben's Foods, Inc., Nos. BES–0672, on the grounds that recent amendments to 10 CFR 211.67(a)(5), *see* 46 Fed. Reg. 36080 (July 13, 1981), rendered that Decision and Order moot.

The 341 Tract Unit of the Citronelle Field, Exxon Company, U.S.A. Mobil Oil Corporation, 8/5/81, BEX–0224

This Supplemental Order clarifies the procedures that are applicable to the conduct of the evidentiary hearing scheduled to be held in the *Citronelle* case. *See Exxon Co., U.S.A.*, 8 DOE ¶ 82,589 (1981) (Motions for Discovery and Evidentiary Hearing); *See also The 341 Tract Unit of the Citronelle Field*, 7 DOE ¶ 81,140 (1980) (Interim Decision and Order.) The DOE set forth guidelines that would govern the conduct of the hearing and designated the list of witnesses that would present testimony at the evidentiary hearing. In addition, the DOE determined that the production of certain documents relating to the testimony of each witness should be exchanged among the parties prior to the date of the hearing.

Protective Order

The following firms filed an Application for a Protective Order. The application, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firms. The DOE granted the following application and issued the requested Protective Order as an Order of the Department of Energy:

Name and Case Number

Ashland Oil, Inc., Amoco Oil Co.; BEJ–0210.

Dismissals

The following submissions were dismissed without prejudice:

Name and Case Number

American Marina Development Corp., BRO–0106.
Masonite Corp., BEA–0670.
Uncle Ben's Foods, Inc., BEA–0672.
Tenneco Oil Co., BRO–1280.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

September 23, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 81–28371 Filed 9–29–81; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of August 24 Through August 28, 1981

During the week of August 24 through August 28, 1981, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Koch Industries, Inc., 8/25/81, BEA-0451

Koch Industries, Inc. filed Appeals from two Temporary Assignment Orders issued to it by the Economic Regulatory Administration on July 15, 1980. The Orders directed Koch to provide certain quantities of motor gasoline to Monarch Oil and Supply Company and Prairie State Petroleum Company in order to fulfill temporary supply obligations which were made retroactive to the month of December 1979. In considering the Appeals, the DOE found that ERA did not provide any information concerning the availability of gasoline supplies to Monarch and Prairie. Accordingly, the Appeals were granted and the Orders were rescinded. However, in view of the fact that Koch was experiencing no difficulty in supplying its own customers with gasoline, the DOE concluded that it would not be appropriate to require Prairie and Monarch to return the gasoline they received pursuant to the ERA Orders.

Requests for Exception

Circle R Convenience Stores, Inc., 8/24/81, DEE-7254

Circle R Convenience Stores, Inc. filed an Application for exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. Since the motor gasoline allocation program is no longer in effect, the DOE determined that the firm's Application should be dismissed as moot. The DOE also noted that the firm had failed to establish that the supply difficulties it experienced were caused by the application of DOE regulations. The DOE pointed out that the mere fact that the firm could have realized greater profits had DOE regualtions not prevented it from further increasing its gasoline sales was not a basis for granting exception relief.

City of Columbus, Ohio, BEE-1623,
City of Clinton, Iowa, BEE-1658,
San Jose/Santa Clara Water Pollution Control Plant, BEE-1663,
Midwest Solvents Co., Inc., BEE-1671,
Bergen County Utilities Authority, 8/27/81, BEE-1681

The City of Columbus and four other applicants sought exception relief which would permit them to sell previously issued entitlements which they had been unable to sell as a result of purchase defaults. In considering the Applications, the DOE noted that the purpose of the Entitlements Program is frustrated when entitlements sellers are unable to consummate sales transactions dictated by the issuance of Entitlements Notices. Accordingly, exception relief was granted to the applicants and certain other similarly situated parties.

Indiana Farm Bureau Cooperative Association, Inc., 8/27/81, BEE-1628

Indiana Farm Bureau Cooperative Association, Inc. filed an Application for Exception from the provisions of 10 CFR § 211.67 (the Entitlements Program) in which the firm requested that its entitlements sales position be increased by the amount necessary to compensate it for the disproportionately low access to price controlled domestic crude oil and the accompanying crude oil cost disparity which it claims to have experienced during the period January 1980 through January 1981. In considering the request, the DOE found that although Indiana Farm received a substantially lower percentage of price controlled domestic crude oil than the average domestic refiner, the firm had not suffered the type of financial difficulty which would warrant a grant of exception relief on either a retroactive or prospective basis. The DOE further found that whatever financial difficulties the firm had experienced in its petroleum operations in connection with its crude oil cost disparity vis-a-vis the average refiner were not primarily the result of the DOE regulatory program. Accordingly, exception relief was denied.

LaGloria Oil & Gas Co., 8/24/81, BEE-1653

LaGloria Oil and Gas Company filed an Application for Exception from the provisions of 10 CFR 211.67 in which the firm sought additional entitlements to compensate for the regulatory burdens associated with the crude oil purchases made to increase its permanent refinery inventory. In considering the request, the DOE found that since the firm's application was filed 16 months after the firm purchased the crude oil inventory in question, the request should be considered under the criteria which govern the approval of retroactive exception relief. Because the firm chose not to submit data demonstrating that it would experience financial injury if relief were denied, the DOE was unable to conclude that the firm had met the standards applicable to requests for retroactive exception relief. The DOE also noted that LaGloria's refinery expansion was not undertaken with te expectation of a subsequent entitlements adjustment.

Navajo Refining Co., 8/25/81, BEE-0247

Navajo Refining Co. filed an Application for Exception from the provisions of 10 CFR 211.67 in which the firm sought exception relief from its entitlements obligations incurred in fiscal years 1980 and 1981. In considering the request, the DOE found that although Navajo's crude oil cost was greater than the national average, the existence of such a disparity, alone, did not justify exception relief. The DOE concluded that because the firm had been granted exception relief under the Delta standards for fiscal years 1980 and 1981, it was able to maintain its historical return on its invested capital.

Motion for Modification and/or Rescission

Newhall Refining Co., Inc., 8/25/81, BER-0152

Newhall Refining Company, Inc. filed an Application for Modification or Rescission in which it requested that two previous decisions, *Newhall Refining Company*, 4 DOE ¶81,012 (1979) and *Newhall Refining Company*, 8 DOE ¶ ———, No. DEX-0133 (April 20, 1981), be modified to eliminate the requirement that Newhall refund $2, 215,274 in excessive entitlements relief. In considering the Application, the DOE determined that Newhall failed to demonstrate that the hardship that the additional entitlements purchase obligation would impose on the firm was attributable to the DOE regulations. Accordingly, the Application was denied.

Motion for Evidentiary Hearing

St. Louis Fuel and Supply Co., 8/28/81, BRD-0113, DRD-0159, DRH-0159

St. Louis Fuel and Supply Company filed a Motion for Evidentiary Hearing and two Motions for Discovery in conjunction with its Statement of Objections to a Proposed Remedial Order issued to it by DOE Region VII. In its Motion for Evidentiary Hearing, St. Louis Fuel sought to cross-examine DOE auditors in order to establish that the audit leading to the issuance of th PRO was erroneously performed. In considering St. Louis Fuel's Motion for Evidentiary Hearing, the DOE found that the firm had failed to identify with sufficient specificity the factual issues in dispute, and had further failed to demonstrate that its position could be established only through the direct questioning of witnesses at an evidentiary hearing. Accordingly, St. Louis Fuel's Motion for Evidentiary Hearing was denied. St. Louis Fuel's first Motion for Discovery sought memoranda, policy statements, reports and guidelines which it alleged were pertinent to the audit performed by the DOE and also set forth five requests for admission: In considering these requests, the DOE found that the type of discovery sought by the firm was unlikely to advance the resolution of pertinent issues in the underlying enforcement proceeding. Accordingly, St. Louis Fuel's first Motion for Discovery was denied. St. Louis Fuel's second Motion for Discovery generally dealt with documents outlining the agency's and Region VII's policies in regard to the settlement of compliance actions which involved less than $50,000. The DOE generally found that, in the absence of a showing of abuse of prosecutorial discretion, delving into Region VII's interpretation and implementation of agency policy would not be allowed. Accordingly, St. Louis Fuel's second Motion for Discovery was denied

Supplemental Order

Southwestern Refining Company, Inc., 8/28/81, BEX-0226

On June 2, 1981, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order to Southwestern Refining Company, Inc. which granted the firm's request for entitlement relief for the period July 1980 through January 1981. *Southwestern Refining Co.*, 8 DOE ¶———, No. BEE-1567

(June 2, 1981). However, as a result of its entitlement purchase defaults for the months of August, October, and November 1980, the firm had received benefits in excess of those found to be appropriate in the June 2, 1981 Order. In order to ensure that the firm did not retain these excessive benefits, the June 2, 1981 Order was modified so as to require Southwestern to (i) fulfill its entire entitlement purchase obligation for the month of January 1981, and (ii) purchase additional entitlements in the January 1981 Entitlements Notice worth $35,625. As an additional matter, the conditions set forth in the June 2, 1981 Order under which Southwestern was to fulfill its outstanding entitlement purchase obligations for periods prior to July 1980 were also modified. Consequently, Southwestern was required to satisfy its outstanding purchase obligations for the months of December 1979, January 1980, and April 1980 by delivering a certified check in the amount of $316,382.90 to the Economic Regulatory Administration.

Dismissals

The following submission was dismissed without prejudice:

Name and Case No.

Little America Refining Company, Inc., BED–0128

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

September 23, 1981.

George B. Breznay

Director, Office of Hearings and Appeals.

[FR Doc. 81–28372 Filed 9–29–81; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

DOE/NSF Nuclear Science Advisory Committee; Renewal

This notice is published in accordance with the provisions of Section 7 of the Office of Management and Budget Circular A–63, as amended. Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, and following consultation with the committee Management Secretariat, General Services Administration, notice is hereby given that the DOE/NSF Nuclear Science Advisory Committee has been renewed for a 2-year period ending on September 23, 1983.

The renewal of the Committee has been determined necessary and in the public interest. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the Department of Energy Organization Act (Pub. L. 95–91), OMB Circular No. A–63 (Revised), and other directives and instructions issued in implementation of those acts.

Further information regarding this Advisory Committee may be obtained from the Department of Energy Advisory Committee Management Office (202–252–5187).

Issued at Washington, D.C. on September 24, 1981.

K. Dean Helms,

Advisory Committee Management Officer.

[FR Doc. 81–28247 Filed 9–29–81; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66085; PH–FRL–1942–2]

Certain Pesticide Products; Intent To Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the name of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. Production of these products after the effective date of cancellation will be considered a violation of the Act unless continued registration is requested.

EFFECTIVE DATE: October 30, 1981.

ADDRESS: Written comments to: Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–401, 401 M St. SW., Washington, DC 20460, (202–426–2610).

FOR FURTHER INFORMATION CONTACT: Lela Sykes, Process Coordination Branch (TS–767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 516, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7121).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No.	Product name	Registrant	Date registered
100–487	KIK Personal Insect Repellent	Ciba-Geigy Corp., P.O. Box 11422, Greensboro, NC 27409	Aug. 30, 1967.
239–1550	Ortho Orchard Mouse Bait	Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804	Sept. 13, 1960.
239–1953	Ortho Kleenstock DV Concentrate	do	June 24, 1964.
270–48	Rider Guard Insect Repellent Towelettes	Farnam Companies, Inc., P.O. Box 21447, Phoenix, AZ 85036	Sept. 9, 1968.
270–49	Farnam Wipe-On Nosquito Mosquito & Gnat Repellent	do	Nov. 27, 1968.
270–91	Rider Guard II Insect Repellent Spray	do	Apr. 8, 1974.
270–130	Delnav 30 EM	do	Mar. 19, 1973.
279–286	TEPP "40"	FMC Corporation, Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103.	May 19, 1948.
279–1455	Niagra Trithion 2 Dust	do	June 29, 1959.
385–56	McKesson Mosquitone Insect Repellent Spray	McKesson Laboratories, P.O. Box 2277, Dublin, CA 94566	Sept. 5, 1957.
1021–960	Insect Repellent Gel Made From MGK 5734	McLaughlin Gormley King Company, 8810 Tenth Ave. N., Minneapolis, MN 55427.	Mar. 5, 1968.
1021–961	Insect Repellent Made From MGK 5734	do	Mar. 6, 1968.
1202–105	Gavicide Thimet PCNB 6.5–6.5	Puregro Company, 1052 W. 6th St., Los Angeles, CA 90017	Aug. 16, 1966.
1269–87	DeWitt Insect Repellent	Zep Manufacturing Company, P.O. Box 2015 Atlanta, GA 30301	May 6, 1967.

Registration No.	Product name	Registrant	Date registered
2342-875	8-16-16+0.15 D Contains 0.15% Di-Syston or 3 lbs. Active Per Ton For Use on Potatoes.	Kerr-Mcgee Chemical Corporation, Kerr-Mcgee Bldg., Oklahoma City, OK 73120.	May 23, 1967.
2749-260	Dioxathion Emulsifiable Concentrate Miticide	Aceto Chemical Company, Inc., 126-02 Northern Blvd., Flushing, NY 11368	Jan. 9, 1973.
2909-1	Cramer Insect Repellent Spray	Cramer Products, Inc., P.O. Box 1001, Gardner, KS 66030	Feb. 11, 1966.
4582-26	Reefer Galler Insect Repellent	Colgate Palmolive Co., 300 Park Avenue, New York, NY 10022	Mar. 30, 1962.
4582-51	Wash 'N Dri Insect Repellent Towlettes	do	Nov. 23, 1966.
8253-1	H-R Wipe On Insect Repellent	Youngs Drug Products, Corporation, P.O. Box 5, Piscataway, NJ 08854	Dec. 5, 1963.
8590-221	Agway Personal Insect Repellent	Agway Inc., Box 4933, Syracuse, NY 13221	Dec. 29, 1965.
8590-278	Agway Dibrom 4D Phosphate Insecticide	do	Sept. 5, 1967.
8853-4	Picfume Chloropicrin	Hendrix and Dail, Inc., P.O. Box 631, Greenville, NC 27834	Oct. 7, 1974.
9110-1	RV Pellent Ointment #399	Paul B. Elder Co., 705 Mulberry St., Bryan, Ohio 43506	Feb. 27, 1967.
9480-1	Repel-Away Insect Repellent Saturated Towlette	Nice-Pak Products, Inc., 150 No. MacQuesten Parkway, Mount Vernon, NY 10550.	Mar. 17, 1967.
10622-1	Be-Gon Personal Insect Repellent Spray	Unikem, A Junior Achievement Co., Sponsored by Ashland Chemical Co., P.O. Box 2219, Columbus, Ohio 43216.	Mar. 6, 1970.
10728-3	Coleman Insect Repellent	The Coleman Company, Inc., P.O. Box 1762, Wichita, KS 67207	Aug. 24, 1970.
11640-1	Bug Repel	Divajox, 15551 Redhill Ave., Tustin, CA 92680	Nov. 3, 1971.
11885-9	Mater Mix (Bulk) Blue Death Rat and Mouse Bait	Central Soya Company, Inc., 1200 Ft. Wayne Bank Bldg., Ft. Wayne, IN 46802.	Jan. 30, 1974.
11885-11	Rigo Rat Blues-F	do	Mar. 18, 1975.
37594-7	Repel Insect Repellent	Trigon Corporation, P.O. Box 7183, Reno, NV 89510	Oct. 23, 1967.
43142-6	Hercules Metadelphene Insect Repellent Lotion	Boots Hercules Agro-chemicals Company, 910 Market St., Wilmington, DE 19899.	Nov. 2, 1956.
43142-12	Insect Repellent	do	May 15, 1961.
43142-13	Hercules Metadelphene Insect Repellent	do	Mar. 14, 1962.
43142-20	Pressurized Metadelphone Insect Repellent	do	Nov. 22, 1966.

The Agency has agreed that such cancellation shall be effective October 30, 1981 unless within this time the registrant or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue in commerce until the supply is exhausted, or for 1 year after the effective date of cancellation, whichever is earlier; provided that the use of these products is consistent with the label and labeling registered with EPA. Furthermore, the sale and use of existing stocks have been determined to be consistent with the purposes of FIFRA as amended. Production of these products as pesticide formulations after the effective date of cancellation will be considered to be a violation of the Act.

Requests that the registration of these products be continued, may be submitted in triplicate to Process Coordination Branch, Registration Division (TX-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP-66085]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in the Document Control Office, Room E-107, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA as amended 86 Stat. 973 89 Stat. (751, 7 U.S.C. 136))

Dated: September 15 1981

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-28131 Filed 9-29-81; 8:45 am]

BILLING CODE 6560-32-M

[OPTS-59066; TSH-FRL-1945-3]

Pentasubstitutedbenzopyran Test Marketing Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person intending to manufacturer or import a new chemical substance for a commercial purpose in the United States to submit a premanufacture notice (PMN) to EPA at least 90 days before he commences such manufacture or import. Under section 5(h) the Agency may, upon application, exempt any person from any requirement of section 5 to permit such person to manufacture or process a chemical for test marketing purposes. Section 5(h)(6) requires EPA to issue a notice of receipt of any such application for publication in the **Federal Register**. This notice announces receipt of an application for an exemption from the premanufacture reporting requirements for test marketing purposes and requests comments on the appropriateness of granting the exemption.

DATE: The Agency must either approve or deny these applications by November 1, 1981. Persons should submit written comments on the applications no later than October 15, 1981.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401, M Street SW., Washington, DC 20460, (202-755-5687).

FOR FURTHER INFORMATION CONTACT:

George Bagley, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-210, 401 M Street SW., Washington, DC 20460, (202-426-2601).

SUPPLEMENTARY INFORMATION: Under Section 5 of TSCA (90 Stat. 2012 (15 U.S.C. 2604)), any person who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA before the manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the inventory of existing chemical substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** on May 15, 1979 (44 FR 28558—Initial) and July 29, 1980 (45 FR 50544—Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

Section 5(a)(1) requires each PMN to be submitted in accordance with section 5(d) and any application requirement of chemical substances that are subject to testing rules under section 4. Section 5(b)(2) requires additional information in PMN's for substances which EPA, by rules under section 5(b)(4), has determined may present unreasonable risks or injury to health or the environment.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b) to permit the persons to manufacture or process a chemical substance for test marketing purposes. To grant such an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approved or deny the application within 45 days of its receipt, and the Agency must publish a notice of its disposition in the **Federal Register**. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

Under section 5(h)(6), EPA must publish in the **Federal Register** a notice of receipt of an application under section 5(h)(1) immediately after the Agency receives the application. The notice identifies and briefly describes the application (subject to section 14 confidentiality restrictions) and gives interested persons an opportunity to comment on it and whether EPA should grant the exemption. Because the Agency must act on the application within 45 days, interested persons should provide comments within 15 days after the notice appears in the **Federal Register**.

EPA has proposed Premanufacture Notification Requirements and Review Procedures published in the **Federal Register** of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764) containing proposed manufacture rules and notice forms. Proposed 40 CFR 720.15 (44 FR 2268) would implement section 5(h)(1) concerning exemptions for test marketing and includes proposed 40 CFR 720.15(c) concerning the section 5(h)(6) **Federal Register** notice. However, these requirements are not yet in effect. In the meantime, EPA has published a statement of Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) which applies to PMN's submitted prior to the promulgation of the rules and notice forms.

Interested persons may, on or before October 15, 1981, submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Rm. E-401, 401 M Street SW., Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-59066]". Comments received may be seen in Rm. E-107 between 8:00 a.m. and 4:00 p.m., Monday through Friday excluding legal holidays.

TME 81-36

Close of Review Period. November 1, 1981.

Importer's/Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Pentasubstitutedbenzopyran.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used as a minor constituent of an article for commercial and consumer use.

Production Estimates

	Maximum (kg)
Three months	1,000

Physical/Chemical Properties

Melting point, 9°C
Solubility water, 0.04 parts per million (ppm)
Octanol, 1.0-10.0%
Vapor pressure, 0.1 mm Hg @ 25°C

Toxicity Data

Acute oral LD_{50}, >3,000 mg/kg
Acute dermal LD_{50}, >20 ml/kg
Skin irritation, Slight
Eye irritation, Slight
Skin sensitization potential—Low
Repeated 10-day skin application—Moderate exacerbation of the irritation response.
Repeated 2-week feeding study (rats) 1.0 & 0.1% in diet—Weight gain and feed intake: Decreased for high dose group, normal for low dose group.
Hematology: Platelets were elevated in high dose group, otherwise normal for both.
Clinical chemistry: Serum alkaline phosphatose was elevated in high dose group.
Pathology: Relative liver and kidney weights were increased as well as absolute liver weight for the high dose group. Minor hepatocytomegaly was also observed in the high dose group. Low dose group was normal.
Target organs: Liver and kidney (high dose).

Environmental Test Data.

COD, 2.75 g/g
Secondary waste treatment compatibility study. An exposure of 0.1 ppm (measured concentration) showed no effects on microbiological carbon metabolism.
Acute effects on five acquatic species. An exposure to 0.1 and 0.04 ppm (measured concentration) showed no effects on four of the five acquatic species. The LC_{50} for daphnids is 0.045 ppm
Plant growth effects, No effects as tested (0.04 ppm).

Exposure. The manufacturer states that during manufacture and processing dermal and inhalation exposure may occur for up to 15 people for a maximum of 2 hr/day, 5 days/yr during manual transfer and processing operations. The average and potential maximum concentrations for these operations are expected to be 0-1 ppm. The chemical will be manufactured and processed in closed equipment with minimal potential for occupational exposure. The chemical will be contained as a minor constituent in an article for commercial and consumer use in such a manner as to afford a very low potential for human contact.

Environmental Release/Disposal. The manufacturer states that there will be no release of the new chemical to land and essentially none to air or water during test marketing, manufacture and processing. This chemical has a very low solubility in water. Almost all of the waste generated during manufacture and processing will be incinerated directly or will be collected in a sump and/or a biological treatment system and the incinerated. The very small amount of chemical potentially soluble in the discharge will be mixed with other plant effluents and receiving waters. Both the biological treatment system and incinerator operate in compliance with federal and state regulations. The TME chemical will be incorporated in a commercial consumer article that has a potential for disposal in landfills or by incineration. Due to the low water solubility of the chemical and its distribution in tihe article it is estimated that very little of the chemical will be leached from a landfill. Therefore the submitter states that the chemical will present no unreasonable risk to the environment.

Dated: September 22, 1981.

Woodson W. Bercaw,

Acting Director for Management Support Division.

[FR Doc.81-28316 Filed 9-29-81; 8:45 am]
BILLING CODE 6560-31-M

[OPTS-51321; TSH-FRL-1945-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of seven PMN's and provides a summary of each.

DATES: Written comments by:

PMN 81-462, 81-463, 81-464, 81-465, 81-466, 81-467, and 81-468—November 20, 1981.

ADDRESS: Written comments, identified by the document control number "[OPTS-51321]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St. SW., Washington, DC 20460, (202-755-5687).

FOR FURTHER INFORMATION CONTACT:

For PMN No.	Notice manager	Telephone	Room No.
81-462	Rachel Diamond	202-426-2601	E-222
81-463	Rose Allison	202-426-8815	E-222
81-464	Rachel Diamond	202-426-2601	E-222
81-465	Kathleen Ehrensberger	202-426-8815	E-222
81-466	Kathleen Ehrensberger	202-426-8815	E-222
81-467	Carrie Berlin	202-426-8815	E-222
81-468	Kathleen Ehrensberger	202-426-8815	E-222

Mail address of notice managers: Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMN's received by EPA:

PMN 81-462

Close of Review Period. December 20, 1981.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Annual sales—Between $10,000,000 and $99,000,000

Manufacturing site—East North Central region

Standard Industrial Classification Code—281

Specific Chemical Identity. Benzaldehyde, 3-methoxy-4-[3-propanamonium-2-hydroxy-N,N,N-trimethyl chloride.

Use. The manufacturer states that the PMN substance will be used in a contained use.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	225	900
2d year	900	3,200
3d year	900	4,300

Physical/Chemical Properties

Appearance—Liquid (aqueous solution)

pH—6.5±0.5

Density—9.3 lbs/gal

Color—Dark brown.

Cl minus concentrate—86±4 g/l

Toxicity Data

Acute oral toxicity LD_{50} (rat)—Non-irritant

Primary skin irritation (rabbit)—0.5

Primary eye irritation (rabbit)—Non-irritant

Exposure. The manufacturer states that during manufacture, 4 workers may experience inhalation exposure 1 hr/day, 4 days/yr. During processing, use, and disposal 43 workers may experience dermal exposure 6 hrs/day, 210 days/yr. Exposure may occur when closing drums and during mixing and blending with water and other chemicals.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr may be released to air, land, and water. Release to air will be for 3 hrs/day, 4 days/yr. Disposal is by on-site waste water treatment plant.

PMN 81-463

Close of Review Period. December 20, 1981.

Importer's/Manufacturer's Identity. E.I. du Pont de Nemours and Company, Inc., 1007 Market Street, Wilmington, DE 19898.

Specific Chemical Identity. Benzenesulfonic acid, 4-[2-(trichlorosilyl)ethyl-, reaction product with silica.

Use. The manufacturer states that the PMN substances will be used in high-performance liquid chromatography.

Production Estimates

	Maximum (kilogram per year)
1st year	10
2d year	0
3d year	0

Physical/Chemical Properties. No data were submitted.

Toxicity Data

Skin irritation (rabbit)—Non-irritant

Eye irritation (rabbit)—Moderate irritation

Exposure. The manufacturer states that 6 workers may experience dermal exposure 14 days/yr.

Environmental Release/Disposal. Disposal is by incineration and landfill

PMN 81-464

Close of Review Period. December 20, 1981.

Manufacturer's Identity. The Goodyear Tire and Rubber Company, 1144 E. Market Street, Akron, OH 44316.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Alkyl styrenated acrylate terpolymer.

Use. The manufacturer states that the PMN substance will be used as a synthetic resin for coating, paint and toner systems.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	900,000	1,150,000
2d year	1,000,000	1,250,000
3d year	1,000,000	1,250,000

Physical/Chemical Properties

Appearance—White powder or friable granules

pH—1.034

Viscosity (Ford cup)—25-50 sec

Solubility:

Water—0 percent

Xylene—100 percent

Particle size (mm):

93 percent through 14 mesh

80 percent between 10 and 100 mesh

Softening point—49°C

Nephelos (moisture)—130 max.

Toxicity Data

Acute oral toxicity LD_{50} (rat) >5,000 mg/kg

Primary skin irritation (rabbit) Not a primary irritant

Molecular weight:

$\overline{M}_n = 46,300$

$\overline{M}_w = 108,000$

$\overline{M}_w/\overline{M}_n = 2.34$

Exposure. The manufacturer states that during production approximately 15 workers may be exposed approximately 144 man-hours per worker per year.

Environmental Release/Disposal. The manufacturer states that any environmental and workplace releases would be accidental and/or incidental spills; consequently, there would be no duration of release into the air or water. Disposal is by an approved solid waste landsfill. Product dust will be removed by workplace ventilation and captured by a bagging process.

PMN 81-465

Close of Review Period. December 20, 1981.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Annual sales—Between $10,000,000 and $99,999,999
Manufacturing site—East North Central region
Standard Industrial Classification Code—286

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Alkanedioic acid, (1-methyl, 5-hydroxymethyl heteromonocycle) diester.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in industrial use as a resin modifier.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	35,000	135,000
2d year	70,000	270,000
3d year	70,000	400,000

Physical/Chemical Properties

Boiling point—>200°C
Melting point—<0°C
Solubility:
Water—10^{-4}–10^{-2} gm/1
Methanol—>10 gm/1
Benzene—>10 gm/1
Density—Liquid, >1.1 gm/cc

Toxicity Data

Parenteral administration LD_{50} (rabbit) 1,250 mg/kg

Exposure. The manufacturer states that during manufacture, processing, and use a total of 26 workers may experience dermal and inhalation exposure 2 hrs/day, 5 days/wk. Exposure could occur during charging reactions, sampling, analysis, drumming, unloading, and transfer.

Environmental Release/Disposal. The manufacturer states that less that 10 kg/yr may be released to the air 8 hrs/day, 50–100 days/yr. Disposal will be in accordance with regulations. The empty drums will be reclaimed and reused.

PMN 81-466

Close of Review Period. December 20, 1981.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Annual sales—Between $10,000,000 and $99,999,999
Manufacturing site—East North Central region
Standard Industrial Classification Code—286

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Alkanedioic acid, bis(hydroxymethyl heteromonocycle) ester.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in industrial use as a resin modifier.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	35,000	135,000
2d year	70,000	270,000
3d year	70,000	400,000

Physical/Chemical Properties

Boiling point—>200°C
Melting point—<0°C
Solubility:
Water—10^{-4}–10^{-2} gm/1
Methanol—>10 gm/1
Benzene—>10 gm/1
Density—Liquid, >1.1 gm/cc

Toxicity Data

Parenteral administration LD_{50} (rabbit)—1,250 mg/kg

Exposure. The manufacturer states that during manufacture, processing, and use a total of 26 workers may experience dermal and inhalation exposure 2 hrs/day, 5 days/wk. Exposure could occur during charging reactions, sampling, analysis, drumming, unloading, and transfer.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr may be released to the air 8 hrs/day, 50–100 days/yr. Disposal will be in accordance with regulations. The empty drums will be reclaimed and reused.

PMN 81-467

Close of Review Period. December 20, 1981.

Manufacturer's Identity. American Hoechst, Route 202/206 North, Somerville, NJ 08876.

Specific Chemical Identity. 2-naphthalenesulfonic acid, 6-(acetylamino)-4-hydroxy-, sodium salt.

Use. The manufacturer states that the PMN substance will be used as site limited dye intermediate.

Production Estimates. Claimed confidential business information.

Physical/ Chemcial Properties.

Appearance—Red-tan water wet solid
pH—5.5 (1% in H_2O)
Solubility—30 g/100 ml H_2O @ 20°C

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture 4 workers may experience dermal exposure when the product is removed from a filter press, placed in drums, and then dumped from the drums into a vat.

Environmental Release/Disposal. The manufacturer states that there will be no disposal of the substance. Residual amounts will be treated at an on site National Pollution Discharge Elimination System (NPDES) biological treatment facility.

PMN 81-468

Close of Review Period. December 20, 1981.

Manufacturer's Identity. Day-Glo Color Corporation, 4515 St. Clair Avenue, Cleveland, OH 44103.

Specific Chemical Identity. 4-chloronaphthalene 1,8-dicarboxylic acid anhydride.

Use. The manufacturer states that the PMN substance will be used as a dye intermediate.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	20	1,000
2d year	1,000	5,000
3d year	3,000	10,000

Physical/Chemical Properties

Appearance—White powder
Melting point—209–210°C
Solubility:
Water—Insoluble
Alcohol—Soluble
Esters—Soluble
Ketones—Soluble

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture and use 4 workers may experience dermal exposure 16 hrs/day, 40 days/yr.

Exposure may occur during transport from filter press to tubs and during transport from tubs to reactor.

Environmental Release/Disposal. The manufacturer states that no release is anticipated.

Dated: September 23, 1981.

Woodson W. Bercaw,

Acting Director for Management Support Division.

[FR Doc. 81-28315 Filed 9-29-81; 8:45 am]

BILLING CODE 6560-31-M

[A-7-FRL-1944-4]

Approvals of PSD Permits; Augusta, Kansas, et. al.

In the matter of city of Augusta, Kansas. Augusta, Kansas; Vulcan Materials, Wichita, Kansas; National Cooperative Refinery Association, McPherson, Kansas; CRA, Inc., Coffeyville, Kansas.

Notice is hereby given that the Environmental Protection Agency (EPA) has issued construction permits under the Prevention of Significant Air Quality Deterioration (PSD) regulations (40 CFR 52.21) to: City of Augusta, Kansas; Vulcan Materials; and National Cooperative Refinery (NCRA). Notice is also given that EPA approved a change in a permit previously issued to CRA, Inc.

On May 29, 1981, the EPA formally approved, with conditions, a proposal to install one 6000 Kilowatt dual fuel engine generator at Plant No. 2 at the Municipal Electric System, located in Augusta, Kansas. The engine addition will qualify as a major modification of a major stationary source because the addition will result in a significant increase in nitrogen oxides (NO_x), carbon monoxide (CO), and sulfur dioxide (SO_2) emissions.

On July 23, 1981, the EPA formally approved a proposal to the Vulcan Materials Company to construct a stationary gas turbine cogeneration facility at the existing chemical processing plant located in Wichita, Kansas. The turbine addition will qualify as a major modification of a major stationary source because the addition will result in a significant increase in nitrogen oxides (NO_x) and carbon monoxide (CO).

On July 17, 1981, the EPA formally approved a proposal by the National Cooperative Refinery Association (NCRA) to modify its refinery in McPherson, Kansas. The proposed project qualifies as a "major modification" of an existing major stationary source with respect to NO_x and volatile organic compound (VOC) emissions only. The modification will result in a significant net emission increase of these two pollutants from the refinery.

On July 6, 1981, the EPA fomally approved requested changes to a condition of the PSD permit that was issued to CRA, Inc. on September 4, 1980 regarding the emission limitation for NO_x emissions from the process heaters (Units 40-45). The changes will not significantly change the information that was provided in the preliminary review document, and the resulting incremental change in air quality impact is not significant.

Under Section 307(b)(1) of the Clean Air Act, as amended in August 1977, judicial review of any of these determinations in available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, as amended in August 1977, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

In these cases, the appropriate court is the Tenth Circuit Court of Appeals. A petition for review must be filed with this court on or before November 30, 1981. Copies of these permits and related information are available for public inspection at: U.S. Environmental Protection Agency, Air and Hazardous Materials Division, Air, Noise and Radiation Branch, 324 East 11th Street, Kansas City, Missouri 64106.

Date: September 14, 1981.

William W. Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 81-28317 Filed 9-29-81; 8:45 am]

BILLING CODE 6560-38-M

[A-7-FRL-1944-5]

Approval of PSD Permit; A. E. Staley Manufacturing Co. and Iowa-Illinois Gas and Electric Co.

Notice is hereby given that the Environmental Protection Agency (EPA) has issued a construction permit under the Prevention of Significant Air Quality Deterioration (PSD) regulations (40 CFR 52.21) as amended August 7, 1980, (45 FR 52735) to A. E. Staley Manufacturing Company, Des Moines, Iowa. Notice is also given that EPA amended one condition of a permit to Iowa-Illinois Gas and Electric Company, Muscatine, Iowa.

On July 30, 1981, the EPA formally approved, with conditions, a proposal to construct a coal-fired steam generating facility at the A. E. Staley soybean processing plant in Des Moines, Iowa. The applicant proposes to construct two coal-fired boilers, one of the two existing oil, gas-fired boilers will remain at its existing location and will be utilized only as a backup boiler. This project is a major modification of an existing major stationary source.

The applicant estimates potential SO_2 emissions of 2,102.7 tons per year and potential NO_x emissions of 845.5 tons per year. Potential volatile organic compound (VOC) emissions are predicted to be approximately 65.0 tons per year. The source is subject to PSD review for these pollutants.

On June 16, 1981, the Environmental Protection Agency (EPA) amended Permit Condition No. 8 of the permit issued to Iowa-Illinois Gas and Electric Company for construction of the Louisa Generating Station near Muscatine, Iowa. The permit was originally issued August 7, 1979 and Condition No. 8 was added January 20, 1981. This amendment increases the allowable daily and hourly emission for sulfur dioxide.

Under Section 307(b)(1) of the Clean Air Act, as amended in August 1977, judicial review of the above determination is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Judicial review of the amended permit for Iowa-Illinois Gas and Electric Co. is available only as to the specific adjustment to the emissions stated in Condition No. 8. Under Section 307(b)(2) of the Clean Air Act, as amended in August 1977, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

In this case, the appropriate court is the Eighth Circuit Court of Appeals. A petition for review must be filed with this court on or before November 30, 1981.

Copies of these permits and related information are available for public inspection at: U.S. Environmental Protection Agency, Air and Hazardous Materials Division, Air, Noise and Radiation Branch, 324 East 11th Street, Kansas City, Missouri 64106.

Dated: September 14, 1981.

William W. Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 81-28318 Filed 9-29-81; 8:45 am]

BILLING CODE 6560-38-M

[A-7-FRL-1944-6]

Nonapplicability of PSD Regulation; New Dawn Foods, Inc., Estherville, Iowa

Notice is hereby given that the Environmental Protection Agency (EPA), on July 1, 1981, pursuant to the regulations for the prevention of significant deterioration, 40 CFR 52.21, as amended August 7, 1980, (45 FR 57235), issued a non-applicability determination to New Dawn Foods, Inc. for the modification of dryers at their facility in Estherville, Iowa. Emissions from the facility will not significantly increase due to this modification, therefore the proposed project will not be subject to the preconstruction review requirements of the Prevention of Signficant Air Quality Deterioration Regulations (PSD). Under Section 307(b)(1) of the Clean Air Act, as amended in 1977, judicial review of this determination is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today.

In this case, the appropriate court is the Eighth Circuit Court of Appeals. A petition for review must be filed with this court on or before November 30, 1981.

This determinations and related background information are available for public inspection at: U.S. Environmental Protection Agency, Air and Hazardous Materials Division, Air, Noise and Radiation Branch, 324 East 11th Street, Kansas City, Missouri 64106.

Dated: September 14, 1981.

William W. Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 81-28319 Filed 9-29-81; 8:45 am]

BILLING CODE 6560-38-M

[A-7-FRL-1944-7]

Non-applicability of PSD Regulation; Chase Transportation Co., Scott City, Kansas

Notice is hereby given that the Environmental Protection Agency (EPA), on July 7, 1981, pursuant to the regulations for the prevention of significant deterioration, 40 CFR 52.21, as amended August 7, 1980 (45 FR 52735), issued a non-applicability determination to Chase Transportation Company for the installation of two 1000-horsepower (HP) diesel engines and one 1000 HP gas turbine. The Scott City Terminal was not sufficiently large in terms of emissions to be considered a major stationary source, as defined in 40 CFR 52.21(b)(1), as amended. Since the addition of these three engines do not qualify as a major source, the project is not subject to PSD review. Under Section 307(b)(1) of the Clean Air Act, as amended in August 1977, judicial review of this determination is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today.

In this case, the appropriate court is the Tenth Circuit Court of Appeals. A petition for review must be filed with this court on or before November 30, 1981.

This determination and related background information are available for public inspection at: U.S. Environmental Protection Agency, Air and Hazardous Materials Division, Air, Noise and Radiation Branch, 324 East 11th Street, Kansas City, Missouri 64106.

Date: September 14, 1981.

William W. Rice,

Acting Regional Administrator, Region VIII.

[FR Doc. 81-28320 Filed 9-29-81; 8:45 am]

BILLING CODE 6560-38-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Delegation of Authority; Acting Chairman

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: This notice sets forth a delegation of authority from the Equal Employment Opportunity Commission to the Acting Chairman of the Commission.

EFFECTIVE DATE: This delegation of authority shall be effective as of October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Anthony J. De Marco, Legal Counsel Division, Equal Employment Opportunity Commission, Room 2254, 2401 E Street, N.W., Washington, D.C. 20506 (202-634-6595).

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission has delegated to the Acting Chairman of the Commission the authority to act, in consultation with the other sitting Commissioner, in all matters normally reserved for action by the Commission as a body. This delegation will terminate at such time as there are three sitting Commissioners.

Signed at Washington, D.C., this 25th day of September 1981.

For the Commission.

J. Clay Smith, Jr.,

Acting Chairman, Equal Employment Opportunity Commission.

[FR Doc. 81-28473 Filed 9-29-81; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Preparations for the ITU 1983 Region 2 Broadcasting Satellite Service Planning Conference; Rescheduled Working Group Meeting

September 18, 1981.

Advisory Committee—1983 BSS Conference

Working Group 1A: Conventional Television Service Requirements.

Chairman: Thomas R. Keller, (202) 488-5380.

Meeting: September 28, 1981, 1:30 P.M., vice September 21, 1981, at 9:30 A.M. Public Broadcasting Service, 475 L'Enfant Plaza W, S.W., 6th Floor, Washington, D.C.

William J. Tricarico,

Secretary, Federal Communications Committee.

[FR Doc. 81-28309 Filed 9-29-81; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee on Preparations for the ITU 1983 Region 2 Broadcasting Satellite Service Planning Conference; Working Group Meeting

September 25, 1981.

Working Group 1E Public Service Requirements.

Co-Chairman: Frank Norwood, (202) 331-0660.

Co-Chairman: David E. Honig, (202) 387-8155.

Meeting: October 22, 1981, 10:00 A.M. to 1:00 P.M., Philip Murray Building, Kennedy Room, 7th Floor, 1126 16th Street, N.W., Washington, D.C.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 81-28364 Filed 9-29-81; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket Nos. 81-663, 81-664; BPCT-810102KG, BPCT-810511KJ]

Decatur Foursquare Broadcasting, Inc. and Jackson Telecasters, Inc.; Hearing Designation Order; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: September 18, 1981.

Released: September 24, 1981.

In re applications of Decatur Foursquare Broadcasting, Inc., Decatur, Illinois, BC Docket No. 81-663, File No. BPCT-810102KG; Jackson Telecasters, Inc., Decatur, Illinois, BC Docket No. 81-664, File No. BPCT-810511KJ; for construction permit.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television broadcast station on Channel 23, Decatur, Illinois.

2. Since no determination has been reached that the tower height and location proposed by each applicant would not constitute a hazard to air navigation, issues regarding this matter are required.

Decatur Foursquare Broadcasting, Inc.

3. Applicant estimates that $540,000 will be required to construct and operate for three months. Applicant indicates that equipment is to be purchased on an installment sales basis and that it "should be able" to get credit from its supplier. However, no documentation is submitted as required by page 3, Section III, FCC Form 301. Applicant's parent organization, the International Church of the Foursquare Gospel, has extended a $450,000 line of credit to applicant. So, applicant appears to require an additional $90,000 and a limited financial issue will be specified.

Jackson Telecasters, Inc.

4. Section 1.1305 of the Commission's Rules states that a Commission action authorizing construction of an antenna tower which exceeds 300 feet in height will be considered a major action within the meaning of the National Environmental Policy Act. A proposal to construct such tower must include a narrative statement containing the environmental information required by § 1.1311 of the Commission's Rules. Applicant proposes to construct an antenna structure with an overall height above ground of 1,105 feet, but has not submitted an environmental statement with the required information. Therefore, it will be required to submit to the presiding Administrative Law Judge, within 20 days of the release of this Order, an environmental statement which supplies the information required by § 1.1311 of the Commission's Rules.

Conclusion and Order

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications Are Designated for Hearing in a Consolidated Proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to each applicant whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

2. To determine with respect to Decatur Foursquare Broadcasting, Inc.:

(a) The source and availability of an additional $90,000;

(b) Whether in light of the evidence adduced pursuant to the foregoing issue, applicant is financially qualified;

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, That the Federal Aviation Administration IS MADE A PARTY to the proceeding with respect to issue 1.

8. It is further ordered, That, Jackson Telecasters, Inc. submit to the presiding Administrative Law Judge, within 20 days of the release of this Order, an environmental statement which supplies the information required by § 1.1311 of the Commission's Rules.

9. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

10. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Acting Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 81-28365 Filed 9-29-81; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 81-646; File No. BPCT-5177, etc.]

Hubbard Broadcasting of San Antonio, Inc.; Hearing Designation Order

Adopted: September 18, 1981.

Released: September 24, 1981.

In re applications of HUBBARD BROADCASTING OF SAN ANTONIO, INC., San Antonio, Texas, (BC Docket No. 81-646; File No. BPCT-5177); Las Misiones de Bejar Television Co., San Antonio, Texas, (BC Docket No. 81-647; File No. BPCT-5235); Alamo Broadcasting Corp., San Antonio, Texas, (BC Docket No. 81-648; File No. BPCT-5244); Christian Tele-Communications, INC., San Antonio, Texas, (BC Docket No. 81-649; File No. BPCT-5245); LEE ENTERPRISES, Inc., San Antonio, Texas, (BC Docket No. 81-650; File No. BPCT-5247); Tejas Broadcasting Co., San Antonio, Texas, (BC Docket No. 81-651; File No. BPCT-5247); UNITED TELEVISION BROADCASTING CORP., San Antonio, Texas, (BC Docket No. 81-652; File No. BPCT-5248); For construction permit designating applications for consolidated hearing on stated issues.

1. The Commission, By the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television broadcast station on Channel 29, San Antonio, Texas and several informal objections to the grant of Christian Tele-Communications, Inc's. application.

2. The proposed towers of Hubbard Broadcasting of San Antonio, Inc., Las Misiones De Bejar Television Co., Alamo Broadcasting Corporation and Lee Enterprises, Inc. are to be located near the non-directional tower of Station WOAI (AM). Because of the proximity of the proposed towers to WOAI, a grant of any of the aforementioned applications will be conditioned to ensure that WOAI's radiation pattern

will not be adversely affected by the construction of any of the proposed towers.

3. Tejas and United contemplate operating subscription television (STV) over their proposed facilities. These parties have applications for STV authorizations pending before the Commission. The STV applications will not be consolidated for hearing in this proceeding, however. This is in keeping with the Commission's policy with regard to mutually exclusive applications for a new station where one contemplates STV operation and the other a conventional facililty as stated in paragraph 15, *Second Report and Order*, FCC 81–13, adopted January 8, 1981.

Hubbard Broadcasting of San Antonio, Inc.

4. Applicant indicates that it will require $6,154,000 to construct its proposed station and operate it for three months, itemized as follows:

Equipment	$5,159,000
Land	150,000
Building	250,000
Other Costs	295,000
Operating Costs (3 months)	300,000
Total	$6,154,000

In order to meet this requirement, applicant relies upon a loan from Hubbard Broadcasting, Inc.[1] However, analysis of Hubbard Broadcasting, Inc.'s balance sheet reveals that it has net liquid assets of only $2,606,501. Therefore, an issue will be specified inquiring into the source and availability of an additional $3,547,499 to construct and operate as proposed.

Christian Tele-Communications, Inc.

5. We have received letters opposing the application of Christian Tele-Communications, Inc. from the Reverend Dr. C. Don Baugh, Executive Director of the Council of Churches in San Antonio, Reverend Louis H. Zbinden, Jr. of First Presbyterian Church of San Antonio and William P. Lytle, D.D., Pastor of the Madison United Presbyterian Church of San Antonio.

6.The Reverend Messrs. Baugh, Zbinden and Lytle each expresses a personal view that Christian broadcasters in other cities generally are anti-Semitic, anti-Roman Catholic and present a view of Christianity that is generally unacceptable to most Protestants and they apparently feel that Christian Tele-Communications, Inc. would present a similarly biased view. The Commission has held that the prime consideration is not the religious orientation of a licensee, but "whether the applicant, whatever his own views, is likely to give a 'fair break' to other who do not share them." *WBNX Broadcasting Co.*, 12 FCC 837, 841, 4 RR 242, 248 (1948). *Noe* v. *FCC*, 260 F. 2d 739 (D.C. Cir. 1958). Where a question has been raised regarding the applicant's willingness to provide a "fair break" to other faiths with divergent religious precepts, an applicant has been required to indicate its intentions. However, in the instant case, the objectors have not alleged any specific facts with respect to this particular applicant which would raise a question as to whether the applicant is likely to adhere to the "fair break" doctrine. Their concerns are, therefore, speculative and further inquiry is not warranted. In the event of a grant of Christian Tele-Communications, Inc.'s application, we would expect the permittee to comply with the "fair break" doctrine and we are confident that the objectors' vigilance can be relied upon to assure that result. The informal objections of The Reverend Messrs. Baugh, Zbinden and Lytle will be denied.

Lee Enterprises, Incorporated

7. Applicant will require $4,949,500 to construct and operate its proposed station, itemized as follows:

Equipment	$3,575,000
Land	150,000
Buildings	475,000
Other Costs	390,000
Operating Costs (3 months)	359,500
Total	4,949,500

To meet this requirement, applicant relies entirely on existing capital. Analysis of Lee's balance sheet shows that it has net current assets of $6,429,000. However, we cannot determine Lee's net liquid assets since it has combined cash and temporary cash investments into one figure ($8,445,000) on its balance sheet and it has not submitted any information to indicate the liquidity of its temporary cash investments. Consequently, we cannot determine whether applicant has any funds available to meet construction and operating costs. Financial issues will be specified.

8. KOIN–TV, Inc., licensee of Station KOIN–TV, Portland, Oregon, is a wholly owned subsidiary of Lee. There is a complaint currently pending against KOIN–TV, Inc., filed by Don Hansen with the State of Oregon Civil Rights Division, alleging that Hansen was discharged from Station KOIN–TV due to his sex and his race. Since the outcome of the proceeding relates to the applicant's qualifications to be a Commission licensee in the event of a grant of Lee's application, the construction permit shall contain the condition that grant is subject to whatever action the Commission may deem appropriate as a result of the outcome of the pending proceeding filed against KOIN–TV Inc.

United Television Broadcasting Corporation

9. The Applicant will require $2,056,916 to construct and operate its proposed station for three months, intemized as follows:

Equipment	$1,755,416
Land & Building	17,500
Other Costs	140,000
Operating Costs (3 months)	144,000
Total	$2,056,916

In order to meet this requirement, applicant relies on a $860,000 bank loan and funds to be made available to it from United Cable Television Corporation.[2] The Bank letter submitted by the applicant does not comply with the requirements of Section III, page 3, item 4(e), in that the letter does not specify the interest rate, repayment terms or the collateral or security required. With respect to the funds to be provided by United Cable, applicant has submitted documentation that United Cable has a $10,500,000 line of credit with a bank. However, it does not appear that the line of credit, or any portion of it, is earmarked by the bank for a construction and operation of applicant's proposed station. Applicant has not submitted a balance sheet for United Cable which is required since the credit it relies on is not earmarked. See *Contemporary Television Broadcasting, Inc.*, Mimeo 05812, released January 16, 1981. Furthermore, applicant has not submitted a copy of the agreement by which United Cable is obligated to provide it funds. In view of the foregoing, United Television has not demonstrated the availability of any funds to construct and operate as proposed. Appropriate financial issues will be specified.

10. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consilidated proceeding on the issues specified below.

11. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as

[1] Hubbard Broadcasting of San Antonio, Inc. is a wholly owned subsidiary of Hubbard Broadcasting, Inc.

[2] United Television Broadcasting Corporation is 80% owned by United Cable Television Broadcasting Corporation.

amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Hubbard Broadcasting of San Antonio, Inc.:

(a) the source and availability of an additional $3,547,499 to construct its proposed station and operate it for three months;

(b) Whether, in light of the evidence adduced pursuant to the foregoing issue, applicant is financially qualified.

2. To determine with respect to Lee Enterprises, Incorporated:

(a) the source and availability of $4,949,500 to construct its proposed station and operate it for three months;

(b) whether, in light of the evidence adduced pursuant to the foregoing issue, applicant is financially qualified.

3. To detemine with respect to United Television Broadcasting Corporation:

(a) The source and availability of $2,056,916 to construct its proposed station and operate it for three months;

(b) whether, in light of the evidence adduced pursuant to the foregoing issue, applicant is financially qualified.

4. To determine, on a comparative basis, which of the applications would best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

12. It is further ordered, That the informal objections filed by The Reverend Messrs. Baugh, Zbinden and Lytle are denied.

13. It is further ordered, That, in the event of a grant of a construction permit to Hubbard Broadcasting of San Antonio, Inc., Las Missiones De Bejar Television Co., Alamo Broadcasting Corporation, or Lee Enterprises, Incorporated, the construction permit shall be subject to the following condition:

Prior to construction of the TV tower authorized herein, permittee shall notify AM station WOAI so that that station may determine operating power by the indirect method. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the aforementioned AM station. Subsequent to construction of the TV tower and installation of all appurtenances thereon, antenna impedance measurements of the AM antenna shall be made and sufficient field strength measurements obtained at at least 10 locations along each of eight equally spaced radials shall be made to establish that the AM radiation pattern is essentially omnidirectional and, the results submitted to the Commission in application for the AM station to return to the direct method of power determination. Thereafter the TV station may commence Limited Program Tests.

14. It is further ordered, That, in the event of a grant of Lee Enterprises, Incorporated's application, the construction permit shall contain a condition that grant is subject to whatever action the Commission may deem appropriate as a result of the outcome of the pending discrimination proceeding filed against KOIN–TV, Inc.

15. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

16. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Larry D. Eads,

Acting Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 81-28376 Filed 9-29-81; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket Nos. 81-644, 81-6415; File Nos. 4598-CM-P-80, 625-CM-P-80]

Microband Corp. of America and Hi Band Broadcasting Co.; Designating Applications for Consolidated Hearing on Stated Issues; Memorandum Opinion and Order

Adopted: September 15, 1981.

Released: September 23, 1981.

1. For consideration are the above-referenced applications. [1] These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 in Billings, Montana. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There are no petitions to deny or other objections under consideration.[2]

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[3]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Microband Corporation of America, Hi Band Broadcasting Company and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in

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[1] On August 18, 1980, Tymshare, Inc. (Tymshare) and Arthur Lipper Corporation (ALC) executed a contract whereby ALC agreed to transfer control of Microband to Tymshare. *Transfer of Control/MDS*, 85 FCC ed 1023 (1981).

[2] By Memorandum Opinion and Order adopted June 26, 1981 and released July 2, 1981, Mimeo No. 001863, Microband was granted an exemption from the Commission's "cut-off" rules pursuant to Section 21.31 of the Rules, 47 CFR 21.31, to preserve the status of its pending mutually exclusive application.

[3] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

accordance with the provisions of §1.221 of the Commission's rules.

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 81-28377 Filed 9-29-81; 8:45 am]

BILLING CODE 6712-01-M

North Atlantic Consultation Working Group (NACWG) Telecommunications Facility Planning for the North Atlantic Region; Meeting

September 24, 1981.

The heads of delegations of North Atlantic Consultative Working Group (NACWG) will meet at FCC headquarters, Washington, D.C. on October 6–7, 1981 to prepare for an upcoming NACWG meeting to be held in Montreal, Canada on November 10–13, 1981.

In preparation for the meetings listed above, the Commission's staff will conduct an informal meeting on October 2, 1981 at 10:00 a.m. in Room A–110, FCC, 1229 20th Street, N.W. (the Annex), Washington, D.C. This meeting will be open to the public and anyone who wishes to attend and express views is invited.

For additional information, contact Mike Cummins at (202) 632–4047.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 81-28370 Filed 9-29-81; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket Nos. 81-654, 81-655 and File Nos. 21525-CD-P-1-81, 22126-CD-P-1-81]

Radio Relay Corp. and Phone Depots of Connecticut, Inc., d.b.a. Liberty Communications; Memorandum Opinion and Order

Adopted September 18, 1981.

Released September 23, 1981.

In re applications of Radio Relay Corp., New Jersey (CC Docket No. 81–654, File No. 21525–CD–P–1–81), for construction permit to add an additional location on frequency 35.58 MHz for one-way signaling Station KEC935 in the Domestic Public Land Mobile Radio Service at Spring Valley, New York; and Phone Depots of Connecticut, Inc., d.b.a. Liberty Communications (CC Docket No. 81–655, File No. 22126–CD–P–1–81), for a construction permit to add an additional location on frequency 35.58 MHz for one-way signaling Station KCI310 in the Domestic Public Land Mobile Radio Service at Mahopac, New York; designating applications for consolidated hearing on stated issues.

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, are the captioned applications of Radio Relay Corporation—New Jersey and Phone Depots of Connecticut, Inc., d.b.a. Liberty Communications. These applications are electrically mutually exclusive; therefore, a comparative hearing will be held to determine which applicant would better serve the public interest. We find the applicants to be otherwise qualified.

2. Accordingly, it is ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the application of Radio Relay Corp., New Jersey, File No. 21525–CD–P–1–81), and Phone Depots of Connecticut, Inc., File No. 22126–CD–P–1–81, ARE DESIGNATED FOR HEARING in a consolidated proceeding upon the following issues:

(a) to determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) to determine on a comparative basis, the areas and populations that each applicant will service within the prospective interference-free area within the 43 dBu contours,[1] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[2] and to determine and compare the need for the proposed services in said areas; and

(c) to determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience and necessity.

3. It is further ordered, That the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

4. It is further ordered, That any authorization granted to Radio Relay—New Jersey, as a result of the comparative hearing designated herein shall be without prejudice to and conditioned upon whatever action, if any, the Commission may take as a result of allegations raised in petitions against Digital Paging Systems of New York, Inc.

5. It is further ordered, That the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It is further ordered, That the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221(c) of the Rules within 20 days of the release date hereof, a written notice stating an intention to appear on the date for the hearing and present evidence on the issues specified in this Memorandum Opinion and Order.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Sheldon M. Guttmann,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 81-28379 Filed 9-29-81; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 81-632; File No. 21491-CD-P-(1)-80]

Radio Electronics Products Corp.; Memorandum Opinion and Order

Adopted: September 9, 1981.

Released: September 17, 1981.

In re application of Radio Electronics Products Corp., for a construction permit for an additional channel on frequency 152.15 MHz, for Station KMD687 in the Domestic Public Land Mobile Radio Service at Redding, California, designating application for hearing on stated issues.

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, is the above-captioned application of Radio Electronics Products Corporation (REPC). Our review of the REPC application has raised a question concerning whether the applicant has demonstrated a need for an additional frequency. We find REPC to be otherwise qualified.

2. REPC has submitted a traffic loading study pursuant to § 22.516 of the Rules in an attempt to demonstrate need for the additional two-way frequency it requests. REPC has not shown that it is holding any order for additional units and the loading study submitted does not demonstrate sufficient traffic to justify an additional frequency. The traffic loading study shows an average peak hour usage of only 32.2 minutes, leading to a probability of blocking of only 0.28 for three channels. As a result, we will designate an issue as to whether

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[1] For the purposes of this proceeding, the interference-free area is defined as that area within the 43 dBu contour as calculated from §22.504, in which the ratio of desired-to-undesired signal is always equal to or greater than R in F.C.C. Report No. R-6406, equation 8.

[2] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 35 MHz band. Propagation data sert forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50, 50) for the facilities involved in this proceeding. (The applicants should consult the Bureau in an effort to submit joint technical exhibits).

the applicant has demonstrated a need for an additional frequency.

3. Accordingly, it is ordered, that the above-referenced application of Radio Electronics Products Corporation, File No. 21491-CD-P-(1)-80 IS DESIGNATED FOR HEARING, pursuant to Section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine whether the applicant has demonstrated a sufficient public need for the proposed facility; and

(b) To determine, in light of evidence adduced pursuant ot foregoing issue, what disposition of the referenced application would best serve the public interest, convenience and necessity.

4. It is further ordered, that the hearing be held at a time and place and before an Administrative Law Judge to be specified in a subsequent order.

5. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It is further ordered, that the applicant may avail itself of an opportunity to be heard by filing with the Commission pursuant to § 1.221(c) of the Rules within 20 days of the release date hereof, a written notice stating an intention to appear on the date for the hearing and present evidence on the issues specified in this Memorandum Opinion and Order.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Sheldon M. Guttmann,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 81-28378 Filed 9-29-81; 8:45 am]

BILLING CODE 6712-01-M

Radio Technical Commission for Marine Services; Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 81, "Review of FCC Rules Applicable to VHF-FM Maritime Frequencies", Notice of 1st Meeting, Wednesday, October 14, 1981—1:30 p.m., Conference Room A-106, FCC Annex, 1229 20th Street, N.W., Washington, D.C.

Agenda

1. Administrative matters.
2. Discussion concerning terms of Reference, tasks, and organization.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 81-28363 Filed 9-29-81; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 81-633; File No. 21631-CD-P-81]

Terre Haute Communications, Inc.; Designating Application for Hearing on Stated IssuesJ

Memorandum opinion and order

Adopted: September 9, 1981.

Released: September 17, 1981.

In re application of Terre Haute Communications, Inc. for a construction permit for an additional channel on frequency 152.15 MHz for Station KSB655 in the Domestic Public Land Mobile Radio Service at Terre Haute, Indiana.

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, is the above-referenced application of Terre Haute Communications, Inc. (Terre Haute). Our review of the Terre Haute application has raised a question concerning whether the applicant has demonstrated a need for an additional frequency. We find Terre Haute to be otherwise qualified.

2. Terre Haute presently has one frequency. The application is requesting an additional frequency. Terre Haute has submitted a traffic loading study pursuant to § 22.516 of the Rules in an attempt to demonstrate need for the additional two-way frequency it requests. However, the loading study submitted does not demonstrate sufficient traffic to justify an additional frequency. The traffic loading study shows an average peak hour usage of only 27.9 minutes. This results in 46.5 percent blocking for the existing frequency. As a result, we will designate an issue as to whether the applicant has demonstrated a need for an additional frequency.

3. Accordingly, it is ordered, that the above-referenced application of Terre Haute Communications, Inc., File No. 21631-CD-P-81 IS DESIGNATED FOR HEARING, pursuant to Section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine whether the applicant has demonstrated a sufficient public need for the proposed facility; and

(b) To determine, in light of evidence adduced pursuant to the foregoing issues, what disposition of the referenced application would best serve the public interest, convenience and necessity.

4. It is further ordered, that the hearing be held at a time and place and before an Administrative Law Judge to be specified in a subsequent order.

5. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It is further ordered, that the applicant may avail itself of an opportunity to be heard by filing with the Commission pursuant to § 1.221(c) of the Rules within 20 days of the release date hereof, a written notice stating an intention to appear on the date for the hearing and present evidence on the issues specified in this Memorandum Opinion and Order.

7. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Sheldon M. Guttmann,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 81-28380 Filed 9-29-81; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 81-667, File No. BPCT-800319KG, etc.]

Tidewater Television Corp., et al.; Hearing Designation Order

Adopted: September 18, 1981.

Released: September 25, 1981.

In re applications of Tidewater Television Corp., Norfolk, Virginia, BC Docket No. 81-667, File No. BPCT-800319KG; Focus Broadcasting of Norfolk, Inc., Norfolk, Virginia, BC Docket No. 81-668, File No. BPCT-800806KF; Tidewater Community Broadcasting, Inc., Norfolk, Virginia, BC Docket No. 81-669, File No. BPCT-800806KE; for construction permit; designating applications for consolidated hearing on stated issues.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television broadcast station on Channel 49, Norfolk, Virginia.

Preliminary Matters

2. Tidewater Television Corporation (Tidewater) has an application pending for subscription television (STV) authority. However, the STV application will not be considered in this proceeding. This is in keeping with the Commission's policy in regard to mutually exclusive applications for a new station where one contemplates STV operation and the others a conventional facility as stated in Paragraph 15, *Second Report and Order*, FCC 81-13, adopted January 8, 1981.

Tidewater Television Corporation

3. The application estimates that $1,040,518 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$839,318
Land (included in operating costs)	Leased
Building (included in operating costs)	Leased
Miscellaneous	77,000
Operating costs (three months)	124,200
Total	1,040,518

To finance its proposal, applicant relies upon: (1) $7,500 in net liquid assets and, (2) $1,500,000 loan from William G. Baker, Jr., treasurer of applicant corporation. The financial statement submitted by Baker does not comply with Item 4b, Page 3, Section III, FCC Form 301, which states, in part: "* * * a mere statement of total assets and total liabilities or a statement of net worth, is not acceptable under the terms of this section." Therefore, since applicant has demonstrated only $7,500 in net liquid assets, it will require an additional $1,033,018 and an appropriate financial issue will be designated.

Focus Broadcasting of Norfolk, Inc.

4. The applicant estimates that $2,800,134 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$2,547,634
Land (included in operating costs)	To be leased
Building (included in operating costs)	To be leased
Miscellaneous	75,000
Operating costs (three months)	177,500
Total	2,800,134

Focus has indicated that financial documentation will be submitted as soon as STV negotiations are completed and a franchise agreement is signed. Focus, however, has not submitted an STV proposal. Consequently, we are unable to find that any funds are available to the applicant, and an appropriate financial issue will be specified.

5. Since no determination has been reached that the tower height and location proposed by Focus would not constitute a hazard to air navigation, an issue regarding this matter is required.

Tidewater Community Broadcasting, Incorporated

6. The proposed tower is to be located 1.53 miles from the existing AM station WPMH directional array. Therefore, in order to insure that the AM pattern will not be adversely affected, a grant of this application will be appropriately conditioned.

Conclusion and Order

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Tidewater Telelvision Corporation:

(a) Whether it has $1,033,018 available to meet its estimated construction and operation costs;

(b) Whether, in light of the evidence adduced pursuant to the foregoing issue, applicant is financially qualified.

2. To determine with respect to Focus Broadcasting of Norfolk, Inc.:

(a) Whether it has $2,800,134 available to meet its estimated construction and operation costs;

(b) Whether, in light of the evidence adduced pursuant to the foregoing issue, applicant is financially qualified;

(c) Whether there is a resaonable possibiity that the tower height and location proposed would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That, the Federal Aviation Administration IS MADE A PARTY to the proceeding with respect to issue 2(c).

10. It is further ordered, That, should a construction permit be granted to Tidewater community Broadcasting, Incorporated, such grant will be subject to the following condition:

Prior to the construction of the TV tower authorized herein, permittee shall notify AM station WPMH so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the aforementioned AM station. Both prior to construction of the TV tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, the results submitted to the Commission and to the AM station. Thereafter the TV station may commence *Limited Program Test.*

11. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and party respondent herein shall, purusant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, That, the applicants herein shall, pursuant to § 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Acting Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 81-28366 Filed 9-29-81; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 81-658, File No. BPCT-801224KH, etc.]

Valle Verde Broadcasting Corp., et al.; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: September 14, 1981.

Released: September 25, 1981.

In re applications of Valle Verde Broadcasting Corp., Tucson, Arizona, BC

Docket No. 81-658, File No. BPCT-801224KH; J P Communications, Inc., Tucson, Arizona, BC Docket No. 81-659, File No. BPCT-810409KE; Focus Broadcasting of Tucson, Inc., Tucson, Arizona, BC Docket No. 81-660, File No. BPCT-810410KE; Sunwest Broadcasting, Inc., Tucson, Arizona, BC Docket No. 81-661, File No. BPCT-810413KH; National Group Telecommunications of Tucson, Inc., Tucson, Arizona, BC Docket No. 81-662, File No. BPCT-810413KI; for construction permit.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television broadcast station on Channel 40, Tucson, Arizona.

2. *Focus Broadcasting of Tucson, Inc. (Focus).* Applicant estimates that it will require $2,003,895 to construct its proposed station and operate for three months, itemized as follows:

Equipment	$1,604,755
Land	24,140
Building	20,000
Other items	190,000
Operating Costs	165,000
Total	2,003,895

To meet these expenses, Focus intends to rely on a lease and/or a loan said to be forthcoming as part of a franchise agreement to be made with potential subscription television operators.[1] We have no copy of such agreement or any other indication that applicant has any funds available to construct and operate the proposed facility. Accordingly, financial issues will be specified to determine if Focus has $2,003,895 available.

3. *SunWest Broadcasting, Inc. (Sun).* Applicant will require $1,223,430 to construct its proposed facility and operate for three months, itemized as follows:

Equipment (down payment)	$523,250
(5 months payment)	242,000
Land (lease, included in operating costs)	
Building	25,000
Other items	120,000
Pre-Operating costs (3 months)	85,580
Operating costs (3 months)	227,600
Total	1,223,430

To meet these expenses, applicant will rely upon stock subscriptions totaling $650,000 from two of its principals, Dr. Goins and Mr. Steel, and a loan for $600,000 from First National Bank. No copy of a subscription agreement evidencing Dr. Goins' or Mr. Steel's willingness to subscribe to stocks totaling $650,000 has been submitted nor have we any indication as to the amount of each commitment. Furthermore, the bank letter in support of the $600,000 loan states that it is not an agreement or a commitment to lend funds, but is merely an expression of interest in providing financing. Further, the letter does not give the rate of interest or the terms of repayment. Additionally, any loan would require the guarantees of Dr. Goins and Mr. Steel, which have not been furnished. See FCC Form 301, Section III, page 3, item 4(e). Under these circumstances, Sun may not rely on the availability of the bank loan. Since Sun has not demonstrated that it can rely either upon stock subscriptions or the bank loan, a financial issue will be specified to determine the availability of $1,223,430 to construct and operate as proposed.

4. *National Group Telecommunications of Tucson, Inc. (National).* Applicant estimates that it will require $957,570 to construct its proposed facility and operate for three months, itemized as follows:

Equipment (lease)	$107,670
Land	237,000
Building	30,000
Other items	385,000
Operating costs (3 months)	197,900
Total	957,570

To meet these expenses, National intends to rely on existing capital of $4,330 and a net loan of $1,151,830 from Wells Fargo Bank. The loan from Wells Fargo Bank is contingent upon the execution of guarantees by all of the principals of National. However, there is no documentation evidencing each principal's willingness to guarantee the loan. Therefore, National may not depend upon the bank loan to meet its expenses. In that the applicant has demonstrated the availability of only $4,330, financial issues will be specified to determine if it has an additional $953,240 available.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine with respect to Focus Broadcasting of Tucson, Inc.:

(a) Whether it has $2,003,895 available;

(b) Whether, in light of the evidence adduced pursuant to issue (a), applicant is financially qualified.

(2) To determine with respect to SunWest Broadcasting, Inc.:

(a) Whether, it has $1,223,430 available;

(b) Whether, in light of the evidence adduced pursuant to issue (a), applicant is financially qualified.

(3) To determine with respect to National Group Telecommunications of Tucson, Inc.:

(a) Whether, it has $953,240 available.

(b) Whether, in light of the evidence adduced pursuant to issue (a), applicant is financially qualified.

(4) To determine which of the proposals would, on a comparative basis, best serve the public interest.

(5) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issue specified.

8. It is further ordered, That, the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Acting Chief, Broadcasting Facilities Division, Broadcast Bureau.

[FR Doc. 81-28367 Filed 9-29-81; 8:45 am]

BILLING CODE 6712-01-M

[1] Focus indicates that it will make application for a STV authorization.

[PR Docket No. 81-653]

James L. Ward; For Amateur Radio Station and Novice Class Operator Licenses; Designation Order

Adopted: September 21, 1981.

Released: September 23, 1981.

The Chief, Private Radio Bureau, has under consideration the Amateur Novice Class Operator license and station license of James L. Ward, 13222 Safford

Street, Garden Grove, California 92643, filed August 29, 1980.

1. James L. Ward was granted a Citizens Band (CB) license, KALT–2883, on February 25, 1977. On August 7, 1980, Ward was issued an Order directing him to Show Cause why his CB radio license should not be revoked. Ward waived his right to a hearing, but included a written statement.

2. On November 24, 1980, the Commission issued an Order (PR–967–80) revoking Ward's Citizens Band radio station license. The Order considered Ward's statement and concluded that he willfully operated in violation of the following CB rules: [1]

17(a) (unauthorized frequency: 27.805 MHz, assigned for exclusive use of United States Government radio stations).
19(a) (use of non-type accepted transmitter).
30(a) (station identification as "Jim" instead of by Commission call sign at end of communication).

The Order also concluded that the violations occurred on June 18, 1979, and that on that date, Ward refused to allow authorized FCC representatives to inspect his station, in wilful violation of CB Rule 43. The Order further concluded that Ward's July 5, 1979, response to an Official Notice of Violation was severely lacking in candor. On December 1, 1980, Ward petitioned for reconsideration which was denied by an Order issued March 9, 1981. The Commission cited Ward's operating violations, failure to allow inspection and lack of candor as reasons to deny reconsideration, stating each was an independent ground warranting revocation. The findings and conclusions of the Order of Revocation and March 9, 1981, Order shall be *res judicata* and shall not be relitigated in this proceeding.

3. Ward's conduct described above raises questions as to his fundamental qualifications to become a Commission licensee and also precludes the Commission from determining that a grant of his application would serve the public interest, convenience and necessity.

4. Section 309(e) of the Communications Act of 1934, as amended, requires the Commission to designate an application in which it is unable to determine that grant would serve the public interest, convenience and necessity.

5. It is ordered, That Ward's application for a Novice Class Operator license and station license is designated for hearing on the issues specified below.

(a) To determine the effect of the November 24, 1980, Order revoking Ward's CB license and the March 9, 1980, Order denying reconsideration on his qualifications to be a licensee of the Commission.

(b) To determine whether James L. Ward possesses the requisite qualifications to become a Commission licensee.

(c) To determine whether the public interest, convenience and necessity would be served by the grant of Ward's application.

6. It is further ordered, That if Ward desires to be heard on the application, he must file on or before October 20, 1981, a written appearance, in triplicate, stating that he will appear at a hearing to present evidence on the issues specified above.[2] [3] If a hearing is requested, the time, place and Presiding Judge will be specified by subsequent order.

7. It is further ordered, That copies of this Order shall be sent by Certified Mail—Return Receipt Requested and by Regular Mail to the licensee at his address of record as shown in the caption.

Chief, Private Radio Bureau.

Raymond A. Kowalski,

Chief, Compliance Division.

[FR Doc. 81-28381 Filed 9-29-81: 8:45 am]

BILLING CODE 6712-01-M

[BC Docket Nos. 81–665, 81–666; File Nos. BPCT–800819KH, BPCT–800820KE]

Western Slope Communications, Ltd., and High Country Television, Inc., et al.; Hearing Designation Order

Adopted: September 18, 1981.

Released: September 24, 1981.

In re applications of Western Slope Communications, Ltd., Glenwood Springs, Colorado, BC Docket No. 81–665, File No. BPCT–800819KH; High Country Television, Inc., Glenwood Springs, Colorado, BC Docket No. 81–666, File No. BPCT–800820KE; for construction permit.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television broadcast station on Channel 3, Glenwood Springs, Colorado.

Western Slope Communications, Ltd.

2. The applicant estimates that $1,251,080 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$532,161
Additional equipment cost [1]	298,919
Land (included in operating costs)	(*)
Building (included in operating costs)	(*)
Miscellaneous	255,000
Operating costs (3 months)	165,000
Total	1,251,080

[1] Additional equipment costs represent the difference between the $1,968,754 in equipment costs shown on page 1, Section III, FCC Form 301, and the $1,669,835 for equipment which appears in the installment sales contracts which have been filed with the application.
[*] To be leased.

3. Western relies on the sale of partnership interests and cash as sources of capital. Only two proposed partners, Nicholas DeWolf and Sy Salkowitz, have shown the ability to meet their commitments (totalling $180,000) to the applicant, as required by page 3, Section III, FCC Form 301. It appears, therefore, that the applicant has $286,137 available for construction and operation costs, consisting of the $180,000 plus cash of $106,137.[1] Therefore, a limited financial issue will be specified to determine the source and availability of an additional $964,943 to finance its proposal.

High Country Television, Inc.

4. John H. Gayer is President, director, and 35 percent stockholder of High Country Television, Inc. (Country). Gayer and members of his family have other broadcast interests. (Refer to para. 5). In *Alan K. Levin*, Para. 11, FCC 80–657, released December 1, 1980, 45 FR 85512, December 29, 1980, the Commission designated for hearing in a consolidated proceeding the applications noted in Para. 5, below, in which the Gayer family has interests, saying:

"Generally, family relationships standing alone do not create a presumption of common control. *KTRB Broadcasting Co., Inc.*, 46 FCC 2d 605 (1974). However, the circumstances in a particular case may raise questions which can only be answered through the hearing process. *Stuart W. Epperson*, 44 FCC 2370 (1961). Therefore, the facts of each case that comes before us must be carefully considered * * *. Our analysis of present and past Gayer family interests gives rise to sufficient questions of common control to warrant further exploration".

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[1] The CB Rules are contained in Section 95.401 of the Commission's Rules.

[2] Absent a showing of good cause, if a written appearance is not filed within the specified time period, the application will be dismissed with prejudice for failure to prosecute pursuant to §§ 1.221(c) and 1.961(b) of the Commission's Rules.

[3] The enclosed forms may be used to enter your appearance. A copy should be sent to the Chief Administrative Law Judge in the envelope provided. The other copy should be sent to the F.C.C., Washington, D.C. 20554, in the envelope provided.

[1] As we are not able to determine if applicant has included $36,902 in prepaid legal and engineering expenses in its cost estimates on page 1, Section III, FCC Form 301, we cannot consider it as a source of capital.

Therefore, consistent with the Commission's action noted above, and since there is substantial primary service contour overlap among the proposals, an issue will be specified to determine whether circumstances show that there are sufficient common interests of the Gayer family to constitute common control in a manner inconsistent with § 73.636(a)(1) of the Commission's Rules, pertaining to multiple ownership.

5. A listing of Gayer family broadcast interests follows:

1. Summit Radio, Inc., BC Docket No. 80-713, File No. BP-780728AN, Dillon, Colorado.
2. Eagle Radio, Inc., BC Docket No. 80-715, File No. BP-20,626, Vail, Colorado.
3. Grand Radio, Inc., BC Docket No. 80-717, File No. BP-21,129, Fraser, Colorado.
4. KBCR-FM, Steamboat Springs, Colorado.
5. KBCR (AM), Steamboat Springs, Colorado.
6. AM Radio, BP-801117AC, Oceanside, California.
7. Television, BPCT-790305LD, Denver, Colorado.
8. Television, BPCT-5227, Boulder, Colorado.
9. Television, BPCT-790627KE, Omaha, Nebraska.

The proposed Glenwood Springs television station would be located within 100 miles of items one through four, above, and there will be overlap of the primary service contours of these stations. If the Commission determines that common control exists among the various members of the Gayer family, then the instant proposal may come within the proscriptions of § 73.636(a)(2) of the Commission's Rules (regional concentration of control). An appropriate issue will be specified.

Conclusion and Order

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place and before an Administrative Law Judge to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Western Slope Communications, Ltd.:

(a) Whether it has the additional $964,943 available to meet its estimated construction and operation costs;

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

2. To determine with respect to High Country Television, Inc. whether the application is consistent with § 73.636(a)(1) of the Commission's Rules and § 73.636(a)(2) of the Commission's Rules with respect to regional concentration of control.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

9. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Acting Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 81-28366 Filed 9-29-81; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Bryson Bancshares, Inc.; Formation of Bank Holding Company

Bryson Bancshares, Inc., Bryson, Texas, 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 The First State Bank of Bryson, Bryson, Texas. 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 Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 24, 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, September 24, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28403 Filed 9-29-81; 8:45 am]

BILLING CODE 6210-01-M

Carson Bancorporation, Inc.; Formation of Bank Holding Company

Carson Bancorporation, Inc., Carson, North Dakota, 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 96.9 per cent or more of the voting shares of Grant County State Bank, Carson, North Dakota. 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 Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 24, 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, September 24, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28404 Filed 9-29-81; 8:45 am]

BILLING CODE 6210-01-M

CNB Bancorp, Inc.; Formation of Bank Holding Company

CNB Bancorp, Decatur, 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 100 per cent of the voting shares, less directors' qualifying shares, of the successor by merger to The Citizens National Bank of Decatur, Decatur, 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 October 22, 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, September 24, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28405 Filed 9-29-81; 8:45 am]

BILLING CODE 6210-01-M

Farmers National Bancorp, Inc.; Formation of Bank Holding Company

Farmers National Bancorp, Inc., Remington, 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 per cent or more of the voting shares of The Farmers National Bank of Remington, Remington, 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 Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 22, 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, September 24, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28406 Filed 9-29-81; 8:45 am]

BILLING CODE 6210-01-M

First National Holding Company; Formation of Bank Holding Company

First National Holding Company, Oxford, Mississippi, 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 The First National Bank of Oxford, Oxford, Mississippi. 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 October 24, 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, September 24, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28407 Filed 9-29-81; 8:45 am]

BILLING CODE 6210-01-M

Geary Bancshares, Inc.; Formation of Bank Holding Company

Geary Bancshares, Inc., Geary, Oklahoma, 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 per cent of the voting shares of The First National Bank of Geary, Geary, Oklahoma. 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 October 24, 1981. Any comments 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, September 24, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28408 Filed 9-29-81; 8:45 am]

BILLING CODE 6210-01-M

Hawkeye Bancorporation; Acquisition of Bank

Hawkeye Bancorporation, Des Moines, Iowa, 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 51 per cent or more of the voting shares of Security State Bank, Mount Ayr, Iowa. 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 October 15, 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, September 24, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28409 Filed 9-29-81; 8:45 am]

BILLING CODE 6210-01-M

Holmes County Capital Corp.; Formation of Bank Holding Company

Holmes County Capital Corporation, Lexington, Mississippi, 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 at least 80 per cent of the voting shares of Holmes County Bank & Trust Company, Lexington, Mississippi. 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 October 24, 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 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, September 24, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28410 Filed 9-29-81; 8:45 am]

BILLING CODE 6210-01-M

Holyrood Bancshares, Inc.; Formation of Bank Holding Company

Holyrood Bancshares, Inc., Holyrood, Kansas, 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 The Bank of Holyrood, Holyrood, Kansas. 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 October 15, 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, September 24, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28411 Filed 9-29-81; 8:45 am]

BILLING CODE 6210-01-M

Mid-Citco, Inc.; Formation of Bank Holding Company

Mid-Citco, Incorporated, 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 100 percent of the voting shares, less directors' qualifying shares, of the successor by merger to The Mid-City National Bank of Chicago, Chicago, 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 October 24, 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, September 24, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28412 Filed 9-29-81; 8:45 am]

BILLING CODE 6210-01-M

Morgan Bancorporation, Inc.; Formation of Bank Holding Company

Morgan Bancorporation, Inc., Morgan, Minnesota, 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 88 percent or more of the voting shares of State Bank of Morgan, Morgan, Minnesota. 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 Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 24, 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, September 24, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28413 Filed 9-29-81; 8:45 am]

BILLING CODE 6210-01-M

Pineview Bancshares, Inc.; Formation of Bank Holding Company

Pineview Bancshares, Inc., Pineview, Georgia, 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 at least 84.4 percent of the voting shares of Pineview State Bank, Pineview, Georgia. 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 October 24, 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, September 24, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28414 Filed 9-29-81; 8:45 am]

BILLING CODE 6210-01-M

Schrage Ltd.; Formation of Bank Holding Company

Schrage Ltd., Plainfield, Iowa, 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 Farmers State Bank, Plainfield, Iowa. 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 October 24, 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, September 24, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-28415 Filed 9-29-81; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Services Administration

Maternal and Child Health Research Grants Review Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1981:

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: November 18–19, 1981, 9:00 a.m.

Place: Conference Room L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open November 18, 9:00 a.m.–10:00 a.m.

Closed for remainder of meeting.

Purpose: The Committee is charged with the review of all research grant applications in the program areas of maternal and child health administered by the Bureau of Community Health Services.

Agenda: The open portion of the meeting will cover: Report on program issues, Congressional activities, and other topics of interest in the field of maternal and child health. The meeting will be closed to the public on November 18, 1981, from 10:00 a.m. for the remainder of the meeting for the review of research grant applications. The closing is in accordance with the provision set forth in section 552b(c)(6), Title 5, U.S. Code, and the Determination by the Acting Administrator, Health Services Administration, pursuant to Pub. L. 92–463.

Anyone wishing to obtain a roster of the members, minutes of meeting, or other relevant information should write to or contact Dr. Gontran Lamberty, Bureau of Community Health Services, Health Services Administration, Room 7–44, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2190.

Agenda items are subject to change as priorities dictate.

Dated: September 24, 1981.

William H. Aspden, Jr.,

Associate Administrator for Management.

[FR Doc. 81–28345 Filed 9–29–81: 6:45 am]

BILLING CODE 4110–84–M

Public Health Service

Advisory Committees; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of October 1981:

Name: Health Services Research Review Subcommittee.

Date and Time: October 15—16, 1981, 8:00 a.m.

Place: Gramercy Inn, North Scott Room, 1616 Rhode Island Avenue NW., Washington, D.C. 20036.

Open October 15, 8:00 a.m.–9:00 a.m.

Closed for remainder of meeting.

Purpose: The objective of the Subcommittee is to advise the Secretary and make recommendations to the Director, National Center for Health Services Research, concerning the scientific and technical merit review of health services research grant applications involving primarily the analysis and use of economic, statistical, and other theoretical approaches which examine problems associated with the delivery of health services.

Agenda: The open session of the meeting on October 15, 1981, will be devoted to a business meeting covering administrative matters and reports. During the closed session, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. The closing is in accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code, and the Determination by the Assistant Secretary for Health, pursuant to Pub. L. 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Anthony Pollitt, Ph.D., National Center for Health Services Research, OASH, Room 7–50A, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–6918.

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: October 22–23, 1981, 9:00 a.m.

Place: Gramercy Inn, Scott Room South, 1616 Rhode Island Avenue NW., Washington, D.C. 20036.

Open October 22, 9:00 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research.

Agenda: The open session of the meeting on October 22, 1981, will be devoted to a business meeting covering administrative matters and reports. During the closed sessions the Subcommittee will be reviewing research grant applications relating to the delivery, organization and financing of health services. The closing is in accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code, and the Determination by the Assistant Secretary for Health, pursuant to Pub. L. 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Mr. David McFall, National Center for Health Services Research, OASH, Room 7–50A, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–6916.

Name: Health Care Technology Study Section.

Date and Time: October 26–27, 1981, 8:30 a.m.

Place: Gramercy Inn, Scott Room, 1616 Rhode Island Avenue NW., Washington, D.C. 20036.

Open October 26, 8:30 a.m. to 12:00 noon

Closed for remainder of meeting.

Purpose: The Committee is charged with the initial review of health research grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research (NCHSR) and the National Center for Health Care Technology (NCHCT).

Agenda: The open session of the meeting on October 26 will include a presentation by the Acting Director, NCHSR, the Director, NCHCT, and the Director of the Office of Program Development, NCHSR, and a business meeting covering administrative matters and reports. The closed portion of the meeting will be utilized in a review of health services research grant applications relating to the delivery, organization, and financing of health services. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code, and the Determination by the Assistant Secretary for Health, pursuant to Pub. L. 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research, OASH, Room 7–50A, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–6196.

Agenda items are subject to change as priorities dictate.

Dated: September 15, 1981.

Wayne C. Richey, Jr.,

Acting Executive Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 81-28239 Filed 9-29-81; 8:45 am]

BILLING CODE 4110-85-M

National Health Service Corps Scholarship Program; Availability

Availability of National Health Service Corps Scholarship Program Awards for the 1981–82 School Year for Former Participants in the Scholarship Program for First-Year Students of Exceptional Financial Need.

Section 751 of the Public Health Service Act (42 CFR 62) directs the Secretary of Health and Human Services to give priority in the selection of first-time recipients of National Health Service Corps Scholarship Program awards to individuals who have previously received scholarships under the Scholarship Program for First-Year Students of Exceptional Financial Need.

Notice is hereby given that, for the school year 1981–82, scholarship support is available under the National Health Service Corps Scholarship Program to students of medicine, osteopathy, and dentistry who have previously received scholarships under the Scholarship Program for First-Year Students of Exceptional Financial Need. Due to the limited availability of funds, applicants will be ranked for selection by the following criteria:

1. Career Goals—the applicant's expressed intent to enter into a primary care practice in an urban or rural health manpower shortage setting following the period of obligated service.

2. Work Experience—the extent to which an applicant's work background has included salaried or volunteer experience in medically underserved rural or urban settings.

3. Community Background—the extent to which an applicant has resided in a medically underserved urban or rural area.

For Additional Information Contact: Allan S. Noonan, M.D., Director, Division of Health Services Scholarships, Bureau of Health Personnel Development and Service, Health Services Administration, Center Building, Room G–15, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone: (301) 436–6788.

Dated: September 24, 1981.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

[FR Doc. 81-28349 Filed 9-29-81; 8:45 am]

BILLING CODE 4110-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PHX 075438, etc.]

Arizona; Order Providing for Opening of Public Lands

Correction

In FR Doc. 81–26383, published on page 45203, on Thursday, September 10, 1981, in the third column, in the fourth line from the bottom,

"T. 7 S., R. 3 E.,"

should be corrected to read

"T. 7 S., R. 3 W.,".

BILLING CODE 1505-01-M

[PHX 075419, etc.]

Arizona; Order Providing for Opening of Public Lands

1. In exchanges of land made under the provisions of Section 8 of the Act of June 28, 1934 (49 Stat. 1272, as amended, 43 U.S.C. 315g), the following lands have been reconveyed to the United States under the serial numbers listed below.

Gila and Salt River Meridian, Arizona

PHX 075419

T. 4 N., R. 11 W.,
Sec. 2, Lots 1, 2, 3, SE¼NE¼, S½.
T. 4 N., R. 16 W.,
Sec. 2, Lots 1, 2, 3.
T. 4 N., R. 18 W.,
Sec. 2, Lots 1, 2, 3, 4, S½N½, S½.
T. 4 N., R. 19 W.,
Sec. 2, Lots 1, 2, 3, 4.
T. 5 N., R. 12 W.,
Secs. 16 and 36.
T. 5 N., R. 13 W.,
Secs. 32 and 36.
T. 5 N., R. 14 W.,
Sec. 32, N½, N½S½, SE¼SW¼, SE¼.
T. 5 N., R. 16 W.,
Sec. 2, Lot 1; sec. 16.

PHX 075434

T. 5 N., R. 16 W.,
Sec. 32.

PHX 075768

T. 7 N., R. 12 W.,
Sec. 24, S½;
Sec. 25, N½, SW¼;
Sec. 26, S½, NW¼, N½NE¼, SW¼NE¼;
Sec. 27, N½, SW¼, N½SE¼;
Secs. 34 and 35.
T. 5 N., R. 12 W.,
Sec. 5, S½N½, SW¼, N½SE¼.
T. 14 N., R. 14 W.,
Sec. 6, Lots 1, 2, 3, 4, 5, 6, 7, SE¼NW¼, S½NE¼, E½SW¼, SE¼;
Sec. 18, E½, E½W½.
T. 12 N., R. 15 W.,
Sec. 2, SE¼, SW¼SW¼, E½SW¼.
T. 12 N., R. 17 W.,
Sec. 2, Lots 1, 2, 3, 4, SW¼, W½SE¼, SE¼SE¼.
T. 24 N., R. 17 W.,
Sec. 2, Lots 1 and 2.

PHX 077290

T. 7 N., R. 12 W.,
Sec. 25, SE¼.
T. 7 N., R. 11 W.,
Sec. 34, NE¼, NE¼NW¼.

PHX 078044

T. 7 N., R. 11 W.,
Secs. 28 and 29.
T. 7 N., R. 12 W.,
Sec. 23, N½, SE¼, NE¼SW¼.
T. 13 N., R. 17 W.,
Sec. 2, Lots 1, 2, 3, 4, S½N½, SW¼, W½SE¼.
T. 13 N., R. 18 W.,
Sec. 36, N½, SW¼, W½SE¼, NE¼SE¼.
T. 11 N., R. 15 W.,
Sec. 16, SE¼.
T. 13 N., R. 14 W.,
Sec. 2, Lots 1, 2, 3, 4, S½N½, S½.
T. 14 N., R. 15 W.,
Sec. 32; sec. 36, N½, SW¼, W½SE¼.
T. 12 N., R. 13 W.,
Sec. 16.
T. 12 N., R. 17 W.,
Sec. 36.
T. 13 N., R. 16 W.,
Sec. 2, Lots 1, 2, 3, 4, S½N½, S½.
T. 10 N., R. 12 W.,
Sec. 32, N½, SE¼.

PHX 078069

T. 9 N., R. 11 W.,
Sec. 36, N½S½.
T. 9 N., R. 12 W.,
Secs. 16, 32, and 36.
T. 10 N., R. 11 W.,
Sec. 32;
Sec. 36, N½, SW¼, N½SE¼, SW¼SE¼, E½NE¼SE¼SE¼, W½NW¼SE¼SE¼, S½SE¼SE¼.
T. 10 N., R. 13 W.,
Sec. 32;
Sec. 36, N½, SW¼.

PHX 078110

T. 9 N., R. 10 W.,
Sec. 36, Lots 1, 2, 3, 4, N½S½, S½.
T. 6 N., R. 12 W.,
Sec. 2, Lots 1, 2, 3, 4, S½N½, SW¼, W½SE¼, NE¼SE¼.

PHX 078391

T. 6 N., R. 13 W.,
Secs. 2, 16, and 32.
T. 7 N., R. 12 W.,
Sec. 32.

PHX 078401

T. 6 N., R. 12 W.,
Sec. 16, NW¼;
Sec. 36, NE¼.

PHX 078453

T. 6 N., R. 12 W.,
Sec. 36, NW¼, S½.

PHX 080231

T. 13 N., R. 16 W.,
Sec. 32, SW¼SE¼.
T. 13 N., R. 17 W.,
Sec. 2, E½SE¼.
T. 13 N., R. 18 W.,

Sec. 2, N½, SE¼, NW¼SW¼;
Sec. 16, SE¼, SW¼NW¼, S½SW¼;
Sec. 36, SE¼SE¼.
T. 14 N., R. 14 W.,
Sec. 36, SE¼SE¼.
T. 14 N., R. 16 W.,
Sec. 16, E½NE¼, NW¼SW¼.
T. 14 N., R. 18 W.,
Sec. 16, SE¼;
Sec. 32, SE¼SE¼.
T. 14 N., R. 19 W.,
Sec. 2, W½, N½NE¼, SE¼NE¼.
T. 15 N., R. 14 W.,
Sec. 6;
Sec. 22, SE¼SE¼;
Sec. 26, S½SE¼;
Sec. 28, SE¼SE¼;
Sec. 30, Lot 3.
T. 15 N., R. 18 W.,
Sec. 2, Lots 3 and 4.
T. 16 N., R. 14 W.,
Sec. 18, Lots 1, 2, 3, 4.
T. 16 N., R. 15 W.,
Sec. 28, NW¼NE¼.
T. 17 N., R. 15 W.,
Sec. 16, SW¼NW¼.
T. 17 N., R. 16 W.,
Sec. 32, S½SW¼.
T. 17 N., R. 18 W.,
Sec. 2, Lot 4;
Sec. 36, SE¼SE¼.
T. 17 N., R. 21 W.,
Sec. 2, Lot 2.
T. 18 N., R. 17 W.,
Sec. 2, SE¼SE¼.
T. 18 N., R. 20 W.,
Sec. 2, less patented mining claim;
Sec. 16, SE¼SW¼.
T. 19 N., R. 15 W.,
Sec. 32, SE¼SE¼.
T. 19 N., R. 17 W.,
Sec. 2, Lot 3.
T. 19 N., R. 18 W.,
Sec. 32, E½SE¼.
T. 19 N., R. 19 W.,
Sec. 36, SW¼NE¼.
T. 20 N., R. 16 W.,
Sec. 32, N½NW¼, SW¼NW¼.
T. 20 N., R. 17 W.,
Sec. 32, W½NW¼.
T. 20 N., R. 20 W.,
Sec. 36, NE¼SE¼.

PHX 080325

T. 12 N., R. 10 W.,
Sec. 32.

PHX 080328

T. 1 N., R. 19 W.,
Sec. 36.
T. 5 N., R. 14 W.,
Sec. 36, Lot 4, W½E½, NW¼.
T. 9 N., R. 12 W.,
Sec. 2.

PHX 080687

T. 10 S., R. 27 E.,
Sec. 6, Lots 1, 2, 4, 5, 6, 7, SE¼NW¼, E½SW¼, SE¼SE¼.
T. 11 S., R. 28 E.,
Sec. 36, E½.
T. 11 S., R. 29 E.,
Sec. 24;
Sec. 25, N½, N½S½, SE¼SE¼;
Sec. 32 and 36.
T. 12 S., R. 29 E.,
Secs. 1 and 2.

PHX 080894

T. 9 N., R. 9 W.,
Sec. 2, Lots 1 and 2, SW¼NE¼.
T. 10 N., R. 8 W.,
Sec. 13, N½.
T. 8 N., R. 10 W.,
Sec. 2, excepting the patented mining claims.

PHX 080894

T. 12 S., R. 29 E.,
Sec. 4, S½, S½NW¼, SE¼NE¼;
Sec. 8, NW¼;
Sec. 9, NW¼;
Sec. 17, N½;
Sec. 20;
Sec. 21, S½, NE¼;
Sec. 36.

PHX 081212

T. 5 N., R. 14 W.,
Sec. 36, Lots 1, 2, 3, SE¼SW¼.
T. 7 N., R. 11 W.,
Sec. 20, SE¼SE¼;
Sec. 27, NE¼, E½NW¼.
T. 7 N., R. 12 W.,
Sec. 23, W½SW¼, SE¼SW¼.

PHX 081368

T. 7 N., R. 11 W.,
Sec. 31, NE¼;
Sec. 33, SW¼NE¼.
T. 7 N., R. 12 W.,
Sec. 24, N½.

PHX 081968

T. 12 S., R. 29 E.,
Sec. 6, Lots 1, 2, 3, SE¼NW¼.

PHX 082255

T. 12 S., R. 29 E.,
Sec. 6, Lot 4, S½NE¼.
T. 12 S., R. 30 E.,
Sec. 34, W½SW¼.

AR 017533

T. 12 S., R. 29 E.,
Sec. 31, Lots 1, 2, 3, 4, E½W½.

A 6025

T. 17 N., R. 18 W.,
Sec. 3, Lots 1, 2, 3, 4, S½N½, S½;
Sec. 5, Lots 1, 2, 3, 4, S½N½, S½;
Sec. 7, Lots 1, 2, 3, 4, E½W½, E½;
Secs. 9, 11, 15 and 17;
Secs. 23 and 35 less railroad right-of-way.
T. 18 N., R. 18 W.,
Sec. 5, Lots 1, 2, 3, 4, S½N½, S½;
Sec. 7, Lots 1, 2, 3, 4, E½W½, E½;
Secs. 9 and 17;
Sec. 19, Lots 1, 2, 3, 4, E½W½, E½;
Secs. 21, 27 and 29;
Sec. 31, Lots 1, 2, 3, 4, E½W½, E½;
Sec. 33.
T. 17 N., R. 19 W.,
Sec. 1, Lots 1, 2, 3, 4, S½N½, S½;
Sec. 3, Lots 1, 2, 3, 4, S½N½;
Sec. 5, Lots 1, 2, 3, 4, S½N½, S½;
Sec. 7, Lots 1, 2, 3, 4, E½W½, E½;
Secs. 11 and 13;
Sec. 15, S½NE¼, S½NW¼;
Sec. 17, S½, NW¼, W½NE¼;
Sec. 19, Lots 1, 2, 3, 4, E½W½, E½;
Secs. 21, 23, 27 and 29;
Sec. 31, Lots 1, 2, 3, 4, E½W½, E½;
Sec. 33.
T. 18 N., R. 19 W.,
Sec. 3, Lots 1, 2, 3, 4, S½N½, S½;
Sec. 5, Lots 1, 2, 3, 4, S½N½, S½;
Sec. 7, Lots 1, 2, 3, 4, E½W½, E½;
Secs. 9, 11, 13, 15 and 17;
Sec. 19, Lots 1, 2, 3, 4, E½W½, E½;
Secs. 21, 23, 25, 27 and 29;
Sec. 31, Lots 1, 2, 3, 4, E½W½, E½;
Secs. 33 and 35.
T. 19 N., R. 19 W.,
Sec. 5, Lots 1, 2, 3, 4, S½N½, S½;
Sec. 7, Lots 1, 2, 3, 4, 6 and 7, NE½, E½W½, NE¼SE¼ except that protion of the 10.997 acre parcel previously sold and described in deed dated 8/23/62, recorded 8/24/62, in Book 127 of Deeds, pages 258–259, records of Mohave County, intruding into this subdivision.
Sec. 9;
Sec. 19, Lots 1 and 2, E½W½, E½;
Secs. 25, 27 and 29;
Sec. 31, Lots 1, 2, 3, 4, E½W½, E½;
Secs. 33 and 35.

The areas described aggregate approximately 85,276.26 acres in Cochise, Graham, Maricopa, Mohave, Pinal, Yavapai and Yuma.

2. The United States did not acquire the mineral rights in any of the lands described in paragraph 1.

3. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 hereof are hereby open to operation of the public land laws, generally. All valid applications received at or prior to October 9, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. Inquiries concerning the lands should be addressed to the Bureau of Land Management, Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073 (602–261–3706).

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 81-28351 Filed 9-29-81; 8:45 am]

BILLING CODE 4310-84-M

Rawlins, Wyoming; Rawlins District Advisory Council

Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Rawlins District Advisory Council will be held on October 27, 1981.

The meeting will begin at 9:00 a.m. at the Rawlins District Office, Bureau of Land Management, 1300 North Third Street, Rawlins, Wyoming.

The meeting agenda will include: (1) Recommendations on public access needs within the district, (2) Fiscal year 1982 budget outlook, and (3) Status of the Green Mountain Management Framework Plan. The meeting will be open to the public.

Interested persons may make oral statements before the Council or file written statements for the Council's consideration. Persons wishing to make oral statements are asked to notify the Rawlins District Manager at the above address by close of business October 20, 1981.

David J. Walter,

District Manager.

[FR Doc. 81-28354 Filed 9-29-81; 8:45 am]

BILLING CODE 4310-84-M

Intent To Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Development of a Management Framework Plan and preparation of an Environmental Impact Statement on the Proposed Grazing Management in the Green Mountain portion of the Lander Resource Area, Rawlins District, Wyoming.

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act, the Bureau of Land Management (BLM) Rawlins District Office will prepare an environmental impact statement (EIS) for the Green Mountain portion of the Lander Resource Area located in central Wyoming, based on rangeland management planning recommendations. In addition, BLM will be soliciting public comment on proposed management framework plan decisions in the Green Mountain area not directly related to rangeland management. The Green Mountain area includes approximately 1.4 million acres of BLM-administered land in Carbon, Fremont, Natrona, and Sweetwater Counties.

The purpose of the range management recommendations is to maintain or improve public land resource values which include soil, water, vegetation, wildlife, and wild horses. The EIS will analyze effects of managing grazing allotments based on selective management categories. This notice modifies an earlier (July 1979) notice of intent to prepare this EIS, and reflects recent changes in rangeland management policy.

Alternatives to be considered include continuation of present livestock management as well as alternatives depicting different levels and intensities of management for livestock and other resources.

A public scoping meeting is scheduled for November 2, 1981, at 7 p.m., in the Carnegie Room of the Fremont County Public Library, Lander, Wyoming. The purpose of the meeting is (1) to provide the public with an opportunity to comment on proposed management framework plan decisions not directly related to rangeland management; (2) to present rangeland management multiple use planning recommendations to the public; (3) to inform the public of the proposed action and tentative alternatives that BLM proposes to analyze in the EIS; (4) to gather resource information from the public; and (5) to identify concerns and issues important to the public for possible inclusion into the EIS or into planning system decisions. Comments received at this scoping meeting will be used in developing the EIS and the planning decisions that result.

FOR FURTHER INFORMATION CONTACT: All inquiries and comments should be directed to either Dale Brubaker, Lander Area Manager, P.O. Box 589, Lander, Wyoming 82520, telephone (307) 332-4220; or Bob Tigner, Green Mountain Team Leader, P.O. Box 670, Rawlins, Wyoming 82301, telephone (307) 324-7171.

Written comments on the planning system recommendations must be received no later than close of business December 2, 1981.

F. William Eikenberry,

Associate State Director.

[FR Doc. 81-28353 Filed 9-29-81; 8:45 am]

BILLING CODE 4310-84-M

Wilderness Alternatives; Extension of Comment Period

September 21, 1981.

AGENCY: Bureau of Land Management, Richfield District, Interior.

ACTION: Notice of extension of public comment period for wilderness suitability reports, Henry Mountain Resource Area, Wayne and Garfield Counties, Utah.

SUMMARY: Notice is hereby given that public comments on the following wilderness study areas will be accepted until October 30, 1981:

UT-050-221	Fremont Gorge
UT-050-236A	Dirty Devil
UT-050-236B	French Spring—Happy Canyon
UT-050-237	Horseshoe Canyon
UT-050-238	Blue Hills-Mt. Ellen
UT-050-241	Fiddler Butte
UT-050-242	Bull Mountain
UT-050-247	Little Rockies
UT-050-248	Mt. Pennell
UT-050-249	Mt. Hilliers

COMMENTS SHOULD BE SENT TO: Public Information Officer, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

BACKGROUND: Availability of wilderness suitability reports for the ten wilderness study areas in the Henry Mountain Resource Area was previously announced in the **Federal Register**, dated July 23, 1981, Volume 46, No. 141, page 37982-3.

Since an environmental impact statement will not be prepared for the 10 wilderness study areas during fiscal year 1982, preliminary recommendations on the suitability or unsuitability of these areas for wilderness designations will not be issued by the Richfield District Manager until further notice.

FOR FURTHER INFORMATION CONTACT: Public Information Officer, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

Larry Oldroyd,

Assistant District Manager.

[FR Doc. 81-28234 Filed 9-29-81; 8:45 am]

BILLING CODE 4310-84-M

Winnemucca District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Winnemucca District Grazing Board will be held on November 3, 1981. The meeting will begin at 10:00 A.M. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada.

The agenda for the meeting will include:

1. New Rangeland Management Policy.
2. New Rangeland Improvement Policy and Funding.
3. Accomplishments 1981 AWP.
4. AWP Plan for 1982.
5. Individual Allotments for Alder Creek Allotment.
6. Public Comment Period.
7. Update on WH&B Activities.
8. Arrangements for Next Meeting and Discussion of Agenda Items.

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:00 and 2:00 P.M. on November 3, 1981 or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445, by October 20, 1981. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: September 21, 1981.

Vaden G. Stickley,

Acting District Manager for State Director, Nevada.

[FR Doc. 81-28351 Filed 9-29-81; 8:45 am]

BILLING CODE 4310-84-M

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A., Inc.

AGENCY: Geological Survey, Interior

ACTION: Notice of the Receipt of a Proposed Development and Production Plan

SUMMARY: This notice announces that Chevron U.S.A. Inc., Unit Operator of the Eugene Island Block 231 Federal Unit Agreement No. 14-08-0001-8813, submitted on September 14, 1981, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the Eugene Island Block 231 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837-4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: September 21, 1981.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 81-28232 Filed 9-29-81; 8:45 am]

BILLING CODE 4310-31-M

Outer Continental Shelf; Blowout and Fire, High Island Block 38, OCS-G 4077, Offshore Texas; Availability of Report

AGENCY: Geological Survey, Interior.

ACTION: Notification of Availability of Report on Blowout and Fire, High Island Block 38, OCS-G 4077, Offshore the State of Texas.

Pursuant to the provisions of Section 22 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1348, an investigation was conducted into the blowout and fire that occurred on January 12, 1981, involving drilling operations on Well No. 1, lease OCS-G 4077, High Island Block 38, Gulf of Mexico, off the Texas coast. A report has been prepared by an Investigative Panel appointed to conduct the investigation, and copies of the report are now available.

The Panel was comprised of four USGS Conservation Division members. Information for the report was obtained through meetings with lease operator personnel as well as a thorough review of various well and lease records and other numerous documents.

The investigation findings included in the report cover the following topics:

A. Preliminary Activities.
B. Loss of Well Control.
C. Explosion and Fire.
D. Emergency Warning.
E. Abandonment of Platform.
F. Injuries and Damage.

Additionally, the Panel's conclusions address the proximate causes of the loss of well control, probable cause of the fire, and the cause of the fatalities.

The report also contains recommendations to the USGS concerning actions to be taken to minimize the possibility of future occurrences.

Copies of this report may be obtained from the Deputy Division Chief, Offshore Minerals Regulation, Conservation Division, U.S. Geological Survey, 640 National Center, Reston, Virginia 22092. For further information contact Mr. Price McDonald at (703) 860-6831.

Dated: September 24, 1981.

Robert L. Rioux,

Deputy Division Chief, Offshore Minerals Regulation Conservation Division.

[FR Doc. 81-28312 Filed 9-29-81; 8:45 am]

BILLING CODE 4310-31-M

Outer Continental Shelf (OCS) Oil and Gas Production Operations; Failure and Inventory Reporting System (FIRS) Reporting Requirements

AGENCY: Geological Survey, Interior.

ACTION: Notice of proposal to rescind the U.S. Geological Survey (USGS) FIRS program.

SUMMARY: This Notice informs the public of the USGS proposal to rescind the FIRS Program. This would be accomplished by the elimination of the requirements contained in paragraph 6 of OCS Order No. 5.

SUPPLEMENTARY INFORMATION: The USGS established the FIRS program on January 1, 1980. Through the systematic reporting of inventory and failure information, the USGS intended to collect and analyzed the data needed to enable it to contribute to the safety and reliability of offshore production platforms and to the prevention of environmental pollution.

The USGS proposed certain changes to the FIRS program (46 FR 26876, May 15, 1981) and requested comments on the proposed changes. Twenty comments were received. Fifteen commenters questioned the desirability of continuing the FIRS program and recommended the rescission of the FIRS program because, in their opinion, the program is not cost beneficial. They believe that it imposes a burdensome paperwork task on regulated industry, and it has not produced corresponding benefits.

In response to Secretary Watt's news release of January 28, 1981, solicitating recommendations from the public as to excessive, burdensome, or counterproductive regulations, a number of respondents identified the FIRS program and recommended its rescission.

Comments

Comments are requested on the proposed rescission of the FIRS program. Comments are also requested as to systems, methods, or techniques to collect and use information relating to the safety of operations on the OCS. Comments must be received by 4:00 p.m. EST November 16, 1981.

ADDRESS: Comments on this proposed action should be addressed to the Deputy Division Chief, Offshore minerals Regulation, U.S. Geological Survey, Conservation Division, National Center, Mail Stop 640, Reston, VA 22092.

FOR FURTHER INFORMATION: CONTACT Mr. M. L. Courtois, U.S. Geological Survey, Conservation Division, National Center, Mail Stop 640, Reston, VA 22092. (703) 860-6831.

Dated: September 22, 1981.

Richard B. Krahl,

Acting Deputy Division Chief, Offshore Minerals Regulation Conservation Division.

[FR Doc. 81-28311 Filed 9-29-81; 8:45 am]

BILLING CODE 4310-31-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board Number 3, Krock, Joyce and Dowell.

MC-FC-78082. By decision of September 14, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to JOSEPH T. LANGLAND, JR., of Lansing, IA, of Permit No. MC-139408 (Sub-Nos. 1 and 2), issued to BRILMAN TRUCKING SERVICE, INC., of Waukson, IA, authorizing: (Sub-No. 1) *butter*, from Waukson, IA, to New York, NY, and (Sub-No. 2) (a) *butter*, from Waukson, IA, to points in Cook County, IL, and from Waukson, IA, to Plymouth, WI; (b) *cheese*, from Elkader and Waukson, IA, to points in Wisconsin, both subs under continued contracts(s) with Meadowland Dairy Association, of Waukson, IA. Representative: Richard D. Howie, 600 Hubbel Bldg., Des Moines, IA 50309. TA lease is sought. Transfer is not a carrier.

MC-FC-78724. By decision of August 19, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 5 approved the transfer to LUGI DELLAPINA and LEA LETTERIS, a partnership, doing business as ASTORIA MOTOR VAN CO., of Long Island City, NY, of Certificates No. MC-43148 issued April 2, 1958, to JOSEPH G. CUREIO and RICHARD E. CURCIA, a partnership, doing business as ROCCO VAN & STORAGE CO., of Long Island City, NY, authorizing the transportation of *household goods*, as defined by the Commission, between New York, NY, on the one hand, and, on the other, points in New Jersey, Pennsylvania, Massachusetts, Rhode Island, Maryland, Connecticut, Delaware, New York, and the District of Columbia, and between New York, NY, on the one hand, and, on the other, points in Virginia, Vermont, New Hampshire, and Maine. Representative: Mr. David A. Brown, Attorney 32-02 30th Avenue, Long Island City, NY 11102, (212) 726-1598. TA application has not been filed. Transferee presently holds no authority.

MC-FC-79220. By decision of September 4, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to WHATLEY TRANSPORTATION CO., INC. of Dothan, AL of Permit No. MC-134054 (Sub-No. 2) issued October 5, 1972, and of Certificate No. MC-133814 (Sub-No. 9) issued July 29, 1981, to WHATLEY SUPPLY CO., INC. d/b/a WHATLEY EQUIPMENT CO. of Dothan, AL. The Permit authorizes the transportation, by irregular routes, of *brick, tile and concrete masonry units* between the plantsites of Bickerstaff Clay Products Company, Inc. at certain points in Georgia, Alabama, and Florida, on the one hand, and, on the other, points in Georgia, Alabama, Mississippi, and Tennessee, and a portion of Florida under a continuing contract, or contracts with Bickerstaff Clay Products Company, Inc.; the certificate authorizes the transportation by irregular routes of *brick* from certain points in Alabama to points in Alabama, Georgia, Mississippi, Tennessee and Florida; *brick and tile* (except floor tile) from Montgomery, AL to points in Georgia, Mississippi, Tennessee, and Florida; *brick and clay products* and *used building materials* between points in Alabama, Florida, Georgia, Louisiana, Mississippi, North and South Carolina, and Tennessee; *damaged and rejected shipments of brick and clay products*, from points in Florida to points in Alabama; *concrete silo blocks and articles* used in the installations and erection of concrete silos (except commodities in bulk and cement) from points in Alabama, to points in Florida, Georgia, Mississippi and Tennessee. Representative: William K. Martin, 57 Adams Avenue (P.O. Box 2069), Montgomery, AL 36197.

MC-FC-79225. By decision of 6/25/81, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132, Review Board Number 3 approved the transfer to RESIDENTIAL DELIVERY, INC., of Jacksonville, FL, to Permit No. MC-138429 (Sub-Nos. 2, 4, 5, and 9), issued to ASI, INC., of Jacksonville, FL, authorizing the transportation of: (Sub-No. 2) *Such merchandise* as is marketed by home products distributors, (a) between points in Florida, (b) between points in Virginia, (c) between points in West Virgina, and (d) from points in Virginia to points in West Virginia, under continuing contract(s) with Amway Corporation. (Sub-No. 4) *Such merchandise* as is marketed by home products distributors, between points in North Carolina, under continuing contract(s) with Amway Corporation. (Sub-No. 5) *Such merchandise* as is marketed by home products distributors, from Orlando, FL, to points in that part of Georgia on and south of Interstate Highway 20, under continuing contract(s) with Stanley Home Products, of Orlando, FL. (Sub-No. 9) *Such merchandise* as is marketed by home products distributors, between Orlando, FL, Memphis, TN, and Charlotte, NC, on the one hand, and, on the other, points in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee, under

continuing contract(s) with Stanley Home Products, of Jacksonville, FL, restricted (1) against the transportation of commodities in bulk and (2) against transportation from Orlando to points in Florida, under continuing contract(s) with Stanley Home Products, Inc., of Jacksonville, FL.

MC-FC-79229. By decision of 6/25/81, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132, Review Board Number 3 approved the transfer to ALAN R. HOULE, of Vernon, VT, of Permit No. MC-150177 (Sub-No. 1) issued to CONATSER TRUCKING, INC., of Amherst, MA, authorizing *such commodities* as are dealt in or used by distributors of bottled water (except commodities in bulk), from Portland Spring, ME, to points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, West Virginia, Virginia, North Carolina, South Carolina, Georgia, Alabama, Florida, Mississippi, Tennessee, Kentucky, Pennsylvania, Ohio, Illinois, Wisconsin, Indiana, Missouri, and the District of Columbia, under continuing contract(s) with Poland Spring, Inc., of Las Vegas, NV. Representative: Patrick A. Doyle, 40 Sky Ridge Lane, Springfield, MA 01128. TA lease is not sought. Transferee is not a carrier.

MC-FC-79302. By decision of September 4, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to WALLER TRANSFER, INC. of Malvern, IA of Certificate No. MC-25932 issued on April 27, 1977 to RAYMOND WALLER & R. STEPHEN WALLER, d.b.a. WALLER TRANSFER of Malvern, IA authorizing *livestock*, between Malvern, IA, and those points in IA and NE within 25 miles of Malvern, on the one hand, and, on the other, St. Joseph and Kansas City, MO, and Kansas City, KS., from Malvern, IA, and points to IA within 25 miles of Malvern, to Omaha and Nebraska City, NE, *building materials*, between Malvern, IA, on the one hand, and, on the other, Nebraska City and Gretna, NE, *household goods* and *emigrant movables*, between Malvern, IA, and points in IA within 25 miles of Malvern, on the one hand, and, on the other, points in MO and NE within 50 miles of Malvern, *general commodities*, from Omaha, NE, to Malvern, IA, and points in IA within 25 miles of Malvern. Representive: R. Stephen Waller, 209 Main, Malvern, IA 51551. TA lease is not sought. Transferee is not a carrier.

MC-79325. By decision of September 4, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132, Review Board Number 3 approved the transfer to HALL BROS. MOVERS, INC., of Worcester, MA, of Certificate No. MC-94207 (Sub-No. 1) issued June 26, 1981, to ALL NEW ENGLAND VAN LINES, INC., of Marlboro, MA, authorizing the transportation of *Household goods*, as defined by the Commission. Between points in MA, on the one hand, and, on the other, points in ME, NH, VT, RI, CT and NY. Representative: Robert G. Parks, Attorney, 20 Walnut Street, Suite 101, Wellesley Hills, MA 02181, 617-235-5571. Transferee presently holds no authority. TA application has not been filed.

No. MC-FC-79328. By decision of September 10, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to A.J.D. TRANSPORT INC., of Gilmanton Iron Works, NH of Certificate No. MC-34564 and all subs thereunder, issued to ADOLPH J. DAROKSA, of Pittsfield, NH, authorizing: Named commodities, *including lumber, livestock, agricultural machinery, wood turnings, soap, kids, and fertilizer;* and *general commodities;* from and to named points in the New Hampshire, Maine, Massachusetts, Connecticut, Rhode Island, Vermont, and New York. Representative: Howard B. Myers, 4 Park St., Concord, NH 03301. TA lease is not sought. Transferee is not a carrier.

MC-FC-79330. By decision of September 4, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to DANIEL P. FERRE AND HENRY M. FERRE, a partnership, doing business as DIABLO TRANSPORTATION CO., of Pacheco, CA, of Certificate Nos. MC-105682 (Sub-Nos. 9, 14, and 18) and Certificate of Registration No. MC-105682 (Sub-No. 17), issued to ELMER G. FILOMEO AND BRUNO NARDI, a partnership, doing business as DIABLO TRANSPORTATION CO., of Concord, CA, authorizing the transportation as follows: No. MC-105682 (Sub-No. 9): Irregular routes, *general commodities* (except classes A and B explosives), and household goods as defined by the Commission) between the site of Fairfield-Suisun, CA, Army Air Base, on the one hand, and, on the other, the sites of Sacramento Municipal Airport, McClelland Field, Mather Field, Sacramento Signal Corps Depot at Polk, San Francisco Municipal Airport (Mills Field), Oakland Municipal Airport, Sacramento, San Francisco, Oakland, Alameda, and Emeryville, CA; No. MC-105682 (Sub-No. 14): Irregular routes, *automobile parts, chemicals, small arms ammunition, and turpentine*, from Sierra Ordnance Depot, Herlong, CA, to Oakland, CA, restricted to traffic moving to the Territories or possessions of the United States; No. MC-105682 (Sub-No. 18): Irregular routes, *general commodities* (except commodities in bulk, household goods as defined by the Commission, articles of unusual value, and commodities which require the use of special equipment), between Oakland, Oxnard, Long Beach, and San Diego, CA, and Travis Air Force Base, at Fairfield, CA (conditioned to the extent that authority is granted to transport classes A and B explosives, the certificate expires May 9, 1983); and No. MC-105682 (Sub-No. 17): Irregular routes, transporting property between San Francisco and Oakland, CA, on the one hand, and United States Navy Depot near Port Chicago, CA, on the one hand, subject to the following condition: prior to or concurrently with consummation of this transaction, applicants shall furnish to the Commission a certified copy of the California Public Utilities Commission certificate as reissued to it, or if the California Public Utilities Commission does not reissue the certificate, a certified copy of the order which approves the transfer of the California intrastate certificate, together with a statement in writing confirming the date of consummation of the intrastate transaction. Representative: Armand Karp, 743 San Simeon Drive, Concord, CA 94518.

Notes.—Transferee is a non-carrier. TA has not been filed.

MC-FC-79333. By decision of September 4, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to JOSEPH J. SARCONA TRUCKING CO., INC., of Brooklyn, NY, of Permit No. MC-127976 (Sub-No. 1), issued July 30, 1968, to J & J TRUCKING CO., INC., of Brooklyn, NY, authorizing the transportation of *automobile and motorcycle parts and accessories*, from points in the New York, NY commercial zone, as defined by the Commission, to Melville, NY, restricted to of shipments having a prior movement by water, and limited to a transportation service to be performed under a continuing contract(s) with Beck Distributing Corp., of Melville, NY. Representative: Pike & Piken, P.C., 95-25 Queens Blvd., Rego Park, NY 11374.

Notes.—Transferee holds no authority from the Commission. TA application has not been filed.

MC–FC–79336. By decision of September 4, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to E & J FREIGHT LINES, INC., of Middlebury, IN, of Certificate Nos. MC–128256 and MC–128256 (Sub-Nos. 29, 30, 32, and 34), issued to BLOSSER TRUCKING, INC., of Middlebury, IN (First State Bank of Middlebury, IN, Secured Creditor; and David G. Smith, Assignor), authorizing the transportation, as summarized, of *lumber, mouldings, composition board, axle assemblies, frames, wheels, windows, doors, screens, aluminum extrusions, siding and roofing, particle board, plywood, plastics and plastic articles, insulation board, gypsum board, and hardboard,* between specified points in the United States (except AK and HI). Representative: Richard K. Muntz, 124 N. Detroit Street, LaGrange, IN 46761.

Notes.—TA has been filed. Transferee is a non-carrier.

MC–FC–79340. By decision of September 8, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to H & O TRANSPORT, INC., of Campbellsville, KY of Certificate No. MC–38227 (Sub-Nos. 5, 6, 7, and 9) thereunder issued to CRUTCHER TRANSFER LINE, INC., of Louisville, KY, authorizing: Regular route: MC–38227, *General commodities,* except those of unusual value, high explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, Between Fort Knox, KY, and Lousiville, KY, over U.S. Highway 31W, serving the intermediate points of Tip-Top and Muldraugh, KY. (Sub-5) *General commodities,* except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading. Between Hodgenville, KY, and Louisville, KY, serving all intermediate points on Kentucky Highway 61 south of Elizabethtown, KY, and the off-route point of Buffalo, KY, without restriction: From Hodgenville, over Kentucky Highway 61 to Elizabethtown, KY, thence over U.S. Highway 31W to Louisville, and return over the same route. *General commodities,* except household goods as defined by the Commission, Between Elizabethtown, KY, and Louisville, KY, serving all intermediate points south of Fort Knox, KY: From Elizabethtown, over U.S. Highway 31W to junction old U.S. Highway 31W near Radcliffe, KY, thence over old U.S. Highway 31W via Fort Knox, KY, to junction U.S. Highway 31W near Tip-Top, KY, thence over U.S. Highway 31W to Louisville, and return over the same route. Between junction new U.S. Highway 31W and old U.S. Highway 31W near Tip-Top, KY, and junction new U.S. Highway 31W and old U.S. Highway 31W near Radcliffe, KY, serving no intermediate points: From junction new U.S. Highway 31W and old U.S. Highway 31W near Tip-Top, KY, over new U.S. Highway 31W to junction old U.S. Highway 31W near Radcliffe, KY, and return over the same route. Restriction: the authority granted herein is restricted against serving points in Indiana within the Louisville, KY, commercial zone as defined by the Commission. (Sub-6) *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 Elizabethtown, KY, and Munfordville, KY, over U.S. Highway 31W, serving the intermediate point of Bonnieville, KY. (Sub-7) *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 Elizabethtown, KY, and Munfordville, KY, over U.S. Highway 31W, serving all intermediate points: Between Hodgenville, KY, and Cub Run, KY, serving all intermediate points. From Hodgenville over U.S. Highway 31–E to Hardyville, KY, thence over Kentucky Highway 88 to Cub Run, and return over the same route. Between Sonora, KY, and Hodgenville, KY, over U.S. Highway 84, serving no intermediate points. (Sub-9) *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 (1) USM Corporation, Parker-Kalon Division, (2) Union Underwear Company, Inc., and (3) Ingersall-Rand Company, at or near Campbellsville, KY, and Louisville, KY, serving no intermediate points. From Campbellsville, KY, over U.S. Highway 68 to junction Kentucky Highway 61, thence over Kentucky Highway 61 to junction Interstate Highway 65, thence over Interstate Highway 65 to Louisville, KY, and return over the same route. Representative: Robert L. Baker, 6th Fl., United American Bank Bldg., Nashville, TN. TA lease is sought. Transferee is not a carrier.

MC–FC–79349. By decision of 9/10/81 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to KELLOW REFRIGERATED SERVICE, INC. of Certificate No. MC–113267 and sub-numbers thereunder, issued to CENTRAL & SOUTHERN TRUCK LINES, INC. authorizing the transportation of specified commodities such as *food products, paper and paper products, merchandise dealt in by wholesale, retail, chain grocery and food business, bag, bagging, and wrapping paper, plastic and plastic products,* between various points in the United States (except AK and HI). Representative: Virgil H. Smith, 74 Highway N. Box 245, Tyrone, GA 30290.

Notes.—(1) Transferee is a non-carrier. (2) No application for temporary authority has been filed.

MC–FC–79218. By decision of July 10, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to GEORGE KU, INC., of Certificate No. MC–47126 issued January 14, 1971, and No. MC–47126 (Sub–No. 5) issued May 17, 1972, to SUBURBAN TRANSIT, INC., authorizing the transportation of *passengers and their baggage, and express and newspapers in the same vehicle with passengers,* over regular routes between Newton Falls, Ohio and Warren, Ohio, serving all intermediate points; between Newton Falls, Ohio and Ravenna, Ohio, serving all intermediate points; between junction Ohio Highways 82 and 5, and junction Ohio Highways 82, 303, and 534, serving all intermediate points; between Windham, Ohio, and junction Ohio Highways 168 and 82, serving all intermediate points; between Garrettsville, Ohio, and Freedom, Ohio, serving all intermediate points; between Ravenna, Ohio, and Kent, Ohio, serving all intermediate points; between Warren, Ohio, and Youngstown, Ohio serving all intermediate points. The above described authority to transport passengers was issued pursuant to an application filed on or before January 1, 1967, and therefore incidental charter operations in interstate or foreign commerce may be conducted under rules and regulations prescribed by the Commission pursuant to section 49 U.S.C. 10932(c). The certificate in (Sub-No. 5) authorizes the transportation of *passengers and their baggage,* in the same vehicle with passengers in special and charter operations, beginning and ending at points in Trumbull, Mahoning,

and Portage Counties, Ohio, and extending to points in the United States, (including Alaska but excluding Hawaii). Representative: Lewis S. Witherspoon, 2455 North Star Road, Columbus, Ohio 43221.

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28252 Filed 9-29-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it 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. This presumption shall not be deemed to exist where the application is opposed. 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 opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

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".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OPY-2-179

Decided: September 22, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Chandler not participating.)

MC 24583 (Sub-43), filed August 31, 1981 Applicant: FRED STEWART CO., INC., P.O. Box 340, El Dorado, AR 71730-0340. Representative: Tom E. Moore (same address as applicant), (501) 862-5133. Transporting *chemicals and related products, rubber, and plastic products and metal products,* between points in Columbia County, AR, Jefferson County, MO, Will County, IL, Mason and Bay Counties, MI, Hancock, Licking and Lawrence Counties, OH Whitfield County, GA, New London County, CT, and Middlesex County, NJ, on the one hand, and, on the other, points in the U.S. Condition: To the extent this certificate authorizes the transportation of classes A and B explosives, it shall be limited to a period expiring 5 years from its date of issuance.

MC 24583 (Sub-45), September 8, 1981. Applicant: FRED STEWART COMPANY, P.O. Box 340, El Dorado, AR 71730. Representative: James M. Duckett, 221 W. Second, Suite 411, Little Rock, AR 72201, (501) 375-3022. Transporting *laminated wood products* between points in Columbia County, AR, on the one hand, and, on the other, points in the U.S.

MC 59352 (Sub-6), filed September 9, 1981. Applicant: C.L.&A. MOTOR DELIVERY, INC., 4110 Dane Ave., Cincinnati, OH 45223. Representative: Norbert B. Flick, 2250 Beechmont Ave., Cincinnati, OH 45230, (513) 231-4831. Transporting *containers* between points in Dearborn County, IN, on the one hand, and, on the other, points in OH.

MC 111672 (Sub-16), filed August 27, 1981. Applicant: R & M TRUCK LINE, INC., P.O. Box 422, Oskaloosa, IA 525770. Representative: Ronald R. Adams, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244-2329. Transporting *malt beverages,* (1) between points in Franklin County, MO, on the one hand, and, on the other, Milwaukee, WI, Chicago, Peoria, Evansville, and Belleville, IL, Memphis, TN, Detroit, MI, Fort Wayne, IN, Omaha, NE and Fort Worth, TX, and (2) between points in Mahaska and Wapello Counties, IA, on the one hand, and, on the other, LaCrosse and Milwaukee, WI, Belleville, IL, Memphis, TN, and Winston-Salem, NC.

MC 119752 (Sub-11), filed September 8, 1981. Applicant: G & G HAULAGE CO., INC., 215 Henderson St., Jersey City, NJ 07302. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048, (212) 466-0220. Transporting *building materials, and paper and paper products,* between Chicago Heights, IL, and points in Chippewa County, WI, on the one hand, and, on the other, points in NJ and NY.

MC 143023 (Sub-3), filed September 8, 1981. Applicant: CHIWAUKEE TRUCK LINE, INC., 1501 West Pershing, Rd., Chicago, IL 60609. Representative: Donald E. Weishaar, Suite 202, 1301 W. 22nd St., Oak Brook, IL 60521, (312) 986-5855. Transporting (1) *wines, cocktail mixes, and extracts,* under continuing contract(s) with P.J. Trucking, Inc., d.b.a. Trans-Rail, of Summit, IL, and (2) *beverages,* under continuing contract(s) with C & S Distributing Co., and Elmwood Distributing Co., both of Chicago, IL, between points in the U.S.

MC 143963 (Sub-6), filed September 9, 1981. Applicant: P. J. LOMBARDI TRUCKING, INC., 1308 71st St., Brooklyn, NY 11228. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006, (201) 575-7700. Transporting (1) *electrical machinery* and (2) *fabricated metal products,* between points in the U.S., under continuing contract(s) with Slant/Fin Corporation, of Greenvale, NY.

MC 146583 (Sub-5), filed September 22, 1981. Applicant: TERRAIN TAMERS, INC.—INTERSTATE TRANSPORT, P.O. Box 1457, Roseburg, OR 97470. Representative: John A. Anderson, 1600 One Main Pl., 101 SW Main St., Portland, OR 97204, (503) 224-5525. Transporting *general commodities*

except classes A and B explosives), between points in WA, OR and CA, on the one hand, and, on the other, points in WA, OR, CA, NV, ID, MT, WY, UT, CO, AZ, NM and TX.

MC 147262 (Sub-3), filed September 8, 1981. Applicant: DETROIT AIR CARGO, INC., 18450 Highland Rd., Romulus, MI 48174. Representative: James P. Kirkhope, P.O. Box 15296, Fort Wayne, IN 46885, (219) 422–8884. Transporting *electronic equipment and parts,* between points in the U.S., under continuing contract(s) with Control Data Corporation, of Minneapolis, MN.

MC 147442 (Sub-5), filed September 9, 1981. Applicant: LAVIERO TRUCKING, INC., 70 Maureen Dr., Bristol, CT 06010. Representative: Gerald A. Joseloff, 410 Asylum St., Hartford, CT 06103, (203) 728–0700. Transporting *general commodities* (except classes A and B explosives), between points in CT, on the one hand, and, on the other, points in CA and those in the U.S. in and east of WI, IL, KY, TN, and MS.

MC 148143 (Sub-13), filed September 8, 1981. Applicant: MID-AMERICAN FARM LINES, INC., M.P.O. Box 71, Springfield, MO 65801. Representative: John M. Ringenberg (same address as applicant), (417) 862–7460. Transporting *general commodities* (except classes A and B explosives), between the facilities used by Grand Enterprises, Inc., and its affiliated companies, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 151383 (Sub-8), filed September 1, 1981. Applicant: NICKELL TRUCKING CO., 4901 West 51st St., Tulsa, OK 74107. Representative: Fred Rahal, Jr., Suite 305, Reunion Center, 9 East Fourth St., Tulsa, OK 74103. Transporting *metal products,* between points in the U.S., under continuing contract(s) with (a) Fabsco, Inc., of Sapulpa, OK and (b) Auxier-Scott Supply Co., of Tulsa OK.

MC 153752, filed September 8, 1981. Applicant: MACHADO TRUCKING, INC., Pier D, Berth 34, Long Beach, CA 90802. Representative: Robert Machado (same address as applicant), (213) 435–7671. Transporting *containers and chassis,* between points in the U.S., under continuing contract(s) with Maersk Line Agency, of Los Angeles, CA.

MC 157153 (correction), filed July 21, 1981, published in the **Federal Register,** issue of August 11, 1981, and republished, as corrected, this issue. Applicant: LYNNHAVEN TRAVEL CENTER, 2872 Virginia Beach Boulevard, Virginia Beach, VA 23452. Representative: Ray Allen Wood, Jr. (same as applicant), (804) 486–1911. As a *broker,* at Virginia Beach, VA, in arranging for the transportation, by motor vehicle, of *passengers and their baggage, in the same vehicle with passengers,* in round-trip special and charter operations beginning and ending at Norfolk, VA, and extending to points in the U.S.

Note.—The purpose of this republication is to correct this application to read as a *broker.*

MC 158152, filed September 8, 1981. Applicant: BAXLEY TRUCKING CO., INC., Route 1, Box 13, Hemingway, SC 29554. Representative: C. Bradley Ruffin, Jr., P.O. Box 218, Hemingway, SC 29554, (803) 558–2588. Transporting *rubber and plastic products, textile mill products,* and *machinery* between points in SC, on the one hand, and, on the other, points in the U.S.

MC 158163F, filed September 11, 1981. Applicant: WORTHY CARTAGE CO., INC., 1428 Dalton St., Cincinnati, OH 45214. Representative: Jerry B. Sellman, 50 W. Broad St., Columbus, OH 43215. *General commodities* (except classes A and B explosives), between Cincinnati, OH, Chicago, IL, St. Louis, MO, and points in Jasper County, IN, on the one hand, and, on the other, points in OH, KY and IN.

Volume No. OPY–2–180

Decided: September 22, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Chandler not participating.)

MC 1783 (Sub-38), filed September 2, 1981. Applicant: BLUE LINE EXPRESS, INC., 260 D.W. Highway, Nashua, NH 03060. Representative: Charles A. Webb, Suite 1111, 1828 L St., NW., Washington, DC 20036, (202) 822–8200. Transporting *general commodities* (except classes A and B explosives), between points in ME, VT, NH, MA, RI, CT, NY, NJ, and PA.

MC 2153 (Sub-54), filed September 14, 1981. Applicant: MIDWEST MOTOR EXPRESS, INC., 5015 E. Main, P.O. Box 1058, Bismarck, ND 58501. Representative: James L. Nelson, 1241 Pierce Butler Route, St. Paul, MN 55104, (612) 646–6677. Transporting *general commodities* (except classes A and B explosives), between points in WI, IL, MO, IA, MN, ND, SD, NE, KS, CO, UT, WY, MT, ID, WA and OR.

Note.—Applicant intends to tack this authority with its existing authority.

MC 24583 (Sub-44), filed September 8, 1981. Applicant: FRED STEWART COMPANY, P.O. Box 340, El Dorado, AR 71730. Representative: James M. Duckett, 221 W. 2nd, Suite 411, Little Rock, AR 72201, (501) 375–3022. Transporting *machinery, equipment, materials, and supplies* used in or in connection with (1) the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and byproducts, and (2) the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking up thereof, between points in the U.S.

MC 24583 (Sub-46), filed September 14, 1981. Applicant: FRED STEWART COMPANY, P.O. Box 340, El Dorado, AR 71730. Representative: James M. Duckett, 221 W. Second, Suite 411, Little Rock, AR 72201, (501) 375–3022. Transporting *petroleum and related products,* between points in Union County, AR, on the one hand, and, on the other, points in the U.S. Condition: To the extent any certificate issued in this proceeding authorizes the transportation of liquified petroleum gasses, it shall be limited to a period expiring 5 years from its date of issuance.

MC 64373 (Sub-19), filed September 14, 1981. Applicant: CLARKSON BROS. MACHINERY HAULERS, INC., P.O. Box 788, Cowpens, SC 29330. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440–0496, (219) 1652–2789. Transporting (1) *those commodities which because of their size or weight, require the use of special handling or equipment* and (2) *transportation equipment,* between those points in the U.S. in and east of WI, IL, KY, TN and MS, on the one hand, and, on the other, points in the U.S.

MC 93143, filed September 8, 1981. Applicant: LARRY C. WOLFF, d.b.a. WOLFF TRANSPORTATION COMPANY, 3120 Jackson St., Dubuque, IA 52001. Representative: Carl E. Munson, 469 Fischer Bldg., Dubuque, IA 52001, 319–557–1320. Transporting *general commodities* (except classes A and B explosives), between points in IL, IA, and WI.

MC 95813 (Sub-20), filed August 7, 1981. Applicant: SHUMAKER TRUCKING COMPANY, 601 U.S. Route 15N, Dillsburg, PA 17019. Representative: David Shumaker (same address as applicant), (717) 432–9617. Transporting *metal products,* between points in CT, DE, ME, MD, KY, MA, NY, NJ, NH, NC, OH, PA, RI, SC, TN, VA, WV, and DC.

MC 106002 (Sub-5), filed August 28, 1981 Applicant: JOHN F. HARRIS, d.b.a., HOGAN'S TRANSFER & STORAGE CO., 1122 S. Davis Ave., Elkins, WV 26241. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane,

WV 25526, 304–562–3460. Transporting (1) *beverages*, between points in the U.S., under continuing contract(s) with (a) Wonn Distributing Company, (b) Elkins Distributing Company and (c) Tygart Valley Distributing Company, of Elkins, WV, and (2) *building materials*, between points in the U.S., under continuing contact(s) with Elkins Builders Supply, of Elkins, WV.

MC 108473 (Sub-58), filed September 14, 1981. Applicant: ST. JOHNSBURY TRUCKING COMPANY, INC., 87 Jeffrey Ave., Holliston, MA 01746. Representative: Harry J. Jordan, Suite 502, Solar Bldg., 1000 16th St., NW., Washington, D.C. 20036, (202) 783–8131. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

MC 108833 (Sub-18), filed September 15, 1981 Applicant: BARNES FREIGHT LINE, INC., P.O. Box 800, Carrollton, GA 30117. Representative: Larry M. Treadaway (same address as applicant), (404) 832–3581. Transporting *general commodities* (except classes A and B explosives), between points in AL, GA, FL, MS, AR, LA, KY, NC, SC, VA, WV, TN, OH, IN, MO, IL, and PA.

MC 113362 (Sub-420), filed September 8, 1981. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912, 507–433–3427. Transporting *rubber products*, between points in Miller County, AR, on the one hand, and, on the other, points in CO, IA, IL, IN, KS, MI, MO, MN, NE, ND, OH, OK, SD, TX, and WI.

MC 128153 (Sub-6), filed September 3, 1981. Applicant: VICTORY VAN CORPORATION, 950 South Pickett St., Alexandria, VA 22304. Representative: Alan F. Wohlstetter, 1700 K St. NW., Washington, DC 20006, 202–833–8884. Transporting *household goods*, between points in DE, MD, NC, VA, WV and DC, on the one hand, and, on the other, New York, NY, Boston, MA, Wilmington, DE, Philadelphia, PA, Baltimore, MD, Norfolk, VA, Wilmington, NC, Charleston, SC, Savannah, GA, and Jacksonville, Miami and Tampa, FL.

MC 129573 (Sub-1), filed August 31, 1981. Applicant: THIBODEAU-FINCH EXPRESS LIMITED, P.O. Box 2430, 3049 Devon Dr., Windsor, Ontario, Canada N8Y 4S4. Representative: Robert D. Schuler, 100 West Long Lake Rd., Suite 102, Bloomfield Hills, MI 48013, 313–645–9600. In foreign commerce only, transporting *general commodities* (except classes A and B explosives), between points in IL, IN, IA, KY, MI, MN, NY, OH, PA and WI.

MC 134612 (Sub-9), filed September 15, 1981. Applicant: FAST MOTOR SERVICE, INC., 9100 Plainfield Rd., Brookfield, IL 60513. Representative: Albert A. Andrin, 180 North La Salle St., Chicago, IL 60601, 312–332–5106. Transporting *general commodities* (except Classes A and B explosives), between points in the U.S., under continuing contract(s) with Sweetheart Cup Corp./Northwest Cone Co., Division of Maryland Cup Corp., of Chicago, IL.

MC 142672 (Sub-180), filed September 4, 1981. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702, 501–521–8121. Transporting *food and related products*, between New York City, NY, on the one hand, and, on the other, points in the U.S.

MC 144452 (Sub-23), filed August 31, 1981. Applicant: ARLEN LINDQUIST, d.b.a. ARLEN E. LINDQUIST TRUCKING, 9172 Davenport St, NE., Minneapolis, MN 55434. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Ten South Fifth St., Minneapolis, MN 55402, 612–340–0808. Transporting (1) *rubber and plastic products*, between Nashville, TN, Kansas City, MO, points in Franklin and Trumbull Counties, OH, Graves County, KY, Oklahoma and Cleveland Counties, OK, and Morgan County, MO, on the one hand, and, on the other, points in CO, IA, KS, MN, NE, ND, SD, WI and WY, (2) *petroleum and petroleum products*, between St. Louis, MO and points in Madison County, IL, on the one hand, and, on the other, points in CO, KS, MO, OK, IA, NE and WY, and (3) *chemicals and related products and petroleum and petroleum products*, between points in Cook County, IL, on the one hand, and, on the other, points in NM, ND, OH and OK. Condition: To the extent this certificate authorizes the transportation of classes A and B explosives or liquified petroleum gas, it shall be limited to a period expiring 5 years from the its date of issuance.

MC 144752 (Sub-62), filed September 15, 1981. Applicant: MONFORT TRANSPORTATION COMPANY, P.O. Box G, Greeley, CO 80632. Representative: Steven K. Kuhlmann, 2600 Energy Center, 717 17th St., Denver, CO 80202, (303) 892–6700. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with George C. Brandt, Inc., of Denver, CO.

MC 145982 (Sub-1), filed September 14, 1981. Applicant: MOTOR TRANSPORTATION COMPANY, INC., 141 North Laurel St., Hazeleton, PA 18201. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K St, NW., Washington, DC 20005, 202–783–3535. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter and special operations, beginning and ending at points in that part of PA bounded by a line beginning at the junction of Interstate Hwy 80 and the Carbon-Monroe County line, then west along Interstate Hwy 80 to its intersection with PA Hwy 339, then along PA Hwy 339 to its intersection with PA Hwy 924, then along PA Hwy 924 to its intersection with PA 54, then along PA Hwy 54 to its intersection with PA Hwy 309, then along PA Hwy 309 to its intersection with PA Hwy 443, then along PA Hwy 443 to the Carbon-Schuylkill County line, then along the Carbon-Schuylkill County line to its intersection with the Lehigh-Carbon County line, then along the Lehigh-Carbon County line to the Monroe-Carbon County line, then along the Monroe-Carbon County line to its intersection with Interstate Hwy 80, including points on the named Highways, and extending to points in the U.S. (including AK, but excluding HI).

MC 146202 (Sub-2), filed September 2, 1981. Applicant: CONTRACTUAL CARRIERS, INC., Alan Dr., Harmony Industrial Park, Newark, DE 19711. Representative: Dean N. Wolfe, Suite 145, 4 Professional Dr., Gaithersburg, MD 20879, 301–840–8565. Transporting *general commodities* (except classes A and B explosives), between points in New Castle County, DE, on the one hand, and, on the other, points in the U.S.

MC 146723 (Sub-5), filed September 15, 1981. Applicant: J.C. BANGERTER & SONS, INC., 1265 North Main St., Bountiful, UT 84010. Representative: Harry D. Pugsley, 940 Donner Way #370, Salt Lake City, UT 84108, 801–581–0322. Transporting *rubber and plastic products*, between points in ID, UT, AZ and TX.

MC 147712 (Sub-34), filed September 14, 1981. Applicant: MIDWESTERN TRANSPORT, INC., 14625 Carmenita Rd., Norwalk, CA 90650. Representative: Joseph Fazio (same address as applicant), (213) 921–7474. Transporting *building woodwork*, between points in the U.S., under continuing contract(s) with Bend Millwork Limited, of Bend, OR.

MC 148732 (Sub-6), filed September 16, 1981. Applicant: L & J TRUCKING, INC., P.O. Box 1325, Wisconsin Rapids, WI 54494. Representative: Robert P.

Sack, P.O. Box 6010, West St. Paul, MN 55118, 612–457–6889. Transporting *pulp, paper and related products,* between points in Oneida, Maratha, Winnebago and Outagamie Counties, WI, on the one hand, and, on the other, points in the U.S.

MC 151533 (Sub-13), filed September 14, 1981. Applicant: BESTWAY FREIGHT LINES, LTD., 1749 Wilbur Cross Hwy., Berlin, CT 06037. Representative: Gerald A. Joseloff, 410 Asylum St., Hartford, CT 06103, 203–728–0700. Transporting *those commodities which because of their size or weight require the use of special handling or equipment,* between those points in the U.S. in and east of WI, IL, TN, KY, MS, and CA, on the one hand, and, on the other, points in the U.S.

MC 152672 (Sub-5), filed September 14, 1981. Applicant: A. ROGER LEASING, LTD., 850 Beaver Grade Rd., Coraopolis, PA 15108. Representative: Barry Weintraub, Suite 510, 8133 Leesburg Pike, Vienna, VA 22180, 703–442–8330. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with (a) Eljer Plumbing Division of the Wallace-Murray Corporation, of Pittsburgh, PA, (b) Quaker State Oil Refining Corporation, of Oil City, PA, and (c) Action Industries, Inc., of Cheswick, PA.

MC 154872 (Sub-1), filed August 31, 1981. Applicant: SOLAR TRANSPORT, INC., 420 Central Ave., West, Hampton, IA 50441. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, 515–282–3525. Transporting *petroleum, natural gas and their products,* between points in Black Hawk County, IA, on the one hand, and, on the other, points in MN. Condition: to the extent this certificate authorizes the transportation of liquified petroleum gas, it shall be limited to a period expiring 5 years from its date of issuance.

MC 157902, filed September 15, 1981. Applicant: VANCO TRUCKING CO-OP, 2191 South 300 West, Salt Lake City, UT 84115. Representative: Larry A. VanWagoner, 3093 Bell Canyon Rd., Sandy, UT 84092, 801–943–4164. Transporting *furniture and furniture parts,* between points in CA, UT, and ID.

MC 157953, filed August 28, 1981. Applicant: GWYN D. NORRIS AND NYLE HENDERSON, d.b.a CUSTOMER TRAVEL SERVICE, 1215 8th St. Eureka, CA 95501. Representative: Eugene Q. Carmody, 15523 Sedgeman St., San Leandro, CA 94579, 415–357–6236. Transporting *passengers and their baggage, in the same vehicle with passengers,* in charter and special operations, beginning and ending at points in Humboldt, Del Norte, Trinity, and Shasta Counties, CA, on the one hand, and, on the other, points in the U.S. (including AK, but excluding HI).

MC 158033, filed August 31, 1981. Applicant: CROWN TRANSPORTATION AND DELIVERY SERVICE, INC., 810 Lynwood, Broken Arrow, OK 74012. Representative: Earl W. Wolfe, 616 South Main, Suite 204, Tulsa, OK 74119, 918–582–3168. Transporting *general commodities* (except Classes A and B explosives) between points in U.S., under continuing contract(s) with Amway Corporation, of Arlington, TX.

MC 158083, filed September 4, 1981. Applicant: RANGE THREE TRUCK LINES, INC., P.O. Box 8621, Houston, TX 77009. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103, 817–332–4718. Transporting *Mercer commodities,* between points in the U.S.

MC 158112, filed September 8, 1981. Applicant: M. LEE JACKS TRUCKING COMPANY, 605 Lawnwood Drive, Oxnard, CA 93030. Representative: Theodore J. England, Fifth Floor, Financial Plaza Tower, 500 Esplanade Drive, Oxnard, CA 93030, 805–485–9627. Transporting *bananas,* between points in Orange, Los Angeles, and Ventura Counties, CA, on the one hand, and, on the other, points in OR and WA.

MC 158123, filed September 8, 1981. Applicant: K & R TRANSPORTATION, INC., 3950 North Firestone Drive, Hoffman Estates, IL 60195. Representative: Donald S. Mullins, 1033 Graceland Ave., Des Plaines, IL 60016, 312–298–1094. Transporting *general commodities* (except classes A and B explosives), between points in Cook, DuPage, Kane, Lake, and McHenry Counties, IL, on the one hand, and, on the other, points in IN, MI, and WI.

MC 158222, filed September 14, 1981. Applicant: SIOUX TRAIL TRANSIT, INC., 12164 198th St., Hastings, MN 55033. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *floor coverings and floor care products,* between Minneapolis, MN, on the one hand, and, on the other, points in ND, and SD.

MC 158263, filed September 14, 1981. Applicant: FRENZ PETROLEUM CORPORATION, 2318 West State St., New Castle, PA 16103. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Avenue, Pittsburgh, PA 15222, (412) 471–3300. Transporting *petroleum, natural gas and their products,* between points in the U.S., under a continuing contract(s) with United Refining Company, of Warren, PA. Condition: To the extent any permit issued in this proceeding authorizes the transportation of liquified petroleum gas, it shall be limited in point of time to a period expiring 5 years from its date of issuance.

MC 158273, filed September 16, 1981. Applicant: ODEEN HIBBS TRUCKING CO., INC., P.O. Box 14332, Austin, TX 78761. Representative: Paul D. Angenend, P.O. Box 2207, Austin, TX 78768, (512) 476–6391. *Limestone products* between points in Williamson County, TX, on the one hand, and, on the other, AR, AZ, LA, MS, OK and NM.

Volume No. OPY–4–379

Decided: September 24, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 59666 (Sub-19), filed September 14, 1981. Applicant: TRAFIC SERVICES, INC., 25 Esten Ave., Pawtucket, RI 02860. Representative: Robert A. Mega (same address as applicant), (401) 724–1200. Transporting *wood and wood products,* and *paper and paper products,* between points in the U.S., under continuing contract(s) with Champion International Corporation, of Stamford, CT.

MC 73616 (Sub-5), filed September 14, 1981. Applicant: BILKAYS EXPRESS CO., a corporation 830 Old Corlies Ave., Neptune, NJ 07753. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528, (914) 835–4411.Transporting *general commodities* (except classes A and B explosives), between points in CT, DE, MD, MA, NJ, NY, PA, RI, and VA.

MC 96696 (Sub-3), filed September 14, 1981. Applicant: G. H. BEMIS FREIGHT SERVICE, INC., 4114 Wismann Lane, Quincy, IL 62301. Representative: Robert L. Lawley, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *general commodities* (except classes A and B explosives), between points in AR, CO, IA, IL, IN, KS, KY, MI, MN, MO, NC, OH, TN, and WI.

MC 111656 (Sub-16), filed September 16, 1981. Applicant: FRANK LAMBIE, INC., Pier 79 North River, New York, NY 10018. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528, (914) 835–4411.Transporting *textile mill products,* between points in the U.S., under continuing contract(s) with American Hoechst Corporation, of Spartanburg, SC.

MC 123476 (Sub-74), filed September 15, 1981. Applicant: CURTIS TRANSPORT, INC., 23 Grandview Industrial Ct., Arnold, MO 63010.

Representative: David G. Dimit (same address as applicant), (314) 464–1300.Transporting *textile mill products,* between the facilities of Union Underwear Company, at points in the U.S. on and east of U.S. Hwy 85.

MC 136246 (Sub-50), filed September 14, 1981. Applicant: GEORGE BROS., INC., P.O. Box 492, Sutton, NE 68979. Representative: Arlyn L. Westergren, Suite 201, 9202 W. Dodge Rd., Omaha, NE 68114, (402) 397–7033. Transporting *lumber and wood products, forest products,* and *building materials,* between points in the U.S., under continuing contract(s) with North Star Forest Materials, Inc., of St. Paul, MN.

MC 143776 (Sub-31), filed September 16, 1981. Applicant: C. D. B. INCORPORATED, 155 Spaulding Ave., S.E., Grand Rapids, MI 49506. Representative: C. Michael Tubbs (same address as applicant), (800) 253–9527. Transporting *rubber and plastic products,* between the facilities of points in Charter Industries, Incorporated, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 143776 (Sub-32), filed September 16, 1981. Applicant: C. D. B. INCORPORATED, 155 Spaulding Ave., S.E., Grand Rapids, MI 49506. Representative: C. Michael Tubbs (same address as applicant), (800) 253–9527. Transporting *metal and plastic products, and electrical equipment,* between points in Coles County, IL, on the one hand, and, on the other, points in CA, NJ, and OR.

MC 144776 (Sub-15), filed September 17, 1981. Applicant: APACHE TRANSPORT, INC., 833 Warner St., S.W., Atlanta, GA 30310. Representative: Virgil H. Smith, 74 Hwy N., Box 245, Tyrone, GA 30290, (404) 969–1980. Transporting *electric storage batteries,* between points in Forsyth County, NC, on the one hand, and, on the other, points in the U.S.

MC 146166 (Sub-7), filed September 18, 1981. Applicant: TRIANGLE TRANSPORT CO., INC., 74 Sulyma Street, Cumberland, RI 02864. Representative: William F. Poole, 41 Bea Drive, North Kingstown, RI 02854, (401) 885–0474. Transporting *metal products,* between points in U.S. under continuing contract(s) with ITT Royal Electric Division of East Providence, RI.

MC 148976 (Sub-3), filed September 15, 1981. Applicant: H & W TRANSFER & CARTAGE SERVICE, INC., 611 South Main St., Cedartown, GA 30125. Representative: Bruce E. Mitchell, 5th Floor, Lenox Towers South, 3390 Peachtree Rd., Atlanta, GA 30326, (404) 262–7855. Transporting *furniture and fixtures,* between points in the U.S., under continuing contract(s) with the Hon Company, a division of Hon Industries, of Cedartown, GA.

MC 150586 (Sub-2), filed September 14, 1981. Applicant: McDONOUGH TRUCK LINE, INC., 119 Irving Ave., Fairbault, MN 55021. Representative: James M. Christenson, 4444 IDS Center, 80 South 8th St., Minneapolis, MN 55402, (612) 339–4546. Over regular routes, transporting *general commodities* (except classes A and B explosives), between Minneapolis and Owatonna, MN, over Interstate Hwy 35, serving all intermediate points, and off-route points in Dakota, Rice, and Steel Counties, MN.

MC 152316, filed September 14, 1981. Applicant: NORTHWESTERN HAULERS, INC., P.O. Box 5225, Wilmington, DE 19808. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, DC 20005, (202) 296–3555. Transporting *general commodities* (except classes A and B explosives), between Wilmington and points in New Castle County, DE, on the one hand, and, on the other, points in NJ, PA, and MD.

MC 153336, filed September 14, 1981. Applicant: GEORGE SNYDER TRUCKING CO., INC., P.O. Box 13 Hibernia Rd., Brandamore, PA 19316. Representative: Rolfe C. Marsh, 295 S. Newtown St. Rd., Benson Bldg., Suite 1001, Newton Square, PA 19073, (215) 356–5302. Transporting *non-woven material,* between points in Chester County, PA, on the one hand, and, on the other, New York, NY and points in Sulfolk County, NY and those in MD, DE, and NJ.

MC 155916 (Sub-4), filed September 15, 1981. Applicant: ARDMORE FARMS, INC., P.O. Box 183, De Land, FL 32720. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210, (703) 525–4050. Transporting *printed matter,* between points in Brevard and Palm Beach Counties, FL, on the one hand, and, on the other, points in the U.S.

MC 156296, filed September 14, 1981. Applicant: HODGES WAREHOUSE, division of PORT CITY PROPERTIES, INC., 6533 E. 46th St., Tulsa, OK 74145. Representative: Michael H. Lennox, 531 N. Portland, P.O. Box 75613, Oklahoma City, OK 73147, (405) 943–2722. Transporting *medical supplies,* between points in Tulsa County, OK, on the one hand, and, on the other, points in KS.

MC 157186 (Sub-1), filed September 18, 1981. Applicant: U.S. TRANSPORT, INC., 14307 Still Meadow, Houston, TX 77079. Representative: Keith Kisner P.O. Box 26742 Austin, TX 78755. (512) 346–4800. Transporting *Mercer commodities,* between points in TX, on the one hand, and, on the other, points in the U.S.

MC 158036, filed September 11, 1981. Applicant: MKM TRUCKING, INC., 106 Chestnut St., Cherry Hill, NJ 08002. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 435–7140. Transporting *such commodities* as are dealt in or used by department stores and discount houses, (1) between Cherry Hill, NJ, on the one hand, and, on the other, points in NJ, NY, PA, DE, MD, VA, and DC, and (2) between Dallas, TX, on the one hand, and, on the other, points in OK, TX, KS, and MO.

MC 158316, filed September 18, 1981. Applicant: OSCAR WILLIAMS, JR. TRUCKING, Box 66, Pinetop, AZ 85935. Representative: Donald E. Fernaays, 4040 E. McDowell Rd., Suite 320, Phoenix, AZ 85008, (602) 275–3124. Transporting (1) *lumber and wood products,* and (2) *building materials,* between points in AZ, AR, CA, CO, ID, NM, NV, OK, OR, TX, UT and WA.

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Decided: September 22, 1981.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 105159 (Sub-44), filed September 11, 1981. Applicant: KNUDSEN TRUCKING, INC., 1320 West Main Street, Red Wing, MN 55066. Representative: Stephen F. Grinnell, 1600 TCF Tower, Minneapolis, MN 55402, (612) 333–1341. Transporting (1) *food and related products,* and (2) *food serving and dispensing equipment,* between Minneapolis, MN, and Cincinnati, OH, on the one hand, and, on the other, points in the U.S.

MC 112989 (Sub-1), filed September 3, 1981. Applicant: WEST COAST TRUCKING LINES, INC., 85647 Hwy. 99 So., Eugene, OR 97405. Representative: John T. Morgans (same address as applicant), (503) 747–1283. Transporting *construction materials, contractors' materials, equipment* and *supplies, mining equipment,* and *filtration equipment,* between points in the U.S.

MC 121658 (Sub-40), filed September 8, 1981. Applicant: STEVEN D. THOMPSON, TRUCKING, INC., 710 Prairie St., Winnsboro, LA 71295. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205 (601) 948–8820. Transporting *general commodities* (except classes A and B explosives), between points in AL, AR, FL, GA, IL, IN, IA, KY, LA, MS, MO, NC, OH, OK, PA, SC, TN, TX, and VA.

MC 124809 (Sub-6), filed September 11, 1981. Applicant: WAEHLER TRUCKING SERVICE, INC., Route 1,

Box 65, Lomira, WI 53048. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, P.O. Box 5086, Madison, WI 53705–0086 (608) 238–3119. Transporting *lumber and wood products,* between points in the U.S., under continuing contract(s) with Lumber Specialities, Ltd., of Delafield, WI.

MC 134839 (Sub-3), filed September 11, 1981. Applicant: HANEFELD BROTHERS, INC., Route 1, Burnett, WI 53922. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719 (608) 273–1003. Transporting *meats, meat products, meat byproducts, and articles distributed by meat packing houses,* between points in the U.S., under continuing contract(s) with Green Bay Dressed Beef, Inc., of Green Bay, WI.

MC 135989 (Sub-33), filed September 9, 1981. Applicant: COAST EXPRESS, INC., 14280 Monte Vista Avenue, Chino, CA 91710. Representative: William J. Lippman, Steele Park, Suite 588, 50 South Steele Street, Denver, CO 80209 (303) 322–0800. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of glass containers, between points in the U.S., under continuing contract(s) with Chattanooga Glass Company, of Chattanooga, TN.

MC 135989 (Sub-34), filed September 9, 1981. Applicant: COAST EXPRESS, INC., 14280 Monte Vista Avenue, Chino, CA 91810. Representative: William J. Lippman, Steele Park, Suite 588, 50 South Steele Street, Denver, CO 80209 (303) 322–0800. Transporting *malt beverages, wines, and liquors and mixes,* between Denver, CO, and points in Mesa County, CO, on the one hand, and, on the other, points in the U.S.

MC 144209 (Sub-13), filed September 8, 1981. Applicant: ERWIN TRUCKING, INC., 4515 North 24th Street, Omaha, NE 68110. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68108, (402) 392–1220. Transporting *food and related products,* between points in the U.S., under continuing contract(s) with Campbell Soup Company of Camden, NJ.

MC 146628 (Sub-11), filed September 9, 1981. Applicant: HUNT SUPER SERVICE, INC., P.O. Box 270, Bradley, IL 60915. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *metal containers and bottle caps,* between points in the U.S., under continuing contract(s) with Crown, Cork & Seal Company, Inc., of Philadelphia, PA.

MC 147039 (Sub-5), filed September 1, 1981. Applicant: TRANSPORTATION SERVICES, INC., 21055 West Rd., Trenton, MI 48183. Represeniative: H. Neil Garson, 3251 Old Lee Hwy., Suite 400, Fairfax, VA 22030, (703) 691–0900. Transporting *automotive parts,* (1) between points in TX, on the one hand, and, on the other, points in AL, AR, CA, FL, GA, KS, KY, IL, IN, MI, MN, MO, MS, NC, NJ, NY, OH, OK, PA, SC, TN, WI, and VA, (2) between points in AL, AR, NC, SC, MS, OK, and KS, on the one hand, and, on the other, points in CA, GA, IL, OH, NJ, NY, FL, MN, VA, MI, MO, WI, PA, TN, KY, IN, and KS, and (3) between points in AR, on the one hand, and, on the other, points in Al, NC, SC, MI, and OK.

MC 150339 (Sub-39), filed September 10, 1981. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: Stephen J. Hammer (same address as applicant), (301) 673–7151. Transporting *metal products,* between points in the U.S., under continuing contract(s) with LeRoy Machine Co., Inc., of LeRoy, NY.

MC 150938 (Sub-2), filed September 8, 1981. Applicant: NORMAN GRUBB LEASING, INC., 2018 Bethel Dr., High Point, NC 27260. Representative: Archie W. Andrews, 617 F Lynrock Terrace, Eden, NC 27288, (919) 627–0555. Transporting *furniture* between points in Davidson, Guilford, and Randolph counties, NC, on the one hand, and, on the other, points in GA, SC, and FL.

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Decided: September 22, 1981.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 152019 (Sub-2), filed September 10, 1981. Applicant: C.A.T. TRUCKING, INC., P.O. Box 487, Greensburg, IN 47240. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204, 317–635–2339. Transporting *plastic products,* between points in the U.S. under continuing contract(s) with Hoover Universal, Inc., of Georgetown, KY.

MC 152629 (Sub-3), filed September 4, 1981. Applicant: ATLAS WAREHOUSE COMPANY, 923 Osborn St., P.O. Box 456, Burlington, IA 52601. Representative: Michael D. Bromley, 4317 S. 35th St., Arlington, VA 22206, 703–820–2240. Transporting *general commodities* (except classes A and B explosives), between the facilities of Ralston Purina and its subsidiaries at points in the U.S. on the one hand, and, on the other, points in the U.S.

MC 154469 (Sub-1), filed September 14, 1981. Applicant: WARREN L. ADAMS d.b.a. WARREN TRANSPORTATION, 1667 English St., Maplewood, MN 55109. Representative: Andrew R. Clark, 1600 TCF Tower, Minneapolis, MN 55402, 612–333–1341. Transporting *such commodities* as are dealt in, or used by, manufacturers or distributors of stove and range parts, between points in Polk County, WI, on the one hand, and, on the other, points in TN.

MC 155209 (Sub-1), filed September 9, 1981. Applicant: DOT TRANSPORTATION, INC., 1825 Midland Boulevard, Ft. Smith, AR 72904. Representative: Edwin M. Snyder, P.O. Box 45538, Dallas, TX 75245, (214) 358–3341. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with General Electric Company of Fairfield, CT.

MC 156509, filed September 14, 1981. Applicant: W. M. M. COMPANY, P.O. Box 80, Goshen, OR 97401. Representative: Wilford L. Main, 2299 Willona Dr., Eugene, OR 97401, 503–485–4255. Transporting *wines and brandy,* between points in CA, on the one hand, and, on the other, points in OR and WA.

MC 157729, filed September 8, 1981. Applicant: RED RIDER, INC., 512 Custer St., P.O. Box 202, Delphos, KS 67436. Representative: Clyde N. Christey, Kansas City Credit Union Building, 1010 Tyler, Suite 110L, Topeka, KS 66612, 913–233–9629. Transporting *passengers and their baggage in the same vehicle with passengers,* in charter and special operations, beginning and ending at points in Smith, Osborne, Russell, Ellsworth, Lincoln, Mitchell, Marshall, Jewell, Republic, Cloud, Ottawa, Saline, Dickinson, Clay, Washington, Riley, and Geary Counties, KS, and extending to points in AR, CO, IA, MN, MO, NE, NM, OK, TX, WI and WY.

MC 157859, filed August 24, 1981. Applicant: NORTH AMERICAN CARTAGE COMPANY, INC., P.O. Box 1997, Greenwood, MS 38930. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701, (601) 335–3576. Transporting (1) *machinery,* (2) *those commodities* which because of their size or weight require the use of special handling or equipment, and (3) *Mercer commodities,* between Corpus Christi, TX, Wichita, KS, and points in Terrebonne Parish, LA, Leflore County, MS, and Grayson, Gregg, and Morris Counties, TX, on the one hand, and, on the other, points in the U.S.

MC 158118, filed September 8, 1981. Applicant: CROSS COUNTRY

CARRIERS, INC., P.O. Box 2389, Grand Rapids, MI 49501. Representative: Michael P. Zell, P.O. Box 2389, Grand Rapids, MI 49501, (616) 774–0400. Transporting *general commodities* (except classes A and B explosives), between points in CA and those points in the U.S. in and east of MT, WY, CO, and NM.

MC 158138, filed September 9, 1981. Applicant: PACKAGE EXPRESS SERVICES, LTD., 27165 Wick Rd., Taylor, MI 48180. Representative: Phillip L. Pharmer (same address as applicant), 313–946–8705. Transporting *general commodities* except classes A and B explosives), between Detroit and Grand Rapids, MI, on the one hand, and, on the other, Cincinnati, OH and points in Williams, Fulton, Lucas, and Ottawa Counties, OH; and points in Wayne, Washtenaw, Monroe, Lenawee, Hinsdale, Jackson, Ingham, Livingston, Oakland, and McComb Counties, MI.

MC 158169, filed September 11, 1981. Applicant: MILTON G. WALDBAUM COMPANY, 501 Main St., Wakefield, NE 68784. Representative: Foster L. Kent, P.O. Box 285, Council Bluffs, IA 51502, 712–323–9124. 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 Albertson's, Inc. of Boise, ID.

MC 158189, filed September 11, 1981. Applicant: WISEMAN OIL COMPANY, INC., 84 Montour Rd., Corapolis, PA 15108. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222, 412–471–3300. Transporting *petroleum products*, between Venango County, PA, on the one hand, and, on the other, those points in the U.S. east of ND, SD, NE, KS, OK, and TX.

MC 158219, filed September 14, 1981. Applicant: ROBERT E. PETTY d.b.a. B & G TRUCKING, Route #3, New Market, TN 37820. Representative: Kathleen D. Day, 4507 Doris Circle, Knoxville, TN 37918, 615–922–7453. Transporting *bananas*, between points in the U.S. under continuing contract(s) with White Stores, Inc., of Knoxville, TN.

Volume No. OPY–5–163

Decided: September 23, 1981.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell. (Member Joyce not participating.)

MC 5888 (Sub-69), filed September 14, 1981. Applicant: MID-AMERICAN LINES, INC., 127 West 10th Street, Kansas City, MO 64105. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603, (312) 236–9375. Transporting (1)(a) *concrete products* and (b) *petroleum and coal products*, between points in Berks County, PA, on the one hand, and, on the other, points in the U.S. (2) *machinery*, between points in Washington County, NE, on the one hand, and, on the other, points in the U.S., and (3) *charcoal and charcoal products*, between points in Dent County, MO, and Lunenberg County, VA, on the one hand, and, on the other, points in the U.S.

MC 125708 (Sub-217), filed September 14, 1981. Applicant: THUNDERBIRD MOTOR FREIGHT LINES, INC., 210 East State Street, Kokomo, IN 46901. Representative: Herman Galligos, 109 Velma, South Roxana, IL 62087 (618) 254–7624. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of refractories and refractory products, insulation and insulation materials, between points in Columbiana County, OH, Allegany County, MD, Lake County, IN, Audrain County, MO, Monterey County, CA, and Montgomery County, PA, on the one hand, and, on the other, points in the U.S.

MC 141889 (Sub-19), filed September 15, 1981. Applicant: RONALD DEBOER, d.b.a. RON DEBOER TRUCKING, Route 1, Box 82, Sherry Station, Milladore, WI 54454. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703, (608) 256–7444. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of malt beverages, between Memphis, TN, and points in Gregg and Harrison Counties, TX, on the one hand, and, on the other, points in IL, IA, MN, and WI.

MC 145768 (Sub-7), filed September 14, 1981. Applicant: KREILKAMP TRUCKING, INCORPORATED, Route 1, Allenton, WI 53002. Representative: Nancy J. Johnson, 103 East Washington St., Box 218, Crandon, WI 54520 (715) 478–3341. Transporting (1) *metal and metal products*, (2) *machinery*, and (3) *such commodities* as are dealt in or used by manufacturers and distributors of snowmobiles, snowmobile trailers and boat trailers, between points in Washington and Dodge Counties, WI, on the one hand, and, on the other, points in the U.S.

MC 153839, filed September 9, 1981. Applicant: TOM WILSON, INC., 2126 W. 50 Highway, P.O. Box 816, Emporia, KS 66801. Representative: J. Philip Welch (same address as applicant) (316) 342–3944. Transporting *meats, meat products, meat byproducts*, and articles distributed by meat packing houses, (1) between points in Osborne County, KS, on the one hand, and, on the other, Los Angeles, CA, St. Joseph, MO, and points in Fresno, Stanislaus, and San Joaquin Counties, CA, and York County, NE, and (2) between Jewell County, KS, on the one hand, and, on the other, Los Angeles, CA, Houston and Ft. Worth, TX, Tucson, AZ, Denver, CO, and Minneapolis, MN, and points in Stanislaus County, CA.

MC 154108 (Sub-1), filed September 14, 1981. Applicant: CALHOUN TRANSPORTATION SERVICE, INC., Old Route 11, P.O. Box 10, Calhoun, TN 37309. Representative: M. C. Ellis, Chattanooga Freight Bureau, Inc., 1001 Market Street, Chattanooga, TN 37402, (615) 756–3620. Transporting *paper and paper products*, between Naheloa, AL, Ft. Smith, AR, Dallas, TX, St. Marys, GA, and points in Coweta County, GA Lauderdale County, NC, and Darlington County, SC on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX, VA, and WV.

MC 154279 (Sub-1), filed September 16, 1981. Applicant: S & S SERVICES, INC., Port of Gulfport, Eastpier, P.O. Box 4008, Gulfport, MS 39501. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064, 615–790–2510. Transporting *machinery*, between points in Harrison County, MS on the one hand, and, on the other, points in Mobile and Baldwin Counties, AL and New Orleans, LA.

MC 154569 (Sub-3), filed September 15, 1981. Applicant: LEYDIG TRUCKING, INC., P.O. Box 217, Corriganville, MD 21524. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 217, Hagerstown, MD 21740, 301–797–6060. Transporting, *brick, tile and concrete products*, between points in Allegany and Garrett Counties, MD, on the one hand, and, on the other, points in OH, VA, and PA.

MC 156388, filed September 14, 1981. Applicant: JOHN ROY BALDWIN and CLYDE T. GASPERSON, JR. d.b.a. G. D. I. Route 3, Box 128, Jackson Rd., Fletcher, NC 28732. Representative: D. Samuel Neill, 222 Third Avenue West, Hendersonville, NC 28739 (704) 693–1739. Transporting (1) *malt beverages, wine and brandy*, between points in the U.S., under continuing contract(s) with (a) Ideal of Asheville, Inc., of Asheville, NC, and (b) Skyland Beer Distributing Co., of Arden, NC, and (2) *blankets*, between points in the U.S., under continuing contract(s) with C.D. Owen Mfg., Co., of Swannanoa, NC.

MC 158179, filed September 16, 1981. Applicant: A. CURTIS WOODS, d.b.a. C & J TRUCKING, Route 2, Box 13A1, Albany, IN 47320. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204, 317–635–2339.

Transporting *clay, concrete, glass or stone products,* between points in the U.S. under continuing contract(s) with Indiana Glass Company, a Division of Lancaster Colony Corporation, of Dunkirk, IN.

Volume No. OPY-5-164

Decided: September 24, 1981.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

FF-568, filed September 9, 1981. Applicant: MISSION INTERNATIONAL, INC., 6750 Federal Blvd., Lemon Grove, CA 92045. Representative: Leonard J. Pellman (same address as applicant) (714) 287-4510. As a *freight forwarder* of (a) *used household goods,* (b) *unaccompanied baggage,* and (c) *used automobiles,* between points in CA, on the one hand, and, on the other, points in the U.S.

MC 5888 (Sub-70), filed September 16, 1981. Applicant: MID-AMERICAN LINES, INC., 127 West 10th St., Kansas City, MO 64105. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603 (312) 236-9375. Transporting *polyethylene film,* between Minneapolis, MN, on the one hand, and, on the other, Los Angeles, CA, Portland, OR, Seattle, WA, Dallas, TX, Birmingham, AL, Atlanta, GA, Boston, MA, and points in Maricopa County, AZ, Mecklenberg County, NC, Erie County, NY, Greenville County, SC, and DC, on the other.

Note.—Applicant intends to tack this authority with its existing regular-route authority at Minneapolis, MN, to provide service to points on its regular routes in IL, IA, IN, KS, MI, MN, MO, NE, OH, and WI.

MC 29628 (Sub-3), filed September 14, 1981. Applicant: GERALD F. MOORE, d.b.a. MOORES TRUCK SERVICE, 45 Brandywine St., Binghamton, NY 13902. Representative: Gerald F. Moore, P.O. Box 926, Binghamton, NY 13902 (607) 723-9431. Transporting *castings,* between points in Tioga County, NY, on the one hand, and, on the other, points in Bradford County, PA.

MC 78118 (Sub-61), filed September 16, 1981. Applicant: W. H. JOHNS, INC., 35 Witmer Rd., Lancaster, PA 17602. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101-1295, (717), 236-9318. Transporting *general commodities* (except classes A and B explosives), between those points in the U.S. in and east of MI, IN, KY, TN and MS (except NY, ME, NH, VT, CT, MA, and RI).

MC 114028 (Sub-41), filed September 16, 1981. Applicant: ROWLEY INTERSTATE TRANSPORTATION, COMPANY, INC., 2010 Kerper Blvd., Dubuque, IA 52001. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603, (312) 236-9375. Transporting *chemicals and related products,* between St. Louis, MO, Detroit and Oakland County, MI, points in Kent and Newcastle Counties, DE, Shawnee Sedgewick Counties, KS, Meade and Daviess Counties, KY, Saint Charles Parish, LA, Washoe and Storey Counties, NV, Dodge County, NE, Manitowac and Milwaukee Counties, WI, Sweetwater and Teton Counties, WY, Minnehaha County, SD, CA, GA, IL, IN, MN, NJ, NY, OH, PA, TN, TX, VA, and WV, on the one hand, and, on the other, points in Bremer County, IA.

MC 119099 (Sub-41), filed September 15, 1981. Applicant: BJORKLUND TRUCKING, INC., First Ave., NE and 8th St., Buffalo, MN 55313. Representative: Val M. Higgins, 1600 TCF Tower, 121 S. 8th St., Minneapolis, MN 55402, (612) 333-1341. Transporting *general commodities* between the facilities used by American-Canadian Distribution Center, Inc., at points in MN, MO, GA, and CO, on the one hand, and, on the other, points in the U.S. Condition: Any certificate issued in this proceeding to the extent it authorizes transportation of classes A and B explosives shall be limited in point of time to a period expiring 5 years from the date of issuance of the certificate.

MC 124679 (Sub-141), filed September 16, 1981. Applicant: C. R. ENGLAND AND SONS, INC., 975 West 2100 South, Salt Lake City, UT 84119. Representative: Michael L. Bunnell (same address as applicant), (801) 972-2712. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

MC 158248, filed September 15, 1981. Applicant: NOMEC, INC., 1652 West Belt North, Houston, TX 77043. Representative: Fred L. Jackson, 500 Franklin, Beaumont, TX 77701, (713) 838-9975. Transporting *pumps* between points in the U.S., under continuing contract(s) with Sellers Pump & Supply Company, of Houston, TX.

MC 158268, filed September 14, 1981. Applicant: CLARENCE A. MILLER TRUCKING CO., INC., P.O. Box 626, Jackson, OH 45640. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215, (614) 228-1541. Transporting (1) *coal and limestone,* between points in Gallia, Jackson, Meigs, Lawrence, and Vinton Counties, OH, on the one hand, and, on the other, points in KY and WV, and (2) *clay,* between points in Jackson County, OH, on the one hand, and, on the other, points in NC.

MC 158288, filed September 16, 1981. Applicant: MONTANA CONSULTANTS, INC., d.b.a. TOMAHAWK TRANSPORTATION, INC., 5400 Laurel Rd., Billings, MT 59101. Representative: David A. Sutherland, 1150 Connecticut Ave., NW, Suite 400, Washington, DC 20036, (202) 452-6800. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Billings Furniture Pool Association, Billings Retail Shippers' Association, Billings Shipping Corporation, all of Billings MT, Peavey Company of Minneapolis, MN, and Great Falls Shipping of Great Falls, MT.

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28255 Filed 9-29-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it 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. This

presumption shall not be deemed to exist where the application is opposed. 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 opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the applications later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

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".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OPY-2-178

Decided: September 22, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Chandler not participating.)

MC 126642 (Sub-6), filed August 28, 1981. Applicant: BLACK HILLS MOVERS, INC., 610 East Omaha, Rapid City, SD 57701. Representative: J. Maurice Andren, 1734 Sheridan Lake Rd., Rapid City, SD 57701 (605) 343-4036. Transporting (a) *general commodities*, between Keystone, SD, on the one hand, and, on the other, points in the U.S. and (b) Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensative weapons and munitions), between points in the U.S. Condition: Issuance of a certificate in part (a) above is subject to applicant submitting proof of termination of rail service at Keystone, S.D.

MC 158272, filed September 16, 1981. Applicant: ROHNER, GEHRIG & CO., INC., One Whitehall St., New York, NY 10004. Representative: Kurt Engel (same address as applicant), (212) 269-8900. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 158283, filed September 14, 1981. Applicant: EXECUTIVE LIMOUSINE LTD., INC., 372 Bennetts Farm Rd., Ridgefield, CT 06877. Representative: Lawrence Hauser, 134 East Ave., Norwalk, CT 06851, (203) 853-7000. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OPY-2-181

Decided: September 23, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Chandler not participating.)

MC 158092, filed September 3, 1981. Applicant: MARION BURGERS TRUCKING, R# 2 Box 20, Colton, SD 57018. Representative: Marion Burgers (same address as applicant), (605) 446-3263. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 158132, filed September 9, 1981. Applicant: SHELDON TRANSPORT CO., INC., 810 6th St., Sheldon, IA 51201. Representative: A. J. Swanson, P.O. Box 1103, 226 North Phillips Ave., Sioux Falls, SD 57101-1103, (605) 335-1777. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 158253, filed September 9, 1981. Applicant: JAMES W. BLACKBURN, JR., Rte. 4, Box 424F, North Wilkesboro, NC 28659. Representative: James W. Blackburn, Jr. (same address as applicant), (919) 667-3882. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 158262, filed September 9, 1981. Applicant: RONALD FRYREAR, d.b.a. COLORADO WEST TRUCKING, 2050 Fenton, Edgewater, CO 80214. Representative: Ronald Fryrear (same address as applicant), (303) 232-9064. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 158292F, filed September 16, 1981. Applicant: CWC BROKERAGE, 910 10th Street, P.O. Box 7, Plano, TX 75074. Representative: William Sheridan, P.O. Box 5049, Irving, TX 75062, (214) 255-6279. As a *broker of general commodities* (except household goods) between points in the U.S.

Volume No. OPY-4-380

Decided: September 24, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 152136 (Sub-5), filed September 18, 1981. Applicant: DANE TRUCKING & CARTAGE COMPANY, P.O. Box 7506, Fort Worth, TX 76111. Representative: William Sheridan, P.O. Box Drawer 5049, Irving, TX 75062, (214) 255-6279. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret material and sensitive weapons and munitions) between points in the U.S.

MC 158266, filed September 11, 1981. Applicant: WALTER REDWINE, 2911 W. Dakota St., Tucson, AZ 85706. Representative: Ella F. Redwine (same address as applicant), (602) 883-5403. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 158286, filed September 16, 1981. Applicant: M. T. TRUCK LINES, INC., 111 Washington St., Chicago, IL 60602. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602, (312) 236-5944. Transporting *general commodities* (except classes A and B explosives), between Merrillville, IN, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor common carrier service in lieu of rail abandoned service.

Volume No. OPY-5-162

Decided: September 24, 1981.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 130679 (Sub-3), filed September 10, 1981. Applicant: METRO PARK WAREHOUSE, INC., 301 S. 5th St., Kansas City, KS 66110. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105, (816) 221–1464. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 135839 (Sub-8), filed September 14, 1981. Applicant: B LINE SERVICES, INC., P.O. Box 127 Stein Rd., Hammond, LA 70404. Representative: Edward A Winter, 235 Rosewood Dr., Metairie, LA 70005, (504) 835–4724. Transporting *metal products*, between points in the U.S. under continuing contract(s) with Gulf South Machine, Inc., of Pontchatoula, LA.

MC 146448 (Sub-32), filed September 16, 1981. Applicant: C & L TRUCKING, INC., P.O. Box 409, Judsonia, AR 72081. Representative: Junior C. Landis (same address as applicant), (800) 643–5650. Transporting *general commodities* (except household goods and classes A and B explosives), between Hamburg, Mist and Snyder, AR, Fallbrook, CA, Bell, FL, Astoria, Clare, Easton, Esmond, Five Points and Lindenwood, IL, Clemons, Minerva, St. Anthony and Zearing, IA, Cedarvale, Dexter, Fleming-Neon, Kona, Millstone, Sedan and Tyro, KY, Brashear, Durham, Edina, Ewing, Hurdland, Knox City, La Belle, Lewistown, Maywood and Taylor, MO, Butler, Cheyenne and Reydon, OK, Keystone, SD, Allison, Briscoe and Mobectie, TX, and Barronett, Burkhardt, Clayton Comstock, Cumberland, Deer Park, Gillett, Green Valley, Krakow, Marion, Shell Lake, Tigerton and Wittenberg, WI, on the one hand, and, on the other, points in the U.S. Condition: Approval of this authority is conditioned upon applicant certifying to the Commission, prior to commencing operations, that all rail service has actually terminated at all of the involved points.

Note.—The purpose of this application is to substitute motor carrier service for complete abandonment of rail carrier service.

MC 158158, filed September 8, 1981. Applicant: THOMAS KIMBER, 240 Pinecrest, Winona, MN 55987. Representative Thomas Kimber (same address as applicant), (507) 454–5344. Transporting *food and other edible products and byproducts intended for human consumption* (except alcholic beverages and drugs), agricultural limestone and fertilizers, and other soil conditioners by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 158208, filed September 14, 1981. Applicant: CIRCLE AIRFREIGHT CORP., 545 Sansome St., San Francisco, CA 94111. Representative: W. O. Locke (same address as applicant), (415) 983–9704. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 158259, filed September 11, 1981. Applicant: FRED G. YAEGER, 542 Skyline Dr., Great Falls, MT 59404. Representative: Fred G. Yaeger (same address as applicant), (406) 727–3394. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle between points in the U.S.

MC 158269, filed September 8, 1981. Applicant: MAURICE S. BOZEL, d.b.a. BOZEL-FETTY ASSOCIATES, 4500 Hollis Ferry Rd., Baltimore, MD 21227. Representative: Theodore Polydoroff, Suite 301, 1307 Dolly Madison Blvd., McLean, VA 22101, (703) 893–4924. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 158289, filed September 16, 1981. Applicant: GENERAL EXPRESS, INC., 4698 Lake Mirror Place, Forest Park, GA 30050. Representative: Bill R. Davis, Suite 101—Emerson Center, 2814 New Spring Rd., Atlanta, GA 30339, (404) 434–3381. (1) As a *broker* of *general commodities* (except household goods), between points in the U.S. and (2) transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28234 Filed 9-29-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 172]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: September 23, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Ewing, and Shaffer.

James H. Bayne,

Acting Secretary.

MC 1718 (Sub-15)X, filed September 16, 1981. Applicant: ALFRED M. FLATEGRAFF, d.b.a. GARDNER TRUCK LINE, P.O. Box 22, Pine River, MN 56474. Representative: Stanley C. Olsen, Jr., 5200 Willson Road, Ste. 307, Edina, MN 55424. Applicant seeks to remove restrictions from its lead and Sub-Nos. 12F, 13F, and 14F to: (1) broaden commodity descriptions from butter to "food and related products" in its lead, paragraph 1; from wooden spools, reels, lagging, and cooperage to "lumber and wood products, metal products, and machinery" in its lead, paragraphs 2 and 4; from new store and office fixtures and new furniture, uncrated, to "furniture and fixtures" in its lead, paragraph 3; from wooden spools, wooden reels, wooden reel head, wooden cooperage and nuts, bolts and washers used in the assembly thereof to "lumber and wood products and metal products" in Sub-No. 12F part (1) and from lumber and lumber products to "lumber and wood products" in Sub-No. 12F, part (2); from lumber, lumber products, wood products, and forest products to "lumber and wood products and forest products" in Sub-No. 13F; from wooden spools, wooden reels, wooden reel heads and wooden cooperage to "lumber and wood products and materials, equipment, supplies and accessories used in the manufacture and installation of lumber and wood products" in Sub-No. 14F; (2) replace existing one-way authority with

radial in its lead and Sub-Nos. 12F and 13F; (3) broaden territorial description from Pine River, MN to Cass County, MN in its lead and Sub-Nos. 12F and 14F; from Duluth, MN to St. Louis County, MN in its lead; from Pequot Lakes and Brainerd, MN, to Crow Wing County, MN in its lead; (4) delete restriction against service to AK and HI in its Sub-No. 14f; (5) delete "originating at" restriction in its Sub-No. 13F.

MC 16903 (Sub-90)X, filed September 17, 1981. Applicant: MOON FREIGHT LINES, INC., P.O. Box 1275, Bloomington, IN. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Applicant seeks to remove restrictions in its Sub-No. 70F certificate to (1) broaden the commodity description from road and street signs posts and brackets, and materials used in the manufacture of road and street signs to "metal products and materials, equipment and supplies used in the manufacture and distribution of metal products"; and (2) remove the facilities limitation at Bloomington, IN, and change city to county-wide authority from Bloomington to Monroe County, IN, to authorize authority between points in Monroe County, IN, and, those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX.

MC 87231 (Sub-29)X, filed August 24, 1981. Applicant: BAY & BAY TRANSFER CO., INC., 7200 West 128th Street, Savage, MN 55378. Representative: Pamela N. Merkle, 300 Roanoke Building, Minneapolis, MN 55402. Applicant seeks to remove restrictions in its portions of its lead and Sub-Nos. 9, 10, 13, 15, 21, 22 and 26F certificates to (1) broaden the commodity descriptions to "commodities in bulk" from animal and poultry feed and fertilizer, in bulk, in tank or hopper vehicles, in the lead; dry fertilizer, in bulk, in Sub-No. 9; salt, in bulk, in hopper-type vehicles, in Sub-No. 10; foundry sands and silica sands, in bulk, in Sub-No. 13 and part of Sub-No. 19, fertilizer compounds, urea, ammonium nitrate fertilizer, and supperhosphate, in Sub-No. 15; salt, in Sub-No. 21; and silica sand, in Sub-No. 26F, (2) broaden the territorial description by substituting county-wide authority for city-wide authority as follows: Freeborn County, MN (for Albert Lea, MN), in the lead; Winona County, MN (Winona, MN), in Sub-No. 9; Scott County, MN (for Savage, MN), in Sub-No. 10; LeSueur County, MN (for Ottawa, MN), in Sub-Nos. 13 and 19; Scott County, MN (for Port Cargil, MN), in Sub-No. 15; and Dakota County, MN (for Pine Bend, MN), in Sub-No. 21, and (3) replace one-way authority with radial authority, in the lead and all subs.

MC 88414 (Sub-5)X, filed September 18, 1981. Applicant: RICHMOND TRANSFER & STORAGE CO., INC., 2114 MacDonald Street, Richmond, CA 94801. Representative: Alan F. Wohlstetter, 1700 K Street, NW, Suite 301, Washington, DC 20006. Applicant seeks to remove restrictions in its Sub-No. 4 certificate which authorizes the transportation of used household goods, in containers, and unaccompanied baggage, between points in the US to remove the AK and HI exceptions.

MC 103490 (Sub-87)X, filed March 4, 1981 and previously noticed in **Federal Register** of March 23, 1981, and April 21, 1981, republished as corrected, this issue. Applicant: PROVAN TRANSPORT CORP., 210 Mill St., Newburgh, NY 12550. Representative: Morton E. Kiel, Two World Trade Center, Suite 1832, New York, NY 10048. By a certificate served June 19, 1981, applicant was granted authority to perform the operations previously published. This republication is made pursuant to a decision of the Commission, Division 1, in *Provan Transport Corp.—Administrative Appeal of Partial Rejection of Restriction Removal Application* (not printed), served September 9, 1981. Applicant seeks to remove restrictions in its Sub-No. 36, 79, and 82 certificates to (1) authorize county-wide authority for city authority: Camden County for Pettys Island, NJ in Sub-No. 36; Essex County for Groveland, MA and Summit County for Macedonia, OH, in Sub-No. 79; and Essex County for Tahawas, NY in Sub-No. 82; and (2) substitute encompassed counties for a mileage-radius formula territory: points in New York in, east, and south of Steuben, Schuyler, Seneca, Cayuga, Oswego, Lewis, Herkimer, Hamilton, and Essex Counties, and those in Pennsylvania in and east of York, Cumberland, Perry, Juniata, Snyder, Union, Lycoming, and Tioga Counties, for those points within 200 miles of Stamford, CT, in New York and Pennsylvania, in Sub-No. 36.

MC 111310 (Sub-68)X, filed September 15, 1981. Applicant: BEER TRANSIT, INC., P.O. Box 352, Black River Falls, WI 54615. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. Applicant seeks to modify its Sub-No. 57F to (1) delete the following restrictions: (a) facilities limitations; (b) "originating at"; and (c) "except AK and HI"; (2) substitute Brown, Jefferson, Outagamie, and Winnebago Counties, WI for DePere, Fort Atkinson, and Menasha, WI; (3) authorize radial service in place of one-way authority; and (4) change commodity description from paper and paper products to "pulp, paper, and related products."

MC 138465 (Sub-8)X, filed September 14, 1981. Applicant: TOWNSEND HAULING, INC., Route 1, Box 292, Live Oak, FL 32060. Representative: Norman J. Bolinger, Suite 225, 3100 University Blvd. S., Jacksonville, FL 32216. Applicant seeks to remove restrictions in its Sub-Nos. 3 and 7F certificates to: in Sub-No. 3 (1) broaden the commodity description from fertilizer and agricultural limestone to "chemicals and related products" (2) replace Albany, GA, with Dougherty County, GA (3) remove the dry, in bulk restriction, and (4) broaden one-way authority to radial authority (a) between points in Dougherty County, GA, and, points in 16 named counties in FL; and (b) between points in Levy, Marion, and Suwannee Counties, FL, and, in that part of Georgia on and south of U.S. Hwy 280; and in Sub-No. 7F (1) broaden the commodity description from agricultural limestone, wet gypsum, superphosphate, and fertilizer to "chemicals and related products", (2) remove the in bags, in bulk, in dump vehicles restriction, (3) replace Clyo and Cordele, GA, with Crisp and Effingham Counties, GA, and (4) broaden one-way authority to radial authority (a) between points in Citrus and Taylor Counties, FL, and, points in Georgia on and south of U.S. Hwy 280, (b) between points in Hamilton County, FL, and, points in Georgia on and south of U.S. Hwy 280 and in Coffee, Covington, Dale, Geneva, Henry and Houston Counties, AL, (c) between points in Hamilton, Hillsborough, Manatee, and Polk Counties, FL, and, points in Georgia on the south of U.S. Hwy 280 and in Coffee, Covington, Dale, Geneva, Henry, and Houston Counties, AL, and (d) between Crisp and Effingham Counties, GA, and, points in Florida on and north of FL Hwy 40.

MC 145058 (Sub-3)X, filed August 26, 1981, previously noticed in the **Federal Register** of September 11, 1981, republished as corrected this issue. Applicant: THOMAS PRODUCE COMPANY OF MOUNT AIRY, INC., North Carolina Hwy. No. 220 South, P.O. Box 16707, Greensboro, NC 27406. Representative: Michael F. Morrone, 1150 17th Street N.W., Suite 1000, Washington, D.C. 20036. Applicant seeks to remove restrictions in its Sub-No. 1F certificate to (1) broaden the commodity description to "general commodities, except classes A and B explosives" from general commodities, with exceptions; (2) authorize radial, county-wide

authority to replace existing one-way, facilities or city-wide authority: between points in Wake and Guilford Counties, NC (for facilities at High Point and Raleigh, NC) and Washington County, VA (for Abingdon, VA), and points in 22 States. The purpose of this republication is to correct the county-wide authority.

MC 145252 (Sub-10)X, filed September 15, 1981. Applicant: HENRY ANDERSEN, INC., P.O. Box 75, King George, VA 22485. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth St. N.W., Washinbgton, DC 20005. Applicant seeks to remove restrictions from its Sub-No. 7 permit to (1) broaden the commodity description to "food and related products and materials, supplies and equipment used in the production and distribution thereof" from meats, meat products and meat by-products (except commodities in bulk), and materials, supplies and equipment used in the production and distribution of the aforementioned commodities (except commodities in bulk); and (2) expand the territorial authorization to authorize service between points in the United States, under continuing contract(s) with a named shipper.

MC 150091 (Sub-3)X, filed September 18, 1981. Applicant: PRESCOTT FERTILIZER CORP., 450 2nd Street, Prescott, WI 54201. Representative: Stanley C. Olsen, Jr., 5200 Wilson Road, Suite 307, Edina, MN 55424. Applicant seeks to remove restrictions in its Sub-Nos. 1F and 2F permits to (1) broaden the commodity description to "food and related products and chemicals and related products and materials, equipment and supplies used in the manufacture and distribution of the commodities above" from feed and feed ingredients, and fertilizer and materials, equipment and supplies used in the manufacture and distribution of the above commodities, in both subs and (2) broaden the territorial description to between points in the U.S. under continuing contract(s) with named shippers, in both subs.

MC 153938 (Sub-5)X, filed August 31, 1981. Applicant: ENERGY EXPRESS, INC., 2125 North Redwood Road, Salt Lake City, UT 84116. Representative: William S. Richards, P.O. Box 2465, Salt Lake City, UT 84110. Applicant seeks to remove restrictions in authority granted to it pursuant to MC-FC-79008 to (a) remove "in bulk" restrictions; (b) remove "tank truck (vehicle)" restrictions; (c) remove restriction requiring "specially heated equipment"; (d) authorize radial authority where only one-way exists; and (e) remove restriction requiring that no shipments shall be transported between specified UT and NV points.

[FR Doc. 81-28253 Filed 9-29-81; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29731]

Central of Georgia Railroad Co.—Lease—Southern Railway Co.; Exemption

September 24, 1981.

On September 3, 1981, the Southern Railway Company (Southern) and its wholly-owned subsidiary Central of Georgia Railroad Company (Central) jointly filed a Notice of Exemption of a proposed lease and operation by Central of a 19.33 mile railroad line owned and operated by Southern between Fort Valley and Roberta, in Peach and Crawford Counties, GA. The notice was filed pursuant to 49 CFR 1111.5(c)(3), as amended by *Railroad Consolidation Procedures*, 363 I.C.C. 200, 224 and 266 (1980), 45 FR 6299 (September 23, 1980).

Central is a wholly-owned subsidiary of Southern as approved by the Commission in *Central of Georgia Railway Company—Consolidation*, 338 I.C.C. 353 (1971).

This transaction is within the Southern corporate family and does not involve any changes in operations service levels, or competitive balance with other carriers.

In granting an exemption under section 10505, we may not relieve a carrier of its obligation to protect the interests of employees as required by 49 U.S.C. Subtitle IV. (See 49 U.S.C. § 10505(g)(2).) Therefore, we will require, as a condition to this exemption, the same level of labor protection as is usually required in lease transactions. We have determined that the employee protective conditions developed in *Mendocino Coast Ry., Inc. Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (s980) satisfy the statutory requirements for protection of employees involved in a lease transaction. Therefore Southern and Central must comply with those provisions as a condition to the exercise of this exemption.

By the Commission, Gary J. Edles, Director, Office of Proceedings.

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28251 Filed 9-29-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: September 24, 1981.

In our recent decisions, an 18.0-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figure set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 17.8-percent. Accordingly, we are authorizing that the surcharge for this traffic remain at 18.0 percent. All owner-operators are to receive compensation at this level.

No change is authorized on the 2.0-percent surcharge for United Parcel Service, or the 6.6-percent surcharge for the bus carriers. However, the surcharge on less-than-truckload (LTL) traffic performed by carriers not using owner-operators is ordered to be reduced to 3.0-percent.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commission or Boards of each State having jurisdiction over transportation by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. for public inspection and by depositing a copy to the Director, Office of the Federal Register, for publication therein.

It is ordered:

This decision shall become effective Friday 12:01 a.m., September 25, 1981.

By the Commission, Chairman Taylor, Vice Chairman Clapp, Commissioners Gresham and Gilliam.

James H. Bayne,

Acting Secretary.

Appendix.—*Fuel Surcharge*

September 21, 1981

Base date and price per gallon (including tax)

January 1, 1979 ..... 63.5¢

Date of current price measurement and price per gallon (including tax)

September 21, 1981 ..... 130.3¢

	Transporation performed by—			
	Owner operator [1]	Other [2]	Bus carrier	UPS
	(1)	(2)	(3)	(4)
Average percent; fuel expenses (including taxes) of total revenue	16.9	2.9	6.3	3.3
Percent surcharge developed	17.8	3.0	6.6	[3] 2.8

	Transporation performed by—			
	Owner operator [1]	Other [2]	Bus carrier	UPS
Percent surcharge allowed	18.0	3.0	6.6	[4] 2.0

[1] Apply to all truckload rated traffic.
[2] Including less-then-truckload traffic.
[3] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).
[4] The developed surcharge is reduced 0.8 percent to reflect rule-related increases already included in UPS rates.

[FR Doc. 81-28249 Filed 9-29-81; 8:45 am]
BILLING CODE 7035-01-M

Long-and-Short-Haul Applications for Relief (Formerly Fourth Section Applications)

September 23, 1981.

These applications for long-and-short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. on or before October 15, 1981.

FSA No. 43937, Southwestern Freight Bureau, Agent No. B-137, reduced rates on synthetic rubber and rubber compounds, from stations in Louisiana and Texas to Hopedale, MA, in Supplement 79 to its Tariff ICC SWFB 4973-A, effective October 19, 1981. Grounds for relief—destination rate relationship.

FSA No. 43938, Southwestern Freight Bureau, Agent, carload rates of iron or steel pipe and related articles from Chicago, IL and Youngstown, OH to Brookshire, TX in Tariff ICC SWFB 4853, to become effective October 21, 1981. Grounds for relief—destination rate relationship.

FSA No. 43939, Southwestern Freight Bureau, Agent (No. B-138) reduced rates on alloys or metals, from Industry, PA to Texas destinations, in Supplement 137 to its Tariff ICC SWFB 3002-I, effective October 24, 1981. Grounds for relief—market competition.

By the Commission.

James H. Bayne,

Acting Secretary.

[FR Doc. 81-28250 Filed 9-29-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. 173]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: September 24, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings: We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Ewing, and Shaffer.

James H. Bayne,

Acting Secretary.

FF-84 (Sub-3)X, filed September 18, 1981. Applicant: C. S. GREENE AND COMPANY, INC., 2803 Butterfield Road, Oak Brook, IL 60521. Representative: Abraham A. Diamond, 20 South LaSalle Street, Chicago, IL 60603. Applicant seeks to remove restrictions in its lead and Sub-No. 1 permits to (1) broaden the commodity description from general commodities, with exceptions to "general commodities (except classes A and B explosives)" in Sub-No. 1; (2) expand one-way to radial authority; and (3) remove the restriction to the transportation of export traffic in Sub-No. 1.

MC 95540 (Sub-1172)X, filed September 4, 1981. Applicant: WATKINS MOTOR LINES, INC., P.O. Box 1636, Lakeland, FL 33802. Representative: Paul M. Daniell, P.O. Box 872, Atlanta, Georgia 30301. Applicant seeks to remove restrictions in its Sub-No. 1169F certificate to broaden the commodity description from general commodities with the usual exceptions to general commodities (except classes A and B explosives), in connection with its authority to serve between points in the U.S.

MC 113119 (Sub-15)X, filed September 17, 1981. Applicant: C.S.I., INC., d.b.a. CONTRACT SERVICE, INC., Trewigtown Rd., Colmar, PA 18915. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Applicant seeks to remove restriction in its Sub-Nos. 8 and 12 certificates to (1) broaden the commodity description from paper and paper products to "pulp, paper and related products" in both subs; (2) change city to county-wide authority from New Hope, PA, to Bucks County, PA, in Sub-No. 8(3) change one-way to radial authority in both subs, (4) remove the facility limitation in Sub-No. 12 and replace New Hope, PA with Bucks County, PA, (5) remove in bulk restriction in Sub-No. 12, and (6) remove the originating at and destined to restriction in Sub-No. 8.

MC 124170 (Sub-No. 188)X, filed, September 21, 1981. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, IL 60521. Applicant seeks to remove restrictions in its Sub-No. 142F certificate to (1) broaden the commodity description from foodstuffs to "food and related products"; (2) replace Boston and Woburn, MA and West Reading, PA with Suffolk, Essex, Middlesex, Norfolk and Plymouth Counties, MA and Berks County, PA; and (3) provide radial authority in place of one-way authority.

MC 145955 (Sub-No. 27)X, filed, September 14, 1981. Applicant: CENTRAL TRUCK SERVICE, INC., 4440 Buckingham Avenue, Omaha, NE 68107. Representative: Arlyn L. Westergren, 9202 W. Dodge Road, Omaha, NE 68114. Applicant seeks to remove restrictions in its Sub-Nos. 5, 6, and 7 certificates to (1) broaden the commodity description from plastic articles and chemicals to "rubber and plastic products, chemicals and related products" in Sub-No. 5; (2) delete in bulk, in tank vehicle restrictions in all three Sub-Nos.; (3) delete plantsite restriction in Sub-No. 5; (4) authorize radial service in place of existing one-way authority between Chicago, IL, and named mid-western States in all authorities.

MC 146773 (Sub-No. 4)X, filed, September 14, 1981. Applicant: CON-EX, INC., Cove Street, Manchester, NH 03101. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Applicant seeks to remove restrictions in its Sub-No. 3 certificate to (1) broaden the commodity description from general commodities (with exceptions) to "general commodities (except Classes A and B explosives)"; (2) remove the originating at or destined to facilities of

a named shippers association restrictions where they exist and (3) remove exceptions to service at AK, HI, ME, NH, VT, and MA in its radial authority between ME, NH, VT, and MA and points in the U.S. (with exceptions).

MC 148561 (Sub-No. 2)X, filed, September 23, 1981. Applicant: BENETO, INC., P.O. Box 533, West Sacramento, CA 95691. Representative: Ronald Chauvel, 100 Pine Street, Suite 2550, San Francisco, CA 94111. Applicant seeks to remove restrictions in its lead certificate to: (1) remove the exception of asphalt, road oil, and fuel oils used in paving operations (2) remove the in bulk restriction; (3) remove the in tank vehicles restriction; and (4) change one-way to radial authority between points in named CA counties, on the one hand, and, on the other, points in part of NV and Lassen County, CA.

MC 148907 (Sub-No. 2)X, filed August 31, 1981 and previously noticed in **Federal Register** September 10, 1981, republished as corrected this issue. Applicant: R. M. ORMES TRANSPORTATION, INC., 20 Atlantic Avenue, Woburn, MA 01807. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Applicant seeks to remove restrictions in its lead and Sub-No. 1 certificates to (1) broaden the commodity description from household goods to "household goods and furniture and fixtures" in both certificates; and (2) expand the territorial area of Brockton, MA and points within 25 miles thereof, to points in Plymouth, Norfolk, Bristo, Suffolk, Middlesex, Essex, and Worcester Counties, MA, and Providence County, RI, in Sub-No. 1.

The purpose of this republication is to correct the inadvertent omission of Worcester and Providence Counties.

MC 151004 (Sub-No. 3)X, filed September 21, 1981. Applicant: WARNACO TRUCKING CORP., 350 LaFayette Street, Bridgeport, CT 06602. Representative: Applicant seeks to remove restrictions in its lead certificate to (1) broaden the commodity description from clothing, shoes, and piece goods to "textile mill products and shoes, and materials, equipment and supplies used in the maufacture, sale, or distribution of shoes"; and (2) remove the restrictions "except on hangers", and "except AK and HI".

[FR Doc. 81-28336 Filed 9-29-81; 8:45 am]
BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-105]

Certain Audiovisual Games and Components Thereof (viz, Pac Man and Rally-X; Amendment of Complaint

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has granted a motion pursuant to § 210.22(a) of the Commission's Rules of Practice and Procedure to amend the complaint in this investigation.

SUMMARY: On September 21, 1981, the Commission granted a motion (Motion 105-3) to amend the complaint in this investigation by joining 20 additional respondents, who are alleged to be infringing complaintant's copyright and trademark rights in the Pac Man and Rally-X games. Although the effective date of such joinder is September 30, 1981, the parties joined by this action shall not be required to appear at the hearing on temporary relief, scheduled to commence on September 21, 1981. In addition, the parties joined by this action shall not be made subject to any *in personam* temporary relief pursuant thereto.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION: On July 24, 1981, complainant moved (Motion 105-3) to amend the complaint by joining 33 additional respondents, who are alleged to be infringing complainant's copyright and trademark rights in the Pac Man and Rally-X games. On August 12, 1981, the presiding officer issued a recommended determination that the motion be granted. After consideration of Motion 105-3 and the response thereto by the Commission investigative attorney and the subsequent reply by the complainant, the Commission determined to amend the notice of investigation by the joinder of the following named parties:

Jackson & Co., Ltd.
2nd Floor No. 1 Lane
Yen Chi Street
Taipei, Taiwan

C. J. Gasper
P 44 American Village
Fussa-City, Japan 197

Haitai International Inc.
CPO Box 4495
Seoul, Korea

Kyodo Agencies Ltd.
823 Moromizato
Okinawa City, Okinawa

Mama Top Corp.
3-1-3 Kitaando
Shizuoka City
420 Japan

J. C. Wang & Co.
1500 Salvatierra Drive
Coral Gables, FL 33134

NCA International Import & Export
1734 Taraval Street
San Francisco, CA 94116

Hua Chu Enterprises Co., Ltd.
No. 81-32 Fu Shing N. Rd.
Taipei, Taiwan

Spectron Corporation
Hibiya-Kashi Bldg., 28-15
Hatchobori 3 Chome
Chuo-Ku Tokyo, 104 Japan

B. P. Allies Co., Ltd.
8th Floor, Chung Hsiao Bludg
No. 85 Chung Hsiao E. Road Sec. 2
Taipei, Taiwan

Tiso Enterprises, Inc.
P.O. Box 221184
Charlotte, NC 28222

Buffy Mfg. Co., Inc.
P.O. Box 44-132
Taipei, Taiwan

Sewin Co., Ltd.
500, Songrae-Dong
Buchu-Si, Kyungki-Do
Korea

Leijac Co., Ltd
11-10, 5-Chome Nishinakajima
Yodogawa-Ku
Osaka, Japan 532

Impeuropex Corp. S.A.S.
P.O. Box No. 49
04100 Latina, Italy

United States Amusements Inc.
P.O. Box 505
2 West Northfield Road
Livingston, NJ 07039

Multigold Co., Ltd.
P.O. Box 68-1996
Taipei, Taiwan

I Canstant Co.
P.O. Box 68-302
Taipei, Taiwan

Jing Pung Electric Co., Ltd.
P.O. Box 82
Tainan, Taiwan

Sunyard Corporation
P.O. Box 81-171
Taipei, Taiwan

By order of the Commission.

Issued: September 23, 1981.

Kenneth R. Mason,
Secretary.

[FR Doc. 81-28430 Filed 9-29-81; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-104; Order No. 55]

Certain Card Data Imprinters and Components Thereof; Designation of Administrative Law Judge

Pursuant to my authority as Chief Administrative Law Judge, I hereby relieve Administrative Law Judge Janet D. Saxon and designate Administrative Law Judge Donald K. Duvall as the Presiding Officer in this investigation, effective 5:00 p.m. this date.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: September 23, 1981.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 28431 Filed 9-29-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-91]

Certain Mass Flow Devices and Components Thereof; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Termination of investigation based on settlement agreement.

SUMMARY: Having reviewed the record in this investigation, including the presiding officer's recommendation, the Commission has voted to grant the parties' joint motion to terminate (motion 91–42) and is ordering the termination of investigation No. 337–TA–91, Certain Mass Flow Devices and Components Thereof. The motion was joined by all parties to the investigation.

Petitions for Reconsideration: Any party wishing to petition for reconsideration of the Commission's action must do so within 14 days of service of the Commission order. Such petitions must be in accord with § 210.56 of the Commission's rules (19 CFR 210.56).

SUPPLEMENTARY INFORMATION: On November 26, 1980, the Commission published notice of the institution of an investigation, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), of alleged unfair methods of competition and unfair acts in the importation and sale of certain mass flow devices and components thereof (45 FR 78843). On June 10, 1981, complainant Tylan Corp., respondents Advanced Semiconductor Materials Holding, b.v. and Advanced Semiconductor Materials America, Inc., and the Commission investigative attorney jointly moved to terminate the investigation on the basis of a settlement agreement entered into by complainant and respondents. The presiding officer recommended that the Commission grant the motion.

The Commission published notice containing a summary of the proposed settlement agreement in the **Federal Register** on August 5, 1981, and requested comments from the public. No comments adverse to termination were received.

Copies of the Commission's Action and Order and any other public documents in this investigation are available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0161. The settlement agreement entered into by the parties contains confidential business information subject to a protective order and is not available for public examination.

FOR FURTHER INFORMATION CONTACT: Jane Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–1627.

Issued: September 22, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-28427 Filed 9-29-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-99; Order No. 16]

Certain Molded-In Sandwich Panel Inserts and Methods for Their Installation; Designation of Presiding Officer

For unanticipated but necessitous reasons of administrative management and judicial economy, Administrative Law Judge Donald K. Duvall is hereby relieved and Administrative Law Judge Janet D. Saxon is hereby designated as the Presiding Officer in this investigation, effective this date.

Such redesignation of the Presiding Officer will not affect the prehearing and hearing schedule previously ordered in this investigation and will afford the newly designated Presiding Officer adequate time to prepare for the hearing presently scheduled to commence following the prehearing conference on October 19, 1981.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: September 24, 1981.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 81-28433 Filed 9-29-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. TA-203-9]

Certain Mushrooms; Results of Investigation

September 11, 1981.

In accordance with section 203(i)(2) of the Trade Act of 1974 (19 U.S.C. 2253(i)(2)), the United States International Trade Commission herein reports the results of an investigation (No. TA–203–9) conducted with respect to certain mushrooms.

Summary of advice of the Commission

The Commission unanimously advises, on the basis of information obtained in the investigation, that termination of the import relief presently in effect with respect to imports of certain mushrooms would not have an adverse economic effect on the domestic industry producing prepared or preserved mushrooms. Specifically, the Commission advises that exclusion from import relief of the following mushroom products will not have an adverse economic effect on the domestic industry: frozen battered or frozen breaded mushrooms; straw mushrooms, golden mushrooms, oyster mushrooms, and summer oyster mushrooms, whole, in airtight containers of nine ounces or less; wild specialty mushrooms in airtight containers; and cultivated specialty mushrooms in airtight containers valued over $3.00 per pound; all the foregoing provided for in item 144.20 of the Tariff Schedules of the United States. The Commission also advises that termination of the import relief presently in effect with respect to the other mushroom products specified in the letter of May 19, 1981, to the Commission from the U.S. Trade Representative (USTR) would have a significant adverse economic on the domestic industry.[1]

Background

The investigation was instituted on May 28, 1981, following receipt of a request for such an investigation from USTR on May 19, 1981. Public notice of

[1] Detailed advice on the probable economic effect on the domestic industry concerned of the termination of the import relief presently in effect with respect to each of the mushroom products specified in the letter to the Commission from USTR is contained in the statement of the Commission which follows. The Commission's statement also contains advice on four additional issues, as requested by USTR.

the investigation and hearing was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register of June 3, 1981 (46 FR 29793). A public hearing in connection with the investigation was held on July 30, 1981, in Washington, D.C. All interested persons were afforded an opportunity to be present, to present evidence, and to the heard.

The information contained in this report was obtained from fieldwork, from questionnaires sent to domestic manufacturers and importers, from the Commission's files, from other Government agencies, from information received at the hearing, from briefs filed by interested parties, and from other sources.

Statement of the Commission

The issue of the impact of imported mushrooms on the domestic industry has a long history before the Commission. From 1964 to 1980, the Commission has conducted six investigations regarding the domestic mushroom industry. In the most recent investigation, [2] conducted under section 201 of the Trade Act of 1974 (19 U.S.C. 2251) and completed in August 1980, the Commission determined (Commissioner Bedell not participating) that mushrooms prepared or preserved, provided for in item 144.20 of the Tariff Schedules of the United States (TSUS), were being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the domestic industry producing an article like the imported article. Thereafter, the President proclaimed an increase in the duty of imported mushrooms, prepared or preserved, pursuant to section 203(a)(1) of the Trade Act of 1974 (19 U.S.C. 2253(a)(1)).

The present investigation was requested by the U.S. Trade Representative (USTR) on May 19, 1981, in order to provide advice upon which the President can base his decision on whether to modify the mushroom import relief program presently in place.[3] Normally, a section 203 investigation examines, among other things, an industry's adjustment to import competition during the period of import relief. However, the scope of the Presidential request for this section 203 investigation is more narrow. We have been asked to determine whether the proposed termination of that relief program with respect to the following mushroom categories would have an adverse economic effect on the domestic industry: frozen battered and frozen breaded; champignon de Paris, chanterelle, cepe, morel, and mixed mushrooms valued over $1.60 per pound (drained weight); chanterelle mushrooms valued over $8.50 per pound (drained weight) and straw, golden oyster, and summer oyster mushrooms. In addition, we address four separate questions posed by USTR with respect to the above mushroom types.

Probable Economic Effects of Termination

Frozen Battered and Frozen Breaded Mushrooms

Modification of the import relief program currently in effect with respect to imported frozen battered and frozen breaded mushrooms[4] would have no adverse economic effect on the domestic industry. It is true that such imported mushrooms compete with U.S.-produced frozen battered and frozen breaded mushrooms, as well as other frozen mushrooms sold to the institutional market.[5] However, the value of imported frozen battered mushrooms has been consistently higher than that of the domestic product. The unit value of the Canadian imports averaged $1.28 per pound in 1978 and increased to $1.30 per pound in 1980. In contrast, the comparable price for domestic frozen battered and frozen breaded mushrooms averaged $1.01 per pound in 1978 and $1.09 in 1980. The price of other domestic frozen mushrooms averaged $0.81 and $0.98 per pound for the same 2 years. Further, import penetration of frozen battered mushrooms to domestic production of frozen battered and frozen breaded mushrooms declined from about 7 percent in 1978 to about 6 percent in 1980, before declining precipitously to about 2 percent in January-March 1981.[6] At the same time, domestic production has steadily increased as domestic capacity utilization has risen from 47 percent in 1978 to 68 percent in 1980.[7] Also of the domestic freezers of battered or breaded mushrooms responding to questionnaires indicate that sales were not lost to, and prices were not depressed by, import competition.[8] Furthermore, we do not believe that the limited importation of frozen battered and frozen breaded mushrooms is such a significant factor in the market as to affect the canned mushroom industry.

Wild Specialty Mushrooms

Wild specialty mushrooms imported in cans are valued 2 to 5 times higher than are U.S.-produced canned *Agaricus* mushrooms and are sold to gourmet retail outlets or to restaurants featuring gourmet menus. The large price difference and different markets in which wild specialty mushrooms are sold limit direct competition between these mushrooms and U.S.-producted canned *Agaricus* mushrooms.[9] In addition, the import penetration ratio of imported canned wild specialty mushrooms to domestically produced canned *Agaricus* mushrooms is very small (0.2 percent). Thus, we conclude that the domestic industry would not suffer a significant adverse economic effect by an exemption to the import relief currently in place.[10]

Cultivated Specialty Mushrooms

Imported canned cultivated specialty mushrooms (champignon de Paris) are of the same genus (*Agaricus)* as domestically produced mushrooms and compete with them. In our view, exemption of such mushrooms would have a significant adverse economic effect on the domestic industry unless a price break is establish at a level to assure that imports are of a specialty nature. Imported canned cultivated mushrooms were valued at about $2.00 per pound in 1980 compared with a value of $1.39 per pound for U.S.-produced canned. *Agaricus* mushrooms in containers of comparable size.[11] This price differential has been attributed to the use of high-grade mushrooms and

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[1] Mushrooms, Inv. No. TA-201-43, USITC Publication 1089 (1980).

[2] The Commission's authority to conduct this investigation is based upon the receipt of a request for advice from the President made pursuant to sec. 203(i)(2) of the Trade Act of 1974 (19 U.S.C. 2253(i)(2)), which provides: Upon request of the President or upon its own motion, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of the extension, reduction, or termination of the import relief provided pursuant to this section.

[3] Although the Commission was asked to consider frozen battered and frozen breaded mushrooms, only frozen battered mushrooms are currently imported into the United States.

[5] Staff report, p. A-37.

[6] Id., p. A-15.

[7] Id., p. A-17.

[8] Staff report, p. A-37.

[9] Id., pp. A-28.

[10] One firm in the United States sells fresh wild mushrooms (limited to chanerelles at this time) to gourmet restaurants at prices comparable with those of the canned wild mushroom imports. Initial sales of this product were in the spring of 1981. Supply is dependent on purchases of fresh mushrooms from about 2,000 independent pickers who generally gather mushrooms in U.S. forests and on the land of lumber companies. The growing season for these mushrooms occurs from mid-July through December, and because of the perishable nature of fresh mushrooms, distribution is restricted to these months. In the off-season the firm distributes a limited amount of dried mushrooms.

[11] Staff report, p. A-22.

better methods of cutting and canning.[12] The import penetration ratio for this product was less than 2 percent of U.S. production of canned whole and sliced mushrooms from 1979 to 1980.[13] It has been suggested that canned cultivated specialty mushrooms be exempted from relief on the basis of a price break of over $1.60 per pound. However, a significant amount of mushroom imports in 1980 was valued at levels so close to $1.60 that it would be advantageous for both exporters and importers to have the f.o.b. price raised to $1.61 per pound to circumvent the import relief tariff.[14] Further, inflation would bring an increasing volume of imports closer to this price break. Therefore, the Commission has recommended that only cultivated specialty mushroom imports valued over $3.00 per pound be exempted from the relief. At this price break, circumvention is unlikely given current prices of canned mushroom imports.

Straw and Certain Other Oriental Mushrooms

Exemption of imported straw mushrooms, which compete with domestic *Agaricus* mushrooms in several areas, would have a significant adverse economic effect on the domestic industry. Although whole straw mushrooms have a distinctive shape, they lose many of the features that distingquish them from canned *Agaricus* mushrooms when chopped or sliced, especially if used in sauces, soups, etc.[15] The possibility of import competition in the institutional-use market is greatly increased by the fact that imported canned straw mushrooms significantly undersell the domestic canned *Agaricus* mushrooms. The price per pound (drained weight) of straw mushrooms, chopped into stems and pieces and sold in institutional size contaners, rose from $0.71 per pound in 1978, to $0.98 for January-March 1981; during the same period, the price for similarly chopped and packaged canned *Agaricus* mushrooms rose from $1.23 to $1.30 per pound.[16]

However, imported whole straw mushrooms in retail-size cans (9 ounces or less) supply a separate market normally for home use in oriental cusine. They are not known to be marketed through major supermarket chain but rather through shops specializing in oriental food products. Accordingly, the domestic industry would not suffer an adverse economic effect if these mushrooms were exempted from the import relief program.

Competition between imported canned golden, oyster, and summer oyster mushrooms, and canned domestic mushrooms follows the same pattern as that described above for canned straw mushrooms and U.S.-produced canned mushroons.[17] When these oriental mushrooms are chopped or sliced, they are readily substitutable for domestic canned mushroom stems and pieces, especially in the institutional market.[18] However, whole golden, oyster, and summer oyster mushrooms on containers of 9 ounces or less supply a separate oriental cusine market and are not known to be sold in the same stores as most canned *Agaricus* mushrooms. Therefore, exemption of whole golden, oyster, and summer oyster mushrooms in containers of 9 ounces or less would not cause an adverse economic effect to the domestic industry.

Specific questions posed by USTR

The following questions were posed by the United States Trade Representative: (1) to what extent does each category of imported mushroom compete with the domestic product; (2) how would import levels be affected by specific exemptions; (3) would specific exemptions be administratively feasible; and (4) what circumvention problems can be expected if exemptions are granted.

Frozen Battered and Frozen Breaded Mushrooms

As noted above, imported frozen battered and frozen breaded mushrooms compete most directly with the corresponding segment of the domestic industry. They compete to a lesser extent, if at all, with domestic canned mushrooms.

Importation of frozen battered and frozen breaded mushrooms is not likely to increase significantly in the event that they are exempted from increased duties. Omstead Foods Ltd., which accounts for almost all imported frozen battered and frozen breaded mushrooms, is presently experiencing difficulty in obtaining the type of fresh mushroom that it maintains it requires for production.[19] Thus, although its exports to the United States increased from 1978 to 1980, they fell precipitously in January-March 1981, in part because of supply shortages.[20] Moreover, it is not constraints will permit it to significantly increase its exports to the United States above their 1980 level.[21] Although other foreign producers might enter the frozen battered or frozen breaded mushroom market, the possibility is remote in view of the considerable cost of installing necessary facilities.[22] It should be noted that certain companies in Taiwan currently export frozen mushrooms to the United States. However, Omstead estimates these companies would face conversion costs of $200,000 to enter production of frozen breaded or frozen battered mushrooms.[23] No evidence was presented to suggest that any Taiwanese company currently plans to enter this market. Therefore, given the supply constraints, increased future imports based on past trends do not appear to be likely.

The U.S. Customs Service has submitted a report discussing the administrative feasibility of applying exemptions to the current import relief for the categories of mushrooms considered in this investigation. With respect to frozen breaded and frozen battered mushrooms, manufacturers' invoices always provide a clear description. Further, even without invoices, Customs can readily identify frozen battered and frozen breaded mushrooms.

Wild Specialty Mushrooms

As stated above, canned imports of wild specialty mushrooms do not compete with the domestic industry producing canned mushrooms.

The Universal Import Group [24] estimates that importation of canned wild specialty mushrooms could rise as much as 35 percent a year in the absence of the current relief.[25] Based on this estimate, imports of canned wild specialty mushrooms could increase to 253,000 pounds in 1983.[26] However, the import penetration ratio is so low and the price differentials so great that we do not believe such expansion will have a significant effect on the domestic industry.

Uncultivated specialty mushrooms pose an administrative problem for customs agents in that such mushrooms are not always identified as to type by their invoices. However these mushrooms are priced at far higher levels than are other mushrooms and,

[12] Id., p. A28.
[13] Id., p. A28.
[14] Id., p. A29.
[15] Id., p. A32.
[16] Transcript of the hearing, pp. 46, 108, and 180.
[17] Staff report, p. A-34.
[18] Id., p. A-34.
[19] Staff report, p. A-37.
[20] Id., p. A-37.
[21] Id., p. A-37.
[22] Omstead's prehearing brief, p. 20.
[23] Staff report, p. A-38.
[24] The Universal Import Group represents a number of firms that import wild mushrooms.
[25] Staff report, p. A-29.
[26] Id., p. A-29.

therefore, can readily be identified on that basis by customs agents.

Because wild specialty mushrooms can only be grown in forest areas and in certain climates, the potential for large increases in production is restricted.[27] Therefore, it is unlikely that the intent of the import relief could be circumvented if an exemption from the import relief is granted for this product.

Cultivated Specialty Mushrooms

As discussed in greater detail above, cultivated specialty mushrooms priced below $3.00 per pound do compete with the domestic product.

The French Mushroom Canning Association [28] estimates that U.S. imports of canned cultivated specialty mushrooms could increase as much as 15 percent in the absence of the current relief.[29] According to this estimate, imports of canned cultivated specialty mushrooms could increase to 262,000 pounds in 1983.[30]

Customs reports that cultivated specialty mushrooms will be easy to identify despite the fact that they belong to the *Agaricus* genus because the imports have entered in such large quantities over recent years that Customs agents have become quite familiar with their appearance.

As discussed above, exemption of canned cultivated mushrooms would lead to circumvention if a sufficiently high price break were not established in order to prevent circumvention.

Straw and Certain Other Oriental Mushrooms

As noted above, whole straw and certain other oriental mushrooms imported in containers of 9 ounces or less do not compete with the domestic product. Whole straw and other oriental mushrooms imported in containers larger than 9 ounces, as well as such mushrooms chopped or sliced in containers of any size, do compete.

An estimate for future imports of canned straw mushrooms, if exempted from the relief, is based on the volume growth of imports from 1979 to 1980. If all straw mushrooms are exempted, imports could be expected to reach 4.7 million pounds in 1983.[31] Imports of straw mushrooms in institutional-size cans compete directly with similarly packaged domestic *Agaricus* mushrooms and are, therefore, expected to take a larger share of this increase if all canned straw mushrooms are exempted.[32] Because of the relatively limited and specialized market in the United States for this product, imports of whole straw mushrooms in retail-size cans will probably not increase if exempted. Further, it is not economically feasible to purchase straw mushrooms in retail-size cans (9 ounces or less) for institutional use.

An estimate for future imports of other oriental mushrooms (golden, oyster, and summer oyster), if exempted from the relief, is based on the average annual volume of growth of imports from 1978 to 1980. If these oriental mushrooms are exempted, imports could be expected to reach 1.1 million pounds in 1983.[33] Because these canned mushrooms compete with canned domestic *Agaricus* mushrooms in the same way as canned straw mushrooms, similar conclusions can be drawn regarding imports of institutional and retail-size containers.

Conclusion

On the basis of the information before the Commission in this investigation, it is our judgment that termination of the import relief presently in effect with respect to frozen battered and frozen breaded mushrooms, wild specialty mushrooms,[34] cultivated specialty mushrooms [35] valued at over $3.00 per pound (drained weight), and straw and certain other oriental mushrooms [36] imported whole in airtight containers of 9 ounces or less (drained weight) will not have an adverse economic effect on the domestic industry currently benefiting from the above import relief. However, it is also our judgment that termination of the import relief presently in effect with respect to cultivated specialty mushrooms valued at $3.00 or less per pound (drained weight), and straw and other oriental mushrooms, imported whole in airtight containers larger than 9 ounces, or imported sliced or chopped in containers of any size will have a significant adverse economic effect on the domestic industry.[37] We therefore recommend that portions of the current tariff relief be terminated as indicated herein.

Issued: September 11, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-28429 Filed 9-29-81; 8:45 am]

BILLING CODE 7020-02-M

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[27] Id., p. A-28.

[28] This association represents most producers of canned cultivated specialty mushrooms.

[29] Staff report, p. A-29.

[30] Id., p. A-29.

[31] Staff report, p. A-33.

[32] Id., p. A-33.

[33] Id., p. A-33.

[34] These mushrooms are of the following type and genera: chanterelle (*Cantharellus*), cepe (*Boletus*), morel (*Morchella*), and mixed mushrooms (*Boletus luteus, Lactarius deliciosus, Rozites caperata, Suillus grevillei,* and *Suillus granulatus*).

[35] These mushrooms are champignon de Paris (*Psalliota*).

[36] These mushrooms are of the following type and genera: straw mushrooms (*Volvariella volvocea*), golden mushrooms (*Flammulina voletipes*), Oyster mushrooms (*Pleurotus ostreatus*), and summer oyster mushrooms (*Pleurotus abalon*).

[37] Presidential Proclamation No. 4801 (45 FR 72817 (1980)) set forth the import relief for the domestic industry producing mushrooms, prepared or preserved, provided for in TSUS item 144.20. That import relief is scheduled to terminate on Oct. 31, 1983, unless earlier suspended, modified, or terminated by the President pursuant to sec. 203(h)(3) of the Trade Act of 1974.

[Investigation No. 337-TA-95]

Certain Surface Grinding Machines and Literature for the Promotion Thereof; Commission Request for Comments Regarding Proposed Termination of Respondents Based on Consent Order Agreements

AGENCY: International Trade Commission.

ACTION: A request for public comment on the proposed termination of two respondents based on consent order agreements.

SUMMARY: The consent order agreements would result in the termination of the investigation as to respondents Sigma Machinery, Inc. and Ramco Machinery Sales, Inc. This notice requests comments from the public on the proposed termination.

DATES: Comments will be considered if received within thirty (30) days of the date of publication of this notice. Comments should conform with § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), and should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION: Complainant Brown and Sharpe Manufacturing Company respondents Sigma and Ramco, and the Commission investigative attorney have moved jointly in separate motions for termination of this investigation as to those respondents on the basis of consent order agreements. On August 17, 1981, the presiding officer recommended that the joint motions be granted.

Notice of the institution of the investigation was published in the **Federal Register** of January 22, 1981 (46 FR 7107).

Settlement Agreements: The two proposed consent orders, which are

identical except for the difference noted, provide in pertinent part as follows:

I. It Is Ordered That: Respondent * * * refrain from importing or buying, Surface Grinding Machines into the United States directly or indirectly from Taiwan or other countries of the type and style which

(a) are reproductions, copies, colorable imitations, or simulations * * * under the designations "510", "612", "618", "818", "824", "1024", "1030", "1224", and "1236" or

(b) are of the type or style offered for sale heretofore by Lian Feng Machine Co. of Taiwan, China, under the designations "612", "618", "718" and "818" and/or those identified in Exhibit 14 attached to BROWN & SHARPE Complaint in this investigation. Respondent * * * will refrain from selling, leasing or otherwise transferring all Surface Grinding Machines in the preceding sentence that were imported into the United States after July 15, 1981 or after the effective date of this order, whichever occurs first.

Respondent * * * shall

(a) refrain from copying, reprinting, using, selling or distributing * * * copies of manuals, catalogs, brochures or other printed material prepared or owned by BROWN & SHARPE and bearing a BROWN & SHARPE copyright notice

(b) refrain from using or distributing for use any BROWN & SHARPE manual, catalog, or other printed material, or copies thereof in whole or in part, whether or not protected by copyright * * *

(c) refrain from using photographs of BROWN & SHARPE MFG. CO. Surface Machines * * * to market Surface Grinding Machines except those of BROWN & SHARPE

(d) refrain from using BROWN & SHARPE, Micromaster, B&S or other registered trademarks of BROWN & SHARPE * * * except in connection with the sale of BROWN & SHARPE products;

(e) refrain from using any name, language, picture, or combination thereof which implies, suggests or creates an impression that respondent is selling Surface Grinding Machines made by BROWN & SHARPE MFG. CO. * * *

II. It Is Further Ordered That: Respondent shall file a report under oath with the Commission within thirty (30) days of the anniversary date of the effective date of this order and annually for two (2) years thereafter indicating whether or not it is complying with Section I of this order and attaching copies of photographs, brochures, or advertising material it is using in connection with the sale of Surface Grinding Machines.

III. It Is Further Ordered That: Respondent notify the Commission at least 30 days prior to any proposed material change in the organization of RAMCO, including dissolution, assignment or sale, the creation of subsidiaries or their dissolution, or any other change which may affect compliance obligations arising out of the order.

IV. It Is Further Ordered That: In determining whether there has been compliance with the requirements and prohibitions of this Consent Order, the Commission may consider evidence of any activity engaged in by Respondent which is brought to its attention or of which it becomes aware.

For the purposes of securing compliance with this Consent order, Respondent shall retain any and all records relating to the importation, sale or distribution of Surface Grinding Machines made and received in the usual and ordinary conduct of their business, * * * for a period of one (1) year from the close of the fiscal year to which they pertain, and in summary form for a period of two (2) years from the close of the fiscal year to which they pertain from which compliance with this order may be determined.

For the purpose of determining or securing compliance with this Consent Order * * * authorized representatives of the Commission shall, upon reasonable written notice by the Commission or its staff to Respondent, be permitted:

a. Access to and the right to inspect and copy in Respondent's principal office during the office hours of Respondent, and in the presence of counsel or other representative if Respondent chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents * * *

b. Subject to the reasonable convenience of Respondent and without restraint or interference from it, to interview officers, directors, agents, partners or employees of Respondent who may have counsel present, regarding any of the matters contained in this Consent Order.

In paragraph 3 (III), the Commission consent order with Ramco Machinery Sales, Inc. includes the following:

This requirement shall terminate upon expiration of the reporting period referred to in paragraph II above.

Written Comments Requested: In order to discharge its statutory obligation to consider the public interest, the Commission seeks written comments from interested persons regarding the effects of terminating this investigation as to respondents Sigma and Ramco on the basis of consent order agreements on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers. All written comments must be filed with the Secretary to the Commission no later than October 30, 1981. In addition, pursuant to 19 CFR 210.14(a)(2), the Commission has requested comments from the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service.

Additional Information: The original and 19 copies of all written submissions must be filed with the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request *in camera* treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection at the Secretary's office.

FOR FURTHER INFORMATION CONTACT: Clarease E. Mitchell, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-0148.

Issued: September 22, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-28424 Filed 9-29-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-94]

Certain Wet Motor Circulating Pumps and Components Thereof; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Termination of investigation No. 337-TA-94, Certain Wet Motor Circulating Pumps and Components Thereof.

SUMMARY: The parties to this investigation have filed a joint motion to terminate on the basis of a settlement agreement. After reviewing the record, the Commission has voted to terminate the investigation.

SUPPLEMENTARY INFORMATION: In connection with the Commission's investigation under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) of alleged unfair methods of competition and unfair acts in the importation into or sale in the United States of certain wet motor circulating pumps and components thereof, the complainant, Taco, Inc., and the respondents, Grundfos A.S., Grundfos Pumps, Inc., and Curtis V. Givan, filed a joint motion (motion No. 94–39) to terminate this investigation on the basis of a settlement agreement.

Notice of the pendency of the motion to terminate along with the text of the settlement agreement (with confidential information deleted) was published in the **Federal Register** on July 29, 1981 (46 FR 38793). By the terms of the notice, all comments were to be received by the Secretary to the Commission no later than July 28, 1981. No comments opposed to termination of the investigation were received.

Reconsideration: Any party wishing to petition for reconsideration of the Commission's action must do so within 14 days of service of the Commission's Action and Order. Such petitions must be in accord with § 210.157 of the Commission's rules (46 FR 17530).

Public Access to Record: Copies of the Commission's Action and Order and any other public document on the record of this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20463, telephone 202–523–1693.

Issued: September 22, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81–28426 Filed 9–29–81; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–3]

Doxycycline; Motion To Modify Exclusion Order

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received a motion to modify the exclusion order issued at the conclusion of the above-captioned investigation. In conformity with § 211.57 of the Commission's Rules of Practice and Procedure (46 FR 17533, March 18, 1981), the motion and this notice will be served on each former party to the investigation. Within 30 days of such service, any former party served may file an answer to the motion.

DATES: Answers to the motion will be considered if received within 30 days of service upon the former party. Answers should conform with § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), and should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION: On April 12, 1979, the Commission issued an order excluding the importation into the United States of doxycycline falling within claim 10 of U.S. Letters Patent 3,200,149 for the remaining term of the patent except under license. That order is now in force.

On September 2, 1981, Agvar Chemicals, Inc., filed a motion with the Commission seeking modification of the doxycycline exclusion order to permit the importation of small quantities of doxycycline to be used for testing or research purposes required to obtain Food and Drug Administration certification under 21 U.S.C. 357, and not for sale to the consuming public.

FOR FURTHER INFORMATION CONTACT: N. Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436; telephone 202–523–0311.

Issued: September 23, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81–28432 Filed 9–29–81; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 332–131]

Institution of Investigation for the Conversion of the Tariff Schedules of the United States into the Nomenclature Structure of the Harmonized System

AGENCY: International Trade Commission.

ACTION: Institution of investigation for the conversion of the Tariff Schedules of the United States into the nomenclature structure of the Harmonized System.

SUMMARY: The United States International Trade Commission (hereinafter "the Commission") hereby gives notice of investigation No. 332–131, initiated upon the request of the President of the United States to serve as the basis for the preparation of a conversion of the Tariff Schedules of the United States into the nomenclature structure of the Harmonized Commodity Description and Coding System (Harmonized System).

EFFECTIVE DATE: September 11, 1981.

FOR ADDITIONAL INFORMATION CONTACT: Mr. Eugene A. Rosengarden, Director, or Mr. Holm Kappler, Deputy Director, Office of Tariff Affairs, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436; telephone (202) 523–0370 or 0362.

SUPPLEMENTARY INFORMATION: In response to a request dated August 24, 1981, by the President of the United States, the U.S. International Trade Commission has instituted an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of serving as a basis for the preparation of a conversion of the Tariff Schedules of the United States into the nomenclature structure of the Harmonized System. The full text of the request is as follows:

"Dear Mr. Chairman: As you know, the Harmonized System Committee of the Customs Cooperation Council has substantially completed the technical work on the Harmonized Commodity Description and Coding System (Harmonized System) being developed for international use as a standard system of classifying products for both tariff and foreign trade statistical purposes.

I believe that the use of the Harmonized System by all countries for customs tariff and international trade statistical reporting could result in major benefits both to the United States and our trading partners.

In order to fully assess the impact of United States adoption of the Harmonized System, I request the Commission to undertake an investigation under section 332(g) of the Tariff Act of 1930 to serve as the basis for the preparation of a conversion of the Tariff Schedules of the United States into a nomenclature structure of the Harmonized System, in accordance with the attached guidelines.

In view of the international timetable for implementation of the Harmonized System by January 1, 1985, the Commission's report, including the converted U.S. tariff schedules, should be submitted as soon as possible but no later than June 30, 1983.

Sincerely,

Ronald Reagan.

Guidelines for Converting the Tariff Schedules of the United States to the Harmonized System

1. In converting the tariff schedules the Commission should avoid, to the extent practicable and consonant with sound nomenclature principles, changes in rates of duty on individual products. However, the

U.S. tariff structure should be simplified to the extent possible without rate changes significant for U.S. industry workers, or trade. Within these guidelines, the Commission should suggest modifications to the rate structure which, in the Commission's judgment, would alleviate administrative burdens on the Customs Service.

2. The final concession rates negotiated in the Multilateral Trade Negotiations (MTN) should be used as the basis for the proposed column 1 rates of duty. Adjustments concerning the staging of column 1 rates of duty and status of the converted tariff items under the Generalized System of Preferences will be made when, and if, the revised schedules become effective. In addition, references to units of measurement should be reflected in metric units.

3. With the converted schedules the Commission should submit a report on the probable effect of their adoption on U.S. industries workers, and trade. The Commission's report should also identify all known changes in rates of duty which would result from adoption of the converted schedules. At an appropriate time during its deliberations, the Commission should hold public hearings to obtain the views of interested parties.

4. Since the tariff conversion will affect programs for the collection of statistical data on trade, the Commission in preparing the converted schedules and proposed statistical subdivisions thereof should work closely with the Bureau of the Census and the U.S. Customs Service to insure improvements in the levels of statistical comparability, in the usefulness of trade data and the continuity of statistical series.

5. In preparing the converted tariff schedules, consultations should be held with the U.S. Trade Representative's Office so that, to the extent possible, policy matters regarding the conversion can be brought to the attention of the Administration prior to submission of the Commission's final report and conversion.

6. Finally, the Commission in undertaking this task should avail itself of the expertise and services of other agencies of the Executive Branch, particularly the Bureau of the Census and the U.S. Customs Service. I am therefore requesting the agencies to cooperate fully with the Commission in expediting completion of its work.

Chapters 25, 27, 44–55, 68–71, and 84–89 of the TSUS converted into the nomenclature structure of the Harmonized System will be published for comment on or about January 18, 1982 with public hearings thereon beginning on or about March 15, 1982. Chapters 1–14, 28, 29, 37, 42, 61–63, 74–82, and 90–92 of the conversion will be published for comment on or about August 9, 1982 with public hearings thereon beginning on or about October 4, 1982. Finally, chapters 15–24, 26, 30–36, 38–41, 43, 56–60, 64–67, 72, 73, 83, and 93–97 of the conversion will be published for comment on or about February 28, 1983 with public hearings thereon beginning on or about May 2, 1983. Appropriate public notice will be issued with respect to such hearings and the publication of such chapters.

Issued: September 16, 1981.

By order of the Commission.

Kenneth Mason,

Secretary.

[FR Doc. 81-29425 Filed 9-29-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-80 (Preliminary)]

Lamb Meat From New Zealand; Preliminary Countervailing Duty Investigation

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation.

EFFECTIVE DATE: September 21, 1981.

SUMMARY: On September 21, 1981, the Commission was notified by the Department of Commerce that, in accordance with section 702 of the Tariff Act of 1930 (19 U.S.C. 1671a), it was commencing an investigation to determine whether the government of New Zealand offers its exporters, producers, and processors of lamb meat benefits that qualify as subsidies within the meaning of the Act. Accordingly, effective September 21, 1981, the Commission, pursuant to section 703(a) of the Act (19 U.S.C. 1671b(a)), instituted preliminary countervailing duty investigation No. 701-TA-80 (Preliminary) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from New Zealand of lamb meat, provided for in item 106.30 of the Tariff Schedules of the United States, upon which bounties or grants are alleged to be paid. The Commission must make its determination in the investigation within 45 days after the date on which the notice of investigation was received from the Department of Commerce, or by November 5, 1981 (19 CFR 207.17). The investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207, 44 FR 76457), and particularly subpart B thereof.

FOR FURTHER INFORMATION CONTACT: Patrick J. Magrath, Office of Investigations (202-523-0283).

SUPPLEMENTARY INFORMATION:

Background. On April 23, 1981, a petition was filed with the Department of Commerce by counsel for the National Wool Growers Association, Inc., Salt Lake, Utah, alleging that imports of lamb meat from New Zealand are being subsidized within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303). The National Lamb Feeders Association, Inc., Menard, Texas, became a copetitioner on May 12, 1981. As New Zealand was not at that time a "country under the Agreement" within the meaning of section 701(b) of the Act (19 U.S.C. 1671(b)), there was no requirement for the petition to be filed with the Commission pursuant to section 702(b)(2) and no requirement for the Commission to conduct a preliminary material injury investigation pursuant to section 703(a).

On September 17, 1981, however, the United States Trade Representative announced that New Zealand had become a "country under the Agreement" (46 FR 46263). Accordingly, Commerce terminated its investigation under section 303, initiated an investigation under section 702, and notified the Commission of its action.

Written subcommissions. Any person may submit to the Commission on or before October 23, 1981, a written statement of information pertinent to the subject matter of this investigation. A signed original and nineteen copies of such a statement must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10:00 a.m., e.d.t., on October 16, 1981, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for this investigation, Mr. Lynn Feathertone (202-523-0242). It is anticipated that parties in support of the petition for countervailing duties and parties opposed to the petition will each be collectively allocated one hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by the supervisory investigator.

Inspection of the petition. A copy of the petition filed with the Department of Commerce in this case is available for public inspection at the Office of the Secretary, International Trade Commission.

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12).

Issued: September 24, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-28434 Filed 9-29-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-132]

Relationship of Exports in Selected U.S. Service Industries to U.S. Merchandise Exports

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), the Commission has instituted, on its own motion, investigation No. 332-132 for the purpose of gathering and presenting information on the relationship between the exports of selected U.S. service industries and U.S. merchandise exports. Specifically, the Commission will investigate the level of product exports generated by selected service industries, to include air transportation, computer services, construction and engineering, educational services, equipment leasing services, financial services, franchising, health services, hotel and motel services, telecommunications, and transportation and related services; the implications of international service trade barriers to U.S. goods-producing industries; and the nature of product movements in international markets and foreign shipments of merchandise attributed to existing U.S. services trade.

EFFECTIVE DATE: September 16, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Brookhart (telephone 202-523-0275), Office of Industries, International Trade Commission, Washington, D.C. 20436.

Written Submissions: While there are no public hearings currently scheduled for this study, parties wishing hearings may so request. Written submissions from interested parties are invited. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission in this study, written statements should be submitted at the earliest practicable date, but no later than March 15, 1982. All submissions and other correspondence related to this investigation should be addressed to the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

Issued: September 21, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-28428 Filed 9-29-81; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Harvey Hubbell, Inc.; Ohio Brass Co.; and O.B. Merger Co.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement (CIS), as set forth below, have been filed with the United States District Court in Bridgeport, Connecticut in *United States v. Harvey Hubbell, Incorporated, et al.*, Civil Action No. N-78-292. The Complaint in this case alleged that Harvey Hubbell's acquisition of the Ohio Brass Co., violated Section 7 of the Clayton Act (15 U.S.C. 18) in that the effect of the acquisition may be substantially to lessen competition in the manufacture and sale of underground power distribution equipment.

The proposed Final Judgment requires Hubbell to divest, as an ongoing business, a manufacturing facility and other assets used to manufacture eleven specified custom underground power distribution products. Hubbell must accomplish the divestiture within twelve months of the entry of the Judgment, otherwise a Trustee will be appointed to accomplish the divestiture. Hubbell is also injoined for a period of five years from using the trade name "Ensign" or "Ensign Electric," in connection with its sale of any of the eleven specified products. Hubbell is also enjoined and restrained for a period of ten years from acquiring or merging without the prior written consent of the Government with anyone engaged in the manufacture or sale of underground power distribution products.

Public comment is invited within the statutory sixty (60) day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice, Room 3630, New York, New York 10278.

Joseph H. Widmar,

Director of Operations.

U.S. District Court, District of Connecticut

United States of America, Plaintiff, v. *Harvey Hubbell, Incorporated, the Ohio Brass Company, and the OB Merger Company*, Defendant.

Civil Action No. N-78-292.

Filed: September 17, 1981.

Entered:

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. Section 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff: William F. Baxter, *Assistant Attorney General.* Mark P. Leddy, Ralph T. Giordano, *Attorneys, Department of Justice.*

For the Defendants:

Simpson Thacher & Bartlett, Charles E. Koob, Gary A. Kimmelman, Bruce E. Repetto, *Attorneys, Department of Justice, Antitrust Division, 26 Federal Plaza, New York, New York 10278, Telephone: (212) 264-0600.*

U.S. District Court, District of Connecticut

United States of America, Plaintiff, v. *Harvey Hubbell, Incorporated the Ohio Brass Company, and the OB Merger Company*, Defendants

Civil Action No. N78-292.

Final Judgment.

Filed: September 17, 1981.

Plaintiff, United States of America, having filed its complaint herein on August 25, 1978, and the defendants, Harvey Hubbell Incorporated, The Ohio Brass Company and The OB Merger Company, having appeared and filed their answer to the complaint denying the material allegations thereof, and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of or finding on any issue of fact or law herein, and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein,

Now, therefore, before the taking of any testimony and upon the consent of the parties hereto, it is hereby

Ordered, adjudged and decreed, as follows:

I

This Court has jurisdiction of the subject matter of this action and the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Act of Congress of October 15, 1914, commonly known as the Clayton Act (15 U.S.C. 18), as amended.

II

As used in this Final Judgment:

(A) "Hubbell" means Harvey Hubbell, Incorporated and each of its subsidiaries;

(B) "Ensign" means the Ensign Electric Division of Hubbell;

(C) "Underground Power Distribution Products" means those 11 products listed in the attached Schedule A, which products are used primarily by coal mining companies for underground mines to transmit, utilize, regulate and distribute electrical power in connection with the use of underground mining equipment;

(D) "Person" means any individual, partnership, firm, corporation, association or any other business or legal entity;

(E) "Eligible Purchaser" means any one or more persons proposing to purchase the assets listed in the attached Schedule A as an ongoing business, to which the plaintiff after notice pursuant to Section IX of this Final Judgment does not object, or if the plaintiff does object, of which the Court approves.

III

The provisons of this Final Judgment shall apply to the defendants, and to each of their directors, officers, employees, agents, subsidiaries, partnerships, successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

(A) Hubbell is hereby ordered and directed to divest, as an ongoing business, to an Eligible Purchaser within 12 months of the date of entry of this Final Judgment all of its rights, title, interest and obligations in the assets listed in the attached Schedule A. Divestiture shall be accomplished in such a way as to reasonably ensure that the assets can be operated by the Eligible Purchaser as a viable ongoing business engaged in the manufacture and sale of underground power distribution products in the United States.

(B) With the prior written approval of the plaintiff, and at the request of a prospective Eligible Purchaser, Hubbell may sell to it, as an ongoing business, less than all of the assets listed in the attached Schedule A. In the event that the plaintiff approves the sale to an Eligible Purchaser pursuant to this paragraph (B) such sale shall fully discharge the obligations of Hubbell under Section IV of this Final Judgment.

(C) At the request of a prospective Eligible Purchaser, Hubbell may, in addition to those assets listed in the attached Schedule A, sell to such Eligible Purchaser any other assets of Ensign.

V

If Hubbell does not comply with Section IV above within 12 months from the date of entry of this Final Judgment, the Court shall, on application of the plaintiff on notice to Hubbell with an opportunity to be heard, appoint a trustee for the purpose of effecting said divestiture in accordance with the provisions of this Final Judgment. The Trustee shall serve at the cost and expense of Hubbell on such terms and conditions as the Court may set.

VI

In accomplishing the divestiture ordered by Section IV of this Final Judgment, Hubbell shall make known, by usual and customary means, including periodic advertising as appropriate, the availability of the assets listed in the attached Schedule A for sale as an ongoing business. Hubbell shall notify any person expressing an interest in purchasing the assets listed in the attached Schedule A that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Hubbell shall also furnish to all bona fide prospective Eligible Purchasers who so request, all necesary information regarding the assets listed in the attached Schedule A, as well as the operations of Ensign and shall permit them to make such inspection as may be necessary.

VII

At the option of an Eligible Purchaser, Hubbell shall use its best efforts to provide it with such engineering, installation, marketing, and supply information as may be reasonably necessary to enable it to operate the assets listed in the attached Schedule A as a viable, ongoing business. At the option of an Eligible Purchaser, Hubbell shall also provide it with the name and address of each officer and employee of Ensign together with the job description, annual compensation, accrued sick leave, and accrued vacation pay of each.

VIII

Hubbell shall release, free and clear, from any employment contract any officer or employee whose primary responsibilities involve the design, manufacture, marketing, distribution, sale or repair of any of the 11 products listed in the attached Schedule A, who requests such a release in order to become associated with the Eligible Purchaser which, pursuant to this Final Judgment, acquires the assets listed in the attached Schedule A. That Eligible Purchaser shall have the right, but not the obligation, to offer employment to any such officer or employee.

IX

Thirty days after the date of entry of this Final Judgment and every 30 days thereafter until Hubbell has complied with Section IV above, Hubbell shall submit written reports to the plaintiff, describing the steps which have been taken to comply with this Final Judgment. Each report shall include the name and address of each person who, during the preceding 30 days, made an offer, expressed a desire, or entered into negotiations to acquire the assets listed in Schedule A together with full details of same.

At least 60 days prior to the closing date of any divestiture made pursuant to Section IV of this Final Judgment, Hubbell or the Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of the proposed divestiture. If a Trustee is responsible, it shall similarly notify Hubbell. The notice shall set forth the details of the proposed transaction and list the name and address of each person not previously reported who offered or expressed a desire to acquire the assets listed in Schedule A, together with full details of same. Within 30 days thereafter, the plaintiff may request additional information concerning the proposed divestiture. Within 30 days days after receipt of the notice or within 30 days after receipt of the additional information, the plaintiff shall notify Hubbell and the Trustee, if there is one, in writing, if it objects to the proposed divestiture. If the plaintiff does not object within the periods specified, then the divestiture may be consummated. Upon objection by the plaintiff, the proposed divestiture shall not be consummated unless approved by the Court. If there is a Trustee, the Court shall provide Hubbell with the opportunity for a hearing on the proposed divestiture should Hubbell raise an objection within 30 days after the Trustee has furnished Hubbell notice of the sale.

X

The provisions of the Stipulation and Order (the "Hold Separate Order") entered on August 28, 1978 shall remain in effect until the divestiture ordered by Section IV of this Final Judgment is consummated.

XI

Hubbell is enjoined and restrained for a period of 10 years from the date of entry of this Final Judgment from acquiring any of the assets or stock of, or from merging with, any person engaged in whole or in part in the manufacture or sale of underground power distribution products without the prior written consent of the plaintiff.

XII

Hubbell is enjoined and restrained for a period of 5 years from the date of divestiture pursuant to this Final Judgment from using the trademark "Ensign" or the trade name "Ensign Electric" in any form in conjunction with the manufacture, distribution or sale of any product which is listed in the attached Schedule A and is divested pursuant to this Final Judgment.

XIII

Nothing contained in this Final Judgment shall be deemed to prohibit Hubbell from accepting and enforcing a bona fide lien, mortgage, deed of trust or other form of security interest received by Hubbell to secure full payment of the consideration for which the assets listed in the attached Schedule A are divested. If Hubbell, by enforcement or settlement of any such bona fide lien, mortgage, deed of trust or other form of security interest, reacquires ownership, possession or control of any asset included in Schedule A, it shall promptly notify the plaintiff in writing, and shall dispose of such asset within 12 months from the date of reacquisition in accordance with the terms of this Final Judgment.

XIV

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Hubbell at its principal office in Orange, Connecticut, be permitted:

(1) Access during office hours of Hubbell to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and any other records and documents in the possession or under the control of Hubbell relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Hubbell and without restraint or interference from it, to interview the officers, employees and agents of Hubbell, who may have counsel present, regarding such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to Hubbell at its principal office in Orange, Connecticut, Hubbell shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information or documents obtained by the means provided in this Section XIV shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law. If at the time information or documents are furnished by Hubbell to the plaintiff, Hubbell represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Hubbell marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by the plaintiff to Hubbell prior to divulging such material in any legal proceeding (other than a Grand Jury Proceeding) to which Hubbell is not a party.

XV

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XVI

Entry of this Final Judgment is in the public interest. Dated:

_____,

United States District Judge.

Schedule A

This Schedule A is annexed to and made part of the Final Judgment in Civil Action No. N78-292.

(A) All of the tangible and intangible assets held or used by Hubbell in connection with the design, manufacture, marketing, distribution, sale, repair and rework of the eleven (11) Ensign products specifically listed below, including, but not limited to, blueprints, designs, specifications, patents, patent applications, goodwill, licenses, know-how, tooling, furniture, machinery and equipment, work in progress, contracts, inventory, and customer and vendor lists, wherever located:

1. Alternating current power center.
2. Direct current power center.
3. Combination power center.
4. Sectionalizing equipment.
5. Distribution center.
6. Underground disconnect, switch house.
7. Circuit breaker.
8. DC breaker, excluding E.J. Contactors.
9. Portable outdoor substation.
10. Portal circuit breaker.
11. Motor starters, excluding E.J. Contactors, centrifugal switches, push buttons, wobble switches and ground check monitors.

Hubbell shall be permitted to use, deplete, or replace any and all inventory in the ordinary course of its business prior to the consummation of the divestiture.

(B) The real estate and structure located in Huntington, West Virginia, known as Ensign Plant No. 1, together with the improvements thereon, and the adjacent parking area.

U.S. District Court, District of Connecticut

United States of America, Plaintiff v. *Harvey Hubbell, Incorporated; the Ohio Brass Company; and the O.B. Merger Company,* Defendants.

Civil Action No. N-78-292.

Competitive Impact Statement.

Filed: September 17, 1981.

The United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)), submits this Competitive Impact Statement in connection with the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On August 25, 1978 the Government filed a civil antitrust complaint under Section 15 of the Clayton Act (15 U.S.C. 25) to prevent and restrain defendants Harvey Hubbell, Incorporated (Hubbell), The Ohio Brass Company (Ohio Brass) and The O.B. Merger Company (OB) from violating Section 7 of the Clayton Act (15 U.S.C. 18). The Complaint states that Hubbell formed a subsidiary, OB, for the purpose of acquiring Ohio Brass by merging it into OB. The Complaint alleges that the effect of this acquisition of Ohio Brass may be substantially to lessen competition in the manufacture and sale of underground power distribution equipment in that: (a) Competition between Hubbell and Ohio Brass in the manufacture and sale of underground power distribution equipment will be eliminated; (b) concentration in the underground power distribution equipment market will be increased; and (c) competition generally in the manufacture and sale of underground power distribution equipment will be lessened. Underground power distribution equipment is defined in the Complaint as "a cluster of products purchased primarily by coal mining companies for installation in mines in order to transmit, utilize, regulate and distribute electrical power in connection with the equipment used in the mining of coal."

The Court's entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe or carry out the Judgment, to modify any of its provisions, to enforce compliance with the Judgment, or to punish violations of any of its provisions.

II

The Events Giving Rise to the Alleged Violation

The Complaint alleges that Hubbell was the leading manufacturer and seller of underground power distribution equipment at the time the Complaint was filed. In 1977, its sales of approximately $17 million of such equipment accounted for approximately 29 percent of total industry sales.

In 1977 total industry sales were approximately $60 million and the market was highly concentrated with the four largest sellers accounting for approximately 70 percent of the sales. The eight largest sellers accounted for approximately 89 percent of the total sales.

The Complaint alleges that Ohio Brass with 1977 sales of approximately $5 million in underground power distribution equipment was the fifth leading seller. Its sales represented 9 percent of total industry sales.

The Complaint alleges that as a result of its acquisition of Ohio Brass, Hubbell's share of the underground power distribution equipment market in the United States would increase to 38 percent, double that of the nearest competitor, and equal to the combined share of its three largest competitors.

Based on information gathered in the course of pretrial discovery, the Government contends the relevant market is slightly narrower than that alleged in the Complaint and consists of custom underground power distribution equipment. In 1977, Hubbell sold $11 million worth of this equipment, or about

27.5 percent of total industry sales of $40 million. Ohio Brass sold $4.2 million in 1977, or about 10 percent of industry sales.

Hubbell is engaged in the manufacture and sale of many products in addition to underground power distribution equipment, including electrical wiring devices, industrial controls, lighting fixtures, insulated wire and cable, and voice and data signal processing equipment. Hubbell had total sales in 1977 of $211 million. Its total assets were valued at $139.3 million in 1976.

Ohio Brass also manufactures and sells many products in addition to underground power distribution equipment, including high voltage porcelain insulators, surge arresters, apparatus bushings, overhead line material, current collectors, rail bonds, switch lubricants, and bronze valves. In 1977 Ohio Brass has total sales of $80 million, and its assets were valued at $36 million.

On the same day that the Complaint was filed, August 25, 1978, the acquisition of Ohio Brass by Hubbell was consummated. On August 28, 1978, a Hold Separate Order, previously stipulated to by the parties was entered. This Order requires Hubbell to maintain its underground power distribution equipment operation separate and distinct from that of Ohio Brass and to take such reasonable action as may be necessary to maintain the economic well being and viability of the respective operations.

III

Explanation of the Proposed Final Judgment

The Government and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Judgment provides that there has been no admission by any party with respect to any issue of fact or law. Under Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the Judgment is conditioned upon a determination by the Court that entry of the Judgment will be in the public interest.

The proposed Final Judgment requires Hubbell to divest, as an ongoing business, a specified list of assets including a manufacturing facility which has been heretofore used to manufacture and sell eleven specified underground power distribution products. The assets to be divested are used by Hubbell to manufacture and sell custom underground power distribution products which, based on information gathered during extensive pretrial discovery, the Government contends is the relevant product market in this litigation. The assets and products are specified in Schedule A to the proposed Final Judgment. These assets comprise approximately 50 percent of the assets and slightly less than 50 percent of the sales of the Ensign Electric Division of Hubbell. The divestiture must be to an eligible purchaser, one approved by the Government or the Court.

The Final Judgment provides that Hubbell, if requested by the prospective eligible purchaser, may divest less than all the assets specified in Schedule A if prior written approval has been obtained from the Government. Such divestiture must be as an ongoing business. If requested by a prospective eligible purchaser, Hubbell, if it chooses, may divest more than the listed assets.

Hubbell must make known, through periodic advertising and other appropriate means, the availability of the assets listed in Schedule A for sale as an ongoing business. At the option of the eligible purchaser, Hubbell must use its best efforts to provide it with such engineering, installation, marketing, and supply information as may be reasonably necessary to enable it to operate such assets as a viable ongoing business. Hubbell must also release from any employment contract any officer or employee whose primary responsibilities relate to the design, manufacture, marketing, distribution, sale, or repair of any of the products involved in the divestiture and who requests such a release in order to become associated with the eligible purchaser.

If Hubbell does not make the required divestiture within 12 months of the entry of the proposed Judgment, the Government may apply to the Court for the appointment of a trustee to effect the divestiture. The trustee shall serve at the cost and expense of Hubbell on such terms and conditions as the Court may set.

Under the proposed Judgment, the provisions of the Hold Separate Order dated August 28, 1978 shall remain in effect until the required divestiture is accomplished.

Hubbell is enjoined for a period of five years from the date of divestiture from using the name Ensign or Ensign Electric in conjunction with the manufacture, distribution or sale of any products for which assets were divested by order of the Judgment. Hubbell is further enjoined and restrained for a period of ten years from the date of the entry of the proposed Judgment from acquiring any of the assets or stock of, or from merging with any person engaged in whole or in part in the manufacture or sale of underground power distribution products without the prior written consent of the Government.

The proposed Judgment also provides means for determining Hubbell's compliance with its terms.

IV

The Competitive Effects of the Proposed Judgment

The proposed Final Judgment is designed to alleviate the alleged anticompetitive effects of the acquisition. The divestiture required by the proposed Judgment will create a new independent entity in the manufacture and sale of custom underground power distribution equipment products in the United States which will compete with Ohio Brass, deconcentrate the market, and enhance competition in the market generally, thus accomplishing the objectives of the lawsuit.

The provision in the proposed Judgment prohibiting Hubbell from acquiring another company in this market for ten years without the consent of the Government will prevent Hubbell from making any anticompetitive acquisitions in this industry for that period of time.

If the Division were certain that the new entrant would need the "Ensign" trademark to compete successfully in this market, it would have insisted that Hubbell divest it. It appears that trademarks are not so essential and that divestment would impose some cost on Hubbell for retooling and could create confusion as to product source as Hubbell could continue to use the mark on its standard product. The five-year prohibition against Hubbell's use of the mark in competing against the new entrant is in effect a hedge against the possibility that trademarks may constitute—despite the Division's current belief to the contrary—a barrier of some significance to a new entrant in the custom underground power distribution market. To the extent that the "Ensign" trademark does confer upon its holder some marketing advantage, the new entrant will have one less obstacle to overcome.

The Government believes that the proposed Final Judgment prevents the occurrence of the anticompetitive effects that would arise from the challenged acquisition, and that therefore the disposition of this proceeding without further litigation is appropriate and in the public interest.

V

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person who believes that the proposed Final Judgment should be modified may submit written comments relating to the proposed Judgment to Ralph T. Giordano, Chief, New York Office, Antitrust Division, U.S. Department of Justice, Room 3630, 26 Federal Plaza, New York, New York 10278, within the 60-day period provided by the Act. These comments and the Government's responses to them will be filed with the Court and published in the **Federal Register**. All such comments will be given due consideration by the Government, which remains free to withdraw its consent to the proposed Judgment at any time prior to its entry. Additionally, the proposed Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for interpretation, modification, or enforcement of its provisions.

VI

Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violation alleged.

Hubbell's Ensign Electric Division operates out of two plants, one producing the custom designed underground power distribution products and the other producing standard shelf products. The latter were not in the relevant product market and thus not part of this case. Since it is feasible to divest only the custom portion of the business, this option seemed the most appropriate.

Since the proposed divestiture encompasses all the products in the relevant

product market and will result in an entity larger than the Rectifier Division of Ohio Brass, the Government does not perceive any clear advantage to requiring the sale of both portions of the business. The relief set forth in the proposed Judgment achieves the objectives of this suit without the need for further litigation and thus the entry of the Judgment is in the public interest.

VI

Remedies Available to Potential Private Plaintiffs

After entry of the proposed Final Judgment, any potential private plaintiff that might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal or equitable relief that it may have had if the Final Judgment had not been entered. Entry of the proposed Judgment in this proceeding will neither impair nor assist the bringing of any such private actions. Under Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Judgment would have no *prima facie* effect in any such lawsuit.

VII

Other Materials

No materials or documents were considered determinative by the Government in formulating the proposed Final Judgment. Consequently, none if being filed pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)).

Dated: 1981, New York, New York.

Respectfully submitted,

Gary A. Kimmelman, Bruce Repetto,

Attorneys, Department of Justice, Antitrust Division, 26 Federal Plaza, Room 3630, New York, New York 10278.

[FR Doc. 81-28235 Filed 9-29-81; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings; Background

Procedures to be followed with respect to meetings conducted by the Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards, which were published October 7, 1980 (45 FR 66535), are renewed by this notice. These procedures are set forth in order that they may be incorporated by reference in future individual meeting notices.

The Advisory Committee on Reactor Safeguards (ACRS) is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements from members of the public to be considered as a part of the Committee's information gathering procedure, they are not adjudicatory hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those pertaining to radiological safety. ACRS full Committee and Subcommittee, meetings are conducted in accordance with sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.)

General Rules Regarding ACRS Meetings

An agenda is published in the **Federal Register** for each meeting. Practical considerations may dictate some alterations in the agenda. The Chairman of the Committee or Subcommittee which is meeting is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incomplete session from one day to the next.

With respect to public participation in ACRS meetings, the following requirement shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. When meetings are held at locations other than Washington, D.C., reproduction facilities are usually not available. Accordingly, 15 additional copies should be provided for use as such meetings. Comments should be limited to safety related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Designated Federal Employee specified in the **Federal Register** notice for the individual meeting in care of the ACRS, NRC, Washington, D.C. 20555. Comments postmarked no later than one calendar week prior to a meeting will normally be received in time for reproduction, distribution and consideration at the meeting.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the beginning of the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee or Subcommittee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call, on the working day prior to the meeting, to the Office of the Executive Director of the Committee (telephone 202-634-3265, ATTN: the Designated Federal Employee specified in the **Federal Register** notice for the meeting) between 8:15 a.m. and 5:00 p.m., Washington, D.C. time.

(d) Questions may be asked only by ACRS Members, Consultants and Staff.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that is not disruptive to the meeting. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information which may be in documents, folders, etc., being used during the meeting. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept.

(f) A copy of the transcript of the open portions of the meeting where factual information is presented will be available at the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges.

Copies of the above-mentioned minutes and transcript will also be placed in the NRC Local Public Document Room, when appropriate, on the same time schedule. The location of the Public Document Room will be indicated in these cases in the individual **Federal Register** notice for the meeting.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of ACRS meetings where this material is being discussed upon confirmation that such

agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that it can be confirmed and a determination made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Employee prior to the beginning of the meeting.

Dated: September 25, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-28471 Filed 9-29-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on October 14, 1981, Room 1118, 1717 H Street, NW., Washington, D.C. The Subcommittee will be briefed by the Division of Human Factors Safety, Office of Nuclear Reactor Regulation on the developments and programs that have been initiated within the Division over the past year. Items for discussion will include the final version of the control room design evaluation guidelines, operator qualifications, and emergency procedures guidelines. Notice of this meeting was published August 21.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, October 14, 1981 at 8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Richard Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST.

Dated: September 25, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-28472 Filed 9-29-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-36]

Combustion Engineering, Inc., Negative Declaration Regarding Expansion at the Hematite, Missouri, Facility; License No. SNM-33

The Nuclear Regulatory Commission (the Commission) is considering amendment of Special Nuclear Material License SNM.33 to permit expansion of Combustion Engineering's Hematite, Missouri, fuel fabrication plant.

The Commission's Division of Fuel Cycle and Material Safety has prepared an environmental impact appraisal of the proposed expansion. On the basis of this appraisal, the Commission has concluded that the environmental impact created by the proposed action would not be significant and does not warrant the preparation of an environmental impact statement, and, accordingly, it has been determined that a negative declaration is appropriate. The environmental impact appraisal is available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. A copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Fuel Cycle and Material Safety.

Dated at Silver Spring, Maryland, this 23rd day of September, 1981.

For the Nuclear Regulatory Commission.

R. G. Page,

Chief, Uranimum Fuel Licensing Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 81-28466 Filed 9-29-81; 8:45 am]

BILLING CODE 7590-01

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The Nuclear Regulatory Commission (the Commission) has issued Amendment No. 41 to Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Haddam Neck Plant (the facility), located in Middlesex County, Connecticut. The amendment is effective as of its date of issuance.

The amendment revised the Appendix A Technical Specifications to permit a one-time natural circulation cooldown test during the 1981 refueling outage with the plant in Mode 3 (Hot Shutdown).

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated September 17, 1981, (2) Amendment No. 41 to License No. DPR-61, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H. Street, N.W., Washington, D.C. 20555 and at the Russell Library, 119 Broad Street, N.W., Middletown, Connecticut 06457. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington,

D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 23rd day of September, 1981.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 81-28467 Filed 9-29-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320 OLA]

Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 2); Modification of Order

I.

Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (collectively, the Licensee) are the holders of Facility Operating License No. DPR-73, which had authorized operation of the Three Mile Island Nuclear Station, Unit 2 (TMI-2) at power levels up to 2772 megawatts thermal. The facility, which is located in Londonderry Township, Dauphin County, Pennsylvania, is a pressurized water reactor previously used for the commercial generation of electricity.

By Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of license requirements was imposed to reflect the condition of the facility following the accident of March 28, 1979, and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility. 45 Fed. Reg. 11282 (February 20, 1980).

II.

The Licensee has undertaken containment entries as part of its maintenance and recovery effort at TMI-2. In order to facilitate certain activities which it needs to conduct within containment, the Licensee applied on August 20, 1981, for approval of a change to the requirement set forth in Technical Specification 3.6.1.3 that it maintain at least one door in each of its containment air locks closed at all times. The change proposed by the Licensee would permit both doors of the containment air locks to be open simultaneously when necessary to permit the passage of tools and equipment, provided that these operations are undertaken in accordance with procedures approved pursuant to the requirements reflected in Technical Specification 6.8.2.

The NRC Staff has prepared a Safety Evaluation of the proposed change in which it has found that the change will give the Licensee needed additional flexibility in the design of tools and equipment for the conduct of activities inside containment and will reduce the exposure of workers by lessening the time spent inside containment assembling such tools and equipment. Based upon its Evaluation, the Staff has concluded that:

(1) Conditions that the Staff will require to be incorporated in the implementing procedures will assure that no significant releases of radioactive materials will occur in the event of an accident,

(2) The proposed change will not result in a significant increase in the probability or consequences of accidents previously considered, nor a significant reduction in a margin of safety, and does not, therefore, involve a significant hazards consideration,

(3) There is reasonable assurance that the activities that would be authorized under the changed Technical Specification can be conducted without endangering the health and safety of the public, and in compliance with the Commission's regulations, and

(4) Approval of the proposed change will not be inimical to the common defense and security or to the public health and safety.

The Staff has further concluded that approval of the proposed change does not authorize a change in effluent types or total amounts nor an increase in power level and will not result in any significant environmental impact. In light of this determination, it has concluded, pursuant to 10 CFR 51.5(d)(4), that the approval of this change does not require the preparation of an ennvironmental impact statement or negative declaration and environmental impact appraisal.

III.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, the Director's Order of February 11, 1980, is hereby modified to incorporate the requested change to Technical Specification 3.6.1.3. The revised Specification is set forth in Attachment A hereto. This action does not amend Operating License No. DPR-73 to incorporate revised Technical Specification 3.6.1.3 therein. The question of whether to amend the License to incorporate the Recovery Mode Technical Specifications, of which Technical Specification 3.6.1.3 is a part, is presently pending before an Atomic Safety and Licensing Board. The Licensee is, however, authorized to act in accordance with the revised requirements reflected in Technical Specification 3.6.1.3.

For further details with respect to this action, see (1) Letter to B. Snyder, USNRC, from G. K. Hovey, Met. Ed/GPU, Technical Specification Change Request No. 29, dated August 20, 1981, (LL2-81-0192); (2) Letter to G. K. Hovey, Met. Ed/GPU, from B. J. Snyder, USNRC, dated September 23, 1981; and (3) the Director's Order of February 11, 1980.

All of the above documents are available for inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at the Commission's Local Public Document Room at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Effective date: September 23, 1981.

Dated at Bethesda, Maryland, this 23 day of September, 1981.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 81-28468 Filed 9-29-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District; Issuance of Amendment to Facility Operating License

The Nuclear Regulatory Commission (the Commission) has issued Amendment No. 62 to Facility Operating License No. DPR-40 issued to Omaha Public Power District (the licensee), which revised the Technical Specifications for operation of the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska. The amendment is effective as of its date of issuance.

The amendment increases the required reactor shutdown margin during cold shutdown conditions.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact

statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 27, 1981, as supplemented August 3, 1981, (2) Amendment No. 62 to License No. DPR-40, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 22d day of September, 1981.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 81-28409 Filed 9-29-81; 8:45 am]

BILLING CODE 7590-01-M

Statement of Policy on Issuance of Uncontested Fuel Loading and Low Power Testing Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of Policy.

SUMMARY: In October 1979 the Commission suspended its policy that permitted the issuance of nuclear power reactor construction permits and operating licenses by the staff in uncontested cases and directed that no such permits or licenses could be issued except upon prior review by the Commission itself. 44 FR 58559 (October 10, 1979). In the past months, the Commission has revised those procedures in a way designed to improve the licensing process. 46 FR 28627 (May 28, 1981). In this issue of the **Federal Register**, the Commission is publishing final rules which retain to the Commission itself the decision of whether or not an applicant will be granted authority for commercial operation, i.e., full power operation. These final rules will permit fuel loading and low power (up to 5 percent of rated power) testing to be authorized by the Director of Nuclear Reactor Regulation after a favorable decision by a Licensing Board in a contested case. This Statement announces the Commission's intention that in future uncontested cases full power operation will be authorized by the Commission. However, in such cases, the Director shall authorize fuel loading and low power testing without the need to obtain prior Commission approval.

Dated at Washington, D.C. this 24th day of September, 1981.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81-28451 Filed 9-29-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-339]

Virginia Electric and Power Co.; Issuance of Amendment to Facility Operating License

The Nuclear Regulatory Commission (the Commission) has issued Amendment No. 12 to Facility Operating License No. NPF-7 issued to the Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Unit No. 2 (the facility) located in Louisa County, Virginia. The amendment is effective as of its date of issuance.

The amendment revises the time required for the licensee to complete the requirements of Item II.D.1 of NUREG-0737. The date for completion of qualification tests of power operated relief valves and safety valves has been revised from July 1, 1981 to July 1, 1982. The amendment also removes a license condition regarding surveillance testing of 125-volt direct current batteries which is no longer applicable to the facility Technical Specification.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 1, 1981; (2) Amendment No. 12 to Facility Operating License No. NPF-7; and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Board of Supervisor's Office, Louisa County Courthouse, Louisa, Virginia 23093 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy of items (2) and (3) may be obtained upon request to the Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 22nd day of September 1981.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch #3 Division of Licensing.

[FR Doc. 81-28470 Filed 9-29-81; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Hearings On United States-Argentina Agreement on Hides and Leather

Correction

In FR Doc. 81-27606 appearing at page 46857, in the issue of Tuesday, September 22, 1981, please make the following change:

On page 46857, third column, third line from bottom of the page, "currently 2% ad volarem" should be changed to read, "currently 1% ad volarem".

BILLING CODE 1505-01-M

SMALL BUSINESS ADMINISTRATION

Gulfstream Capital Corp.; Surrender of License

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration (SBA) Regulations governing Small Business Investment Companies (13 CFR 107.105 (1981)), Gulfstream Capital Corporation, 600 First National Bank Building, Augusta, Georgia 30902, incorporated under the laws of the State of Georgia; has surrendered its License No. 04/04-0195, issued by SPA on February 10, 1981.

Gulfstream Capital Corporation has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above cited Regulation, the license of Gulfstream Capital Corporation is

hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

Dated: September 24, 1981.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 81-28400 Filed 9-29-81; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Company; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.301(c) sets forth the SBA Regulation governing the maximum annual cost of money to small business concerns for Financing by small business investment companies.

Section 107.301(c)(2) requires taht SBA publish from time to time in the **Federal Register** the current Federal Financing Bank (FFB) rate for use in computing the maximum annual cost of money pursuant to § 107.301(c)(1). It is anticipated that a rate notice will be published each month.

13 CFR 107.301(c) does not supersede or preempt any applicable law that imposes an interest ceiling lower than the ceiling imposed by that regulation. Attention is directed to new Section 308(i) of the Small Business Investment Act, added by Section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Effective October 1, 1981, and until further notice, the FFB rate to be used for purposes of computing the maximum cost of money pursuant to 13 CFR 107.301(c) is 14.915% per annum.

Dated: September 24, 1981.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 81-28401 Filed 9-29-81; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the same as the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954].

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

John E. Chapoton,

Assistant Secretary for Tax Policy.

[FR Doc. 81-28386 Filed 9-29-81; 8:45 am]

BILLING CODE 4810-25-M

[Dept. Circular Public Debt Series—No. 31-81]

Treasury Notes of October 15, 1988, Series F-1988

September 23, 1981.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $3,000,000,000 of United States Securities, designated Treasury Notes of October 15, 1988, Series F-1988 (CUSIP No. 912827 MK 5). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated October 14, 1981, and will bear interest from that date, payable on a semiannual basis of April 15, 1982, and each subsequent 6 months on October 15 and April 15 until the principal becomes payable. They will mature October 15, 1988, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other non business day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, October 7, 1981. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, October 6, 1981.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desire, expressed in terms of and annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Non-competitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined

above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a 1/8 of one percent increment, which results in and equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4, must be made or completed on or before Wednesday, October 14, 1981. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, October 9, 1981. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

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,

Acting Fiscal Assistant Secretary.

[FR Doc. 81-28342 Filed 9-29-81; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 189
Wednesday, September 30, 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).

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Federal Energy Regulatory Commission	1
Federal Maritime Commission	2
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National Mediation Board	4
Parole Commission	5, 6
Postal Rate Commission	7

1

FEDERAL ENERGY REGULATORY COMMISSION.

Meeting
September 28, 1981.

TIME AND DATE: 2 p.m., September 30, 1981.

PLACE: Room 9306, 825 North Capitol Street, N.E., Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: *Process Gas Consumers Group, et al.*, v. *U.S. Department of Agriculture, et al.*, D.C. Cir. No. 79-1336.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

[S-1481-81 Filed 9-28-81: 3:51 pm]

BILLING CODE 6450-85-M

2

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 47173, September 24, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., September 30, 1981.

CHANGE IN THE MEETING: Addition of the following item to the open session:

5. Agreement No. 10159-10: Application to modify and restate the American West African Freight Conference Berth Rationalization Agreement.

[S-1482-81 Filed 9-28-81: 4:00 pm]

BILLING CODE 6730-01-M

3

NATIONAL LABOR RELATIONS BOARD.

TIME AND DATE: 9 a.m., Monday, September 28, 1981.

PLACE: Board Conference Room, sixth floor, 1717 Pennsylvania Avenue, N.W., Washington, D.C.

STATUS: Closed to public observation prusuant to 5 U.S.C. 552b (c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invations of personal privacy).

MATTERS TO BE CONSIDERED: Personnel-related matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 20570; Telephone: (202) 254-9430.

Dated: Washington, D.C., September 25, 1981.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[S-1477-81 Filed 9-25-81: 5:07 pm]

BILLING CODE 7545-01-M

4

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 p.m., Wednesday, October 7, 1981.

PLACE: Board Hearing Room, Eighth floor, 1425 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Staff will report on possible amendments to the current NMB Representation Manual.
2. Ratification of Board actions taken by notation voting during the month of September, 1981.
3. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rowland K. Quinn, Jr., Executive Secretary; Tel: (202) 523-5920.

Dated: September 28, 1981.

[S-1483-81 Filed 9-28-81: 4:00 pm]

BILLING CODE 7550-01-M

5

PAROLE COMMISSION.

[1P0401]

TIME AND DATE:
Monday, October 5, 1981—9:00 a.m. to 5:30 p.m.
Tuesday, October 6, 1981—9:00 a.m. to 3:00 p.m.

PLACE: Room 420-F; One North Park Building; 5550 Friendship Blvd., Bethesda, Maryland 20015.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 20 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, Parole Commission, (301) 492-5926.

[S-1479-81 Filed 9-28-81: 2:45 pm]

BILLING CODE 4410-01-M

6

PAROLE COMMISSION.

[OP0401]

National Commissioners (the Commissioners presently maintaining offices at Bethesda, Md., Headquarters)

TIME AND DATE: 9:30 a.m., Friday, September 25, 1981.

PLACE: Room 420-F, One North Park Building, 5550 Friendship Blvd., Bethesda, Maryland 20015.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

CHANGES IN THE MEETING: On September 24, 1981, the Commission determined that the above meeting date be further continued to 9:30 a.m. on Thursday, October 1, 1981, for consideration of case referrals from Regional Commissioners. The above change is being announced at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION:
Linda Wines Marble, Chief Case Analyst, National Appeals Board, Parole Commission, (301) 492–5926.

[S–1480–81 Filed 9–28–81; 8:45 am]
BILLING CODE 4410–01–M

7

POSTAL RATE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, October 1, 1981.

PLACE: Conference Room, Room 500, 2000 L Street, N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket MC78–3. (E–Com). (Closed pursuant to 5 U.S.C. 552b(c)(10).)

CONTACT PERSON FOR MORE INFORMATION: Dennis Watson, Information Officer, Postal Rate Commission, Room 500, 2000 L Street, N.W., Washington, D.C. 20268; Telephone (202) 254–5614.

[S–1478–81 Filed 9–29–81; 2:48 pm]
BILLING CODE 7715–01–M

federal register

Wednesday
September 30, 1981

Part II

Office of the Federal Register

Incorporations by Reference; Approval in Titles 17, 40, and 42 through 50

Title 17 Chapter II—Securities and Exchange Commission

Title 40 Chapter I—Environmental Protection Agency

Title 42 Chapter I—Public Health Service, Department of Health and Human Services
Chapter IV—Health Care Financing Administration, Department of Health and Human Services

Title 45 Chapter XIII—Office of Human Development Services, Department of Health and Human Services

Title 46 Chapter I—Coast Guard, Department of Transportation

Title 47 Chapter I—Federal Communications Commission

Title 49 Subtitle A—Office of the Secretary of Transportation
Chapter I—Research and Special Programs Administration, Department of Transportation
Chapter II—Federal Railroad Administration, Department of Transportation
Chapter III—Federal Highway Administration, Department of Transportation
Chapter V—National Highway Traffic Safety Administration, Department of Transportation

OFFICE OF THE FEDERAL REGISTER

1 CFR Part 51 and CFR Titles 17, 40, 42, 45, 46, 47, and 49

Approval of Incorporations by Reference

AGENCY: Office of the Federal Register.

ACTION: Approval of incorporations by reference.

SUMMARY: The Office of the Federal Register publishes a document listing materials that have been approved by the Director for incorporation by reference. These references appear in Titles 17, 40, and 42 through 50 of the *Code of Federal Regulations* (CFR). This document is published to inform the public of materials that have the Director's approval and have the same legal status as if they were published in full text in the **Federal Register.**

EFFECTIVE DATE: The Director approves the following incorporations by reference for one year effective October 1, 1981, unless otherwise noted.

ADDRESSES: For specific addresses where materials are available, see table. Materials are also on file at the Office of the Federal Register, 1100 L Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Segal, (202) 523–4534.

SUPPLEMENTARY INFORMATION:

Background. Each agency that wishes material incorporated by reference to remain effective must annually submit to the Director a list of that material and the date of its last revision (1 CFR 51.13). The materials included on the table below are incorporated by reference under 5 U.S.C. 552(a) and 1 CFR Part 51. These procedures provide that material approved for incorporation by reference by the Director of the Federal Register has the same legal status as if it were published in full text in the **Federal Register.**

Availability. Before an agency may incorporate by reference any material, it must make the material reasonably available to the class of persons affected by it. Agencies have listed addresses where you can obtain each item included in the table. The materials approved for incorporation by reference are also available for inspection and copying at the Office of the Federal Register, Room 8401, 1100 L St., NW, Washington, DC, phone (202) 523–5240.

Amendments. If the agency wishes to amend material before the annual approval expires, the agency shall publish a notice which announces the amendment and states where the material may be obtained. The agency shall also assure that the material and its amendments are available to the public and on file at the Office of the Federal Register. Unless the agency follows these procedures, the amendments are not approved.

Quarterly Publication. The titles of the CFR are generally revised according to the following schedule:

Title 1 through Title 16—as of January 1.

Title 17 through Title 27—as of April 1.

Title 28 through Title 41—as of July 1.

Title 42 through Title 50—as of October 1.

Every quarter, the Office of the Federal Register publishes a document on incorporation by reference. This quarterly document contains the following information on incorporation by reference. First, it contains a table of materials in the applicable titles that have been reapproved for incorporation by reference under 1 CFR 51.13. Second, the document contains a listing of any materials which were granted extensions under 1 CFR 51.13 review in the last quarter and have since received final approval by the Director of the Federal Register. Third, the document contains any materials approved for incorporation by reference for the first time under Office of the Federal Register general procedures in 1 CFR Part 51. And fourth, the document may contain corrections to previously published incorporation by reference approval documents.

Material which is approved in a timely fashion during the quarterly review process is also listed in the appropriate *Code of Federal Regulations* volume(s).

How the Table is Arranged. The table is arranged first by headings indicating the CFR title and chapter and the name of the agency incorporating the material. Under each of these headings are listed the name of the standards producing organization, a description of the material being incorporated and where it is available, and the CFR part or section where the material is referenced.

Problems. If you have any problems obtaining the material, notify the agency. If you find the material is not available, notify the Director of the Federal Register (NARS), Washington, DC 20408 or call (202) 523–4534.

John E. Byrne,

Director of the Federal Register.

17 CFR, CHAPTER II (PARTS 200 TO 399)
SECURITIES AND EXCHANGE COMMISSION

Securities and Exchange Commission

	17 CFR
Washington, D.C. 20549	
Form 7A	239.96

Copies may be inspected at the Securities and Exchange Commission, Washington, D.C. 20549, and at the Commission's regional and branch offices whose addresses appear at § 200.11 of this chapter.

40 CFR, CHAPTER I (PARTS 0 TO 1399)
ENVIRONMENTAL PROTECTION AGENCY

Environmental Protection Agency

	40 CFR
Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711	
State Implementation Plans: Consisting of Original State Implementation Plans for the fifty States and the territories of Guam, Puerto Rico, Virgin Islands and American Samoa; Regulatory and Non-Regulatory Revisions to State Implementation Plans approved 1972–June 1979 (prepared by Atlantic Environmental Associates, Inc.); and Individual State Implementation Plan Revisions approved July 1979–June 1981, which are identified below by State and Date of publication of the **Federal Register** notice. (The Director of the Federal Register extended the **July 1, 1981, approval** date for 30 days pending final review under 1 CFR 51.13. The list below reflects the SIP's and amendments receiving final approval for one year effective July 1, 1981.).	52.02(d)

Alabama: Nov. 28, 1979, June 3, Aug. 11, 1980, Oct. 31, 1980, April 27, 1981
Alaska: Dec. 30, 1980, April 15, 1981
Arizona: Dec. 17, 1979, Aug. 11, 1980, Oct. 10, 1980
Arkansas: Jan. 29, 1980, Aug. 15, 1980
California: July 30, 1979, Dec. 6, 1979, April 24, 1980 (2 notices), May 9, 1980, May 28, 1980 (2 actions), June 3, 1980, June 4, 1980, Aug. 11, 1980 (2 notices), Sept. 26, 1980, Oct. 24, 1980, Oct. 31, 1980, Nov. 10, 1980, Dec. 4, 1980, Jan. 16, 1981, Jan. 21, 1981, Jan. 27, 1981, April 14, 1981, May 18, 1981 (2 notices)
Colorado: Oct. 5, 1979, July 9, 1980, July 16, 1980, Aug. 1, 1980, March 13, 1981, March 19, 1981, April 30, 1981
Connecticut: July 30, 1979, Dec. 23, 1980, April 27, 1981, May 14, 1981
Delaware: July 30, 1979, March 6, 1980, Aug. 1, 1980, May 15, 1981
District of Columbia: Jan. 4, 1980, March 3, 1980, Jan. 30, 1981
Florida: Feb. 29, 1980, March 18, 1980, Sept. 10, 1980, Nov. 14, 1980, Dec. 16, 1980, March 17, 1981, May 14, 1981
Georgia: Sept. 18, 1979, Jan. 3, 1980, Jan. 24, 1980, March 20, 1981, May 5, 1981, May 22, 1981
Hawaii: Aug. 7, 1979
Idaho: July 30, 1979, Oct. 23, 1980, March 4, 1981
Illinois: Dec. 6, 1979, Jan. 3, 1980, Feb. 21, 1980, Sept. 22, 1980, Oct. 24, 1980, Jan. 27, 1981, March 4, 1981
Indiana: Jan. 2, 1981, May 19, 1981
Iowa: March 6, 1980, March 20, 1981, April 17, 1981
Kansas: April 3, 1981
Kentucky: Jan. 25, 1980, Oct. 31, 1980, Dec. 24, 1980, June 15, 1981
Louisana: Feb. 14, 1980
Maine: Jan. 30, 1980, Feb. 19, 1980, Sept. 9, 1980, Dec. 9, 1980, Jan. 5, 1981, Jan. 22, 1981
Maryland: Dec. 6, 1979, March 18, 1980, April 17, 1980, April 25, 1980, July 3, 1980, Aug. 12, 1980, Aug. 19, 1980, Sept. 3, 1980, Sept. 4, 1980, March 18, 1981
Massachusetts: May 21, 1979, July 16, 1979, Jan. 10, 1980, May 28, 1980, June 17, 1980, Aug. 12, 1980, Sept. 10, 1980 (2 actions), Sept. 16, 1980, Dec. 15, 1980, Jan. 19, 1981, Jan. 27, 1981, March 4, 1981, March 19, 1981
Michigan: May 6, 1980, June 2, 1980, Aug. 11, 1980, Aug. 25, 1980, Dec. 17, 1980, Dec. 29, 1980, Jan. 27, 1981, March 4, 1981, April 17, 1981, May 1, 1981, May 14, 1981, May 22, 1981, June 5, 1981
Minnesota: Dec. 13, 1979, June 16, 1980, March 4, 1981, April 8, 1981
Mississippi: Jan. 10, 1980, July 10, 1980
Missouri: March 18, 1980, April 9, 1980, May 9, 1980, June 16, 1980, Oct. 31, 1980, Dec. 24, 1980, March 16, 1981, April 3, 1981, April 27, 1981, May 22, 1981, June 12, 1981
Montana: March 4, 1980, Sept. 23, 1980, March 3, 1981
Nebraska: (none)
Nevada: Feb. 4, 1980, Feb. 6, 1980, July 10, 1980, April 14, 1981
New Hampshire: April 11, 1980, June 23, 1980, Sept. 9, 1980, Sept. 22, 1980, Dec. 18, 1980
New Jersey: March 11, 1980, April 19, 1980, May 7, 1980, Oct. 31, 1980, April 15, 1981, April 27, 1981, May 12, 1981
New Mexico: April 10, 1980, Dec. 24, 1980, March 26, 1981, June 18, 1981
New York: Feb. 5, 1980, Mar. 6, 1980, April 24, 1980, May 21, 1980, July 1, 1980, Nov. 10, 1980, Jan. 27, 1981 (2 actions), March 19, 1981 (2 actions), April 27, 1981, May 26, 1981
North Carolina: Jan. 10, 1980, April 17, 1980, Aug. 20, 1980, Sept. 10, 1980, March 19, 1981, April 13, 1981, April 16, 1981, May 15, 1981
North Dakota: Nov. 2, 1979, Aug. 12, 1980
Ohio: Oct. 31, 1980 (3 actions), Nov. 28, 1980, Jan. 27, 1981, March 4, 1981, March 31, 1981, May 1, 1981
Oklahoma: Feb. 13, 1980, Nov. 28, 1980, May 26, 1981
Oregon: July 30, 1979, April 18, 1980, June 24, 1980, July 15, 1980, Jan. 2, 1981, March 4, 1981

40 CFR, CHAPTER I (PARTS 0 TO 1399)—Continued
Pennsylvania: July 7, 1979, Aug. 8, 1979, Dec. 17, 1979, May 20, 1980, Aug. 19, 1980
Rhode Island: Jan. 15, 1981, Jan. 21, 1981, May 7, 1981
South Carolina: Sept. 21, 1979, Jan. 29, 1980, July 7, 1980
South Dakota: July 30, 1979, Aug. 9, 1979
Tennessee: Jan. 10, 1980, Feb. 6, 1980, April 24, 1980, Aug. 13, 1980, Nov. 17, 1980
Texas: Sept. 24, 1979, Dec. 18, 1979, March 25, 1980, Aug. 6, 1980
Utah: Feb. 19, 1980, Sept. 10, 1980, May 5, 1981
Vermont: Jan. 30, 1980, Feb. 19, 1980, Sept. 9, 1980, March 18, 1981
Virginia: Dec. 17, 1979, Jan. 31, 1980, Aug. 19, 1980, Oct. 8, 1980 (2 actions), Dec. 5, 1980, March 18, 1981, April 20, 1981
Washington: July 30, 1979, June 5, 1980, July 31, 1980, Dec. 24, 1980, April 15, 1981
West Virginia: Aug. 14, 1980, Nov. 10, 1980
Wisconsin: Jan. 11, 1980, April 9, 1981, April 17, 1981, May 6, 1981, June 9, 1981
Wyoming: July 2, 1979, Sept. 6, 1979, April 27, 1981
Guam: March 6, 1980, May 12, 1981
Puerto Rico: Nov. 3, 1980, April 27, 1981
Virgin Islands: May 2, 1980, April 27, 1981
American Samoa: (none)

	40 CFR
American Society for Testing and Materials 1916 Race St., Philadelphia, PA 19103	
ASTM D 93–80 Flash Point by Pennsky-Martens Closed Tester	261.21(a)(1)
ASTM D 3278–78 Flash Point of Liquids by Setaflash Closed Tester	261.21(a)(1)
National Fire Protection Association Batterymarch Park, Quincy, MA 02269	
Flammable and Combustible Liquids Code, 1981	264.198(b); 265.198(b)
U.S. Environmental Protection Agency Solid Waste Information, 26 W. St. Clair St., Cincinnati, OH 45268	
Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods, 1980	122.25(b)(5); 122.27(b)(1); 261.22(a)(1); 261.22(a)(2); Part 261, Appendix II; Part 261, Appendix III

42 CFR CHAPTER I (PARTS 1–399)
PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

	42 CFR
American Insurance Association Publications Department, 85 John St., New York, NY 10038	
National Building Code, 1976 edition	Part 36, Subpart H, Appendix A(a)
American Nurses' Association 2420 Pershing Road, Kansas City, MO 64108 Also available from Emergency Department Nurses' Association, 666 N. Lake Shore Dr., Chicago, IL 60611	
ANA Publication Code MS–5 10M 9/75 Standards of Emergency Nursing Practice	57.2106(b)(3)(i)
American Society of Heating, Refrigerating and Air Conditioning Engineers United Engineer Center, 345 East 47th Street, New York, NY 10017	
Handbook of Fundamentals, 1977	Part 36, Subpart H, Appendix A(b)(1); 52b.11(b)(1)
American Society of Mechanical Engineers United Engineer Center, 345 East 47th St., New York, NY 10017	
Boiler and Pressure Vessel Code, 1977 edition, with Summer 1980 addendum, Section 8, Division I	Part 36, Subpart H, Appendix A(b)(3)
National Plumbing Code, 1955	Part 36, Subpart H, Appendix A(b)(2)
Compressed Gas Association 500 Fifth Ave., New York, NY 10036	
Pamphlet P–2.1, Standard for Medical-Surgical Vacuum Systems in Hospitals (1967)	52b.11(b)(4)

42 CFR CHAPTER I (PARTS 1-399)—Continued
PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES—Continued

	42 CFR
General Services Administration	
Specifications and Consumer Information, Distribution Section (WFSIS), Washington Navy Yard, Building 197, Washington, DC 20407	
Federal Specification, Ambulance Emergency Care Vehicle, GSA, KKK-A01822A	56a.102—definition of "Ground Vehicles"
General Services Administration, Public Buildings Services	
Office of Design and Construction, 18th & F Sts., NW., Washington, DC 20405	
GSA Accessibility Standard (PBS (PCD): DG6, October 14, 1980)	36.110(b)(10); 51c.503(a)(7)(iii)(A); 52b.8(j)
Health and Human Services Department	
The following documents are available for public inspection and copying at the Central Information Center, Department of Health and Human Services, North Building, 330 Independence Avenue, SW., Washington, DC 20201 and Regional Office Information Centers listed in 45 CFR 5.31 and may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.	
Minimum Requirements of Construction and Equipment for Hospitals and Medical Facilities, DHHS publication No. (HRA) 79-14500.	Part 36, Subpart H, Appendix A. 57.112; 124.201
Chapter 1-420 of the Department of Health and Human Services Grants Administration Manual	51a.512; 66.213(b)(2)(ii); 122.211(c)(2)(ii)
Department of Health and Human Services General Administration Manual, Chapter 9, Committee Management	52h.3(a); 52h.4(a)
Guide for Audits of Migrants Health Grants of the Department of Health and Human Services Audit Agency	56.603(c); 56.303(d)
Chapter 1-43 of the Department of Health and Human Services Grants Administration Manual	66.113(b); 66.210(b); 67.22(b); 86.33(b)
Part 2.1 (except section 5.4, 8.8, 11.2, 11.3, 11.4, Chapter 12, sections 13.2, 13.3, and exhibits 9 and 10) of DHHS Technical Handbook for Facilities Engineering and Construction Manual, Federally Assisted Construction, entitled "2.1 Information for Project Applicants and State Agencies on Design and Construction Related Activities".	110.1005(a)
Chapter 14 of DHHS Publication No. (HRA) 79-15400, Minimum Requirements of Construction and Equipment for Hospitals and Medical Facilities, "Small Primary Health Care Centers," except for the last sentence of paragraph 14.1A, the parenthetical phrase "(usually 4)" in paragraph 14.1B(1) and paragraph 14.1B(3) in its entirety.	110.1005(b)(2)
International Conference of Building Officials	
5360 South Workman Mill Rd., Whittier, CA 90601	
Uniform Building Code, 1979 edition	52b.11(g); 52b.11(a); Part 36, Subpart H, Appendix A(g)
National Association of Plumbing-Heating-Cooling Contractors	
1016 20th St., NW., Washington, DC 20036	
National Standard Plumbing Code, 1980 edition	52b.11(b)(2)
National Council on Radiation Protection and Measurement	
P.O. Box 30175, Washington, DC 20014	
Also available for examination at ALOSH, 944 Chestnut Ridge Rd., Morgantown, WV 26505 and National Institute for Occupational Safety and Health, 5600 Fishers Lane, Rockville, MD 20857	
NCRP Report No. 33, Medical X-ray and Gamma-Ray Protection for Energies Up to 10 MeV—Equipment Design and Use (issued February 1, 1968).	Part 36, Subpart H, Appendix A(f), 37.43; 52b.11(f)
NCRP Report No. 35, Dental X-ray Protection (issued March 9, 1970)	Part 36, Subpart H, Appendix A(f)
NCRP Report No. 36, Radiation Protection in Veterinary Medicine (issued August 15, 1970)	Part 36, Subpart H, Appendix A(f)
NCRP Report No. 48, Medical Radiation Protection for Medical and Allied Health Personnel (issued August 1, 1976)	37.43
NCRP Report No. 49, Structural Shielding Design and Evaluation for Medical Use of X-rays and Gamma-Rays of up to 10 MeV (issued September 15, 1976).	37.43; Part 36, Subpart H, Appendix A(f); 52b.11(f)
National Fire Protection Association	
Batterymarch Park, Quincy, MA 02269	
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42 CFR CHAPTER I (PARTS 1–399)—Continued
PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES—Continued

	42 CFR
NFPA No. 101, 1976, Life Safety Code	Part 36, Subpart H, Appendix A(c), 51c.503(a)(7)(iii)(B) 52b.11(c); 52b.11(d)
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Course Guide, National Training Course, Emergency Medical Technician—Paramedic 1977 (DOT Pub. No. HS 802437)	56a.102—definition of "appropriate training and experience" (3)(ii)
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National Training Course Guide for Emergency Medical Technician—Paramedic, 1977 (DOT Pub. No. HS 802437) Appendices B and C.	57.2106(b)(2)(ii)

42 CFR CHAPTER IV (PARTS 400–499)
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American Hospital Association Available from: Health Care Financing Administration, Office of Management and Budget, Division of Communication Services, Printing and Publishing Branch, Gwynn Oak Building, Baltimore, MD 21235	
Chart of Accounts for Hospitals (1973 Edition)	405.415(b)(7)(i)
American Lung Association (Formerly National Tuberculosis Association) 1740 Broadway, New York, NY 10019	
Diagnostic Standards and Classification of Tuberculosis (1974 Edition)	405.1039(b)(2)
American National Standards Institute Available from Engineering Societies' Library, 345 E. 47th St., New York, NY 10017	
ANSI A117.1–1971 Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People.	405.1134(c); 442.330(a)(2) and (b)
American Psychiatric Association 1700 18th St. NW., Washington, DC 20009	
Diagnostic and Statistical Manual of Mental Disorders (3rd Edition 1980)	405.243(b); 405.1037(a)(12)
Health Care Financing Administration Office of Management and Budget, Division of Communication Services, Printing and Publication Branch, Gwynn Oak Building, Baltimore, MD 21235	
Part 11 of the State Medicaid Manual	433.110; 433.111; 433.112(b)(2)
HCFA Long Term Care Manual	442.323(a)(2)
National Academy of Sciences Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20418	
Recommended Dietary Allowances Current Edition (9th Edition 1980)	405.1025(c)(2); 442.332(a)(1); 442.466(c)
National Fire Protection Association Batterymarch Park, Quincy, MA 02269	
NFPA Standard No. 101, Life Safety Code 1981	405.1022(b); 405.1134(a); 442.321(a); 442.507

42 CFR CHAPTER IV (PARTS 400–499)—Continued
HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES—Continued

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45 CFR CHAPTER XIII (PARTS 1300–1399)
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	45 CFR
National Fire Protection Association	
Batterymarch Park, Quincy, MA 02269	
NFPA 101 Life Safety Code, 1978	1321.123(b); 1328.35(b)
Copies are available for inspection at Administration on Aging, Public Inquiries Room 4146, 330 Independence Ave., SW., Washington, DC 20201	

46 CFR SUBCHAPTER D
COAST GUARD, DEPARTMENT OF TRANSPORTATION

	46 CFR
American Bureau of Shipping	
65 Broadway, New York, NY 10006	
Rules for Building and Classing Steel Vessels, 1981	31.10–1; 32.60–1; 32.65–5; 32.65–40
American Society for Testing and Materials	
1916 Race St., Philadelphia, PA 19103	
ASTM D 93–80—Test for Flash Point by Pennsky-Martens Closed Tester	35.25–10
ASTM D 323–79—Test for Vapor Pressure of Petroleum Products (Reid Method)	30.10–22; 30.10–59
Coast Guard	
G–MMT/12, 2100 2nd St., SW., Washington, DC 20593	
160.14 "Compass and Mounting, dated December 14, 1944" (Specification for Compasses: Magnetic, Liquid-filled, Mariners, Compensating, for Life boats (with mounting) for Merchant Vessels.), 1944.	33.15–10
Naval Publications and Forms Center	
Customer Service Code 1052, 5801 Tabor Ave., Philadelphia, PA 19120	
Federal Specification ZZ–H–451 Hose, Fire, Woven-Jacketed Rubber or Cambric-Lined, with Couplings, F	34.10–10
Inter-Governmental Maritime Consultative Organization	
IMCO Sales, New York Nautical Instrument and Service Corp., 140 W. Broadway, New York, NY 10013	
A.264 (VIII) Carriage of Grain, 1973	31.10–33
National Fire Protection Association	
Batterymarch Park, Quincy, MA 02269	
306 Control of Gas Hazards on Vessels, 1975	35.01–1
Underwriters Laboratories	
333 Pfingsten Rd., Northbrook, IL 60062	
UL 19 Woven Jacketed, Rubber Lined Fire Hose, 1971	34.10–10

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COAST GUARD, DEPARTMENT OF TRANSPORTATION

American Boat and Yacht Council	
P.O. Box 806–190 Ketchum Ave., Amityville, NY 11701	
P–1 Safe Installation of Exhaust Systems for Propulsion and Auxiliary Machinery, 1973	58.10–5
American Bureau of Shipping	
65 Broadway, New York, NY 10006	
Rules for Building and Classing Steel Vessels, 1981	58.01–5; 58.01–5; 58.20–5
American National Standards Institute	
1430 Broadway, New York, NY 10018	
ANSI B1.1–1974—Unified Inch Screw Threads	56.60–1
ANSI B2.1–1968—Pipe Threads	56.60–1
ANSI B16.1–1975—C.I. Flanges and Fittings	56.60–1; 56.60–10; 56.60–15
ANSI B16.3–1977—M.I. Threaded Fittings, 150 and 300 Lb	56.60–1
ANSI B16.4–1977—C.I. Threaded Fittings, 125 and 250 Lb	56.60–1
ANSI B16.5–1977—Steel Pipe Flanges and Pipe Fittings	56.20–1; 56.30–10; 56.60–1; 56.60–15
ANSI B16.9–1978—Steel Butt Welding Fitting	56.60–1
ANSI B16.10–1973—Dimensions of Ferrous Valves	56.60–1

46 CFR SUBCHAPTER F—Continued
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	46 CFR
ANSI B16.11–1973—Forged Steel Fittings, Socket Welded and Threaded	56.30–5; 56.60–1
ANSI B16.14–1977—Ferrous Threaded Plugs Bushings	56.60–1
ANSI B16.15–1978—Cast Bronze Threaded Fittings	56.60–1
ANSI B16.18–1978—Cast Brass Solder-Joints	56.60–1
ANSI B16.20–1973—Ring Joint Gaskets, Steel Flanges	56.60–1
ANSI B16.21–1978—Non-metallic Gaskets for Flanges	56.60–1
ANSI B16.22–1980—Wrought Copper and Bronze Solder Joint Fittings	56.60–1
ANSI B16.23–1976—Cast Bronze Solder-Joint Drainage	56.60–1
ANSI B16.24–1979—Brass or Bronze Flanges and Fittings	56.60–1
ANSI B16.25–1979—Butt-welded Ends—Pipe, Valves, Flanges and Fitting	56.60–1; 56.70–0
ANSI B16.28–1978—Wrought Steel Butt-welded Short-radius Elbows and returns	56.60–1
ANSI B16.29–1980—Wrought Copper and Wrought Copper Alloy-Solder Joint Drainage and Fittings	56.60–1
ANSI B31.1–1980—Power Piping	PART 56
ANSI B31.5–1974—Refrigeration Piping	58.20–5; 58.20–20
ANSI B36.10–1979—Stainless Steel Pipe	56.07–5; 56–30–20; 56–60–1
ANSI B36.19–1976—Stainless Steel Pipe	56.07–5
ANSI B93.5–1979—Recommended Practice for the Use of Fire Resistant Fluids for Fluid Power Systems	58.30–10
ANSI Z21.22–1979—Temperature—Pressure Relief Valves	63.15–30
American Society of Mechanical Engineers United Engineering Center, 1345 E. 47th St., New York, NY 10017	
Boiler and Pressure Vessel Code, Section I, Power Boilers, 1977, with addenda through 1979	Part 52; 56.95–10; 58.30–15; 59.10–5
Section III, Division I, Nuclear Power Plant Components, 1980	Part 52; 56.95–10; 58.30–15; 59.10–5
Section IV, Heating Boilers, 1980	Part 53
Section VII, Care of Power Boilers, 1980	59.01–3
Section VIII, Division I, Pressure Vessels, 1980	Part 54; 56.01–6; 56.30–10; 56.30–30; 56.60–1; 56.95–10; 58.30–15; 59.10–5; 64.5; 64.7; 64.11; 64.21; 64.25; 64.31; 64.61
Section IX, Welding and Brazing Qualifications, 1980	Part 57; 56.70–5; 56.70–20; 56.75–20; 56.85–10; 59.10–5
American Society for Testing and Materials 1916 Race St., Philadelphia, PA 19103	
ASTM A 20–80—Steel Plates for Pressure Vessels	54.25–10
ASTM A 36–77a—Structural Steel	56.30–10
ASTM A 47–77—Malleable Iron Castings	56.60–1
ASTM A 53–80—Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless	56.01–6; 56.10–1
ASTM A 106–80—Seamless Carbon Steel Pipe for High-Temperature Service	56.60–1
ASTM A 126–73—(1981) Gray Iron Castings for Valves, Flanges and Pipe Fittings	56.60–1
ASTM A 134–80—Electric-Fusion (Arc)-Welded Steel Plate Pipe (Sizes 16 in. and over)	56.60–1
ASTM A 135–79—Electric-Resistance-Welded Steel Pipe	56.60–1
ASTM A 139–74—(1981) Electric-Fusion (Arc)-Welded Steel Pipe (Sizes 4 in. and over)	56.50–1
ASTM A 178–79b—Electric-Resistance Welded Carbon Steel Boiler Tubes	56.60–1
ASTM A 179–79—Seamless Cold-Drawn Low Carbon Steel Heat Exchanger and Condenser Tubes	56.60–1
ASTM A 193–80c—Alloy-Steel and Stainless Steel Bolting Materials for High Temperature Service	58.30–15
ASTM A 197–79—Cupola Malleable Iron	56.60–1
ASTM A 199–79a—Seamless Cold Drawn Intermediate Alloy-Steel Heat-Exchanger and Condenser Tubes	56.60–1
ASTM A 203–80—Pressure Vessel Plates, Alloy Steel, Nickel	54.05–20
ASTM A 210–79a—Seamless Medium Carbon Steel Boiler & Super Heater Tubes	56.60–1
ASTM A 213–79b—Seamless Ferritic and Austenitic Alloy-Steel Boiler, Superheater, and Heat-Exchanger Tubes	56.60–1
ASTM A 214–79—Electric-Resistance-Welded Carbon Steel Heat Exchanger and Condenser Tubes	56.60–1
ASTM A 226–80—Electric-Resistance-Welded Carbon Steel Boiler and Superheater Tubes for High-Pressure Service	56.60–1
ASTM A 234–80a—Piping Fittings for Wrought Carbon Steel and Alloy Steel for Moderate and Elevated Temperatures	56.60–1
ASTM A 249–80b—Welded Austenitic Steel Boiler, Superheater, Heat Exchanger, and Condenser Tubes	56.60–1
ASTM A 268–80a—Seamless and Welded Ferritic Stainless Steel Tubing for General Service	56.60–1
ASTM A 276–80a—Stainless and Heatresisting Steel Bars and Shapes	56.60–2

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	46 CFR
ASTM A 307–80—Carbon Steel Externally and Internally Standard Fasteners	56.25–20
ASTM A 312–80b—Seamless and Welded Austenitic Stainless Steel Pipe	56.60–1
ASTM A 333–80—Seamless and Welded Steel Pipe for Low Temperature Service	56.60–1
ASTM A 334–79—Seamless and Welded Carbon and Alloy Steel Tubes for Low Temperature Service	56.60–1
ASTM A 335–80—Seamless Ferritic Alloy Steel Pipe for High Temperature Service	56.60–1
ASTM A 358–80—Electric Fusion-Welded Austenitic Chromium Nickel Alloy Steel Pipe for High Temperature Service	56.60–1
ASTM A 369–79a—Ferritic Alloy Steel Forged and Bored Pipe for High Temperature Service	56.60–1
ASTM A 370–77—Mechanical Testing of Steel Products	54.25–20
ASTM A 376–80—Seamless Austenitic Steel Pipe for High Temperature Central Station Service	56.07–10; 56.60–1
ASTM A 395–80—Ferritic Ductile Cast Iron Pressure-Retaining Castings for use at Elevated Temperatures	56.60–1
ASTM A 403–80—Wrought Austenitic Stainless Steel Piping Fittings	56.60–1
ASTM A 420–80a—Piping Fittings of Wrought Carbon Steel and Alloy Steel for Low Temperature Service	56.60–1
ASTM A 430–79—Austenitic Steel, Forged and Bored Pipe for High Temperature Service	56.60–1
ASTM A 520–72—(1979) Supplementary Requirements Seamless and Electrical-Resistance-Welded Carbon Steel Tubular Products for High Temperature Service Conforming to ISO Recommendations for Boiler Construction.	56.60–1
ASTM A 575–80—Merchant Quality Hot Rolled Carbon Steel Bars	56.60–2
ASTM A 576–79—Steel Bars, Carbon, Hot Rolled, Special Quality	56.60–2
ASTM B 16–81—Free-cutting Brass Rod, Bar and Shapes for use in Shapes for use in Screw Machines	56.60–2
ASTM B 21–80—Naval Brass Rod, Bar and Shapes	56.60–2
ASTM B 26–80a—Aluminum-Alloy sand Castings	56.60–2
ASTM B 42–80—Seamless Copper Pipe, Standard Sizes	56.60–1
ASTM B 43–80—Seamless Red Brass Pipe, Standard Sizes	56.60–1
ASTM B 68–80—Seamless Copper Tube, Bright Annealled	56.60–1
ASTM B 75–80—Seamless Copper Tube	56.60–1
ASTM B 85–76—Aluminum Alloy Die Castings	56.60–2
ASTM B 88–80—Seamless Copper Water Tube	56.60–1
ASTM B 96–80—Copper Silicon Alloy Plate and Sheet for Pressure Vessels	56.60–2
ASTM B 97–80—Copper Silicon Alloy Plate, Sheet, Strip and Rolled Bar for General Purposes	58.50–5
ASTM B 111–80—Copper and Copper Alloy Seamless Condenser Tube and Ferrule Stock	56.60–1
ASTM B 122–80—Copper-Nickel-Zinc Alloy (Nickel Silver) & Copper-Nickel Alloy Plate, Strip and Rolled Bar	58.50–5
ASTM B 124–80—Copper and Copper Alloy Forging Rod, Bar and Shapes	56.60–1
ASTM B 127–80a—Nickel Copper Alloy (UNS NO 4400) Plate, Sheet and Strip	58.50–5; 58.50–10
ASTM B 152–80—Copper Sheet, Strip Plate and Rolled Bar	58.50–5
ASTM B 154–80—Mercurous Nitrate Test for Copper and Copper Alloys	56.60–1
ASTM B 161–75—Nickel Seamless Pipe and Tube	56.60–1
ASTM B 167–80—Nickel-Chromium-Iron Alloy (UNS NO 6600) Seamless Pipe and Tube	56.60–1
ASTM B 171–80—Copper-Alloy Condenser Tube Plates	56.60–2
ASTM B 209–81—Aluminum-Alloy Sheet and Plate	58.50–5; 58.50–10
ASTM B 210–80—Aluminum-Alloy Drawn Seamless Tubes	56.60–1
ASTM B 234–80—Aluminum-Alloy Drawn Seamless Tubes for Condensers and Heat Exchangers	56.60–1
ASTM B 241–80—Aluminum-Alloy Seamless Pipe and Seamless Extruded Tube	56.60–1
ASTM B 280–80—Seamless Copper Tube for Air Conditioning and Refrigeration Field Service	56.60–1
ASTM B 283–80—Copper and Copper Alloy Die Forging (Hot-pressed)	56.60–2
ASTM B 315–80—Copper-Silicon Alloy Seamless Pipe and Tube	56.60–1
ASTM B 361–81—Factory Made Wrought Aluminum and Aluminum Alloy Welding Fittings	56.60–1
ASTM D 92–78—Test for Flash and Fire Points by Cleveland Open Cup	58.30–10
ASTM D 93–80—Test for Flash Point by Pensky-Martens Closed Tester	58.01–10; 58.01–15
ASTM D 323–79—Test for Vapor Pressure of Petroleum Products (Reid Method)	58.16–5
ASTM D 396–80—Fuel Oils	63.05–75; 65.10–75
ASTM D 635–81—Test Rate of Burning and/or Extent and Time of Burning of Self-Supporting Plastics in a Horizontal Position.	56.60–25
ASTM D 1785–76—Poly (Vinyl Chloride) (PVC) Plastic Pipe Schedules 40, 80, and 120	56.60–25
ASTM D 2241–80—Poly (Vinyl Chloride) (PVC) Plastic Pipe (SDR–PR)	56.60–25
ASTM D 2464–76—Threaded Poly (Vinyl Chloride) (PVC) Plastic Pipe Fittings, Schedule 80	56.60–25
ASTM D 2466–78—Socket-type Poly (Vinyl Chloride) (PVC) Plastic Pipe Fittings, Schedule 40	56.60–25
ASTM D 2467–76a—Socket-type Poly (Vinyl Chloride) (PVC) Plastic Pipe Fittings, Schedule 80	56.60–25
ASTM E 23–80—Notched Bar Impact Testing of Metallic Materials	54.05–5; 56.50–105
ASTM E 208–69—(1975) Conducting Drop-Weight Test to Determine Nil-Ductility Transition Temperature of Ferritic Steels.	54.05–5
Compressed Gas Association 500 Fifth Ave., New York, NY 10036	
S–1.2 –Safety Relief Device Standards—Cargo and Portable Tanks for Compressed Gases, 1979	54.15–25
S–1.2.5.2—Flow Test of Safety Relief Valves, 1979	54.15–10; 54.15–10

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Fluid Controls Institute, Inc. Plaza 222, U.S. Highway One, Tequesta, FL 33458	
69–1—Pressure Rating Standard for Steam Traps, 1977	56.60–1
Manufacturers Standardization Society 5203 Leesburg Pike, Suite 502, Falls Church, VA 22401	
SP–9—Spot-facing for Bronze, Iron and Steel Flanges, 1977	56.60–1
SP–25—Standard Marking System for Valves, Fittings, Flanges and Unions, 1978	54.01–25; 56.15–1; 56.20–5
SP–42—Class 150—Corrosion Resistant Gate Globe, Angle and check valves with Flanged and Butt-Welded Ends, 1978	56.60–1
SP–45—By-pass and Drain Connection, 1976	56.20–20; 56.60–1
SP–51—Standard 1501b Corrosion Resistant Cast Flanges and Fittings, 1978	56.60–1
SP–55—Quality Standard for Steel Castings for Valves, Flanges and Fittings and other Piping Components (Visual Method), 1971 reaffirmed 1980.	56.60–1
SP–58—Pipe Hangers and Supports, 1975	56.60–1
Naval Publications Forms Center, Customer Service—Code 1052 5801 Tabor Ave., Philadelphia, PA 19120	
Military Specification: MIL–S–901 Shock Tests, HI, (high impact); shipboard machinery equipment and systems requirements for, 1963.	58.30–17
National Fire Protection Association Batterymarch Park, Quincy, MA 02269	
70 National Electrical Code, 1981	63.05–85; 63.10–85
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Society of Automotive Engineers 400 Commonwealth Dr., Warrendale, PA 15096	
J429 Mechanical and Quality Requirements for Externally Threaded Fasteners, 1980k	58.30–15
Tubular Exchanger Manufacturers Association 707 Westchester Ave., White Plains, NY 10604	
Heat Exchangers, Class "B," "C," or "R", 1978	54.01–2
Underwriters Laboratories 333 Pfingsten Rd., Northbrook, IL 60062	
UL174—Household Electric Storage Tank Water Heaters, 1979	63.15–5; 63.15–35
UL296—Oil Burners, 1980	63.05–70; 63.05–85; 63.10–70; 63.10–85
UL343—Pumps for Oil Burning Appliances, 1976	63.05–55; 63.10–65
UL506—Specialty Transformers, 1979	63.05–55; 63.10–65
UL814—Gas Tube Sign and Ignition Cable, 1978	63.05–55; 63.10–55
UL1102—Non-Integral Marine Fuel, Tanks, 1980	58.50–15

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Rules for Building and Classing Steel Vessels, 1981	70.35–1; 71.15–1; 72.01–20; 72.01–15
American Society for Testing and Materials 1916 Race St., Philadelphia, PA 19103	
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Coast Guard, G–MMT/12 2100 2nd St., SW., Washington, DC 20593	
160.014—"Compass and Mounting, dated December 14, 1944" (Specification for Compasses: Magnetic, Liquid-filled, Mariners, Compensating, for Life Boats (with mounting) for Merchant Vessels), 1944.	75.20–15
Naval Publications and Forms Center, Customer Service—Code 1052 Philadelphia, PA 19120	
Federal Specification: ZZ–H–451 Hose, Fire, Woven-jacketed Rubber or Cambric-lined, with Couplings, F	76.10–10
Inter-Governmental Maritime Consultative Organization, IMCO Sales, New York Nautical Instrument and Service Corp. 140 W. Broadway, New York, NY 10013	
A/ES III Res. 108 Annexes I thru IV dated Nov. 30, 1966 Amendments to Chapter II of the International Convention for Safety of Life at Sea, 1960. (adopted as part of International Convention for the Safety of Life at Sea, 1974), 1966.	80.20
National Fire Protection Association Batterymarch Park, Quincy, MA 02269	
56A—Inhalation Anesthetics (Replaces former "Code for Flammable Anesthetics"), 1973	72.05–10

46 CFR SUBCHAPTER H—Continued
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	46 CFR
306—Control of Gas Hazards on Vessels, 1980	71.60–1
Underwriters Laboratories 333 Pfingsten Rd., Northbrook, IL 60062	
UL 19—Woven-Jacketed, Rubber-Lined Fire Hose, 1971	76.10–10

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American Bureau of Shipping 65 Broadway, New York, NY 10006	
Rules for Building and Classing Steel Vessels, 1981	90.35–1; 91.15–1; 92.01–10
American Society for Testing and Materials 1916 Race St., Philadelphia, PA 19103	
ASTM D 93–80—Test for Flash Point by Pennsky-Martens Closed Tester	97.15–55
ASTM D 323–79—Test for Vapor Pressure of Petroleum Products (Reid Method)	105.10–15
Coast Guard, G–MMT/12 2100 2nd St. SW., Washington, DC 20593	
160.014—"Compass and Mounting dated December 14, 1944" (Specification for Compasses: Magnetic, Liquid-filled, Mariners Compensating, for Lifeboats (with mounting) for Merchant Vessels), 1944.	94.20–15
Naval Publications and Forms Center, Customer Service—Code 1052 5801 Tabor Ave., Philadelphia, PA 19120	
Federal Specification: ZZ–H–451 Hose, Fire, Woven-jacketed Rubber or Cambric-Lined, with Couplings, F	95.10–10
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National Fire Protection Association Batterymarch Park, Quincy, MA 02269	
306—Control of Gas Hazards on Vessels, 1980	91.50–1
Underwriters Laboratories 333 Pfingsten Rd., Northbrook, IL 60062	
UL 19—Woven-jacketed, Rubber Lined Fire Hose, 1978	95.10–10

46 CFR SUBCHAPTER I–A
COAST GUARD, DEPARTMENT OF TRANSPORTATION

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American National Standards Institute 1430 Broadway, New York, NY 10018	
ANSI Z89.1–1969—Industrial Head Protection	108.497
ANSI A14.3–1974—Fixed Ladders	108.160
American Petroleum Institute 300 Corrigan Tower Bldg., Dallas, TX 75201	
API RP2D with supplement 1—Recommended Practice for Operation and Maintenance of Offshore Cranes, 1972	107.259; 109.437; 109.521; 109.527
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496—Standard for Purged and Pressurized Enclosures for Electrical Equipment in Hazardous Locations, 1974	108.187
Naval Forms and Publications Center, Customer Service—Code 1052 5801 Tabor Ave., Philadelphia, PA 19120	
Federal Specification: ZZ–H–451 Hose, Fire, Woven-jacketed Rubber or Cambric-lined, with Couplings, F	108.425
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46 CFR SUBCHAPTER J
COAST GUARD, DEPARTMENT OF TRANSPORTATION

American Bureau of Shipping 65 Broadway, New York, NY 10006	

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American Society of Mechanical Engineers	
345 E. 47th St., New York, NY 10017	
ANSI A17.1-1978—American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks	110.10-1; 110.80-35
Institute of Electrical and Electronic Engineers	
345 E. 47th St., New York, NY 10017	
45—Recommended Practice for Electric Installations on Shipboard, 1977	110.10-1; 111.30-5; 111.30-10; 111.60-1; 113.10-90; 113.15-90; 113.20-90
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5801 Tabor Ave., Philadelphia, PA 19120	
Military Specifications: MIL-C-915 Cable and Cord, Electrical, for Shipboard Use, 1972, with 1980 Amdt	110.10-1; 111.60-1
MIL-W-76—Wire and Cable, Hook-up, Electrical, for Shipboard Use, B	113.05-10
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56A—Inhalation Anesthetics, 1973	110.10-1; 111.80-20
70—The National Electrical Code, 1981	110.10-1; 111.50-15; 111.80-5
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333 Pfingsten Rd., Northbrook, IL 60062	
UL 20—General-Use Snap Switches, 1979	110.10-1; 111.55-5
UL 62—Flexible Cord and Fixture Wire, 1979	110.10-1; 111.60-5
UL 67—Panelboards, 1979, with revs thru Nov. 1979	110.10-1; 111.40-1
UL 98—Enclosed Switches, 1974, with revs thru July 1980	110.10-1; 111.55-5
UL 104—Elevator Door Locking Devices and Contacts, 1973	110.10-1; 111.80-35
UL 197—Commercial Electric Cooking Appliances, 1978, with revs thru Nov. 1979	110.10-1; 111.80-65
UL 363—Knife Switches, 1980	110.10-1; 111.55-5
UL 486A—Electric Wire Connectors and Soldering Lugs for Use with Copper Conductors, 1978	110.10-1; 111.60-25; 111.60-40
UL 498—Electrical Attachment Plugs and Receptacles, 1974, with revs thru Jan. 1979	110.10-1; 111.75-30
UL 514—Electrical Outlet Boxes and Fittings, 1979, with revs thru Apr. 1980	110.10-1; 111.75-35
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57—Standard for Fumigation, 1973	147A.11
70—National Electrical Code, 1981	146.29-35
Naval Publications and Forms Center	
Customer Service—Code 1052, 5801 Tabor Ave., Philadelphia, PA 19120	
Military Specifications: MIL-B-11886 Box, Metal, Shipping: Reusable, Transporter, Steel, Maximum Load 9,000 Lbs, K	146.29-11; 146.29-90
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American Bureau of Shipping	
65 Broadway, New York, NY 10006	
Rules for Building and Classing Steel Vessels, 1981	Part 154
American National Standards Institute	
1430 Broadway, New York, NY 10018	
ANSI B16.5-1979—Steel Pipe Flanges and Pipe Fittings	151.50-35; 153.940
ANSI B16.11-1973—Forged Steel Fittings, Socket-Welding and Threaded	151.50-10
ANSI B16.25-1979—Butt-welded Ends—Pipe, Valves, Flanges, and Fittings	151.50-10
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	46 CFR
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ASTM A 20–78—Steel Plates for Pressure Vessels	154.610
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Par. PG–69—Testing 1977–1979	162.001–1
Par. PG–71—Mounting 1977–1979	162.001–1
Par. PG–110—Stamping of Safety Valves 1977–1979	162.001–1
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ASTM A 36–77—Structural Steel	160.035–1
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ASTM A 525–80—Steel Sheets, Zinc-Coated (Galvanized) by the Hot Dip Process	160.035–1
ASTM B 61–80—Steam or Valve Bronze Castings	162.014–1
ASTM B 117–73—Method of Salt Spray (Fog) Testing	161.002–1; 161.004–1; 161.006–1; 161.071–3
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ASTM E 84–80—Standard Test Method for Surface Burning Characteristics of Building Materials	164.012–1
ASTM E 119–80—Fire Testing of Building Construction and Materials	164.007–1; 164.008–1
ASTM D 3574–77—Flexible Cellular Materials—Slab Bonded and Molded Urethane Foam, Testing	164.031–1
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DWG No. F–49–6–5—Life Preserver, Kapok, Child	160.002–1
DWG No. 160.005–1—Life Preserver, Fibrous Glass, Adult and Child (Jacket Type)	160.005–1
DWG No. 160.009—Cork and Balsa Wood Ring Life Buoy; arrangement and construction details	160.009–1
DWG No. 160.013–1—Hatchet (Lifeboat and Liferaft)	160.013–1
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DWG No. 160.047–1—Buoyant Vest, Kapok or Fibrous Glass, Adult and Child	160.047–1
DWG No. 160.048–1—Buoyant Cushion, Fibrous Glass	160.048–1
DWG No. 160.049–1—Buoyant Cushion, Plastic Foam	160.049–1
DWG No. 160.052–1—Buoyant Vest, Unicellular Plastic Foam, Adult and Child	160.052–1
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CCC–C–426—Cloth, Cotton Drill, D	160.048–1; 160.049–1; 160.055–1; 164.018–5
CCC–C–443—Cloth, Cotton, Duck, Plied Filling Yarns, Flat, E, and Amdt. 1	160.009–1, 164.018–5
CCC–C–700—Cloth, Coated, Vinyl (Artificial Leather), G	160.048–1; 160.049–1; 160.055–1
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HH–M–351—Millboard, Asbestos, E, and Amdt. 2	164.009–3
L–P–375—Plastic Film, Flexible, Vinyl Chloride, C, and Amdt. 3	160.002–1; 160.005–1; 160.047–1; 160.048–1; 164.018–1
L–P–390—Plastic Molding and Extrusion Materials, Polyethylene and Copolymers (Low, Medium, and High Density), C, and Amdt. 1.	161.010–1
L–P–393—Plastic Molding Material Polycarbonate, Injection and Extrusion, A, and Amdt. 2	161.010–1
L–P–406—Plastics, organic; General Specification (Test Methods), B, and Amdt. 1	161.010–1
L–S–300—Sheeting and Tape, Reflective: Non-exposed Lens, Adhesive Backing, B	164.018–5
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QQ–W–423—Wire, Steel, Corrosion-resisting, B	160.061–1
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T–R–605—Rope, Manila and Sisal, B, and Amdt. 3	160.017–1; 160.031–1; 160.009–1; 160.028–1
TT–E–489—Enamel, Alkyd, Gloss (for Exterior and Interior Surfaces), G	161.001–1; 161.010–1
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VV–G–671—Grease; Lubricating, Graphite, E	161.001–1
W–B–101—Batteries and Cells; Dry, H	161.008–1; 161.010–1
WW–C–621—Couplings; Hose, Cotton (Rubberlined) and Linen (Unlined), E, and Amdt. 1	162.027–1
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No. 151—Metals, Test Methods, B, and Notice 2	160.062–1
No. 191—Textiles, Test Methods, A	160.002–1; 160.005–1; 160.009–1; 160.047–1; 160.052–1; 160.055–1; 160.060–1; 160.071–3
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MIL–C–17415—Cloth, Coated and Webbing, Inflatable Boat and Miscellaneous Use, E, and Amdt. 1	160.051–1; 164.018–1
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MIL–D–5531—Desalter Kit Sea water Mark Q, E	160.058–1
MIL–E–15090—Enamel, equipment, light gray (Formula No. 111), B, and Amdt. 2	160.026–1
MIL–F–859—Fuel Oil, Boiler, E and Amdt. 2	164.015–1; 164.016–1
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MIL–L–1204—Lamp, Safety, Flame, B	160.016–1
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MIL–L–7178—Lacquer, Cellulose Nitrate, Glass for Aircraft Use, A, and Amdt. 1	160.026–1
MIL–L–17653A—Life Preserver, Vest, Work Type, Unicellular Plastic, B, and Amdt. 3	160.053–1
MIL–L–19496 (ships)—Lifeboat, CO_2 Inflatable Mark 5, Mod 1, 15-person Capacity, D, and Amdt. 1	160.051–1
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MIL–P–79—Plastic Rods and Tubes, Thermosetting, Laminated, C, and Amdt. 2	160.001–1; 161.010–1
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MIL–R–21607—Resins, Polyester, Low-Pressure Laminating, Fire-retardant, D	160.035–1; 164.018–5
MIL–R–23139—Rocket Motors, Surfaced Launched, Development and Qualification Requirements for, B	160.040–1
MIL–S–18655—Signal, Smoke and Illumination, Marine, C	160.023–1
MIL–W–530—Webbing, Textile, Cotton, General Purpose, Natural or in Colors, F, and Amdt. 2	160.002–1; 160.005–1; 160.047–1; 160.052–1; 160.055–1; 160.055–1
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Underwriters Laboratories 333 Pfingsten Road, Northbrook, IL 60062	
UL 62—Flexible Cord and Fixture Wire, 1980	161.006–1
UL 198B—Class H Fuses, 1975	161.004–1
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Rules for Building and Classing Steel Vessels, 1981	167.15–27; 167.20–1
Institute of Electrical and Electronic Engineers (formerly American Institute of Electrical Engineers) 345 East 47th St., New York, NY 10017	
45—Recommended Practice for Electrical Installations on Shipboard, 1977	167.40–1; 167.25–1

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Naval Publications and Forms Center, Customer Service—Code 1052	
5801 Tabor Ave., Philadelphia, PA 19120	
Federal specification: ZZ–H–451 Hose, Fire, Woven-Jacketed Rubber or Cambric-lined, with Couplings, F	167.45–5
National Fire Protection Association	
Batterymarch Park, Quincy, MA 02269	
306—Control of Gas Hazards on Vessels, 1980	167.30–1
Underwriters Laboratories	
333 Pfingsten Rd., Northbrook, IL 60062	
UL 19—Woven-jacketed Rubber Lined Fire Hose,1971	167.45–5

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American Boat and Yacht Council	
P.O. Box 806—190 Ketchum Ave., Amityville, NY 11701	
P–1—Safe Installation of Exhaust Systems for Propulsion and Auxiliary Machinery, 1973	182.15–15; 182.15–20
Institute of Electrical and Electronic Engineers (formerly American Institute of Electrical Engineers)	
345 East 47th St., New York, NY 10017	
45—Recommended Practice for Electrical Installations on Shipboard, 1977	183.01–15; 183.05–45; 183.10–10
American Society for Testing and Materials	
1916 Race St., Philadelphia, PA 19103	
ASTM B 97–77—Copper-Silicon Alloy Plate, Sheet, Strip and Rolled Bar for General Purposes	182.15–25
ASTM B 122–79—Copper-Nickel Zinc Alloy (Nickel Silver) and Copper-Nickel Alloy Plate, Strip, and Rolled Bar	182.15–25
ASTM B 127–80a—Nickel-Copper Alloy (UNS NO4400) Plate, Sheet and Strip	182.15–25; 182.20–25
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ASTM D 323–79—Test for Vapor Pressure of Petroleum Products (Reid Method)	188.10–21
Naval Publications and Forms Center, Customer Service—Code 1052	
5801 Tabor Ave., Philadelphia, PA 19120	
Federal Specification ZZ–H–451—Hose, Fire, Woven-jacketed Rubber or Cambric-lined, with Couplings, F	181.15–10
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National Fire Protection Association	
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70—National Electrical Code, 1980	183.01–10; 183.05–45; 183.05–50; 183.10–20
Underwriters Laboratories	
333 Pfingsten Rd., Northbrook, IL 60062	
UL 19—Woven-Jacketed, Rubber Lined Fire Hose, 1971	181.15–10
UL 197—Commercial Electric Cooking Appliances, 1978, incl. all revisions thru 1979	183.01–15; 183.10–45
UL 595—Marine Type Electric Lighting Fixtures, 1974, incl. all revisions thru 1980	183.01–15
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American Bureau of Shipping	
65 Broadway, New York, NY 10006	
	46 CFR
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Coast Guard, G–MMT/12	
2100 2nd St., SW, Washington, DC 20593	
160.014—"Compass and Mounting dated December 14, 1944" (Specification for Compasses: Magnetic, Liquid-filled, Mariners, Compensating, for Lifeboats (with mounting) for Merchant Vessels, 1944.	192.20–15
Naval Publications and Forms Center, Customer Service—Code 1052	
5801 Tabor Ave., Philadelphia, PA 19120	
Federal Specification: ZZ–H–451—Hose, Fire, Woven-jacketed, Rubber or Cambric Lined, with Couplings, F	193.10–10
National Fire Protection Association	
Batterymarch Park, Quincy, MA 02269	
306—Control of Gas Hazards on Vessels (Formerly "Control of Gas Hazards on Vessels to be Repaired"), 1975	189.50–1
Underwriters Laboratories	
333 Pfingsten Rd., Northbrook, IL 60002	

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American National Standards Institute 1430 Broadway, New York, NY 10018	
ANSI B31.1–1980—Power Piping	197.204; 197.205; 197.336
American Society of Mechanical Engineers United Engineering Center, 345 East 47th St., New York, NY 10017	
Boiler and Pressure Vessel Code, Section VIII, 1980	197.204; 197.205; 197.300; 197.310; 197.328
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47 CFR, CHAPTER I (PARTS 1–199)
FEDERAL COMMUNICATIONS COMMISSION

	47 CFR
National Association of Regulatory Utility Commissioners 1102 Interstate Commerce Commission Building, Constitution Ave. and Twelfth St., NW., Washington, DC 20005	
Separations Manaual (Standard Procedures for Separating Telephone Property Costs, Revenues, Expenses, Taxes and Reserves), February 1971. Copies of the NARUC Separations Manual are available for inspection at the following locations: Office of the Common Carrier Bureau, Federal Communications Commission, 1919 M St., NW., Washington, DC 20554; Field Office of the Common Carrier Bureau, Room 1309X, 90 Church St., New York, NY.	67.1

49 CFR SUBTITLE A (PARTS 0–99)
OFFICE OF THE SECRETARY, DEPARTMENT OF TRANSPORTATION

	49 CFR
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Interagency Land Acquisition Conference Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402	
Uniform Appraisal Standards for Federal land Acquisition (1972 Edition), Stock No. 5259–0002	25.260

49 CFR CHAPTER I (PARTS 100–189)
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	49 CFR
The Aluminum Association 420 Lexington Ave., New York, NY 10017	
Aluminum Standards and Data, 1970–71 Dated December 1969	173.266; 178.65–5
American National Standards Institute 1430 Broadway, New York, NY 10018	
ANSI B16.5–1977—Steel Pipe Flanges, Flanged Fittings	178.34
ANSI N14.1–1971—Packaging of Uranium Hexafluoride for Transport	171.7; 173.396
American Society of Mechanical Engineers United Engineering Ctr., 345 47th St., New York, NY 10017	
ASME Code, Sec. VIII (Div. I) and IX of 1977 edition of American Society of Mechanical Engineers Boiler and Pressure Code and Addenda through 12/31/78.	171.7; 173.33; 173.306, 173.315, 177.814; 178.251; 178.255; 178.337; 178.340; 178.342; 178.343; 178.245; 173.32; 179.400
ASME Code, Section V (FR Nondestructive examination, 1977)	173.33
ASME Code, Section IX (FR Welding and Brazing Qualification 77 + Add 79)	178.245
American Society for Testing and Materials 1916 Race St., Philadelphia, PA 19103	

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ASTM A 20–72a—General Requirements for Delivery of Steel Plates for Pressure Vessels	178.337
ASTM A 47–68—Malleable Iron Castings	179.200
ASTM A 53–69a—Welded and Seamless Steel Pipe	179.12–2
ASTM A 178–70—Electric Resistance Welded Carbon Steel Boiler Tubes	179.12
ASTM A 192–69—Seamless Carbon Steel Boiler Tubes for High Pressure Service	179.12
ASTM A 240–69—Stainless and Heat-Resisting Chromium and Chromium-Nickel Steel Plate, Sheet, and Strip For Fusion-Welded Unfired Pressure Vessels.	178.57; 179.100; 179.200; 179.201; 179.220; 179.400
ASTM A 242–68—High-strength Low Alloy Structural Steel	179.100
ASTM A 262–44–T—Boiling Nitric Acid Test for Corrosion Resisting Steels	178.83
ASTM A 265–69—Nickel and Nickel-Base Alloy Clad Steel Plate	173.252
ASTM A 269–69—Seamless and Welded Austenitic Stainless Steel Tubing for General Service	179.12
ASTM A 285–78—Pressure Vessel Plates, Carbon Steel, Low- and Intermediate-Tensile Strength	179.100; 179.200; 179.220; 172.300
ASTM A 300–58—Steel Plates for Pressure Vessels for Service at Low Temperatures	178.337
ASTM A 300–68—Notch Toughness Requirements for Normalized Steel Pressure Plates for Pressure Vessels	179.102
ASTM A 302–78—Pressure Vessel Plates, Alloy Steel, Manganese-Molybdenum and Manganese-Molybdenum-Nickle	179.100; 179.200; 179.220
ASTM A 312–70a—Seamless and Welded Austenitic Stainless Steel Pipe	179.12
ASTM A 333–67—Seamless and Welded Steel Pipe for Low-Temperature Service	178.45
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U.S. Department of Commerce	
National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161	399.205

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Office of Vehicle Safety Standards, DOT–NHTSA, 400 7th St. SW., Washington, DC 20590

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400 Commonwealth Dr., Warrendale, PA 15096

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[FR Doc. 81-27948 Filed 9-29-81; 8:45 am]

BILLING CODE 1505-02-M

federal register

Wednesday
September 30, 1981

Part III

Department of Health and Human Services

Health Care Financing Administration

Medicaid Program; Payment for Long-Term Care Facility Services and Inpatient Hospital Services; Interim Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 447

Medicaid Program; Payment for Long-Term Care Facility Services and Inpatient Hospital Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim Final Rule With Comment Period.

SUMMARY: We are revising the regulations on Medicaid payment for long-term care (LTC) facility and inpatient hospital services. Revised regulations are needed to implement recent amendments to the Medicaid law (section 962 of the Omnibus Reconciliation Act of 1980 and section 2173 of the Omnibus Budget Reconciliation Act of 1981) that:

(1) Removed the requirements, in the previous law, that State agencies pay for LTC facility services on a reasonable cost-related basis and for inpatient hospital services on a reasonable cost basis, in accordance with methods and standards developed by the State and approved by the Secretary;

(2) Added the requirement that State agencies pay for both types of services through the use of rates that the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs that efficiently and economically operated facilities must incur to provide care in conformity with applicable State and Federal laws, regulations, and quality and safety standards; and

(3) Specified that payments for inpatient hospital services must take into account certain other factors, as explained in the preamble to these regulations.

The purpose of the revised regulations is to set forth the procedures HCFA will use in obtaining and accepting States' assurances that their payment rates meet the requirements of the Medicaid law. These procedures are intended to increase States' discretion in setting rates, minimize the administrative requirements States, facilities, and hospitals must comply with, and ensure that facilities and hospitals receive the reasonable and adequate payments intended by law.

DATES: Effective date: September 30, 1981. Although these regulations are final, comments may be submitted as described below.

Comment date: To assure consideration, comments should be mailed by December 29, 1981.

ADDRESS: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17076, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave. S.W., Washington, D.C., or to Room 789, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP-148-FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309-G of the Department's office at 200 Independence Ave. S.W., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, we will consider all comments we receive. If as a result of comments we decide changes in these regulations are needed, we will publish these changes in the **Federal Register** and respond to the comments in the preamble of that document.

FOR FURTHER INFORMATION CONTACT: Alan Spielman, (301) 594-4010.

SUPPLEMENTARY INFORMATION:

General Background

The revised regulations set forth below implement both section 962 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499), which deals with payment for long-term care facility services, and section 2173 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), which deals with payment for inpatient hospital services. The first section of this preamble (Payment for Long-Term Care Facility Services) explains the general approach we followed in developing the regulations. Thus, most of the discussion in the first section is equally applicable to both LTC facilities and hospitals. The second section of this preamble (Payment for Inpatient Hospital Services) provides further background on the changes made by section 2173, and discusses certain issues that relate specifically to hospital reimbursement. The final section of the preamble (Impact Analysis) sets forth further information on the cost and burden of the revised regulations, as required by Executive Order 12291 and the Regulatory Flexibility Act.

Payment For Long-Term Care Facility Services

I. Background

A. *Previous Medicaid Law.* Since it was originally enacted in 1965, the Medicaid law (title XIX of the Social Security Act; 42 U.S.C. 1396-1396k) has required each State with an approved Medicaid plan to pay for skilled nursing facility (SNF) services to individuals eligible for those services under the plan. In 1971, Pub. L. 92-223 added intermediate care facility (ICF) services as an optional Medicaid service. SNFs, ICFs, and intermediate care facilities for the mentally retarded, ICF/MRs, are known, collectively, as long-term care (LTC) facilities.

The Medicaid law did not initially include any specific requirements regarding the methods of payment to be used to pay for either SNF or ICF services. As a result, individual States were permitted to develop their own payment methods, subject only to the general requirement, in section 1902(a)(30) of the Act, that payments not exceed reasonable charges consistent with efficiency, economy, and quality of care. Under the initial Medicaid law, States developed a variety of payment methods. These methods ranged from the retrospective, reasonable cost reimbursement system used by Medicare (see 42 CFR Part 405, Subpart D), to prospective rates based, in some instances, on State budgetary considerations and other factors not directly related to actual LTC facility costs.

B. *1972 Amendments.* In 1972, Congress enacted Pub. L. 92-603 (the Social Security Amendments of 1972). Section 249 of Pub. L. 92-603 added a new section 1902(a)(13)(E) to the Act, effective July 1, 1976. This section required that each State Medicaid plan provide for payment for SNF and ICF services on a reasonable cost-related basis, in accordance with payment methods and standards developed by the State on the basis of cost-finding methods approved and verified by the Secretary.

The Senate Finance Committee report accompanying Pub. L. 92-603 stated that, under previous law, some SNFs and ICFs were being overpaid, while others were being paid too little to support the quality of care needed by Medicaid patients. On the other hand, the committee noted that the reasonable cost reimbursement method used by Medicare and, in particular, the detailed

cost-finding requirements that are an integral part of that method, could cause difficulty for some LTC facilities. To avoid the problems that could arise either from the absence of specific requirements or from excessively detailed requirements, Congress enacted section 249. This provision required that payments to LTC facilities be related to the reasonable costs the facilities incur, but permitted States considerable flexibility, within limits established by the Secretary, to develop their own methods and standards for paying for these costs.

C. *Section 249 Regulations.* The section 249 regulations on payment for LTC facility services are currently codified at 42 CFR 447.272–447.316. These regulations specify that States must pay for LTC facility services on a reasonable cost-related basis, and require State plans to conform to specific requirements for:

- Cost-finding and cost reporting;
- Desk analysis of cost reports, and periodic audits of a specified percentage of facilities;
- Payment methods and standards that are based on approved cost-finding methods and reasonably account for allowable cost;
- Upper limits based on charges, and on amounts that would have been paid under Medicare; and
- A minimum payment level that is high enough to meet the costs of an economically and efficiently operated facility.

Although the current regulation on payment for LTC facility services do not include any specific provisions that either authorize or prohibit the use of payment rates that exceed actual facility costs, we have stated our policy on this issue in a separate **Federal Register** document. In response to a court order issued December 7, 1977, in *American Health Care Association v. Califano*, we published a notice in the **Federal Register** to explain the opportunities for profit that States may allow LTC providers (43 FR 4861, published February 6, 1978). This notice explains that profit, other than a return on equity capital for proprietary facilities, is available to facilities that can keep their costs below a prospectively determined class rate or individual facility rate, or can earn an incentive payment for performance relative to a standard established by the State. However, as specified in the preamble to the current regulations (41 FR 27300, published July 1, 1976), payment rates must not include flat amounts designated as growth allowances or efficiency bonuses. The preamble explains that these amounts are not to be included in payment rates because they are not reasonably related to incurred costs.

D. *Federal Review of State Plans Under Section 249.* The Secretary has delegated the approval authority for all State plans to the Administrator of HCFA, which is the Federal agency responsible for administration of the Medicare and Medicaid programs. All State plan provisions on payment for LTC facility services have been reviewed under the criteria in the regulations cited above.

Under section 249, our review focused on the State's LTC facility payment methods and standards, rather than on the rates paid to facilities. The term "rate" generally refers to the dollar amount payable to facilities under the State's payment method. The rate is simply the result of the payment method.

The primary purpose of the section 249 review was to determine whether the State's payment methods and standards would result in the reasonable cost-related payment required by that statute. To enable us to make this determination, we required each State that proposed to change its payment methods and standards to give us a detailed explanation of the rationale for the proposed change, and of the effects the change would have on other elements of the State's payment system.

After receiving this information, we first assessed the appropriateness of each element of the State's payment system. These elements include, among others, the State's definition of allowable costs; its methods of cost-finding; its system, if any, of classifying facilities into comparison groups for rate-setting purposes; and its specific methods for relating payment rates to facilities' costs and for adjusting these rates for inflation. We then considered the appropriateness of these elements as they relate to one another. This phase of our review was crucial, since an element of a payment system that would not meet the "reasonable cost-related" test if judged in isolation might be accepted if it were compensated for by other elements of the system. For example, a very restrictive standard on the amount of administrative salary cost considered acceptable by the State might result in payment for this specific type of cost that is not "reasonable cost-related". However, the effect of this restrictive standard might be offset by liberal incentive payments for efficiency, so that the payment system as a whole would result in reasonable cost-related payment. The approval that resulted from this review represents a comprehensive judgment that these elements, and their interaction, result in payments that are consistent with the requirements in section 249 and the regulations that implement it.

We wish to note that, under section 249, each State was responsible for developing specific methods and standards for determining its payment for LTC facility services. HCFA's responsibility was not to specify the payment methods and standards a State should adopt, but to review and approve or disapprove the particular plan, in light of the requirements in the Medicaid law and regulations.

II. Omnibus Reconciliation Act of 1980

A. *Major Provisions Relating to LTC Facility Reimbursement.* The Omnibus Reconciliation Act of 1980 (Pub. L. 96–499), which was enacted on December 5, 1980, made a significant change in the provisions of the Medicaid law that govern payments for LTC facility services. Specifically, section 962 of Pub. L. 96–499 amended section 1902(a)(13)(E) of the Social Security Act to remove the requirement that States pay for these services on a reasonable cost-related basis, and to substitute for it the requirement that States pay for SNF and ICF services through the use of rates (determined in accordance with methods and standards developed by the State) which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide care in conformity with applicable State and Federal laws, regulations, and quality and safety standards. Section 962 also requires the State to make further assurances, satisfactory to the Secretary, for the filing of uniform cost reports by each SNF or ICF, and for periodic audits by the State of these reports. The effective date specified in the amendment for this change is October 1, 1980.

B. *Legislative History.* In developing regulations to implement the amendment, we relied on the amendment and its legislative history, including the pertinent parts of the Senate Finance Committee Report entitled "Spending Reductions: Recommendations of the Committee on Finance Required by the Reconciliation Process in section 3(a)(115) of H. Con. Res. 307, The First Budget Resolution for Fiscal Year 1981 (96th Congress, 2nd session committee print, Serial No. 96–36.)." We also considered the parts of the Senate Finance Committee Report on H.R. 934 (Senate Report No. 96–471), which ultimately led to Pub. L. 96–499,

and of the Conference Report on Section 962 of Pub. L. 96-499 (Report No. 96-1479). We gave special emphasis to the expectation that, in implementing the amendment, the Secretary will keep the regulatory and other requirements States and facilities must comply with to the minimum level necessary to assure proper accountability.

C. *State Discretion in Establishing Payment Levels.* The Senate Finance Committee reports note that States have argued that complex Federal regulations implementing the statutory requirements of section 249 have unduly restrained their administrative and fiscal discretion, and that the Federal approval process has forced States to rely heavily on Medicare principles of reimbursement. (For example, the current regulations at 42 CFR 447.276(c) specify that Medicare cost-finding methods will be approved automatically. Other methods require specific justification.) The reports further state that neither of these consequences was intended when section 249 was enacted.

The reports also state that applying the Medicare reasonable cost reimbursement principles to LTC facility reimbursement is not entirely satisfactory, since these principles are inherently inflationary, and contain no incentives for efficient performance. The reports note that, under the amendment, States would be free to establish rates on a Statewide or other geographic basis, or on an institution-by-institution basis, without reference to Medicare reimbursement principles.

D. *Minimizing Administrative Burden.* The Senate Finance Committee reports state the expectation that the Secretary will keep regulatory and other requirments to the minimum level necessary to assure proper accountability for Medicaid spending, and will not overburden States and facilities with marginal but massive paperwork requirements. In our view, this expectation requires us to develop Federal procedure for acceptance of State assurances that would be less burdensome to States than the review procedure used under Section 249.

III. Omnibus Reconciliation Act of 1981

On August 13, 1981 the Omnibus Reconciliation Act of 1981 (Pub. L. 97-35) was enacted. This legislation includes a provision that directly affects issuance of the regulations set forth below.

Section 2161 of Pub. L. 97-35 requires specific percentage reductions in the amount of Federal financial participation (FFP) that otherwise would be paid to each State for fiscal years 1982, 1983, and 1984. A special provision of this section specifies that these reductions in FFP shall not be made for any calendar quarter unless, as of the first day of that quarter, the Secretary has promulgated and has in effect final regulations implementing paragraphs (10)(C) and (13)(A) of section 1902(a) of the Social Security Act, as amended by Pub. L. 97-35. (Section 1092(a)(13)(A) incorporates the changes made by section 962 of the Omnibus Reconciliation Act of 1980.) This special provision means that, if we are to make the reductions in FFP required by section 2161, we must publish revised hospital and LTC facility payment regulations by October 1, 1981. To meet this deadline, we are issuing the regulations set forth below as interim final rules effective on the date they are published in the **Federal Register** (September 30, 1981).

Although these regulations are effective on their date of publication, we believe it is important that the public be given an opportunity to comment on them, and that we have the benefit of these comments. Therefore, we have provided a 90-day public comment period for the revised regulations. We will consider all comments we receive during this period, and if as a result of comments we decide changes in these regulations are needed, we will publish these changes in the **Federal Register** and respond to the comments in the preamble of that document.

IV. Summary of Major Features of Revised Regulations

For the convenience of the reader, the major features of the revised regulations are summarized below.

The revised regulations provide for:

- Elimination of all requirements, in current regulations, that relate to Medicaid payment for LTC facility services on a reasonable cost-related basis.
- A requirement that States submit assurances to HCFA that their rates meet the statutory requirements, and also submit related information on the estimated short-term, and to the extent feasible, long-term impact of the rates on availability of services, type of care furnished, extent of provider participation, and the degree to which costs are covered in hospitals that serve a disproportionate number of low income patients with special needs. We will review the information a State submits with respect to these items to determine whether it is reasonable to justify acceptance of the State's assurances.
- A requirement that States resubmit assurances regarding rates before the end of the calendar quarter that includes the date on which the rate has been in effect for one year, or whenever they wish significantly to revise their methods of determining rates, whichever is earlier.
- A requirement that States submit assurances that they have provided the public with the opportunity to review and comment on significant changes in their methods for determining payment rates before the changes are implemented.
- A requirement that States develop appeals procedures that will give individual facilities an opportunity to seek administrative review and adjustment of the rates.
- Cost reporting and audit requirements, as provided by the statute. We are not specifying detailed requirements but are permitting States to implement their own systems in order to reduce the administrative burden, for States and facilities, of complying with the new regulations.
- Aggregate upper limits on payments to hospitals and LTC facilities that are based on Medicare payments, and limits on hospital payment rates based on charges.

V. Public Notice of Changes in Method of Reimbursement

On September 16, 1981, we published proposed regulations to remove the current requirement in 42 CFR 447.205 that Medicaid agencies give 60 days public notice of certain proposed changes in the statewide method or level of reimbursement for Medicaid services (46 FR 45964). We made this proposal to reduce the regulatory burden on States and allow them greater flexibility in adjusting reimbursement rates in response to changing fiscal situations. We indicated in the preamble to the proposed regulations published on September 16, 1981, that the Department was considering approaches to assure that State reimbursement decisions continue to be made through a public process.

With respect to institutional providers, i.e., hospitals and long-term care facilities, we believe that it is important that major changes in a State's reimbursement methodology be made only after public notice. We believe it is reasonable to expect that rates developed through a public process will represent an appropriate balance among provider concerns, beneficiary concerns, and budget and other limitations. Although most States have their own procedures for notifying the public of agency policy changes, we believe that the statutory requirements

governing long-term care facility and inpatient hospital reimbursement added by section 962 and section 2173 make it appropriate to establish a Federal requirement on the public notice procedures that must be followed by all States.

Under the regulations we are proposing, we have included a procedural requirement that the State continue to issue public notice of any major change in its method of calculating payment rates for inpatient hospital or LTC services. However, in the interest of limiting the State's flexibility as little as possible and to streamline the process, we are not establishing either an explicit expenditure threshold that would have to be exceeded before public notice is required, or a mandatory length for the comment period. (The existing rule in 42 CFR 447.205 would continue to apply, however, if we determine not to remove it as we have proposed.)

VI. Other Provisions

In addition to the provisions regarding the States' assurances, we have included, in the revised regulations, other provisions needed to implement the amendment. We also have revised our current regulations on payment for LTC facility services to eliminate all requirements relating to payment on a reasonable cost-related basis, and to simplify or eliminate many of the current recordkeeping, reporting and audit requirements. These changes are explained in the following paragraphs.

A. *Time limit for HCFA review.* We have specified in the revised regulations that HCFA will notify the agency of its decision regarding acceptance of the agency's assurances within 60 days of receiving the assurances and related information. We have also specified that if we do not notify the agency of our decision within this time limit, the State's assurances will be deemed accepted.

This time limit is based on the requirements in section 2177 of the Omnibus Budget Reconciliation Act of 1981. (Pub. L. 97–35). Under section 2177, a request for approval of a State plan, plan amendment, or waiver of plan requirement will be deemed approved unless, within 90 days after the request is submitted, the Secretary either disapproves the request or gives the State written notice of the additional information needed for a decision on it. If further information is needed, the request will be deemed approved unless the Secretary disapproves it within 90 days of receiving the additional information. Since the revised regulations merely establish minimal procedural and information reporting requirements for States, we decided that a shorter timeframe for processing State's assurances is both achievable and in the public interest.

B. *Effective Date of Rates.* Under the revised regulations, a proposed rate will be effective for the period for which the State wishes to use the rate. However, this period cannot begin earlier than the first day of the calendar quarter in which HCFA received the State's assurance that the proposed rate meets the statutory requirements. This limitation on the retroactivity of rates is necessary to conform the revised regulations to the current regulations on the effective date of new plans and plan amendments (see 45 CFR 201.3(g)).

C. *Resubmittal of Assurances and Related Information.* In discussing the presumed approval of payment rates not disapproved within 90 days after they were submitted, the Conference Committee Report on section 962 specifies that these rates are to be effective for the fiscal year for which they were proposed. We believe this indicates that the Committee expected each rate to apply only to a single 12-month rate period, or to all periods beginning within one year of the first date for which the rate is effective. Therefore, we have specified in the revised regulations that a State must submit new assurances and related information before the end of the calendar quarter that includes the date on which the rate has been in effect for one year, or whenever the agency significantly changes its payment methodology, whichever occurs first.

Because this requirement will apply to both prospective and retrospective rates, the current requirement, in 42 CFR 447.304, that prospective payment rates be redetermined at least annually is no longer needed. Therefore, we have deleted this more limited requirement.

D. *Cost Reporting Requirements.* Section 962 requires each State to make assurances satisfactory to the Secretary for the filing of uniform cost reports by each SNF or ICF. The revised regulations do not add any further requirements for cost reporting. In general, we believe each State is best equipped to develop its own standards and procedures for cost reporting.

E. *Recordkeeping.* We have deleted the current regulations, in 42 CFR 447.277, under which each provider is required to keep financial records accurately and in enough detail to support its report of these costs, to keep the records for at least 3 years after it submits the cost report to which the records relate, and to make these records available on request to representatives of the State or HHS. These requirements are not needed to implement the amendment and, if retained, could be interpreted as duplicating the more general record retention and access requirements in 45 CFR Part 74, Subpart D. These more general requirements are not affected by the amendment and therefore will continue in effect.

F. *Audits.* Section 962 requires the State to make assurances satisfactory to the Secretary that it will provide for periodic State audits of LTC facility cost reports. To implement this requirement, we are requiring only that States provide for periodic audits of providers' cost reports. We are deleting the current regulations dealing with a minimum level of audit activity (audit of 15 percent of all facilities each year), audit procedures, cost report desk analysis, audit of all facilities' records over a 3-year period, audit reports, and accounting for overpayments found in audits (see 42 CFR 447.290–447.296). We believe the specific requirements regarding desk reviews and audits are not needed to implement the amendment, and that retaining them could limit States' discretion to design audit programs to meet their needs. However, we expect that States will, under the revised regulations maintain the minimum level of audit activity needed to ensure that payments are being made in accordance with their State plans and to detect and correct provider fraud and abuse.

Although we have included audit requirements for all States, we are concerned that the retroactive adjustments in payments that could be required as a result of audit findings might, in some cases, conflict with the requirements of State payment systems. This potential for conflict could arise because some payment systems, especially those that use prospectively determined class rates, do not allow adjustments to be made after a payment rate is determined. We wish to solicit comments on the specific issue of how adjustments needed to act on overpayments or underpayments discovered as a result of audits could be made under these systems.

G. *Payment Methods and Standards.* In revising the current regulations on payment methods and standards (see 42 CFR 447.301–447.306) to reflect the changes made by section 962, we have deleted the requirements that relate to payment on a reasonable cost-related basis, but have retained the general requirements that specify that each State plan must describe the State's payment methods and standards. This

requirement is based on a general requirement in section 1902(a)(30) of the Social Security Act that plans must provide methods and procedures relating to payment for care and services provided under the plan. The requirement is also consistent with our current regulations at 45 CFR 201.2, which provide that each State plan must comprehensively describe the nature and scope of its program.

We also are requiring that, if the agency wishes to apply the Medicare limits on SNF costs to limit individual facility payments, it must state specifically in the plan that it intends to do so. We also are deleting the provisions of current regulations that require States to specify the types of service deficiencies, if any, for which rates will be reduced retroactively. We believe the requirement in the revised regulations, under which States must specify their payment methods and standards in their State plans, is adequate to ensure that this requirement will be met.

H. *Opportunity for Profit.* The current regulations do not specify the conditions under which facilities may be allowed a profit. Profit is a significant issue under the current regulations, because those regulations implement previous legislation (section 249 of Pub. L. 92–603), which required reasonable cost-related payment and thus raised the issue of when payments that exceed costs are justified. However, section 962 of Pub. L. 96–499 amended the Medicaid law to remove the cost-related payment requirement. We believe that, under section 962, each State should be free to decide, in setting its payment rate, whether to allow facilities an opportunity for profit. Therefore, in developing the proposed regulations to implement section 962, we have not included any specific rules on this issue.

I. *Upper Limits.* The revised regulations specify that the agency's total payments for all LTC facility services furnished under the plan must not be greater than the total amount that would be paid for the services under the Medicare principles of reimbursement in 42 CFR Part 405, Subpart D. To determine whether this requirement is met, the agency may consider payments to a random sample of all Medicaid facilities or average payments to all facilities in a class.

The regulations provide two separate approaches for determining what would have been paid under Medicare. For facilities that participate in both Medicare and Medicaid, the Medicare interim reimbursement rate, adjusted to account for services not covered under the Medicaid plan, may be used to determine the upper limit. For facilities that do not participate in Medicare, the regulations require the agency to use estimates of the amount Medicare would have paid these facilities. These estimates must be consistent with the intent that payments do not exceed what would be paid under Medicare principles.

The upper limit based on Medicare payments is needed to implement the general requirement in section 1902(a)(30) of the Act that Medicaid payments be consistent with efficiency, economy, and quality of care. In addition, the Senate Finance Committee Reports on the amendment state that the Secretary would be expected to continue to apply current regulations that require that payments made under State plans do not exceed amounts that would be determined under the Medicare principles of reimbursement. These reports also state that, since States would be free to establish payment rates without reference to Medicare principles of reimbursement, the Secretary would be expected only to compare the average rates paid to SNFs participating in Medicare with the average rates paid to SNFs participating in Medicaid, in applying this limitation. In our view, these statements make it clear that the Committee expected that the upper limits based on Medicare payments would remain in effect.

In developing the revised regulations, we revised the current upper limits as follows.

(a) *Revision to upper limit based on charges.* We deleted the current provision, in 42 CFR 447.315, that prohibits States from paying more for long-term care facility services than the providers' customary charges. We believe that the intent of section 962 to provide States with greater flexibility in the setting of payment rates warrants the removal of this upper limit requirement, which is not required by the statute. We believe that an aggregate upper limit based on Medicare payments is sufficient to assure that the increased flexibility granted by section 962 does not result in unacceptable increases in Federal Medicaid payments.

(b) *Medicare upper limit revisions.* We have extended the Medicare upper limit, which currently applies only to payments under retrospective payment systems, to payments under both retrospective and prospective systems. We made this change because we believe that a payment limit designed to implement section 1902(a)(30), which applies to Medicaid payments generally, should be applicable to all Medicaid plans and not only to those with retrospective payment systems. Currently, only 16 of the 53 Medicaid plans use retrospective payment systems, and we expect the number of retrospective systems to decline further as States exercise the increased flexibility provided by section 962. We do not believe it would be either equitable or effective to apply the limit based on Medicare payments only to the few States that use retrospective systems.

In making this change, we are aware that some States have expressed concern that applying the limit based on Medicare payments to prospective systems that use significantly different reimbursement principles could be costly and burdensome, since it could require the agency to apply Medicare's detailed cost-finding principles to determine what would have been paid under Medicare. However, we do not believe application of these principles would be necessary. Our current regulations permit agencies to use Medicare interim payments to determine what Medicare would have paid facilities that participate in both Medicare and Medicaid, and allow agencies considerable discretion in calculating what Medicare would have paid to Medicaid-only facilities. The revised regulations will allow agencies similar discretion in estimating what Medicare would have paid to facilities that participate only in Medicaid. Therefore, we believe that the limit could be extended to cover prospective systems without creating excessive administrative burdens for States with these systems.

In addition to making this change, we have specified that States must adjust the Medicare interim rate, (or other amount they estimate would have been paid under Medicare) to reflect services not included in the Medicaid plan. Although our current regulations do not explicitly require States to make this adjustment in applying the limit to Medicaid-only facilities, the adjustment has been required under our current policy on review of State plan provisions dealing with the limits, and is needed to assure that the limit applies equitably to all facilities. We believe, therefore, that the requirement should be stated explicitly in the upper limit regulations.

J. *Provider appeals.* The revised regulations require each State agency to develop an appeals procedure that allows a provider to submit evidence to the agency and seek prompt administrative review of its payment rate. We believe the appeals requirement described above is needed

because individual facility rates will not receive Federal review under the revised regulations.

We believe that individual facilities must be given some opportunity to request review and adjustment of their rates. We recognize, however, that another approach could be used to achieve this purpose. Therefore, we wish to invite comments on the following issues:

- Is there a procedure other than an appeals process that would help ensure that facilities' payment rates are reviewed as necessary?
- If there is no appropriate alternative to an appeals process, should conditions for appeals be specified?

Payment for Inpatient Hospital Services

I. Omnibus Reconciliation Act of 1980

Section 902 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499) amended the Medicaid law by providing special rules on payment for inpatient hospital services to a patient who does not require an inpatient level of care but must be kept in the hospital because the SNF or ICF care the patient requires is not available. These rules specified that if the services are furnished in a hospital that meets the occupancy standard set forth in the amendment (80 percent average daily occupancy in the calendar year immediately preceding the year in which the services were furnished), the State must pay for the services at its regular rate of payment for inpatient hospital services. If the services were furnished in a hospital that does not meet the occupancy standard, the State must pay for the services at the estimated adjusted Statewide per diem rate for the level of care (SNF or ICF) the patient required or, for hospitals with distinct parts certified as SNFs or ICFs, at the lesser of the Statewide rate or the actual rate for the particular SNF or ICF. The effective date specified in the legislation for this amendment is the date the Secretary issues final regulations implementing the amendment. When the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) was enacted, regulations implementing section 902 of Pub. L. 96–499 had not been issued.

II. Omnibus Budget Reconciliation Act of 1981

A. *Major Provisions Relating to Hospital Reimbursement Under Medicaid.* The Omnibus Budget Reconciliation Act of 1981, which was enacted on August 13, 1981, made several significant changes in the provisions of the Medicaid law that govern payments for inpatients hospital services. Specifically, section 2173 of Pub. L. 97–35:

- Removed the requirement that States pay for the reasonable cost of inpatient hospital services in accordance with methods and standards, consistent with section 1122 of the Act, that are developed by the States, and reviewed and approved by the Secretary;
- Removed the requirements, added by section 902 of Pub. L. 96–499, that specify how States are to determine their payments for inappropriate inpatient hospital services to patients who require a lower level of care;
- Added the requirement that States pay for hospital services through the use of rates (determined in accordance with methods and standards developed by the State) which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide care in conformity with applicable State and Federal laws, regulations, and quality and safety standards. (This is the same requirement that was added, for LTC facility reimbursement, by section 962 of Pub. L. 96–499);
- Added the requirements that States' methods and standards for determining payment rates for hospital services take into account the situation of hospitals that serve a disproportionate number of low income patients with special needs and provide, in the case of hospital inpatients receiving an inappropriate level of care (under conditions similar to those in section 1861(v)(1)(G) of the Act), for lower reimbursement rates reflecting the level of care the patients actually received (in a manner consistent with section 1861(v)(1)(G)). (Section 2101 of Pub. L. 97–35 amended section 1861(v)(1)(G) by removing the 80 percent occupancy standard added by section 902, and substituting more general provisions under which Medicare will pay for inappropriate services at the acute care rate only if the Secretary determines there is no excess of hospital beds.);
- Added the requirement that States' payment rates for hospital services be reasonable and adequate to assure that Medicaid patients have reasonable access, taking into account geographic location and reasonable travel time, to inpatient hospital services of adequate quality; and
- Added the requirement that each State make further assurances, satisfactory to the Secretary, for the filing of uniform cost reports by each hospital and for periodic audits by the State of those reports.

B. *Legislative History of Section 2173.* In developing regulations to implement this amendment, we relied on section 2173 and its legislative history, including the parts of the Conference Report on Pub. L. 97–35 that deal with section 2173. We also considered the pertinent parts of the Senate Budget Committee Report on S. 1377 (Senate Report No. 97–139) and of the House Budget Committee Report on H.R. 3982 (House Report No. 97–158). (The Conference Committee considered both S. 1377 and H.R. 3982 in deciding to recommend enactment of section 2173.) We gave special emphasis, in developing the revised regulations set forth below, to the parts of the amendment and its legislative history that deal with the issues described in items (1) through (5).

1. *State discretion in determining payment levels.* Both the House Budget Committee Report on H.R. 3982 and the Senate Budget Committee Report on S. 1377 make it clear that removal of the requirement that hospitals be paid on a reasonable cost basis is intended to increase State discretion in setting payment rates. Specifically, the report on H.R. 3982 notes that even the alternative payment methods approved under the previous law must offer a reasonable cost basis for reimbursement, and that the requirement that hospitals be paid on this basis results in higher levels of payment than States might set if granted more flexibility. The report on S. 1377 expresses the view that States should have flexibility in developing methods of payment for their Medicaid programs, and states that application of Medicare's reasonable cost reimbursement principles is not entirely satisfactory, since these principles are inherently inflationary and contain no incentives for efficient performance.

2. *Minimizing administrative burden.* The report on S. 1377 emphasizes the need for the Federal Government to keep its administrative requirements to the minimum necessary to assure proper accountability, and not to overburden States and facilities with unnecessary and burdensome paperwork requirements.

3. *Hospitals with disproportionate numbers of low-income patients with special needs.* The report on H.R. 3982 expresses concern about the impact of State payment practices on hospitals that treat a large volume of Medicaid patients and patients without health insurance. The report notes that these hospitals, especially those in urban areas, provide many public health and social services to residents of their areas, as well as serving as hospitals of

last resort for the poor. As a result, these hospitals experience special costs. Meeting these costs is often difficult, since these hospitals also frequently receive only a small proportion of their overall revenues from non-public sources. The report states that, for these reasons, many of these hospitals are now and will continue to be financially distressed, and will experience special costs that States should take into consideration.

4. *Payment for inappropriate inpatient hospital services.* Although the reports cited above do not explicitly discuss this issue, section 2173 repealed the detailed provisions on payment for these services that were added by section 902 of Pub. L. 96–499, and substituted for them the more general requirement that State payment methods and standards provide lower reimbursement rates for these services in a manner consistent with section 1861(v)(1)(G) of the Act. (This section sets forth the requirements added by section 902, on Medicare payment for these services. As noted earlier, section 2102 modified these requirements by deleting the 80 percent occupancy standard and substituting more general provisions relating to situations in which the Secretary determines there is no excess of hospital beds.) In our view, the purpose of this change is to allow States greater flexibility than under previous law to develop appropriate ways of calculating their payments for these services.

5. *Reasonable access to inpatient hospital services.* The report on H.R. 3982 states the expectation that payment levels for inpatient services will be adequate to assure that a sufficient number of facilities providing a sufficient level of services actively participate in the Medicaid program to enable all Medicaid beneficiaries to obtain quality inpatient services. This report further states that payments should be set at a level that ensures the active treatment of Medicaid patients in a majority of the hospitals in the State.

III. Implementation of Section 2173

A. *General Implementation Approach.* We believe that section 2173, which extended the changes made by section 962 of Pub. L. 96–499 to apply to hospital as well as LTC facility reimbursement, requires that we adopt the same basic implementation approach with respect to payments for both inpatient hospital and LTC facility services. In addition, we believe that use of the same approach to implement both section 962 and section 2173 will simplify the administration of the Medicaid program for both the Federal and State governments and will make it easier for hospitals and facilities to understand Federal policy in this area. Therefore, we will use the revised regulations set forth below, which deal with payments to hospitals as well as LTC facilities, to implement section 2173. Except as specified otherwise in the following paragraphs, we will apply the requirements and procedures described in the section of this preamble that deals with payment for LTC facility services to payment for hospital services as well.

We wish to point out that our use of the same general approach to implement the changes in the Medicaid law relating to LTC facility and hospital services does not mean that States must use the same reimbursement method for both types of facility services. We also wish to note that the term "rates" as used in the revised regulations refers to the payment amounts produced under whatever specific payment method the State adopts for a particular type of facility.

B. *Issues Related to Payment for Inpatient Hospital Services.*

1. *Additional requirements for hospital payments.* In the revised regulations, we have set forth three requirements that apply only to payments for inpatient hospital services, as follows:

- The methods and standards used by States to determine payment rates must take into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs;
- The methods and standards used by States to determine payment rates must provide that reimbursement for hospital patients receiving services at an inappropriate level of care, under conditions similar to those described in section 1861(v)(1)(G) of the Act, will be made at lower rates reflecting the level of care actually received, in a manner consistent with section 1861(v)(1)(G); and
- The payment rates for inpatient hospital services must be adequate to assure that beneficiaries have reasonable access, taking into account geographic location and reasonable travel time, to inpatient hospital services of adequate quality.

We have included these additional requirements because they are identified in section 2173 as basic conditions that must be met by hospital, but not LTC facility, payments. We have not, however, developed any standard methodology for States to use in ensuring that they meet these standards. We believe development of this methodology should be the responsibility of each State.

2. *Upper limit based on charges.* Section 1903(i) of the Act states that FFP for payments for inpatient hospital services is not available to the extent those payments exceed the hospital's customary charges for the services or, for services of a public institution that furnishes services free or at nominal charges, the amount that would provide fair compensation for the services. The upper limit based on charges is based on this provision of the Medicaid law as well as on the more general provisions of section 1902(a)(30).

Impact Analysis

I. Executive Order 12291

We have determined that these regulations do not meet the criteria for a major rule that are set forth in section 1(b) of Executive Order 12291. That is, the regulations will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or

(3) Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have made this determination because the revised regulations will not require States to make any specific changes in their hospital or LTC facility payment systems or payment rates. On the contrary, those regulations will simplify the current procedures for Federal action with respect to States' proposed payment rates, and thus increase State discretion in setting rates. Therefore, we believe the initial economic effect of the revised regulations will be to reduce the costs of administering State Medicaid plans.

In making this determination, we are aware that the increased State discretion in rate-setting that will be allowed by the revised regulations may induce some States to make changes in their payment rates, and that these changes could have economic consequences for States, hospitals, and facilities. However, we do not now have any basis for predicting the extent of these changes, or for estimating their economic impact.

II. Regulatory Flexibility Analysis

The Secretary certifies, under section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations will not have a significant economic impact on a substantial number of small

businesses, nonprofit entities or small local governments.

The reason for the Secretary's negative certification is that, as explained in the Executive Order discussion, these regulations will not require States to make any specific changes in their hospital or LTC facility payment systems or payment rates. By simplifying Federal rules, they increase State discretion in setting rates, and thereby should reduce the costs of administering State Medicaid plans.

As also noted above, State changes in payment rates could have a fiscal impact on States, hospitals, and facilities. However, changes of this type are not required by these regulations, and we do not now have any basis for predicting the extent of these changes, or for estimating their economic impact.

Waiver of Proposed Rulemaking

As indicated in the first part of this preamble, section 2161 of Pub. L. 97-35 requires that the amount of Federal financial participation (FFP) that would otherwise be paid to each State under the Medicaid law be reduced by specific percentages (3 percent for fiscal year 1982, by 4 percent for fiscal year 1983, and by 4.5 percent for fiscal year 1984). These reductions cannot be made for any quarter unless, as of the first day of that quarter, the Secretary has promulgated and has in effect final regulations implementing paragraphs (10)(C) and (13)(A) of section 1902(a) of the Social Security Act. The effect of this special provision is to require that the regulations set forth below, which are needed to implement paragraph (13)(A) of section 1902(a) of the Act, be published in final form (on an interim or other basis) on or before October 1, 1981. If this were not done, we would be prohibited from making the reductions in FFP required by section 2161 for the first quarter of fiscal year 1982.

Because of the statutory deadline imposed by the special provision of section 2161 described above, we believe it would be impractical to delay publication of the final rules set forth below by the amount of time needed to obtain and analyze public comments on them. Moreover, if these regulations are not published on or before October 1, 1981, we would be precluded from making a part of the reduction in FFP for fiscal year 1982 that is required by section 2161. We believe this would be contrary to the public interest. Finally, since Congress expressly referred in section 2161 to the use of interim final regulations, their use in this case has been explicitly authorized. Therefore, we find good cause to waive publication of a notice of proposed rulemaking, and to publish these regulations in final form.

The statutory deadline for implementing these regulations does not permit States time to submit revised State plan amendments before the effective date of the regulations. To accommodate this problem, HCFA will not hold a State out of compliance with the regulations if the Medicaid agency submits the preprinted plan amendment required by the revised regulations by December 31, 1981.

PART 447—PAYMENTS FOR SERVICES

42 CFR Part 447 is amended as set forth below:

1. In Subpart C, §§ 447.250—447.316 are removed and revised §§ 447.250—447.272 are added to read as follows:

Subpart C—Payment For Inpatient Hospital and Long-Term Care Facility Services

Sec.

447.250 Basis and purpose.

Payment Rates

447.251 Definitions.
447.252 General requirements.
447.253 State plan requirements.
447.254 Public notice requirements.
447.255 Submittal of assurances and related information.
447.256 Procedures for HCFA action on assurances.

Provider Appeals

447.258 Provider appeals of State rate determinations.

Cost Reporting

447.260 Provider cost reporting.

Audits

447.265 Audit requirement.

Upper Limits

447.271 Upper limits based on customary charges.
447.272 Upper limits based on Medicare payments.

Subpart D—Payment for Other Institutional and Noninstitutional Services

* * * * *

Subpart C—Payment for Inpatient Hospital and Long-Term Care Facility Services

§ 447.250 Basis and purpose.

Sections 447.251 through 447.265 of this subpart implement section 1902(a)(13)(A) of the Act, which requires that the State plan provide for payment for hospital and long-term care facility services through the use of rates that the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with State and Federal laws, regulations, and quality and safety standards. Sections 447.271 and 447.273 implement section 1902(a)(30) of the Act, which requires that payments be consistent with efficiency, economy, and quality of care; and section 1903(i)(3), which requires that payments for inpatient hospital services not exceed the hospital's customary charges.

Payment Rates

§ 447.251 Definitions

For the purposes of this subpart—

"Long-term care facility services" means skilled nursing facility (SNF) services and intermediate care facility (ICF) services, including intermediate care facility services for the mentally retarded (ICF/MR).

"Provider" means an institution that furnishes inpatient hospital services or an institution that furnishes long-term care facilities services.

§ 447.252 General requirements.

(a) *Payment rates.* (1) The Medicaid agency must pay for inpatient hospital services and long-term care facility services through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers to provide services in conformity with applicable State and Federal laws, regulations, and quality and safety standards.

(2) The payment rates used by the Medicaid agency must be determined in accordance with methods and standards developed by the agency.

(3) With respect to inpatient hospital services—

(i) The methods and standards used to determine payment rates must take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs;

(ii) The methods and standards used to determine payment rates must provide that reimbursement for hospital patients receiving services at an inappropriate level of care under conditions similar to those described in section 1861(v)(1)(G) of the Act will be made at lower rates, reflecting the level of care actually received, in a manner consistent with section 1861(v)(1)(G); and

(iii) The payment rates for such services must be adequate to assure that recipients have reasonable access, taking into account geographic location and reasonable travel time, to inpatient hospital services of adequate quality.

(b) *State findings.* The Medicaid agency must find that the rates used to

reimburse providers satisfy the requirements of paragraphs (a)(1) and (a)(3) of this section.

(c) *State assurances.* The Medicaid agency must make assurances satisfactory to the Secretary that the requirements of paragraphs (a)(1), (a)(3)(iii), (b), and (f) of this section are met and that, in making significant changes in its methods and standards for determining payment rates, it has complied with the public notice requirements in § 447.254.

(d) *Submittal of assurances and related information.* The Medicaid agency must comply with the requirements regarding submittal of assurances and related information in § 447.255.

(e) *Provider appeals.* The Medicaid agency must provide for a system of provider appeals, as specified in § 447.258.

(f) *Uniform reporting and audit requirements.* The Medicaid agency must provide for uniform cost reporting and periodic audits, as specific in §§ 447.260 and 447.265, respectively.

(g) *Upper limits.* The Medicaid agency must comply with the requirements regarding upper limits specified in §§ 447.271 and 447.272.

§ 447.253 State plan requirements.

(a) The plan must provide that the requirements of this subpart are met.

(b) The plan must specify the methods and standards used by the agency to set payment rates.

(c) If the agency chooses to apply the hospital or SNF services cost limits established under Medicare (see § 405.460 of this chapter) on an individual provider basis, the plan must specify this requirement.

(d) The plan must provide that the agency will make the findings and sumbit the assurances and related information to HCFA, as required under §§ 447.252 and 447.255.

§ 447.254 Public notice requirements.

(a) *When notice is required.* Except as specified in paragraph (b) of this section, the agency must provide public notice of any significant proposed change in its methods and standards for setting payment rates for inpatient hospital services and long-term care facility services.

(b) *When notice is not required.* Notice is not required if the change is required by court order.

(c) *Content of notice.* The notice must—

(1) Describe the proposed change in methods and standards;

(2) Give an estimate of any expected increase or decrease in annual aggregate expenditures;

(3) Explain why the agency is changing its methods and standards;

(4) Identify a local agency in each county (such as the social services agency or health department) where copies of the proposed changes are available for public review;

(5) Give an address where written comments may be sent and reviewed by the public; and

(6) If there are public hearings, give the location, date and time for hearings or tell how this information may be obtained.

(d) *Publication of notice.* The notice must—

(1) Be published before the proposed effective date of the change;

(2) Appear as a public announcement in—

(i) A State register similar to the Federal Register;

(ii) The newspaper of widest circulation in each city with a population of 50,000 or more; or

(iii) The newspaper of widest circulation in the State, if there is not a city with a population of 50,000 or more; and

(3) Be sent to the HCFA Regional Office upon publication.

§ 447.255 Submittal of assurances and related information.

(a) *Assurances.* The Medicaid agency must submit the assurances in § 447.252(c) before the end of the calendar quarter that includes the date on which the rate has been in effect for one year, or whenever the agency wishes to make a significant change in its methods and standards for determining the rate, whichever is earlier.

(b) *Related information.* The Medicaid agency must submit, with the assurances described in § 447.252(c), the following information:

(1) The amount of the average proposed payment rate for each type of provider (hospital, SNF, ICF, or ICF/MR), and the amount by which that average rate increased or decreased relative to the average payment rate in effect for each type of provider for the immediately preceding rate period;

(2) A quantified estimate of the short-term and, to the extent feasible, long-term effect the change in the rate will have on—

(i) The availability of services on a Statewide and geographic area basis;

(ii) The type of care furnished (for example, secondary or tertiary care);

(iii) The extent of provider participation; and

(iv) The degree to which costs are covered in hospitals that serve a disproportionate number of low income patients with special needs.

§ 447.256 Procedures for HCFA action on assurances.

(a) *Time limit for action.* HCFA will review the related information described in § 447.255 to determine the reasonableness of significant changes in the items specified in paragraph (b)(2) of that section that result from a change in the average proposed payment rate. HCFA will notify the agency of its determination as to whether the agency's assurances regarding a proposed rate are acceptable within 60 days of the date HCFA receives the assurances described in paragraph (c) of § 447.252 and the related information described in paragraph (b) of § 447.255.

If HCFA does not notify the agency of its determination within this time limit, the assurances will be deemed accepted.

(b) *Effective date.* (1) Except as specified in paragraph (b)(2) of this section, a proposed payment rate with respect to which HCFA has accepted assurances or with respect to which an assurance has been deemed accepted under this section will be effective on the date specified in the agency's assurances.

(2) A payment rate with respect to which HCFA has accepted assurances or with respect to which an assurance has been deemed accepted under this section will not be effective for any period beginning before the first day of the calendar quarter in which the agency submits the assurances and related information described in § 447.255.

Provider Appeals

§ 447.258 Provider appeals of State rate determinations.

The agency must provide an appeals procedure that allows individual providers an opportunity to submit additional evidence and request prompt administrative review of payment rates.

Cost Reporting

§ 447.260 Provider cost reporting.

The agency must provide for the filing of uniform cost reports by each participating provider.

Audits

§ 447.265 Audit requirement.

The agency must provide for periodic audits of the financial and statistical records of participating providers.

Upper Limits

§ 447.271 Upper limits based on customary charges.

(a) Except as provided in paragraph (b) of this section, the agency may not pay a provider more for inpatient hospital services under Medicaid than the provider's customary charges to the general public for the services.

(b) The agency may pay a public provider that provides services free or at a nominal charge at the same rate that would be used if the provider's charges were equal to or greater than its costs.

§ 447.272 Upper limits based on Medicare payments.

(a) An agency may not pay more in the aggregate for inpatient hospital services or long-term care facility services than the amount that would be paid for the services under the Medicare principles of reimbursement under Part 405, Subpart D of this chapter. Payments meet this requirement—

(1) If, in a random sample of all Medicaid providers, the payment is not more than the amount that would have been paid under Medicare in at least 90 percent of the providers in the sample; or

(2) If the average payment to all providers in a class is not more than the average amount that would have been paid under Medicare.

(b) To determine what would have been paid for a class of providers under Medicare—

(1) For providers that participate in Medicare, the interim rate paid to the provider under Medicare (adjusted for services not included in the State plan and for the Medicare inpatient routine nursing salary cost differential paid under § 405.430 of this chapter) may be used to determine the upper limit; and

(2) For hospitals and SNFs that do not participate in Medicare and for ICFs, the agency must estimate the amounts Medicare would have paid those providers. These estimates must be consistent with the intent that payments do not exceed amounts (adjusted for services not included in the State plan and for the Medicare inpatient routine nursing salary cost differential paid under § 405.430 of this chapter) that would be determined using Medicare's principles.

2. A new heading is added before § 447.321, as follows:

Subpart D—Payment for Other Institutional and Noninstitutional Services

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: September 23, 1981.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 24, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81-28323 Filed 9-29-81; 8:45 am]

BILLING CODE 4110-35-M

federal register

Wednesday
September 30, 1981

Part IV

Department of Health and Human Services

Health Care Financing Administration

Medicaid Eligibility and Coverage Criteria

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 435, 436, 440, and 441

Medicaid Program; Medicaid Eligibility and Coverage Criteria

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This rule amends current regulations that contain requirements States must follow in establishing eligibility criteria for the medically needy recipients under Medicaid (title XIX of the Social Security Act) and in providing services for those individuals. It also makes certain changes with respect to categorically needy persons. This rule implements sections 2171 and 2172 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). That law gives States considerable flexibility in establishing eligibility criteria and scope of services for the medically needy.

These final regulations: (1) specify whom the State must include among the medically needy if it provides for that group in the Medicaid program: (2) provide the State with flexibility in determining what additional persons will be included among the medically needy; (3) specify what services must be provided for the medically needy; and (4) require the State to include specified groups of individuals (certain children, pregnant women, and persons in certain work programs) among the categorically needy.

DATES: These regulations are effective October 1, 1981. Although these regulations are final, comments may be submitted as described below. To assure consideration, comments should be mailed by December 29, 1981.

State agencies have until December 31, 1981, to submit their preprinted plan amendments and required attachments. HCFA will not hold a State to be out of compliance with the requirements of these final regulations if they submit the necessary preprint plan material by that date.

ADDRESS: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration; P.O. Box 17076, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C., or to Room 789, East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP–179–FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave., S.W., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, if as a result of comments, we believe that changes are needed in these regulations, we will publish the changes in the **Federal Register** and respond to the comments in the preamble of that document.

FOR FURTHER INFORMATION CONTACT: Elmer Smith, (301) 594–9682.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Medicaid program was enacted in 1965 under title XIX of the Social Security Act (the Act). States that establish Medicaid programs must provide for medical assistance to the categorically needy. These are persons eligible for Medicaid because, in general, they receive certain cash assistance—Aid to Families with Dependent Children (AFDC) (title IV–A of the Act) or Supplemental Security Income (SSI) (title XVI of the Act). States could also cover as categorically needy certain individuals who would be eligible to receive cash benefits and recipients of certain State Supplmentary Payments. States may also provide medical assistance to the medically needy. Before Pub. L. 97–35, this group consisted, in general, of persons who would have been categorically needy, except that their income or resources exceeded the financial eligibility requirements for the categorically needy, but were within limits set by the State.

States that chose to include the medically needy in their Medicaid programs had to meet, among others, the following requirements:

(1) States had to cover as medically needy all groups that were categorically related (the aged, blind and disabled, and families with dependent children).

(2) States had to offer a mix of institutional and noninstitutional services.

(3) States had to offer the same amount, duration, and scope of services to all medically needy—the comparability of services requirement.

Sections 2171 and 2172 of the Omnibus Budget Reconciliation Act of 1981 (the 1981 Amendments) revised title XIX of the Act by giving the States flexibility in determining which groups of individuals would be included in the medically needy and what services those groups would be offered under the State plan. Congress intended to enable each State, based on internal consideration of priorities, needs, and resources, to target Medicaid services for the optional groups more appropriately (H.R. Rept. No. 97–208, p. 971).

Under the 1981 Amendments, coverage of the medically needy continues to be optional. A State can choose not to have a medically needy program at all. (At the present time, all but 20 States have a medically needy program.) However, the 1981 Amendments enacted the following changes in the eligibility requirements for those States that choose to have a medically needy program:

1. The State is not required to cover all categorically related groups (for example, the aged and blind) under its medically needy program.

2. The State plan must include a description of criteria for determining eligibility of each covered group of medically needy individuals.

3. The States are given greater flexibility in coverage of individuals under age 21. However, there are some minimal requirements that States must meet, as discussed below.

4. If the State plan provides for the medically needy, the plan must provide for pregnant women who, but for income and resources, would be eligible for Medicaid as catergorically needy.

The new legislation also includes the following provisions related to the categorically needy:

1. States must include as categorically needy persons who are denied AFDC payment solely because the payment would be less than $10 a month.

2. The State must include as categorically needy individuals who participate in certain AFDC-related work programs and are deemed by the State to be receiving AFDC.

3. The State must include under the categorically needy certain pregnant women who are deemed by the State to be AFDC recipients.

The 1981 Amendments made the following changes that affect the services that are provided to the medically needy:

1. The State plan is no longer required to provide the same amount, duration,

and scope of services for all medically needy groups under the plan.

2. The State plan must indicate the amount, duration, and scope of services for each covered group of medically needy.

3. Ambulatory services must be offered to (a) eligible children under age 18 and (b) individuals entitled to institutional services.

4. A range of services specified in the statute must be offered to all medically needy if the State plan provides for services to the medically needy in an intermediate care facility for the mentally retarded (ICF–MR) or in an institution for mental diseases (IMD).

5. Prenatal care and delivery services must be offered to all eligible pregnant women.

These final regulations implement the changes enacted by the 1981 Amendments. For the most part, the regulations restate the provisions of these amendments, giving States the maximum flexibility provided for under the Act. In the discussions that follow we identify the significant changes and the fundamental issues that are involved. In addition, there are technical revisions in the regulations to bring them into conformity with the latest changes in the statute.

II. Categorically Needy Eligibility Provisions

A. Optional Categorically Needy Group

Previously, section 1902(a)(10)(C) defined the medically needy and contained language that enabled one to identify a group of individuals referred to as the "optional categorically needy". They were individuals for whom the State had the option of providing medical assistance as categorically needy. This group included, among others, persons eligible for but not receiving AFDC cash assistance because they chose not to receive such assistance, and persons who would have been eligible to receive cash assistance if they were not institutionalized.

Section 2171(a) of the 1981 Amendments has revised the definition of the medically needy so that a question arises as to whether the optional categorically needy can continue to be identified under Medicaid. Section 1902(a)(10)(C) of the Act now defines the medically needy as "any group of individuals described in section 1905(a) who are not described in subparagraph (A) [of section 1902(a)(10)]". Subparagraph (A) describes the mandatory categorically needy, that is, persons receiving cash assistance. Section 1905(a) lists general groups of individuals, such as persons under 21 years of age and persons who are blind or disabled. Therefore, the new definition of medically needy could be interpreted to mean that anyone not receiving cash assistance or aid is considered medically needy rather than categorically needy.

In the past, the optional categorically needy group afforded the States some flexibility. For example, if the State did not wish to adopt a full scale medically needy program, it was able to provide Medicaid for certain individuals, such as those who would be eligible for cash assistance if they were not institutionalized, by electing to cover them as optional categorically needy.

Now, however, given the extensive flexibility afforded the States as a result of the 1981 Amendments (as explained more fully below), it is possible that there is no longer any reason for maintaining the optional categorically needy classification, because the State could cover these persons under one of the medically needy classifications. However, in order not to inhibit the States' options and allow the States to implement their new authority with the least confusion and disruption possible, we have in these regulations maintained the previous provisions that provide for the optional categorically needy. We specifically invite comments from the public as to whether, in view of the 1981 Amendments, the optional categorically needy classification should continue to be provided for as a distinct group in Medicaid and the implications of its deletion.

B. Individuals in Work Supplementation Programs

The State plan must provide Medicaid eligibility as categorically needy for all individuals who (1) are participating in an AFDC work supplementation program (under section 414 of the Act) *and* (2) are deemed by the State to be AFDC recipients. (See 42 CFR 435.115 and 436.114, as added by this rule.) This provision implements section 1902(a)(10)(A) of the Act, as amended by section 2171(a)(1) of the 1981 Amendments.

Section 2308 of the 1981 Amendments added a new section 414 to title IV of the Act. That section allows States to institute work supplementation programs. These programs make jobs available to AFDC recipients, as an alternative to receiving AFDC. States with these programs have the option of considering individuals who participate in these programs as receiving AFDC for purposes of eligibility under title XIX (section 414(g) of the Act). Individuals who, under section 414(g) of the Act, are considered to be receiving AFDC must be included among the categorically needy classification under Medicaid (section 1902(a)(10)(A) of the Act). (Under the provisions of section 414(a) of the Act, the State may elect, for purposes of Medicaid, to deem the following to be AFDC recipients: the participant in the work program, any child or relative of the participant, or other individual living in the same household as the participant.)

C. Pregnant Women

Under section 406(g)(2) of the Act (as amended by the 1981 Amendments), a State may choose to extend Medicaid eligibility to pregnant women as soon as pregnancy is medically verified, even though eligibility for AFDC cash assistance is limited to the last four months of pregnancy. If a State chooses to do so, it must treat such individuals as categoricaly needy. The issues and regulations related to these individuals are discussed more fully below in section V, "Pregnant Women."

D. Individuals Denied AFDC Cash Payment

The State plan must provide Medicaid for individuals who are denied a cash payment from the title IV–A agency solely because the amount of the AFDC payment would be less than $10. (See 42 CFR 435.115 and 436.114, as added by this rule.)

Section 2316 of the 1981 Amendments added a new paragraph (32) to section 402(a) of the Act. The new paragraph denies an AFDC cash assistance payment to an individual if the payment would be less than $10. However, that same paragraph specifies that such an individual is deemed to be an AFDC recipient. Since the Medicaid plan must provide for an individual receiving (or deemed to be receiving) AFDC cash assistance, the individual deemed to be an AFDC recipient under Section 402(a)(32) of the Act must, if otherwise eligible, be included under the mandatory categorically needy in the State Medicaid plan.

E. Persons Under 21 Years of Age

There were several changes in the AFDC and Medicaid programs affecting children under age 21. In order to discuss these in an orderly and logical way, we have grouped the issues and regulations relevant to these individuals below in section IV, "Individuals Under 21 Years of Age."

F. Individuals Entitled to Benefits Under Section 1622 of the Act

Individuals entitled to benefits under section 1622 of the Act are not to be considered SSI recipients for purposes of determining Medicaid eligibility. (See 42 CFR 435.120 as revised by this rule.)

Section 2201 of the 1981 Amendments repeals the minimum benefit provisions of Social Security (title II of the Act: Federal Old-Age, Survivors, and Disability Insurance Benefits). At the same time, the 1981 Amendments added a new section 1622 to the Act to provide benefits under the SSI program (title XVI of the Act) for certain individuals formerly receiving minimum benefits under title II. Generally, persons receiving SSI benefits become eligible for Medicaid as a result of that status. However, the new statute also specifies that individuals entitled to benefits under section 1622 shall not be considered to be SSI beneficiaries for purposes of title XVI or any other title of the Act (see section 1622(d) of the Act). Consequently, individuals entitled to benefits under section 1622 of the Act, do not automatically become eligible for Medicaid by reason of receiving such benefits.

III. Medically Needy Eligibility Provisions

Prior to the 1981 Amendments, States had the option of including, or excluding, the medically needy; but if they chose to include any medically needy, they were required to provide for all the medically needy, that is, the aged, blind, disabled, and families with dependent children. The 1981 Amendments substantially changed those requirements by giving the States flexibility in determining what groups (for example, the aged, or the blind, or the disabled) would be eligible for Medicaid as medically needy. Along with that flexibility, however, there are certain requirements that a State must follow if it does choose to provide for the medically needy. The following provisions identify the Federally-established parameters within which a State must specify the "medically needy" in its Medicaid program.

A. Choice of Medically Needy Groups

1. *Provision:* Subject to specific requirements discussed later pertaining to children and pregnant women, a State has discretion to extend eligibility to any of the groups of individuals listed in section 1905(a) of the Act who are not eligible as categorically needy. The groups listed in section 1905(a) of the Act are:

a. Caretaker relatives (formerly identified in regulations as part of the families with dependent children group).
b. Aged.
c. Blind.
d. Disabled.
e. Persons under age 21 (discussed below in section IV, "Individuals Under Age 21").

Congress also indentified another medically needy group, certain pregnant women who would be eligible for Medicaid as categorically needy, except for income and resources. This specific group is discussed below in section V, "Pregnant Women".

This provision, regarding choice of medically needy groups, is provided for in this final rule by revising 42 CFR 435.301 and 436.301. Formerly, those sections required States to offer Medicaid to all medically needy groups if the medically needy option were chosen.

2. *Discussion:* The statutory basis for this provision is section 1902(a)(10)(C) of the Act, as amended by section 2171(a)(3) of the 1981 Amendments.

B. The "209(b) States"

1. *Provision:* The "209(b) States" have the same flexibility as other States in choosing which medically needy groups they provide for in the State plan. (This final rule provides for this by revising 42 CFR 435.321 and redesignating it as 435.330.)

2. *Discussion:* Section 209(b) of Pub. L. 92-603, which added section 1902(f) to the Act, gave States the option not to use SSI criteria for determining Medicaid eligibility for aged, blind or disabled individuals. Instead, a State could choose to determine eligibility for these groups according to more restrictive criteria used in their January 1, 1972 State Medicaid plan. States that choose this option are referred to as "209(b) States". The question arises whether a 209(b) State is allowed to drop portions of its medically needy program, that is, whether the 1981 Amendments give a 209(b) State the same option as other States in selecting the groups of medically needy that it will cover. Our current regulations at 42 CFR 435.121(b)(1) do not permit the 209(b) States to have more liberal standards for their categorically needy than the standards current in the SSI program. This regulation is based on the reading of section 1902(f) of the Act in conjunction with section 1902(a)(10)(A) of the Act.

"Notwithstanding any other provision of this title [(XIX) which requires States to provide Medicaid eligibility to all SSI recipients], no State * * * shall be required to provide medical assistance to any aged, blind, or disabled individual [unless the State would have been required to provide Medicaid to such individuals under its Medicaid plan in effect on January 1, 1972] * * *."

In our view, the obligation to provide Medicaid to aged, blind, and disabled individuals who would have been eligible for Medicaid under the January 1, 1972 plan is limited to those individuals (such as SSI recipients) whom the State is currently required to make Medicaid eligible by virtue of some other provision of the law. In this case, section 1902(a)(10)(A) of the Act requires States to make all SSI recipients eligible for Medicaid as categorically needy.

Regarding the medically needy, the 1981 Amendments have revised section 1902(a)(10)(C) of the Act so that States with a medically needy program are no longer required to provide eligibility for the aged, blind, *and* the disabled. We believe that the 209(b) States which had a medically needy program in 1972 are no longer required to continue to cover all groups of medically needy and, therefore, may eliminate the medically needy program for any or all of their medically needy group.

We believe that this view is consistent with the intent of section 1902(f) of the Act that was to allow States flexibility in administering their Medicaid programs by being more restrictive in their policies than the SSI program, while providing a certain amount of protection to individuals adversely affected by this option. We do not believe the intent was to deny the 209(b) States the options otherwise available to all States. With this in mind, and in view of the flexibility clearly intended by Congress and expressed in the amended language of the Act, we believe that 209(b) States should have the same options for selection of medically needy groups as other States, and we provide for this in these regulations. (See 42 CFR 435.321 which is revised and redesignated in this rule as 435.330.)

We note, however, that these final regulations do not affect the current requirements governing "spend down" of the categorically needy in 209(b) States (see 42 CFR 435.732)—regardless of whether the State has a medically needy program. ("Spend down" means that an individual incurs medical expenses in the amount by which his income exceeds a prescribed financial eligibility level.)

C. All Individuals in a Group

1. *Provision:* If the State plan provides for Medicaid to any individuals in a

group, the agency must provide Medicaid benefits for all individuals eligible to be in that group. (See revised sections, 42 CFR 435.301 and 436.301 of this final rule.) The only time the State plan may provide for a classification, or subgroup, is in the case of individuals under 21 years of age. (See new sections 42 CFR 435.308 and 436.308 of this final rule.)

2. *Discussion:* This provision is based on the new section 1902(a)(10)(C) of the Act that defines the medically needy, in part, as any *group* of individuals described in section 1905(a) of the Act. The only subgroups specified in section 1905(a) are those under age 21. Section 1905(a)(i) of the Act describes individuals "under the age of 21, or, at the option of the State, under the age of 20, 19, or 18 as the State may choose, or *any reasonable category of such individuals"* (emphasis added).

The issue is whether the State can limit eligibility to subgroups of any of the other groups in section 1905(a) of the Act. The phrase "any reasonable category" is used in the provision that addresses the under age 21 group. Therefore, we believe that Congress intended that if the State plan provides for any other group specified in section 1905(a) of the Act, such as the aged, the plan must provide for all the individuals who are eligible to be in that group.

D. State-Established Criteria

1. *Provision:* The State plan must include a description of the criteria for determining the eligibility of each medically needy group.

2. *Discussion:* This provision implements section 1902(a)(10(C)(i) of the Act, as amended by the 1981 Amendments. That section of the Act requires States that choose the medically needy option to describe the eligibility criteria. Existing Federal regulations (42 CFR 435.10 and 436.10) contain a general requirement that State plans specify the eligibility criteria for the medically needy; and this final rule does not amend those sections. However, as discussed below, this final rule does contain new regulatory language that requires State plans to specify certain eligibility criteria, such as the medically needy income and resource standards.

E. Medically Needy Income Level (MNIL)

1. *Provisions:* The State plan must specify the MNIL. The MNIL—

a. May be the same for all covered groups, or vary from group to group;

b. Must be the same for all members within a group;

c. Must be based on family size; and

d. Must be reasonable, as described below.

(These provisions are contained in 42 CFR 435.811 through 435.814, 436.811, and 436.812, as revised by this final rule, and in the new § 436.814.)

2. *Discussion:* Before the 1981 Amendments, the States were required to use an income standard (referred to as the medically needy income level (MNIL)) that met the following requirements:

a. The MNIL had to be determined by family size.

b. There had to be one MNIL for all medically needy.

c. The level had to be at least equal to the highest of all the income levels used in the cash assistance programs.

d. If 133⅓ percent of the payment standard for AFDC cash assistance was lower than the standard arrived at in "c", the State could adjust the MNIL downward to 133⅓ percent of the AFDC standard. This was allowed because Federal financial participation (FFP) was not available for medical assistance to a medically needy individual with income in excess of 133⅓ percent of the AFDC standard. (See section 1903(f) of the Act.)

The 1981 Amendments did not remove the requirement in section 1903(f) of the Act that, for FFP purposes, the MNIL cannot be higher than 133⅓ percent of the AFDC payment standard. Because that section of the statute also relates the cap provision to family size, and this is reasonable under section 1902(a)(17) of the Act, these final regulations maintain the requirement that States continue to set their MNILs according to family size.

The 1981 Amendments gave flexibility to the States in determining the eligibility criteria for the medically needy. Those criteria need not be the same for all covered groups. The amendments, however, did not revise section 1902(a)(17) of the Act, which mandates that income eligibility requirements be reasonable and comparable. Therefore, these final regulations mandate that the MNIL standard be the same for all members within the same covered group of medically needy. However, given the intent of Congress to "provide States with flexibility in establishing eligibility criteria and scope of services within the medically needy program to address the needs of different population groups more appropriately" (H.R. Rep. 97-208, p. 971) and the statutory change that no longer requires eligibility for all medically needy groups, we are reinterpreting comparability to allow different standards for each medically needy group. Also, the standards must be reasonable.

These regulations do not mandate a specific MNIL that the State must use for a medically needy group. On the contrary, the State is free to select one that it believes is most appropriate, provided that the standard is based on family size and uniform for all members of a group, as discussed above. However, any standard that the agency provides for in its Medicaid plan must also meet the requirement of "reasonableness" of section 1902(a)(17) of the Act; and HCFA will review the State's standards against that norm. The following are MNILs that HCFA will presume to be reasonable:

a. The State plan may provide that one standard is used for all medically needy groups; and that standard at least equals the highest of the income standards used for any of the cash assistance programs related to those medically needy groups, or 133⅓ percent of the AFDC cash standard (the cap provision of section 1903(f) of the Act), if that amount is lower. (For example, in a State that provides only for medically needy that are AFDC-related and blind-related, the State would use a uniform MNIL, subject to the 1903(f) cap, at least as high as the highest standard derived from the cash assistance programs for the AFDC and the blind.) This is a continuation of the practice established under the previous regulations. It is reasonable standard for the medically needy since it is based on the highest cash assistance standard, subject to the cap of section 1903(f) of the Act.

b. The State plan may provide for multiple standards that vary by medically needy groups, and the level for each group at least equals the income standard of the appropriate cash assistance program related to that group, or 133⅓ percent of the AFDC cash standard (the cap provision of section 1903(f) of the Act), if that amount is lower. (For example, in a State that provides only for medically needy AFDC- and blind-related, the State would use MNILs at least as high as the standards of the AFDC cash assistance program and of the cash assistance program for the blind for their respective medically needy groups.) This is reasonable as well, given the fact that States are no longer required to cover all medically needy groups and that Congress expressed its intent that the needs of each group be addressed more appropriately (H.R. Rep. 97-208, p. 971).

c. In the case of "209(b) States", the State plan may provide that the MNIL for aged, blind, disabled, or AFDC-type

individuals is set as specified in "a" or "b". However, for the aged, blind, and disabled individuals, the MNIL in a 209(b) State may be set at a lower level, but not below the respective levels for those groups as provided for in the State's January 1, 1972 plan.

If a State wishes to use a MNIL lower than the options described above in "a", "b", and "c", HCFA will not presume it to be reasonable. Rather, the State must describe the standard chosen and explain why, in the State's view, the standard satisfies the requirement of section 1902(a)(17) of the Act. (For example, a State could show that the SSI level, which is set nationally, might be more generous in that State (where the State does not supplement SSI) given the cost of living in that State.) Although we intend to be deferential to the State's judgment as to what is reasonable, we have a statutory responsibility to review it carefully before approval. We also invite comments and suggestions regarding what criteria, other than those indicated above in "a" through "c", States might use in setting income levels for determining the eligibility of the medically needy.

F. Medically Needy Resource Standards

1. *Provision:* The State plan must specify the resource standards. Those standards:

a. Must be based on family size;

b. May be the same for all groups of medically needy, or vary by group; and

c. Must be reasonable, as discussed below.

(See 42 CFR 435.840, 435.841, 436.840 as revised by this final rule, and the new §§ 435.843, 436.841, and 436.843.)

2. *Discussion:* Resource standards are criteria that measure an individual's financial assets, such as personal property and bank accounts, to determine whether they are low enough to enable one to be eligible for assistance. Before the 1981 Amendments, States were required to apply resource standards according to requirements specified in Federal statute (1902(a)(17) of the Act) and regulations (for example, 42 CFR 435.840 and 435.841). The resource standards had to be (a) comparable for all medically needy, (b) related to family size, and (c) at least equal to the highest resource standard used in the related cash assistance programs.

These regulations give a State agency extensive discretion in establishing its resource standards for the medically needy. The rule on this point is analogous to the rule for MNILs. Thus, HCFA will presume each of the following options to be reasonable:

a. The State plan may provide for one resource standard for all medically needy groups, if that standard is at least equal to the highest resource standard used in the related cash assistance programs.

b. The State plan may provide for multiple resource standards that vary by medically needy group, if the level for each group is at least as high as the standards of the related cash assistance group.

c. In the case of "209(b) States", the State plan may provide that the resource standard be set as in "a" or "b". Moreover, the resource standard level may be set for the aged, blind, and disabled individuals at lower levels, but not below the respective levels for those groups, as provided for in the State's January 1, 1972 plan.

If a State plan provides for a resource standard lower than specified in "a", "b", and "c", HCFA will not presume reasonableness. Rather, the State agency must describe the standard chosen, and that standard must be reviewed and approved by HCFA against the test of reasonableness in section 1902(a)(17) of the Act. We also invite comments as to what options, other than those specified above, the State might select for resource standards.

G. Treatment of Income and Resources

1. *Provisions:* States are no longer required to apply a uniform methodology for treating income and resources in such matters as deemed income, interest, court-ordered support payments, and infrequent and irregular income. Rather, the State plan must specify the methodology that will be used; and that methodology must be reasonable. (See 42 CFR 435.850–435.852 and 436.850–436.852, as added by this final rule.)

2. *Discussion:* Before the 1981 Amendments, the methodology for treatment of income and resources of the medically needy depended on the individuals' relationship to a specific cash assistance program. For example, the methodology for deeming the income of medically needy aged, blind, and disabled was taken from the SSI program. This was based on the former wording of section 1902(a)(10) of the Act that described the medically needy, in part, as individuals who "except for income and resources" would be eligible for cash assistance and for Medicaid as categorically needy. Furthermore, section 1902(a)(17)(C) of the Act required that the methodology for the treatment of income and resources be reasonable and gave the Secretary authority to prescribe standards regarding that methodology.

Section 2171 of the 1981 Amendments revised the Medicaid statute so that the direct linkage between the cash assistance programs and the medically needy is no longer explicit. (The statute no longer defines the medically needy as those who would be categorically needy "except for income and resources.") Therefore, we have concluded that the State need not adopt the methodology of a related cash assistance program in treating income and resources of the medically needy. Rather, the State may develop its own. However, section 1902(a)(17)(C) of the Act has not been amended. Consequently, these final regulations require that the State must use a methodology for the treatment of income and resources that is reasonable.

The rule on this point is analogous to the rule for MNILS. Therefore, HCFA will presume the treatment of income and resources to be reasonable if the methodology is the same as that used in the cash assistance program related to the covered medically needy group. If the agency uses a different methodology, HCFA will not presume reasonableness. Rather, the agency must describe the methodology chosen, and that methodology must be reviewed and approved by HCFA.

Also, if a State uses the cash assistance level as the MNIL but wishes to use differing methodologies for the treatment of income and resources, the description must include information on the impact of the methodology. This is part of the information HCFA will use to review "reasonableness". We note that if a State uses a different methodology for determining income—and the MNIL is officially the same as the cash assistance level—the actual income levels for eligibility could be different because the components of the calculation differ.

At this time, we also invite comments and suggestions as to what methodologies for the treatment of income and resources, other than those specified above, would be reasonable.

We emphasize, at this point, that in determining eligibility, States must continue to disregard income and resources in the same manner as the related cash assistance programs. This is provided for in section 1902(a)(17)(B) of the Act, and is unchanged by this rule. (See 42 CFR 435.831 and 436.831.)

H. Individuals Under Age 21

1. *Provisions:* If the State adopts a medically needy program, the State plan must provide for individuals under age 21 (or, at State option, under the age of

20, 19, or 18) or any reasonable category of such individuals. (See 42 CFR 435.301 and 436.301 as revised by this rule, and 435.308 and 436.308 as added by this rule.)

2. *Discussion:* This provision implements sections 1902(a)(10)(C)(ii)(I) and 1905(a)(i) of the Act, and is discussed below in section IV, "Individuals Under Age 21".

I. Pregnant Women

1. *Provision:* If the State covers the medically needy, the State plan must provide services for pregnant women, during the course of their pregnancy, who but for income and resources would be eligible as categorically needy. (See 42 CFR 435.301 and 436.301 as revised by this rule.)

2. *Discussion:* This provision implements section 1902(a)(10)(C)(ii)(II) of the Act, and is discussed below in section V, "Pregnant Women".

IV. Individuals Under Age 21

A. Prior Legislation

Before the 1981 Amendments, States were permitted to limit coverage of "dependent children" under their AFDC plans to individuals under age 18. At State option, they could cover students age 18 through 20 who were regularly attending primary, secondary, or vocational school. Furthermore, they could cover individuals age 18 through 20 attending college.

For Medicaid purposes, States were required to cover as categorically needy all individuals under age 21 who were AFDC recipients. States also had to cover, as categorically needy, those who were not AFDC recipients, but would have been except they did not meet age and school attendance requirements. For example, States were required to make eligible for Medicaid as categorically needy a 19 year old who was deprived of parental support and who met the financial criteria for AFDC, but was not in school and thus did not receive AFDC. States could offer Medicaid to the caretaker relatives of these children.

States had the option to cover as categorically needy all individuals under age 21 who would have qualified for AFDC financially, but were not AFDC eligible because they were not deprived of parental support. Furthermore, States could provide Medicaid to all of these individuals or, under Federal regulations, could limit Medicaid eligibility to reasonable classifications of these individuals (42 CFR 435.222 and 436.222).

B. Legislative Changes

By the 1981 Amendments, Congress simultaneously changed the AFDC and the Medicaid programs, both to limit AFDC and to provide more flexibility for Medicaid. Section 2311 of this legislation amended the AFDC program to lower the age limit for coverage of children. States may now limit coverage of otherwise eligible children to individuals under age 18. States also have the option to extend this to individuals under age 19 for children who are attending a secondary school, or receiving the equivalent of technical or vocational training. States can no longer cover as a dependent child an individual 19 years of age or older. Furthermore, attendance at college can no longer be used to qualify an individual over age 18.

Sections 2171 and 2172 of the 1981 amendments made several changes in the Medicaid eligibility rules. States continue to be required to cover as categorically needy all AFDC recipient children. However, States are no longer required to cover, as categorically needy, individuals who are not AFDC recipients, but who would be eligible for AFDC except for age and school requirements. States continue to have the option to cover all individuals under age 21 if they meet certain financial criteria. They are now allowed, however, to limit coverage, by age, to individuals under age 20, or to individuals under age 19 or 18. (However, the State Medicaid agency cannot exclude the 18-year-olds who meet the definition of dependent child under the State AFDC plan.) Furthermore, the statute now specifies that States may limit Medicaid eligibility to "any reasonable category" of individuals within the age range chosen. However, since States must cover AFDC recipients, the "reasonable categories" of the categorically needy must include all AFDC recipient children.

With respect to the medically needy, in section 2171 of the 1981 amendments, Congress required all States which choose to have a medically needy program to make some provision for Medicaid coverage of individuals under age 21 who are not AFDC recipients. (See section 1902(a)(10)(C)(ii)(I) of the Act.) However, Congress gave the States discretion to target assistance for this group, based on the States' priorities for expenditure of Medicaid funds and their assessment of those most in need, by providing the age range and reasonable classification choices described above.

C. Provisions of These Regulations

In order to conform to the above legislative changes, the following provisions are included in this final rule.

1. The State plan must provide Medicaid to individuals under age 19 who receive AFDC assistance as dependent children under the State title IV–A plan. (See 42 CFR 435.3 and 436.2 as revised by this rule.)

Note.—If the State AFDC agency chooses to limit the definition of dependent children to individuals under 18 years of age and limits cash assistance to that age group, the Medicaid agency is only required to offer medical assistance to those under 18 years of age. These persons are included among the mandated categorically needy.

2. The State plan may include under the optional categorically needy those individuals under age 21 (or, at the State option, under age 20, 19, or 18) who do not qualify as AFDC dependent children. In addition, States may limit coverage to reasonable classifications of these persons. (See 42 CFR 435.222 and 436.222, as revised by this rule.) Examples of reasonable classifications are as follows:

a. Individuals in foster homes or private institutions for whom a public agency is assuming a full or partial financial responsibility. If the agency covers these individuals, it may also provide Medicaid to individuals placed in foster homes or private institutions by private nonprofit agencies.

b. Individuals in adoptions subsidized in full or in part by a public agency.

c. Individuals in intermediate care facilities, if intermediate care facility services are provided under the plan. If the agency covers these individuals, it may also provide Medicaid to individuals in intermediate care facilities for the mentally retarded.

3. If the State plan includes the medically needy, the plan must provide medical assistance for individuals meeting the State's income standards who are under age 21 (or, at State option, under 20, 19, or 18), or reasonable classifications of these individuals. However, the statute does not specify whether these individuals must be provided for as medically needy or categorically needy. (As categorically needy, they would be identified as children who would be eligible for AFDC if they met the definition of dependent child. See 42 CFR 435.222 and 436.222. These individuals are also referred to as "Ribicoff children".) Accordingly, these regulations do not mandate the coverage group under which States are to provide for these persons. That decision rests with the

States. Therefore, the State plan may satisfy this requirement by providing for the under age 21 group as categorically needy (these are in addition to AFDC recipients under age 21 and are identified above in item 2) or as medically needy. (See 42 CFR 435.301 and 436.301, as amended by this rule.)

V. Pregnant Women

A. Prior Legislation

Before the 1981 Amendments, title IV–A of the Act (AFDC) did not specifically mention pregnant women. However, by Federal regulations, States were permitted to cover unborn children in their AFDC plans. This had the effect of also permitting States to provide for a pregnant woman, even if she had no other children, under AFDC.

For Medicaid purposes, States were required to cover all AFDC recipients; and, if States provided AFDC for unborn children, this included unborn children and their mothers. Furthermore, States could, at their option, cover unborn children and their mothers even if AFDC did not cover them. Under this option, States could extend Medicaid eligibility as categorically needy; and, if a State with a medically needy program covered unborn children as categorically needy, it was also required to cover them as medically needy.

B. Legislative Changes

The 1981 Amendments excluded payments to meet the needs of unborn children from the definition of AFDC. The statutory language now focuses on pregnant women. Furthermore, the effect of the Amendments is to limit AFDC coverage. AFDC now may be provided to a pregnant woman "only if it has been medically verified that the child is expected to be born in the month such payments are made or within the three-month period following such month of payment, and who if such child had been born and was living with her in the month of payment, would be eligible for aid to families with dependent children" (section 406(b) of the Act).

If a State opts to cover these pregnant women for AFDC, it must also cover them for Medicaid as categorically needy. Furthermore, in order to enable States to provide medical assistance to women throughout pregnancy, Congress added a new provision, section 406(g) of the Act. This section enables States, for purposes of Medicaid eligibility, to deem a woman to be an AFDC recipient, who would otherwise be eligible for AFDC if the child were born and living with her, as soon as pregnancy is medically verified. These deemed AFDC recipients must also be covered for Medicaid as categorically needy. If a State has chosen the "deemed AFDC option" and chooses to have a medically needy program, then the State must cover as medically needy all pregnant women who , but for income and resources, would be eligible as categorically needy, and who meet the medically needy financial requirements.

C. Provisions of These Regulations

1. *Categorically needy.* The State Medicaid plan must provide for all pregnant women who, at State option, are deemed to be recipients of AFDC under section 406(g)(2) of the Act. (See 42 CFR 435.115 and 436.114 which are added by this rule.) This provision implements section 1902(a)(10)(A) of the Act, as amended by section 2171(a)(1) of the 1981 Amendments. (It should be noted that neither the 1981 amendments nor these final regulations change the requirement that the Medicaid agency must provide Medicaid to pregnant women actually receiving AFDC or SSI.)

2. *Medically needy.* The State Medicaid plan must provide Medicaid to pregnant women during the course of their pregnancy who, but for income and resources, would be eligible for Medicaid as categorically needy. (This includes pregnant women who would have been eligible for AFDC, or for one of the other cash assistance programs, such as SSI.) (See 42 CFR 435.301 and 436.301, as amended by this rule.) This provision implements section 1902 (a)(10)(C)(i)(II) of the Act, as provided for by section 2171(a)(3) of the 1981 Amendments.

VI. Covered Services for the medically needy

A. Prior Legislation

Since the enactment of the Act in 1965, the coverage of services for the medically needy has been conditioned, in part, by the coverage provisions related to the categorically needy. Before the 1981 Amendments, the Act contained the following provisions regarding coverage of services for the categorically needy:

1. Under section 1902(a)(13)(B), State plans had to include services specified in section 1905(a)(1)–(5) and (17) of the Act for all categorically needy. These services include such items as physician services, inpatient and outpatient hospital services, and skilled nursing facility (SNF) services for individuals 21 years of age and older.

2. Under section 1902(a)(13)(B), States could provide any number of additional services, specified in section 1905(a)(6)–(16) and (18) of the Act, for the categorically needy. These include items such as dental services, intermediate-care facility services, and clinic services.

3. Under section 1902(a)(10)(B), all the categorically needy had to be entitled to the same amount, duration, and scope of services. (The law does specify, however, certain limitations in some cases. For example, SNF services in an institution for mental diseases are limited to persons 65 years of age and older (see section 1905(a)(14) and clause following section 1905(a)(18) of the Act).

4. Under section 1902 (a)(13)(A), States had to provide for the inclusion of some institutional and some noninstitutional services and to provide for home health services for any individual entitled to skilled nursing facility services. (These two requirements applied to both the categorically and medically needy under the State plan.)

Before the 1981 Amendments, the Act also contained the following provisions for services to the medically needy:

1. Under section 1902(a)(10)(B), the amount, duration, and scope of services offered to the medically needy could not be more than the amount, duration, or scope of services offered to the categorically needy.

2. Under section 1902(a)(10)(C), all the medically needy had to be entitled to the same amount, duration and scope of services, the comparability of services requirement.

3. Under 1902(a)(13)(C), States that chose the medically needy option were required, at a minimum, to offer the medically needy either all the services mandated for the categorically needy (sections 1905(a)(1)–(5) and (17) of the Act) or, as an alternative, the care and services listed in any 7 of the 17 paragraphs defining covered services under Medicaid (section 1905(a)(1)–(17) of the Act). If the State chose the latter option for the medically needy, it was required to provide physician services to individuals receiving covered inpatient hospital or SNF services.

B. Legislative Changes

The 1981 Amendments did not change the substance of the provisions regarding covered services for the categorically needy, although it moved the requirements formerly in section 1902(a)(13)(B) of the Act to section 1902(a)(10)(A). However, section 2171 of the 1981 Amendments deleted most of the requirements regarding coverage of services for the medically needy, thereby giving States greater flexibility in designing their Medicaid plans for this population group. In general, the States are permitted to choose the

services to be offered to the medically needy without being bound by requirements pertaining to a minimum number of services or a mix of institutional and noninstitutional services. Furthermore, the comparability of services provisions of the former statute have been deleted concerning services to different medically needy groups. (See section 2171(a)(3) of the 1981 Amendments.) States may now offer one set of services for a certain medically needy group, for example, the aged, without being required to offer them to all the medically needy groups. The amendments enable States to focus their resources on those services most urgently needed by specific population groups. These are the groups listed in section 1905(a) of the Act. The State is required, however, to furnish certain specified services to designated individuals. Thus, it is required to furnish ambulatory services to children under age 18, and to individuals entitled to institutional services. Also, the State must provide prenatal and delivery care to pregnant women. Third, if the State plan includes services either in institutions for mental diseases or in intermediate care facilities for the mentally retarded, it must offer a range of services specified in the statute. Finally, the State plan must include home health services for individuals entitled to SNF care.

C. Provisions of These Regulations

These provisions are taken directly from section 2171 of the 1981 Amendments, and they apply only if the State chooses to provide medical assistance for the medically needy:

1. The plan must describe the amount, duration, and scope of services for each covered group of the medically needy. (See 42 CFR 440.230, as amended by this rule.)

2. The State plan must provide that the services available to any member of a covered medically needy group are not less in amount, duration, and scope of services available to other members of that group. Exceptions to this rule are specified below in items 4 and 6. (See 42 CFR 440.240, as amended by this rule.)

3. The services provided for one group of medically needy (for example, the aged) need not be the same in amount, duration, and scope as the services for all medically needy groups. In other words, this rule deletes from current Federal regulations any reference to comparability of services for the medically needy groups. The statutory basis for this deletion is contained in section 2171(a)(3) of the 1981 Amendments which deletes the requirement (formerly section 1902(a)(10)(C)(ii) of the Act) that comparability of services be provided for the medically needy. (See 42 CFR 440.240, as amended by this rule.)

4. The State plan must provide ambulatory services to the following medically needy:

a. Children under 18.

b. Individuals entitled to institutional services. (See 42 CFR 440.220, as amended by this rule.)

We do not define "ambulatory services" in these regulations, but leave that to the States. This will afford States greater flexibility in designing a health care package that will best meet the needs of the population in question. At this time, however, we wish to note that, in the Conference Committee report on the 1981 Amendments, Congress indicated its view that the term ambulatory services means physician, clinic, nurse practitioner, dental, and preventive services (see H.R. Rep. No. 97-208, p. 971). (We believe that this is not to be understood as an all-inclusive list, but only a list of examples.) In the same conference report, the Congress also stated it expects the State to offer a service of sufficient amount, duration, and scope to achieve its purpose.

We further note that, in providing these ambulatory services, the State plan—

a. Must define ambulatory services (See 42 CFR 440.220, as revised by this rule);

b. Need not offer all of the ambulatory services that are offered to the categorically needy, or to other groups of medically needy; and

c. May not offer ambulatory services to the medically needy that are not also offered to the categorically needy.

5. If the plan includes services in institutions for mental diseases (see section 1905(a)(14) or (16) of the Act), or services in an intermediate care facility for the mentally retarded (see section 1905(a)(15) and (d) of the Act), it must offer a full range of services to all the medically needy. (See 42 CFR 440.220, as revised by this rule.) To fulfill this requirement, the State plan has the following options.

a. The State plan may offer those services specified in section 1905(a)(1) through (5) and (17). These are: inpatient hospital services; outpatient hospital services and rural health clinic services; other laboratory and x-ray services; skilled nursing facility services for individuals age 21 or older, early and periodic screening diagnosis and treatment of individuals under age 21, and family planning services and supplies for individuals of child-bearing age; physicians' services; and nurse-midwife services. (Section 965 of Pub. L. 96-499, the Omnibus Reconciliation Act of 1980, mandates payment under Medicaid for nurse-midwife services under certain circumstances. These services are being provided for in 42 CFR 440.165, and we are issuing a separate rule that defines nurse-midwife services.)

b. As an alternative, the State plan may offer any seven services specified in section 1905(a)(1) through (17) in the Act. Those include the services specified above in paragraph "a", plus the following: other practitioners' services; home health care; private duty nursing services; clinic services; dental services; physical therapy and related services; prescribed drugs, dentures, prosthetic devices, and eyeglasses; other diagnostic, screening, preventive, and rehabilitative services; inpatient hospital, skilled nursing facility, and intermediate care facility services for individuals age 65 and older in an institution for mental diseases or tuberculosis; intermediate care facility services (not in a mental institution); and inpatient services for individuals under age 21 in a psychiatric facility.

c. The State plan may offer option "a" to some medically needy groups, while offering option "b" to others.

The requirement that the State plan must offer this range of services is provided for in section 2171(a)(3) of the 1981 Amendments. It should be noted, however, that in accordance with item number 2, above, the amount, duration, and scope of these services need not be the same for all medically needy groups.

6. The plan must provide for prenatal care and delivery services for all eligible pregnant women. (See 42 CFR 440.220, as revised by this rule.)

7. Home health services must be offered to individuals entitled to skilled nursing facility services. (See 42 CFR 440.220, as revised by this rule.)

Some sections of these regulations are affected by statutory provisions that are implemented by other regulations documents also being published at this time. It would be confusing to present the same section with different wording in different documents (by making, in each document, only the particular changes called for by the statutory provisions implemented by that document). In order to avoid this problem, the sections affected by more than one provision are presented in each document with all the changes required by each of the provisions of law that affect them. However, each of the changes is explained only once, in the preamble of the regulations document that implements the provision which requires that particular change.

VII. Waiver of Proposed Rulemaking

We are publishing these regulations in final form without notice of proposed rulemaking procedures. We believe the rapid implementation of these regulations is desirable in order to give States maximum flexibility in their Medicaid programs. To delay the effective date of these regulations by following a proposed rulemaking procedure would be contrary to the public interest. Also, Congress expressly addressed the issuance of interim final regulations as an option for the development of regulations to implement changes in section 1902(a)(10(C) of the Act (section 2161 of the 1981 Amendments). Moreover, the provisions of these regulations follow closely the language of the statute which is clear.

We, therefore, find good cause to waive notice of proposed rulemaking procedures. However, we invite comments from States and others interested in the provisions of this rule, and we will publish in the **Federal Register** any changes to the regulations that are appropriate.

VIII. Dates

These regulations are effective October 1, 1981. However, that effective date does not permit States time to comply with the new State plan requirements, such as specifying whether the plan provides for participants in work supplementation programs are covered as categorically needy (see, for example 42 CFR 435.115). To accommodate this need, HCFA will not hold a State out of compliance with these requirements if the Medicaid agency submits the preprinted plan amendments and required attachments by December 31, 1981.

IX. Impact Analysis

A. Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule because it will not have an annual effect on the economy of $100 million or more; result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions; or otherwise meet the thresholds of the Executive Order. Any substantial economic impacts are attributable to the statute itself, rather than these regulations.

There are no data available on the actual cost impact of the provisions of the new statute. We anticipate the statutory amendments affecting Medicaid eligibility changes will result in fiscal year 1982 savings. However, it is not possible to project how many States (and to what extent) will actually take advantage of the options made available as a result of the amendments. We anticipate significant savings resulting from AFDC related caseload reductions, but these savings are not covered by these regulations.

B. Regulatory Flexibility Analysis

The Secretary certifies, under Section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354) that these regulations will not have a significant economic impact on a substantial number of small entities. (A small entity is a small business, a non-profit enterprise, or a small governmental jurisdiction.) As explained above, these regulations provide flexibility to States in determining population and services coverage for the "medically needy". We have no basis for predicting the specific decisions States will make, but these decisions may in some cases adversely impact particular providers in particular locations, through a reduction in coverage and hence income. However, we have no reason to believe that coverage limitations will be so substantial as to threaten the economic viability of health care providers or otherwise cause a "significant" impact on a "substantial" number of providers.

42 CFR Chapter IV is amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES AND DISTRICT OF COLUMBIA

1. The authority citation for Part 435 reads as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

2. Section 435.1 is amended by adding a new paragraph (e) to read as follows:

§ 435.1 Introduction.

* * * * *

(e) Changes in Medicaid eligibility as a result of Pub. L. 97–35—

(1) *General purposes.* The intent of this legislation is to give States more flexibility in determining which individuals will be eligible for Medicaid.

(2) *Categorically needy.* If participants of a work supplementation program are deemed to be AFDC recipients under section 414 of the Act, the State must make them eligible for Medicaid. If certain pregnant women are deemed to be AFDC recipients under section 406 of the Act, the State must make them eligible for Medicaid. The State must provide Medicaid to individuals who are denied AFDC cash payment solely because the payment would be less than $10 a month (section 402(a) of the Act). The upper age limit of AFDC dependent children has been lowered from under age 21 to under age 19.

(3) *Medically needy.* The State is no longer required to include among the medically needy all those groups formerly mandated under the statute, that is the aged, blind, disabled, and families with dependent children, who do not receive cash assistance and whose income and resources are insufficient to enable them to pay for the cost of necessary health care. Rather, the State may restrict participation in the State Medicaid program to some of those groups. However, if the State chooses to provide for medically needy under the State plan, it must provide medical assistance to individuals under age 21, or a younger age, or reasonable classifications, as determined by the State (section 1905(a)(i) of the Act), and to pregnant women who, but for income and resources, would be included among the cagetorically needy (section 1902(a)(10)(C)(ii) of the Act).

3. Section 435.3 is amended to read as follows:

§ 435.3 Basis.

This part implements the following sections of the Act, which state eligibility requirements and standards:

* * * * *

1902(b) Prohibited conditions for eligibility:

* * * * *

Age requirement excluding children under age 19 who meet the definition of dependent child under the State title IV–A plan;

* * * * *

1905(a)(i)–(vii) List of eligible individuals.

* * * * *

4. In § 435.4 the definition "medically needy" is revised to read as follows:

§ 435.4 Definitions and use of terms.

As used in this part—

* * * * *

"Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State plan;

* * * * *

5. The table of contents is amended by removing § 435.111 and adding a new § 435.115 to read as follows:

Subpart B—Mandatory Coverage of the Categorically Needy

* * * * *

435.115 Individuals deemed to be receving AFDC.

* * * * *

§ 435.111 [Removed]

6. Section 435.111 is removed.

7. A new § 435.115 is added to read as follows:

§ 435.115 Individuals deemed to be receiving AFDC.

(a) The Medicaid agency must provide Medicaid to individuals deemed to be receiving AFDC, as specified in this section.

(b) The State must deem individuals to be receiving AFDC who are denied a cash payment from the title IV–A State agency solely because the amount of the AFDC payment would be less than $10.

(c) The State may deem pregnant women to be receiving AFDC under section 406(g)(2) of the Act. This section permits States, for purposes of title XIX, to deem a pregnant woman to be receiving AFDC if—

(1) She would be eligible for AFDC cash payments if the child had been born and was living with her in the month of payment; and

(2) The pregnancy has been medically verified.

(d) The State may deem participants in a work supplementation program to be receiving AFDC under section 414(g) of the Act. This section permits States, for purposes of title XIX, to deem an individual and any child or relative of the individual (or other individual living in the same household) to be receiving AFDC, if the individual—

(1) Participates in a State-operated work supplementation program under section 414 of the Act; and

(2) Would be eligible for an AFDC cash payment if the individual were not participating in the work supplementation program.

8. Section 435.120 is revised to read as follows:

§ 435.120 Individuals receiving SSI.

(a) *General provisions.* Except as allowed under § 435.121, the agency must provide Medicaid to aged, blind, and disabled individuals or couples who receive SSI, including—

(1) Individuals receiving SSI pending a final determination of blindness or disability;

(2) Individuals receiving SSI under an agreement with the Social Security Administration to dispose of resources that exceed the SSI dollar limits on resources; and

(3) From January 1, 1981 until December 31, 1983, individuals considered to be receiving SSI under 1619(b) of the Act (blind individuals or those with disabling impairments whose income equals or exceeds a specific SSI limit). (See 20 CFR 416.263–416.269 for determinations of eligibility under this provision.)

(b) *Exclusion.* Individuals entitled to benefits under section 1622 of the Act are not to be considered individuals receiving SSI. Section 1622 of the Act provides for certain individuals whose minimum benefits under title II of the Act were reduced by section 2201 of Pub. L. 97–35.

9. Section 435.121 is amended by revising paragraph (c) to read as follows:

§ 435.121 Individuals in States using more restrictive requirements for Medicaid than the SSI requirements.

* * * * *

(c) The following sections of this part apply to the agency's use of more restrictive eligibility requirements:

(1) Section 435.135, treatment of individuals who receive OASDI cost-of-living increases.

(2) Section 435.330, medically needy coverage.

(3) Section 435.530, more restrictive definitions of blindness.

(4) Section 435.540, more restrictive definitions of disability.

(5) Sections 435.731 through 435.733, more restrictive income and resource requirements.

(6) Sections 435.812, 435.823, 435.831, and 435.841, medically needy financial eligibility requirements.

10. The table of contents is amended by removing § 435.221.

§ 435.221 [Removed]

11. Section 435.221 is removed.

12. Section 435.222 is revised to read as follows:

§ 435.222 Individuals under age 21 who would be eligible for AFDC but do not qualify as dependent children.

(a) The agency may provide Medicaid to individuals under age 21 (or, at State option, under age 20, 19 or 18) who would be eligible for AFDC if they met the definition of dependent child. (See 45 CFR 233.90(c)(1).)

(b) The agency may cover all individuals described in paragraph (a) of this section or in reasonable classifications of those individuals. Examples of reasonable classifications are as follows:

(1) Individuals in foster homes or private institutions for whom a public agency is assuming a full or partial financial responsibility. If the agency covers these individuals, it may also provide Medicaid to individuals of the same age placed in foster homes or private institutions by private nonprofit agencies.

(2) Individuals in adoptions subsidized in full or part by a public agency.

(3) Individuals in intermediate care facilities, if intermediate care facility services are provided under the plan. If the agency covers these individuals, it may also provide Medicaid to individuals in intermediate care facilities for the mentally retarded.

(4) Individuals under age 21 receiving active treatment as inpatients in pyschiatric facilities or programs, if inpatient psychiatric services for individuals under 21 are provided under the plan.

13. Section 435.223 is revised to read as follows:

§ 435.223 Individuals who would be eligible for AFDC if coverage under the State's AFDC plan were as broad as allowed under title IV–A.

(a) The agency may provide Medicaid to individuals who—

(1) Would be eligible for AFDC if the State's AFDC plan included individuals whose coverage under title IV–A is optional (for example, Medicaid may be provided to members of families with an unemployed parent even though AFDC is not available to them under the State's AFDC plan); or

(2) Would be eligible for AFDC if the State's AFDC plan did not contain eligibility requirements more restrictive than, or in addition to, those required under title IV–A.

(b) The agency may cover any AFDC optional group without covering all such groups.

14. The table of contents is amended by adding §§ 435.308, 435.322, 435.324, 435.330, and 435.340, revising §§ 435.310 and 435.320, and removing §§ 435.321 and 435.325 as follows:

Subpart D—Optional Coverage of the Medically Needy

435.300 Scope.
435.301 General rule.
* * * * *
435.308 Medically needy coverage of individuals under age 21.
435.310 Medically needy coverage of caretaker relatives.
435.320 Medically needy coverage of aged in States that cover individuals receiving SSI.
435.322 Medically needy coverage of the blind in States that cover individuals receiving SSI.
435.324 Medically needy coverage of the disabled in States that cover individuals receiving SSI.
435.330 Medically needy coverage of aged, blind, and disabled individuals in States that impose more restrictive eligibility requirements.
435.340 Protected medically needy coverage for blind and disabled individuals eligible in December 1973.
* * * * *

15. Sections 435.301 is revised to read as follows:

§ 435.301 General rules.

(a) A medicaid agency may provide Medicaid to individuals specified in this subpart who—

(1) Either—

(i) Have income that meets the applicable standards in §§ 435.812 through 435.814; or

(ii) If their income is more than allowed under those standards, have incurred medical expenses at least equal to the difference between their income and the applicable income standard; and

(2) Have resources that meet the applicable standards in §§ 435.840 through 435.843.

(b) If the agency chooses this option, the following provisions apply:

(1) The agency must provide Medicaid to—

(i) All pregnant women during the course of their pregnancy who, but for income and resources, would be eligible for Medicaid as categorically needy; and

(ii) All individuals under age 21 (or, at State option, under age 20, 19, or 18), as specified in § 435.308. For purposes of this requirement, the agency may provide for individuals under age 21 as—

(A) Categorically needy, as specified in § 435.222; or

(B) Medically needy, as specified in § 435.308.

(2) The agency may provide Medicaid to any of the following groups of individuals:

(i) Individuals under age 21 (§ 435.308).

(ii) Caretaker relatives (§ 435.310).

(iii) Aged (§§ 435.320 and 435.330).

(iv) Blind (§§ 435.322, 435.330 and 435.340).

(v) Disabled (§§ 435.324, 435.330 and 435.340).

(3) If the agency provides Medicaid to any individual in a group specified in paragraph (b)(2) of this section, the agency must provide Medicaid to all individuals eligible to be members of that group.

16. A new § 435.308 is added to read as follows:

§ 435.308 Medically needy coverage of individuals under age 21.

(a) If the agency provides Medicaid to the medically needy, it must provide Medicaid to individuals under age 21 (or, at State option, under age 20, 19, or 18), as specified in paragraph (b) of this section, who meet the income and resource standards in Subpart I of this part. (See § 435.301 for required coverage as either categorically or medically needy.)

(b) The agency may cover all individuals described in paragraph (a) of this section or reasonable classifications of those individuals. Examples of reasonable classifications are as follows:

(1) Individuals in foster homes or private institutions for whom a public agency is assuming a full or partial financial responsibility. If the agency covers these individuals, it may also provide Medicaid to individuals placed in foster homes or private institutions by private nonprofit agencies.

(2) Individuals in adoptions subsidized in full or in part by a public agency.

(3) Individuals in intermediate care facilities, if intermediate care facility services are provided under the plan. If the agency covers these individuals, it may also provide Medicaid to individuals in intermediate care facilities for the mentally retarded.

(4) Individuals receiving active treatment as inpatients in psychiatric facilities or programs, if inpatient psychiatric services for individuals under 21 are provided under the plan.

17. Section 435.310 is revised to read as follows:

§ 435.310 Medically needy coverage of caretaker relatives.

(a) If the agency provides for the medically needy, it may provide Medicaid to caretaker relatives, as specified in paragraph (b) of this section, who meet the income and resource standards of Subpart I of this part.

(b) "Caretaker relatives" mean individuals who—

(1) Meet the definition of a caretaker relative under 45 CFR 233.90(c)(1)(v)(A); and

(2) Have in their care an individual who is determined to be dependent, as specified in § 435.510.

18. Section 435.320 is revised to read as follows:

§ 435.320 Medically needy coverage of the aged in States that cover individuals receiving SSI.

If the agency provides Medicaid to individuals receiving SSI and elects to cover the medically needy, it may provide Medicaid to individuals who—

(a) Are 65 years of age and older, as specified in § 435.520; and

(b) Meet the income and resource requirements of Subpart I of this part.

19. A new § 435.322 is added to read as follows:

§ 435.322 Medically needy coverage of the blind in States that cover individuals receiving SSI.

If the agency provides Medicaid to individuals receiving SSI and elects to cover the medically needy, it may provide Medicaid to blind individuals who meet—

(a) The requirements for blindness, as specified in §§ 435.530 and 435.531; and

(b) The income and resource requirements of Subpart I of this part.

20. A new § 435.324 is added to read as follows:

§ 435.324 Medically needy coverage of the disabled in States that cover individuals receiving SSI.

If the agency provides Medicaid to individuals receiving SSI and elects to cover the medically needy, it may provide Medicaid to disabled individual who meet—

(a) The requirements for disability, as specified in §§ 535.540 and 435.541; and

(b) The income and resource requirements of Subpart I of this part.

21. Section 435.321 is redesignated as § 435.330 and revised to read as follows:

§ 435.330 Medically needy coverage of the aged, blind, and disabled in States that impose eligibility requirements more restrictive than used under SSI.

(a) If an agency provides Medicaid as categorically needy only to those aged, blind, or disabled individuals who meet more restrictive requirements than used under SSI and elects to cover the medically needy, it may provide Medicaid as medically needy to those aged, blind, or disabled individuals who—

(1) Are not categorically needy, as specified in paragraph (b) of this section;

(2) Have income and resources within the standards established under Subpart I of this part; and

(3) If applying as blind or disabled, meet the blindness or disability requirements established under § 435.121.

(b) To determine whether an individual is covered as categorically needy or medically needy, the agency must—

(1) Consider as categorically needy those individuals who meet the State's categorically needy financial standard and—

(i) Who, before their incurred medical expenses are deducted from income, meet the financial eligibility requirements for SSI or a State supplement; or

(ii) Whose OASDI increases are not counted under §§ 435.134 and 435.135.

(2) Consider as medically needy all other individuals.

22. Section 435.325 is redesignated as § 435.340 and revised to read as follows:

§ 435.340 Protected medically needy coverage for blind and disabled individuals eligible in December 1973.

If an agency provides Medicaid to the medically needy, it must cover individuals who—

(a) Where eligible as medically needy under the Medicaid plan in December 1973 on the basis of the blindness or disability criteria of the AB, APTD, or AABD plan;

(b) For each consecutive month after December 1973, continue to meet—

(1) Those blindness or disability criteria; and

(2) The eligibility requirements for the medically needy under the December 1973 Medicaid plan; and

(c) Meet the current requirements for eligibility as medically needy under the Medicaid plan except for blindness or disability criteria.

23. Section 435.520 is amended by revising paragraph (a) to read as follows:

§ 435.520 Age requirements for the aged and children.

(a) The agency must not impose—

(1) An age requirement of more than 65 years;

(2) An age requirement that excludes an individual under age 19 who meets the definition of dependent child under the State title IV–A plan; or

(3) A lower age requirement than that under the State's AFDC plan.

* * * * *

24. The table of contents for Subpart I is revised as follows:

Subpart I—Financial requirements for the medically needy

435.800 Scope.

Medically Needy Income Standards

435.811 Medically needy income standards: General requirements.
435.812 Medically needy income standards: Reasonableness.
435.813 [Reserved]
435.814 Medically needy income standards: State plan requirements.
435.815 [Reserved]

Financial Responsibility of Relatives

435.821 Financial responsibility of relatives: Individuals under the age 21 and caretaker relatives.
435.822 Financial responsibility of relatives of aged, blind, or disabled individuals in States using SSI eligibility requirements.
435.823 Financial responsibility of relatives of aged, blind, or disabled individuals in States using more restrictive requirements than SSI.

Medically Needy Income Eligibility

435.831 Income eligibility.
435.832 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

Medically Needed Resource Standards

435.840 Medically needy resource standards: General requirements.
435.841 Medically needy resource standards: Reasonableness.
435.843 Medically needy resource standards: State plan requirements.

Determining Eligibility on the Basis of Resources

435.845 Medically needy resource eligibility.

Treatment of Income and Resources

435.850 Treatment of income and resources: General requirements.
435.851 Treatment of income and resources: Reasonableness.
435.852 Treatment of income and resources: State plan requirements.

25. Section 435.811 is revised to read as follows:

Medically Needy Income Standards

§ 435.811 Medically needy income standards: General requirements.

To determine eligibility of medically needy individuals, a Medicaid agency must use an income standard under this subpart that is—

(a) Based on family size;

(b) Uniform for all individuals in a covered group;

(c) For FFP purposes, not in excess of 133⅓ percent of the highest money payment that ordinarily would be made in the State AFDC program to an individual or a family of comparable size (see § 435.1007); and

(d) Reasonable (see § 435.812).

26. Section 435.812 is revised to read as follows:

§ 435.812 Medically needy income standards: Reasonableness.

(a) The agency must use a medically needy income standard that is reasonable.

(b) The following medically needy income standards are presumed to be reasonable:

(1) The agency provides one medically needy income standard for all covered medically needy groups. Except as provided in paragraphs (c) and (d) of this section, the standard must at least equal the highest income or payment standard used to determine eligibility in the cash assistance programs (or an optional State supplement, if the agency provides Medicaid under § 435.230) related to the covered medically needy groups.

(2) The agency provides a different medically needy income standard for each covered medically needy group. Except as provided in paragraphs (c) and (d) of this section, the standard for each covered group must at least equal the income or payment standard used to determine eligibility in the cash assistance program (or an optional State supplement, if the agency provides Medicaid under § 435.230) related to that covered medically needy group.

(c) The agency may use a lower medically needy income standard than the standards specified in paragraph (b) of this section if—

(1) The income standard used under paragraph (b) of this section exceeds the maximum dollar amount on income allowed for purposes of FFP under § 435.1007; and

(2) The lower income standard at least equals the maximum amount allowed for purposes of FFP.

(d) In the case of an agency that provides Medicaid for the aged, blind, or disabled individuals only if they meet more restrictive requirements than used under SSI, the following provisions apply:

(1) The agency may use an income standard for those individuals that is lower than the standard specified in paragraph (b) of this section.

(2) The lower standard must at least equal the medically needy income standard for those aged, blind, or disabled individuals under the State's plan on January 1, 1972.

(e) If the agency uses a medically needy income standard not specified in paragraphs (b) through (d) of this section—

(1) That standard is not presumed to be reasonable; and

(2) HCFA must approve the standard.

27. Section 435.814 is revised to read as follows:

§ 435.814 Medically needy income standards: State plan requirements.

(a) The State plan must specify the income standard for each covered medically needy group.

(b) If the agency uses an income standard that is not presumed to be reasonable under § 435.812, the State plan must describe that standard.

§ 435.816 [Removed]

28. Section 435.816 is removed.

29. Section 435.821 is revised to read as follows:

§ 435.821 Financial responsibility of relatives: Individuals under age 21 and caretaker relatives.

(a) The agency must meet the requirements of this section in determining eligibility—

(1) Under § 435.308 of medically needy individuals under age 21; and

(2) Under § 435.310 of medically needy caretaker relatives.

(b) The agency must consider income and resources that are actually contributed by the spouse or parent as available to the individual.

(c) The agency may consider income and resources of spouses or parents as available to the individual even if they are not actually contributed to the individual.

30. Section 435.822 is revised to read as follows:

§ 435.822 Financial responsibility of relatives of aged, blind, or disabled individuals in States using SSI eligibility requirements.

(a) The agency must meet the requirements of this section in determining eligibility—

(1) Under § 435.320 of medically needy aged individuals;

(2) Under § 435.322 of medically needy blind individuals; and

(3) Under § 435.324 of medically needy disabled individuals.

(b) For aged, blind, or disabled individuals with spouses, the agency—

(1) Must consider income and resources that are actually contributed by one spouse to another; and

(2) May consider income and resources of spouses as available to each other even if they are not actually contributed.

(c) For blind or disabled individuals under age 21—

(1) The agency must consider the parent's or spouse's income and resources as available if they are actually contributed to the individual; and

(2) The agency may consider the parent's or spouse's income and resources as available even if they are not actually contributed.

31. Section 435.823 is revised to read as follows:

§ 435.823 Financial responsibility of relatives of aged, blind, or disabled individuals in States using more restrictive requirements than SSI.

(a) The agency must meet the requirements of this section in determining eligibility under § 435.330 of medically needy aged, blind, and disabled individuals.

(b) For aged, blind, or disabled individuals with spouses, the agency—

(1) Must consider income and resources as available if they are actually contributed by one spouse to the other; and

(2) May consider income and resources of spouses as available to each other even if they are not actually contributed.

(c) For blind or disabled individuals under age 21, the agency—

(1) Must consider the parent's or spouse's income and resources as available if they are actually contributed to the individual; and

(2) May consider the parent's or spouse's income and resources as available even if they are not actually contributed.

32. In § 435.831, paragraphs (a)(1), (b), and (d) are revised as follows:

§ 435.831 Income eligibility.

The agency must determine income eligibility of medically needy individuals in accordance with this section. The agency must use a prospective period of not more than 6 months to compute income.

(a) *Determining countable income.* The agency must deduct the following amounts from income to determine the individual's countable income.

(1) For individuals under age 21 and caretaker relatives, the agency must deduct amounts that would be deducted in determining eligibility under the State's AFDC plan.

* * * * *

(b) *Eligibility based on countable income.* If countable income determined under paragraph (a) of this section is equal to or less than the applicable income standard under § 435.814, the individual or family is eligible for Medicaid.

* * * * *

(d) *Eligibility based on incurred medical expenses.* Once deduction of incurred medical expenses reduces income to the income standard, the individual is eligible for Medicaid.

33. Section 435.832(c) (2)(iii) and (3) are revised as follows:

§ 435.832 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

* * * * *

(c) The agency must deduct the following amounts, in the following order, from the individual's total income including amounts disregarded in determining eligibility:

* * * * *

(2) For an individual with only a spouse at home, an additional amount for the maintenance needs of the spouse. This amount must be based on a reasonable assessment of need but must not exceed the highest of—

* * * * *

(iii) The amount of the highest medically needy income standards for one person established under § 435.814.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family. This amount must—

(i) Be based on a reasonable assessment of their financial need;

(ii) Be adjusted for the number of family members living in the home; and

(iii) Not exceed the highest of the following need standards for a family of the same size:

(A) The standard used to determine eligibility under the State's approved AFDC plan.

(B) The standards used to determine eligibility under the State's Medicaid plan, as provided for in § 435.814.

* * * * *

34. Section 435.840 is revised to read as follows:

§ 435.840 Medically needy resource standards: General requirements.

To determine eligibility of medically needy individuals, a Medicaid agency must use a resource standard under this subpart that is—

(a) Based on family size;

(b) Uniform for all individuals in a group; and

(c) Reasonable.

35. Section 435.841 is revised to read as follows:

§ 435.841 Medically needy resource standards: Reasonableness.

(a) The agency must use a medically needy resource standard that is reasonable, according to the provisions of this section.

(b) The following medically needy resource standards are presumed to be reasonable:

(1) The agency provides one medically needy resource standard for all covered medically needy groups. Except as provided in paragraph (c) of this section, the standard must at least equal the highest resource standard used to determine eligibility in the cash assistance programs (or an optional State supplement, if the agency provides Medicaid under § 430.230) related to the covered medically needy groups.

(2) The agency provides a different medically needy resource standard for each covered medically needy group. Except as provided in paragraph (c) of this section, the standard for each covered group must at least equal the resource standard used to determine eligibility in the cash assistance program

(or an optional State supplement, if the agency provides Medicaid under § 435.230) related to that covered medically needy group.

(c) In the case of an agency that provides Medicaid for the aged, blind, or disabled individuals only if they meet more restrictive requirements than used under SSI, the following provisions apply:

(1) The agency may use a resource standard for those individuals that is lower than the standard specified in paragraph (b) of this section.

(2) The lower standard must at least equal the medically needy resource standard for those aged, blind, or disabled individuals under the State's plan on January 1, 1972.

(d) If the Agency uses a medically needy resource standard not specified in paragraphs (b) and (c) of this section—

(1) That standard is not presumed to be reasonable; and

(2) HCFA must approve the standard.

36. A new § 435.843 is added to read as follows:

§ 435.843 Medically needy resource standards: State plan requirements.

(a) The State plan must specify the resource standard for each covered medically needy group.

(b) If the agency uses a resource standard that is not presumed to be reasonable under § 435.841, the State plan must describe that standard.

37. Section 435.845 is amended by revising paragraphs (c) and (f) to read as follows:

§ 435.845 Medically needy resource eligibility.

To determine eligibility on the basis of resources for medically needy individuals, the agency must—

* * * * *

(c) For individuals under age 21 and caretaker relatives, deduct the value of resources that would be deducted in determining eligibility under the State's AFDC plan;

* * * * *

(f) Apply the resource standards established under § 435.843.

38. A new § 435.850 is added to read as follows:

Treatment of Income and Resources

§ 435.850 Treatment of income and resources: General requirements.

To determine eligibility of medically needy individuals, a Medicaid agency must use a methodology for the treatment of income and resources that is—

(a) Uniform for all individuals in a covered group; and

(b) Reasonable (see § 435.851).

39. A new § 435.851 is added to read as follows:

§ 435.851 Treatment of income and resources: Reasonableness.

(a) The agency must use a methodology for the treatment of income and resources, to determine eligibility of the medically needy, that is reasonable.

(b) The methodology used to determine eligibility of individuals in the cash assistance program related to the covered medically needy group is presumed to be reasonable.

(c) If the agency provides Medicaid for the aged, blind, or disabled individuals who meet more restrictive requirements than used under SSI, the methodology for the treatment of income and resources of those aged, blind, or disabled individuals under the State's plan on January 1, 1972, is presumed to be reasonable.

(d) If the agency uses a methodology not described in paragraphs (b) and (c) of this section—

(1) The methodology is not presumed to be reasonable; and

(2) HCFA must approve that methodology.

40. A new § 435.852 is added to read as follows:

§ 435.852 Treatment of income and resources: State plan requirements.

(a) The State's plan must specify the methodology used to treat the income and resources for each covered medically needy group.

(b) If the agency uses a methodology that is not presumed to be reasonable under § 435.851, the State plan must describe that methodology.

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

41. The authority citation for Part 436 reads as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

42. Section 436.2 is amended by changing the wording of the second item listed under 1902(b) as follows:

§ 436.2 Basis.

This part implements the following sections of the Act, which state requirements and standards for eligibility:

* * * * *

1902(b) Prohibited conditions for eligibility: Age requirement of more than 65 years; Age requirement excluding children under age 19 who meet the definition of dependent child under the State title IV–A plan;

* * * * *

43. Section 436.3 is amended by revising the definition for "medically needy" as follows:

§ 436.3 Definitions and use of terms.

As used in this part—

* * * * *

"Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy and whose income and resources are within limits set under the Medicaid State plan.

* * * * *

44. The Table of Contents is amended by adding a new § 436.114 and by removing § 436.115 as follows:

Subpart B—Mandatory Coverage of the Categorically Needy

* * * * *

436.114 Individuals deemed to be AFDC recipients.

* * * * *

45. A new § 436.114 is added to read as follows:

§ 436.114 Individuals deemed to be receiving AFDC.

(a) The Medicaid agency must provide Medicaid to individuals deemed to be receiving AFDC, as specified in this section.

(b) The State must deem individuals to be receiving AFDC who are denied a cash payment from the title IV–A State agency solely because the amount of the AFDC payment would be less than $10.

(c) The State may deem pregnant women to be receiving AFDC under section 406(g)(2) of the Act. This section permits States, for purposes of title XIX, to deem a pregnant woman to be receiving AFDC if—

(1) She would be eligible for AFDC cash payments if the child had been born and was living with her in the month of payment; and

(2) The pregnancy has been medically verified.

(d) The State may deem participants in a work supplementation program to be receiving AFDC under section 414(g) of the Act. This section permits States, for purposes of title XIX, to deem an individual and any child or relative of the individual (or other individual living in the same household) to be receiving AFDC, if the individual—

(1) Participates in a State-operated work supplementation program under section 414 of the Act; and

(2) Would be eligible for an AFDC cash payment if the individual were not participating in the work supplementation program.

§ 436.115 [Removed]

46. Section 436.115 is removed.

47. The Table of Contents is amended by removing § 436.221.

48. Section 436.212(a)(1) is revised as follows:

§ 436.212 Individuals who would be eligible for cash assistance if the State plan for OAA, AFDC, AB, APTD, or AABD were as broad as allowed under the Act.

(a) The agency may provide Medicaid to individuals who—

(1) Would be eligible for OAA, AFDC, AB, APTD, or AABD if the State's plan under those programs included individuals whose coverage under title I, IV–A, X, XIV, or XVI is optional (for example, the agency may provide Medicaid to members of families with an unemployed parent even though the State's AFDC plan does not include them); or

* * * * *

§ 436.221 [Removed]

49. Section 436.221 is removed.

50. Section 436.222 is revised to read as follows:

§ 436.222 Individuals under age 21 who would be eligible for AFDC but do not qualify as dependent children.

(a) The agency may provide Medicaid to individuals under age 21 (or, at State option, under age 20, 19 or 18) who would be eligible for AFDC if they met the definition of dependent child. (See 45 CFR 233.90(c)(1).)

(b) The agency may cover all individuals described in paragraph (a) of this section or reasonable classifications of those individuals. Examples of reasonable classifications are as follows:

(1) Individuals in foster homes or private institutions for whom a public agency is assuming a full or partial financial responsibility. If the agency covers these individuals, it may also provide Medicaid to individuals of the same age in foster homes or private institutions by private nonprofit agencies.

(2) Individuals in adoptions subsidized in full or in part by a public agency.

(3) Individuals in intermediate care facilities, if intermediate care facility services are provided under the plan. If the agency covers these individuals, it may also provide Medicaid to individuals in intermediate care facilities for the mentally retarded.

(4) Individuals receiving active treatment as inpatients in psychiatric facilities or programs, if inpatient psychiatric services for individuals under 21 are provided under the plan.

51. The Table of Contents for Subpart D of Part 436 is revised as follows:

Subpart D—Optional Coverage of the Medically Needy

436.300 Scope.
436.301 General rules.
436.308 Medically needy coverage of individuals under age 21.
436.310 Medically needy coverage of caretaker relatives.
436.320 Medically needy coverage of the aged.
436.321 Medically needy coverage of the blind.
436.322 Medically needy coverage of the disabled.

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

52. Section 436.301 is revised to read as follows:

§ 436.301 General rules.

(a) A Medicaid agency may provide Medicaid to individuals specified in this subpart who—

(1) Either—

(i) Have income that meets the standards in § 436.814; or

(ii) If their income is more than allowed under those standards, have incurred medical expenses at least equal to the difference between their income and the applicable income standards; and

(2) Have resources that meet the standards in § 436.843.

(b) If the agency chooses this option, the following provisions apply:

(1) The agency must provide Medicaid to—

(i) All pregnant women during the course of their pregnancy who, but for income and resources, would be eligible for Medicaid as categorically needy; and

(ii) All individuals under age 21 (or, at State option, under age 20, 19, or 18), or specified in § 436.308. For purposes of this requirement, the agency must provide for individuals under age 21 as—

(A) Categorically needy, as specified in § 436.222; or

(B) Medically needy, as specified in § 436.308.

(2) The agency may provide Medicaid to any or all of the following groups of individuals:

(i) Individuals under age 21 (§ 436.308).

(ii) Caretaker relatives (§ 436.310).

(iii) Aged (§ 436.320).

(iv) Blind (§ 436.321).

(v) Disabled (§ 436.322).

(3) If the agency provides Medicaid to any individual in a group specified in paragraph (b)(2) of this section, the agency must provide Medicaid to all individuals eligible to be members of that group.

53. A new § 436.308 is added to read as follows:

§ 436.308 Medically needy coverage of individuals under age 21.

(a) If the agency provides Medicaid to the medically needy, it must provide Medicaid to individual under age 21 (or, at State option, under age 20, 19, or 18), as specified in paragraph (b) of this section, who meet the income and resource standards in Subpart I of this part. (See § 436.301 for required coverage as either categorically or medically needy.)

(b) The agency may cover all individuals in paragraph (a) of this section or individuals in reasonable classifications. Examples of reasonable classifications are as follows:

(1) Individuals in foster homes or private institutions for whom a public agency is assuming a full or partial financial responsibility. If the agency covers these individuals, it may also provide Medicaid to individuals placed in foster homes or private institutions by private nonprofit agencies.

(2) Individuals in adoptions subsidized in full or in part by a public agency.

(3) Individuals in intermediate care facilities, if intermediate care facility services are provided under the plan. If the agency covers these individuals, it may also provide Medicaid to individuals in intermediate care facilities for the mentally retarded.

(4) Individuals receiving active treatment as inpatients in psychiatric facilities or programs, if inpatient psychiatric services for individuals under 21 are provided under the plan.

54. Section 436.310 is revised to read as follows:

§ 436.310 Medically needy coverage of caretaker relatives.

(a) If the agency provides for the medically needy, it may provide Medicaid to caretaker relatives, as specified in paragraphs (b), (c), and (d) of this section, who meet the income and resource standards of Subpart I of this part.

(b) "Caretaker relatives" mean individuals who—

(1) Meet the definition of a caretaker relative under 45 CFR 233.90(c)(1)(v)(A); and

(2) Have in their care an individual who is determined to be dependent, as specified in § 436.510.

55. Section 436.320 is revised to read as follows:

§ 436.320 Medically needy coverage of the aged.

If the agency provides Medicaid to the medically needy, it may provide Medicaid to individuals who—

(a) Are 65 years of age and older, as provided for in § 436.520; and

(b) Meet the income and resource requirements of Subpart I of this part.

56. A new § 436.321 is added to read as follows:

§ 436.321 Medically needy coverage of the blind.

If the agency provides Medicaid to the medically needy, it may provide Medicaid to blind individuals who meet—

(a) The requirements for blindness, as specified in §§ 436.530 and 436.531; and

(b) The income and resource requirements of Subpart I of this part.

57. A new § 436.322 is added to read as follows:

§ 436.322 Medically needy coverage of the disabled.

If the agency provides Medicaid to the medically needy, it may provide Medicaid to disabled individuals who meet—

(a) The requirements for disability, as specified in §§ 436.540 and 436.541; and

(b) The income and resource requirements of Subpart I of this part.

§ 436.330 [Removed]

58. Section 436.330 is removed.

59. Section 436.520 is amended by revising paragraph (a) to read as follows:

§ 436.520 Age requirements for the aged and children.

(a) The agency must not impose—

(1) An age requirement of more than 65 years;

(2) An age requirement that excludes an individual under age 19 who meets the definition of dependent child under the State title IV–A plan; or

(3) A lower age requirement than that under the State AFDC plan.

* * * * *

60. Section 436.811 is revised to read as follows:

§ 436.811 Medically needy income standards: General requirements.

To determine eligibility of medically needy individuals, the agency must use an income standard under this subpart that is—

(a) Based on family size;

(b) Uniform for all individuals in a covered group;

(c) Reasonable; and

(d) For FFP purposes, not in excess of 133⅓ percent of the highest money payment that ordinarily would be made in the State AFDC program to an individual or a family of comparable size (see § 435.1007).

61. Section 436.812 is revised to read as follows:

§ 436.812 Medically needy income standards: Reasonableness.

(a) The agency must use a medically needy income standard that is reasonable, according to the provisions of this section.

(b) The following medically needy income standards are presumed to be reasonable:

(1) The agency provides for one medically needy income standard for all covered medically needy groups. Except as provided in paragraph (c) of this section, that standard must at least equal the highest income standard used on or after January 1, 1966, to determine eligibility for the OAA, AFDC, AB, APTD, and AABD programs that are related to the covered medically needy groups.

(2) The agency provides for a different medically needy income standard for each covered medically needy group. Except as provided in paragraph (c) of this section, the standard for each covered group must at least equal the income standard used on or after January 1, 1966, to determine eligibility for the OAA, AFDC, AB, APTD, or AABD program that is related to that covered medically needy group.

(c) The agency may use a medically needy income standard, that is lower than the standards specified in paragraph (b) of this section, if—

(1) The medically needy income standard in paragraph (b) of this section exceeds the maximum dollar amount or income allowed for purposes of FFP under §435.1007; and

(2) The lower income standard at least equals the maximum amount allowed for purposes of FFP.

(d) If the agency provides for a medically needy income standard not specified in paragraphs (b) or (c) of this section—

(1) That standard is not presumed to be reasonable; and

(2) HCFA must approve that standard.

62. A new § 436.814 is added to read as follows:

§ 436.814 Medically needy income standard: State plan requirements.

(a) The State plan must specify the income standard for each covered medically needy group.

(b) If the agency provides for an income standard that is not presumed to be reasonable under § 435.812, the State plan must describe that standard.

63. Section 436.821 is amended by revising the introductory text and paragraph (a) as follows:

§ 436.821 Financial responsibility of spouses and parents.

In determining eligibility of medically needy individuals, the agency may use the rules for determining whether the income of a spouse or parent is available to the individual that would be used if he were applying for OAA, AFDC, AB, APTD or AABD. However—

(a) For individuals under age 21 and caretaker relatives, the agency must consider parental income and resources available to a child who is living with the parent until he becomes 21, even if State law confers adult status below age 21; and

* * * * *

64. Section 436.831 is amended by revising paragraphs (b) and (d) to read as follows:

§ 436.831 Income eligibility.

The agency must determine income eligibility of medically needy individuals in accordance with this section. The agency must use a prospective period of not more than 6 months to compute income.

* * * * *

(b) *Eligibility based on countable income.* If countable income determined under paragraph (a) of this section is equal to or less than the applicable income standard under § 436.814, the individual is eligible for Medicaid.

* * * * *

(d) *Eligibility based on incurred medical expenses.* Once deduction of incurred medical expenses reduces income to the income standard, the individual is eligible for Medicaid.

* * * * *

65. Section 436.832(c) (2) and (3) are revised as follows:

§ 436.832 Post-eligibility treatment of income and resources of institutionalized individuals. Application of patient income to the cost of care.

(a) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraph (c) from the individual's income.

* * * * *

(c) The agency must deduct the following amounts, in the following order, from the individual's total income including amounts disregarded in determining eligibility:

* * * * *

(2) For an individual with only a spouse at home, an additional amount for the maintenance needs of the spouse. This amount must be based on a reasonable assessment of need but must not exceed the higher of—

(i) The amount of the highest need standard for an individual without income and resources under the State's approved plan for OAA, AFDC, AB, APTD, or AABD; or

(ii) The amount of the highest medically needy income standard for one person established under § 436.814.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family. This amount must—

(i) Be based on a reasonable assessment of their financial need;

(ii) Be adjusted for the number of family members living in the home; and

(iii) Not exceed the highest of the following need standards for a family of the same size:

(A) The standard used to determine eligibility under the State's Medicaid plan, as provided for in § 436.814.

(B) The standard used to determine eligibility under the State's approved AFDC plan.

* * * * *

66. Section 436.840 is revised to read as follows:

§ 436.840 Medically needy resource standards: General requirements.

To determine eligibility of medically needy individuals, the Medicaid agency must use a resource standard under this subpart that is—

(a) Based on family size;

(b) Uniform for all individuals in a group; and

(c) Reasonable.

67. A new § 436.841 is added to read as follows:

§ 436.841 Medically needy resource standards: Reasonableness.

(a) The agency must use a medically needy resource standard that is reasonable, according to the provisions of this section.

(b) The following medically needy resource standards are presumed to be reasonable:

(1) The agency provides one medically needy resource standard for all covered medically needy groups. The standard must at least equal the highest resource standard used on or after January 1, 1966, to determine eligibility for the OAA, AFDC, AB, APTD, and AABD programs that are related to the covered medically needy groups.

(2) The agency provides for a different medically needy resource standard for each covered medically needy group. The standard for each covered group must at least equal the resource standard used on or after January 1, 1966, to determine eligibility for the OAA, AFDC, AB, APTD, or AABD program that is related to that covered medically needy group.

(c) If the agency provides for a medically needy resource standard not specified in paragraph (b) of this section—

(1) That standard is not presumed to be reasonable; and

(2) HCFA must approve the standard.

68. A new § 436.843 is added to read as follows:

§ 436.843 Medically needy resource standards: State plan requirements.

(a) The State plan must specify the resource standard for each covered medically needy group.

(b) If the agency provides for a resource standard that is not presumed reasonable under § 435.841, the State plan must describe that standard.

69. Section 436.845 is amended by revising paragraph (d) to read as follows:

§ 436.845 Medically needy resource eligibility.

To determine eligibility on the basis of resources for medically needy individuals, the agency must—

* * * * *

(d) Apply the resource standards established under § 436.843.

70. A new § 436.850 is added to read as follows:

Treatment of Income and Resources

§ 436.850 Treatment of income and resources: General requirements.

To determine eligibility of medically needy individuals, a Medicaid agency must use a methodology for the treatment of income and resources that is—

(a) Uniform for all individuals in a covered group; and

(b) Reasonable (see § 436.851).

71. A new § 436.851 is added to read as follows:

§ 436.851 Treatment of income and resources: Reasonableness.

(a) The agency must use a methodology for the treatment of income and resources, to determine eligibility of the medically needy, that is reasonable.

(b) The methodology used to determine eligibility of cash assistance program related to the covered medically needy group is presumed to be reasonable.

(c) If the agency uses a methodology not described in paragraph (b) of this section—

(1) The methodology is not presumed to be reasonable; and

(2) HCFA must approve that methodology.

72. A new § 436.852 is added to read as follows:

§ 436.852 Treatment of income and resources: State plan requirements.

(a) The State plan must specify the methodology used to treat the income and resources for each covered medically needy group.

(b) If the agency uses a methodology that is not presumed to be reasonable under § 436.851, the State plan must describe that methodology.

PART 440—SERVICES: GENERAL PROVISIONS

73. The Table of Contents is amended by adding a new § 440.165 to read as follows:

Subpart A—Definitions

* * * * *

440.165 Nurse-midwife services. [Reserved]

* * * * *

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

74. A new § 440.165 is added to read as follows:

§ 440.165 Nurse-midwife services. [Reserved]

75. Section 440.200 is revised to read as follows:

§ 440.200 Basis, purpose, and scope.

(a) This subpart implements—

(1) Section 1902(a)(10), regarding comparability of services for groups of recipients, and the amount, duration, and scope of services described in 1905(a) of the Act that the State plan must provide for recipients;

(2) Section 1902(a)(22)(D), which provides for standards and methods to assure quality of services; and

(3) Section 1907 on observance of religious beliefs.

(b) The requirements and limits of this subpart apply for all services defined in Subpart A of this part.

76. Section 440.220 is revised to read as follows:

§ 440.220 Required services for the medically needy.

Except as limited in § 440.250, a State plan that includes the medically needy must specify that the medically needy are provided, as a minimum, the following services:

(a) Prenatal care and delivery services for pregnant women.

(b) Ambulatory services, as defined in the State plan, for—

(1) Individuals under age 18; and

(2) Individuals entitled to institutional services.

(c) Home health services (§ 440.70) to any individual entitled to skilled nursing facility services.

(d) If the State plan includes services in an institution for mental diseases (§§ 440.140 and 440.160) or in an intermediate care facility for the mentally retarded (§ 440.150(c)) for any group of medically needy, either of the following sets of services to each of the medically needy groups:

(1) The services contained in §§ 440.10–440.50 and 440.165; or

(2) The services contained in any seven of the sections in §§ 440.10–440.165.

77. Section 440.230 is revised to read as follows:

§ 440.230 Sufficiency of amount, duration, and scope.

(a) The plan must specify the amount, duration, and scope of each service that it provides for—

(1) The categorically needy; and

(2) Each covered group of medically needy.

(b) Each service must be sufficient in amount, duration, and scope to reasonably achieve its purpose.

(c) The Medicaid agency may not arbitrarily deny or reduce the amount, duration, or scope of a required service under §§ 440.210 and 440.220 to an otherwise eligible recipient solely because of the diagnosis, type of illness, or condition.

(d) The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures.

78. Section 440.240 is revised to read as follows:

§ 440.240 Comparability of services for groups.

Except as limited in § 440.250—

(a) The plan must provide that the services available to any categorically needy recipient under the plan are not less in amount, duration, and scope than those services available to a medically needy recipient; and

(b) The plan must provide that the services available to any individual in the following groups are equal in amount, duration, and scope for all recipients within the group:

(1) The categorically needy.

(2) A covered medically needy group.

79. Section 440.250 is amended by adding new paragraphs (h) through (k) to read as follows:

§ 440.250 Limits on comparability of services.

* * * * *

(h) Ambulatory services for the medically needy (§ 440.220(b)) may be limited to—

(1) Individuals under age 18; and

(2) Individuals entitled to institutional services.

(i) Services provided under an exception to requirements allowed under § 431.54 may be limited as provided under that exception.

(j) If HCFA has approved a waiver of Medicaid requirements under § 431.55, services may be limited as provided by the waiver.

(k) If the agency has been granted a waiver of the requirements of § 440.240 (Comparability of services) in order to provide home or community-based services under § 440.180, the services provided under the waiver need not be comparable for all individuals within a group.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

80. The authority citation for Part 441 reads as follows:

Authority. Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

81. Section 441.10 is amended by revising paragraph (a) to read as follows:

Subpart A—General Provisions

§ 441.10 Basis.

This subpart is based on the following sections of the Act which state requirements and limits on the services specified or provide Secretarial authority to prescribe regulations relating to services.

(a) Sections 1902(a)(10)(D) and 1905(a)(7) for home health services (§ 441.15).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program)

Dated: September 16, 1981.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 24, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81-28324 Filed 9-29-81; 8:45 am]

BILLING CODE 4110-35-M

federal register

Wednesday
September 30, 1981

Part V

Department of Health and Human Services

Health Care Financing Administration

Medicaid Program; Reductions in Payments to States

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 433

45 CFR Part 201

Medicaid Program; Reductions in Payments to the States

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim Final Rule with Comment Period.

SUMMARY: This rule amends current Medicaid regulations to implement section 2161 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) which imposes reductions in Federal matching payments for fiscal years 1982 through 1984. In the regulations, we describe the conditions and specify minimum criteria under which States may lower the reduction. The conditions are the existence of a qualified hospital cost review program, a specific level of unemployment in a State, and a specific amount of fraud and abuse recoveries by a State or, for fiscal year 1982 only, a combination of fraud and abuse and third party liability recoveries. We intend these regulations to provide guidance as to when the reductions, and offsets against the reductions, will be made and how States can qualify for the offsets.

In addition, we have issued a notice of proposed rulemaking elsewhere in this issue of the **Federal Register** that contains proposed policies concerning recoveries from liable third parties for purposes of implementing section 2161.

DATES: This rule is effective September 30, 1981. It is being issued as a final rule for reasons explained in Waiver of Proposed Rulemaking in the Supplementary Information section below. However, we will consider any comments mailed by November 30, 1981, and revise the regulations, if necessary.

Sections 433.209 and 433.213 of these regulations contain reporting or recordkeeping requirements that have not been approved by the Office of Management and Budget (OMB). The reporting or recordkeeping referenced in these sections is not required until OMB approval has been obtained. HCFA will publish a further notice in the **Federal Register** when OMB approves or disapproves these requirements.

ADDRESS: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17076, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C., or to Room 789, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPO–26–FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave., S.W., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, if as a result of comments, we believe that changes are needed in these regulations, we will publish the changes in the **Federal Register** and respond to the comments in the preamble of that document.

FOR FURTHER INFORMATION CONTACT: Charles Schreibeis, 301–597–1702.

SUPPLEMENTARY INFORMATION:

I. Background

A. Program Description

Medicaid, authorized under title XIX of the Social Security Act, is a program that provides medical assistance to certain categories of individuals and families with low income. The program is funded by both the Federal government and the States, but is administered by the individual States. Each State designs its own program within certain Federal guidelines. Thus, there is substantial variation among the States in the nature of the program itself and in the way in which the program is administered. For example, eligibility requirements, the range of medical services provided to beneficiaries, and the policies governing the ways in which providers of health care services are reimbursed may differ extensively from State to State. Additionally, because of differing levels of administrative resources and the scope of individual programs, the various States emphasize specific administrative aspects of their program, such as fraud and abuse activities, to varying degrees.

Under current law, as noted above, Medicaid is financed jointly with Federal and State funds. Generally, the Federal government shares in the cost of health care services covered under each State's Medicaid program, with the Federal contribution determined under a statutory formula (sections 1903(a) and 1905(b) of the Social Security Act) that is designed to have the Federal government pay a proportionally larger share of the program in States with lower per capita income as compared to the national per capita income. The Federal government also shares in the cost of the administration of each State's Medicaid program (section 1903(a) of the Act).

B. Section 2161 of the Omnibus Budget Reconciliation Act of 1981

On August 13, 1981, the President signed the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). Section 2161 of that Act added sections 1903(s) and (t) to the Social Security Act and mandated progressive reductions in total Federal Medicaid payments to the States for fiscal years 1982 through 1984. Under the law, Federal matching payments to which a State is entitled are to be reduced by three percent of each quarter's payment in fiscal year (FY) 1982, four percent in FY 83, and four and one half percent in FY 84. However, Congress provided that a State may lower the amount of its reduction by one percentage point for each quarter in the year for each of the following conditions:

- The State has in operation a qualified hospital cost review program.
- The State has an unemployment rate equal to or exceeding 150 percent of the national average.
- The State demonstrates recoveries of Medicaid funds, as a result of fraud and abuse initiatives, equal to one percent of the Federal share of total expenditures. With respect to FY 82 only, States may qualify for this decrease if the combination of recoveries from fraud and abuse and third party liability efforts is equal to one percent of the Federal share of total expenditures.

The legislation further provides that a State will be entitled to a dollar for dollar offset in the reductions if total Federal Medicaid funding of the State's program in a year falls below a specified target amount. However, the amount recovered by a State in this manner may not exceed the total amount of the original reduction for the fiscal year. Congress established the target amount for 1982 as equal to 109 percent of each State's estimate of the amount of Federal funding it needed for FY 81, and stipulated that the State estimates to be used would be those that were submitted to HCFA before April 1, 1981. For FY 83 and FY 84, the target amounts are equal to the FY 82 target amount increased or decreased by the same percentage as the increase or decrease in the index of the medical care

expenditure component of the consumer price index over the same period.

A review of the legislative history of section 2161 and the language of the section itself clearly indicate what Congress intends regarding the existence of a hospital cost review program. Section 2161 states the specific conditions (see section II A of this Preamble) that must be met, including requirements for the effective date of the program, its scope, its treatment of affected groups, and its results in terms of cost containment.

Regarding the offset for States with high unemployment, the statute provides that a State qualifies for the one percent offset in the reduction if the monthly average of unemployment for the quarter immediately preceding the quarter in which the offset is to be applied is equal to or greater than 150 percent of the national average for the same period.

For purposes of the offset gained by fraud and abuse recoveries, and for 1982 only, both fraud and abuse and third party liability recoveries, the statute simply provides that the recoveries for a quarter must equal or exceed one percent of the amount of Federal payments to the State in that quarter.

These provisions, and how we will apply them, are discussed in greater detail below.

Congress specifically applied the reductions, and the offset against the reductions, to the State with Medicaid plans approved as of July 1, 1981. This means that the reductions apply to all States and the District of Columbia, with the exception of Arizona, which does not participate in Medicaid. Other provisions of the Budget Act (section 2162) set limits on Federal funding for Medicaid programs in the other jurisdictions (Guam, Puerto Rico, the Virgin Islands and the Northern Mariana Islands).

Reductions in Medicaid payments to the States under section 2161 were made contingent on approval and publication of regulations by the Secretary implementing several other provisions of law, by the first day of the quarter in which the reductions are applied. First, Congress required that final regulations implementing section 1902(a)(10)(C) of the Social Security Act, as amended by section 2171 of the Omnibus Budget Reconciliation Act of 1981, relating to flexibility in Medicaid eligibility requirements, be published in the **Federal Register**. Second, Congress required that regulations implementing section 1902(a)(13)(A) of the Social Security Act, as amended by section 962 of the Omnibus Reconciliation Act of 1980 and section 2173 of the Omnibus Budget Reconciliation Act of 1981, relating to modifications in requirements for hospital, skilled nursing facility and intermediate care facility reimbursement, be published. The first set of regulations were published elsewhere in this issue, and the second set published elsewhere in this issue.

II. Provisions of the Regulations

A. Location and General Content

We have amended the existing Medicaid regulations in 42 CFR Part 433, State Fiscal Administration, by adding a new Subpart E, Reductions in Total Federal Payments to the States for fiscal years 1982–1984. The new subpart spells out the rules that will govern HCFA's administration of the statutory requirements. Specific provisions are explained below. In addition, we have made conforming changes in 42 CFR Part 433, Subpart A and 45 CFR Part 201. These changes are cross-references to the new subpart.

B. Notice of Proposed Rulemaking on Third Party Liability Recoveries

We issued a notice of proposed rulemaking elsewhere in this issue of the **Federal Register** containing a proposed description of what we mean by recoveries from liable third parties. We are providing the public with a 30 day period in which to comment on the proposal and will issue a final rule as soon as possible after the comment period is over. The final rule will consist of definitions of "third party" and "third party liability" to be included in § 433.203 and a new § 433.215 that will describe the use of recoveries from liable third parties in determining the offset against the FY82 reductions.

C. States with Qualified Hospital Cost Review Programs

Sections 433.207(a) and 433.209 of the new regulations are based on sections 1903 (s)(2)(A) and (s)(3) of the Social Security Act (as enacted by section 2161 of Pub. L. 97–35). Section 1903(s)(2)(A) specifies that the percentage reduction in FFP for a State that is required by the amendment for a quarter is to be decreased by one percentage point if the State has a qualified hospital cost review program for the quarter. Section 1903(s)(3) specifies that a program will be considered to be "qualified" if specific criteria are met. These criteria are as follows:

- The program must have been established by statute, and have been in effect on July 1, 1981, and at the beginning of the quarter in which offset against the reduction is granted;
- The program must be operated directly by the State;
- The program just apply to substantially all non-Federal acute care hospitals;
- Under the program, the State must review all non-Medicare revenues or expenses for inpatient hospital services, or at least 75 percent of all revenues or expenses for inpatient hospital services, including those under Medicare;
- The State must make satisfactory assurances to the Secretary that the program provides substantially equitable treatment to all payors, hospital employees and hospital patients; and
- The State's rate of increase in aggregate inpatient hospital costs per capita or per admission on a calendar year basis must be at least two percentage points lower than the rate of increase in all States without qualifying programs. The period of comparision is the most recent calendar year or, at the State's option, the two or three calendar year period ending at least nine months before the quarter covered by the Federal payment.

These conditions are set forth in § 433.209 of the new regulations as the criteria we will use to determine whether a State is entitled to a decrease in the reduction based on the existence of a qualified hospital cost review program. Since we believe these criteria are largely self-explanatory, we have not included any further description of our interpretation of them in § 433.209. To avoid any confusion as to how we intend to implement § 433.209, however, we are providing an explanation of the meaning of certain key phrases used in that section, as follows:

- *Established by statute.* We will consider a program to be "established by statute" if the statutory laws of the State provide a basis for the operation of the program.
- *In effect.* We will consider a program to have been "in effect" on July 1, 1981 if, on that date, rules or regulations for the conduct of the program had been issued and were in effect.
- *Operated directly by the State.* This means that the State must be directly involved in the operation of the program, or that final decisions under the program must be made by a State employee or by an individual or a commission (or similar body) appointed by the State
- *Substantially all.* We will consider a program to apply to "substantially all" non-Federal acute care hospitals in a State if it applies to all non-Federal acute care hospitals, with possible,

occasional exceptions for the purpose of dealing with extraordinary circumstances.

• *Review.* For purposes of § 433.209, we will consider review of revenue or expenses to mean an examination of:

(1) The reasonableness of a hospital's proposed revenue, expenses, or rate request for a prospective period that results in a determination that is binding on the hospital; or

(2) A hospital's past expenses, rates or revenue for purposes of establishing rates or restricting the revenue to be received by the hospital for services in future periods.

If a State does not review hospitals when their proposed expenses, revenues or rate increases are less than specified target levels, those hospitals would be considered to have been reviewed by the State for purposes of determining whether the program was qualified under this section.

• *Assurances regarding equitable treatment.* To meet this requirement, we are requiring that the State assure HCFA, in a letter signed by the administrator of the Medicaid State agency, that the State's review program provides for equitable treatment of all entities that pay hospitals for inpatient hospital services, all hospital employees, and all hospital patients. In the absence of a significant question about whether all entities are being treated equitably, we will not require the State to specify the basis for its assurances, or to provide further information regarding its manner of ensuring that payers, hospital employees, and patients are treated equitably.

• *Calculation of annual rates of increase in aggregate hospital inpatient costs on a calendar year basis.* In determining whether this requirement is met, we will use the best available national data base. However, no national data bases currently exist with individual or Statewide hospital expense data reported on a calendar year basis. Medicare cost reports, for example, are filed by hospitals based on their own fiscal years which vary throughout the calendar year.

The best available data base currently available is the American Hospital Association's Annual Survey of Hospitals. The expenses reported by AHA are total expense figures (outpatient as well as inpatient expenses). To compute inpatient admission expenses, adjustments are made for outpatient costs by using a ratio of outpatient revenue to total revenue to derive an adjusted admissions figure. HCFA will make a similar adjustment to compute an inpatient expense per capita.

For purposes of this Annual Survey, hospitals are requested by the American Hospital Association (AHA) to report each year's expenses based on their fiscal years ending closest to September 30. AHA then makes the data available from its Annual Survey in September of the year following the reporting date. (Approximately one-half of the hospitals report to AHA on the basis of fiscal years ending on September 30, one quarter on June 30, and the remainder vary throughout the calendar year.) This means that data reported to AHA for hospital reporting periods closest to September 30, 1980 will be available in late September, 1981.

In addition, in order to prepare a national data base for *calendar year* 1980, it is necessary to have available for *all* hospitals both their FY80 and FY81 expenditure data (except those with fiscal years ending on December 31). For example, a hospital whose fiscal year ended on September 30, 1980 would report to AHA its expenditure data for the period October 1, 1979 through September 30, 1980. At the end of its FY81, that hospital would report to AHA its expenditure data for the period October 1, 1980 through September 30, 1981. This latter data would, of course, be included in AHA's Annual Survey available in September, 1982. Therefore, data from both fiscal years would be used to construct a *calendar year* 1980 expenditure file for the hospital because FY81 expenditure reports would be needed to provide the data for the period October through December, 1980.

As a result of this delay in the availability of complete data for calendar year 1980, and in order to avoid an unreasonable delay in the application of the hospital cost review offset against the reduction, we will use the data available by the end of October 1981 in the AHA Annual Survey. We will determine in this manner which States tentatively meet the criterion and apply the offset against the reduction in grants for all quarters of FY81. We anticipate that we will make a supplementary grant award in November to States that qualify for the offset. For subsequent quarters, we will make the adjustment in the initial grant award. We will review the AHA Annual Survey published in September 1982 and make any necessary retroactive adjustments to the grant awards of the States determined to have qualified for the reduction. We will follow these same procedures in FY 83 and FY 84.

D. States with High Unemployment Rates

Section 433.207(b) of the new regulations is based on sections 1903(s)(2)(B) and (4) of the Social Security Act, as enacted by section 2161. Those sections specify that the percentage reduction in FFP required by the amendment for a calendar quarter is to be decreased by one percentage point if the State's average monthly unemployment rate for the immediately preceding calendar quarter, as determined by the Bureau of Labor Statistics (BLS), was at least 50 percent higher than the national average unemployment rate for the same period. To determine whether a State's average monthly unemployment rate is high enough to permit the State to qualify for this decrease, we plan to use the unemployment data in *Employment and Earnings* (table E–1), which is published monthly by the BLS and includes unemployment data for all States. The unemployment data for the 10 largest States are based on the *Current Population Survey*, which is the same survey used to derive estimates of national unemployment rates. Unemployment data for other States are based on State-administered unemployment insurance surveys. The unemployment data for each quarter generally are available by the middle of the following quarter. We will issue a supplementary grant award as soon as the data is available.

E. Fraud and Abuse and Third Party Liability Recoveries

Under section 1903(s)(2)(C) of the Act, as enacted by section 2161, the States will be entitled for each quarter to a decrease of one percentage point in the applicable reduction if the total amount of the State's recoveries against expenditures for the previous quarter, that are the result of third party liability or fraud and abuse activities, is equal to or exceeds one percent of the total Federal Medicaid payments due the State for the quarter. The statute goes on to define "recoveries" and further provides that recoveries from liable third parties may be considered for FY 82 only. In addition, the provision specifies that recoveries exceeding one percent of the Federal payment can be carried over for crediting against the succeeding quarter's reduction.

Third party and fraud and abuse recoveries are defined by section 1903(s)(5)(A)(i) as the total amount that the "State demonstrates to the Secretary that it has recovered or diverted * * *" We believe that Congress intended that

the States must be able to document their recoveries and must report them to HCFA before we include them in our determinations concerning the decrease in the reduction of Federal payments. In itself, the phrase "demonstrates to the Secretary" necessarily implies that the recoveries must be auditable and have been reported. Additionally, however, in the Report of the House Committee on the Budget on H.R. 3982 (97th Congress, 1st Sess. 290 (1981)), clear reference is made to the view that the recoveries must be documented. The report goes on to note that claims by the States of reduced expenditures because fraud and abuse has been discouraged are too subjective to establish the right to a smaller reduction through application of the offset. We find nothing in the legislative history of Pub. L. 97-35 to indicate a shift in Congressional intent away from that view. Therefore, in the regulation we do not consider expenditures that may have been reduced because fraud and abuse have been discouraged. We defined recoveries to include funds actually collected or diverted by a Medicaid State agency or Medicaid Fraud Control Unit, and which have been reported to the Federal government.

Furthermore, the statute makes use of the term "diverted" funds. We take the view that Congress intended that diverted funds, as well as recoveries, should be documented by the State before being included in determinations by HCFA concerning decreases in the reduction mandated by Pub. L. 97-35. We included in the definition of diverted funds amounts saved as a result of a State's having applied prepayment screens to all claims submitted by a specifically identified provider, and also savings realized from the application of special prepayment utilization screens in a mechanized or automated claims processing system. With respect to general screens, we distinguish between routine monitoring or screening edits in automated or mechanized claims systems and those put in place by the States as a result of surveillance and utilization review program actions or fraud control unit actions.

We will include savings from the latter source in deteminations about the fraud and abuse effect, and we will designate categories of screens that qualify in our reporting instructions for completion of the quarterly expenditure report (Form HCFA-64). Examples of qualified categories of screens are one time only procedures, inappropriate services for speciality and inappropriate place of service. More generally, diverted funds do not, for example, include amounts—

- Recovered as a result of routine audit activities or review of cost reports;
- Recovered or avoided as a result of detecting duplicate payments or applying normal utilization claims processing screens;
- Saved from claims that are denied as a result of prior authorization or general application of mechanized prepayment screens;
- Recovered as a result of overpayments based on State agency or fiscal agent administrative error;
- Amounts estimated by the States as future savings based on the conviction or suspension of a provider from Medicaid because of fraud or abusive practices;
- Amounts saved as a result of programs that restrict recipients to receive services from certain providers.

Generally, the regulations (§ 433.213) provide that HCFA will grant, on a quarter by quarter basis, the one percent decrease in the applicable reduction based on the total amounts a State can demonstrate as having been recovered or diverted through operation of its fraud control unit or through other fraud or abuse control activities. HCFA will make adjustments based on the decrease after it has received and reviewed the applicable data and determined that a State qualifies for the offset. This normally will occur toward the end of the quarter, or in the next succeeding quarter, depending on the timeliness of receipt and review of the necessary data.

For fiscal year 1982 only, Congress provided that recoveries from liable third parties will be included in determinations regarding the applicability of the one percent decrease in the reduction. This provision is covered in the proposed § 433.215, published in the notice of proposed rulemaking mentioned above.

We also provide in § 433.213 that amounts of third party liability (fiscal year 1982 only) and fraud and abuse recoveries in a quarter that exceed one percent of the total Federal Medicaid payments due a State for that quarter, will be carried forward for one quarter, as provided in section 1903(s)(5)(B).

For the purpose of establishing a tracking system to determine whether a State achieves the requisite level of third party liability and fraud and abuse recoveries, we are requiring that States report the data on existing forms. We will extract the data from these forms. Additionally, it is important to note here that the forms must be properly completed in order to facilitate a timely determination regarding the level of recoveries.

E. Target Amounts

Section 433.217 of the regulations implements section 1903(t) of the Social Security Act, as added by section 2161(b) of Pub. L. 97-35. Section 1903(t) provides for establishment of target amounts of Federal Medicaid expenditures for each State for fiscal years 1982, 1983 and 1984. A State is entitled to a dollar-for-dollar offset of the reductions made under section 2161 if the total Federal Medicaid expenditures fall under its target amount, but the offset applies only up to the total amount of the reductions.

The target amounts are established as follows:

FY 82—109 percent of the State's estimate of the Federal share of expenditures for FY 81, as reflected in the estimate received by the Department before April 1, 1981;

FY 83 and *FY 84*—The FY 82 target amount adjusted by the percentage increase or decrease in the index of the medical care expenditure category of the consumer price index for all urban consumers, between September 1982 and the end of the respective fiscal year (September 1983 or September 1984).

The calculation of the target amounts does not take into account interest paid under section 1903(d)(5) on disallowances of State claims, reductions in payments under section 1903(s) as enacted by section 2161, supplementary payments received by the State for spending less than the target in the previous year, or adjustments for claims relating to expenditures before October 1, 1981.

Under sections 1905(b) and 1101(a)(8) of the Social Security Act, the percentage of the Federal share of each State's medical assistance expenditures is recalculated each two years according to a specified formula. There will be a recalculation of the formula for FY 84. In recognition of this, section 1903(t)(3) provides that any change in this percentage for a State for FY 84 will be disregarded for purposes of computing target amounts. The Conference Report (H.R. Rep. No. 97-208, 97th Cong., 1st Sess. (1981)) points out (p. 960) that this provision was included to avoid rewarding a State simply because of a change in the share of its expenditures paid by the Federal government.

It should be noted that, under section 2165 of Pub. L. 97-35, Congress directed the Comptroller General, in consultation with the Advisory Commission on Intergovernmental Relations, to conduct a study of (1) the statutory formula for

computing the Federal medical assistance percentage (the Federal share of State Medicaid expenditures), and (2) the validity and equity of adjustments that should be made to the States' FY 83 and FY 84 target rates to reflect economic and demographic factors affecting the State but not under the State's ordinary sphere of control. The report is due to Congress by October 1, 1982.

III. Implementation of the Regulations

A. HCFA Grant Awards Process

We will impose the reductions mandated by Congress through our grant awards process. As noted above, the Federal government's share of a State's Medicaid program is determined by a formula based on the State's per capita income, with special provisions for administrative expenditures. Regulations governing the process are located in 45 CFR Part 201. To obtain the Federal government's share (which is called Federal financial participation, or FFP), each State submits to HCFA, 45 days prior to the beginning of each quarter in the fiscal year, an estimate (Form HCFA–25) of the amount of FFP the State will need for that quarter. This estimate includes the amounts the State believes it will need from the Federal government to cover program expenditures (that is, medical services covered under the State plan) and administrative expenditures. After reviewing the estimates, we advance funds by awarding a grant about 15 days before the beginning of the quarter. This grant authorizes States to obtain Federal cash as a payment of estimated expenses. Within 30 days after the end of the quarter, the State submits a quarterly expenditure report (Form HCFA–64) that reflects the actual expenditures incurred by the State. We review the report and determine whether the State has claimed reimbursement for any expenditures that are not allowable. (See **Federal Register** issues of January 15, 1981 (46 FR 3527) and September 17, 1981 (46 FR 46134) for clarification of "expenditures".) If we determine that any adjustments (that is, deferral, disallowance, suspension or other financial actions) are necessary in the amount of FFP advanced to the State before the quarter, the adjustment is made at the same time that the award for the next succeeding quarter is granted or shortly thereafter as a supplemental grant award.

B. Effect of Section 2161 on the Grants Process

The grant award computation form we use (Form HCFA–152) shows the amount of the estimate for the ensuing quarter, and the amounts by which the estimate is reduced or increased because of over- or under-estimates for a prior quarter and for other adjustments. We will use this form to show the applicable reduction to the amount of payments to the State and any of the three offsets against the reduction for which the State qualifies.

Of the three conditions allowing offsets against the reduction, two are not dependent on the budget and awards process followed by HCFA and the States. That is, unemployment offset and the hospital rate review program offset are controlled by factors extrinsic to the grant awards process. On the other hand, we will implement the fraud and abuse and third party liability offset based on information gathered and reported by the States, as explained below, to support their estimates of the amount of FFP needed for a given quarter.

Included in the State's expenditure reports are expenditures for current and prior year activities, as well as collections and adjustment actions. Part of the data reported covers the State's collection efforts in recovering funds through third party payments. In these instances, claims paid under the Medicaid program are collected from insurance companies or others found to have the legal liability to pay for care and services. Also reported are recovered amounts that result from fraud and abuse control actions. State Medicaid fraud control units or other fraud control entities are responsible for collecting payments that were made improperly. Through the efforts of these units, funds are returned to the program.

The following example illustrates how we will reduce Federal payments in accordance with section 2161 of the Pub. L. 97–35. The example contains dates for FY 82, but the process described will apply equally to FY 83 and FY 84. Separate grant awards procedures and forms are used for grants to the States for the Federal share of the costs of State programs for survey and certification of health facilities, and for certified State Medicaid fraud control units authorized under 42 CFR 455.300, but the reductions and offsets apply to FFP for these costs as well. The following illustration also applies generally to our survey and certification grant procedures.

Funding needs for the first quarter of FY 82 were to be submitted by August 15, 1981. For our example, we are using a State funding estimate of $1,000,000. By August 30, 1981 the HCFA Regional Administrator had reviewed the State's estimate and submitted a recommendation of $800,000 as the State's funding need. Both the State estimates and Regional Administrator's recommendation were forwarded to the HCFA central office for use in preparing the first quarter grant award. The initial grant award was issued before the beginning of the quarter and was for the amount that HCFA estimates as the State's need for the quarter, less the three percent reduction. We will apply offsets for unemployment and for third party liability/fraud and abuse recoveries and collections when data is reviewed by HCFA indicating that States qualify for those offsets. In like manner, we will apply the hospital cost review offset when supporting data become available. In the first quarter of FY 82, we expect to apply this offset in November, 1981, and thereafter in the initial grant awards. We will make these adjustments by preparing supplemental grant awards during the quarter, or as soon as possible thereafter.

The States are to submit their expenditure reports 30 days after the end of the quarter, which would be January 30, 1982, for the purpose of our example. The HCFA Regional Administrator reviews the expenditures reported by the State and submits a recommendation on the allowability of the expenditures to the HCFA central office two weeks after the State submits the expenditure report. Based on the State expenditure report and the HCFA Regional Administrator's recommendations, the HCFA central office calculates the final expenditures amount and prepares the final grant award adjustment. This action is to occur together with the initial award for the third quarter; however, due to timing difficulties, the final adjustment will normally occur in the third quarter. As an example, we will assume that the initial HCFA determination of funds required is $800,000 and that $900,000 is the final expenditure amount. In addition, we will assume that the State qualified for the hospital cost review and the third party liability/fraud and abuse offsets. The final award adjustment calculation, including offsets, will be as follows:

HCFA Initial Funding Determination	$800,000
3% reduction—Sec. 2161	−24,000
Initial Grant Award	776,000
Adjusted Expenditures	900,000
3% reduction—Sec. 2161	−27,000
1% TPL/FA offset	9,000
1% Hospital Cost Review Offset	9,000
Final First Quarter Adjusted Expenditure	891,000
Initial Grant Award Funding	−776,000
Final Grant Award Adjustment	115,000

The quarterly cycle continues as described above for the remainder of the fiscal year. At the end of the fiscal year, before the issuance of the initial award for the first quarter of FY 83, the State's total expenditures for the fiscal year are estimated by the HCFA central office based on the available actual expenditure data and the State's budget estimate. To the extent that the State's total estimated expenditures are under the target amount and expenditure reductions have not been offset, the State is entitled to a supplemental adjustment. If, in this case, we use $3,600,000 as the State's estimated FY 82 expenditures, a target amount of $3,650,000 and $36,000 as reductions that have not been offset, we have the following calculation:

Target amount—FY 82	$3,650,000
Estimated Annual Expenditures	−3,600,000
Under Targeted Expenditures	50,000
Reductions not offset	36,000
Less Amount used as supplement award adjustment	36,000

Since $36,000 is the lower of the two amounts that are compared (the amount by which the State's expenditures are under its target amounts, and the amount of reductions not offset), this is the supplemental figure awarded to the State. Upon determination of the final expenditure amount for FY 82, an adjustment will be made as described above in the appropriate grant award.

IV. Impact Analyses

A. Executive Order 12291

The Secretary had determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule. We are required by the Amendment to reduce FFP in Medicaid by more than $100 million per year. However, because the reduction is mandated by law and we are required by the amendment to adopt the specific implementation approach set forth in the regulations, the reduction is not attributable to this regulation.

B. Regulatory Flexibility Analysis

The Secretary certifies, under section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354), that these regulations will not have a significant economic impact on a substantial number of small businesses, nonprofit entities or small local governments.

One major objective of the revised regulations is to give States financial incentives for more efficient purchasing of health care services under Medicaid. We are aware that, in responding to these incentives, individual States may take actions that have a significant economic impact on some physicians, hospitals, long term care facilities, or other providers of services that meet the definition of "small entities" in Pub. L. 96-345. However, we do not now have any basis for predicting either the specific actions States will take, or the effect these actions will have on small entities. Moreover, apart from the budget reductions involved, which are not attributable to these regulations, State decisions are as likely to have a favorable as adverse impact on small entities, or to affect a less than "substantial" number. Accordingly, these regulations do not meet the thresholds established in the Regulatory Flexibility Act.

V. Waiver of Proposed Rulemaking

As explained earlier in this preamble, the major provisions of the new regulations are based on requirements that are set forth explicitly in section 2161. Because we are required by that amendment to adopt those rules, we believe it is unnecessary to publish a notice of proposed rulemaking. Further, we believe it would be both impractical and contrary to the public interest to delay implementation of section 2161 by the amount of time that would be needed to obtain and analyze public comments. As a practical matter, we would not be able to make any reductions in FFP for the first quarter of fiscal year 1982 if we delayed implementation of these rules by even the minimum amount of time (60 days) usually allowed for public comment and the time (30 days) usually provided for delay in the effective date. Therefore, we find good cause to waive the requirement for publication of a notice of proposed rulemaking and a delayed effective date. However, as stated previously, we will accept any comments mailed within the specified period and will make any changes in the regulations we believe necessary as a result of the comments.

Title 42—Public Health

PART 433—STATE FISCAL ADMINISTRATION

A. 42 CFR Part 433 is amended as set forth below:

1. The table of contents for Part 433 is amended as follows:

a. Subpart A of Part 433 is amended by adding a new § 433.8 as follows:

Subpart A—Federal Matching Provisions

* * * * *

433.8 Application of progressive reductions during fiscal years 1982-1984.

* * * * *

b. A new Subpart E is added to Part 433 as follows:

Subpart E—Reduction in Total Federal Payments to the States for Fiscal Years 1982-1984

Sec.
433.201 Statutory basis and scope.
433.203 Definitions.
433.205 Reductions in total Federal payments.
433.207 Offsets against reductions.
433.209 Qualifications for offset based on hospital cost review programs.
433.213 Offset based on fraud and abuse recoveries.
433.215 Third party liability recoveries [Reserved].
433.217 Use of target amounts to decrease reductions.

2. The authority citation for Part 433 is revised to read as follows:

Authority: Secs. 1102, 1902(a)(25), 1903(d)(2), 1903(o), 1903(p), 1903(s), 1903(t) and 1912 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396b(s), 1396b(t) and 1396(k), unless otherwise noted.

3. Subpart A is amended by adding a new § 433.8 as follows:

§ 433.8 Application of progressive reductions to FFP during fiscal years 1982-1984.

Under sections 1903 (s) and (t) of the Act, HCFA will reduce the FFP described in §§ 433.10 and 433.15 in accordance with the procedures described in Subpart D of this part.

4. A new Subpart E is added to read as follows:

Subpart E—Reduction in Total Federal Payments to the States for Fiscal Years 1982-1984

§ 433.201 Statutory basis and scope.

(a) *Basis.* Sections 1903 (s) and (t) of the Act (as enacted by section 2161 of Pub. L. 97-35) provide for progressive reductions in Federal payments to the States, in fiscal years 1982 through 1984.

(b) *Scope.* The reductions apply only to the 49 States with Medicaid programs approved by HCFA as of July 1, 1981, and to the District of Columbia. Special funding provisions in § 433.10 apply to Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands.

§ 433.203 Definitions.

For purposes of this subpart—

"Abuse" means provider practices that are inconsistent with sound fiscal, business or medical practices, and result in unnecessary cost to the Medicaid program, or in reimbursement for

services that are not medically necessary or that fail to meet professionally recognized standards for health care.

"Diverted funds" means those amounts saved from claims that are denied or reduced in amount—

(1) As a result of applying prepayment screens to all or a particular portion of the claims submitted by a specifically identified provider; and

(2) By the application of special prepayment utilization screens in a mechanized or automated claims processing system, designed to detect fraud and abuse, to all claims submitted for payment from all providers or from a general category of providers. The term does not include amounts estimated by the States as future savings based on the conviction or suspension of a provider from Medicaid because of fraud or abusive practices.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or to some other person or entity. It includes any act that constitutes fraud under applicable State law.

"Recoveries" means Medicaid funds a provider of services has been paid in excess of amounts payable under title XIX of the Act, applicable regulations and the State plan that are actually collected or diverted by a State agency or Medicaid Fraud Control Unit, and which have been reported to the Federal Government. Fines, penalties and unexecuted judgments established by, Federal, State, or local courts or administrative bodies are not considered recoveries.

§ 433.205 Reductions in total Federal payments.

(a) *Amount of the reductions.* HCFA will reduce total Federal payments to which a State is otherwise entitled under the Medicaid program by the following percentages:

(1) Three percent in fiscal year 1982.

(2) Four percent in fiscal year 1983.

(3) Four and one half percent in fiscal year 1984.

(b) *Effective date and date reductions end.* HCFA will impose the reductions effective October 1, 1981 for the first quarter in fiscal year 1982. No reductions will be imposed for quarters after the last quarter of fiscal year 1984, which ends on September 30, 1984. However, adjustments relating to the final computations for fiscal years 1982–1984 expenditures will continue to be made until the States have submitted all expenditure reports and all outstanding issues have been resolved.

(c) *Amounts not affected by reductions.* HCFA will not apply the progressive reduction to—

(1) Payments to the State for expenditures made before fiscal year 1981; or

(2) Supplementary payments made to a State resulting from its having incurred fewer expenditures than its target amount, described in § 433.217.

§ 433.207 Offsets against reductions.

HCFA will decrease the reduction specified in § 433.205 by one percentage point for a quarter for a State, for each of the following three conditions that the State meets:

(a) *Hospital cost review program.* Operation by the State of a hospital cost review program that meets the criteria, described in § 433.209, for the quarter covered by the Federal payment.

(b) *Unemployment levels.* An unemployment rate in the State, for the quarter before the quarter covered by the Federal payment, that is equal to or greater than 150 percent of the national unemployment rate for the same period, as determined by the Bureau of Labor Statistics.

(c) *Fraud and abuse and third party liability recoveries.* For the quarter before the quarter covered by the Federal payment, recovery through fraud and abuse initiatives, described in § 433.213, of an amount equal to one percent of the FFP for the quarter covered by the payment. For fiscal year 1982 only, this total may include recoveries from liable third parties (see § 433.215).

§ 433.209 Qualifications for offset based on hospital cost review programs.

(a) A state has a qualified hospital cost review program if the qualifications in the following paragraph (b) of this section are met.

(b) The State must provide HCFA with assurances of equitable treatment, under its cost review program, for hospital employees and patients, and for all payers, including Federal and State programs, that pay hospitals for inpatient hospital services. In addition, in order to qualify, a hospital cost review program must—

(1) Be established by statute;

(2) Have been in effect on July 1, 1981 and at the beginning of the quarter covered by the Federal payment;

(3) Be directly operated by the State;

(4) Apply to substantially all non-Federal acute care hospitals in the State;

(5) Provide for review of all non-Medicare revenues or expenses for inpatient hospital services, or at least 75 percent of all revenues or expenses for inpatient hospital services including those under Medicare; and

(6) Result in an annual rate of increase in aggregate hospital inpatient costs per capita, or per admission, in the State on a calendar year basis that is at least two percentage points less than the rate of increase in all States without qualifying programs. A State may meet this requirement based on performance during the most recent one, two, or three calendar year period ending at least nine months before the quarter covered by the Federal payment.

§ 433.213 Offset based on fraud and abuse recoveries.

(a) *General policy.* HCFA will decrease the reduction under § 433.205 by one percentage point for each quarter in which the State demonstrates that its fraud and abuse recoveries (and third party liability recoveries for fiscal year 1982 only (see § 433.215)), for the quarter before the quarter covered by the Federal payment, are equal to one percent of the total Federal Medicaid payments due to the State in that previous quarter. For purposes of calculating the one percent, HCFA will not include in this total any supplementary payments due to a State resulting from the State's having spent less than its target amount, described in § 433.217.

(b) *Fraud and abuse recoveries.* For purposes of paragraph (a) of this section, fraud and abuse recoveries—

(1) Must be documented by the State; and

(2) May include diverted funds or funds recovered as a result of—

(i) The operation of a State Medicaid fraud control unit, as defined in Part 455, Subpart D, of this chapter;

(ii) Audit activities that are initiated as a result of a suspicion or complaint of fraud or abuse (including any amounts recovered as restitution in civil or criminal litigation resulting from these audit activities, but not including fines, penalties, unexecuted judgments established by Federal, State, or local courts or administrative bodies (and fraud and abuse uncovered through routine audits); and

(iii) State determinations of overutilization or furnishing of unnecessary care.

(c) *Procedures for carrying forward fraud and abuse recoveries.* For purposes of paragraph (a) of this section, HCFA will carry forward, to the next quarter only, the amount by which a State demonstrates that its fraud and abuse recoveries exceed one percent of the total Federal Medicaid expenditures

for the quarter covered by the Federal payment.

§ 433.215 Third party liability recoveries [Reserved].

§ 433.217 Use of target amounts to decrease reductions.

(a) *Purpose of the target amount.* HCFA will issue supplemental grants for fiscal years 1982–1984 based on the amount by which a State's total Federal Medicaid expenditures are under the State's target amount, described in paragraph (b) of this section, for the fiscal year. However, the supplemental grant may not exceed the amount of the reduction, described in § 433.205, for the fiscal year under consideration.

(b) *Method for determining target amounts.*—(1) *Fiscal year 1982.* The target amount for a State for fiscal year 1982 is 109 percent of the State's estimate of the Federal share of all Medicaid expenditures for fiscal year 1981, in the latest estimate received by HCFA central office before April 1, 1981. The estimate may not include Federal expenditures resulting from adjustments made during fiscal year 1981 based on expenditures made before October 1, 1980.

(2) *Fiscal year 1983.* HCFA will derive the target amount for each State for fiscal year 1983 by increasing or decreasing the 1982 target amounts by a percentage equal to the percentage increase or decrease, between September 1982 and September 1983, in the index of the medical care expenditure category of the consumer price index for all urban consumers, as determined by the Bureau of Labor Statistics.

(3) *Fiscal year 1984.* HCFA will derive the target amount for each State for fiscal year 1984 by the same method used for the 1983 targets, except that the 1982 target amounts will be increased or decreased based on medical care expenditure data for the period between September 1982 and September 1984. For purposes of calculating the fiscal year 1984 target amount, HCFA will deem the FMAP for 1984 to be equal to the percentage for 1983.

(c) *Exclusions from target amount determinations.* HCFA will exclude the following from each year's target amount determinations:

(1) Adjustments with respect to prior year claims (see paragraph (b)(1) of this section);

(2) Interest paid on disallowances of disputed claims;

(3) Any offset payments the State receives for spending less than its target amount in the previous year; and

(4) Any reductions in Federal funds under § 433.205.

Title 45—Public Welfare

PART 201—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

B. 45 CFR 201.5 is amended by revising the introductory language as set forth below. The authority citation for Part 201 reads as follows:

Authority: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

§ 201.5 Grants.

To States with approved plans, grants are made each quarter for expenditures under the plan for assistance, services, training and administration. The determination as to the amount of a grant to be made to a State is based upon documents submitted by the State agency containing information required under the Act and such other pertinent facts as may be found necessary.

Progressive reductions in Federal Medicaid payments to the States under sections 1903 (s) and (t) of the Act for fiscal years 1982–1984 are described in 42 CFR Part 433, Subpart E.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 13.714, Medical Assistance Program)

Dated: September 16, 1981.

Carolyne K. Davis

Administrator, Health Care Financing Administration.

Approved: September 24, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81-28325 Filed 9-29-81; 8:45 am]

BILLING CODE 4110-35-M

federal register

Wednesday
September 30, 1981

Part VI

Department of Health and Human Services

Health Care Financing Administration

Medicaid Program; Offset Based on Third Party Liability Recoveries Against Reductions in Medicaid Payments

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

Medicaid Program; Offset Based on Third Party Liability Recoveries Against Reductions in Medicaid Payments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Section 2161 of the Omnibus Budget Reconciliation Act (Pub. L. 97–35) imposes reductions in Federal matching payments for fiscal years 1982 through 1984, but also provides for offsets against the reductions if a State meets certain conditions. One of the conditions is a specific level of fraud and abuse recoveries by a State or, for fiscal year 1982 only, a combination of fraud and abuse and third party liability recoveries. Interim final rules, published elsewhere in this issue of the **Federal Register**, amend Medicaid regulations to implement section 2161, except for the provisions relating to third party liability recoveries. We are proposing here that, for purposes of implementing these provisions, recoveries from Medicare would be—

- Excluded in situations in which the State had knowledge of the dual entitlement of individuals to Medicare and Medicaid before a Medicaid claim was paid; and
- Included in situations in which the State had to make a special effort to determine that an individual's claim should be paid by Medicare.

DATE: To assure consideration, comments should be mailed by October 30, 1981.

ADDRESS: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17076, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave, S.W., Washington, D.C., or to Room 789, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPO–27–P. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave., S.W., Washington, D.C., 20201 on Monday through Friday of each from 8:30 a.m. to 5:00 p.m. (202–245–7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

FOR FURTHER INFORMATION CONTACT: Charles Schreibeis, 301–597–1702.

SUPPLEMENTARY INFORMATION:

In an interim final rule "Reductions in Payments to the States", published elsewhere in this issue of the **Federal Register**, we issued regulations implementing section 2161 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). Section 2161 imposes reductions in the total Federal Medicaid payments to the States for fiscal years 1982–1984. However, in enacting section 2161, Congress also provided that States are entitled to an offset against each fiscal year's reduction of one percentage point for each of three conditions involving the existence of a hospital cost review program, the rate of unemployment in a State and the level of recoveries of funds from fraud and abuse activities.

Congress provided that the level of fraud and abuse recoveries must be equal to or more than one percent of the total Federal Medicaid payment, and that, for fiscal year (FY) 1982 only, fraud and abuse recoveries may be combined with recoveries from liable third parties for purposes of determining whether a State is entitled to the offset against the reduction.

The Supplementary Information section of the interim final rule mentioned above contains an extensive discussion of the provisions of section 2161 and of the regulations that implement it. However, the final rule does not include a discussion of the types of recoveries we will use in determinations about a State's third party liability recoveries in FY 82. We refer the reader to the background discussion in the final rule and present here a proposed description of third party liability recoveries.

Proposed Regulations

States reduce costs for Medicaid by predetermining obligations of liable third parties and offsetting the amounts paid on provider invoices (prepayment screens), or by retroactively identifying the obligations and collecting the appropriate amounts from third party payers. In the former system, the reductions are called cost avoidance; in the latter, they are called collections. Both are considered recoveries.

If a Medicaid recipient is also entitled to Medicare, a claim for a provider of health care services is referred, either on a prepayment or post-payment basis, to the Medicare program. In these circumstances, Medicaid is responsible only for any deductible or coinsurance amount payable on behalf of the recipient. Being the payer of last resort, a Medicaid agency routinely transfers claims for services in these situations to the Medicare program.

Generally, we do not believe that transfers of claims to the Medicare program were intended by Congress to be used for purposes of decreasing the reductions in Federal payments. We take this view primarily because the States know beforehand which recipients are entitled to both Medicaid and Medicare and, therefore, which claims will routinely be paid by Medicare. For example, HCFA makes available to all States with buy-in programs (that is, programs in which the States pay Medicare premiums for individuals) certain compilations of information (for example, the Carrier Alphabetic State File (CASF) and the Beneficiary State Tape (BEST) that permit the States to determine whether an individual is dually entitled to Medicare and Medicaid. In addition, if individuals are receiving Supplemental Security Income (SSI) under title XVI of the Social Security Act, they may also be entitled to Medicare. In this case, the Social Security Administration makes SSI and Medicare entitlement information available to the States (Bendex and State Data Exchange (SDX) tapes). In like manner, characteristics of Medicaid applicants such as age, the existence of a long-term disability, or an impairment of a certain nature such as end stage renal disease, help the States to identify individuals entitled to Medicare. On the other hand, situations do arise in which the State pays a Medicaid claim without knowing that the individual is dually entitled. These situations typically involve inaccurate or incomplete information concerning the nature of an individual's disability, or retroactive entitlement to Medicare resulting from successful appeals concerning factors of entitlement to Medicare such as a person's age. For the most part, however, dually entitled individuals are routinely identified and claims are routinely referred to Medicare for payment. The additional effort normally required on the part of the State to detect liable third parties and to seek recoveries is not required in these circumstances. Thus, we believe

that it was the intent of Congress, in providing for the third party liability offset provision, to encourage additional efforts by the States against liable third parties other than the Medicare program.

Therefore, for purposes of implementing section 2161 of Pub. L. 97-35, we are proposing to amend Medicaid regulations (42 CFR Part 433, Subpart E, issued in the **Federal Register** on this date as an interim final rule) by adding a new § 433.215 to prohibit the States from attributing to third party liability recovery efforts, savings realized in Medicaid costs by transferring the claims of dually entitled individuals to Medicare for payment.

However, we would provide an exception for circumstances in which a State has paid a Medicaid claim, subsequently discovers that the individual was also entitled to Medicare, and recovers the payment after referring the claim to Medicare.

We would also state that in order for HCFA to use recoveries from liable third parties in FY 82, the recoveries must be auditable and must have been reported to HCFA. We would also amend § 433.203 to add definitions of "third party" and "third party liability".

Impact Analysis

For information concerning the applicability of Executive Order 12291 and the Regulatory Flexibility Act to these proposed rules, refer to the final rule on "Reductions in Payments to the States", published elsewhere in this issue of the **Federal Register.**

30-Day Comment Period

Normally, when issuing a notice of proposed rulemaking, we provide a 60-day comment period. HCFA and the States need to make determinations about third party liability recoveries as soon as possible. In order to make these determinations, final regulations are necessary. Therefore, we are limiting the comment period to 30 days and will issue final regulations as quickly as possible.

PART 433—STATE FISCAL ADMINISTRATION

42 CFR Part 433, Subpart E is proposed to be amended as follows:

The authority citation for Part 433 reads as follows:

Authority: Secs. 1102, 1902(a)(25), 1903(d)(2), 1903(o), 1903(p), 1903(s), 1903(t) and 1912 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396b(s), 1396b(t) and 1396(k), unless otherwise noted.

1. Section 433.203 is amended by adding two new definitions, in alphabetical order as follows:

§ 433.203 Definitions.

For purposes of this subpart—

* * * * *

"Third party" means any individual, entity or program that is or may be liable to pay all or part of the medical costs of injury, disease or disability of an applicant or recipient.

"Third party liability" means payment resources, available from both private and public health insurance, and other liable third parties, that can be applied toward Medicaid recipients' medical and health benefit expenses.

A new § 433.215 is added to read as follows:

§ 433.215 Third party liability recoveries.

(a) *Applicability in fiscal year 1982 only.* For fiscal year 1982 only, for purposes of determining whether a State is entitled to the offset under § 433.213, HCFA will add to the total fraud and abuse recoveries, funds saved as a result of recoveries from liable third parties under procedures described in Subpart D of this Part, except as provided in paragraph (c) of this section.

(b) *Conditions for inclusion of third party liability recoveries.* For purposes of paragraph (a) of this section, HCFA will include recoveries from liable third parties if the recoveries—

(1) Can be validated by audit; and

(2) Have been reported to the Federal government.

(c) *Recoveries from the Medicare program.*—(1) *General policy.* For purposes of paragraph (a) of this section, recoveries from liable third parties may not include recoveries from the Medicare program, except those based on claims paid by Medicaid because the State did not know that the individual was entitled to both Medicare and Medicaid.

(2) *Examples of excluded recoveries.* Recoveries from Medicare that are excluded are based on those cases in which the State knows, prior to the payment of a claim, that the individual is entitled to Medicare. Examples include situations in which—

(i) The State is paying Medicare premiums for the individual under State buy-in agreements (see Subpart B of Part 405 of this chapter);

(ii) The individual is receiving Supplemental Security Income (SSI) benefits under title XVI of the Act; or

(iii) The State has access to or has received information from the Federal government that identifies individuals entitled to Medicare.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: September 16, 1981.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 24, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81-28328 Filed 9-29-81; 8:45 am]

BILLING CODE 4110-35-M

federal register

Wednesday,
September 30, 1981

Part VII

Department of Health and Human Services

Health Care Financing Administration

Medicare Programs; Schedule of Limits on Hospital Per Diem Inpatient General Routine Operating Costs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicare Program; Schedule of Limits on Hospital Per Diem Inpatient General Routine Operating Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice sets forth a schedule of limits on hospital per deim inpatient general routine operating costs that may be reimbused under Medicare beginning October 1, 1981. This is a special revision of the schedule, not an annual update, and replaces the current schedule, which was published in the Federal Register on June 30, 1981 (46 FR 33637). It incorporates two changes required by the Omnibus Budget Reconciliation Act of 1981:

- The limits are lowered from 112 percent of mean costs to 108 percent; and
- The limits are revised to reflect a reduction in the nursing salary differential.

As required by statute, this notice also has a special provision for its effective date.

EFFECTIVE DATE: The revised schedule of limits is applicable to cost reporting periods *ending after* September 30, 1981. For any of these cost reporting periods that begin before October 1, 1981, the reductions in payments resulting from application of these limits shall be applied only in proportion to the part of the reporting period that occurs after September 30, 1981.

FOR FURTHER INFORMATION CONTACT: Carl Slutter, 301–594–9344.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) as amended by Section 223 of Pub. L. 92–603, the Social Security Amendments of 1972, authorizes the Secretary to set prospective limits on the costs that are reimbursed under Medicare. These limits may be applied to direct or indirect overall costs or to costs incurred for specific items or services furnished by a Medicare provider, and may be based on estimates of the cost necessary in the efficient delivery of needed health services.

Regulations implementing this authority are set forth at 42 CFR 405.460. Under this authority, we published limits on hospital per diem inpatient general routine service costs annually from 1974 through 1978, and limits on hospital per diem inpatient general routine operating costs in 1979 and 1980.

On June 30, 1981, we published in the Federal Register (46 FR 33637) a schedule of limits on hospital per diem inpatient general routine operating costs applicable to cost reporting periods beginning on or after July 1, 1981. In that notice, we described the scope of the limits, and explained our methodology for deriving and applying those limits. That methodology remains essentially unchanged.

II. Changes Required by the Omnibus Budget Reconciliation Act of 1981

A. *Limits cannot exceed 108 percent of mean costs.* Section 2143 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) established a new statutory maximum on cost limits for reimbursement of hospitals under Medicare. The statute states:

> The Secretary, in determining the amount of the payments that may be made under this title with respect to routine operating costs for the provision of general inpatient hospital services, may not recognize as reasonable (in the efficient delivery of health services) routine operating costs for the provision of general inpatient hospital services by a hospital to the extent these costs exceed 108 percent of the mean of such routine operating costs per diem for hospitals, or, in the judgment of the Secretary, such lower percentage or such comparable or lower limit as the Secretary may determine.

As stated in the House Report on H.R. 3850 (House Report No. 97–143, p. 79), the Congress believed that reducing the limits from 112 percent of mean costs to 108 percent is an appropriate method of encouraging efficient operation of hospitals. In accordance with section 2143 of the Omnibus Budget Reconciliation Act of 1981, we have revised the limits to set them at 108 percent of the mean labor-related costs and mean non-labor costs of each comparison group. We continue to have the authority to grant exceptions to and exemptions from the limits. (Exceptions are granted to cover specific types of costs, such as costs of atypical services to meet the special needs of patients treated; exemptions are granted in specific circumstances, such as when a hospital is the sole community source of inpatient hospital care. See 42 CFR 405.460(e) and (f).)

B. *Adjustment required by change in the nursing salary differential.* Under the Medicare regulations (42 CFR 405.430) published in July 1969, we have recognized a per diem rate above the facility's average costs for all patients for inpatient routine nursing care furnished to aged Medicare patients. (The differential is also applied to pediatric and maternity patients, who also are assumed to require a greater amount of routine nursing services than other patients.) This is called the "nursing salary cost differential." The differential is not an add-on to the total routine nursing salary costs incurred by a provider, but rather a reallocation of the actual routine nursing salary costs between aged, pediatric and maternity patients and all other classes of patients. It presumes that, on the average, aged, pediatric and maternity patients receive more routine nursing services than do other patients.

The effect of the nursing differential is that the Medicare program recognizes a higher than average routine per diem cost for aged, pediatric and maternity patients and a lower than average per diem cost for all other classes of patients. (Disabled Medicare beneficiaries are counted in the "all other" category, unless they are also pediatric or maternity patients, and the lower than average per diem is applicable to that class of patient.)

The total impact of the differential on a particular facility's Medicare reimbursement will vary, depending on the provider's patient mix. If all of the provider's patients were aged, pediatric and maternity, no differential would be applicable.

We presently recognize a nursing salary differential equal to 8.5 percent of the provider's average per diem nursing salary costs. However, Section 2141 of Pub. L. 97–35 amended Section 1861(v)(1) of the Social Security Act to state that "an inpatient routine nursing salary cost differential shall be allowable as a reasonable cost of hospitals, at a rate not to exceed 5 percent, to be applied under the same methodology used for the nursing salary cost differential for the month of April 1981." According to its terms, Section 2141 is effective for all cost reporting periods ending after September 30, 1981, and reductions in Medicare payments resulting from the smaller nursing differential shall be made only in proportion to the part of a provider's reporting period that occurs after September 30, 1981.

We will be publishing a separate regulation implementing Section 2141. However, Section 2141 has also necessitated an adjustment of the cost limits. All of our current cost report data incorporates the 8.5 percent differential in the Medicare costs. However, for cost reports that straddle September 30, 1981, we can only recognize a 5 percent nursing differential for that portion of the cost reporting period occurring on or after October 1, 1981. To do this, we have estimated the portion of per diem

costs in each hospital classification group attributable to the 8.5 percent nursing differential, and developed adjustment ratios that reflect the proportionate application of this change to the part of the cost reporting period after September 30, 1981.

Briefly, we derived these ratios in the following way:

- We calculated the total average per diem routine operating costs for each provider grouping (for purposes of these cost limits, hospitals are grouped in seven cells according to SMSA/non-SMSA location and bedsize). We also calculated the Medicare average per diem routine operating costs for the same grouping. (We did this for a cost reporting period ending September 30, 1981, in order to reflect the same period for which we have developed the revised limits.)
- For each grouping, we determined the difference between the overall total average per diem costs and the Medicare average per diem costs. This difference represents the average effect of the 8.5 percent nursing differential on the average per diem cost for that provider grouping.
- For each provider grouping, we multiplied the resulting figure by .588 (the ration of 5 percent to 8.5 percent). The products represent the dollar value, on the average, of a 5 percent nursing differential for each hospital grouping. We subtracted this amount from the average dollar value of the differential at 8.5 percent to obtain the dollar value of the reduction.
- We divided the result from the prior step by the original Medicare average per diem cost for each grouping. This gives us a ratio of the reduction due to the differential to the original mean. (This varies from group to group ranging from approximatley 1 to 2 percent.)
- The ratio obtained from the prior step, for each grouping, is divided into twelve equal parts and applied in proportion to the number of months in the cost year prior to October 1.
- The arithmetic from the prior step yields a set of ratios, set forth in Tables IV A and IV B. An explanation of how to use these tables is also set forth below, in paragraph VII.3.

C. *Special effective date provision.* Section 2143 of the Reconciliation Act also included provisions for its effective date that prescribe how it is to be applied to particular cost reporting periods. Previously, we had always made revised shcedules of cost limits applicable to the cost reporting periods beginning on or after a specified date (usually July 1 of each year). However, Section 2143(b) states that this provision is effective for cost reporting periods *ending* after September 30, 1981.

Thus, these limits apply to current cost reporting years. Section 2143(b) also states, however, that for cost reporting periods that straddle the September 30 date, the limits will be applied in proportion to the part of the cost reporting period that occurs after September 30, 1981. Thus, each hospital cost reporting period beginning before October 1, 1981, and ending after that date, will be governed by two schedules of cost limits: (1) The schedule in effect on the first day of the cost reporting period, which will be applied in proportion to the part of the total period occurring between the first day of the period and ending September 30, 1981; and (2) this schedule, effective October 1, 1981, which will be applied in proportion to the part of the total cost reporting period occurring after September 30, 1981. The method for making these proportional applications is illustrated later in this notice under paragraph VII. 7. For cost reporting periods beginning on or after October 1, 1981, these revised limits will be in effect for the entire cost reporting period.

III. Summary Description of Cost Limit Methodology

The basic methodology previously used has not been changed. A full explanation is set forth in the notices published on April 1, 1980 (45 FR 21582), June 20, 1980 (45 FR 41868) and June 30, 1981 (46 FR 33637). In brief summary, it is as follows:

1. Limits on hospital per diem inpatient general routine operating costs. The limits do not apply to capital-related costs, costs of approved medical or nursing education programs that are properly allocated to interns and residents (in approved programs) and nursing school cost centers on the hospital's Medicare cost report, costs of special care units or ancillary services, or malpractice insurance costs.

2. A classification system based on each hospital's bed size, and whether the hospital is located within a Standard Metropolitan Statistical Area (SMSA), a New England County Metropolitan Area (NECMA) or in a non-SMSA/non-NECMA area. (For a discussion of the exceptions to these rules for certain New England areas, see the notice published June 18, 1980 (45 FR 41218). For a listing of the counties including in each SMSA or NECMA, see the hospital cost limits notice published on June 20, 1980 (45 FR 41868).)

The Executive Office of Management and Budget on June 19, 1981 announced new SMSAs based on the 1980 census. As soon as we have received new wage index values for these areas, we will publish in the **Federal Register** a list of the constituent counties in the SMSAs and their wage index values.

3. Use of actual hospital inpatient general routine per diem operating cost data from Medicare cost reports to derive the limits. We have adjusted the limits to reflect the allowance of an 8.5 percent routine nursing salary cost differential through September 30, 1981, and a 5 percent nursing differential thereafter.

4. A market basket index (see Appendix) that we developed to reflect changes in the prices of goods and services purchased by hospitals.

5. A hospital wage index (see Tables III A and III B) that we developed from hospital wage and employment data obtained from the Bureau of Labor Statistics (BLS). We use this index to adjust for the differing levels of labor-related costs among the areas in which hospitals are located.

6. A cost-of-living adjustment to the nonlabor component of the limits for hospitals in Alaska and Hawaii.

7. Limits set at 108 percent of the mean labor-related costs and of the mean nonlabor costs of each group.

8. An adjustment to the limits for increased costs due to approved internship and residency programs.

9. A formula that permits the limits to be adjusted upward for areas where the number of covered days of care per 1,000 Medicare beneficiaries is less than the national average.

10. An explanation of how these limits will be implemented effective October 1, 1981, in proportion to whatever part of a hospital's cost reporting period occurs after September 30, 1981.

11. A revised schedule of dollar limits, by geographic area and hospital size, that we calculated under the methodology summarized above.

IV. Impact analyses

Executive Order 12291

This notice merely implements statutory amendments made by Pub. L. 97-35 to Section 1861(v)(1) of the Social Security Act, and does not otherwise modify the methodology used to compute the limits in any manner. Therefore, the Secretary has determined that, although this notice will have an annual effect on the economy of $263 million in fiscal year 1982, the development of a Regulatory Impact Analysis is not required. If, in the future, discretionary changes are proposed that would modify the methodology used in computing the limits and would meet the

criteria for conducting a Regulatory Impact Analysis, a Regulatory Impact Analysis will be developed and made available for public comment.

Regulatory Flexibility Act

The Secretary certifies, under Section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354), that the revised schedule of limits set forth in this notice will not have a significant economic impact on a substantial number of small entities. The reason for the Secretary's certification is that the revised limits merely implement recent statutory changes governing the system of hospital costs limits that is now in effect, and do not otherwise include any changes in our methodology for deriving and applying them.

V. Waiver of Proposed Notice and 30-day Delay in Effective Date

We developed the revised limits set forth below by using the same methodology that we use to develop the current hospital cost limits, which were published on June 30, 1981 (46 FR 33637) and the previous cost limits, published on June 20, 1980 (45 FR 41868). On April 1, 1980, we published a proposed notice that described in detail our methodology for developing and applying those limits, and provided a 60-day period for public comment (45 FR 21582). In developing the current methodology for deriving and applying the schedule of limits, we considered all comments received in response to the April 1, 1980 notice. These comments, and our responses to them, are described in the June 20, 1980 notice.

Because the methodology used for the revised schedule has previously been published for public comment, and because the changes being made in this notice are mandated by statute, we do not believe it is either necessary or useful to request comment agains on that methodology. Therefore, we find good cause to waive publication of a proposed notice, and to publish this notice of revised limits in final form.

In the past, we generally have attempted to allow a 30-day period between the date of publication of each cost limit schedule and the effective date of the schedule. Since the effective date of the statutory changes is October 1, 1981, we find that there is good cause to waive the customary 30-day delay between publication of new limits and their effective date, and apply them to hospitals effective October 1, 1981.

VI. Methodology for Determining per Diem Routine Operating Cost Limit

Development of Published Limits

1. *Data.* We developed the limits by using actual hospital inpatient general routine operating cost data obtained from the latest Medicare cost reports available as of April 15, 1980. In developing the revised limits, we excluded capital-related costs and costs allocated to the interns and residents (in approved programs) and nursing school cost centers. After excluding these costs, we would normally adjust the remaining data for inflation by projecting them from the midpoints of the cost reporting periods used in the data collection through the midpoint of the first cost reporting period to which the limits would apply.

Since the amendments to the statute direct that the revised limits be applied to cost reporting periods *ending* (rather the *beginning*) after September 30, 1981, the limits published in this notice represent what the limits would have been at 108 percent costs for the period October 1, 1980 through September 30, 1981. We derived these limits by deflating (using the market basket index) the means used in deriving the limits published on June 30, 1981, so that the midpoint of the limits became March 31, 1981, rather than December 31, 1981. We then multiplied the new means by 1.08 to arrive at the new limits.

We derived the limits in this manner for ease of administration and application. For every hospital whose cost reporting period ends after September 30, 1981, the intermediary will adjust the limits to account for the change in the nursing differential, as indicaated in item 3 below, and will apply an inflation adjustment as indicated in item 6 under *"Calculation of Individual Hospital Limit"* below. The intermediary will apply both of these adjustments for those months in the cost reporting period that occur after September 30, 1981.

We anticipate that our next schedule of limits will apply for whole cost reporting periods beginning on or after October 1, 1982. The schedule of limits in this notice is applied to periods ending after September 30, 1981. As a result of this, many hospitals will have a second cost reporting period subject to the limits contained in this schedule. For example, a hospital whose cost reporting period ends December 32, 1981 will also be subject to this schedule for the period beginning January 1, 1982. Therefore, we have included additional inflation factors in item 6 which the intermediary will use to determine the limit for the reporting period following the reporting period which ends after September 30, 1981.

The annual percentage increase over the previous year that we used for our inflation projections are:

	Percent
1978	13.1
1979 (1/1 through 6/30)	10.8
1979 market basket (7/1 through 12/31)	9.1
1980 market basket	11.7
1981 market basket	*10.8
1982 market basket	*9.5
1983 market basket	*9.5

*Forecasted increase.

If the actual rate of the increase in the market basket is at least .3 of 1 percentage point above the estimated rate, we will advise the Medicare intermediaries to use the actual rate to adjust each hospital's cost limit at the time of final settlement.

2. *Adjustment for Education Costs.* We adjusted each hospital's Medicare per diem routine operating costs used in calculating the mean for each group by dividing the per diem costs by 1.0 plus the product of the education adjustment factor (.047) and the individual hospital's adjusted intern-and-resident to bed ratio. We determined that adjusted ratio by dividing the number of full-time equivalent (FTE) interns and residents for the cost reporting period to which each per diem cost applies (see step 5 of the "Calculation of Individual Hospital Limit") by the hospital's bed size determined at the beginning of that period to obtain the hospital's intern-and-resident to bed ratio, and dividing that ratio by .1. Example: The per diem operating cost of a 686-bed hospital in Los Angeles, California, is $200. The hospital employed 77 FTE interns and residents in approved teaching programs.

The per diem cost is adjusted for education costs as follows:

$77 \div 686 = .1122$, which is the intern-and-resident to bed ratio for this hospital.
$.1122 \div .1 = 1.122$ – Adjusted Ratio
$\$200 \div [1 + (.047 \times 1.122)] =$
$\$200 \div 1.0527 = \$189.99$, Education-adjusted per diem cost.

The education-adjusted per diem costs are divided into labor-related and nonlabor portions, adjusted by the wage index and used to calculate the group means (see steps 3 and 4 below).

3. *Use of Wage Index to Adjust Cost Data.* We divided each hospital's adjusted per diem routine operating cost into labor-related and nonlabor portions. We determined the labor-related portion of cost by multiplying each hospital's adjusted per diem

routine operating cost by 79.26 percent, which is the labor-related portion of cost from the market basket. We then divided the labor-related portion of each hospital's per diem cost by the wage index applicable to the hospital's location (see Tables III A and III B) to arrive at an adjusted labor-related portion of routine cost.

If we discover that we, or the Bureau of Labor Statistics, have made any error that results in an incorrect wage index for any area, we will notify the Medicare intermediaries of the corrected index and will direct them to recalculate the limits for affected providers.

4. *Group Limits.* We calculated separate means of routine labor-related and nonlabor operating costs for each group established in accordance with the hospitals' SMSA/NECMA or non-SMSA/non-NECMA location and bed size.

For each group, we multiplied the mean labor-related and mean nonlabor costs by 108 percent. (See Tables I and II as well as the explanation in item 1 above.)

VII. Calculation of Individual Hospital Limit

1. *Cost-of-Living Adjustment (Alaska and Hawaii Hospitals Only).* If a hospital is located in Alaska or Hawaii, the hospital's intermediary will multiply the nonlabor component for the hospital's group (see Tables I and II) by the appropriate cost-of-living adjustment factor from the list included in these tables. The intermediary will use the adjusted nonlabor component in computing the hospital's limit.

Example—Calculation of Cost-of-Living Adjusted Non-Labor Component for a 400-bed Hospital Located in Alaska.

Non-Labor Component—$27.62 (Published in Table I)
Adjustment Factor for Alaska = 1.25
$27.62 × 1.25 = $34.53 Cost-of-Living Adjusted Non-Labor Component.

2. *Adjustment of Labor-Related Component by Wage Index.* To arrive at a labor-adjusted limit for each hospital, the hospital's Medicare intermediary will multiply the labor-related component for the hospital's group by the wage index developed from the wage levels for hospital workers in the area in which the hospital is located (see Tables III. A and III. B). The individual limit that applies to any hospital will be the sum of the nonlabor component, plus the adjusted labor-related component, as adjusted further for the change in the nursing differential under item 3, and for the hospital's actual cost reporting period under item 6, unless the hospital also qualifies for one or more of the adjustments described in steps 4 and 5.

Example—Calculation of Adjusted Limit for a 686-bed Hospital Located in Los Angeles, California, with a cost reporting period ending 11/30/81.

Non-Labor Component—$28.95 (published in Table I).

Labor-related Component—$98.15 (published in Table I).

SMSA Wage Index—1.2899 (published in Table III A).

Computation of Adjusted Limit

$98.15 × 1.2899 (wage index) = $126.60—Adjusted Labor Component
$126.60 + $28.95 = $155.55—Adjusted limit.

The wage indices for each SMSA/NECMA area and for the non-SMSA/non-NECMA areas of each State are published in Tables III A and III B.

3. *Adjustment for change in nursing differential.* To adjust each hospital's limit to take account of the change in the nursing differential from 8.5 percent to 5 percent effective for cost reporting periods ending after September 30, 1981, the Medicare intermediary will multiply the individual limit (after adjusting the labor component under item 2 and combining the adjusted labor component and nonlabor component into an adjusted limit) by the appropriate ratio for that hospital's bed size, urban or rural location, and the beginning date of its reporting period (see Tables IV A and IV B). The resulting limit will reflect application of the 8.5 percent differential from the first day of the reporting period through September 30, 1981, and a 5 percent differential for the remainder of the period.

All cost reporting periods that begin after October 1981 will be subject to the adjustment factor that appears for October 1981.

Example—A 686-bed hospital in Los Angeles, California has an adjusted Medicare limit of $155.55. The adjustment ratio from Table IV A is .99857.

Adjusted limit $155.55 × Adjustment ratio .99857 = $155.33, which is the hospital's limit after applying the nursing salary differential adjustment.

4. *Adjustment for Covered Days of Care.* If a hospital is located in a State that is entitled to a covered days of care adjustment (see Table V) the intermediary will determine the adjusted limit for the hospital, and multiply that limit by the applicable factor from Table IV.

Example—A 686-bed hospital in Los Angeles, California has an adjusted Medicare limit of $155.33. The adjustment factor from Table V is 1.06483.

Adjusted limit $155.33 × Adjustment factor 1.06483 = $165.40, which is the hospital's limit after application of the covered days of care adjustment.

5. *Education Cost Adjustment.* If a hospital has a graduate medical education program approved under 42 CFR 405.421, the intermediary will increase the hospital's limit by 4.7 percent for each .1 increase (above zero) in the hospital's ratio of full-time equivalent (FTE) interns and residents (in approved programs) to its bed size. The hospital will report to its intermediary, 45 days before the start of each cost reporting period, the number of FTE interns and residents it employed on the September 30 immediately preceding the date on which this report is due. The intermediary will calculate the amount of the education cost adjustment based on that report, and will adjust the hospital's limit retroactively at final settlement if, for a cost reporting year, a hospital actually employed more or fewer FTE interns and residents on September 30 of that period than the number it reported.

The number of full-time equivalent interns and residents is the sum of:

a. Interns and residents employed for 35 hours or more per week, and

b. One half of the total number of interns and residents working less than 35 hours per week (regardless of the number of hours worked).

For purposes of this adjustment, a hospital will be allowed to count only interns and residents in teaching programs approved under 42 CFR 405.421 who are employed at the hospital. Interns and residents in unapproved programs and those who are on the hospital's payroll but furnish services at another site will not be taken into account in making this adjustment.

Example—A 686-bed hospital in Los Angeles, California has an adjusted limit of $165.40 for the portion of the cost reporting period occurring after September 30, 1981. The hospital has a cost reporting period of December 1, 1980 through November 30, 1981. The hospital employed 77 FTE interns and residents in approved teaching programs on September 30, 1980.

77 ÷ 686 = .1122 Ratio of FTE Interns and Residents to Beds
Ratio .1122 ÷ .1 = 1.122 Adjusted ratio
The Education Adjustment Factor is .047.
Adjusted Medicare limit
$165.40 × [1 + (education adjustment factor .047 × adjusted ratio 1.122)] = $165.40 × 1.0527 = $174.12 Education-adjusted Medicare limit.

If the number of FTE interns and residents the hospital employs on September 30, 1981, is more or less than

77, the intermediary will adjust the hospital's limit at the time of final settlement of the hospital's cost report.

6. *Market Basket Inflation Adjustment for Cost Reporting Year.* For all hospitals having cost reporting periods ending after September 30, 1981, the intermediary will increase the limit by the factor from Table VI that corresponds to the month and year in which the cost reporting period begins. Each factor represents the monthly increase that we derived by dividing the projected annual increase in the market basket index by twelve. This adjustment is needed to account for price increases that occur after the date on which the limits are effective.

As indicated under item 1 above, the majority of hospitals will experience a second cost reporting period under this schedule of limits. Therefore, Table VI contains additional inflation factors to be applied to the second cost reporting period.

Example—A 686-bed hospital in Los Angeles, California has a cost reporting period that ends November 30, 1981. The otherwise applicable limit for the hospital is $174.12.

Computation of Revised Hospital Limit

Individual Hospital Adjusted Limit—$174.12
Adjustment Factor from Table VI—1.018
Adjusted Limit $174.12 × Adjustment factor 1.018 = Revised Medicare limit $177.25

For the cost reporting period beginning December 1, 1981, the adjustment factor will be 1.12058.

If a hospital uses a cost reporting period that is not 12 months in duration, a special calculation of the adjustment factor must be made. This results from the fact that projections are computed to the midpoint of a cost reporting period and the adjustment factors in Table VI are based on an assumed 12 month reporting period. For cost reporting periods other than 12 months, the calculation must be done specifically for the midpoint of the cost reporting period. The hospital's intermediary will obtain this adjustment factor from HCFA.

7. *Proportional Application of Limits to Cost Reporting Periods Ending After September 30, 1981.* As a result of the new legislation, each hospital reporting period beginning before October 1, 1981, and ending after September 30, 1981, will be governed by two schedules of cost limits: (1) The schedule in effect on the first day of the reporting period, which will be applied in proportion to the part of the total period occurring between the first day of the period and ending September 30, 1981; and (2) the schedule in this notice, which will be applied in proportion to the part of the total period occurring after September 30, 1981.

In determining the proportional application of the new limits, it is not our intention that ongoing systems for reporting and determining reasonable costs be revised or otherwise disrupted or that hospitals be subjected to new reporting requirements. However, we also understand that more than one method can be used to determine the proportional application. We believe some hospitals may find the adjustment easier to calculate as a reduction factor based upon the previous limit, particularly since this application is specific to those cost reporting periods which begin before October 1, 1981 and end after September 30, 1981. Therefore, we have provided two alternatives for calculating the application of the new cost limits. The examples illustrate two alternative methods providers and intermediaries may use to determine the proportional application.

Example 1: A hospital has a cost reporting period which begins December 1, 1980. Assume that the hospital's limit for this period is $177.24, and the limit for that portion of the period ending after September 30, 1981 is $170.24. Assume also that the hospital had 1,000 general routine patient days during the entire cost reporting period.

It is first necessary to determine what total allowable cost would be for the entire period under both the old and new limits (even though neither the old nor the new limit in fact applies to the entire period). This is done as follows:

Total allowable cost for the entire period using old limit:
$177.24 × 1,000 days = $177,240

Total allowable cost for the entire period using new limit:
$170.24 × 1,000 days = 170,240
Difference = $7,000

It is then necessary to determine what proportion of this difference should be applied to the months after September 30, 1981. This is accomplished as follows:

$7,000 × 3/12 (number of months after 9-20-81 in the hospital's cost reporting period) = $1,167

To determine the actual total allowable cost, the amount of the disallowance under the new limits ($1167) is subtracted from the total allowable costs for the entire period (under the old limit) as follows:

Total allowable cost for the period	$177,240
	−1,167
	176,073

Example 2: Assume the same facts as in example 1.

Total allowable costs for the entire period using old limit: $177,240.

Ratio of new limit to old limit $170.24 to $177.24 is .96050.

.96050 represents the proportion which the new limit bears to the old limit. However, since the new limit applies only to months in the reporting period after September 30, 1981, it is necessary to increase this proportion to reflect this fact. This is done by the formula below. .0395 represents the total percentage reduction in the new limit (1.00 − .96050). This figure is then reduced in proportion to the number of months subject to the old limit (10) and the result is added to .96050 to obtain the relationship which total allowable costs using the proportional application of the new limits bears to total allowable costs computed under the old limits for the entire period.

[(.0395 × 10 divided by 12) + .96050] × $177,240 = $176,073 − Total allowable cost for the period.

VIII. Schedule of Limits

Under the authority of section 1861(v) of the Social Security Act, the following per diem limits will apply to hospital inpatient general routine operating costs that may be reimbursed under Medicare effective October 1, 1981. Medicare fiscal intermediaries will compute the adjusted limits for hospitals that participate in Medicare using the methodology set forth in this notice, and will notify each hospital of its applicable limit. These limits, adjusted by the cost reporting year adjustment factors in Table VI, will remain in effect until replaced by a revised schedule of limits published in a final notice in the **Federal Register.**

Table I.—*Hospitals Located in SMSA (NECMA) Areas*

Bed size	Labor-related component	Nonlabor component
Less than 100	$101.28	$28.06
100 to 404	97.78	27.62
405 to 684	94.16	26.58
685 and above	98.15	28.95

Table II.—*Hospitals Located in Non-SMSA (Non-NECMA) Areas*

Bed size	Labor-related component	Nonlabor component
Less than 100	$96.14	$24.02
100 to 169	91.91	23.29
170 and above	87.92	22.64

Nonlabor components for hospitals located in the States of Alaska and Hawaii will be

increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor
Alaska	1.25
Hawaii:	
Oahu	1.15
Kauai	1.15
Molokai	1.125
Maui and Lanai	1.15
Hawaii	1.10

Table IIIA.—*Wage Index for Urban Areas*

SMSA area	Wage index
Abilene, TX	0.8485
Akron, OH	1.0417
Albany, GA	.8566
Albany-Schenectady-Troy, NY	.9624
Albuquerque, NM	1.0009
Alexandria, LA	.8954
Allentown-Bethlehem-Easton, PA-NJ	1.0569
Altoona, PA	1.0219
Amarillo, TX	.9233
Anaheim-Santa Ana-Garden Grove, CA	1.2115
Anchorage, AK	1.6461
Anderson, IN	.9812
Ann Arbor, MI	1.2175
Anniston, AL	.8400
Appleton-Oshkosh, WI	1.0124
Asheville, NC	.9678
Atlanta, GA	.9162
Atlantic City, NJ	1.0174
Augusta, GA-SC	.9237
Austin, TX	.9859
Bakersfield, CA	1.1223
Baltimore, MD	1.1698
Baton Rouge, LA	.8813
Battle Creek, MI	1.0229
Bay City, MI	1.1238
Beaumont-Port Arthur-Orange, TX	.8530
Billings, MT	[1].9496
Biloxi-Gulfport, MS	.8143
Binghamton, NY-PA	.9769
Birmingham, AL	.9658
Bismarck, ND	.9032
Bloomington, IN	[1].9481
Bloomington-Normal, IL	.8484
Boise City, ID	.9634
Boston-Lowell-Brockton-Lawrence-Haverhill, MA-NH	1.1214
Bradenton, FL	[1].8631
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1647
Brownsville-Harlingen-San Benito, TX	.9312
Bryan-College Station, TX	.8377
Buffalo, NY	.9926
Burlington, NC	.8899
Canton, OH	.9447
Cedar Rapids, IA	[1].9193
Champaign-Urbana-Rantoul, IL	1.1197
Charleston-North Charleston, SC	.9751
Charleston, WV	1.0628
Charlotte-Gastonia, NC	.9456
Chattanooga, TN-GA	1.0226
Chicago, IL	1.1780
Cincinnati, OH-KY-IN	1.0814
Clarksville-Hopkinsville, TN-KY	.8397
Cleveland, OH	1.1957
Colorado Springs, CO	.9743
Columbia, MO	1.1712
Columbia, SC	.9743
Columbus, GA-AL	.9021
Columbus, OH	1.1184
Corpus Christi, TX	.9337
Dallas-Fort Worth, TX	.9403
Davenport-Rock Island-Moline, IA-IL	.9219
Dayton, OH	1.1064
Daytona Beach, FL	.9423
Decatur, IL	.9096
Denver-Boulder, CO	1.0960
Des Moines, IA	1.0156
Detroit, MI	1.2280
Dubuque, IA	.9426
Duluth-Superior, MN-WI	.9193
Eau Claire, WI	.9806
El Paso, TX	.8714
Elkhart, IN	[1].7997
Elmira, NY	.9642
Enid, OK	.8228

Table IIIA.—*Wage Index for Urban Areas*—Continued

SMSA area	Wage index
Erie, PA	.9652
Eugene-Springfield, OR	.9639
Evansville, IN-KY	1.0742
Fargo-Moorhead, ND-MN	.9355
Fayetteville, NC	[1].8353
Fayetteville-Springdale, AR	.7997
Flint, MI	1.1919
Florence, AL	.8056
Fort Collins, CO	.8353
Fort Lauderdale-Hollywood, FL	1.0506
Fort Myers, FL	.9391
Fort Smith, AR-OK	.8899
Fort Wayne, IN	.8881
Fresno, CA	1.1265
Gadsden, AL	.9264
Gainesville, FL	.9019
Galveston-Texas City, TX	1.0607
Gary-Hammond-East Chicago, IN	1.1664
Grand Forks, ND-MN	.8779
Grand Rapids, MI	.9463
Great Falls, MT	[1].9162
Greeley, CO	[1].9312
Green Bay, WI	.9740
Greensboro-Winston-Salem-High Point, NC	.9232
Greenville-Spartanburg, SC	.9371
Hamilton-Middleton, OH	1.0620
Harrisburg, PA	1.0534
Hartford-New Britain-Bristol, CT	1.1535
Honolulu, HI	1.1645
Houston, TX	1.0630
Huntington-Ashland, WV-KY-OH	.9270
Huntsville, AL	.8593
Indianapolis, IN	1.0507
Iowa City, IA	1.0209
Jackson, MI	[1] 1.0173
Jackson, MS	.8699
Jacksonville, FL	.9331
Janesville-Beloit, WI	.8579
Jersey City, NJ	1.1160
Johnson City-Kingsport-Bristol, TN-VA	.8777
Johnstown, PA	1.0445
Kalamazoo-Portage, MI	1.1695
Kankakee, IL	1.0073
Kansas City, MO-KS	.9399
Kenosha, WI	[1] 1.0778
Killeen-Temple, TX	.8868
Knoxville, TN	.9100
Kokomo, IN	.9828
La Crosse, WI	[1].9016
Lafayette, LA	.8622
Lafayette-West Lafayette, IN	.9141
Lake Charles, LA	.8706
Lakeland-Winter Haven, FL	.9749
Lancaster, PA	1.0674
Lansing-East Lansing, MI	1.0811
Laredo, TX	[1].8593
Las Cruces, NM	[1].8129
Las Vegas, NV	1.1884
Lawrence, KS	[1].9193
Lawton, OK	[1].8377
Lewiston,-Auburn, ME	[1].8899
Lexington-Fayette, KY	.9016
Lima, OH	.9932
Lincoln, NE	.9259
Little Rock-North Little Rock, AR	1.0205
Long Branch-Asbury Park, NJ	1.0648
Longview, TX	.8129
Lorain-Elyria, OH	1.0207
Los Angeles-Long Beach, CA	1.2899
Louisville, KY-IN	.9915
Lubbock, TX	.9042
Lynchburg, VA	.8876
Macon, GA	.9637
Madison, WI	1.0257
Manchester-Nashua, NH	.9352
Mansfield, OH	.9196
McAllen-Pharr-Edinburg, TX	.8165
Melbourne-Titusville-Cocoa, FL	.9374
Memphis, TN-AR-MS	1.0371
Miami, FL	1.1050
Midland, TX	[1].9141
Milwaukee, WI	1.0080
Minneapolis-St. Paul, MN-WI	.9802
Mobile, AL	.9416
Modesto, CA	1.0250
Monroe, LA	.9451
Montgomery, AL	.9626
Muncie, IN	[1].9852
Muskegon-Norton Shores-Muskegon Heights, MI	.9658
Nashville-Davidson, TN	1.0187

Table IIIA.—*Wage Index for Urban Areas*—Continued

SMSA area	Wage index
Nassau-Suffolk, NY	1.2758
New Bedford-Fall River, MA	.9687
New Brunswick-Perth Amboy-Sayreville, NJ	1.0409
New Haven-Waterbury-Meridan, CT	1.0900
New London-Norwich, CT	1.0903
New Orleans, LA	.9644
New York, NY-NJ	1.3956
Newark, NJ	1.2099
Newport News-Hampton, VA	.8907
Norfolk-Virginia Beach-Portsmouth, VA-NC	.9496
Northeast Pennsylvania	1.0598
Odessa, TX	[1].9496
Oklahoma City, OK	.9252
Omaha, NE-IA	.9365
Orlando, FL	.9087
Owensboro, KY	[1].8364
Oxnard-Simi Valley-Ventura, CA	1.3788
Panama City, FL	[1].8777
Parkersburg-Marietta, WV-OH	1.0461
Pascagoula-Moss Point, MS	[1] 1.1535
Patterson-Clifton-Passaic, NJ	1.0959
Pensacola, FL	.8841
Peoria, IL	1.0175
Petersburg-Colonial Heights-Hopewell, VA	.9484
Philadelphia, PA-NJ	1.1810
Phoenix, AZ	1.1100
Pine Bluff, AR	[1].7997
Pittsbrugh, PA	1.1275
Pittsfield, MA	1.0275
Portland, ME	.9718
Portland, OR-WA	1.1026
Poughkeepsie, NY	1.0778
Providence-Warwick-Pawtuckett, RI	1.0314
Provo-Orem, UT	.9454
Pueblo, CO	1.0969
Racine, WI	.9240
Raleigh-Durham, NC	1.0173
Rapid City, SD	[1].8680
Reading, PA	1.0101
Reno, NV	[1] 1.2428
Richland-Kennewick, WA	.9763
Richmond, VA	.9252
Riverside-San Bernardino-Ontario, CA	1.1729
Roanoke, VA	.9614
Rochester, MN	.9952
Rochester, NY	1.0653
Rockford, IL	.9696
Sacramento, CA	1.1396
Saginaw, MI	1.1279
St. Cloud, MN	.8680
St. Joseph, MO	.9749
St. Louis, MO-IL	.9977
Salem, OR	1.1063
Salinas-Seaside-Monterey, CA	1.2428
Salt Lake City-Ogden, UT	.8550
San Angelo, TX	.8364
San Antonio, TX	.9509
San Diego, CA	1.1113
San Francisco-Oakland, CA	1.3153
San Jose, CA	1.3055
Santa Barbara-Santa Maria-Lompoc, CA	1.0552
Santa Cruz, CA	1.0811
Santa Rosa, CA	1.4037
Sarasota, FL	.8554
Savannah, GA	.9414
Seattle-Everett, WA	1.0500
Sherman-Denison, TX	.8277
Shreveport, LA	.9292
Sioux City, IA-NE	.9306
Sioux Falls, SD	.8844
South Bend, IN	.9154
Spokane, WA	1.0921
Springfield, IL	.9873
Springfield, MO	.8933
Springfield, OH	.9821
Springfield-Chicopee-Holyoke, MA	1.0184
Steubenville-Weirton, OH-WV	.9689
Stockton, CA	1.3046
Syracuse, NY	1.3209
Tacoma, WA	1.0514
Tallahassee, FL	[1].9219
Tampa-St. Petersburg, FL	.9896
Terre Haute, IN	.8644
Texarkana-TX-Texarkana; AR	1.0929
Toledo, OH-MI	1.1157
Topeka, KS	1.0602
Trenton, NJ	1.1706
Tucson, AZ	.9977
Tulsa, OK	.9626
Tuscaloosa, AL	1.0142

Table IIIA.—*Wage Index for Urban Areas*—Continued

SMSA area	Wage index
Tyler, TX	.9481
Utica-Rome, NY	1.0145
Vallejo-Fairfield-Napa, CA	1.5862
Vineland-Millville-Bridgeton, NJ	1.0083
Waco, TX	.8593
Washington, DC-MD-VA	1.1457
Waterloo-Cedar Falls, IA	.8631
West Palm Beach-Boca Raton, FL	.9632
Wheeling, WV-OH	.9921
Wichita, KS	1.0248
Wichita Falls, TX	.8262
Williamsport, PA	.9749
Wilmington, DE-NJ-MD	1.0898
Wilmington, NC	.8936
Worcester-Fitchburg-Leominster, MA	.9703
Yakima, WA	.8523
York, PA	.9884
Youngstown-Warren, OH	1.1090

[1] Approximate value for area.

Table IIIB.—*Wage Index for Rural Areas*

Non-SMSA area	Wage index
Alabama	0.8960
Alaska	1.5579
Arizona	1.0269
Arkansas	.8686
California	1.2415
Colorado	.8990
Connecticut	1.1552
Delaware	1.0370
Florida	.9917
Georgia	.9463
Hawaii	1.3362
Idaho	.9669
Illinois	.9180
Indiana	.9763
Iowa	.9220
Kansas	.8973
Kentucky	.9207
Louisiana	.9216
Maine	.9926
Maryland	1.1028
Massachusetts	1.1722
Michigan	1.1325
Minnesota	.9052
Mississippi	.8751
Missouri	.9156
Montana	.9561
Nebraska	.8130
Nevada	1.0790
New Hampshire	1.0971
New Jersey	1.0820
New Mexico	1.0073
New York	1.0327
North Carolina	.9917
North Dakota	.9045
Ohio	1.0086
Oklahoma	.9111
Oregon	1.0673
Pennsylvania	1.1358
Rhode Island	(*)
South Carolina	.9180
South Dakota	.7990
Tennessee	.8779
Texas	.8979
Utah	.8499
Vermont	.9993
Virginia	.9792
Washington	1.0465
West Virginia	1.0111
Wisconsin	.9179
Wyoming	1.0402

[*] Not applicable. All of Rhode Island is classified as urban.

Table IVA.—*Nursing Differential Adjustment Ratio for Hospitals Located in Urban Areas*

[Bed size]

Cost reporting period begins	Less than 100	101 to 404	405 to 684	685 and above
October 1980	1.000	1.000	1.000	1.000
November 1980	.99935	.99961	.99963	.99928
December 1980	.99869	.99922	.99925	.99857
January 1981	.99804	.99883	.99888	.99785
February 1981	.99739	.99844	.99850	.99713
March 1981	.99674	.99805	.99813	.99642
April 1981	.99609	.99766	.99776	.99571
May 1981	.99544	.99727	.99738	.99500
June 1981	.99479	.99688	.99701	.99429
July 1981	.99414	.99649	.99664	.99358
August 1981	.99349	.99610	.99626	.99287
September 1981	.99285	.99571	.99589	.99216
October 1981 or after	.99220	.99533	.99552	.99146

Table IVB.—*Nursing Differential Adjustment Ratio for Hospitals Located in Rural Areas*

[Bed size]

Cost reporting periods begins	Less than 100	101 to 169	170 and above
October 1980	1.000	1.000	1.000
November 1980	.99942	.99949	.99974
December 1980	.99885	.99899	.99948
January 1981	.99827	.99848	.99922
February 1981	.99770	.99798	.99896
March 1981	.99712	.99747	.99870
April 1981	.99655	.99697	.99844
May 1981	.99598	.99647	.99818
June 1981	.99541	.99596	.99792
July 1981	.99484	.99546	.99766
August 1981	.99427	.99496	.99740
September 1981	.99370	.99446	.99714
October 1981 or after	.99312	.99396	.99688

Table V.—*Adjustment to Limits Based on Areas With Covered Days of Care Per 1,000 HI Enrollees Less Than the National Average (1979 Data)*

State	Adjustment factor
Alaska	1.06577
Arizona	1.04813
California	1.06483
Colorado	1.00420
Connecticut	1.02302
Florida	1.01248
Georgia	1.01559
Hawaii	1.10006
Idaho	1.08364
Montana	1.04632
Nevada	1.02016
New Hampshire	1.02357
New Mexico	1.05796
Oregon	1.10056
Rhode Island	1.00912
South Carolina	1.02003

Table V.—*Adjustment to Limits Based on Areas With Covered Days of Care Per 1,000 HI Enrollees Less Than the National Average (1979 Data)*—Continued

State	Adjustment factor
Utah	1.13128
Washington	1.10009

The published limit will be increased so that hospitals in States with low utilization per 1,000 HI enrollees would receive higher per diem limits.

Sources of Data: Medicare inpatient covered days of care for short stay hospitals for 1979, by State: HCFA, Office of Research, Demonstrations and Statistics, Current Utilization Tabulations as of June 27, 1980—Table AA4A—Total—Number of Bills, Days of Care, Amount of Covered Charges and Reimbursement by Period Expense Incurred.

Number of Medicare beneficiaries, by State: HCFA, Office of Research, Demonstrations and Statistics, Medicare: 1979, Table 1.1.1., Enrollment (July 1) and reimbursement for hospital and medical insurance by census region, division, and State of residence: All persons, unpublished.

Table VI.—*Cost reporting year adjustment factors*

If the hospital cost reporting period begins—	The adjustment factor is: [1]
Oct. 1, 1980	1.00000
Nov. 1, 1980	1.00900
Dec. 1, 1980	1.01800
Jan. 1, 1981	1.02700
Feb. 1, 1981	1.03600
Mar. 1, 1981	1.04500
Apr. 1, 1981	1.05400
May 1, 1981	1.06300
June 1, 1981	1.07200
July 1, 1981	1.08100
Aug. 1, 1981	1.08892
Sept. 1, 1981	1.09683
Oct. 1, 1981	1.10475
Nov. 1, 1981	1.11267
Dec. 1, 1981	1.12058
Jan. 1, 1982	1.12850
Feb. 1, 1982	1.13642
Mar. 1, 1982	1.14433
Apr. 1, 1982	1.15225
May 1, 1982	1.16017
June 1, 1982	1.16808
July 1, 1982	1.17600
Aug. 1, 1982	1.18392
Sept. 1, 1982	1.19183

Based on projected market basket inflation rates of 10.8 percent for 1981, 9.5 percent for 1982 and 9.5 percent for 1983. These adjustment factors are subject to change based on later estimates of cost increases.

If for any reason, we do not publish a new schedule of limits or do not announce other changes in the current schedule, the current limits would continue in effect. These limits would be increased by .007917 (corresponding to .7917 percent) per month, until a new schedule of limits or other provison is issued.

Appendix.—*Derivation of "Market Basket" index for routine inpatient hospital operating costs*

Category of costs	Relative importance,[1] 1979	Forecaster,[2] percent changes 1980–83	Price variable used
1. Wages and salaries	59.41	DRI–CFS	For the period calendar year 1980 and thereafter: Percentage change in average hourly earnings of hospital industry workers (SIC 806).[3] Source: U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, (monthly) Table C–2.
2. Employee benefits	6.13	DRI–MM	Percentage change in supplements to wages and salaries per worker in nonagricultural establishments. Sources: For supplements to wages and salaries—U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business* (monthly) table 7 (1.12). July issue has detailed components. For total employment—U.S. Dept. of Labor, Bureau of Labor Statistics *Employment and Earnings*, (monthly) table B–4.
3. Professional fees, other (legal, auditing, consulting, etc.)[4]	.49	DRI–MM	Percentage change in hourly earnings index for production or nonsupervisory workers on private nonagricultural payrolls, total private. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, (monthly), table 18.
4. Malpractice insurance premiums	2.09	HHS, HCFA	Percentage change in hospital malpractice insurance premiums per hospital. Data obtained from the American Hospital Association for the period 1967–1978. HHS, Health Care Financing Administration projected these data for 1979–1961
5. Food	5.99	DRI–MM	A. Percentage change in food and beverages component of consumer price index, all urban (relative importance, 3.02). Sources: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, table 23.
		DRI–MM	B. Percentage change in processed foods and feeds component of producer price index (relative importance, 2.97). Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, table 27
6. Fuel and other utilities	3.33	DRI–MM	A. Percentage change in implicit price deflator—consumption of fuel oil and coal (derived from fuel oil component of consumer price index) (relative importance, 1.43). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, (monthly) table 7.11.
		DRI–MM	B. Percentage change in implicit price deflator—consumption of electricity (derived from electricity component of consumer price index) (relative importance, .83). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis. Unpublished data provided to Data Resources Inc. by the Bureau of Economic Analysis. Historcal time series data are available from the Health Care Financing. Administration or the Bureau of Economic Analysis.
		DRI–MM	C. Percentage change in implicit price deflator for natural gas, derived from utility (piped) gas component of consumer price index (relative importance, .69). Source: Same as electricity above.
		DRI–CFS	D. Percentage change in water and sewerage maintenance component of consumer price index (relative importance, .38). Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, table 23.
7. Drugs	1.32	DRI–CFS	Percentage change in pharmaceutical preparations, ethical component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Producer Prices and Price Indexes* (monthly), table 6.
8. Chemicals and cleaning products	2.53	DRI–MM	Percentage change in chemicals and allied products component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, table 27.
9. Surgical and medical instruments and supplies	1.25	DRI–CFS	Percentage change in special industry machinery and equipment component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, table 27.
10. Rubber and miscellaneous plastics	1.07	DRI–MM	Percentage change in rubber and plastic products component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, table 27.
11. Business travel and motor freight	1.44	DRI–CFS	Percentage change in transportation component of consumer price index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, table 23.
12. Apparel and textiles	1.72	DRI–MM	Percentage change in textile products and apparel component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, table 27.
13. Business services	3.93	DRI–MM	Percentage change in services component of consumer price index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, table 23.
14. All other miscellaneous expenses[5]	7.30	DRI–MM	Percentage change of consumer price index for all items, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, table 23.
Total	100.00		

[1]Routine operating cost weights for 1977 were derived from special studies by the Health Care Financing Administration using primarily data from the American Hospital Association and data from HCFA Medicare cost reports. A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. In calendar 1977 each price variable has an index value of 100.00. The "relative importance" of the routine operating cost weights changes each period in accordance with price changes for each price variable. Cost categories with relatively higher price increases get relatively higher cost weights and vice versa.

[2]DRI–CFS = Data Resources, Inc., Cost Forecasting Service, 1750 K Street, NW., Washington, D.C. 20006, (Forecast: CFS 811).

DRI–MM = Data Resources, Inc., Macro Model, 29 Hartwell Avenue, Lexington, Massachusetts 02173, (Forecast: Control 032381).

HHS–HCFA = Dept. of Health and Human Services, Health Care Financing Administration, 200 Independence Avenue, SW., Washington, D.C. 20201.

[3]For six months in 1979, the annual percentage change in average hourly earnings of service industry workers was used.

[4]Medical professional fees are included as part of nonroutine costs.

[5]This is a residual category of routine operating costs not included in the 13 specific categories above. It consists primarily of miscellaneous and unallocated items.

(Secs. 1102, 1814(b), 1861(v)(1), 1866(a), and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 12, 1981.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 18, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81–28327 Filed 9–29–81; 8:45 am]

BILLING CODE 4110–35–M

federal register

Wednesday
September 30, 1981

Part VIII

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit Effective October 1, 1981

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit Effective October 1, 1981

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final Notice.

SUMMARY: This notice sets forth a schedule of limits on home health agency (HHA) costs that may be reimbursed under the Medicare program beginning October 1, 1981. This is a special revision of the schedule, not an annual update, and replaces the current schedule, which was published in the Federal Register on June 30, 1981 (46 FR 33645). It incorporates a change required by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) which is to lower the level of the limits from the 80th percentile of unweighted per visit costs to the 75th percentile of these costs. As required by statute, this notice also has a special provision for its effective date.

EFFECTIVE DATE: The revised schedule of limits is applicable to all cost reporting periods *ending after* September 30, 1981. For any of these cost reporting periods that begin before October 1, 1981, the reductions of payments resulting from application of these limits shall be applied only in proportion to the part of the reporting period that occurs after September 30, 1981.

FOR FURTHER INFORMATION, CONTACT: Carl Slutter, 301–594–9344

SUPPLEMENTARY INFORMATION:

Background

Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) as amended by section 223 of the Social Security Amendments of 1972 (Pub. L. 92–603) authorizes the Secretary to set prospective limits on allowable costs incurred by a provider of services that will be reimbursed under Medicare. These limits may be based on estimates of the costs necessary in the efficient delivery of needed health services. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. This provision of the statute is implemented under regulations at 42 CFR 405.460.

Under this authority, we have published limits on home health agency per visit costs annually since 1979. On June 30, 1981 we published in the Federal Register (46 FR 33645) the current schedule of limits, applicable to cost reporting periods beginning on or after July 1, 1981. These limits contained provisions related to (1) a classification system based on whether a HHA is provider-based or freestanding, and whether the HHA is located within a Standard Metropolitan Statistical Area (SMSA), a New England County Metropolitan Area (NECMA), or on non-SMSA area; (2) a "market basket" index developed from the price of goods and services purchased by HHAs; (3) adjustments to the limits by an area wage index developed from hospital wages; (4) a cost-of-living adjustment for HHAs in Alaska and Hawaii; (5) limits set at the 80th percentile; (6) calculation of per visit limits by type of service; and (7) application of the limits to each HHA in the aggregate.

On August 13, 1981, the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) became law, including provisions affecting the Medicare program. Section 2144 of that Act amended the Social Security Act, setting new statutory requirements on cost limits for reimbursement of home health agencies under Medicare by adding a new paragraph (L)(ii) to section 1861(v)(1) that read as follows:

"The Secretary, in determining the amount of the payments that may be made under this title with respect to services furnished by home health agencies, may not recognize as reasonable (in the efficient delivery of such services) costs for the provision of such services by an agency to the extent these costs exceed (on the aggregate for the agency) the 75th percentile of such costs per visit for home health agencies, or, in the judgment of the Secretary, such lower percentile or such comparable or lower limit (based on or related to the mean of the costs of such agencies or otherwise) as the Secretary may determine. The Secretary may provide for such exemptions and exceptions to such limitation as he deems appropriate."

Section 2144 also includes provisions on the effective date of the new limits, and the Conference Committee Report accompanying the legislation clarifies the method of application. (H.R. Report No. 97–208, 97th Cong., 1st Sess. p. 949 (1981).) Previously, we applied schedules of cost limits to cost reporting periods beginning after a specified date. Thus, a single schedule applied to each cost reporting period of a home health agency. However, the new provision in 1861(v)(1)(L)(ii) is effective for *all* cost reporting periods *ending* after September 30, 1981, including portions of reporting periods that begin before and continue after that date.

This notice implements these provisions of the Reconciliation Act, but otherwise retains the methodology of the prior cost limits.

Summary of Provisions

This revised schedule of limits on home health agency costs per visit provides for:

1. Identical provisions to those of the June 30, 1981 Notice (see 46 FR 33645) concerning the classification system, market basket and wage index adjustment.

One June 19, 1981, the Executive Office of Management and Budget announced revised Standard Metropolitan Statistical Area (SMSA) definitions based on the 1980 census. As soon as we have received new wage index values for these areas, we will publish in the Federal Register a list of the constituent counties in the revised SMSAs together with the appropriate wage indexes.

2. *Limits set at the 75th percentile.*

In accordance with Pub. L. 97–35, we are setting the basic service limits at the 75th percentile of each comparison group. Each HHA's individual limits will be increased or decreased by the application of the wage index as described in the June 30 notice.

3. *Application of Limits.*

The 75th percentile limits apply to cost reporting periods ending after September 30, 1981 (or beginning on or after 11/1/80), but are applicable only in proportion to that portion of the cost reporting period occurring after September 30, 1981. We explain how this adjustment is made later in this notice.

The limits will continue to be applied in the aggregate. However, the Conference Committee Report accompanying Pub. L. 97–35 "* * * urges the Secretary, as soon as possible, to begin to impose the limits by type of service." (H.R. Report No. 97–208, 97th Cong., 1st Sess. p. 949 (1981).) Therefore, we will continue to examine the possibility of applying the limits to individual services.

Impact Analyses

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this final notice does not constitute a "major rule" because it will not: have an annual effect on the economy of $100 million or more; result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity,

innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Secretary certifies, under Section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354), that the revised schedule of limits set forth in this notice will not have a significant economic impact on a substantial number of small entities. The reason for the Secretary's negative certification is that the revised limits merely implement recent statutory changes governing the system of home health agency cost limits that is now in effect, and do not otherwise include any changes in our methodology for deriving and applying them.

Waiver of Proposed Notice and 30-Day Delay in Effective Date

As explained previously, we developed the revised limits using the same methodology that we used to develop the current limits, that were published on June 30, 1981, and the previous cost limits, published on June 5, 1980. On February 15, 1980, we published a proposed notice that described in detail our methodology for developing and applying the limits and provided a 60-day period for public comment (45 FR 10450). In developing the current methodology for deriving and applying the schedule of cost limits, we considered all comments received in response to the February 15, 1980 notice. These comments, and our responses to them, are described in the June 5, 1980 notice (45 FR 38014).

Because the main features of the methodology used in this revised schedule has previously been published for public comment, we believe that it would be impracticable and unnecessary to again request public comment. To do so would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice, and publish this notice of updated limits in final form.

In the past, we generally have attempted to allow a 30-day period between the date of publication of each cost limit schedule and the effective date of the schedule. In this case, it would be impracticable and contrary to the public interest to do so because the effective date of the statutory changes is October 1, 1981. Since prompt publication of the results of these changes in the limits would be in the public interest, we find good cause to waive the customary 30-day delay between publication of new limits and their effective date, and apply them to HHAs effective October 1, 1981.

Methodology For Determining Cost Per Visit Limits

1. *Basic Service Limit.* An explanation of the data used and methodology for calculating the home health agency limits is contained in the June 30, 1981 notice (46 FR 33645). For this schedule, a basic service limit equal to the 75th percentile of the array was calculated for each type of service, according to the provider-based and freestanding classification and the urban or non-urban location of the group.

2. All other aspects of the methodology for determining the cost per visit limits contained in this schedule are identical to those described in the June 30, 1981 notice. For ease of reference, however, we have reprinted the annual percentage increases in the market basket which we use for the June 30, 1981 schedule and these revised limits.

	Percent increase
Calendar year:	
1977	7.1
1978	6.7
1979	7.6
1980 (1/1/80 to 6/30/80)	8.1
1980 (market basket, 7/1/80 to 12/31/80)	11.7
1981 (market basket)	10.8
1982 (market basket)	9.5
1983 (market basket)	9.6

Schedule of Limits

This schedule of limits applies to all cost reporting periods ending after September 30, 1981. However, for cost reporting periods beginning before October 1, 1981, any reduction in payment resulting from this schedule will be applied in proportion to the part of the reporting period occurring after September 30, 1981. The fiscal intermediaries will compute the adjusted limits using the wage index published in Table III A and III B, and adjustment factors published in Table IV and notify each HHA of its applicable limits. These limits will remain in effect until replaced by a revised schedule of limits published in a final notice in the **Federal Register.**

Any HHA that has a cost reporting period that begins prior to October 1, 1981, will be affected by two cost limits: the limit in effect for the period before October 1, 1981 (the cost limits that were published June 5, 1980 *or* June 30, 1981 will apply to this period); and these revised costs limits that apply to the portion of the cost reporting period occurring after September 30, 1981.

The intermediary will determine the proportionate application of the limits in the following manner:

1. Compute the aggregate cost limit using the two schedules which apply:

(a) Limits published June 5, 1980, (45 FR 38014), for cost reporting periods beginning on or after July 1, 1980 *or* limits published June 30, 1981, (46 FR 33645), for cost reporting periods beginning on or after July 1, 1981; and

(b) This schedule of limits.

2. Determine the disallowance under each schedule separately.

3. Multiply the disallowance for each schedule of limits by a factor that represents the portion of the cost reporting period to which each schedule applies. This is divided by the number of months before the effective date (for the period covered by the limits in (a) above) and after the effective date (for the period covered by this schedule) by 12. (See following examples.) These are the reductions in payments which apply to each portion of the cost reporting period.

4. Determine the total disallowance by adding the results from the calculation described in step 3 above. This sum represents the total disallowance for the reporting period.

Examples

A. Cost Reporting Period Beginning on or After October 1, 1981

Example: Home Health Agency X, a freestanding agency located in Pittsburgh, Pennsylvania made 6,000 skilled nursing, 1,000 physical therapy and 2,000 home health aide covered visits to Medicare beneficiaries during the 12-month cost reporting period beginning October 1, 1981. The aggregate cost limit would be determined as follows using the wage index for Pittsburgh, Pennsylvania—1.1275. The provider's actual cost is $500,000.

Portion of Cost Reporting Period after 9/30/81—12÷12=1.0.

Actual Cost: $500,000.

Aggregate Cost Limit (effective 10/01/81):

Type of visit	Visit	Per visit limit [1]	Adjustment limit [2]	Adjustment total
Skilled Nursing (SN)	6,000	45.90	49.95	$299,700
Physical Therapy (PT)	1,000	44.96	48.93	48,930
Home health aide	2,000	33.26	36.20	72,400
Total				421,030
Amount disallowed ($500,000 - $421,030)				78,970

(1) Using adjustment factor of 1.0958 from Table IV
(2) Using wage index = 1.1275.

B. Cost Reporting Periods Beginning Prior to October 1, 1981

1. *Example:* Home Health Agency A, a freestanding agency located in Chattanooga, Tennessee, made 5,000 skilled nursing, 1,000 physical therapy, and 1,000 home health aide covered visits to Medicare beneficiaries during the 12-month cost reporting period beginning July 1, 1981.

The aggregate cost limit (effective 7–1–81) was $322,580 (see 46 FR 33649). The provider's actual cost is $320,000.

Portion of Cost Reporting Period Before 10/1/81—3÷12=.25.

Portion of Cost Reporting Period After 9/30/81—9÷12=.75.

a. Actual Cost: $320,000.

Aggregate Cost Limit (effective 07/01/81)—322,580.

Amount over Limit ($320,000−$322,580)=$0.

Amount Disallowed (07/01/81 to 09/30/81) $0×.25=$0.

Actual Cost: $320,000.

Aggregate Cost Limit (effective 10/01/81).

Type of visit	Visit	Per visit limit [1]	Adjustment limit [2]	Adjustment total
SN	5,000	44.91	45.61	$228,050
PT	1,000	43.98	44.67	44,670
Aide	1,000	32.54	33.05	33,050
Aggregate cost limit (effective 10/01/81) total				305,770

[1] Using adjustment factor of 1.0720 from Table IV.
[2] Wage index=1.0226.

Amount over limit (10/01/81 to 06/30/82) ($320,000−305,770)=$14,230.

Amount Disallowed $14,230×.75=$10,673.

Total Amount Disallowed (07/01/81 to 06/30/82)$0+$10,673.

12. *Example:* Home Health Agency B, a freestanding agency located in Savannah, Georgia made 7,000 skilled nursing, 1,000 physical therapy and 2,500 home health aides covered visits to Medicare beneficiaries during the 12-month cost reporting period beginning January 1, 1981.

The aggregate cost limit (calculated in accordance with the June 5, 1980 Notice) was $412,975. The provider's actual cost is $450,000.

Portion of Cost Reporting Period Before 10/1/81=9÷12=.75.

Portion of Cost Reporting After Before 9/30/81=3÷12=.25.

a. Actual Cost: $450,000.

Aggregate Cost Limit (45 FR 38014) 412,975.

Amount over Limit (01/01/81 to 09/30/81) $450,000−412,975=$37,025.

Amount Disallowed (01/01/81 to 09/30/81) $37,025×.75=$27,769.

b. Actual Cost: $450,000.

Aggregate Cost Limit (effective 10–01–81)

Type of visit	Visit	Per visit limit [1]	Adjustment limit [2]	Adjustment total
SN	7,000	42.64	40.91	$286,370
PI	1,000	41.77	40.07	40,070
Aides	2,500	30.90	29.65	74,125
Aggregate cost limit (effective 10/01/81) total				400,565

[1] Using adjustment factor of 1.0180 from Table IV.
[2] Wage index=.9414.

Amount over Limit=$450,000−400,565=$49,435.

Amount disallowed (10/01/81 to 12/31/81) $49,435×.25=$12,359.

Total amount disallowed (01/01/81 to 12/31/81) $27,769+12,359=$40,128.

Before the limits are applied at cost settlement, the provider's actual costs will be reduced by the amount of individual items of cost (e.g., administrative compensation, contract services) that are found to be excessive under Medicare principles of provider reimbursement. The fiscal intermediaries will review the various reported costs against such screens as the cost guidelines for physical therapy under arrangements (see 42 CFR 405.432) and against the limitation on costs that are substantially out of line with those of comparable agencies (see 42 CFR 405.451). The provider's cost will also be reduced by the amount of reimbursable costs that are not included in the limitation amount (e.g., medical appliances).

Table I.—*Per Visit Limits for Provider-Based Home Health Agencies*

Type of visit	Limit	Wage portion 69.28 percent	Non-wage portion 30.72 percent
SMSA (NECMA) Location:			
Skilled nursing care	54.66	37.87	16.79
Physical therapy	49.30	34.16	15.14
Speech pathology	51.49	35.67	15.82
Occupational therapy	48.46	33.57	14.89
Medical social services	50.58	35.04	15.54
Home health aide	48.36	33.50	14.86
NON-SMSA Location:			
Skilled nursing care	51.43	35.63	15.80
Physical therapy	48.72	33.75	14.97
Speech pathology	[1]	[1]	[1]
Occupational therapy	[1]	[1]	[1]
Medical social services	[1]	[1]	[1]
Home health aide	41.94	29.06	12.88

[1] Insufficient data—Use basic service limits for freestanding non-SMSA agencies.

Table II.—*Per visit limits for freestanding home health agencies* [1]

Type of visit	Limit	Wage portion 69.28 percent	Non-wage portion 30.72 percent
SMSA (NECMA) location:			
Skilled nursing care	41.89	29.02	12.87
Physical therapy	41.03	28.43	12.60
Speech pathology	42.33	29.33	13.00
Occupational therapy	41.82	28.97	12.85
Medical social services	48.46	33.57	14.89
Home health aide	30.35	21.03	9.32
Non-SMSA location:			
Skilled nursing care	43.44	30.10	13.34
Physical therapy	43.65	30.24	13.41
Speech pathology	45.65	31.63	14.02
Occupational therapy	40.07	27.76	12.31
Medical social services	45.78	31.72	14.06
Home health aide	27.90	19.33	8.57

[1] Nonwage portion of limits for HHAs located in States of Alaska and Hawaii will be increased by the following cost-of-living adjustment:

Alaska	25
Hawaii (island):	
Oahu	15
Kauai	15
Molokai	12.5
Maui and Lanai	15
Hawaii	10

Table III A.—*Wage Index for Urban Areas*

SMSA area	Wage index
Abilene, TX	.8485
Akron, OH	1.0417
Albany, GA	.8566
Albany-Schenectady-Troy, NY	.9624
Albuquerque, NM	1.0009
Alexandria, LA	.8954
Allentown-Bathlehem-Easton, PA-NJ	1.0589
Altoona, PA	1.0219
Amarillo, TX	.9233
Anaheim-Santa Ana-Garden Grove, CA	1.2115
Anchorage, AK	1.6461
Anderson, IN	.9812
Ann Arbor, MI	1.2175
Anniston, AL	.8400
Appleton-Oshkosh, WI	1.0124
Asheville, NC	.9678
Atlanta, GA	.9162
Atlantic City, NJ	1.0174
Augusta, GA-SC	.9237
Austin, TX	.9859
Bakersfield, CA	1.1223
Baltimore, MD	1.1698
Baton Rouge, LA	.8813
Battle Creek, MI	1.0229
Bay City, MI	1.1238
Beaumont-Port Arthur-Orange, TX	.8530
Billings, MT	[1].9496
Biloxi-Gulfport, MS	.8143
Binghamton, NY-PA	.9769
Birmingham, AL	.9658
Bismarck, ND	.9032
Bloomington, IN	[1].9481
Bloomington-Normal, IL	.8484
Boise City, ID	.9834
Boston-Lowell-Brockton-Lawrence-Haverhill, MA-NH	1.1214
Bradenton, FL	[1].8631
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1647
Brownsville-Harlingen-San Benito, TX	.9312
Bryan-College Station, TX	.8377
Buffalo, NY	.9926
Burlington, NC	.8899
Canton, OH	.9447
Cedar Rapids, IA	[1].9193
Champaign-Urbana-Rantoul, IL	1.1197
Charleston-North Charleston, SC	.9751
Charleston, WV	1.0628
Charlotte-Gastonia, NC	.9456
Chattanooga, TN-GA	1.0226
Chicago, IL	1.1780
Cincinnati, OH-KY-IN	1.0814
Clarksville-Hopkinsville, TN-KY	.8397
Cleveland, OH	1.1957
Colorado Springs, CO	.9743
Columbia, MO	1.1712
Columbia, SC	.9743
Columbus, GA-AL	.9021
Columbus, OH	1.1184
Corpus Christi, TX	.9337
Dallas-Fort Worth, TX	.9403
Davenport-Rock Island-Moline, IA-IL	.9219
Dayton, OH	1.1064

Table III A.—*Wage Index for Urban Areas*—Continued

SMSA area	Wage index
Daytona Beach, FL	.9423
Decatur, IL	.9096
Denver-Boulder, CO	1.0960
Des Moines, IA	1.0156
Detroit, MI	1.2280
Dubuque, IA	.9426
Duluth-Superior, MN-WI	.9193
Eau Claire, WI	.9606
El Paso, TX	.8714
Elkhart, IN	[1].7997
Elmira, NY	.9642
Enid, OK	.8228
Erie, PA	.9652
Eugene-Springfield, OR	.9639
Evansville, IN-KY	1.0742
Fargo-Moorhead, ND-MN	.9355
Fayetteville, NC	[1].8353
Fayetteville-Springdale, AR	.7997
Flint, MI	1.1919
Florence, AL	.8056
Fort Collins, CO	.8353
Fort Lauderdale-Hollywood, FL	1.0506
Fort Myers, FL	.9391
Fort Smith, AR-OK	.8899
Fort Wayne, IN	.8881
Fresno, CA	1.1265
Gadsden, AL	.9264
Gainesville, FL	.9019
Galveston-Texas City, TX	1.0607
Gary-Hammond-East Chicago, IN	1.1664
Grand Forks, ND-MN	.8779
Grand Rapids, MI	.9463
Great Falls, MT	[1].9162
Greeley, CO	[1].9312
Green Bay, WI	.9740
Greensboro-Winston-Salem-High Point, NC	.9232
Greenville-Spartanburg, SC	.9371
Hamilton-Middleton, OH	1.0620
Harrisburg, PA	1.0534
Hartford-New Britain-Bristol, CT	1.1535
Honolulu, HI	1.1645
Houston, TX	1.0630
Huntington-Ashland, WV-KY-OH	.9270
Huntsville, AL	.8593
Indianapolis, IN	1.0507
Iowa City, IA	1.0209
Jackson, MI	[1]1.0173
Jackson, MS	.8699
Jacksonville, FL	.9331
Janesville-Beloit, WI	.8579
Jersey City, NJ	1.1180
Johnson City-Kingsport-Bristol, TN-VA	.8777
Johnstown, PA	1.0445
Kalamazoo-Portage, MI	1.1695
Kankakee, IL	1.0073
Kansas City, MO-KS	.9399
Kenosha, WI	[1]1.0778
Killeen-Temple, TX	.8868
Knoxville, TN	.9100
Kokomo, IN	.9828
La Crosse, WI	[1].9016
Lafayette, LA	.8622
Lafayette-West Lafayette, IN	.9141
Lake Charles, LA	.8706
Lakeland-Winter Haven, FL	.9749
Lancaster, PA	1.0674
Lansing-East Lansing, MI	1.0811
Laredo, TX	[1].8593
Las Cruces, NM	[1].8129
Las Vegas, NV	1.1884
Lawrence, KS	[1].9193
Lawton, OK	[1].8377
Lewiston-Auburn, ME	[1].8899
Lexington-Fayette, KY	.9016
Lima, OH	.9932
Lincoln, NE	.9259
Little Rock-North Little Rock, AR	1.0205
Long Branch-Asbury Park, NJ	1.0648
Longview, TX	.8129
Lorain-Elyria, OH	1.0207
Los Angeles-Long Beach, CA	1.2899
Louisville, KY-IN	.9915
Lubbock, TX	.9042
Lynchburg, VA	.8876
Macon, GA	.9637
Madison, WI	1.0257
Manchester-Nashua, NH	.9352
Mansfield, OH	.9196
McAllen-Pharr-Edinburg, TX	.8165
Melbourne-Titusville-Cocoa, FL	.9374
Memphis, TN-AR-MS	1.0371
Miami, FL	1.1050
Midland, TX	[1].9141
Milwaukee, WI	1.0080
Minneapolis-St. Paul, MN-WI	.9802
Mobile, AL	.9416
Modesto, CA	1.0508
Monroe, LA	.9451
Montgomery, AL	.9626
Muncie, IN	[1].9852
Muskegon-Norton Shores-Muskegon Heights, MI	.9658
Nashville-Davidson, TN	1.0187
Nassau-Suffolk, NY	1.2758
New Bedford-Fall River, MA	.9687
New Brunswick-Perth Amboy-Sayreville, NJ	1.0409
New Haven-Waterbury-Meriden, CT	1.0990
New London-Norwich, CT	1.0903
New Orleans, LA	.9644
New York, NY-NJ	1.3956
Newark, NJ	1.2099
Newport News-Hampton, VA	.8907
Norlolk-Virginia Beach-Portsmouth, VA-NC	.9496
Northeast Pennsylvania	1.0598
Odessa, TX	[1].9496
Oklahoma City, OK	.9252
Omaha, NE-IA	.9365
Orlando, FL	.9087
Owensboro, KY	[1].8364
Oxnard-Simi Valley-Ventura, CA	1.3788
Panama City, FL	[1].8777
Parkersburg-Marietta, WV-OH	1.0461
Pascagoula-Moss Point, MS	[1]1.1535
Paterson-Clifton-Passaic, NJ	1.0959
Pensacola, FL	.8841
Peoria, IL	1.0175
Petersburg-Colonial Heights-Hopewell, VA	.9484
Philadelphia, PA-NJ	1.1810
Phoenix, AZ	1.1100
Pine Bluff, AR	[1].7997
Pittsburgh, PA	1.1275
Pittsfield, MA	1.0275
Portland, ME	.9718
Portland, OR-WA	1.1026
Poughkeepsie, NY	1.0778
Providence-Warwick-Pawtucket, RI	1.0314
Provo-Orem, UT	.9454
Pueblo, CO	1.0969
Racine, WI	.9240
Raleigh-Durham, NC	1.0173
Rapid City, SD	[1].8680
Reading, PA	1.0101
Reno, NV	[1]1.2428
Richland-Kennewick, WA	.9763
Richmond, VA	.9252
Riverside-San Bernardino-Ontario, CA	1.1729
Roanoke, VA	.9614
Rochester, MN	.9852
Rochester, NY	1.0653
Rockford, IL	.9696
Sacramento, CA	1.1396
Saginaw, MI	1.1279
St. Cloud, MN	.8680
St. Joseph, MO	.9749
St. Louis, MO-IL	.9977
Salem, OR	1.1083
Salinas-Seaside-Monterey, CA	1.2428
Salt Lake City-Ogden, UT	.8550
San Angelo, TX	.8364
San Antonio, TX	.9509
San Diego, CA	1.1113
San Francisco-Oakland, CA	1.3153
San Jose, CA	1.3055
Santa Barbara-Santa Maria-Lompoc, CA	1.0552
Santa Cruz, CA	1.0811
Santa Rosa, CA	1.4037
Sarasota, FL	.8554
Savannah, GA	.9414
Seattle-Everett, WA	1.0500
Sherman-Denison, TX	.8277
Shreveport, LA	.9292
Sioux City, IA-NE	.9306
Sioux Falls, SD	.8844
South Bend, IN	.9154
Spokane, WA	1.0921
Springfield, IL	.9873
Springfield, MO	.8933
Springfield, OH	.9821
Springfield-Chicopee-Holyoke, MA	1.0184
Steubenville-Weirton, OH-WV	.9689
Stockton, CA	1.3046
Syracuse, NY	1.3209
Tacoma, WA	1.0514
Tallahassee, FL	[1].9219
Tampa-St. Petersburg, FL	.9698
Terre Haute, IN	.8644
Texarkana-TX-Texarkana, AR	1.0929
Toledo, OH-MI	1.1157
Topeka, KS	1.0602
Trenton, NJ	1.1706
Tucson, AZ	.9977
Tulsa, OK	.9626
Tuscaloosa, AL	1.0142
Tyler, TX	.9461
Utica-Rome, NY	1.0145
Vallejo-Fairfield-Napa, CA	1.5862
Vineland-Millville-Bridgeton, NJ	1.0083
Waco, TX	.8593
Washington, DC-MD-VA	1.1457
Waterloo-Cedar Falls, IA	.8631
West Palm Beach-Boca Raton, FL	.9632
Wheeling, WV-OH	.9921
Wichita, KS	1.0248
Wichita Falls, TX	.8282
Williamsport, PA	.9749
Wilmington, DE-NJ-MD	1.0898
Wilmington, NC	.8936
Worcester-Fitchburg-Leominster, MA	.9703
Yakima, WA	.9523
York, PA	.9884
Youngstown-Warren, OH	1.1090

[1] Approximate value for area.

Table III B.—*Wage Index for Rural Areas*

Non-SMSA area	Wage index
Alabama	.8960
Alaska	1.5579
Arizona	1.0289
Arkansas	.8686
California	1.2415
Colorado	.8990
Connecticut	1.1552
Delaware	1.0370
Florida	.9917
Georgia	.9463
Hawaii	1.3362
Idaho	.9669
Illinois	.9180
Indiana	.9763
Iowa	.9220
Kansas	.8973
Kentucky	.9207
Louisiana	.9216
Maine	.9926
Maryland	1.1028
Massachusetts	1.1722
Michigan	1.1325
Minnesota	.9052
Mississippi	.8751
Missouri	.9156
Montana	.9561
Nebraska	.8130
Nevada	1.0790
New Hampshire	1.0971
New Jersey	1.0620
New Mexico	1.0073
New York	1.0327
North Carolina	.9917
North Dakota	.9045
Ohio	1.0086
Oklahoma	.9111
Oregon	1.0673
Pennsylvania	1.1358
Rhode Island	[1]
South Carolina	.9180
South Dakota	.7990
Tennessee	.8779
Texas	.8979
Utah	.8499
Vermont	.9993
Virginia	.9792
Washington	1.0465
West Virginia	1.0111
Wisconsin	.9179
Wyoming	1.0402

[1] Not applicable. All of Rhode Island is classified as urban.

Table IV.—*Cost Reporting Year Adjustment Factors* [1]

If the HHA cost reporting period begins	The adjustment factor is
December 1, 1980	1.0090
January 1, 1981	1.0180
February 1, 1981	1.0270
March 1, 1981	1.0360
April 1, 1981	1.0450
May 1, 1981	1.0540
June 1, 1981	1.0630
July 1, 1981	1.0720
August 1, 1981	1.0799
September 1, 1981	1.0878
October 1, 1981	1.0958
November 1, 1981	1.1037
December 1, 1981	1.1116
January 1, 1982	1.1195
February 1, 1982	1.1274
March 1, 1982	1.1353
April 1, 1982	1.1433
May 1, 1982	1.1512
June 1, 1982	1.1591
July 1, 1982	1.1670

[1] Based on a projected market basket inflation rate of 9.5 percent for 1982. These adjustment factors are subject to change based on later estimates of costs increases.

If, for any reason, we do not publish a new schedule of limits or do not announce other changes in the current schedule, the current limits would continue in effect. These limits would be increased by .008 (corresponding to .8 percent) per month, until a new schedule of limits or other provision is issued. The adjustment factor of .008 is based on a projected market basket inflation rate of 9.6 percent for 1983.

(Sections 1102, 1814(b), 1861(v)(1), 1866(a), and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a) and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 12, 1981.

Carolyne K. Davis, Ph.D.,

Administrator, Health Care Financing Administration.

Approved: September 18, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81-28028 Filed 9-29-81; 8:45 am]

BILLING CODE 4110-35-M

federal register

Wednesday
September 30, 1981

Part IX

Department of Health and Human Services

Health Care Financing Administration

Medicare and Medicaid Programs; Schedule of Limits on Skilled Nursing Facility Inpatient Routine Service Costs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Medicare and Medicaid Programs; Schedule of Limits on Skilled Nursing Facility Inpatient Routine Service Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final Notice.

SUMMARY: This notice sets forth a schedule of limits on skilled nursing facility inpatient routine service costs that may be reimbursed under Medicare for cost reporting periods beginning on or after October 1, 1981. This is an annual update of the schedule, and replaces the schedule published in the Federal Register on September 4, 1980. This schedule will remain in effect until superseded.

EFFECTIVE DATE: For cost reporting periods beginning on or after October 1, 1981.

FOR FURTHER INFORMATION, CONTACT: Carl Slutter, 301–594–9344.

SUPPLEMENTARY INFORMATION: Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) authorizes the Secretary to set prospective limits on allowable costs incurred by a provider of services that will be reimbursed under Medicare, based on estimates of the costs necessary in the efficient delivery of needed health services. The limits may be applied to direct or indirect overall incurred costs or to the costs incurred for specific items or services furnished by the provider. This provision of the statute is implemented under regulations at 42 CFR 405.460.

Under this authority we have published limits on skilled nursing facility (SNF) per diem inpatient routine service costs annually since 1979. On September 4, 1980, we published in the Federal Register (45 FR 58699) a schedule of limits, applicable to cost reporting periods beginning on or after October 1, 1980. These limits contained provisions related to (1) limits on adjusted SNF per diem inpatient routine service costs; (2) a "market basket" index developed to reflect changes in the price of goods and services purchased by SNFs; (3) adjustments to the limits by an area wage index developed from hospital industry wages; (4) a classification system based on whether the SNF is hospital-based or freestanding and whether it is located within a Standard Metropolitan Statistical Area (SMSA) or non-SMSA area (in the New England area, New England County Metropolitan Areas (NECMA) are used to determine urban location); (5) a cost-of-living adjustment for the nonlabor portion of the limits for SNFs located in Alaska and Hawaii; and (6) limits set at 112 percent of the average per diem labor-related and nonlabor costs of each comparison group.

In developing the revised limits contained in this notice, we have retained essentially the same provisions as in the current limits, as well as the same methodology. We have, however, used more current SNF cost data for calculating the limits, as well as more recent hospital industry wage data and projections of the rates of increase in the costs included in the SNF market basket, as specified below.

Summary of Provisions

This updated schedule of limits on skilled nursing facility inpatient routine service costs provides for:

1. *Separate group limits for labor-related and non-labor components of per diem routine service costs.* As in the current schedule, we have established separate group limits for the labor-related and non-labor components of per diem routine service costs. We calculate these separate limits by first obtaining actual SNF per diem inpatient routine service cost data for each SNF. Next, in order to make the data reflect current conditions more accurately, we increase these data by the actual and projected monthly increases in the SNF market basket (see item 4 below), for a period extending from 1980 to 1983. We then separate each SNF's per diem cost into labor-related and non-labor portions, and divide the labor-related portion by the wage index for the SNF's location (see item 2 below). We then compute separate group means for the labor-related and non-labor components, and multiply each group mean by 112 percent. For each group, the resulting amounts are shown in Tables IA and IB.

2. *Adjustment of SNF cost data by wage index.* We are again using a hospital industry wage index to account for area wage differences, since there are not industry-specific data available on SNF wages. Because hospitals and SNFs generally compete in essentially the same labor market for employees, we believe an index based on geographic variations in hospital wages provides an accurate measure of geographic variations in wages paid by SNFs.

We developed the wage index from hospital wage data obtained from the Bureau of Labor Statistics (BLS). The data used are those for the "hospital industry", a standard BLS reporting category. The wage index we used for the revised limits is based on data for calendar year 1979, which are the latest available data. Data for 1980 will not be available until late in 1981.

We have used the same methodology in calculating the wage index for use in determining the SNF limits that we used for purposes of the limits on hospital per diem inpatient general routine operating costs published on June 30, 1981 (46 FR 33637). The methodology used to calculate the wage index is as follows. We first computed the average hospital wage for each SMSA or NECMA and non-SMSA/non-NECMA area. We then calculated the national average hospital wage for all SMSA or NECMA areas, and a separate national average hospital wage for all non-SMSA/non-NECMA areas. We then divided the average wage level for each area by the appropriate national average (SMSA/NECMA or non-SMSA/non-NECMA). These calculations resulted in an index value for each SMSA or NECMA area that reflects the wage level for that area relative to the national average for all SMSA/NECMA areas, and in an index value for each non-SMSA/non-NECMA area that reflects the wage level for that area relative to the national average for all non-SMSA/non-NECMA areas (see Tables II and III). (The Executive Office of Management and Budget on June 19, 1981 announced new SMSAs based on the 1980 census. As soon as we have received new wage index values for these areas, we will publish in the Federal Register a list of the constitutent counties in the SMSAs and their wage index values.)

In addition to being based on more current data, the wage indexes we used for the revised limits differ in two ways from the wage indexes used in developing the 1980 cost limits. First, we have used approximate, rather than actual, index values for 26 areas. (These approximate values are identified by asterisks in Table III.) We made this change because BLS, which supplies the data on wages and numbers of employees that we use to calculate the wage index, has informed us that its confidentiality requirements prohibit it from disclosing actual data for areas that include fewer than three reporting units. (A reporting unit need not be a single hospital. Reporting unit is defined by BLS as the smallest unit for which data are recorded on the employer's contribution report. For example, two facilities in the same area owned by one employer could appear as one reporting unit.)

To make it possible to calculate limits for these areas, we have asked the BLS to identify the areas having wage index values numerically closest to, but not

less than, the areas for which it cannot supply actual data. In the case of each area for which actual data are unavailable, we have substituted the wage index value identified by BLS as being closest to the actual value. We believe that the use of approximate rather than actual values for these areas will not affect the accuracy of the limits significantly, and will assure that no SNF's limit is reduced because actual data for its area are unavailable.

The second change from the 1980 limits in developing the current wage index is that we have also excluded data from Federal government hospitals. Because these hospitals typically use national pay scales, the amounts they pay their employees do not necessarily reflect area wage levels. We believe excluding data from these hospitals will help improve the accuracy of the wage index adjustment.

We wish to note that the data used to develop the wage indexes were supplied by BLS, and are the most reliable data available. All hospitals are required under State unemployment compensation laws to report these data. If we receive additional data from BLS that require further changes in the wage index values for certain areas, or if we discover that we, or BLS, have made any error that results in an incorrect wage index for any area, we will publish corrected indexes in the Federal Register and will direct the Medicare intermediaries to recalculate the limits. However, we are unable to correct any inaccuracies in the wage indexes that may result from a hospital's failure to report or correctly report the required wage data.

3. *Application of the hospital wage index to employee benefits, health service costs, costs of business services, and other miscellaneous expenses.* In developing the current schedule, we applied the wage index discussed above to five categories of labor-related costs: wages, employee benefits, health service costs, business service costs, and other miscellaneous costs. We have retained this method in developing this revised schedule of limits. The proportion of adjusted routine service cost we adjust by the wage index is 80.25 percent.

For purposes of applying the wage index, employee benefits include such items as FICA tax, health insurance, life insurance, facility contributions to employee retirement funds, and all other compensation that the SNF records in the "employee health and welfare" cost center on its Medicare cost report. (The Medicare Provider Reimbursement Manual (HIM–15), Chapter 4, and the instructions to the HCFA cost reporting forms (HIM–15, Part II) describe the types of costs that are to be recorded in that cost center.)

Health service costs are a category used by the National Nursing Home Survey conducted in 1977 by the Office of Health Research, Statistics and Technology, National Center for Health Statistics of the Public Health Service. They include the costs of routine services that are purchased under arrangement from outside sources.

Business services costs include costs of banking, contract laundry, telephone, and other services SNFs purchase at retail from outside suppliers.

Other miscellaneous costs include various types of routine operating costs not allocated to any other category of the market basket.

Thus, we will apply the wage index to the total portion of cost (80.25 percent) attributable to wages, fringe benefits, health service costs, business service costs, and other miscellaneous expenses, rather than to the wage portion (61.31 percent) only. We are continuing this method because our analysis of the data we used to develop the hospital limits shows that area variations in routine per diem costs in these additional categories are closely related to area variations in prevailing wage levels. We believe that applying the wage index to the other categories of labor-related costs specified above, rather than to wages only, results in individual limits that are more equitable and more appropriate to each SNF's actual market environment.

4. *Use of SNF market basket index.* This updated schedule of limits is based on reported costs, adjusted for actual and projected cost increases by applying the SNF market basket index. The values used in deriving the index are contained in Appendix I below.

The market basket is comprised of the most commonly used categories of SNF routine service expenses. The categories we are using are based primarily on those used by the National Center for Health Statistics in its National Nursing Home Surveys.

The categories of expenses are weighted according to the estimated proportion of SNF routine service costs attributable to each category. The weights for all major categories of SNF costs are based on the National Nursing Home Surveys for 1972 and 1976. These are the most current and comprehensive sources of national data on the distribution of costs in SNFs. (The second column of the index table specifies the weights used for each category.)

In developing the market basket index, we obtained historical and projected rates of increase in the resource prices for each category. The market basket index table, in the third and fourth columns, identifies the price variables used and the source of the forecast for calendar years 1980 through 1983.

The market basket index also provides for adjustments to be made in the limits if our forecasts of economic trends prove erroneous. If the final rate of increase in the market basket index for a year exceeds the estimated rate of increase by at least .3 of 1 percentage point, we will publish that rate in the Federal Register and the Medicare intermediaries will adjust each SNF's limit retroactively at final settlement of the SNF's cost report.

5. *Use of adjusted SNF inpatient routine service costs.* This updated schedule applies to SNF inpatient routine service costs (as defined in 42 CFR 405.452(d)(2)), plus the inpatient routine nursing salary cost differential, adjusted by exclusion of capital-related costs, as is done in the current schedule. The basic methodology in this regard remains unchanged. We have, however, had to make significant changes in our data base with respect to capital-related costs. Capital-related costs include interest, depreciation, insurance, rent and fixed asset related costs that are normally included in the depreciation accounts for Medicare reimbursement purposes. The revised cost report (HCFA–2552, 5/80) contains additional schedules that allow a provider to identify and eliminate indirectly allocated capital-related costs. Some facilities have not been accurately reporting these costs on the cost report we use to develop these limits. Consequently, we have had to adjust the data base from which these limits were derived. As explained fully later in this notice, this resulted in a marginal reduction in the limits for freestanding facilities.

6. *Separate limits for hospital-based and freestanding SNFs.* We included separate limits for hospital-based and freestanding SNFs in the September 1980 notice, based upon indications that hospital-based SNFs incur higher costs due to circumstances beyond their control. In that notice, we indicated that we would conduct a study to examine these higher costs. The areas we were to examine included the Medicare methodology for the allocation of overhead costs and variations in intensity of care. These studies are ongoing.

7. *Cost-of-living adjustment for Alaska and Hawaii.* To avoid disadvantaging SNFs located in Alaska and Hawaii, we have retained the cost-

of-living adjustment for these States. This is an adjustment of the non-labor component of the limits that apply to these two States, based on the amount of the most recently determined cost-of-living differentials developed by the Office of Personnel Management. Since we adjust the labor-related component by the applicable wage index, this cost-of-living adjustment applies only to the non-labor component.

8. *Limits set at 112 percent of the average labor-related and average non-labor costs of each comparison group.* As in the 1980 notice, we are maintaining the limits at 112 percent of the average labor-related and average non-labor costs of each comparison group. The 12 percent allowance above mean costs is intended to account for variations in costs that are consistent with efficiency, but are not accounted for by our classification system and methodology for adjusting and applying the limits, or by the exceptions and exemptions specified in our regulations at 42 CFR 405.460. (Exceptions are granted to cover specific types of costs, such as costs of atypical services to meet the special needs of patients treated; an SNF may be exempted from application of the limits if it qualifies as a new provider under the provisions of 42 CFR 405.460(e)(2)).

Correction in Limits Due to Provider Errors in Reporting Capital-Related Costs

In the process of extracting cost data from the Medicare cost reports to use in updating the limits, we found that a number of SNFs have routinely failed to reclassify capital-related costs to the appropriate cost centers for allocation in accordance with applicable instructions. Provider Reimbursement Manual (HIM–15, Part II, Chapter 3) explicitly defines capital-related costs and specifies that these costs must be reclassified before allocation of overhead costs.

Some of the cost reports we use in extracting data for purposes of updating the limits are in the form submitted by the SNF before review by the intermediary. In a review of those cost reports, we found numerous instances (in those reports that had not gone through the settlement process by the intermediary) of failures to classify capital-related costs properly. Where such errors in classifying capital-related costs were identified in our data collection, we excluded these costs from the data base used to calculate the SNF limits.

The problem of misclassifed capital-related costs was more prevalent in freestanding SNF cost reports. As a result of the correction of misclassified capital-related costs, the adjusted routine service costs in the two freestanding SNF groups resulted in limits for freestanding SNFs that are actually lower than last year's limits by 10 cents in urban areas and 22 cents in rural areas.

SNFs with costs above their limit by virtue of their failure to classify capital-related costs properly can correct their cost reports to remove the additional capital-related costs from the amount subject to the limits. Therefore, the real impact on specific institutions flowing from our making these corrections is not as great as might appear from the fact that the limits have been lowered by a small margin.

Impact Analysis

Executive Order 12291

We have determined that this final notice does not meet the criteria for a major rule that are set forth in section 1(b) of Executive Order 12291. That is, this notice will not:

(1) Have an annual effect on the economy of $100 million or more (our estimate is that this notice will have a total impact of approximately $31 million in FY 82);

(2) Cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or

(3) Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Analysis

The Secretary certifies, under Section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–353), that the revised schedule of limits set forth in this notice will not have a significant economic impact on a substantial number of small entities. The reason for the Secretary's negative certification is that the revised limits merely update the system of skilled nursing facility cost limits that is now in effect, and do not include any changes in our methodology for deriving and applying them.

Waiver of Proposed Notice and 30-Day Delay in Effective Date

As explained previously, we developed the revised limits set forth below by using the same basic methodology that we used to develop the current SNF cost limits, which were published on September 4, 1980. On June 18, 1980, we published a proposed notice that described in detail our methodology for developing and applying those limits, and provided a 60-day period for public comment (45 FR 41292). In developing the schedule of limits now in effect, we considered all comments received in response to the June 18, 1980 notice. These comments, and our responses to them, are described in the September 4, 1980 notice.

Because the methodology used for the revised schedule has previously been published for public comment, we do not believe it would be either necessary or useful to request comment on that methodology again. Moreover, without publication of this notice, the current limits would remain in effect without adjustment for cost reporting periods beginning after September 30, 1981, since there is no provision in the current schedule for adjusting the limits for cost reporting periods that begin after that date. We believe it would be contrary to the public interest to permit this to occur. Therefore, we find good cause to waive publication of a proposed notice, and publish this notice of updated limits in final form.

In the past, we generally have attempted to allow a 30-day period between the date of publication of each cost limit schedule and the effective date of the schedule. Since prompt publication of the limits would be in the public interest, and early implementation of this schedule will benefit those SNFs that will be affected by the updated limits, there is good cause to waive the customary 30-day delay between publication of new limits and their effective date, and apply them to SNFs with cost operating periods beginning on or after October 1, 1981.

If the actual rate of increase in the market basket for a year is at least .3 of 1 percentage point above the estimated rate, we will publish the actual rate of increase in the **Federal Register**. The Medicare intermediaries will use the actual rate to adjust each SNF's cost limit retroactively at final settlement of the SNF's cost report.

2. *Use of Wage Index to Adjust Cost Data.* We divided each SNF's adjusted per diem routine service costs into labor-related and non-labor portions. We determined the labor-related portion by multiplying each SNF's adjusted per diem routine service cost by 80.25 percent, which is the labor-related portion of cost from the market basket. We then divided the labor-related portion of each SNF's per diem cost by the wage index applicable to the SNF's location (see Tables II and III) to arrive at an adjusted labor-related portion of routine cost.

3. *Group Means.* We calculated separate means of labor-related and

non-labor adjusted routine service costs for each SNF group established in accordance with the SNF's SMSA/NECMA or non-SMSA/non-NECMA location and type (hospital-based/freestanding).

4. *Components of Limit.* For each group, we multiplied the mean labor-related and mean non-labor costs by 112 percent (see Tables IA and IB).

Methodology For Determining Per Diem Routine Service Cost Limit

Development of Published Limits

1. *Data.* We have developed the limits by using actual SNF inpatient routine service costs data, less capital-related costs, obtained from the latest Medicare cost reports as of March 6, 1981.

We adjusted this data using the market basket index discussed above, to project costs from the midpoint of each cost reporting period in the data base to the midpoint of the first cost reporting period to which the limits will apply. The annual percentage increases in the market basket over the previous year that we used for this projection are:

1978	8.9
1979	9.4
1980	10.2
1981	[1]10.2
1982	[1]9.3
1983	[1]9.2

[1]Forecasted increase.

If the actual rate of increase in the market basket for a year is at least .3 of 1 percentage point above the estimated rate, we will publish the actual rate of increase in the **Federal Register.** The Medicare intermediaries will use the actual rate to adjust each SNF's cost limit retroactively at final settlement of the SNF's cost report.

2. *Use of Wage Index to Adjust Cost Data.* We divided each SNF's adjusted per diem routine service costs into labor-related and non-labor portions. We determined the labor-related portion by multiplying each SNF's adjusted per diem routine service cost by 80.25 percent, which is the labor-related portion of cost from the market basket. We then divided the labor-related portion of each SNF's per diem cost by the wage index applicable to the SNF's location (see Tables II and III) to arrive at an adjusted labor-related portion of routine cost.

3. *Group Means.* We calculated separate means of labor-related and non-labor adjusted routine service costs for each SNF group established in accordance with the SNF's SMSA/NECMA or non-SMSA/non-NECMA location and type (hospital-based/freestanding).

4. *Components of Limit.* For each group, we multiplied the mean labor-related and mean non-labor costs by 112 percent (see Tables IA and IB).

Adjustment of Published Limits

1. *Adjustment of Labor-Related Component by Wage Index.* To arrive at a labor-adjusted limit for each SNF, we multiply the labor-related component of the limit for the SNF's group by the wage index developed from wage levels for hospital workers in the area in which the SNF is located. (See Tables II and III). The adjusted limit that applies to an SNF will be the sum of the non-labor component, plus the adjusted labor-related component, unless the SNF qualifies for the cost reporting year adjustment discussed in item 2 below.

Example.—Calculation of Adjusted Limit for a Freestanding SNF Located in Dallas, Texas.

Labor-Related Component $40.10 (published in Table IB).

Non-Labor Component $10.72 (published in Table IB).

SMSA Wage Index .9403 (published in Table II).

Computation of Adjusted Limit

Labor-related component	$40.10
Wage index	× .9403
Adjusted labor component	$37.71
Non-labor component	+10.72
Adjusted limit	$48.43

2. *Adjustment for Cost Reporting Year.* If an SNF has a cost reporting period beginning on or after November 1, 1981, the intermediary will increase the limit that would otherwise apply to the SNF by the factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the monthly increase that we derived by dividing the projected annual increase in the market basket by twelve. This adjustment is needed to account for price increases that occur after the date on which the limits are effective.

Example—SNF A has a cost reporting period that begins January 1, 1982.

The otherwise applicable limit for the SNF is $48.43.

Computation of Revised SNF Limit

Individual SNF Adjusted Limit	$48.43
Adjustment Factor from Table IV	× 1.02325
Revised Limit	$49.56

If an SNF uses a cost reporting period that is not 12 months in duration, a special adjustment factor must be calculated. This results from the fact that projections are computed to the midpoint of a cost reporting period and the adjustment factors in Table IV are based on an assumed 12 month reporting period. For cost reporting periods of other than 12 months, the calculation must be done for the midpoint of the specific cost reporting period. The SNF's intermediary will obtain this adjustment factor from HCFA.

Schedule of Limits

Under the authority of section 1861(v) of the Social Security Act, the following group per diem limits will apply to the adjusted SNF inpatient routine service costs (including the inpatient routine service nursing salary differential) reimbursed under Medicare for cost reporting periods beginning on or after October, 1, 1981. Medicare fiscal intermediaries will compute the adjusted limits for SNFs using the methodology set forth in this notice, and will notify each SNF of its applicable limit. These limits, as adjusted by the wage indexes in Tables II & III, and the cost reporting year adjustment factors in Table IV, will remain in effect until replaced by a revised schedule of limits published in a notice in the **Federal Register.**

Table 1A.—*Group Limits for Hospital-Based SNFs*

Location	Labor related component	Non-labor component [1]
SMSA	$83.61	$21.60
Non-SMSA	$64.16	$16.03

Table 1B.—*Group Limits for Freestanding SNFs*

Location	Labor related component	Non-labor component [1]
SMSA	$40.10	$10.72
Non-SMSA	$37.50	$9.25

[1]The non-labor portion of the limits for SNFs located in States of Alaska and Hawaii will be increased by the following cost-of-living adjustments:

	Factor
Alaska	1.25
Hawaii: (Island)	
Oahu	1.15
Kauai	1.15
Molokai	1.125
Maui and Lanai	1.15
Hawaii	1.10

Table II.—*Wage Index for Urban Areas*

SMSA area	Wage index
Abilene, TX	.8485
Akron, OH	1.0417
Albany, GA	.8586
Albany-Schenectady-Troy, NY	.9624
Albuquerque, NM	1.0009
Alexandria, LA	.8954
Allentown-Bethlehem-Easton, PA-NJ	1.0569
Altoona, PA	1.0219
Amarillo, TX	.9233

Table II.—*Wage Index for Urban Areas*—Continued

SMSA area	Wage index
Anaheim-Santa Ana-Garden Grove, CA	1.2115
Anchorage, AK	1.6461
Anderson, IN	.9612
Ann Arbor, MI	1.2175
Anniston, AL	.8400
Appleton-Oshkosh, WI	1.0124
Asheville, NC	.9678
Atlanta, GA	.9162
Atlantic City, NJ	1.0174
Augusta, GA–SC	.9237
Austin, TX	.9859
Bakersfield, CA	1.1223
Baltimore, MD	1.1698
Baton Rouge, LA	.8613
Battle Creek, MI	1.0229
Bay City, MI	1.1238
Beaumont-Port Arthur-Orange, TX	.8530
Billings, MT	[1].9496
Biloxi-Gulfport, MS	.8143
Binghamton, NY–PA	.9769
Birmingham, AL	.9658
Bismarck, ND	.9032
Bloomington, IN	[1].8481
Bloomington-Normal, IL	.8484
Boise City, ID	.9834
Boston-Lowell-Brockton-Lawrence-Haverhill, MA–NH	1.1214
Bradenton, FL	[1].8631
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1647
Brownsville-Harlingen-San Benito, TX	.9312
Bryan-College Station, TX	.8377
Buffalo, NY	.9926
Burlington, NC	.8899
Canton, OH	.9447
Cedar Rapids, IA	[1].9193
Champaign-Urbana-Rantoul, IL	1.1197
Charleston-North Charleston, SC	.9751
Charleston, WV	1.0628
Charlotte-Gastonia, NC	.9456
Chattanooga, TN–GA	1.0226
Chicago, IL	1.1780
Cincinnati, OH–KY–IN	1.0614
Clarksville, Hopkinsville, TN–KY	.8397
Cleveland, OH	1.1957
Colorado Springs, CO	.9743
Columbia, MO	1.1712
Columbia, SC	.9743
Columbus, GA–AL	.9021
Columbus, OH	1.1184
Corpus Christi, TX	.9337
Dallas-Fort Worth, TX	.9403
Davenport-Rock Island-Moline, IA–IL	.9219
Dayton, OH	1.1064
Daytona Beach, FL	.9423
Decatur, IL	.9096
Denver-Boulder, CO	1.0960
Des Moines, IA	1.0156
Detroit, MI	1.2280
Dubuque, IA	.8426
Duluth-Superior, MN–WI	.9193
Eau Claire, WI	.9806
El Paso, TX	.8714
Elkhart, IN	[1].7997
Elmira, NY	.9642
Enid, OK	.8228
Erie, PA	.9652
Eugene-Springfield, OR	.9639
Evansville, IN–KY	1.0742
Fargo-Moorhead, ND–MN	.9355
Fayetteville, NC	[1].8353
Fayetteville-Springdale, AR	.7997
Flint, MT	1.1919
Florence, AL	.8056
Fort Collins, CO	.8353
Fort Lauderdale-Hollywood, FL	1.0506
Fort Myers, FL	.8391
Fort Smith, AR–OK	.8899
Fort Wayne, IN	.8681
Fresno, CA	1.1265
Gadsden, AL	.9264
Gainesville, FL	.9019
Galveston-Texas City, TX	1.0607
Gary-Hammond-East Chicago, IN	1.1664
Grand Forks, ND–MN	.8779
Grand Rapids, MI	.9463
Great Falls, MT	[1].9162
Greeley, CO	[1].9312
Green Bay, WI	.9740
Greensboro-Winston-Salem-High Point, NC	.9232
Greenville-Spartanburg, SC	.9371

Table II.—*Wage Index for Urban Areas*—Continued

SMSA area	Wage index
Hamilton-Middleton, OH	1.0620
Harrisburg, PA	1.0534
Hartford-New Britain-Bristol, CT	1.1535
Honolulu, HI	1.1645
Houston, TX	1.0630
Huntington-Ashland, WV-KY-OH	.9270
Huntsville, AL	.8593
Indianapolis, IN	1.0507
Iowa City, IA	1.0209
Jackson, MI	[1] 1.0173
Jackson, MS	1.8699
Jacksonville, FL	.9331
Janesville-Beloit, WI	.8579
Jersey City, NJ	1.1180
Johnson City-Kingsport-Bristol, TN–VA	.8777
Johnstown, PA	1.9445
Kalamazoo-Portage, MI	1.1695
Kankakee, IL	1.0073
Kansas City, MO–KS	.9399
Kenosha, WI	[1] 1.0778
Killeen-Temple, TX	.8868
Knoxville, TN	.9100
Kokomo, IN	.9828
La Crosse, WI	[1].9018
Lafayette, LA	.8622
Lafayette-West Lafayette, IN	.9141
Lake Charles, LA	.8706
Lakeland-Winter Haven, FL	.9749
Lancaster, PA	1.0674
Lansing-East Lansing, MI	1.0611
Laredo, TX	[1].8593
Las Cruces, NM	[1].8129
Las vegas, NV	1.1884
Lawrence, KS	[1].9193
Lawton, OK	[1].8377
Lewiston-Auburn, ME	[1].8899
Lexington-Fayette, KY	.9016
Lima, OH	.9932
Lincoln, NE	.9259
Little Rock-North Little Rock, AR	1.0205
Long Branch-Asbury Park, NJ	1.0648
Longview, TX	.8129
Lorain-Elyria, OH	1.0207
Los Angeles-Long Beach, CA	1.2899
Louisville, KY–IN	.9915
Lubbock, TX	.9042
Lynchburg, VA	.8876
Macon, GA	.9637
Madison, WI	1.0257
Manchester-Nashua, NH	.9352
Mansfield, OH	.9196
McAllen-Pharr-Edinburg, TX	.8165
Melbourne-Titusville-Cocoa, FL	.9374
Memphis, TN–AR–MS	1.0371
Miami, FL	1.1050
Midland, TX	[1].9141
Milwaukee, WI	1.0080
Minneapolis-St. Paul, MN–WI	.9802
Mobile, AL	.9416
Modesto, CA	1.0250
Monroe, LA	.9451
Montgomery, AL	.9626
Muncie, IN	[1].9852
Muskegon-Norton Shores-Muskegon Heights, MI	.9656
Nashville-Davidson, TN	1.0187
Nassau-Suffolk, NY	1.2758
New Bedford-Fall River, MA	.9687
New Brunswick-Perth Amboy-Sayreville, NJ	1.0409
New Haven-Waterbury-Meriden, CT	1.0990
New London-Norwich, CT	1.0903
New Orleans, LA	.9644
New York, NY–NJ	1.3956
Newark, NJ	1.2099
Newport News-Hampton, VA	.8907
Norfolk-Virginia Beach-Portsmouth, VA–NC	[1].9496
Northeast Pennsylvania	1.0598
Odessa, TX	.9496
Oklahoma City, OK	.9252
Omaha, NE–IA	.9355
Orlando, FL	.9087
Owensboro, KY	[1].8364
Oxnard-Simi Valley-Ventura, CA	1.3788
Panama City, FL	[1].8777
Parkersburg-Marietta, WV–OH	1.0461
Pascagoula-Moss Point, MS	[1] 1.1535
Paterson-Clifton-Passaic, NJ	1.0959
Pensacola, FL	.8841
Peoria, IL	1.0175
Petersburg-Colonial Heights-Hopewell, VA	.9484
Philadelphia, PA–NJ	1.1810

Table II.—*Wage Index for Urban Areas*—Continued

SMSA area	Wage index
Phoenix, AZ	1.1100
Pine Bluff, AR	[1].7997
Pittsburgh, PA	1.1275
Pittsfield, MA	1.0275
Portland, ME	.9718
Portland, OR–WA	1.1026
Poughkeepsie, NY	1.0778
Providence-Warwick-Pawtucket, RI	1.0314
Provo-Orem, UT	.9454
Pueblo, CO	1.0969
Racine, WI	.9240
Raleigh-Durham, NC	1.0173
Rapid City, SD	[1].8680
Reading, Pa	1.0101
Reno, NV	[1] 1.2428
Richland-Kennewick, WA	.9763
Richmond, VA	.9252
Riverside-San Bernadino-Ontario, CA	1.1729
Roanoke, Va	.9614
Rochester, MN	.9852
Rochester, NY	1.0653
Rockford, IL	.9696
Sacramento, CA	1.1396
Saginaw, MI	1.1279
St. Cloud, MN	.8680
St. Joseph, MO	.9749
St. Louis, MO–IL	.9977
Salem, OR	1.1083
Salinas-Seaside-Monterey, CA	1.2428
Salt Lake City-Ogden, UT	.8550
San Angelo, TX	.8364
San Antonio, TX	.9509
San Diego, CA	1.1113
San Francisco-Oakland, CA	1.3153
San Jose, CA	1.3055
Santa Barbara-Santa Maria-Lompoc, CA	1.0652
Santa Cruz, CA	1.0811
Santa Rosa, CA	1.4037
Sarasota, FL	.8554
Savannah, GA	.9414
Seattle-Everett, WA	1.0500
Sherman-Denison, TX	.8277
Shreveport, LA	.9232
Sioux City, IA–NE	.9306
Sioux Falls, SD	.8844
South Bend, IN	.9154
Spokane, WA	1.0921
Springfield, IL	.9873
Springfield, MO	.8933
Springfield, OH	.9621
Springfield-Chicopee-Holyoke, MA	1.0184
Steubenville-Weirton, OH-WV	.9689
Stockton, CA	1.3046
Syracuse, NY	1.3209
Tacoma, WA	1.0514
Tallahasee, FL	[1].9219
Tampa-St. Petersburg, FL	.9898
Terre Haute, IN	.8644
Texarkana-TX-Texarkana, AR	1.0929
Toledo, OH-MI	1.1157
Topeka, KS	1.0602
Trenton, NJ	1.1708
Tucson, AZ	.9977
Tulsa, OK	.9626
Tuscaloosa, AL	1.0142
Tyler, TX	.9481
Utica-Rome, NY	1.0145
Vallejo-Fairfield-Napa, CA	1.5862
Vineland-Miltville-Bridgeton, NJ	1.0083
Waco,TX	.8593
Washington, DC-MD-VA	1.1457
Waterloo-Cedar Falls, IA	.8631
West Palm Beach-Boca Raton, FL	.9632
Wheeling, WV-OH	.9921
Wichita, KS	1.0248
Wichita Falls, TX	.8282
Williamsport, PA	.9749
Wilmington, DE-NJ-MD	1.0898
Wilmington, NC	.8936
Worcester-Fitchburg-Leominster, MA	.9703
Yakima, WA	.9523
York, PA	.9884
Youngstown-Warren, OH	1.1090

[1] Approximate value for area.

Table III.—Wage Index for Rural Areas

Non-SMSA area	Wage index
Alabama	.8960
Alaska	1.5579
Arizona	1.0289
Arkansas	.8686
California	1.2415
Colorado	.8990
Connecticut	1.1552
Delaware	1.0370
Florida	.9917
Georgia	.9463
Hawaii	1.3362
Idaho	.9669
Illinois	.9180
Indiana	.9763
Iowa	.9220
Kansas	.8973
Kentucky	.9207
Louisiana	.9216
Maine	.9926
Maryland	1.1028
Massachusetts	1.1722
Michigan	1.1325
Minnesota	.9052
Mississippi	.8751
Missouri	.9156
Montana	.9561
Nebraska	.8130

Table III.—Wage Index for Rural Areas—Continued

Non-SMSA area	Wage index
Nevada	1.0790
New Hampshire	1.0971
New Jersey	1.0820
New Mexico	1.0073
New York	1.0327
North Carolina	.9917
North Dakota	.9045
Ohio	1.0086
Oklahoma	.9111
Oregon	1.0673
Pennsylvania	1.1358
Rhode Island	[1]
South Carolina	.9180
South Dakota	.7990
Tennessee	.8779
Texas	8979
Utah	.8499
Vermont	.9993
Virginia	.9792
Washington	1.0465
West Virginia	1.0111
Wisconsin	.9179
Wyoming	1.0402

[1] Not applicable. All of Rhode Island is classified as urban.

Table IV.—*Cost reporting year adjustment factors* [1]

If the SNF cost reporting period begins—	The adjustment factor is:
Nov. 1, 1981	1.00775
Dec. 1, 1981	1.01550
Jan. 1, 1982	1.02325
Feb. 1, 1982	1.03100
Mar. 1, 1982	1.03875
Apr. 1, 1982	1.04650
May 1, 1982	1.05425
June 1, 1982	1.06200
July 1, 1982	1.06975
Aug. 1, 1982	1.07742
Sept. 1, 1982	1.08509

[1] Based on projected market basket inflation rate of 10.2 percent for 1981, 9.3 percent for 1982, and 9.2 percent for 1983.

If, for any reason, we do not publish a new schedule of limits or do not announce other changes in the current schedule, the current limits would continue in effect. These limits would be increased by .00767 (corresponding to .767 percent) per month, until a new schedule of limits or other provision is issued.

Appendix I.—*Derivation of "Market Basket" index for SNF routine service costs*

Category of costs	Relative [1] importance, 1980	Forecaster,[2] percent changes 1981–83	Price variable used
Payroll expenses	61.31	DRI-CFS	Percentage changes in average hourly earnings of employees in nursing and personal care facility. (SIC 805). Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly), Table C-2.
Food	9.71	DRI-MM	Processed foods and feeds component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
		DRI-MM	Food and beverage component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 22.
Employee benefits	7.91	DRI-MM	Supplements to wages and salaries per worker in nonagricultural establishments. For supplements to wages: Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business*. Table 1.11. For total employment: Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly), Table B-4.
Fuel and other utilities	5.24	DRI-MM	A. Implicit price deflator-consumption of fuel oil and coal (derived from fuel oil component of Consumer Price Index). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, (monthly), Table 7.11.
		DRI-MM	B. Implicit price deflator-consumer of electricity (derived from electricity component of Consumer Price Index). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis.
		DRI-MM	C. Implicit price deflator for natural gas (derived from utility (piped) gas component of Consumer Price Index). Source: Same as electricity above.
		DRI-CFS	D. Water and sewage maintenance component of the Consumer Price Index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Miscellaneous	4.96	DRI-MM	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Other business services	4.87	DRI-MM	Services component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Supplies	3.40	DRI-MM	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Drugs	1.40	DRI-CFS	Pharmaceutical preparations, ethical component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Producer Prices and Price Indexes*, (monthly), Table 6.
Health services	1.20	DRI-CFS	Physician services component of Consumer Price Index for all urban consumers. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.

[1] The basic weights for all major categories of skilled nursing home costs were obtained from the DHEW-National Center for Health Statistics (NCHS) National Nursing Home Surveys (NNHS) for 1972 and 1976 for homes certified for participation in the Medicare program. See *Nursing Home Costs 1972, United States: National Nursing Home Survey, August 1973–April 1974, DHEW, NCHS: National Nursing Home Survey: 1977 Summary for the United States, Vital and Health Statistics, Series 13, Number 43.*

A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. In calendar year 1977 each "price" variable has an index value of 100.0. The relative routine service cost weights change each period in accordance with price changes for each price variable. Cost categories with relatively higher "price" increases get relatively higher cost weights and vice versa.

[2] DRI–CFS refers to Data Resources, Inc., Cost Forecasting Service (CFS 812), 1750 K Street, N.W., Washington, D.C. 20006.

[3] DRI–MM refers to Data Resources, Inc., Marcro Model, (Control 052581), 29 Hartwell Avenue, Lexington, Massachusetts 02173.

(Sections 1102, 1814(b), 1861(v)(1), 1866(a) and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395f(f), 1395x(v)(1), 1395cc(a) and 1395hh)

Dated: September 15, 1981.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 24, 1981.

Richard S. Schweiker,

Secretary.

[FR Doc. 81-28329-Filed 9-29-81; 8:45 am]

BILLING CODE 4110-35-M

federal register

Wednesday
September 30, 1981

Part X

Department of the Treasury

Office of Revenue Sharing

Final Revenue Sharing Regulations

DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

31 CFR Part 51

Final Revenue Sharing Regulations

AGENCY: Office of Revenue Sharing, Treasury.

ACTION: Final rule.

SUMMARY: This final rule contains the amended revenue sharing regulations. The changes made result from the amendments to the Revenue Sharing Act by the State and Local Fiscal Assistance Act Amendments of 1980. This final rule also implements the changes proposed to be made to the regulations on December 31, 1979 (44 FR 77356). The revisions are primarily technical and procedural to conform certain regulations to existing operating procedures, and to lessen the impact of regulations on recipient governments.

EFFECTIVE DATE: October 30, 1981.

FOR FURTHER INFORMATION CONTACT:
Richard S. Isen, Chief Counsel (Designate), Office of Revenue Sharing
or
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SUPPLEMENTARY INFORMATION:

Background

On December 28, 1980, the State and Local Fiscal Assistance Act Amendments of 1980 (Pub. L. 96-604) were enacted to amend the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512), which established the General Revenue Sharing Program. The State and Local Fiscal Assistance Act of 1972 had previously been amended by the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 94-488). The 1980 Amendments extended the General Revenue Sharing Program for three years until the end of the fiscal year 1983 (September 30, 1983). The amendments also eliminated entitlements to State governments, but authorized the appropriation of revenue sharing payments to State governments for fiscal years 1982 and 1983. Payments to State governments were not appropriated for fiscal year 1981. The 1980 Amendments also made certain technical changes to the formula, public participation and audit provisions in the Act. The 1980 Amendments necessitated several changes to the regulations contained in 31 CFR Part 51, which implement the Revenue Sharing Act. Proposed rulemaking was published in the **Federal Register** on July 22, 1981 (46 FR 37717-37722) and comments were requested for 30 days, ending August 22, 1981. Two comments were received and are discussed in the section-by-section analysis contained in an Appendix.

In 1979, the ORS conducted a thorough review of the complete set of regulations contained in 31 CFR Part 51. As a result of the review, notice of proposed rulemaking was published in the **Federal Register** on December 31, 1979 (44 FR 77356-77437) and comments were requested for 60 days, ending February 29, 1980. Over 50 comments were received on the December 31, 1979 proposed rule. The majority of these comments concerned the proposed handicapped discrimination regulations. Approximately 20 comments concerned other provisions of this part and are discussed below in the section-by-section analysis of the regulation contained in an Appendix. The section-by-section analysis combines the significant comments and changes made to the regulations from proposed form to the present final regulation.

Discrimination on the Basis of Handicap and Age

The ORS published final regulations implementing the prohibition against discrimination on the basis of handicap on January 5, 1981 (46 FR 1120). These regulations are contained in a new § 51.55, which implement Section 504 of the Rehabilitation Act of 1973, as amended, the effective date of this section was deferred pending reconsideration pursuant to Executive Order 12291. As a result of the case *Paralyzed Veterans of America* v. *Smith, etc., et al.*, U.S. District Court, Central District of California, No. 79-1979 WPG, certain provisions of the regulations were issued in interim form on August 14, 1981 (46 FR 41047). The provisions of § 51.55 which have not been deferred are published as a part of these regulations.

The proposed rule published on December 31, 1979, also contained a new § 51.56, "Discrimination on the basis of age." This provision concerns a prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended. This provision is currently under review by the Department of Health and Human Services and will be published in final form at a later date. Accordingly, Section 51.56 is reserved at this time.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, (Pub. L. 96-354, hereinafter referred to as the RFA) provides that regulations with significant economic impact on a substantial number of "small entities" should undergo a regulatory flexibility analyses. With respect to the General Revenue Sharing Program, small entities are defined as recipient governments with a population below 50,000.

The final regulations reflect changes in the Revenue Sharing Act made after a review in 1979 pursuant to Executive Order 12044 "Improving Government Regulations." The final regulations also implement the 1980 Amendments to the Revenue Sharing Act made by the State and Local Fiscal Assistance Act Amendments of 1980 (Pub. L. 96-604).

As a result of the 1979 proposed rule, a number of the changes have been made to lessen the impact of rule-making on recipient governments. In Subpart B, public participation and reporting requirements have been amended to expand the coverage of the provisions and eliminate certain reporting requirements. In subpart E the ORS has adopted the EEOC Guidelines and expanded its provisions concerning agreements between agencies in order to ensure consistent and nonduplicative enforcement of the prohibitions against discrimination. Recipient governments will be less likely to be subjected to conflicting or inconsistent requirements. Similarly in Subpart F, reporting provisions regarding audits have been reduced and the waiver provisions have been expanded in coverage.

As mentioned above, the final regulations implement statutory changes made by the 1980 Amendments. The revenue effects of the final regulations, if any, flow directly from the statute, and the regulations impose no additional paperwork, compliance, or financial burdens on recipient governments. The final regulations are primarily interpretative, providing needed guidance to recipient governments with respect to the General Revenue Sharing Program. The final regulations are not expected to have a significant economic impact on small governmental units. Accordingly, the provisions of the RFA were not applicable to this regulatory project, and an initial regulatory flexibility analysis was not required.

Executive Order 12291—"Federal Regulation"

The proposed regulations do not constitute a "major rule" within the meaning of Section 1(b) of Executive Order 12291, entitled "Federal Regulation." A regulatory analysis is not required.

Executive Order 12067—"Providing For Coordination of Federal Equal Employment Opportunity Programs"

These regulations have been reviewed by the Office of Interagency Coordination of the Equal Employment Opportunity Commission, pursuant to Executive Order 12067 "Providing for Coordination of Federal Equal Employment Opportunity Programs." Pursuant to this Executive Order, EEOC has the authority to review other agency's regulations implementing equal employment opportunity programs to insure consistent government-wide enforcement.

Executive Order 12250—"Leadership and Coordination of Nondiscrimination Laws"

The regulations have also been reviewed by the Office of Coordination and Review of the Department of Justice, pursuant to Executive Order 12250 "Leadership and Coordination of Nondiscrimination Laws." Pursuant to this Executive Order, the Department of Justice has authority to review other agencies regulations implementing Federal statutes laws which prohibit discrimination on the basis of race, color, national origin, handicap, religion or sex under any program or activity receiving Federal financial assistance.

31 CFR Part 51, is therefore revised to read as set forth below:

Dated: September 25, 1981.

Michael F. Hill,

Director, Office of Revenue Sharing.

PART 51—FINANCIAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Subpart A—General Information

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51.0 Scope and application of regulations.
51.1 Establishment of Office of Revenue Sharing.
51.2 Definitions.
51.3 Procedure for effecting compliance for violations of provisions other than subpart E.
51.4 Transfer of entitlement funds to secondary recipients.
51.5 Effect of State or local law.
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51.11 Reports to the Director; assurances; procedure for effecting compliance.
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51.15 Amendments or modification to enacted budget.
51.16 Participation by senior citizens.
51.17 Notification of news media.
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Sec.
51.19 Reports to the Bureau of the Census.

Subpart C—Computation And Adjustment Of Entitlement Funds

51.20 Data.
51.21 Data affected by a major disaster.
51.22 Adjusted taxes.
51.23 Dates for finalizing data.
51.24 Boundary changes, governmental reorganization, etc.
51.25 Waiver of entitlement; nondelivery of checks; insufficient data.
51.26 Reservation of funds and adjustment of entitlement.
51.27 State to maintain transfers to local governments.
51.28 Optional formula.
51.29 Notification and adjustment of data factors.
51.30 Adjustment to entitlements; application of adjustments.
51.31 Separate law enforcement officers.
51.32 Population.

Subpart D—Prohibitions And Restrictions On Use Of Funds

51.40 Matching funds.
51.41 Permissible expenditures for local governments.
51.42 Wage rates and labor standards.
51.43 Lobbying.
51.44 Use of entitlement funds for debt retirement.
51.45 Use of entitlement funds in accordance with State or local law.
51.46 Procedure for effecting compliance.

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51.51 Definitions.
51.52 Discrimination prohibited.
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51.54 Discrimination on the basis of sex.
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51.56 [Reserved].
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51.58 Discrimination on the basis of religion.
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51.60 Compliance information and reports.
51.61 Compliance reviews and affirmative action.
51.62 Administrative complaints and investigations.
51.63 Notification to the complainant.
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51.65 Determination by the Director.
51.66 Compliance agreements.
51.67 Resumption of suspended entitlement funds.
51.68 Exhaustion of administrative remedies.
51.69 Agreements between agencies.
51.70 Jurisdiction over property.

Subpart F—Fiscal Procedures And Auditing

51.100 Definitions.
51.101 Procedures applicable to the use of funds.
51.102 Auditing and evaluation.
51.103 Waiver of audit requirement.
51.104 Audits of secondary recipients.
51.105 Reliance upon audits under other Federal laws.
Sec.
51.106 Audit opinions.
51.107 Scope of audits.
51.108 Retention and submission of audit reports and workpapers.
51.109 Procedure for effecting compliance.

Subpart G—Proceedings For Reduction In Entitlement, Withholding, Or Suspension Of Funds

51.200 Scope of subpart.
51.201 Liberal construction.
51.202 Reasonable notice and opportunity for hearing.
51.203 Opportunity for compliance.
51.204 Institution of administrative hearing.
51.205 Complaint for administrative hearing.
51.206 Service of complaint and other papers.
51.207 Answer, referral to administrative law judge.
51.208 Proof; variance; amendment of pleadings.
51.209 Representation.
51.210 Administrative law judge; powers.
51.211 Administrative hearings.
51.212 Stipulations.
51.213 Evidence.
51.214 Depositions.
51.215 Stenographic record; oath of reporter; transcript.
51.216 Proposed findings and conclusions.
51.217 Preliminary finding (for hearings under Subpart E).
51.218 Initial decision of the administrative law judge.
51.219 Certification and transmittal of record and decision.
51.220 What constitutes record?
51.221 Procedures for review of decision of administrative law judge.
51.222 Effect of absence of appeal on review of initial decision of administrative law judge.
51.223 Publicity of proceedings.
51.224 Judicial review.
Appendix—Section-by-Section Analysis.

Authority: State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512), as amended by the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 94-488), the State and Local Fiscal Assistance Act Amendments of 1980 (Pub. L. 96-604), and Treasury Department Order No. 224, dated January 26, 1973 [38 FR 3342] as amended by Treasury Department Order No. 242 (Revision No. 1) dated May 17, 1977.

Subpart A—General Information

§ 51.0 Scope and application of regulations.

(a) *In general.* The rules and regulations in this subpart are prescribed for carrying into effect the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512) applicable to entitlement periods beginning January 1, 1972, and ending December 31, 1976, as amended, by the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 94-488) applicable to entitlement periods beginning January 1, 1977, and ending September 30, 1980, and the State and Local Fiscal Assistance Act

Amendments of 1980 (Pub. L. 96-604) applicable to entitlement periods beginning after October 1, 1980. Subpart A of this part sets forth general information and definitions of terms used in this part. Subpart B of this part prescribes the reporting, public hearing and publication requirements under this part. Subpart C of this part contains rules regarding the computation, allocation and adjustment of entitlements. Subpart D of this part prescribes prohibitions and restrictions on the use of funds. Subpart E of this part contains the nondiscrimination provisions and procedures applicable to programs funded by recipient governments which receive revenue sharing funds. Subpart F of this part prescribes fiscal procedures and auditing requirements. Subpart G of this part contains rules relating to procedure and practice requirements where a recipient government has failed to comply with any provision of this part. A reference to individuals in the feminine or masculine gender shall not be construed to exclude either gender.

(b) *Effect on pending cases.* The procedural provisions of the State and Local Fiscal Assistance Act of 1972, as amended by Pub. L. 94-488 and 96-604 and regulations promulgated thereunder, shall apply to all pending administrative proceedings, including cases commenced by complaints filed prior to January 1, 1977.

§ 51.1 Establishment of Office of Revenue Sharing.

There is established, in the Office of the Secretary of the Treasury, the Office of Revenue Sharing. The Office shall be headed by a Director who shall be appointed by the Secretary of the Treasury. The Director shall perform the functions, exercise the powers and carry out the duties vested in the Secretary of the Treasury by the State and Local Fiscal Assistance Act of 1972, Title I, (Pub. L. 92-512) as amended by the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 94-488) and the State and Local Fiscal Assistance Act Amendments of 1980 (Pub. L. 96-604).

§ 51.2 Definitions.

As used in this part (except where the context clearly indicates otherwise, or where the term is otherwise defined elsewhere in this part) the following definitions shall apply:

(a) "Act" means the State and Local Fiscal Assistance Act of 1972 (Title I of Pub. L. 92-512) approved October 20, 1972, 31 U.S.C. 1221 *et seq.*, as amended by the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 94-488) approved October 13, 1976, and as amended by the State and Local Fiscal Assistance Act Amendments of 1980 (Pub. L. 96-604) approved December 28, 1980.

(b) "Chief executive officer" of a unit of local government means the elected official, or the legally designated official, who has the primary responsibility for the conduct of that unit's governmental affairs. Examples of the "chief executive officer" of a unit of local government may be: The elected mayor of a municipality, the elected county executive of a county, the chairman of a county commission or board in a county that has no elected county executive, the township supervisor, trustee, first selectman, chairman, city manager, or such other official as may be designated pursuant to law by the duly elected governing body of the unit of local government; or the chairman, governor, chief or president (as the case may be) of an Indian tribe or Alaskan native village.

(c) "Department" means the Department of the Treasury.

(d) "Director" means the Director of the Office of Revenue Sharing.

(e) "Entitlement funds" means the amount of revenue sharing payments to which a State government or unit of local government is entitled as determined by the Director pursuant to an allocation formula contained in the Act and as established by regulations under this part, including the interest earned on entitlement funds deposited in financial institutions prior to their use, obligation or appropriation.

(f) "Entitlement period" means one of the following periods of time:

(1) Entitlement Period One is the 6-month period beginning January 1, 1972, and ending June 30, 1972.

(2) Entitlement Period Two is the 6-month period beginning July 1, 1972, and ending December 31, 1972.

(3) Entitlement Period Three is the 6-month period beginning January 1, 1973, and ending June 30, 1973.

(4) Entitlement Period Four is the Federal fiscal year beginning July 1, 1973, and ending June 30, 1974.

(5) Entitlement Period Five is the Federal fiscal year beginning July 1, 1974, and ending June 30, 1975.

(6) Entitlement Period Six is the Federal fiscal year beginning July 1, 1975, and ending June 30, 1976.

(7) Entitlement Period Seven is the 6-month period beginning July 1, 1976, and ending December 31, 1976.

(8) Entitlement Period Eight is the 9-month period beginning January 1, 1977, and ending September 30, 1977.

(9) Entitlement Period Nine is the Federal fiscal year beginning October 1, 1977, and ending September 30, 1978.

(10) Entitlement Period Ten is the Federal fiscal year beginning October 1, 1978, and ending September 30, 1979.

(11) Entitlement Period Eleven is the Federal fiscal year beginning October 1, 1979, and ending September 30, 1980.

(12) Entitlement Period Twelve is the Federal fiscal year beginning October 1, 1980, and ending September 30, 1981.

(13) Entitlement Period Thirteen is the Federal fiscal year beginning October 1, 1981 and ending September 30, 1982.

(14) Entitlement Period Fourteen is the Federal fiscal year beginning October 1, 1982, and ending September 30, 1983.

(g) "Funded" means entitlement funds have been or are being made available for expenditure in or substantially benefited a program or activity of a recipient government or a secondary recipient.

(h) "Governor" means the Governor of any of the 50 State governments or the Mayor of the District of Columbia.

(i) "Indian tribes or Alaskan native villages" means an Indian tribe and Alaskan native village which has a recognized governing body and which performs substantial governmental functions. Certification to the Director by the Secretary of the Interior (or by the Governor of a State in the case of a State affiliated tribe) that an Indian tribe or an Alaskan native village has a recognized governing body and performs substantial governmental functions, shall constitute *prima facie* evidence of that fact.

(j) "Lobbying" means the personal solicitation of members of a legislative body by representatives of the recipient government or their agents for the purpose of influencing pending or proposed legislation regarding the provisions of the Act.

(k) "Program or activity" means the operations of the agency or organizational unit of a recipient government or the operations or organizational unit of a secondary recipient funded with entitlement funds (examples include, but are not limited to a police department, department of corrections, health department, or a division of a public or private corporation).

(l) "Recipient government" means a State government or unit of local government, the District of Columbia, Indian tribe, Alaskan native village, as defined in this section, or the office of the separate law enforcement officer for any parish in the State of Louisiana, other than the Parish of Orleans, which

directly receives entitlement funds, except as otherwise provided.

(m) "Secondary recipient" means:

(1) Any State government, unit of local government, any political subdivision of any State or local government, any public or private agency, institution, organization or other entity which receives entitlement funds, in whole or in part, from a recipient government either:

(i) By a contract or other arrangement pursuant to which such other entity shall conduct, deliver or otherwise participate or assist in the conduct or delivery of a program or activity of the recipient government;

(ii) By a grant or other arrangement with the recipient government intended to provide financial assistance to such other entity under a program or activity.

(2) "Secondary recipient" shall not include a construction contractor or any other private or governmental entity from which a recipient government only acquires real or personal property (e.g supplies, equipment and materials) by such means as purchasing, renting, leasing, or bartering. Secondary recipient also shall not include persons who are the ultimate beneficiaries of a recipient government's programs or activities.

(n) "Secretary" means the Secretary of the Treasury.

(o) "State government" means the government of any of the 50 State governments or the District of Columbia.

(p) "Unit of local government" means the government of a county, municipality, or township, which is a unit of general government as determined by the Bureau of the Census for general statistical purposes. The term "unit of local government" shall also include the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions. The District of Columbia, in addition to being treated as a State, shall also be treated as a county area which has no units of local government (other than itself) within its geographic area.

§ 51.3. Procedures for effecting compliance for violations of provisions other than subpart E.

(a) *Investigations.* (1) The Director shall establish procedures to reasonably assure than an investigation of a complaint, relating to possible violation of the provisions of this part (other than Subpart E) is completed and a decision is made as to whether the recipient government is in noncompliance with the Act. The procedures shall provide for the investigation and decision to be made within 180 days of receipt of the complaint.

(2) The scope of the investigation is not necessarily limited to the complaint, but may include any matters covered under the Act either discovered during the investigation or reasonably flowing from the complaint.

(b) *Compliance review or audit.* The Director may periodically conduct audits or reviews of compliance with the provisions of this part (other than Subpart E) based upon receipt of audit reports or other information, which shall be completed within one year after initiation.

(c) *Notice of Noncompliance.* After the completion of an investigation, compliance review or audit, the Director shall decide whether the recipient government has complied with the provisions of the Act. If the decision is that the recipient government has substantially failed to comply with the Act, the Director shall provide the appropriate notice(s) of noncompliance which inform the recipient government of the corrective action necessary to achieve compliance and take appropriate steps to secure compliance.

(d) *Opportunity for hearing.* Whenever a recipient government fails to enter into a compliance agreement after receipt of appropriate notice(s) of noncompliance, the Director shall initiate an administrative hearing and, if appropriate, issue a determination of noncompliance pursuant to the provisions of Subpart G of this part. If a violation is found after such administrative hearing, the administrative law judge shall issue an initial decision that the recipient government is in noncompliance with the provisions of the Act and the Director shall withhold the further payment of entitlement funds, unless corrective action is taken within 60 days of the notification of the determination.

(e) *Delay and constructive waiver of entitlement payments.* (1) The failure of a recipient government to comply with the assurance and reporting requirements of Subparts B and F of this part which include submission of reports and assurances and response to specific requests for information concerning possible violation of the Act, may result in the delay of the further payment of entitlement funds until the assurance, report or information requested is received. A delay of the payment of entitlement funds shall not be subject to the procedures for affecting compliance set forth in paragraphs (a) through (d) of this section.

(2) The Director may, after the payment of entitlement funds have been delayed for one or more of the entitlement periods pursuant to paragraph (e)(1) of this section, determine that the payments to the recipient government for a particular entitlement period are constructively waived pursuant to § 51.25(b) of this part. Entitlement payments constructively waived will no longer be available to the recipient government. The constructive waiver shall not be subject to the procedures for effecting compliance set forth in paragraph (a) of this section or in Subpart E of this part.

§ 51.4. Transfer of entitlement funds to secondary recipients.

(a) *Restrictions, prohibitions and requirements applicable to secondary recipients.* The prohibitions, restrictions and requirements set forth in Subparts D, E, and F of this part that are applicable to a recipient government's use and expenditure of entitlement funds are also applicable to the expenditure of entitlement funds transferred to a secondary recipient by the primary recipient government. Any failure by a secondary recipient to comply with any provision of Subparts D, E, and F shall constitute noncompliance with such subparts by the primary recipient government. The Director shall effect compliance by taking appropriate enforcement action against the primary recipient government pursuant to Subpart A, E or G of this part.

(b) *Responsibilities of the primary recipient government for compliance by secondary recipient.* It is the responsibility of the primary recipient government to inform the secondary recipient of the requirements of this part and monitor its compliance. If the secondary recipient fails or refuses to comply with the restrictions and prohibitions or requirements applicable to the expenditure of entitlement funds, the primary recipient government responsible for achieving compliance may be required to withdraw funding in order to achieve compliance.

§ 51.5 Effect of State or local law.

Any State or local law, ordinance or regulation that substantially impedes compliance by a recipient government with the provisions of this part, shall be inoperative to the extent necessary to achieve such compliance or remedy.

§ 51.6 Applicability of other Federal laws.

Except as otherwise provided in the Act or this part, entitlement funds are not subject to Federal civil laws applicable only to Federally assisted programs or to Federal grants, loans or contracts. The Criminal Code of the

United States (Title 18, U.S.C.) shall be applicable to all criminal offenses relating to the expenditure, accounting or reporting of entitlement funds by a recipient government or secondary recipient of such funds under the Act or this part.

Subpart B—Assurances, Reports, and Public Participation

§ 51.10 Definitions.

As used in this subpart (except where the context clearly indicates otherwise) the following definitions shall apply:

(a) "Budget" means a plan for the overall allocation of funds, including entitlement funds, by a recipient government to various purposes during a specified fiscal period in accordance with its State and local law and procedure. A recipient government that does not formally adopt or enact such a plan, shall be deemed to have adopted or enacted a budget for purposes of this subpart when it has adopted or enacted a resolution, ordinance, or appropriation act, or taken other action dedicating, setting aside, or otherwise designating entitlement funds for a particular purpose or use.

(b) "Budget summary" means categories of expenditures for entitlement funds and general funds classified by major function and activity in accordance with the recipient government's State or local laws and procedures. Where there is no State or local law or procedure prescribing the expenditure classifications, the recipient government shall use the classifications of the Bureau of the Census.

(c) "Enacted" means, in the budget context, the act of final adoption, ratification, confirmation or other action with respect to an approved budget that makes the budget the official expenditure authorization of the recipient government. Where a State board or agency has statutory authority to review or approve the budget of a unit of local government, enacted means the final action of the unit of local government.

(d) "Entitlement funds" means the amount of revenue sharing payments to which a State government or unit of local government is entitled as determined by the Director pursuant to an allocation formula contained in the Act and as established by regulations under this part, including the interest earned on entitlement funds deposited in financial institutions prior to their use, obligation or appropriation.

(e) "Executive authority" means the chief executive officer or other elected or appointed official of the recipient government whose statutory responsibility is to assemble budget data and prepare the budget document for presentation to the legislative body for enactment or approval.

(f) "Fiscal year" means the 12-month period or other fiscal period on the basis of which the recipient government operates.

(g) "Impractical" means, with respect to the publication requirement, that a newspaper of general circulation is available to the citizens of a recipient government but is not generally subscribed to or read within the community.

(h) "Infeasible" means, with respect to the publication requirement, that a newspaper of general circulation is not available or does not serve the citizens of a recipient government.

(i) "Legislative body" means the elected officials of the recipient government who have the primary legal responsibility for enacting the budget. A quorum or the minimum number of legislative officials needed to legally transact business, as determined by State and local law shall constitute the legislative body.

(j) "Presented" means, in the budget context, the submission of a proposed budget to the legislative body having primary legal responsibility for enacting the budget of a recipient government.

(k) "Public hearing" means an open public meeting called by a recipient government to provide all residents (without regard to taxpaying voting status or handicap) with an opportunity to offer written and oral comments regarding the subject to be discussed. A public hearing required under this subpart may be held concurrently with other meetings held by the recipient government for public purposes (such as town meetings, budget sessions and other regular meetings), provided that the recipient government complies with the public notice requirements of this subpart.

(l) "Publication" means giving notice or advising the public, and making information known to the citizens of the recipient government.

(m) "Use report" means a report required by the Director from each recipient government showing the amounts and purposes for which entitlement funds have been used in relation to the relevant functional items in the recipient government's budget.

§ 51.11 Reports to the Director; assurances; procedure for effecting compliance.

(a) *In general.* The Director may require each recipient government to submit such annual and interim reports as may be necessary to provide a basis for evaluation and review of compliance with, and effectiveness of, the provisions of the Act and regulations of this part. Such reports requested by the Director shall include the documentation necessary to support the statements contained therein.

(b) *Retention of documentation concerning public participation requirements.* Documentation establishing compliance with the assurance, reporting and public hearings requirements of this subpart, e.g., the publication of notices, and supplementary information and the availability of required information for public inspection, shall be retained for at least one year and made available to the Director upon request.

(c) *Requisite assurances for receipt of entitlement funds.* In order to qualify for entitlement funds for an entitlement period, the chief executive officer of each recipient government, when requested by the Director, shall file a Statement of Assurances on a form to be provided. The Statement of Assurances will state the recipient government's intention to comply with specified requirements, prohibitions and restrictions of the Act and of Subparts B, D, E, and F of this part, with respect to the use of entitlement funds. The Director will afford the Governor of each State an opportunity for review and comment to the Office of Revenue Sharing on the adequacy of the assurance by units of local government, other than Indian tribes and Alaskan native villages, located in that State.

(d) *Procedure for effecting compliance.* (1) If a recipient government fails to comply with the public participation requirements of this subpart, the Director shall apply the procedures for effecting compliance set forth in §§ 51.3 (a) through (d) of Subpart A and hearing procedures of Subpart G of this part.

(2) If the recipient government fails to comply with the assurance and reporting requirements of this part, the Director may implement the delay of payment and/or constructive waiver provisions of § 51.3(e) of Subpart A and § 51.25(b) of Subpart C of this part.

§ 51.12 Use reports.

(a) *In general.* Each recipient government shall submit a report to the Director (or to the Bureau of the Census or other agency that the Director may designate) setting forth the amounts and purposes for which entitlement funds have been appropriated, spent or obligated during its fiscal year. Such report shall also show the relationship of the entitlement funds to the relevant

functional items in the recipient government's budget and shall identify differences between the actual use of entitlement funds and the use of such funds as planned in the enacted budget. The report shall be filed on the form prescribed and approved by the Director and shall be submitted within the requested time period. Failure to file the report as prescribed by the Director may jeopardize future entitlement payments pursuant to § 51.3(e).

(b) *Public inspection.* A copy of the use report and documentation necessary to support the statements contained therein shall be made available to any person for a period of three years. Within 10 days after the use report is filed, this information shall be placed at the principal office of the recipient government for public inspection during normal business hours. Where feasible, local public libraries and other public buildings should be used also. If the recipient government has no principal office, the report and supporting documentation shall be made available for public inspection at a public place or places within the political boundaries of the recipient government to satisfy the requirements of this paragraph.

(c) *Notice of availability of use reports.* The recipient government shall publish a notice which indicates that the actual use report is available for public inspection within 10 days of the filing of the report with the Director or other designated agency. Such notice shall specify the location(s) and hours during which the report and its supporting documentation are available to the public. Publication of the notice shall be made in a newspaper of general circulation serving the recipient government's geographic area. Where newspaper publication is impractical or infeasible, alternative methods of publication shall be used as provided in § 51.13(c)(2).

(d) *Submission of use reports to Governor.* The Director (or such agency as the Director may designate) shall furnish the reports required under paragraph (a) of this section, except those reports relating to Indian tribes and Alaskan native villages, to the Governor of the State in which a recipient government is located, in the manner and form prescribed by the Director.

§ 51.13 Proposed use hearing.

(a) *In general.* Each recipient government which expends entitlement funds in any fiscal year, pursuant to each budget enacted on or after January 1, 1977, shall, prior to such enactment, have at least one public hearing on the possible uses of such funds. Subsequently, the recipient government shall have at least one public hearing on the budget as proposed by the executive authority as described in § 51.14. At the proposed use hearing, all citizens of the recipient government shall have the opportunity to provide the executive authority with written and/or oral comments and suggestions as to the possible uses of entitlement funds. The proposed use hearing shall be conducted not less than seven calendar days before the proposed budget is presented to the legislative body for enactment.

(b) *Public notice*—(1) *Publication of notice.* Notice of the proposed use hearing shall be published in at least one newspaper of general circulation serving the recipient government's geographic area, no later than 10 days prior to the scheduled date of the hearing.

(2) *Contents of notice.* The notice shall include the date, place, and time of the hearing, the amount of unappropriated entitlement funds in the recipient government's revenue sharing trust fund, and the amount of entitlement funds which the recipient government expects to receive during its fiscal year. In addition, the notice shall specify that citizens attending the public hearing shall have the right to provide written and oral comments and suggestions as to the possible uses of entitlement funds.

(c) *Waiver of proposed use hearing and notice requirements; alternative method of publication*—(1) *Waiver of hearing requirement due to cost.* The Director, upon written application by the chief executive officer of a recipient government, may grant a waiver of the proposed use hearing requirements for one or more entitlement periods, if it can be determined from the facts submitted that the unavoidable expenses associated with holding the proposed use hearing would exceed fifteen (15) percent of the recipient government's entitlement received during the applicable entitlement period. An itemized cost estimate, which specifically describes the unavoidable expenses, must accompany the waiver application. For purposes of this paragraph, "unavoidable expenses" are those incurred in holding the public hearing, such as space, furniture and equipment rentals, overtime compensation, and similar direct costs including the costs of publication of the public notice verified by a newspaper. The waiver must be requested and approved before the proposed appropriation of entitlement funds occurs.

(2) *Waiver of publication requirement.* The newspaper publication requirements for the notice of the proposed use hearing may be waived by the Director upon written application by the chief executive officer of the recipient government. The application shall indicate the circumstances making newspaper publication impractical or infeasible, and provide for an alternative method of notification which informs citizens of the recipient government of the date, place, time, and subject of the public hearing. The waiver must be requested and approved before the proposed appropriation of entitlement funds occurs.

(3) *Waiver of proposed use hearing and publication requirements where hearing is based upon projections.* A recipient government shall not be required to conduct an additional hearing under paragraph (a) of this section concerning entitlement funds appropriated for entitlement period twelve where:

(i) The hearing was held prior to December 28, 1980, and,

(ii) The recipient government used reasonable projections as to the amounts of entitlement funds to be received during entitlement period twelve to determine the amount of entitlement funds subject to the budget process.

§ 51.14 Budget hearing.

(a) *Budget hearing requirement.*—(1) *In general.* Each recipient government which expends entitlement funds in any fiscal year pursuant to a budget enacted on or after January 1, 1977 shall, after the proposed use hearing, have at least one public hearing on the government's proposed uses of entitlement funds in relation to its entire budget (i.e., the general revenues and all other funds proposed for appropriation during the fiscal period). The budget hearing shall be conducted by the legislative body, or the appropriate committee thereof, prior to enactment of the budget. The number of representatives of the legislative body required to be present at the hearing is the same as that required for a budget hearing under State or local law. All citizens of the recipient government shall have a reasonable opportunity to provide written and oral comments, and to ask questions concerning the entire budget and the relationship of entitlement funds to the entire budget. The budget hearing required by this paragraph shall be held at a date, place, and time and in a manner that permits and encourages public attendance and participation by all citizens.

(2) *Recipient government with bicameral legislature.* For those recipient governments which have a bicameral legislature, the hearing shall

be held before the appropriate committee in each house of the legislature, or before an appropriate joint committee of both houses of the legislature.

(b) *Alternative procedures for budget hearing.* A recipient government may use an alternative budget hearing process without obtaining prior approval from the Director if it complies with the public notice requirements contained in paragraph (c) of this section and if:

(1) The recipient government, pursuant to State or local law, governing the expenditure of its own revenues, is required to follow a budget procedure which requires a public hearing that provides all citizens the opportunity to provide oral and written comments and ask questions concerning the proposed use of all revenues to be budgeted by the recipient government, including the use of entitlement funds and their relationship to the entire budget; and

(2) Documentation that the recipient government's alternative budget hearing procedures comply with State or local law shall be made available for public inspection during normal business hours at the principal office of the recipient government and submitted to the Director upon request;

(c) *Public notice and inspection.* (1) Notice of the budget hearing shall be published in a newspaper of general circulation serving the recipient government's geographic area no later than 10 days prior to the scheduled date of the hearing. The notice shall specify the date, place, and time of the public hearing, and that all citizens attending the hearing have the right to provide written and oral comments and ask questions concerning the entire budget and the relationship of entitlement funds to the entire budget. The notice shall state how, in the context of its proposed budget, the recipient government intends to use its entitlement funds, and shall require a budget summary of its entire proposed budget. In addition, the notice shall advise when and where the above information, together with a copy of the entire proposed budget, shall be made available for public inspection.

(2) At least 10 days prior to the revenue sharing budget hearing a recipient government shall make available for public inspection during normal business hours, at the principal office of such government, a statement of the government's proposed uses of entitlement funds in the context of its proposed budget, a summary of the entire proposed budget, which describes the uses proposed for entitlement funds, general revenues and other funds, and a copy of its entire proposed budget. If a recipient government has no principal office, then making the above materials available at a public place within the political boundaries of the recipient government shall satisfy the requirements of this paragraph. Where feasible, local public libraries and other public buildings should be used for the purpose of providing additional places for public inspection of these materials.

(d) *Modification of time limitation for public notice and inspection.* Whenever State or local law provides for a specified time period within which a recipient government is required to publish notice of a budget hearing or to permit public inspection of its proposed budget for a specified time period, the recipient government shall comply with the time period for publication or public inspection required by its State or local law, provided that it is not less than three (3) working days.

(e) *Waiver of newspaper publication; alternative forms.* (1) The requirement, that notice of the budget hearing and the summary of the proposed budget be published in a newspaper, may be waived by the Director upon receipt of a written request by the chief executive officer of the recipient government. The request shall include an itemized cost estimate verified by a newspaper, which shows how the cost of publication will exceed fifteen (15) percent of the amount of entitlement funds included in the proposed budget. In addition, the request shall propose an alternative method of publication which provides the citizens of the jurisdiction with adequate notice of the budget hearing and the opportunity to review the budget summary. Any alternative method of publication shall meet the time requirements and include the information required by this section.

(2) When newspaper publication of the notice of the budget hearing and the budget summary is impractical or infeasible, the Director may waive the newspaper publication requirement upon receipt of a written request by the chief executive officer of the recipient government. The request shall indicate the circumstances which make publication in a newspaper impractical or infeasible and shall propose an alternative method of publication. The waiver must be requested and approved before the proposed appropriation of entitlement funds occurs.

(f) *Waiver of budget hearing and publication requirements where hearing is based upon projection.* A recipient government shall not be required to conduct an additional hearing under paragraph (a) of this section concerning entitlement funds appropriated for entitlement period twelve where:

(1) The hearing was held prior to December 28, 1980, and

(2) The recipient government used reasonable projections as to the amounts of entitlement funds to be received during entitlement period twelve to determine the amount of entitlement funds subject to the budget process.

(g) *Summary of enacted budget.* Within 30 days after enactment of a budget as provided by State or local law, a summary of the enacted budget showing the intended uses of entitlement funds and information necessary to support the information and data in the summary shall be made available for public inspection during normal business hours at the principal office of the recipient government. If a recipient government has no principal office, the summary of the enacted budget and the enacted budget document shall be made available for public inspection at a public place within the political boundaries of the recipient government to satisfy the requirements of this paragraph. Where feasible, local public libraries and other public buildings should be used for the purpose of providing additional places at which the public may inspect the budget summary and the enacted budget.

(h) *Published notice of availability of summary of enacted budget.* Public notice shall be published in a newspaper of general circulation serving the geographic area of the recipient government within 30 days after enactment of the budget. The notice shall state where the when the summary of the enacted budget is available for public inspection. Where newspaper publication is impractical or infeasible alternative methods of publication shall be used as provided in § 51.13(c)(2).

§ 51.15 Amendments or modification to enacted budget.

(a) *Amendments or modification pursuant to State or local law.* Where applicable State or local law exists which governs amendments or modification of existing budgets, and requires public notice, at least one public hearing, and the availability of the amendments or modifications for public inspection, the recipient government shall comply with the State or local law when making a major change to an enacted budget.

(b) *Amendment or modification in absence of State or local law.* In the absence of applicable State or local law, the provisions of § 51.14 shall apply to any amendment, modification or

revision of an enacted budget when a major change is proposed.

(c) *Major change defined.* For the purposes of this section, a major change is any change in the enacted budget which, on a cumulative basis, affects the use of more than $2,000 of entitlement funds and affects 25% or more of the entitlement funds as originally enacted in the budget of the recipient government. An amendment or modification that does not meet both criteria shall not be considered a major change.

§ 51.16 Participation by senior citizens.

A recipient government shall endeavor to provide senior citizens, and organizations representing the interests of senior citizens, with an opportunity to be heard and present their views regarding the use of entitlement funds, in any hearing or proceeding required under this subpart or under its own budget processes, prior to final allocation of such funds.

§ 51.17 Notification of news media.

Each recipient government shall advise the news media, including minority, bilingual and foreign language news media, serving its geographic area and shall provide the news media with copies of reports, notice, or budget information on request, at the same time that any public report, notice of hearing or budget information is required to be published in a newspaper under this subpart.

§ 51.18 Legal notice rules not applicable.

Whenever any section of this subpart requires the newspaper publication of a report, public notice, budget summary, or any other required information, the recipient government may publish the required information in a newspaper of general circulation serving its geographic area without regard to State or local statutory requirements for the publication of legal notices. Prominently displayed advertisements or news articles may be used to provide newspaper notice required by this subpart. Such article or advertisement must contain all of the required information.

§ 51.19 Reports to the Bureau of the Census.

It shall be the obligation of each recipient government to comply promptly with requests by the Bureau of the Census (or by the Director) for data, information and reports relevant to the determination of entitlement allocations or use of entitlement funds. Failure of any recipient government to comply may place in jeopardy its receipt of entitlement funds.

Subpart C—Computation and Adjustment of Entitlement Funds

§ 51.20 Data.

(a) *In general.* The data used in determination of allocations and adjustments to allocations, payable under this part, will be the latest and most complete data supplied by the Bureau of the Census, the Bureau of Indian Affairs, the Bureau of Economic Analysis and the Internal Revenue Service which are available prior to the allocations for an entitlement period unless, in the judgment of the Director, the data provided by those agencies are not current enough or are not comprehensive enough to provide for equitable allocations.

(b) *Computation and payment of entitlements.* (1) Allocations will not be made to any unit of local government if the available data is so inadequate as to frustrate the purpose of the Act. Such units of local government will receive an entitlement and payment when current and sufficient data become available to permit an equitable allocation.

(2) Payment to units of local government for which the Director has not received an address confirmation will be delayed until proper information is available to the Director.

(3) Where the Director determines that the data provided by the agencies listed in paragraph (a) of this section are not sufficiently current or comprehensive enough to provide for equitable allocations, the Director may authorize the use of other data, including estimates. The Director's determination shall be final and such other additional data and estimates as are used, including the sources, shall be publicized by notice in the **Federal Register.**

(4) *Currency of tax collection.* Only that tax collection data, which is received in the most recent reporting year available from the appropriate agencies prior to the allocation for an entitlement period, shall be used in the determination of entitlements for that entitlement period, except as provided in § 51.21.

(c) *Special rule for less than one year entitlement periods.* For entitlement periods which encompass less than one year, the adjusted taxes and intergovernmental transfers of any unit of local government for the entire reporting year will be used. The limitation that the amount allocated to a recipient government shall not exceed 50% of the sum of the recipient government's adjusted taxes and intergovernmental transfers of revenues shall be reduced proportionately for entitlement periods which are less than one year.

(d) *Units of local government located in more than one county area.* In cases where a unit of local government is located in more than one county in one or more States, each part of that unit in each county is treated for allocation purposes as a separate unit of local government, and the adjusted taxes and intergovernmental transfers of such parts are estimated on the basis of the ratio which the population of that part bears to the entire population of the local government. Parts of a unit with population below 100, however, need not be treated for allocation purposes as a separate unit of local government.

§ 51.21 Data affected by major disaster.

(a) *In general.* Any change in data otherwise eligible for use in determining the entitlement of a recipient government after April 1, 1974, shall be disregarded for a period of 60 months if that change:

(1) Resulted from a major disaster as determined by the President under section 301 of the Disaster Relief Act of 1974 (Section 414 of Pub. L. 93-288); and

(2) Results in a data factor which is less beneficial to the recipient government than the pre-disaster data factor for purposes of the revenue sharing allocation process.

(b) *Pre-disaster data factor.* For the purposes of this section, a pre-disaster data factor is defined as a data factor of record for the final revenue sharing allocation which was calculated for a time period immediately preceding the data factor time period in which the disaster occurred and, therefore, could not have been affected by the disaster.

(c) *Eligibility requirements.* To be eligible for the data stabilization benefits of paragraph (a) of this section, a recipient government shall be:

(1) Located within a State designated by the President as a major disaster area; and

(2) Located within a geographical subdivision of the State certified to the Office of Revenue Sharing as a major disaster area by the Administrator of the Federal Emergency Management Agency;

(3) Each recipient government within the specific geographic area so designated will be notified, pursuant to the data improvement program provided for in § 51.29, of each of its data factors developed subsequent to the major disaster designation, which are less beneficial than the pre-disaster data factors. The chief executive officer of

the recipient government must verify that the data was adversely affected by the major disaster. In addition, the Director may require that the verifications be accompanied by substantiating documentation which establishes the causal relationship between the major disaster and the current beneficial revenue sharing data factor of record. The Director, upon being satisfied that all of the requirements of this section have been met with respect to any post-disaster data factor, shall refrain from using the post-disaster data factor in the allocation process of an entitlement period, and shall continue to use the pre-disaster data factor in the allocation process for each entitlement period that begins during the 60-month period after the President's designation of the specific major disaster area unless:

(i) A data factor for a current entitlement period is more beneficial than the pre-disaster data factor; or

(ii) A post-disaster data factor of an entitlement period is not verified by the chief executive officer as having been adversely affected by the major disaster;

(iii) The Director determines that the data used for revenue sharing allocations in a State has been significantly affected by other causes subsequent to the disaster declaration by the President. In such cases, the Director will determine the entitlement of a recipient government affected by a major disaster by using current data of record, reasonably adjusted to account only for the effects of the disaster.

(d) *Multiple disasters.* Recipient governments may be in areas designated by the President as specific major disaster areas as the result of two or more disasters. Recipient governments in such areas will also be provided their appropriate pre-disaster data for vertification. The 60-month period for which more beneficial pre-disaster data may be used for a government shall be determined by the most recent designation by the President of a specific major disaster area containing that government.

(e) *Effect on later entitlement periods of failure to verify.* A recipient government which does not verify that an adverse data change is caused by a disaster in an entitlement period when it was afforded an opportunity to do so does not lose the opportunity to verify in a later entitlement period that a disaster has affected the data factor for that later entitlement period.

(f) *Per capita income data.* Increases in per capita income data subsequent to disasters in designated disaster areas will not be considered adverse data changes resulting from a disaster for purposes of section 145 of the Act.

(g) *60-month period.* The post-disaster data factor shall be used for the first entitlement period beginning after the end of the 60 months referred to in § 51.21(a).

§ 51.22 Adjusted taxes.

(a) *In general.* Tax revenues are compulsory contributions to a unit of local government exacted for public purposes, as such contributions are determined by the Bureau of the Census for general statistical purposes. The term "adjusted taxes" means the tax revenues adjusted by excluding an amount equal to that portion of the compulsory contributions which is properly allocable to school operations, debt service on school indebtedness, school capital outlays, and other educational purposes.

(b) *Procedure for exclusion of tax revenues for education.* The tax revenues exacted by a unit of local government shall be adjusted to exclude any such tax revenues used for financing education in a manner consistent with the following provisions:

(1) Where a unit of local government finances education from a specific fund and lists tax revenues to the fund or levies a separate tax for purposes of education, this amount will constitute the tax revenues for education.

(2) If tax revenues for purposes of education are not separately identifiable because education is financed by expenditure or transferring of moneys from a general fund (or similarly named fund) to a school fund or funds, then the ratio of tax revenues (as defined in paragraph (a) of this section) to the total revenues in the fund shall be calculated, and that ratio, multiplied by the expenditure of transfer of non-dedicated moneys from the fund to the school fund, shall be equated with the tax revenues properly allocable to expenses for education. The phrase "total revenues in the fund" means cash and securities on hand in the general fund (or similarly named fund) at the beginning of the fiscal year, plus all non-dedicated revenues to the fund (other than trust or agency revenues) less cash and securities on hand at the end of the fiscal year. Trust and agency funds are those held specifically for individuals or governments for which no discretion can be exercised as to the amounts to be paid to the recipient.

(3) If any instance where neither paragraph (b) (1) nor (2) of this section permits determination of school taxes, then any procedure deemed equitable by the Director shall be utilized to ascertain adjusted taxes.

(c) *Validity of adjusted tax data.* Allocation of funds under the Act will be based on data reported by States and units of local government to the Bureau of the Census and shall be in accordance with definitions established by the Bureau. No State or unit of local government shall report to the Department of the Treasury or the Bureau of the Census in a manner which attempts to circumvent or frustrate the intent of this section.

§ 51.23 Dates for finalizing data.

(a) *Data definitions.* Pursuant to the provisions of § 51.20 (a) and (b)(3), the determination of the data definitions upon which the allocations and entitlements for an entitlement period are to be calculated shall be made no later than the day immediately preceding the beginning of the entitlement period. The final data definitions published in the **Federal Register**, prior to each entitlement period, shall not be subject to change.

(b) *Memphis Rule.* Any change in the computation of local tax effort to credit county sales taxes to units of local government pursuant to section 109(e)(2)(B) of the Act (the "Memphis Rule") will be considered to be a change in a data definition and will not be given effect for any entitlement periods for which there are final data definitions.

(c) *Initial allocation.* The date upon which initial allocations for an entitlement period are calculated for payment purposes shall be determined by the Director as soon as practicable and shall be publicized by notice in the **Federal Register.**

(d) *Adjusted taxes and intergovernmental transfers.* The date for determining the amount of adjusted taxes and intergovernmental transfers of a unit of local government will be the fiscal year that can be uniformly assembled for all units of local government prior to the beginning of the affected entitlement period.

§ 51.24 Boundary changes, governmental reorganization, etc.

(a) *In general.* A boundary change, governmental reorganization, or change in State statutes or constitution, relevant to the computation of entitlement of a unit of local government under the Act, which occurs during an entitlement period shall not result in a change to the entitlement of that government until the next entitlement period. However, payment(s) tendered to such government for the entitlement period may be redistributed pursuant to the provisions of paragraphs (b) and (c) of this section.

(b) *New units of local government.* A unit of local government which came into existence as an active government during an entitlement period shall first be eligible for an allocation for the next entitlement period. A new unit of local government must establish its eligibility for an entitlement period within one year after the end of that period by providing documentation of its boundaries, State certification and its activation date to the ORS or the Bureau of the Census. However, if such unit is a successor government, it shall be eligible to receive the entitlement payment of the unit or units of local government which it succeeded in accordance with the conditions of the succession.

(c) *Dissolution of units of local government.* A unit of local government which dissolved, was absorbed or ceased to exist as such during an entitlement period is eligible to receive an entitlement payment for that entitlement period: *Provided,* That such unit of local government is in the process of winding down its governmental affairs or a successor unit of local government has the legal capacity to accept and use such entitlement funds. Entitlement payments which are returned to the Director because of the cessation of existence of a unit of local government shall be placed in the State and Local Government Fiscal Assistance Trust Fund until such times as they can be redistributed according to the conditions under which the unit of local government ceased to exist. An entitlement payment not used by a dissolved unit of local government or its successor government or governments shall be added to and shall become a part of the entitlement of the next higher eligible unit of government in that State. If that government cannot receive the entitlement funds, they shall be added to the appropriate State reserve.

(d) *Limitations on adjustment for annexations.* Annexations by units of local government shall not affect the entitlement of any unit of local government for an entitlement period, unless the Director determines that adjustments pursuant to such annexations would be equitable and would not be unnecessarily burdensome, expensive, or otherwise impracticable.

(e) *Certification.* Units of local government affected by a boundary change, governmental reorganization, or change in State statutes or constitution shall, before receiving an entitlement adjustment or payment redistribution pursuant to this section, obtain State certification that the change was accomplished in accordance with State law. The certifying official shall be designated by the Governor, and the certification shall be submitted to the Bureau of the Census.

§ 51.25 Waiver of entitlement; nondelivery of checks; insufficient data.

(a) *Waiver.* Any unit of local government or Indian tribe or Alaskan native village may waive its entitlement for any entitlement period: *Provided,* That the chief executive officer, with the consent of the governing body of the government, notifies the Director that the entitlement payments for a past, current, or next beginning entitlement period, or any combination thereof, are being waived. A wavier of entitlement for the next beginning entitlement period will only be given effect if the waiver notice is received during the 6-month period immediately preceding that entitlement period. In the event that an entitlement payment is returned or a notice of waiver is executed which is not in accordance with this procedure, the chief executive officer will be notified by the Director and, unless the attempted waiver is rescinded within 30 days of the notice, it shall be given effect. However, in no event will a notice of waiver be given effect for an entitlement period which follows the next beginning entitlement period. The entitlement waived, and any adjustments resulting from recalculation of earlier entitlements, shall be added to and shall become a part of the entitlement of the next higher unit of government eligible to receive entitlement funds in that State in which the unit of local government, Indian tribe or Alaskan native village waiving the entitlement is located. If that government cannot receive the entitlement funds, they shall be added to the appropriate State reserve. A waiver of entitlement by a unit of local government, Indian tribe or Alaskan native village shall be deemed irrevocable 30 days prior to the first payment for the entitlement period to which it relates.

(b) *Constructive waiver.* Any recipient government which has not waived and is otherwise eligible to receive entitlement payments and which has failed to submit reports or assurances required pursuant to Subparts B, E or F, of this part is subject to having the Director constructively waive one or more of its entitlement payments for the applicable entitlement period. Prior to such a waiver, the Director shall, in two separate notices of not less than 30 days each, notify nonresponsive recipient governments of their noncompliance and that their entitlement payment(s) for the affected entitlement period(s) are being temporarily withheld pursuant to §§ 51.3(c) and 51.60(c). If compliance is not achieved by the end of each affected entitlement period, or a reasonable period thereafter as determined by the Director, the Director shall make a determination that the payments to the nonresponsive recipient governments will or are continued to be constructively waived. Entitlement funds constructively waived will be redistributed pursuant to the provisions of paragraph (a) of this section.

(c) *Nondelivery.* Entitlement payments for any entitlement period which are returned to the Department of the Treasury as being nondeliverable because of incorrect address information, or which are unclaimed for any reason, shall be placed in the State and Local Government Fiscal Assistance Trust Fund until such time as payment can be made.

(d) *Insufficient data.* Entitlement funds for any entitlement period which are withheld from payment because of insufficient data upon which to compute the entitlement, or for which payment cannot be made for any other reason, shall remain in the State and Local Government Fiscal Assistance Trust Fund until such time as payment can be made.

§ 51.26 Reservation of funds and adjustment of entitlement.

(a) *Reservation of entitlement funds.* In order to make subsequent adjustments to an entitlement payment under this part which may be necessitated because of insufficient or erroneous data, or for any other reason, the Director shall reserve in the State and Local Government Fiscal Assistance Trust Fund such percentage, not to exceed 0.5 percent, of the total entitlement funds for each State government and all units of local government within the State for any entitlement period as are necessary to ensure that there will be sufficient funds available to pay adjustments due after the final allocations of funds. The reserves shall be known as State Obligated Adjustment Reserves and amounts remaining in the reserves will accumulate until the liabilities of the Trust Fund to the recipient governments in each State are discharged or sufficiently diminished to permit an allocation.

(b) *Adjustments to entitlement payments.* Adjustments to the entitlement of a recipient government during an entitlement period will ordinarily be effected through alteration

to entitlement payments for the next entitlement period, unless the following circumstances exist:

(1) There is a downward adjustment which is so substantial as to make payment alterations impracticable or impossible. In such case, the Director may demand that the remaining entitlement funds received by the recipient government in excess of its entitlement be immediately repaid to the State and Local Government Fiscal Assistance Trust Fund.

(2) There is a positive adjustment which is so substantial as to make an interim payment adjustment necessary to avoid an inequitable delay in providing a government with its entitlement. In such case, the Director may authorize an interim adjustment for such government provided there are sufficient funds in the appropriate State reserve to permit an early allocation and payment.

(3) For entitlement periods which begin on or after January 1, 1977, any adjustments to increase or decrease entitlement payments of a recipient government for a particular entitlement period shall be made only if demand therefor has been made by the recipient government, or the Director, prior to the expiration of one year from the end of the entitlement period for which the adjustment is claimed.

(4) For entitlement periods which begin on or after January 1, 1977, any adjustments to increase or decrease entitlement payments of a recipient government for a particular entitlement period shall be made through the State Obligated Adjustment Reserve.

(5) Adjustments made to decrease payments to a recipient government for an entitlement period ending before January 1, 1977 shall be withheld from the appropriate State Obligated Adjustment Reserve established under paragraph (a) of this section.

§ 51.27 State to maintain transfers to local governments.

(a) *General rule for entitlement periods commencing on or after January 1, 1977.* The payment of revenue sharing funds to any State government for any entitlement period beginning on or after January 1, 1977, for which entitlement funds were appropriate for State governments, shall be reduced by the amount (if any) by which—

(1) One-half of the aggregate amounts transferred by the State government out of its own sources during the 24-month period ending the last day of the last fiscal year for which the Bureau of the Census has relevant data on the first day of such entitlement period, to all units of local government in such State is less than—

(2) One-half the similar aggregate amount for the 24-month period ending the day before the 24-month period described in paragraph (a)(1) of this section.

For purposes of paragraph (a)(1) of this section, the amount of any reduction in the entitlement of a State government under this section for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State (out of its own sources) government in such State. The phrase "own sources" means all sources of State revenue (including debt proceeds and State's revenue sharing entitlement funds) but excluding intergovernmental revenues received from the Federal government.

(b) *Measurement of maintenance of effort.* The following formula will be applied by the Director to establish the base year intergovernmental transfers to units of local government from the State's own sources and to generally monitor the level of effort in accordance with the maintenance provisions of paragraph (a) of this section during future entitlement periods:

(1) It shall be assumed that the ratio of a State's own source intergovernmental transfers to units of local government to that State's total intergovernmental transfers to units of local government is equal to the ratio of that State's own source revenues to its total revenues. Thus, for a State in which such formula may be applied, its base year own source intergovernmental transfers to units of local government shall be assumed to equal its total intergovernmental transfers to units of local government in the base year multiplied by its own source revenue in the base year divided by its total revenues in the base year.

(2) In a State in which the formula is applied, the State's own source intergovernmental transfers to units of local government in a future entitlement period shall be assumed to equal the average of—

(i) The State's total intergovernmental transfers to units of local government during that period (or that State's fiscal year ending on or immediately prior to the end of such period) multiplied by its own source revenue in that period (or such fiscal year) divided by its total revenues in that period (or such fiscal year) and

(ii) The State's total intergovernmental transfers to units of local government during the preceding entitlement period (or that State's fiscal year ending on or immediately prior to the end of such period) multiplied by its own source revenue in that period (or such fiscal year) divided by its total revenues in that period (or such fiscal year).

(3) Therefore, in a State in which the formula is applied, maintenance (for a given entitlement period) of intergovernmental transfer effort to units of local government will be measured by the difference between that State's average aggregate intergovernmental transfers to units of local government (over the appropriate periods) as calculated by employing the method described in paragraph (b)(2) of this section and that State's own source intergovernmental transfers to units of local government in the base period as calculated by employing the method described in paragraph (b)(1) of this section.

(4) If the application of this formula during any entitlement period indicates that a State government has not maintained its intergovernmental transfer effort, i.e., should a State's intergovernmental transfers to units of local government, for a particular period, be less than transfers calculated for the base period, the difference (as defined in paragraph (b)(3) of this section) shall constitute the future indicated reduction in that State's entitlement unless such State can document to the Director that the fact or amount of nonmaintenance, as determined by application of the formula, is inaccurate.

(c) *Alternative procedure.* If the Director determines that the application of the formula set forth in paragraph (a) of this section in a particular case provides an inaccurate or unfair measurement of transfer effort, then any formula, procedure, or method deemed equitable by the Director may be utilized to measure such transfer effort for the purpose of implementing the maintenance provision.

(d) *Adjustment where State assumes responsibility for category of expenditures.* If the State government establishes to the satisfaction of the Director that since June 30, 1972, it has assumed responsibility for a category of expenditures which (before July 1, 1972) was the responsibility of local governments located in such State, then the aggregate amount taken into account under paragraph (a)(2) of this section shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts, which for the period used for the purposes of this paragraph, it transferred to units of local government.

(e) *Adjustment where new taxing powers are conferred upon local governments.* If a State establishes to the satisfaction of the Director that since June 30, 1972, one or more units of local government within such State have had conferred upon them new taxing authority, then, the aggregate amount taken into account under paragraph (a)(2) shall be reduced to the extent of the larger of—

(1) The amount of the taxes collected by reason of the exercise of such new taxing authority by such local governments, or

(2) The amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments. No amount shall be taken into consideration under paragraph (e)(1) of this section if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Director to have decreased a related State tax.

(f) *Adjustment where Federal government assumes responsibility for category of expenditures.* If in an entitlement period beginning on or after January 1, 1977, a State government establishes to the satisfaction of the Director that the Federal government has assumed responsibility for a category of expenditures for which such State government transferred amounts, during all or a part of the period utilized for purposes of paragraph (a)(1) of this section, which (but for this paragraph) would be included in the aggregate amount taken into account under paragraph (a)(2) of this section, the aggregate amount shall be reduced to the extent that increased Federal government spending has replaced corresponding amounts which such State government had transferred to units of local government.

(g) *Computation by the Office of Revenue Sharing.* The Director shall make the computation required for the determination of maintenance of effort, based on data furnished by the Bureau of the Census. The Bureau of the Census shall provide to the Office of Revenue Sharing the following data pertaining to a State's transfer of funds to units of local government for the State's appropriate fiscal year:

(1) The State's own source funds.

(2) The State's total funds.

(3) The State's own source transfers to units of local government.

(4) The State's total transfers to units of local government.

(h) *Reduction in entitlement.* If the Director has reason to believe that paragraph (a) of this section requires a reduction in the entitlement of any State government for any entitlement period, the Director shall give reasonable notice and opportunity for hearing to the State. If, after a hearing it is determined that a reduction is required, the Director shall determine the amount of the reduction, notify the Governor of the affected State of the determinations and withhold from subsequent payments to such State government under this part an amount equal to the reduction.

(i) *Transfer to general fund.* An amount equal to the reduction in the entitlement of any State government which results from the application of this section shall be transferred from the Secretary's Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

§ 51.28 Optional formula.

(a) *In general.* A State government may by law provide for the allocation of entitlement funds among the county areas, or among units of local government (other than county governments, Indian tribes, and Alaskan native villages):

(1) On the basis of the population multiplied by the general tax effort factors of such areas or units of local government; or,

(2) On the basis of the population multiplied by the relative income factors of such areas or units of local government; or,

(3) On the basis of a combination of those two factors;

(4) Any State which provides by law for such a variation in the allocation formula provided by subsections 108(a), 108(b) (2) and (3) or 108(c) of the Act, shall notify the Director of the new law no later than 90 days before the beginning of the first entitlement period to which it is to apply. Any such law shall:

(i) Provide for allocating 100 percent of the aggregate amount to be allocated under subsections 108(a) or 108(b) (2) and (3) of the Act;

(ii) Apply uniformly throughout the State; and

(iii) Apply during the period beginning on the first day of the first entitlement period to which it applies and ending on September 30, 1983.

(b) *Single legislation required.* If a State government alters its county area allocation formula or its local government allocation formula, or both, such alteration may be made only once and is required to be made in the same legislative enactment.

(c) *Certification required.* Paragraph (a) of this section shall apply within a State only if the Director certifies that the State law complies with the requirements of the paragraph. The Director shall not certify any such law with respect to which notification is received later than 30 days prior to the initial entitlement period during which it is to apply.

§ 51.29 Notification and adjustment of data factors.

(a) *Notification of data factors.* The data factors used in computing allocations of entitlement funds under the Act for any entitlement period will be made available to each State government and unit of local government as soon as practicable. Each such government will be given a reasonable opportunity to question its data factors by providing factual documentation which demonstrates evidence of error in the data as defined in § 51.23(a) for that entitlement period, no later than one year from the end of the entitlement period for which the data are applicable.

(b) *Time limit for data changes.* If it is established to the satisfaction of the Director by factual evidence and documentation that the data used in the computation of an allocation are erroneous, an adjustment will be made to the entitlement payment of such government. No adjustment shall be made unless evidence and documentation of the error in the data as defined for that entitlement period, is provided the Director for determination within one year of the end of the entitlement period with respect to which the payment is made. No adjustment of any kind, which is less than $200, shall be made to an entitlement if in the judgment of the Director such adjustment will be burdensome, expensive, or otherwise impracticable.

§ 51.30 Adjustment to entitlements; application of adjustments.

(a) *County area maximum and minimum per capital entitlement.* (1) *In general.* Pursuant to Section 108(b)(6) of the Act, the per capita amount allocated to any county area shall be not less than 20 percent, nor more than 145 percent, of the amount allocated to the State under section 106 of the Act, divided by the population of that State.

(2) *One hundred forty-five percent.* If a county area allocation is greater than the 145-percent limit, its allocation shall be reduced to the 145-percent level and the resulting surplus shall be shared proportionately by all remaining unconstrained county areas.

(3) *Twenty-percent rule.* If, after the application of paragraph (a)(2) of this section, a county area allocation is less than the 20-percent limit, its allocation shall be increased to the 20-percent level

and the resulting deficit shall be shared proportionately by all remaining unconstrained county areas.

(b) *Local governments (other than a county government, Indian tribe or Alaskan native village)*—(1) *In general.* Except as provided below, the per capita amount allocated to any unit of local government (other than a county government, Indian tribe or Alaskan native village) shall be not less than 20 percent, nor more than 145 percent, of the amount allocated to the State under Section 106 of the Act, divided by the population of that State.

(2) *One hundred forty-five percent rule.* If a unit of local government is allocated an amount greater than the 145-percent limit, its allocation shall be reduced to that level.

(3) *Twenty-percent rule.* If a unit of local government is allocated, an amount less than the 20-percent limit, its allocation shall be increased to the lower of the 20-percent limit or 50 percent of the sum of that local government's adjusted taxes and transfers and intergovernmental transfers of revenue (other than entitlement funds).

(4) *Entitlement less than $200.* If a unit of local government below the level of a county government is allocated an amount less than $200 for an entitlement period, the amount of the entitlement of that local government for that entitlement period shall become a part of the entitlement of the county government of the county area in which the local government is located.

(c) *Fifty percent limitation.* —(1) *In general.* The amount of entitlement funds allocated to any unit of local government other than an Indian tribe or Alaskan native village under this section for any 12-month entitlement period shall not exceed 50 percent of the sum of that local government's adjusted taxes, plus its intergovernmental transfers of revenue (other than entitlement funds).

(2) *Reallocation of excess amounts due to the fifty percent limitation.* In any case in which the amount of entitlement funds allocated to a unit of local government other than a county government is reduced pursuant to paragraph (c)(1) of this section, the amount of the reduction of funds shall be reallocated as follows—

(i) The amount shall be added to the county government in which the local government is located, to the extent that the county government may receive funds after application of the provisions of paragraphs (a) and (c) of this section.

(ii) If the county government cannot receive such funds, the provisions of paragraphs (d) and (e) of this section shall be applied.

(d) *One hundred-percent criterion.* If the amounts allocated to units of local government within a State do not total 100 percent of the amount allocated to that State, due to application to the adjustments set forth in paragraphs (a), (b) and (c) of this section, the amount to be allocated to county areas shall be adjusted appropriately, and the allocation process shall be repeated until the amounts allocated to such units of local government total 100 percent of the amount allocated to that State to the extent possible.

(e) *Distribution of funds in excess entitlement funds resulting from adjustments.* Funds which may not be distributed after application of paragraph (d) of this section shall be added on a pro rata basis to all units for local government within the State.

§ 51.31 Separate law enforcement officers.

(a) *Entitlement of separate law enforcement officers.* (1) The office of the separate law enforcement officer within any parish area in the State of Louisiana, other than the parishes of East Baton Rouge and Orleans, shall be entitled to receive for each entitlement period beginning on or after January 1, 1977, 15 percent of the entitlement of the government of the Parish government, unless entitlement funds are not appropriated to State governments in which case the Office shall receive 13.5 percent of the entitlement.

(2) The office of the separate law enforcement officer within the area of the government of the parish of East Baton Rouge, shall be entitled to receive for each entitlement period, beginning on or after January 1, 1977, 7.5 percent of the entitlements of the governments of Baton Rouge, Baker and Zachary, Louisiana for each such entitlement period, unless entitlement funds are not appropriated to State governments in which case the Office shall receive 6.75 percent of the entitlement.

(b) *Reduction of entitlement of parish government.* (1) The governments of each parish (other than East Baton Rouge and Orleans, Louisiana) shall receive for an entitlement period, entitlements reduced by one-half of the amount due the separate law enforcement officer for such parish, except that after October 1, 1981, the parish government entitlement shall be reduced by the full amount of entitlement funds are not appropriated to the State governments.

(2) The governments of Baton Rouge, Baker and Zachary, Louisiana shall receive, for an entitlement period, entitlements reduced by an amount equal to 3.75 percent of such government's normal entitlement, unless entitlement funds are not appropriated to State governments in which case the entitlements for the governments of Baton Rouge, Baker and Zachary shall be reduced by 6.75 percent.

(c) *Reduction of entitlement of State government.* The State government of Louisiana shall receive for an entitlement period an entitlement reduced by the same amount as the reduction to entitlements of the parishes and governments of Baton Rouge, Baker and Zachary. This subparagraph shall not apply for entitlement periods beginning after October 1, 1981, if entitlement funds are not appropriated to the government of the State of Louisiana.

(d) *Entitlement of the Parish of Orleans.* The provisions of paragraphs (a), (b) and (c) of this secton shall not apply to the entitlements of the Parish of Orleans. The Parish of New Orleans shall be entitled to receive for each entitlement period beginning on or after January 1, 1977, from the State government's entitlement an additional amount equal to 7.5 percent of the amount it is otherwise entitled to receive. This subparagraph shall not apply for entitlement periods beginning after October 1, 1981, if entitlement funds are not appropriated to the State government of Louisiana.

§ 51.32 Population.

(a) *Population generally.* Population shall be determined on the same basis as resident population is determined by the Bureau of the Census for general statistical purposes.

(b) *Undercount adjustment.* To adjust for any possible undercount during the 1980 census, the Director shall—

(1) As soon as practicable, request the Bureau of the Census to adjust the population data provided to include a reasonable estimate of the number of resident persons not counted in the 1980 census or subsequent revisions thereof.

(2) Estimates received from the Bureau of the Census shall be used to calculate the allocations for entitlement periods beginning after receipt of such estimates.

(c) *Adjustment as result of legal immigrants.* The determination of population shall reflect any adjustments made pursuant to Section 118 of Pub. L. 96-369 conducted due to a major population change resulting from the movement of a large number of Cuban or Haitian legal immigrants into a jurisdiction within 6 months after the 1980 census. The adjustments to such

population figures shall be reflected in entitlement periods beginning with fiscal year 1981 and shall continue to be used until the Bureau of the Census makes available 1981 population estimates.

(d) *Population of Indian tribes and Alaskan native villages.* (1) The population of an Indian tribe or Alaskan native village is the resident population as of April, 1980, defined as—

(i) For Indian tribes, American Indians living on a reservation minus those in cities and towns, plus the number of American Indians living in Census Enumeration Districts (ED's) containing adjacent tribally owned trust lands of that tribe. Resident non-Indian members of families with an American Indian householder or spouse are also included in the population data.

(ii) The lands in each Oklahoma county which were part of one or more Indian reservations at the time of allotment will be treated jointly as the land of all the reservations located in that county. Therefore, within a given county, an Indian identified with a tribe whose historic reservation includes a portion of that county will be enumerated with that tribe regardless of whether they reside within their tribe's own historic reservation area or that of one of the other tribes. Areas inside cities and towns will be subtracted from the land of the tribes. Only an Indian identified with the tribe of the Indian governing body and their spouses and children living within the boundaries of the tribal area described above are to be included in the population data of Oklahoma Indian governments. The population of the Osage Tribal Council of Oklahoma is as defined in paragraph (d)(1)(i) of this section since this tribe has its own current reservation.

(iii) For Alaskan native villages, the number of American Indians, Eskimos and Aleuts living in the village on the April 1, 1980, Census date. Resident non-Alaskan native members of families with an Alaskan native householder or spouse are also included in the population data.

(2) The Director will request the Bureau of the Census to provide updated population estimates for Indian tribes and Alaskan native villages when such estimates are provided for other local governments in the Revenue Sharing Program.

Subpart D—Prohibitions and Restrictions on Use of Funds

§ 51.40 Matching funds.

The prohibition against the use of entitlement funds for matching purposes has been repealed. After January 1, 1977, a recipient government may expend its entitlement funds for this purpose without restriction.

§ 51.41 Permissible expenditures for local government.

The priority expenditure restrictions on the use of entitlement funds by units of local government have been repealed. After January 1, 1977, a recipient government may expend its entitlement funds for any purpose permissible under State or local law.

§ 51.42 Wage rate and labor standards.

(a) *Construction laborers and mechanics.* A recipient government shall require that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project costing in excess of $2,000 and of which 25% or more of the cost is paid out of its entitlement funds:

(1) Will be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5); and

(2) Will be covered by labor standards specified by the Secretary of Labor pursuant to 29 CFR Parts 1, 3, 5, and 7.

(b) *Wage rates.* In projects to which the Davis-Bacon Act standards are applicable, the recipient government must ascertain the U.S. Department of Labor's wage rate determination for each intended project and insure that such wage rates are incorporated in the contract specifications. Wage rate determinations may be obtained by filing a Standard Form 308 with the Employment Standards Administration of the applicable regional Office of the U.S. Department of Labor at least 30 days before the invitation for bids, or in the case of construction covered by general wage rate determination, the appropriate rate may be obtained from the Federal Register.

(c) *Government Employees.* A recipient government which employs individuals whose wages are paid in whole or in part from entitlement funds must pay wages which are not lower than the prevailing rates of pay for persons employed in similar public occupations by the same employer. However, this subsection shall apply with respect to employees in any category only if 25% or more of the wages of all employees of the recipient government in such category are paid from the trust fund established by it under § 51.101(a) of this part.

§ 51.43 Lobbying.

(a) *In general.* Entitlement funds may not be used by any State or unit of local government for the purpose of lobbying (as defined in § 51.2(j) of this part) concerning the provisions of the Act.

(b) *Activities prohibited.* Prohibited lobbying activities include, but are not limited, to the following:

(1) Personal solicitation of individual members of a legislative body to influence legislation regarding the General Revenue Sharing Program by personal interview, letter, financial contributions, and other means.

(2) Employment of a lobbyist to engage in proscribed activities.

(c) *Activities permitted.* Without violation of this section, a recipient government may:

(1) Use revenue sharing funds to pay dues to national or State organizations.

(2) Use revenue sharing funds to attempt to influence public opinion or to convey opinions and judgments to the public regarding provisions of the Act, by publication, distribution of books, pamphlets and other writings.

§ 51.44 Use of entitlement funds for debt retirement.

Where the actual expenditures of the proceeds of indebtedness were made after January 1, 1977, the repayment of the indebtedness with entitlement funds is permissible, provided that the expenditures from the proceeds of the indebtedness were made in compliance with the restrictions and prohibitions set forth in Subparts D and E of this part.

§ 51.45 Use of entitlement funds in accordance with State or local law.

A recipient government shall expend its entitlement funds only in accordance with the laws and procedures applicable to the expenditure of its own revenues to the extent that those laws and procedures do not conflict with the provisions of the Act or regulations promulgated thereunder.

§ 51.46 Procedures for effecting compliance.

(a) *Compliance with substantive provisions.* If a recipient government fails to comply with the requirements of this subpart, the Director may implement the procedures for effecting compliance contained in § 51.3 (a) through (d) of Subpart A.

(b) *Compliance with reporting requirements.* If a recipient government fails to comply with the reporting requirements of this subpart, the Director may implement the delay of payment and/or constructive waiver provisions of § 51.3(e) of Subpart A and § 51.25(b) of Subpart C of this part.

Subpart E—Nondiscrimination by States and Local Governments Receiving Entitlement Funds

§ 51.50 Purpose.

The purpose of this subpart is to effectuate section 122 of the Act which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a recipient government. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to a qualified handicapped individual, as provided in section 504 of the Rehabilitation Act of 1973, or any prohibition against discrimination on the basis of religion (as modified by the exemptions and exclusions contained in the Civil Rights Act of 1964, as amended or the Civil Rights Act of 1968), shall also apply to any such program or activity.

§ 51.51 Definitions.

Unless the context provides otherwise, as used in this subpart, the term:

(a) "Attorney General" means the Attorney General of the United States, or a designate.

(b) "Complaint" means an allegation submitted in writing to the ORS which sets forth the nature of the discrimination alleged and the specific facts upon which the allegation is based. The complaint may be filed by an individual or organization which believes that a recipient government has or is committing discrimination prohibited by the provisions of this subpart.

(c) "Compliance review" means a review, initiated at the discretion of the Director, of a recipient government's employment practices, facilities, or delivery of services for the purpose of ascertaining compliance with the provisions of this subpart.

(d) "Determination" means the decision by the Director following a notification of noncompliance as to whether a recipient government is in compliance or in noncompliance with the provisions of this subpart.

(e) "Facility" means all or any portion of a building, structure, parking lot, road, walk, equipment or other real or personal property or interests therein.

(f) "Finding" means the decision by the Director after the completion of an investigation or compliance review that it is more likely than not that a recipient government or secondary recipient is in noncompliance with the provisions of this subpart.

(g) "Funded" means entitlement funds have been or are being made available for expenditure in, or substantially benefit, a program or activity.

(h) "Holding" means any finding of fact or conclusion of law by a Federal court, a State court, or a Federal administrative law judge (after notice and opportunity for a hearing), which has been litigated, identifies the recipient government or part thereof which is in noncompliance and is to the effect that there has been exclusion, denial, or discrimination on the grounds of race, color, national origin, sex, age (other than in employment), handicapped status or religion as prohibited under section 122 of the Act. Except as otherwise provided in § 51.67, a holding is conclusive as to the issue of discrimination.

(i) "Investigation" means fact-finding efforts by the Office of Revenue Sharing or other agency undertaken after receiving a complaint, or other information, that a recipient government has failed to comply with the provisions of this subpart.

(j) "Noncompliance" means that the Director or an administrative law judge has found or determined that a recipient government has violated the provisions of this subpart.

(k) "Notification of noncompliance" means the notification given to a recipient government of a finding or receipt by the Director of a holding.

(l) "Program or activity" means the operations of an agency or organizational unit of a recipient government, or the operations or organizational unit of a secondary recipient, funded with entitlement funds (examples include, but are not limited to a police department, department of corrections, health department).

§ 51.52 Discrimination prohibited.

(a) *In general.* No person in the United States shall, on the ground of race, color, national origin, or sex, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity of a recipient government or a secondary recipient. Also prohibited is discrimination:

(1) on the baisis of age under the Age Discrimination Act of 1975, effective July 1, 1979 (hereinafter referred to as discrimination on the basis of age);

(2) with respect to a qualified handicapped individual, as provided in section 504 of the Rehabilitation Act of 1973, as amended, (hereinafter referred to as discrimination on the basis of handicapped status); or

(3) on the basis of religion, as modified by exemptions and exclusions contained in the Civil Rights Act of 1964, as amended or the Civil Rights Act of 1968, (hereinafter referred to as discrimination on the basis of religion).

(b) *Specific discriminatory actions prohibited.* (1) Except as otherwise provided in § 51.55(c)(1) and other sections in this subpart with respect to services, a recipient government shall not on the ground of race, color, national origin, sex, handicapped status or age:

(i) Deny any service or other benefit provided.

(ii) Provide any service or other benefit, which is not equal to, or is provided in a different form, than that provided to others.

(iii) Subject any person to segregated or separate treatment in any facility or in any matter or process related to receipt of any service or benefit.

(iv) Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or other benefit.

(vi) Determine the types of services, or other benefits or facilities which will be provided or the class of individuals to whom, or the situation in which, such services or other benefits or facilities will be provided by utilizing criteria or methods of administration which have the effect of:

(A) Subjecting individuals to discrimination;

(B) Perpetuating the results of past discrimination; or

(C) Defeating or substantially impairing the accomplishment of the objectives of the programs or activities with respect to individuals of a particular race, color, national origin, and sex, handicapped status or age.

(2) With respect to planning and advisory boards, a recipient government shall not on the ground of race, color, national origin, sex, handicapped status, or religion, deny any person an equal opportunity to participate as an appointed member of planning or advisory bodies.

(3) With respect to employment, a recipient government shall not utilize criteria or methods of administration that have the effect of:

(i) Subjecting individuals to discrimination on the basis of race, color, national origin, sex, handicapped

status, or religion in any program or activity.

(ii) Perpetuating the results of past discriminatory practices.

(iii) Defeating or substantially impairing the accomplishment of the objectives of the program or activities with respect to individuals of a particular race, color, national origin, sex, handicapped status, or religion.

(4) With respect to facilities, a recipient government shall not on the grounds of race, color, national origin, sex, age, or handicapped status, except as otherwise provided in § 51.55 and other sections of this subpart, make selections of site or location of facilities which have the effect of:

(i) Excluding individuals from such facilities.

(ii) Denying the individuals the benefits of such facilities.

(iii) Subjecting individuals using the facilities to discrimination.

(5) A recipient government shall not intimidate, threaten, coerce, or in any way retaliate against any person who files a complaint against that government alleging discrimination which is covered by the provisions of this subpart, who assists the ORS in an investigation, or any other proceedings under this subpart or who opposes a practice made unlawful by this subpart.

(6) A recipient government shall not use any unvalidated selection device, including, but not limited to, a minimum height or weight requirement or physical agility test which operates to disproportionately exclude members of a protected class. Use of such a selection device is a violation of this subpart; the device must either be validated or replaced with a selection device that has less severe impact pursuant to the Uniform Guidelines on Employee Selection Procedures.

(7) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragaph (a) of this section and should not be considered all-inclusive.

(c) *Exemptions.* The provisions of paragraphs (a) and (b) of this section concerning prohibited discrimination shall not apply:

(1) Where a recipient government demonstrates by clear and convincing evidence that a program or activity, with respect to which discrimination is alleged, is not funded in whole or in part with entitlement funds.

(2) To construction projects commenced prior to January 1, 1977, with respect to discrimination on the basis of handicapped status, except as provided in § 51.55(k)(11). A construction project shall be deemed to have commenced when the recipient government has obligated itself by contract for the physical construction of the project or of any substantial portion of the project.

§ 51.53 Employment discrimination.

(a) *Employment practices.* In general a recipient government shall not discriminate on the grounds of race, color, national origin, sex or religion in the following specific activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Setting rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Granting leaves of absence, sick leave, or other leave;

(6) Providing fringe benefits available by virtue of employment, whether or not administered by the recipient government;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social recreational programs; and

(9) Any other term, condition, or privilege of employment.

(b) *Uniform Guidelines on Employee Selection Procedures.* The Equal Employment Opportunity Commission (EEOC), the Office of Personnel Management, the Department of Justice, the Department of Labor and the Department of Treasury, in carrying out their responsibilities in ensuring compliance with Federal equal employment opportunity law, have adopted Uniform Guidelines on Employee Selection Procedures to assist in establishing and maintaining equal employment opportunities. These Guidelines are in 29 CFR Part 1607; 5 CFR 300.103(c); 990–1 (Book 3) of the Federal Personnel Manual; 28 CFR 50.14, and 41 CFR 60.3. These Guidelines, among other things, recognize the unlawfulness of the use of any employee selection procedures (including tests and minimum education levels) which disqualify a disproportionate number of persons on grounds of race, color, religion, sex or national origin and which have not been validated or otherwise justified in accordance with Federal law. Discrimination on the basis of handicapped status and age are not covered by the Guidelines. Recipient governments shall used selection procedures that comply with the provisions of the Guidelines, and a violation of the Guidelines shall constitute a violation of this subpart.

(c) *Preemployment inquiries.* A recipient may make inquiries of an applicant for employment concerning the applicant's race, color, national origin, sex, or religion only for purposes permissible under the Uniform Guidelines on Employee Selection Procedures.

(d) *Self-review.* Recipient governments may conduct continuing reviews of their programs or activities, in accordance with Sections 4, 15 and the appendix of the Uniform Guidelines on Employee Selection Procedures, to determine whether their employment practices have the effect of denying equal employment opportunity on the basis of race, color, national origin, sex or religion. Whenever a self-review indicates that an employment practice is not in compliance with the Guidelines or this subpart, the recipient government is encouraged to take appropriate remedial action.

§ 51.54 Employment discrimination on the basis of sex.

The EEOC has adopted guidelines on employment discrimination on the basis of sex (29 CFR Part 1604). These guidelines provide practical assistance to enable recipient governments to bring themselves into compliance with Federal law. Recipient governments shall comply with the provisions of these Guidelines, which are adopted by the ORS. A violation of these Guidelines shall constitute a violation of this subpart.

§ 51.55 Nondiscrimination on the basis of handicap (interim).

(a) *Definitions.* As used in this section the phrase:

(1) "Handicapped individual" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(2) "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and

endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(3) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(5) "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities, but that is treated by a recipient government as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (iii) has none of the impairments defined in paragraph (a)(1) of this section but is treated by a recipient government as having such impairment.

(6) "Qualified handicapped individual" means (i) with respect to employment, a handicapped individual who, with reasonable accommodation, can perform the essential functions of the job in question; and (ii) with respect to services, a handicapped individual who meets the essential eligibility requirements for the receipt of such services.

(b) *General prohibitions with respect to discrimination against a qualified handicapped individual.*

(1) Those general prohibitions described in § 51.52(b) of this subpart, also apply to discrimination against a handicapped individual, with the exception of § 51.52(b)(1) (ii), (iii) and (iv) of this section which are covered by the provisions of this subsection. In addition, a recipient government shall:

(i) Not exclude a qualified handicapped individual from participation in programs or activities open to the general public, regardless of the availability of permissibly separate or different programs or activities designed especially for the handicapped;

(ii) Administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped individuals;

(iii) Take appropriate steps to ensure that communications with applicants, employees, beneficiaries, and the general public are available to persons with impaired vision or hearing, through means such as brailled or taped material, telecommunication devices, televised information or other media;

(iv) Take the appropriate steps to ensure that the public hearings required under §§ 51.13 and 51.14 of this part are accessible to qualified handicapped individuals and that notice of such hearings is made available to individuals with impaired vision and hearing, through means such as telecommunication devices, brailed or taped material, televised information, qualified sign language interpreters or other media;

(v) Provide a qualified handicapped individual with an aid, benefit, or service that is as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(vi) Not provide a different or separate aid, benefit, or service to qualified handicapped individuals or to any class of qualified handicapped individuals than is provided to others unless such action is necessary to provide qualified handicapped individuals with aid, benefits, or services that are as effective as those provided to others;

(vii) Not aid or perpetuate discrimination against a qualified handicapped individual by funding an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the program or activity;

(viii) A recipient government shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration that:

(A) Have the effect of subjecting qualified handicapped individuals to discrimination on the basis of their handicaps;

(B) Have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient government's program with respect to handicapped individuals; or

(C) Perpetuate the discrimination of another department of the recipient government if both departments are subject to common administrative control or are agencies of the same recipient government; and,

(ix) [Reserved]

(2) The exclusion of persons that are not handicapped individuals from the benefits of a program limited by Federal statute or executive order to handicapped individuals, or the exclusion of a specific class of handicapped individuals from a program limited by Federal statute or executive order to a different class of handicapped individuals, is not prohibited by this section.

(3) For purposes of this section, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped individuals. They must, however, afford qualified handicapped individuals equal opportunity to obtain the identical result, or achievement in the most integrated setting appropriate to the individual's needs.

(4) A recipient government which government receives $25,000 or more entitlement funds in each entitlement period, shall, at the request of, and in consultation with such individual, provide appropriate auxiliary aids to individuals with impaired sensory, manual or speaking skills, where necessary to prevent a qualified handicapped individual from being denied the benefits of, excluded from participation in or subjected to discrimination under a program or activity. Such auxiliary aids may include brailled or typed material, the provision of qualified sign language interpreters, the provision of telecommunication devices, captioned films, video tapes, televised information or other media. The Director may require recipient governments which receive less than $25,000 in entitlement funds in any entitlement period to provide appropriate auxiliary aids when the Director finds that such aids are appropriate to remedy a violation of the provisions of this section.

(5) The enforcement provisions contained in this subpart are applicable to violations of the provisions of this section.

(c) [Reserved]

(d) [Reserved]

(e) [Reserved]

(f) [Reserved]

(g) *Employment discrimination against a qualified handicapped individual.* (1) A recipient government shall:

(i) Not discriminate against a qualified handicapped individual in employment in any program or activity;

(ii) Not participate in a contractual or other relationship that has the effect of subjecting a qualified handicapped applicant or employee to discrimination prohibited by this section. The relationships referred to in this

paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient government, and with organizations providing training and apprenticeship programs;

(iii) Make all decisions concerning employment under any program or activity in a manner which ensures that discrimination on the basis of handicap does not occur and not limit, segregate, nor classify applicants or employees in any way that adversely affects their opportunities or status because of handicap;

(iv) Take appropriate steps to ensure that communications with its applicants and employees are available to persons with impaired vision and hearing as described in § 51.55(b)(1)(iii) and (b)(4);

(v) Not discriminate against a qualified handicapped individual in the following specific activities:

(A) Recruitment, advertising, and the processing of applications for employment;

(B) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(C) Setting rates of pay or any other form of compensation and changes in compensation;

(D) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(E) Granting leaves of absence, sick leave, or any other leave;

(F) Providing fringe benefits available by virtue of employment, whether or not administered by the recipient government;

(G) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(H) Employer sponsored activities, including social or recreational programs; and

(I) Any other term, condition, or privilege of employment.

(2) A recipient government's obligation to comply with this section is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

(3) A recipient government's obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are more limited for handicapped individuals than for nonhandicapped individuals.

(h) *Reasonable accommodation.* (1) A recipient government shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped applicant or employee unless the recipient government can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(2) Reasonable accommodation may include:

(i) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(ii) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices (e.g., telecommunications devices and other telephone devices), the provision of readers or qualified sign language interpreters, and other similar actions. Accommodations shall be made in consultation with the handicapped individual.

(3) The determination of whether an accommodation would impose an undue hardship on the operation of a recipient government's program or activity shall be made on a case-by-case basis upon consideration of the following factors:

(i) The overall size of the recipient government's operations with respect to number of employees, number and type of facilities, and size of budget;

(ii) The type, composition and structure of the specific program or activity and the structure of the workforce required; and

(iii) The nature and cost of the accommodation needed. Such reasonable accommodation may require a recipient government to undertake more than an insignificant economic cost in making allowance for the handicap of a qualified applicant or employee and to accept minor inconvenience which does not bear on the ability of the handicapped individual to perform the essential functions of the job in question.

(4) A recipient government may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(i) *Employment criteria and policies.* (1) A recipient government may not use any employment test, selection criterion or policy, that screens out, or tends to screen out from consideration for employment, a handicapped individual or any class of handicapped individuals unless:

(i) The test, selection criterion or policy as used by the recipient, is shown to be directly related to the essential functions of the position in question, and

(ii) Alternative job-related tests, criteria or policies that do not screen out, or tend to screen out as many handicapped individuals are shown to be not available.

(2) A recipient government shall select and administer tests using procedures (e.g. auxiliary aids such as readers for visually-impaired individuals or qualified sign language interpreters for hearing-impaired individuals) that accommodate the special problems of handicapped individuals to the fullest extent consistent with the objectives of the test. The test results shall accurately reflect the applicant's or employee's ability to perform the essential functions of the job in question, rather than the applicant's or employee's impaired sensory, manual or speaking skills, except where such skills are essential requirements of the job.

(3) If a recipient government has established a test, selection criterion or policy that explicitly or implicitly screens out, or tends to screen out, a class of handicapped individuals from a particular job, and cannot establish that the class as a whole is unqualified to perform the job, the recipient government shall evaluate each such individual who applies for the job to determine whether the applicant can perform the essential functions of the job in question despite the handicap. As part of the determination, the recipient government shall also decide whether such applicant would be qualified to perform the essential functions of the job in question through reasonable accommodation without undue hardship, as provided in § 51.55(h).

(j) *Preemployment inquiries.* (1) Except as provided in paragraph (j)(2) and (3) of this section, a recipient government may not conduct a preemployment medical examination or make preemployment inquiry of an applicant as to whether the applicant is a handicapped individual or as to the nature or the severity of a handicap. A recipient government may, however, make preemployment inquiry into an applicant's ability to perform the essential functions of the job.

(2) When a recipient government is taking remedial action to correct the effects of past discrimination; when a recipient government is taking voluntary action to overcome the effects of conditions that resulted in limited participation in a program or activity, or when a recipient government is taking affirmative action, the recipient government may invite applicants for employment to indicate whether and to

what extent they are handicapped, provided that:

(i) The recipient government states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(ii) The recipient government states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (j)(4) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this section.

(3) Nothing in this section shall prohibit a recipient government from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that: (i) All entering employees are subjected to such as examination regardless of handicap, and (ii) the results of such an examination are used only in accordance with the requirements of this section.

(4) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms and shall be accorded confidentiality as used for medical records, except that:

(i) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped individuals and regarding necessary accommodations;

(ii) First aid and safety personnel may be informed, whether appropriate, if the condition might require emergency treatment; and

(iii) Government officials investigating compliance with the Act shall be provided relevant information upon request.

(k) *Program accessibility.*—(1) *Discrimination prohibited.* No qualified handicapped individual shall, because the facilities owned or leased by a recipient government are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity of a recipient government, which government receives entitlement funds.

(2) *Existing facilities.*—(i) *Program accessibility.* A recipient government shall operate each program or activity in existing facilities owned or leased by it, so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped individuals. Recipient governments are not necessarily required to make each existing facility, or every part of an existing facility accessible to and usable by handicapped individuals. Where structural changes are necessary to make programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of this regulation except as otherwise provided in this section. Recipient governments shall not be required to revoke leases on which lessors refuse to make the structural changes needed if no more accessible facility is available, but shall use the provisions of subparagraph (ii) to ensure that the maximum possible accessibility is achieved.

(ii) *Methods of compliance.* A recipient government may comply with the requirements of paragraph (1) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of paragraph (k)(7) of this section, or any other methods that result in making its programs or activities accessible to handicapped individuals. A recipient government is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (k)(1) of this section. In choosing among available methods for meeting the requirements of paragraph (k)(1) of this section, a recipient government shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate to obtain the full benefits of the program.

(3) *Exception for small recipient governments.* If a recipient government, which government receives less than $25,000 in entitlement funds, in any entitlement period, determines, after consultation with a handicapped individual seeking a health, welfare or social service, that there is no method of complying with paragraph (k)(1) of this section other than making a significant alteration in its existing facilities, that government may, as an alternative, refer the handicapped individual to other providers of those services that are accessible at no additional cost to the handicapped individual. Examples of other providers of those services are States, counties or other larger units of local government.

(4) [Reserved].

(5) [Reserved].

(6) [Reserved].

(7) *New construction.* The construction of facilities by a recipient government financed in whole or in part with entitlement funds or the construction of a facility pursuant to a contract for the recipient government to lease the building facility in its entirety, on or after January 1, 1977, shall be accomplished so as to be readily accessible to and usable by handicapped individuals.

(8) *Alterations.* Alterations to existing facilities owned, or leased by a recipient government, which alterations are funded with entitlement funds and commenced on or after January 1, 1977, shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped individuals.

(9) *American National Standards Institute Accessibility Standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A 117.1–1961 (1971)),* which is incorporated by reference, shall constitute compliance with paragraphs (k) (1) and (2) of this section. A recipient government also may use the revised ANSI standards issued in May of 1980, which are also incorporated by reference and are obtainable at the same address. A recipient government may use standards other than the 1961 or 1980 standards or other methods, if the government establishes that it is clearly evident that equivalent or better access to the facility or part of the facility is provided.

(10) *Exception for construction projects commenced prior to January 1, 1977.* The provisions of this subsection do not apply to buildings or construction projects, including those funded with revenue sharing funds, commenced prior to January 1, 1977, including those funded with revenue sharing funds, unless it is determined that programs or activities funded in whole or in part with revenue sharing funds are conducted within or make use of such facilities, in which case, those programs

*Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018—(212) 354-3300. Copies are also on file with the Federal Register.

and activities must be readily accessible to and usable by handicapped individuals as described in paragraphs (k)(2) (i) and (ii) of this section.

(11) *"Commencement of construction" defined.* A construction project shall be deemed to have commenced when the recipient government has obligated itself by contract for the physical construction of the project or any substantial portion of the project.

(l) *Coordination of unresolved legal issues.* Whenever the Director receives a complaint which alleges a violation of the provisions of this section and involves a legal issue that has not been resolved judicially or administratively, the Director shall request guidance from the Department of Justice which was designated by Executive Order 12250 to coordinate Section 504, within one week of receipt of such complaint. The Director may defer action on the complaint pending receipt of the guidance if it is determined that such guidance will be received within one month from the issuance of the request. Thereafter, the Director shall then act in accordance with the guidance. If the Director determines that the Department of Justice cannot provide guidance concerning the proper course of action within a period of one month (30 days), the Director shall proceed to initiate fact-finding activities with respect to the complaint. During that process, the Director shall continue to keep the Department of Justice advised of the actions taken, pending receipt of the guidance requested.

§ 51.56 [Reserved]

§ 51.57 Discrimination on the basis of national origin.

The EEOC has adopted Guidelines on discrimination on the basis of national origin (29 CFR Part 1606). These Guidelines provide practical assistance to enable recipient governments to bring themselves into compliance with Federal law. Recipient governments shall comply with the provisions of these Guidelines, which are adopted by the ORS. A violation of these Guidelines shall constitute a violation of this subpart.

§ 51.58 Discrimination on the basis of religion.

(a) *In general.* Any prohibition against discrimination on the basis of religion, or any exclusion or exemption from such discrimination, as provided in the Civil Rights Act of 1964 or title VIII of the Act of April, 1968, (hereafter referred to as the Civil Rights Act of 1968), shall apply to any program or activity of a recipient government which government receives entitlement funds under the Act.

(b) *EEOC Guidelines.* The EEOC has adopted Guidelines on discrimination on the basis of religion (29 CFR Part 1605). These Guidelines provide practical assistance to enable recipient governments to bring themselves into compliance with Federal law. Recipient governments shall comply with the provisions of these Guidelines, which are adopted by the ORS. A violation of these Guidelines shall constitute a violation of this subpart.

§ 51.59 Assurances required.

(a) *General.* In order to qualify for any payment of entitlement funds for any entitlement period, each Governor of a State or each chief executive officer of a unit of local government shall execute to the satisfaction of the Director an assurance that all programs and activities of a recipient government will be conducted in compliance with the requirements of this subpart. The chief executive officer is also required to assure that in the event a Federal or State court or Federal administrative law judge makes a holding as defined in § 51.51(h) of this subpart against the recipient government, such recipient government will forward a copy of the holding to the Director within 10 days of receipt by the recipient government. Assurances required under this paragraph shall be in such form and detail as prescribed by the Director.

(b) *Delay and constructive waiver of entitlement payments.* (1) The failure of a recipient government to comply with the assurance and reporting requirements of subpart E of this part which include submission of assurances and requests for information concerning compliance with the provisions of this subpart, may result in the delay of the further payment of entitlement funds until the assurance, report or information requested is received. A delay of the payment of entitlement funds shall not be subject to the procedures for affecting compliance set forth in this subpart.

(2) The Director may, after the payment of entitlement funds have been delayed for one or more of the entitlement periods pursuant to paragraph (b)(1), constructively waive such funds pursuant to § 51.25(b) of this part. Entitlement payments constructively waived shall not be paid to the recipient government.

§51.60 Compliance information and reports.

(a) *Access to sources of information.* Each recipient government shall permit access by authorized representatives of the Office of Revenue Sharing and the Department of Justice during normal business hours to such facilities, books, records, accounts, personnel, and other sources of information as may be relevant to a determination of whether the recipient government is complying with the provisions of this subpart. Where any information required of a recipient government is in the exclusive possession of any other agency, institution, or person, and such agency, institution, or person fails or refuse to furnish this information to the ORS or its authorized representatives, the responsibility for providing such information shall remain with the recipient government.

(b) *Compliance reports.* Each recipient government shall submit on request of the Director timely, complete and accurate compliance reports at such times, in such form, and containing such information, as the Director may determine to be necessary or useful to ascertain whether the recipient government has complied or is complying with the requirements of the subpart. Recipient governments shall make available on request of Office of Revenue Sharing officials, racial, ethnic, male/female, and national origin data showing the extent to which minorities and females will be beneficiaries of entitlement funds. The recipient government shall also make available on request similar data concerning age distinctions and handicapped status. In the case of any program under which a primary recipient government extends or will extend entitlement funds to any secondary recipient, the secondary recipient shall submit such compliance reports to the primary recipient government as may be necessary or useful to enable the primary recipient to carry out its obligations as a recipient government under this subpart. Each recipient government shall identify, on request of the Office of Revenue Sharing, any State or local agency which has been legally authorized to monitor its civil rights compliance activities.

(c) *Delay and constructive waiver of entitlement payments.* (1) The failure of a recipient government to comply with the assurance and reporting requirements of Subpart E of this part which include submission of reports and response to specific requests for information concerning possible violation of this subpart, may result in the delay of the further payment of entitlement funds until the assurance, report or information requested is received. A delay of the payment of entitlement funds shall not be subject to the procedures for affecting compliance set forth in this subpart.

(2) The Director may, after the payment of entitlement funds have been delayed for one or more of the entitlement periods pursuant to paragraph (c)(1) of this section, determine that the payments to the recipient government for a particular entitlement period are constructively waived pursuant to § 51.25(b) of this part. Entitlement payments constructively waived will no longer be available to the recipient government.

§ 51.61 Compliance reviews and affirmative action.

(a) *Compliance Reviews.* (1) The Director may periodically conduct compliance reviews of selected recipient governments.

(2) Selection for review shall be made on the basis of any of the following considerations:

(i) The relative disparity between the percentage of minorities, or women, in the relevant labor market, and the percentage of minorities, or women, employed by the recipient government;

(ii) The percentage of women and minorities in the population receiving benefits from a program or activity;

(iii) The number and nature of discrimination complaints filed against a recipient with ORS or other Federal agencies;

(iv) The scope of the problems revealed by any investigation of allegations of noncompliance against a recipient government; and

(v) The amount of entitlement funds provided to the recipient government.

(3) Within 90 days after selection of a recipient government for review, the Director shall inform the recipient government that it has been selected and will initiate the review. The review will ordinarily be initiated by a letter requesting data pertinent to the review and advising the recipient government of:

(i) The practice(s) to be reviewed;

(ii) The programs or activities affected by the review;

(iii) The opportunity to make, at any time prior to the receipt of the Director's findings, a documentary submission responding to the Director, explaining, validating, or otherwise addressing the practices under review; and

(iv) The schedule under which the review will be conducted and a finding made.

(4) Within 180 days after the initiation of the review, the Director shall advise the chief executive officer of the appropriate recipient government of:

(i) The results of the review; and

(ii) Where appropriate, a recommendation for corrective action.

(5) If within 30 days after the recipient government has been notified of corrective actions required pursuant to subparagraph (4) of this paragraph, a compliance agreement is not secured, the Director shall institute administrative proceedings pursuant to § 51.64, *et seq.* and Subpart G of this part.

(b) *Affirmative action.* The EEOC has adopted Guidelines for affirmative action (29 CFR Part 1608). These Guidelines indicate when voluntary affirmative action is appropriate and are adopted by the ORS.

§ 51.62 Administrative complaints and investigations.

(a) *Administrative complaints.* Any person who believes that he or she has been subjected to discrimination probhibited by this subpart, may personally or by a representative, file a complaint with the Director of the Office of Revenue Sharing (Treasury Department, Washington, D.C. 20226). A person who has not personally been subjected to discrimination may also file a complaint. The complaint must be a written statement setting forth the nature of the discrimination alleged and the facts upon with the allegation is based.

(b) *Investigations.* (1) The Director shall advise the chief executive officer of the recipient government of any administrative complaint received pursuant to paragraph (a) of this section within 30 days of the receipt of such complaint.

(2) The Office of Revenue Sharing shall investigate administrative complaints described in paragraph (a) of this section. Information contained within the files of the Office of Revenue Sharing or other information which suggests discrimination prohibited by this subpart may become part of an ongoing or future investigation.

(3) Such investigations will be made with the assistance of the complainant(s) and of the recipient government to the maximum extent feasible.

(4) In appropriate cases the Director may defer to the Attorney General as provided for in an agreement with the Department of Justice.

(5) The scope of such investigations may not be limited to the administrative complaint or other information, but may include any matters either discovered during the investigation or reasonably flowing from said administrative complaint or other information.

(6) The Director shall to the maximum extent feasible, make a finding within 90 days of receipt of an administrative complaint or State administrative agency determination where there is sufficient evidence of noncompliance.

(7) To the maximum extent feasible, the Director will make use of the agreements between agencies as provided for in § 51.69 of this subpart in order to facilitate compliance with the provisions of this subpart.

§ 51.63 Notification to the complainant.

Upon written request, the complainant shall be advised of the status of the investigation or other proceeding undertaken in response to the complaint. Within 10 days after the Director issues a finding or determination, or receives a holding, the Director shall notify the complainant or the complainant's counsel.

§ 51.64 Notification of noncompliance.

(a) *Notification of noncompliance after a finding by the Director.* The Director shall issue a notice of noncompliance in writing to the chief executive officer of the recipient government (and in the case of a unit of local government, also the Governor of the State in which the recipient government is located) within 10 days of making a finding. The notice shall be to the effect that it is more likely than not that the recipient government has failed to comply with the provisions of this subpart. The notice shall further state that a determination will be made within 30 days after receipt of this notice, and that within this period, the recipient government may enter into a compliance agreement with the Director, present additional evidence that demonstrates compliance with this subpart and/or proves by clear and convincing evidence that the program or activity complained of was not funded with entitlement funds. The Assistant Attorney General for Civil Rights shall also be notified of the finding.

(b) *Notification of noncompliance by the Director after receipt of a holding.* (1) Within 10 days of receipt of a holding, the Director shall issue a notice of noncompliance to the chief executive officer of the recipient government in writing (and in the case of a unit of local government, to the Governor of the State in which the recipient government is located).

(2) The notice shall state that the Office of Revenue Sharing is required to adopt the holding as conclusive on the issue of discrimination and that the recipient government is in noncompliance with the provisions of this subpart. The notice may include the issues beyond those contained in the holding. The notice shall state that unless within 30 days after receipt of

this notice the recipient government enters into a compliance agreement or proves by clear and convincing evidence that the program or activity complained of was not funded with entitlement funds, the Director shall issue a determination that the recipient government has failed to comply with the provisions of this subpart. The Assistant Attorney General for Civil Rights shall also be notified of the finding.

(c) *Effect of a Stay.* An administrative proceeding based on a holding shall be suspended to the extent that a stay is issued by a court of competent jurisdiction with respect to the holding. The suspension shall only affect those issues covered by the stay.

§ 51.65 Determination by the Director.

(a) *Determination by the Director after a finding of discrimination.* (1) The Director shall, within 30 days after the recipient government's receipt of the notice of noncompliance, issue a determination as to whether the recipient government has failed to comply with this subpart to the chief executive officer of the recipient government (and in the case of a unit of local government, the Governor of the State in which the recipient government is located shall also be notified). The Assistant Attorney General for Civil Rights shall also be notified of the determination.

(2) Once a determination of noncompliance is received, a recipient government shall have 10 days in which to enter into a compliance agreement or request an administrative hearing. If a recipient government fails to take either action within the 10-day period, the Director shall immediately suspend the further payment of entitlement funds to such recipient government. The suspension in effect shall remain suspended until the recipient government enters into a compliance agreement.

(b) *Determination by the Director after notice of a holding.* (1) The Director shall, within 30 days after the recipient government's receipt of notification of noncompliance based on a holding, issue a determination as to whether the recipient government is in compliance with this subpart to the chief executive officer of the recipient government (and in the case of a unit of local government, the Governor of the State in which the recipient government is located shall also be notified). The Assistant Attorney General for Civil Rights shall also be notified of the determination.

(2) The determination of noncompliance shall adopt the holding of the Federal or State Court or Federal administrative law judge as conclusive on the issue of discrimination and give the recipient government 10 days from receipt of the notification of the determination to enter into a compliance agreement or request an administrative hearing. The sole issue at the administrative hearing shall be whether the program or activity complained of was funded by entitlement funds. If the recipient government fails to take either action within the 10-day period, the Director shall immediately suspend the further payment of entitlement funds to such government.

(3) If the holding on which the determination is based is reversed by a appellate tribunal, or by agency review in the case of the holding of a Federal administrative law judge, the Director shall discontinue the administrative action begun as a result of the holding. Any suspension of entitlement funds resulting from the determination shall also be discontinued and those funds paid to the recipient government as quickly as possible.

§ 51.66 Compliance agreements.

(a) *In matters where the ORS was not a party to the proceeding.* For purposes of this subpart a compliance agreement includes an agreement in writing between the Federal or State agency or official responsible for prosecuting the claim (including the Attorney General of the United States) and the chief executive officer of the recipient government against whom the noncompliance with this subpart is alleged. Such compliance agreement may take the form of a consent decree to be entered in the proceedings before a court of record or to be entered by a Federal administrative law judge having jurisdiction over the proceedings. Counsel of record representing the chief executive officer of the recipient government may initiate or negotiate the compliance agreement on behalf of the chief executive officer of the recipient government. However, in each case the Director shall, through counsel or representative, approve or reject the compliance agreement. The Director may reject the compliance agreement if it is determined that the agreement has not adequately remedied the discrimination.

(b) *In matters involving a holding.* Where the Director acts on the basis of a holding, the remedial order of the Court or Federal administrative law judge shall constitute the basis of the compliance agreement to be entered into with the Director: *Provided, however,* That the lack of a remedial order does not affect the requirement that a recipient government enter into a compliance agreement with the Director within the time limits set forth in section 122(b) of the Act and §§ 51.64 and 51.65 of this subpart. Any agreement entered into prior to issuance of such remedial order may be appropriately modified when the order is entered.

(c) *In matters between the Director and a recipient government.* In those instances where a compliance agreement is negotiated between the Director and the chief executive officer of the recipient government, the agreement shall be one document signed by the parties containing the following:

(1) A statement of all matters that constitute the failure of the recipient government to comply with the requirements of this subpart;

(2) The terms and conditions with which the recipient government has agreed to comply in order to achieve compliance with the requirements of this subpart. Such terms and conditions may include the payment of restitution to persons injured by the failure of the recipient government to comply with any provisions of this subpart; and

(3) The signatures of the Director and the chief executive officer of the recipient government concerned.

(d) *Monitoring of compliance agreement.* The Director shall monitor compliance by recipient governments with the compliance agreement. As part of the monitoring process, the Director may require from recipient governments periodic reports which demonstrate continued compliance.

(e) *Effect of violation of compliance agreement.*

(1) If the recipient government fails to comply with the obligations stipulated in this agreement, the Director shall issue a determination of noncompliance under section 122(b)(2) of the Act.

(2) The Director shall suspend the payment of entitlement funds to a recipient government 10 days after its receipt of the determination of noncompliance, unless such government either achieves compliance with the provisions of the compliance agreement or requests an administrative hearing. At any such hearing, the issues shall be limited to whether or not the recipient government has acted in compliance with the agreement.

(f) *Notification to complainants of compliance agreement.* Within 15 days after the execution of a compliance agreement (or, in the case of an agreement executed under paragraph (a) of this section, upon the approval of the Director if later than 15 days) the Director shall submit a copy of such agreement to the complainant(s). The

submission of a copy of the compliance agreement to counsel of record (if any) for the complainants shall meet the requirements of this paragraph.

§ 51.67 Resumption of suspended entitlement payment.

The payment of entitlement funds, to a recipient government to which such payment has been suspended, shall be resumed when:

(a) The recipient government enters into a compliance agreement that satisfies the Director that the recipient government will comply with the provisions in this subpart.

(b) The administrative law judge, who made a preliminary finding under section 122(b)(3) of the Act, holds that the recipient government is in compliance with the provisions of this subpart; or

(c) The recipient government complies fully with the remedial order of a court or a Federal administrative law judge if the order covers all matters raised by the Director in the notice of noncompliance based on a holding to the recipient government; or

(d) After a rehearing or similar adjudicative proceedings a court or an administrative law judge which originally held that the recipient government had failed to comply with the provisions of this subpart, subsequently holds that the recipient government did not so fail to comply; or

(e) An appellate court reverses the findings of discrimination by a lower court or administrative law judge upon the basis of which the Director suspended the payment of entitlement funds.

§ 51.68 Exhaustion of administrative remedies.

For purposes of bringing a private civil action pursuant to section 124 of the Act a complainant shall be deemed to have exhausted the administrative remedies upon the expiration of 90 days from the date the administrative complaint was filed with the Director, where the Director:

(a) Issues a determination that the recipient government against whom the complaint was filed is in compliance with the provisions of this subpart; or

(b) Fails to make a determination on such complaint.

§ 51.69 Agreements between agencies.

(a) *Purpose of cooperative agreements.* The Director shall endeavor to enter into cooperative agreements with officials of other departments and agencies of the Federal government, or officials of State agencies (which have concurrent jurisdiction) to effectuate the purposes of this subpart, including the achievement of effective coordination within the executive branch in the implementation of Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d, 2000e), the Civil Rights Act of 1968, the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(b) *Content of cooperative agreements.* The agreements between the Director and other agencies or officials shall describe the cooperative efforts to be undertaken, which may include, but need not be limited to:

(1) Sharing of resources during investigations and compliance reviews (either by having joint investigations or having one agency do an investigation for both);

(2) Cooperation during compliance activities including the issuance of findings or determinations, (including the adopting of other agency's findings or determinations where practical);

(3) Cooperation during administrative hearings including joint participation and sharing of resources.

(4) Deferral of agency action where one agency has begun compliance activities on the same complaint or set of circumstances and provision for resumption of action where the agency deferred to does not act in a timely manner;

(5) Sharing of information, including data, records and investigative and other files, computer printouts, lists and status reports on complaints received;

(6) Identification of liaison personnel and the establishment of periodic meetings to discuss common substantive and procedural problems;

(7) Protecting the confidentiality of information shared;

(8) Providing for notification of formal administrative actions instituted against jointly covered recipients and of the results of such actions, particularly those may be classified as holdings; and

(9) The establishment of lead agencies (in those areas in which lead agencies have not already been designated by statute or executive order) so that the designated lead agency will provide policy guidance in the area where two or more agencies share concurrent jurisdiction.

§ 51.70 Jurisdiction over property.

(a) *In general.* The Director shall have jurisdiction over any recipient government for purposes of this subpart for as long as that recipient government retains ownership or possession of any real or personal property or any interest therein, which was purchased in whole or in part with entitlement funds. Further, if such property is transferred to a secondary recipient or other party, the Director will retain jurisdiction over the recipient government for purposes of this subpart for as long as the property is used to provide benefits similar to those which were provided by the property before the transfer.

(b) *Definitions.* For the purposes of this section:

(1) Real property includes land, structures upon land and fixtures attached to land, and buildings or structures which cannot be removed without damage to the fixtures, buildings or structures.

(2) Personal property includes, at the least, non-expendable tangible property having a useful life or more than one year and an acquisition cost of $1,000 or more per unit of property.

(3) The transfer of property means the passage of the property to a secondary recipient, or to any other person, firm or agency.

(c) *Use of property to provide similar benefits.* For the purposes of this section the clause in subsection (a) "so long as the property is used to provide benefits similar to those provided by the property before the transfer" means the primary use or function of the property and not the specific or particular use of the property in the program or activity for which originally acquired.

(d) *Record keeping requirements.* Recipient governments shall maintain a separate record of real property and of tangible personal property having a value in excess of $1,000. Such records shall set forth the date of purchase, date of disposal or transfer and the transferee of the property. Upon outright sale, discard, or trade of such property the provisions of this section shall no longer be applicable.

Subpart F—Fiscal Procedures and Auditing

§ 51.100 Definitions.

Unless the context requires otherwise, as used in this subpart, the term:

(a) "Compliance audit" means the review of the documentation concerning a recipient government's expenditure of entitlement funds to determine that those funds have been expended in compliance with the provisions of the Act and regulations.

(b) "Financial audit" means the examination of the financial statements of all funds of a recipient government in accordance with generally accepted auditing standards.

(c) "Financial statements" mean:

(1) Show the financial operations for a specific period of time, and

(2) If appropriate, present the financial position as of the end of that fiscal period, and

(3) Present the footnotes required for adequate disclosure.

(d) "Generally accepted auditing standards" means those auditing standards pronounced by the American Institute of Certified Public Accountants and incorporated in its *Statements on Auditing Standards*, or those in the financial and compliance element of the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, issued in 1981 by the Comptroller General of the United States.

(e) "Independent audit" means an audit conducted by independent public accountants, or by independent qualified acountants or examiners from a State or local agency. An independent public accountant or independent qualified accountant or examiner is one who has no personal interest directly or indirectly in the financial affairs of the government being audited, or in the financial affairs of any of the officers of the government being audited.

(1) In those States in which an audit is required by State law to be made of the State government by a State office or official, such audit shall be considered to meet the requirements of an independent audit provided the principal officer of the State audit agency is not responsible for the maintenance of the accounting records being audited and does not report to the officer responsible for maintenance of such accounting records and is:

(i) Elected by the citizens of the State; or

(ii) Elected or appointed by and reports to the State legislature or a committee thereof; or

(iii) Appointed by the Governor and confirmed by and reports to the legislature or a committee thereof.

(2) In those States in which an audit is made of local governments (or certain categories of local government) by a State office or official, such audit shall be considered to meet the requirements of an independent audit.

(3) Audits of local recipient governments made by an internal auditing ofice or officer shall be considered to meet the requirements of an independent audit provided the principal officer of the audit agency is not responsible for the maintenance of the official accounting records being audited and does not report to the officer responsible for maintenance of official accounting records, and is:

(i) Elected by the citizens of the local recipient governments; or

(ii) Elected or appointed by and reporting to the governing body of the local recipient government or a committee thereof; or

(iii) Appointed by the chief executive officer of the local recipient government and reports to the governing body of the local recipient government or a committee thereof.

(4) Audits other than those specified in paragraphs (e) (1), (2) and (3) of this section shall not be considered to be independent audits.

(f) "Independent public accountant" means independent certified public accountants and licensed public accountants licensed on or before December 31, 1970. Certification or licensing shall be by a regulatory authority of a State or other political subdivison of the United States.

§ 51.101 Procedures applicable to the use of funds.

A recipient government which receives entitlement funds under the Act shall:

(a) Establish a trust fund and deposit all entitlement funds received and all interest earned thereon in that trust fund. The trust fund may be established on the books and records as a separate set of accounts, or a separate bank account may be established.

(b) Use, obligate, or appropriate entitlement funds within 24 months from the end of the entitlement period to which the entitlement payment is applicable. The use, obligation or appropriation of entitlement funds shall be consistent with State or local law requiring a legislative enactment in ordinance or resolution form. Any interest earned on such funds while in the trust fund shall be used, obligated, or appropriated within 24 months from the end of the entitlement period during which the interest was received or credited. An extension of time in which to act on the funds, or interest accrued, shall be obtained by application to the Director. The application will set forth the facts and circumstances supporting the need for more time and the amount of additional time requested. The Director may grant such extensions of time which appear necessary or appropriate.

(c) Maintain its fiscal accounts in a manner sufficient to:

(1) Permit the reports required by the Director to be prepared therefrom, and

(2) Permit the tracing of entitlement funds to a level of expenditure adequate to establish that the funds have not been used in violation of the restrictions and prohibitions of this part. Tracing requires that vouchers in support of expenditures funded by the Act shall be identified. Identification can be made in any one of three ways as follows:

(i) Maintain a separate set of fund accounts; or

(ii) Maintain a separate bank account; or

(iii) Keep a memorandum record of the voucher numbers and amounts of the expenditures funded by entitlements received under the Act.

The accounting for entitlement funds shall, at a minimum, employ the same fiscal accounting and internal audit procedures as are used with respect to the expenditures from revenues derived from the recipient government's own sources.

(d) Provide to the Director and to the Comptroller General of the United States, on reasonable notice, access to and the right to examine such books, documents, papers or records as the Director may reasonably require for the purpose of reviewing compliance with the Act and the regulations of this part or, in the case of the Comptroller General, as the Comptroller General may reasonably require for the purpose of reviewing compliance and operations under the Act.

§ 51.102 Auditing and evaluation.

(a) *Audit requirement.* (1) Each recipient government which expects to receive entitlement funds for entitlement periods beginning on or after January 1, 1977, shall have an independent audit of its financial statements conducted for the purpose of determining compliance with the provisions of the Act, in accordance with generally accepted auditing standards, not less often than once every three years. The compliance aspects of the audit must be performed for the same year in which the financial audit is performed on the funds into which revenue sharing entitlements are deposited.

(2) Audits conducted to comply with the provisions of this section shall be submitted to the Director within eight months from the end of the fiscal year audited.

(3) Where applicable and practicable to do so, recipient governments shall employ the provisions of the Office of Management and Budget's Circular A-102, Attachment P in meeting the requirements of this section. The General Accounting Office publication *Guidelines for Financial and Compliance Audits of Federally Assisted Programs* and the OMB Compliance Supplement shall be used by auditors in the performance of these examinations.

(b) *Election by recipient government.* A recipient government may elect to

have the requirements of paragraph (a) of this section not applicable to that government upon filing notice to the Director that the audits are conducted in compliance with State or local law and meet the following requirements:

(1) The financial statements of the recipient governments are audited by independent public accountants as defined in § 51.100(e) of this subpart, or by independent auditors as defined in § 51.100(f) of this subpart; and

(2) The audits of the recipient government are conducted in accordance with generally accepted auditing standards; and

(3) The audits of the recipient government will be conducted not less often than once every three years; and

(4) A compliance audit, as well as a financial audit, is conducted.

(c) *Inapplicability of audit requirement.* The requirement of paragraph (a) of this section shall not apply where the recipient government's allocation of entitlement funds for any of its fiscal years is less than $25,000. State or local law which requires an audit of such government's financial statements must be complied with in accordance with § 51.45 of this part, and will constitute compliance with paragraph (a). Such an audit conducted under State or local law need not be submitted to the ORS, but shall be made available upon request by the Director.

(d) *Modification of audit requirement.* A unit of local government may conduct an audit required pursuant to paragraph (a) of this section solely on those funds of accounts in the financial activity into which entitlement funds have been deposited where:

(1) The State in which the unit of local government is located, entered into an agreement on July 25, 1974, to conduct audits required by the Act on behalf of such units of local government, and

(2) The audits were not conducted as required for entitlement periods beginning after December 31, 1976, and before January 1, 1980.

(e) *Series of audits.* A series of independent audits may be used as an alternative to the provisions of paragraph (a) of this section if they are conducted in accordance with generally accepted auditing standards, over a period not to exceed three fiscal years, and cover, in the aggregate, all of the accounts of a recipient government. When electing a series of audits, a recipient government must perform the compliance audit for the same fiscal year in which the financial audit is performed on the fund into which entitlement funds are deposited. The reports will be considered in an aggregate as one report for the purpose of determining whether the recipient government has complied with the provisions of this part.

(f) *Audits by State governments; local governments receiving less than $25,000 in entitlement funds in one entitlement period.* (1) A State government which receives entitlement funds will be required to conduct audits described in paragraph (a) of this section only if such government receives entitlement funds for three consecutive entitlement periods. The required audit would then be conducted for any one of the three years in which entitlement funds were received.

(2) Units of local government which receive entitlement funds shall be required to conduct audits described in paragraph (a) of this section only when such governments receive $25,000 or more entitlement funds for each of the three consecutive entitlement periods. The required audit would then be conducted for any one of these three consecutive years in which $25,000 or more in entitlement funds were received.

§ 51.103 Waiver of audit requirement.

(a) *Basis for granting waiver.* The Director may waive the provisions of § 51.102 of this subpart in whole or in part, for any recipient government which makes application for such a waiver, for any fiscal period upon determining that:

(1) The accounts of such government are not auditable and the government is making substantial progress towards making its accounts auditable; or

(2) The government has been audited by a State audit agency which does not follow generally accepted auditing standards or which is not independent as defined in § 51.100 (d) and (e) respectively, and which is demonstrating progress toward taking the necessary corrective action.

(b) *Procedure for requesting waiver.* (1) The chief executive officer of the recipient government shall apply to the Director in writing for the waiver and provide the following information:

(i) If the waiver is requested due to unaudibility of government financial accounts, an assurance that in the course of determining compliance with § 51.102, the independent auditor rendered an opinion that part or all of the financial accounts are not auditable. The waiver request shall further clearly set forth the arrangements which have been made or steps taken toward making such financial accounts auditable.

(ii) If the waiver is requested pursuant to paragraph (a)(2) of this section, an assurance that the State audit agency is demonstrating progress toward performing audits in accordance with generally accepted auditing standards or becoming independent. The waiver request shall further clearly set forth the arrangements which have been made or steps taken toward establishing the use of generally accepted auditing standards or achieving independence.

(2) The Director shall determine whether the recipient government or the State audit agency is making substantial progress towards taking the necessary corrective action.

§ 51.104 Audits of secondary recipients.

A recipient government shall be responsible for an audit of the entitlement funds transferred to any secondary recipient, where the aggregate of the entitlement funds transferred to such secondary recipient during the fiscal year is $25,000 or more. Such audit shall be conducted pursuant to § 51.102(a), and the commentary on the audit requirements of the 1980 Amendments to the Act as published by the ORS and available to each recipient government. Audits performed for secondary recipients shall be performed in the same year as such audits are performed for the applicable primary recipient governments.

§ 51.105 Reliance upon audits under other Federal laws.

The Director may rely upon audits of the financial statements of recipient governments conducted in accordance with other Federal laws, for any fiscal period, provided that such audits substantially satisfy the requirements for audits contained in § 51.102(a) of this part. Audits and reports prepared in accordance with the procedures prescribed by OMB Circular A-102, Attachment P, will be acceptable to the Director as meeting the audit requirements of the Act, providing the OMB approved compliance supplement is used, and all funds of the recipient are examined.

§ 51.106 Audit opinions.

(a) *In general.* Opinions made with respect to audits must be rendered as a part of the audit report and shall be in accordance with the opinion in general use for attesting to financial statements, as defined in § 51.100(c).

(b) *Nature of opinions.* Audit opinions may be unqualified, qualified, or adverse. Disclaimers of opinion will be considered on an individual case-by-case basis to determine acceptability. Appropriate opinions for special reports should be expressed where cash basis statements have been prepared.

§ 51.107 Scope of audits.

(a) *In general.* (1) Audits made pursuant to § 51.102(a) shall include all financial statements prepared from accounts which the recipient government is required to maintain pursuant to State or local law.

(2) Audits of such financial statements made pursuant to § 51.102(a) are required whether the funds being audited belong to the recipient government or whether the recipient government is holding such funds in a trust fund or other account which belongs to another political entity.

(3) Audits pursuant to § 51.102(a) are also required (even if the financial statements are prepared from accounts maintained by a political entity other than the recipient government, such as a quasi-independent board, commission, authority) if the Bureau of the Census has classified the political entity as being dependent for general statistical purposes upon the recipient government. The classification of governments is contained in "The Census of Governments, Governmental Organization (Vol. 1)," published by the Bureau of the Census every five years and updated on a current basis to reflect significant changes occurring between censuses.

(4) The audit shall be of the financial and compliance type described in the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions* as issued in 1981 by the Comptroller General of the United States, or the financial types prescribed by the American Institute of Certified Public Accountants and incorporated in its *Statements on Auditing Standards.*

(b) *Verification of fiscal data reported to the Bureau of the Census.* The scope of the audit shall also include a verification of the recipient government's fiscal data as reported by it to the Bureau of the Census.

§ 51.108 Retention and submission of audit reports and workpapers.

(a) *Submission of audit reports.* The Director may require the chief executive officer of a recipient government to submit a copy of its audit report and other information as may be requested by the Director to determine compliance with the provisions of this subpart.

(b) *Retention of audit workpapers.* Audit workpapers and related reports shall be retained for three years after the issuance of the audit report, and shall be made available upon request to the Director and the Comptroller General or to their representatives. Recipient governments whose audits are performed by independent public accountants, not in their employ, may meet the requirement of this section by informing the firm or individual of this requirement and encouraging them to comply.

§ 51.109 Procedures for effecting compliance.

(a) *Compliance with substantive provisions.* If a recipient government fails to comply with the requirements of this subpart, the Director may implement the procedures for effecting compliance contained in § 51.3 (a) through (d) of Subpart A.

(b) *Compliance with reporting requirements.* If a recipient government fails to comply with the reporting requirements of this subpart, the Director may implement the delay of payment and/or constructive waiver provisions of § 51.3(e) of Subpart A and § 51.25(b) of Subpart C of this part.

Subpart G—Proceedings for Reduction in Entitlement, Withholding, or Suspension of Funds

§ 51.200 Scope of subpart.

The regulations of this subpart govern the procedure and practice requirements involving adjudications where the Act requires reasonable notice and opportunity for a hearing. The adjudications covered in this subpart include administrative hearings concerning violations of all provisions of this part. Unless otherwise specified, the procedures described herein apply to both hearings concerning the violation of the provisions contained in Subpart E and hearing concerning the violation of the provisions contained in Subparts B, D and F.

§ 51.201 Liberal construction.

The regulations in this subpart shall be liberally construed to secure just, expeditious, and efficient determination of the issues presented. The Federal Rules of Civil Procedure for the District Courts of the United States, where applicable, shall be a guide in any situation not provided for or controlled by this subpart, but shall be liberally construed or relaxed when necessary.

§ 51.202 Reasonable notice and opportunity for hearing.

Whenever the Director has reason to believe that a recipient government has failed to comply with any provision of the Act or the regulations contained in this part, the Director shall give reasonable notice and opportunity for a hearing to such government as required by the pertinent procedural provisions of Subparts A, E or G prior to the invocation of any sanction available under the Act. The sanctions for violation of the provisions of the Act include: Repayment, withholding, or reduction in the amount of an entitlement of a recipient government which is required for a violation of the provisions of Subparts B, D and F, or suspension or termination of the entitlement payments for violations of the provisions of Subpart E.

§ 51.203 Opportunity for compliance.

(a) *In general.* Except in proceedings involving willfulness or those in which the public interest requires otherwise, an administrative hearing under this part will not be instituted until such facts or conduct which may warrant such action have been called to the attention of the chief executive officer of the recipient government in writing and an opportunity has been given to demonstrate or achieve compliance with the requirements of the Act and the regulations of this part.

(b) *Opportunity for compliance, under provisions other than Subpart E.* The opportunity for compliance will be given in accordance with the procedures for effecting compliance contained in § 51.3 for violations of Subparts B, D and F. If the recipient government fails to meet the requirements of the Act and regulations within such reasonable time as specified by the Director pursuant to § 51.3 of this part, an administrative hearing may be initiated by the Director.

(c) *Opportunity for compliance under Subpart E.* For violations of the provisions of Subpart E, entitlement funds shall be immediately suspended after notification of a determination of noncompliance pursuant to § 51.65, unless a recipient government specifically and timely requests an administrative hearing pursuant to § 51.65. If the recipient government is a unit of local government, a copy of the finding and determination letters shall be transmitted by the Director to the Governor of the State in which the unit of local government is located.

§ 51.204 Institution of administrative hearing.

(a) *Institution of an administrative hearing other than under Subpart E.* An administrative hearing to require repayment of funds to the Director, or to withhold funds from subsequent entitlement payments, or to reduce the entitlement of a recipient government for violations of the provisions of Subparts B, D, or F, shall be instituted by the Director through a complaint which names the recipient government as the respondent.

(b) *Institution of an administrative hearing under Subpart E.* An administrative hearing under Subpart E

of this part shall be instituted at the timely request of the recipient government, pursuant to § 51.65 of Subpart E, within 30 days of receipt of that request by the Director. After receiving the request for a hearing, the Director shall file a complaint which names the recipient government as the respondent.

§ 51.205 Complaint for administrative hearing.

Administrative complaints shall include the following:

(a) *Charges.* A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informed the respondent of the charges against it.

(b) *Demand for answer.* Notification shall be given in the complaint of the time and place within which the recipient government shall file its answer, which time shall be not less than 30 days from the date of service of the complaint for hearings concerning provisions other than Subpart E. Where the hearing concerns provisions under Subpart E, the answer shall be required to be filed within 10 days of the date of service of the complaint. The complaint shall also contain notice that a decision by default will be rendered against the recipient government in the event it fails to file its answer as required.

§ 51.206 Service of complaint and other papers.

(a) *Service of complaint.* The complaint or a true copy thereof may be served upon the recipient government by first-class mail or by certified mail, return receipt requested; or it may be served in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return Postal Service receipt duly signed on behalf of the respondent shall be proof of service. Where the hearing concerns the provisions of Subpart E, the complaint shall be served upon the recipient government within seven days of receipt of the request for a hearing from the recipient government.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon a party or upon its attorney of record by first-class mail. Such mailing shall constitute complete service.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with an administrative hearing under this subpart, and the place of filing is not specified in this subpart or by rule or order of the administrative law judge, the paper shall be filed with the Director, Office of Revenue Sharing, Treasury Department, Washington, D.C. 20226. All papers shall be filed in duplicate.

(d) *Motions and requests.* Motions and requests may be filed with the designated administrative law judge, except that an application to extend the time for filing an answer shall be filed with the Director, Office of Revenue Sharing, pursuant to § 51.207(a).

§ 51.207 Answer; referral to administrative law judge.

(a) *Filing.* The recipient government's answer shall be filed in writing within the time specified in the complaint, unless a recipient government's request for an extension of time is granted by the Director. The recipient government's answer shall be filed in duplicate with the Director, Office of Revenue Sharing.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the recipient government shall not deny a material allegation in the complaint which it knows to be true, nor shall a recipient government state that it is without sufficient information to form a belief when in fact it possesses such information. The recipient government may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegation in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need to be adduced at a hearing.

(d) *Failure to file answer.* Failure to file an answer within the time prescribed in the complaint, except where the time for answer is extended under paragraph (a) of this section, may constitute an admission of the allegations of the complaint and a waiver of hearing, and the administrative law judge may make his findings and decision by default without a hearing or further procedure.

(e) *Reply to answer.* No reply to the recipient government's answer shall be required, and new matter in the answer shall be deemed to be denied, but the Director may file a reply in her discretion and shall file one if the administrative law judge so requests.

(f) *Referral to administrative law judge.* Upon receipt of the answer by the Director, or upon filing a reply if one is deemed necessary, or upon failure of the recipient government to file an answer within the time prescribed in the complaint or as extended under paragraph (a) of this section, the complaint (and answer, if one is filed) shall be referred to the administrative law judge who shall then proceed to set a time and place for hearing and shall serve notice thereof upon the parties at least 15 days in advance of the hearing date.

§ 51.208 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading, and the evidence adduced in support of the pleadings, the administrative law judge may order or authorize amendment of a pleading to conform to the evidence: *Provided,* That, the party that would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations contained in the pleading as amended. The administrative law judge shall make findings on any issue presented by the pleadings as so amended.

§ 51.209 Representation.

A recipient government may appear in person through its chief executive officer or it may be represented by counsel or other duly authorized representative. The Director shall be represented by the General Counsel of the Treasury, or a person or persons designated by the General Counsel.

§ 51.210 Administrative law judge; powers.

(a) *Appointment.* An administrative law judge, appointed as provided by Section 11 of the Administrative Procedure Act (5 U.S.C. 3105), shall conduct proceedings upon complaints filed under this subpart.

(b) *Powers of administrative law judge.* Among other powers provided by law, the administrative law judge shall have authority, in connection with any proceeding under this subpart, to do the following things:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and requests. Prior to the close of the hearing, no appeal shall be made from any such ruling except, at the discretion of the administrative law judge, in extraordinary circumstances;

(3) Determine the time and place of hearing and regulate its course and conduct. In determining the place of hearing, the administrative law judge may take into consideration the requests and convenience of the respondent or its counsel;

(4) Adopt and modify rules of procedure from time-to-time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written arguments on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform the acts and take the measures necessary or appropriate to promote the efficient conduct of any proceeding; and

(10) Make initial findings of fact and conclusions of law and issue a decision.

§ 51.211 Administrative hearings.

(a) *Administrative hearing for violations other than Subpart E.* The administrative law judge shall preside at the hearing on a complaint. Testimony of witnesses shall be given under oath or affirmation. The hearing shall be stenographically recorded and transcribed. Hearings will be conducted pursuant to Section 7 of the Administrative Procedure Act (5 U.S.C. 556).

(b) *Administrative hearing under Subpart E.* A hearing requested by a recipient government under Subpart E pursuant to § 51.65 shall be commenced by the Director within 30 days of receipt of such request and shall be held before an administrative law judge. Testimony shall be given under oath or affirmation and shall consist of two proceedings as follows:

(1) The first proceeding shall be in the nature of a summary hearing conducted in accordance with the provisions of this subpart, similar to a judicial hearing on a preliminary injunction. All parties shall have an opportunity to present their respective positions. The administrative law judge shall issue a preliminary finding as to whether the recipient government is likely to prevail, which finding shall be based upon the record developed throughout this proceeding, and shall be issued within 30 days after commencement of the summary hearing.

(2) The second proceeding, if necessary, shall be a full hearing on the merits conducted in accordance with the provisions of this subpart and shall result in the initial decision of the administrative law judge. The initial decision of the administrative law judge shall be based upon the complete record of all the evidence developed throughout the hearing.

(c) *Failure to appear.* If a recipient government fails to appear at a hearing, after due notice thereof has been served upon it or upon its counsel of record, it shall be deemed to have waived the right to a hearing and the administrative law judge may make appropriate findings and issue a decision against the respondent by default.

(d) *Waiver of hearing.* A recipient government may waive the hearing by informing the administrative law judge, in writing, on or before the date set for hearing, that it desires to waive a hearing. In such event, the administrative law judge may make appropriate findings and issue a decision based upon pleadings and the record before her, together with such documentary evidence properly submitted. The decision shall plainly show that the respondent waived the hearing.

§ 51.212 Stipulations.

The administrative law judge shall, prior to or at the beginning of a hearing, require the parties to arrive at such stipulations as will eliminate the necessity of taking evidence with respect to allegations of facts concerning which there is no genuine issue of material fact. The administrative law judge shall take similar action, where it appears appropriate, throughout the hearing and shall call and conduct any conferences which she deems advisable with a view to the simplification, clarification, and disposition of any of the issues involved.

§ 51.213 Evidence.

(a) *In general.* Any evidence which would be admissible under the rules of evidence governing proceedings in matters not involving trial by jury in the Courts of the United States, shall be admissible and controlling as far as possible; *Provided That* the administrative law judge may relax such rules in any hearing when in her judgment such relaxation would not impair the rights of either party and would more speedily conclude the hearing, or would better serve the ends of justice. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded by the administrative law judge.

(b) *Depositions.* The deposition of any witness may be taken pursuant to § 51.214 and the deposition may be admitted as evidence.

(c) *Proof of documents.* Official documents, records, and papers of a respondent shall be admissible as evidence without the production of the original, provided that such documents, records and papers are proven to represent the original by a copy attested or identified by the chief executive officer of the respondent or the custodian of the document, and contain the seal of the respondent.

(d) *Exhibits.* If any document, record, paper, or other tangible or material thing is introduced in evidence as an exhibit, the administrative law judge may authorize the withdrawal of the exhibit subject to any condition she deems proper. An original document, paper or record need not be introduced, and a copy duly certified (pursuant to paragraph (c) of this section) shall be deemed sufficient.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as permitted by the administrative law judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the right of either party to the proceeding.

§ 51.214 Depositions.

(a) *In general.* Depositions for use at a hearing may, with the written approval of the administrative law judge, be taken by either the Director or the respondent or their duly authorized representative. Depositions may be taken upon oral or written interrogatories, upon not less than 15 days written notice to the other party, before any officer duly authorized to administer an oath for general purposes, except in proceedings under Subpart E in which case depositions may be taken upon not less than 10 days written notice. Such written notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of written notice may be waived by the parties in writing, or may be modified by the administrative law judge. Depositions may be taken from the persons and at times and places mutually agreed to by the parties.

(b) *Written interrogatories.* When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogatories shall be mailed by first class mail or delivered to the opposing party at least 7 calendar days before the date on which such interrogatories or cross-interrogatories are scheduled to be answered, unless the parties mutually agree or the administrative law judge rules otherwise. A party upon whose behalf a deposition is taken must file it with the administrative law judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose request the deposition is taken.

§ 51.215 Stenographic record; oath of reporter; transcript.

(a) *In general.* A stenographic record shall be made of the testimony and proceedings, including stipulations and admissions of fact in all proceedings. A transcript of the proceedings and evidence at a hearing shall be made in all cases.

(b) *Oath of reporter.* The reporter making the stenographic record shall subscribe an oath before the administrative law judge, to be filed in the record of the case, that said reporter will truly and correctly report the oral testimony and proceedings at such hearing and accurately transcribe the same to the best of her ability.

(c) *Transcript.* In cases where the hearing is stenographically reported by a government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the government and the reporter. Where the hearing is stenographically reported by a regular employee of the Department of the Treasury, a copy thereof will be supplied to the respondent or its counsel at actual cost of duplication. Copies of exhibits introduced at the hearing or at the taking of the deposition will be supplied to the parties upon the payment of a reasonable fee (31 U.S.C. 483(a)).

§ 51.216 Proposed findings and conclusions.

Except in cases where a recipient government has failed to answer the complaint, has failed to appear at the hearing, or has waived the hearing, the administrative law judge shall, prior to making the preliminary finding under § 51.217 for hearings under Subpart E or the initial decision, give the parties a reasonable opportunity to submit proposed findings of fact and conclusions of law and any supporting reasons.

§ 51.217 Preliminary finding (for hearings under Subpart E).

(a) *Suspension of funding or termination of payment by administrative law judge.* (1) Within 30 days after the commencement of a summary hearing under § 51.211(b)(1), the administrative law judge conducting the hearing shall, on the record of evidence presented, issue a preliminary finding as to whether the recipient government has failed to comply with the provisions of this part. If the preliminary finding of the administrative law judge is to the effect that the recipient government is not likely to prevail on the issues to which the hearing pertained, the Director shall immediately suspend the further payment of entitlement funds to the recipient government.

(2) Such suspension shall remain in effect until a compliance agreement is entered into by the recipient government and the Director. A preliminary finding by the administrative law judge is not appealable by the recipient government. After the completion of the full hearing on the merits, the administrative law judge shall make findings and a decision based upon the complete record of the evidence. If the administrative law judge issues a decision that the recipient government has failed to comply with the provisions of this part, then the recipient government must enter into a compliance agreement with the Director before the 31st day after the decision. If no compliance agreement is entered into, the Director shall, upon the initial decision of the administrative law judge, indefinitely suspend the payment of entitlement funds to the recipient government, continue the suspension invoked under paragraph (a)(1) of this section, or terminate the payment of entitlement funds if ordered to terminate by the administrative law judge.

(b) *Resumption of funding; finding of compliance by administrative law judge.* A determination by the administrative law judge that the recipient government has complied with the provisions of this part, will terminate a suspension or termination of entitlement funds by the Director pursuant to paragraph (a) of this section. The Director shall, as promptly as feasible, pay over to the recipient government all entitlement funds the payment of which were suspended.

§ 51.218 Initial decision of the administrative law judge.

(a) *In general.* As soon as practicable after the conclusion of a full hearing on the merits under § 51.211(b)(2) and the receipt of any proposed findings of fact and conclusions of law timely submitted by the parties, but in no event later than 30 days after the conclusion of the hearing, the administrative law judge shall, in accordance with 5 U.S.C. Section 557, make the initial decision in the case. The initial decision shall include a statement of the findings of fact and the conclusions of law reached upon all the material issues of fact, law or discretion presented on the record, as well as the reasons or basis for them. The decision shall not, however, order any particular remedy for the noncompliance, but shall only state whether the recipient government has failed to comply with the provisions of the statute. The nature of the remedy shall be within the discretion of the Director, based upon the findings of fact and conclusions of law of the administrative law judge. The initial decision shall further provide for one or more of the following:

(1) With respect to proceedings under Subpart E—

(i) A determination that the recipient government has failed to comply with the provisions of Subpart E. This determination shall result in the immediate suspension of the further payment of entitlement funds by the Director or continued suspension of such funds if they had been previously suspended pursuant to a preliminary finding by the administrative law judge as described in § 51.217 of this subpart.

(ii) An order pursuant to paragraph (a), that the payment of entitlement funds to the recipient government is terminated.

(iii) A determination that the recipient government has proven compliance with the provisions of Subpart E. This determination should cause the Director to immediately resume payments, if they had been suspended pursuant to § 51.217.

(2) With respect to proceedings other than under Subpart E—

(i) That the Director withhold subsequent entitlement payments to the respondent until appropriate corrective action (as determined by the Director) is taken; and

(ii) That the entitlement of a recipient government be reduced and the amount of such reduction to be withheld from subsequent entitlement payments.

(3) That the proceedings be dismissed.

(b) *Suspension of funding.* For violations of the provisions of Subpart E, if the initial decision is against the recipient government, the Director shall suspend the payment of entitlement funds (or continued suspension of funds suspended after a preliminary finding of the administrative law judge). The entitlement payment to the recipient government shall be suspended by the Director until the recipient government enters into a compliance agreement which satisfies the Director that appropriate corrective action has been taken and there is full compliance with the provisions of Subpart E.

(c) *Order of termination of funding.* For violations of the provisions of Subpart E, if the order of the administrative law judge against the recipient government is for termination of entitlement funds, the entitlement payment to the recipient government shall be terminated by the Director. The recipient government may resume participation in the program in the future

if it enters into a compliance agreement which satisfies the Director that appropriate corrective action has been taken and there is full compliance with the provisions of Subpart E. Entitlement funds terminated shall be returned to the general fund of the Department and will not be available to the recipient government, unless the order of termination is reversed by an appellate tribunal.

(d) *Withholding of funding.* For violations of provisions other than Subpart E, if the initial decision of the administrative law judge or the Secretary is against the recipient government the Director shall withhold the further payment of entitlement funds to the recipient government. The amounts shall be withheld by the Director after notice to the chief executive officer of the recipient government. The notice shall state that if the recipient government fails to take corrective action within 60 days after receipt of the notice, the further payment of entitlement payments will be withheld until the Director is satisfied that appropriate corrective action has been taken and there is full compliance with the Act and regulations of this part.

§ 51.219 Certification and transmittal of record and decision.

After reaching the initial decision, the administrative law judge shall certify the complete record and immediately forward the certified record, together with a certified copy of the initial decision, to the Director. The administrative law judge shall also serve a copy of the initial decision by certified mail upon the chief executive officer of the recipient government or upon its attorney of record.

§ 51.220 What constitutes the record?

The transcript of testimony, pleadings and exhibits, all papers and requests filed in the proceeding, together will all findings, decisions and orders, shall constitute the exclusive record in the matter.

§ 51.221 Procedure on review of decision of administrative law judge.

(a) *Appeal to the Secretary.* (1) *By the recipient government.* In all proceedings, within 30 days from the date of the initial decision and order of the administrative law judge, the recipient government may appeal to the Secretary by filing its exceptions to the initial decision and the reasons for the exceptions. The recipient government shall transmit a copy of its appeal and reasons therefor to the Director of the Office of Revenue Sharing, who may, within 30 days from receipt of the recipient government's appeal, file a reply brief in opposition to the appeal. A copy of the reply brief, if one is filed, shall be transmitted to the recipient government or its counsel of record. Upon the filing of an appeal and a reply brief, if any, the Secretary shall make the final agency decision on the record of the administrative law judge within 90 days from the date of the last filing.

(2) *By the Director of the Office of Revenue Sharing.* In all proceedings, the Director may, on her own motion, within 45 days after the initial decision, serve on the recipient government by certified mail a notice that the decision will be appealed to the Secretary. Within 30 days from such notice, the Director through counsel shall file with the Secretary exceptions to the initial decision and supporting reasons therefor. A copy of the exceptions shall be transmitted to the recipient government or its counsel of record, who, within 30 days after receipt thereof, may file a reply brief thereto with the Secretary and submit a copy to the Director of the Office of Revenue Sharing or counsel for ORS. Upon the filing of a reply brief, if any, the Secretary shall make the final agency decision on the record of the administrative law judge within 90 days from the date of the last filing.

(b) *Review by Secretary.* In all proceedings, in the absence of appeal by either party, the Secretary may elect to review the initial decision of the administrative law judge. Within 45 days of the initial decision, the Secretary shall serve on the recipient government by certified mail, a notice that an election has been made to review the decision. As part of the review, the Secretary may request briefs from each party within 30 days of the date of notice of the review. Upon filing of the briefs, the Secretary shall make the final agency decision on the record of the administrative law judge within 90 days from the date of the last filing.

(c) *Decision of the Secretary.* On appeal or review of the initial decision of the administrative law judge, the Secretary shall make the final agency decision, after review of the record or such portions thereof as may be cited by the parties, to permit limiting of the issues. The Secretary may affirm, modify, or revoke the findings and initial decision of the administrative law judge. A copy of the Secretary's decision shall be transmitted immediately to the chief executive officer of the recipient government or its counsel of record.

§ 51.222 Effect of absence of appeal or review of initial decision of administrative law judge.

In the absence of either exceptions by the recipient government, a notice of appeal by the Director or review by the Secretary (where appropriate) within the time periods set forth in paragraphs (a), (b) or (c) of § 51.221, the initial decision of the administrative law judge shall become the final decision of the Department.

§ 51.223 Publicity of proceedings.

(a) *In general.* A proceeding conducted under this subpart shall be open to the public and to elements of the news media provided that, in the judgment of the administrative law judge, the presence of the media does not detract from the decorum and dignity of the proceeding.

(b) *Availability of record.* The record established in any proceeding conducted under this subpart shall be made available for inspection by the public as provided for in accordance with regulations of the Department of the Treasury pursuant to 31 CFR Part 1.

(c) *Decisions of the administrative law judge.* The statement of findings and the initial decision of the administrative law judge in any proceedings, whether or not on appeal or review, shall be indexed and maintained by the Director and made available for inspection by the public at the public documents room of the Department. If practicable, the statement of findings and the decisions of the administrative law judge shall be published periodically by the Department and offered for sale through the Superintendent of Documents.

§ 51.224 Judicial review.

(a) *In general.* Actions taken as a result of administrative hearings pursuant to this subpart shall be subject to judicial review pursuant to Section 143 of Subtitle C of the Act.

(b) *Appeal by the respondent.* A respondent may appeal the initial decision of the administrative law judge which has become final, or a final order of the Secretary pursuant to §§ 51.221(c) or 51.222, to the U.S. Court of Appeals, as provided by law.

(c) *Cross-appeal by the Director.* In the event a recipient government appeals, the Director may cross-appeal any issues decided adversely to the ORS by the administrative law judge. Issues decided adversely to the ORS by the Secretary may not be appealed by the Director.

(d) *The record.* The Secretary, upon prior notification of the filing of the petition for review, shall have prepared

in triplicate, a complete transcript of the record of the proceeding, and shall certify to the correctness of the record. The original record shall then be filed with the Court of Appeals which has jurisdiction.

Appendix—Section-by-Section Analysis of Final Regulations

Subpart A—General Information Section 51.0 Scope and Application of Regulation

Paragraph (a) of this section describes the statutes which these regulations implement. This paragraph is amended to include the State and Local Fiscal Assistance Act Amendments of 1980.

Paragraph (b) of this section is revised to reflect the most recent amendments to the Revenue Sharing Act. One commenter on the 1979 proposed rule objected to the application of January 1, 1977 date to discrimination on the basis of handicap. This date is imposed by the 1976 Amendments to the Revenue Sharing Act and is, therefore, not within the discretion of the Office of Revenue Sharing (ORS).

Section 51.1—Establishment of ORS. This section is amended to reflect the State and Local Fiscal Assistance Act Amendments of 1980.

Section 51.2—Definitions. Paragraph (a) which defines "Act" is amended to reflect the State and Local Fiscal Assistance Act Amendments of 1980.

Paragraph (e) which defines "Entitlement" is eliminated because it was unnecessary. The definition "Entitlement funds" is redesignated paragraph (e) and is amended to make it clear that interest earned on revenue sharing funds prior to their expenditure by recipient governments is subject to the requirements of the Revenue Sharing Act.

Paragraph (g) which defines "Entitlement period" is redesignated paragraph (f) and amended to more accurately describe the fourteen entitlement periods during which recipient governments have received or will receive revenue sharing funds.

A new paragraph (g) which defines "Funded" was added by the 1979 proposed rule to Subpart A, as well as subpart E, because the term has general applicability to all provisions of this part.

The definitions of "Generally accepted auditing standards" and "Independent public accountants" in paragraphs (h) and (j) respectively, have been placed in a new definition section in subpart F. The definitions of "Governor" and "Indian tribes and Alaskan native villages" are redesignated paragraphs (h) and (i) respectively.

The definition of "Lobbying" is redesignated paragraph (j) and is defined as personal solicitation of members of a legislative body to influence legislation regarding the Act. The definition includes solicitation of any legislative body (Federal, State or local) by a representative of the recipient government acting on behalf of the recipient government to influence the outcome of legislation concerning the provisions of the Revenue Sharing Act.

The definition of "Program and activity" is added to this section as a new paragraph (k). This definition also appears in Subpart E, concerning discrimination, but is generally applicable to all provisions of this part. The definition, presently contained in Section 51.51(c) of the regulations was amended on April 2, 1979 (44 FR 1919) to conform it with the definition contained regulations implementing the Crime Control and Safe Streets Act of 1976 (42 U.S.C. 3701 *et seq.*). The nondiscrimination provisions under that Act are substantially similar to those under the Revenue Sharing Act. The final rule amends the rule to encompass secondary recipients.

The definition of "Recipient government" is redesignated paragraph (1) and amended to reflect the fact that Indian tribes and Alaskan native villages are direct recipients of revenue sharing funds, but are not required to comply with certain specified provisions of the Act.

A new paragraph (m) defines "Secondary recipient." Section 51.4 of the current regulations states that any governmental unit or private entity to whom entitlement funds are transferred shall comply with the restrictions and prohibitions contained in the Act but does not define the term "transfer". The final rule defines "Secondary recipient" as any entity which receives entitlement funds by grant, contract or other arrangement for the purpose of providing a service the recipient government would otherwise provide or for the purpose of providing an entity with general financial assistance.

The secondary recipients include other governments, private nonprofit organizations and profit-making business which receive revenue sharing funds and use them in a manner which impacts on the citizens of the primary recipient government. The definition contained in the proposed rule included construction contractors as a secondary recipient. The rationale for the decision to include construction contractors as secondary recipients was that construction contractors could be considered to be providing a service, the construction of the building, which the the primary recipient government would otherwise have to provide. Several commenters on the 1979 proposed rule objected to the inclusion of construction contractors within the definition. They pointed out that it was more accurate to characterize a contract for the construction of a building as a purchase of an item, rather than the provision of a service. The commenters particularly objected to the application of the audit requirement to secondary recipients. The Director agrees with these comments and construction contractors have specifically been deleted from coverage of the definition.

Section 51.3—Procedures for effecting compliance for violations other than subpart E. This section was completely revised to provide better guidance concerning the procedures the ORS uses to achieve compliance where a recipient government in noncompliance with the provisions of the Act, other than of the nondiscrimination provisions contained in subpart E. The procedures described in this section apply to violations of the requirements, restrictions, and prohibitions contained in Subparts B, D and F of this part. The provisions of this regulation are, therefore, broad enough to apply to audit, as well as public participation or Davis-Bacon violations. Section 125 of the Act requires the Secretary to promulgate regulations establishing reasonable and specific time limits for the conduct of an investigation and issuance of a finding and for the conduct of compliance reviews and audits.

It is the position of the ORS that only Section 125(2) of the Act requring reasonable and specific time limits for the conduct of audits and reviews applies to provisions other than Subpart E. Accordingly, the issuance of a finding is not required within 90 days of receipt of a complaint or other information. The final regulation is designed to provide guidance without eliminating the flexibility needed to achieve compliance with varying violations of the Act.

Section 51.3(e) clarifies the procedures that will be used to achieve compliance where a recipient government has failed to submit an assurance, report or other information requested to determine compliance with the Act. The proposed rule has been amended to clarify that the Director has the discretion to determine whether or not to constructively waive the entitlement of a recipient government after delay of entitlement payments has failed to bring about compliance with reporting requirements. Entitlement funds constructively waived are not returned to a recipient government, but become a part of the entitlement of the next highest level of government eligible to receive such funds.

One commenter objected to the subparagraph (a)(2) which provides that the scope of the investigation is not limited to the administrative complaint where an investigation uncovers other violations of the law. The final regulation retains the provision because it is not reasonable to require the ORS to ignore violations uncovered during an investigation merely because they were not the subject of a complaint.

Section 51.4—Transfer of funds to secondary recipients. This section was amended to clarify the application to secondary recipients of the prohibitions and restriction, contained in the Act and regulations. The final regulation provides additional guidance in response to comment that the primary recipient government's responsibility for the secondary recipient compliance was unclear. The regulation attempts to make it clear that the primary recipient must inform the secondary recipient of the requirements attached to the expenditure of revenue sharing funds, monitor compliance with those requirements and attempt to resolve areas of noncompliance found by the ORS. Where compliance cannot be achieved, the Director may require the recipient government to withdraw funding of the secondary recipient. One commenter asked what portion of revenue sharing funds would be endangered if the ORS took enforcement action against the recipient government. The Act authorizes only the full withholding of the primary recipient's entitlement funds, after opportunity for a hearing, until compliance is achieved.

Section 51.5—Time periods (deleted). This section was added to the proposed rule to clarify the time periods for particular events described in the procedures for effecting compliance. All time periods described in the Act and regulations begin to run with receipt of notice of the event. Paragraph (b) of this section provided a distinction between calendar or working days. A number of commenters objected particularly to this paragraph as being confusing and unnecessary. The entire section is, therefore, deleted. Time periods will continue to begin to run with receipt of notice. References to all time periods, however, will remain to calendar days, unless it is specifically provided otherwise.

Section 51.5—Effect of State or local law. Proposed Section 51.6 is redesignated Section 51.5. The final rule adds a new provision to the regulations which states the provisions of the supremacy clause of the U.S. Constitution. Several commenters felt that this might place some recipient governments in the middle of a conflict between the Federal government and a State government. If such situations occur, they will be handled on an individual basis in accordance with Constitutional law.

Section 51.6—Applicability of other Federal laws. Proposed § 51.7 is redesignated Section 51.6. This provision states that general Federal laws relating to Federal grant, loans, contracts and financial assistance programs are not applicable, unless specifically provided in the Revenue Sharing Act or regulations. It has always been the position of the ORS that only the Acts specifically mentioned within the Revenue Sharing Act are applicable to the revenue sharing program. This position has support in the case law. In *Carolina Action* v. *Simon*, (552 F. 2d 295, (1975)) the Court held that the National Environmental Policy Act (42 U.S.C. Sections 4321 *et seq.*) was not applicable to revenue sharing. In the latest case, *Goolsby* v. *Blumenthal*, (590 F. 2d 1369 (1979)), the Court held that the Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Sections 460 *et seq.*) was not applicable to revenue sharing.

The section also provides that the criminal code of the United States is applicable to criminal offenses relating to the expenditure of revenue sharing funds. One commenter objected to the fact that the effect of this provision was to exclude the General Revenue Sharing Program from the coverage of Title VI. The Revenue Sharing Act clearly contains procedures and substantive law that are distinct from those of Title VI, and it has long been held that the ORS is not a Title VI agency.

Subpart B—Assurances, Reports, and Public Participation

Section 51.10—Definitions. The definitions of "Budget" and "Budget Summary" are revised for clarification. The definition of "Recipient government" is eliminated as redundant because it is included in § 51.2 of Subpart A. Current paragraph (f) which defines "Executive authority" is redesignated paragraph (e). New definitions of the terms "Impractical" and "Infeasible" are added as paragraphs (f) and (g) respectively. Current paragraphs (g), (h) and (i) which define "Legislative body," "presented" and "public hearing" respectively are redesignated paragraphs (i), (j) and (k). The definition of "Public hearing" is also revised to emphasize that all citizens of a jurisdiction must have access to hearings concerning revenue sharing funds. Paragraphs (j) and (l) which define "Publication" and "Use report" are redesignated (l) and (m) respectively.

Section 51.11—Reports to the Director; assurances; procedure for effecting compliance. This section is amended by the addition of a new paragraph (b) which sets forth the extent of the record-keeping requirements concerning documentation establishing compliance with the public participation requirements of this subpart. Such documentation shall be retained by a recipient government for period of at least one year. Current paragraph (b) entitled "Requisite assurances for receipt of entitlement funds" is redesignated paragraph (c). Current paragraph (c) entitled "Procedure for effecting compliance" is redesignated paragraph (d) and amended to distinguish between the procedures for effecting compliance for public hearing violations and the procedures for effecting compliance for reporting and assurance violations.

Section 51.13—Proposed use hearing. Paragraph (b) is amended to improve clarity. Section 51.13(c) is amended to clarify that a waiver of the proposed use hearing must be requested by the recipient government and the request must be accompanied by a cost estimate of the unavoidable expenses. Further, the waiver must be approved by the Director prior to the appropriation of revenue sharing funds by the recipient government. Section 51.13(c) is also amended to add an additional waiver of the hearing and publication requirements. Because the Revenue Sharing program was renewed several months after September 30, 1980, some recipient governments enacting budgets for fiscal year 1981, may have had to estimate the amount of funds they would receive during the coming fiscal year without the usual guidance from the ORS as to the amount of entitlement funds they might be expected to receive. For this reason, Section 2(e) of the 1980 Amendments provides that a recipient government, which conducted hearings of the proposed uses of revenue sharing funds prior to December 28, 1980 (the enactment date of the 1980 Amendments) using reasonable projections as to the amount of those funds, would not be considered to have violated the provisions of the Act. New §§ 51.13(c)(3) and 51.14(f) provide that where hearings have been held based upon reasonable estimates, additional hearings would not be required concerning the entitlement funds not subjected to the budget process for entitlement period twelve. This provision is in no way meant to exempt recipient governments from compliance with the public hearing requirements for subsequent entitlement periods.

Section 51.14—Budget hearing. Paragraph (a) of this section is revised to emphasize that public hearings shall be open to all U.S. citizens. This paragraph further emphasizes that these hearings must actually be conducted by the legislative body. Mere presence of one individual of the legislative body at a hearing, for example, would not be sufficient.

Paragraph (b) revises the provision for an alternative procedure for a budget hearing to eliminate the requirement that the recipient government submit a written assurance prior to the use of the alternative procedure. The State or local public hearing procedure may be used automatically and compliance with those procedures need only be proved when questioned pursuant to a compliance review or a complaint.

Paragraph (e), "Waiver of newspaper publication, alternative forms," clarifies the requirements for the waiver of newspaper publication. Those requirements are the same as the requirements for the waiver of the proposed use hearing and publication.

Paragraph (f) entitled "Waiver of budget hearing and publication requirements," sets forth the new waiver created by the 1980 Amendments to the Revenue Sharing Act. Current paragraphs (f) and (g) are redesignated (g) and (h).

Section 51.15—Amendments or modification to enacted budget. This section is amended to clarify what constitutes a major change to an enacted budget. To be a major change, the modification to the budget must involve at least a cumulative amount of $2,000, and also must represent at least 25% of the revenue sharing funds in the recipient government's budget as originally enacted.

Section 51.18—Legal notice rules not applicable. This section is amended to provide that newspaper publication required with respect to public hearings and the use report may be in the form of a newspaper advertisement of article. The publication must, however, include all of the required information.

Subpart C—Computation and Adjustment of Entitlement Funds

Section 51.20—Data. Section 51.20(c) is amended to clarify the special rule concerning intergovernmental transfers for less than one-year entitlement periods. Subparagraph (b)(3) of this section is also amended to eliminate the reference to use of other data where data are determined to be "otherwise inadequate to provide for equitable allocations." The Director may use alternative data only when the data provided by the Bureau of the Census are not current or comprehensive enough to provide for equitable allocations.

Section 51.21—Data affected by a major disaster. The final rule amends § 51.21(c), "Eligibility requirements," to clarify that at the end of the 60-month period the data used for the initial allocation of revenue sharing funds will also be used for the final allocation of these funds. A new § 51.21(g) is added to provide that the post-disaster data factor will be used for the first entitlement period after the end of the 60-month period.

Section 51.23—Dates for finalizing data. Current § 51.23 entitled "Date for determination of allocations" is retitled "Date for finalizing data" and reorganized. The final rule creates a new paragraph (b) entitled "initial allocation out of the last sentence in paragraph (a). Current paragraph (b) entitled

"Time limitation and minimum adjustment" has been added to § 51.29 "Notification and adjustment of data" and retitled "Time limit for data changes."

Section 51.24—Boundary changes, governmental reorganizations. Paragraph (b) of this section entitled "New units of local government" is amended to describe what a new unit of local government must do to establish its eligibility to receive entitlement funds. Paragraph (c) entitled, "Dissolution of units of local government" is amended to point out the fact that entitlement funds, due to a government which has been dissolved, and which would normally go to the next higher unit of local government, will be placed in the appropriate State reserve for later distribution if that higher government cannot receive the money.

Section 51.25—Waiver of entitlement; nondelivery of checks; insufficient data. Paragraph (a) of this section is amended to specify that entitlement funds waived shall become a part of the entitlement of the next higher unit of local government and if that is not proper, the funds shall be placed in the appropriate State adjustment reserve.

Section 51.25(b) "Constructive waiver," clarifies that a recipient government may be constructively waived for failure to comply with the reporting and assurance requirements of the Act and regulations. The reporting requirement includes submission of reports and other information upon request of the Director or a designate to determine compliance with the provisions of Subparts B, D, E or F. This section is also amended to give the Director the discretion to delay implementing constructive waiver procedures where it is determined that additional time should be given a recipient government to submit the required information.

Section 51.26—Reservation of funds and adjustment of entitlement. Paragraph (a) of this section is amended to emphasize the fact that there is a separate State obligated adjustment reserve for each State area. Paragraph (b) of this section is amended to add new subparagraphs (b) (1) and (2) to clarify the circumstances under which interim negative and positive adjustments will occur. Paragraph (b) (5) is also amended to reflect the fact that there are separate reserves for each State.

Section 51.27—State to maintain transfers to local governments. The final rule amends this section to remove all reference to pre-January 1, 1977 rules because they are obsolete and is further reorganized for added clarity. The final rule adds a § 51.27(e), "Adjustment where new taxing powers are conferred," which clarifies the effect upon the States of conferring new taxing powers upon local governments.

Current § 51.27(k), "Report by Governor," becomes a § 51.27(g) "Computation by the ORS". The new section would reflect the current operating procedure of obtaining data concerning maintenance of effort from the Bureau of the Census.

Section 51.28—"Optional Formula". The final rule amends § 51.28 entitled "Optional formula" to update the time period within which a State may apply for use of an optional formula. The date in § 51.28(a)(3)(iii) is changed from September 30, 1980, to September 30, 1983, the end of the last entitlement period authorized by the 1980 Amendments.

Section 51.29—Notification and adjustment of data. This section is retitled "Notification and adjustment of data" and amended by the addition of a new paragraph (b), which is taken from § 51.23. Together these paragraphs specify that recipient governments will be notified of the data to be used in computing allocations of entitlement funds and given the opportunity to request adjustments in data factors if such requests are made within a year of the end of the entitlement period for which the data are applicable.

Section 51.30—Adjustment of Maximum and Minimum per Capita Entitlement; 100 Percent Criterion. The final rule amends paragraphs (a) and (b) of this section to eliminate the reference to inclusion of the States in the formula for determining constraints on allocations to local governments. The final rule also adds new subsections which set forth the methods by which the amounts described in this section, which some local governments cannot receive due to the formula constraints, would be reallocated within States to eligible local governments.

Section 51.31—Separate Law Enforcement Officers. The final rule amends § 51.31 "Separate law enforcement officers" to set forth the source and percentage of direct funding for the separate law enforcement officers in the State of Louisiana during entitlement periods in which funds are not appropriated for State governments.

Section 51.32—Population. The final rule adds a new § 51.32 entitled "Population." Paragraph (a) restates the current definition of population." Paragraph (b) implements the 1980 Amendments regarding the potential use of population undercount adustments when provided by the Bureau of the Census. One commenter objected to this provision. The 1980 Amendments to the Act however, require that the request be made. The Bureau of the Census has informed the ORS that at this time it is not statistically feasible to make such estimates. Paragraph (c) implements the 1980 Amendments regarding population adjustments due to legal immigrants entering the country within six months after the 1980 Census.

Paragraph (d) updates the definition of population for Indian tribes and Alaskan native villages and describes the population data of Oklahoma Indian governments. Oklahoma Indian governments, except the Osage Tribal Council, do not have current reservation boundaries within which population can be determined and the Bureau of the Census cannot determine the Indian population on Oklahoma Indian trust lands since they do not match the geography of Census enumeration districts. Since Oklahoma Indian tribes do not now have reservations, the Bureau of Indian Affairs has advised that it is unlikely that Indian governing bodies in Oklahoma would be providing governmental services to anyone but Indians identified with the tribe of that governing body. Therefore, the population of Oklahoma Indian tribes for revenue sharing purposes will include only Indians and their spouses and children identified with the tribe of the Indian governing body, who are living within the boundaries of the historic areas in those Oklahoma county areas where the tribe had a reservation at the time of the allotment of Oklahoma lands.

One of the commenters on this section pointed out that the definition specifically excluded American Indians living in cities and towns only with respect to American Indians living in the State of Oklahoma. The commenter asked for clarification on this issue and expressed the preference that if the definition was to be applied to other areas, it would be phased in gradually because a sharp reduction in the allocation of entitlement funds to a particular Indian tribe might result. Subparagraph (d)(1)(A) of the definition has been amended to specifically subtract American Indians living in cities and towns as was originally intended by the definition. While the failure to count American Indians living in cities and towns may result in a reduction of the entitlement for some Indian tribes, the Act requires that population estimates provided by the Bureau of the Census be used in making allocations. The Bureau of the Census will not count Indians living in cities and towns as part of the population. To do so would result in double counting.

Subpart D—Prohibitions and Restrictions on Use of Funds

Section 51.40—Matching funds. The amendments to the Revenue Sharing Act in 1976 repealed the prohibition against the use of revenue sharing funds for matching purposes. Since a recipient government has 24 months in which to use, obligate or appropriate revenue sharing funds, revenue sharing funds received in the last quarter of 1976 may not have been spent until after 1978. Accordingly, the current regulations maintain the restrictions concerning matching with the proviso that they do not apply to revenue sharing funds received after January 1, 1977. Since all pre-1977 funds are likely to have been spent, the final rule eliminates the provision and merely states that revenue sharing funds may be used for matching purposes after January 1, 1977.

Section 51.41—Permissible expenditures for units of local government. The 1976 amendments to the Act also eliminated the priority expenditure restrictions for local governments. For the same reason as stated above with respect to matching, the final rule states that revenue sharing funds may be used by recipient governments for any purpose permissible under State or local law.

Section 51.42—Wage rate and labor standards. Several commenters on the 1979 proposed rule objected to the inclusion of renovation and repair projects with construction projects covered by the Davis-Bacon Act. The references to renovation or repair were included in the proposed rule after reviewing the definition of "construction project" in the regulations implementing the Davis-Bacon Act (29 CFR 51.2(g)). This definition in part provides that: "the terms "Construction," * * * "Completion," or "Repair" means all types of work done on a particular building or work done at the site

thereof or * * * including without limitation, altering, remodeling, painting and decorating. * * *" The inclusion of the words "renovation" and "repair" was an attempt to conform the revenue sharing regulations to the Labor Department definition. The final regulation deletes the reference and makes it clear that § 51.42 uses the term "Construction project" as it is defined in 29 CFR 5.2(g).

Section 51.43—Restriction on expenditures by Indian tribes and Alaskan native villages (deleted). This section of the current regulations was issued to implement Section 123(a)(8) of the Act. This provision was eliminated by the 1980 Amendments to the Act and, is therefore, deleted from the regulations.

Section 51.43—Lobbying. Section 51.44 "Lobbying" is a redesignated § 51.43.

Section 51.44—Use of entitlement funds for debt retirement. Section 51.45 "Use of entitlement funds for debt retirement" is redesignated Section 51.44. The final rule also amends this section to clarify the current rule that the restrictions on use of entitlement funds for debt retirement have been eliminated, except that the proceeds of indebtedness must have been spent in compliance with the provisions of Subpart D and E.

Section 51.45—Use of entitlement funds in accordance with State or local law. This section is moved from Sections 51.100(c) of the current regulations. The provision is also qualified to make it clear that State or local laws which conflict with the Revenue Sharing Act are not a defense to violations of the Act due to the Supremacy Clause of the United States Constitution. Several commenters objected to the qualification for the same reasons that they objected to § 51.5 "Effect of State or local law." The comments were not accepted for the same reasons described above. One commenter requested that the word "procedure" be removed from the phrase of the regulations "State or local laws or procedures." Section 123(a)(4) of the Act, however, specifically refers to both laws and procedures. Therefore, this section was not changed.

Section 51.46—Procedures for effecting compliance. A new § 51.46 is added to the final regulation as a companion provision to §§ 51.11(d), and 51.109 to cross-reference the procedures for effecting compliance with the substantive and reporting requirements of the Act. Section 51.3 of Subpart A of the Act contains those procedures to be used to achieve compliance where violations of the provisions of Subpart D are found.

Subpart E—Nondiscrimination by States and Local Governments Receiving Entitlement Funds

Section 51.51—Definitions. (1) The definition of "Attorney General" was amended to remove the reference to the Assistant Attorney General for Civil Rights because the reference was determined to be unnecessary.

(2) The definition of "compliance review" was amended to emphasize that compliance reviews are to be initiated at the discretion of the Director.

(3) The definition of "determination" was amended for clarification purposes.

(4) The definition of "facility" was amended to expand the examples in a manner consistent with the HEW regulations (45 CFR 84.3(i)).

(5) The definition of "program and activity" was amended to clarify that the concept of program or activity is linked to that of funding as per discussion of § 51.2(g) in subpart A.

Section 51.52—Discrimination prohibited. The general prohibitions have been reorganized to provide additional clarity, particularly with respect to what is a prohibited practice concerning the provision of services, employment, and access to facilities.

Section 51.52(b)(6) concerning the use of height or weight requirements was amended in response to comments. One commenter stated that the section did not follow the Uniform Guidelines on Employee Selection Procedures which have been adopted by the Treasury Department. The section was amended to clarify that selection devices, validated pursuant to the Uniform Guidelines may be used even if they have an adverse impact upon a protected class.

One commenter suggested that reference should be made to the sensory impaired with respect to employee selection devices. The Director declines to add references to specific handicaps to these general examples of prohibited discrimination. Discrimination against the handicapped in the use of employee selection devices is specifically covered in § 51.55(i) of the interim handicapped discrimination regulations.

With respect to § 51.52(c) "Exemptions," one commenter complained that § 51.52(c)(2), which provides an exemption where a recipient government proves by clear and convincing evidence that a particular program or activity was not funded by revenue sharing funds, provided recipient governments with a loophole. The Director has no discretion in this matter because this exemption is set forth in Section 122(a)(2)(A) of the Act. Clear and convincing evidence is a very high legal standard, however, and the burden is on the recipient government to prove it to the satisfaction of the Director.

Section 51.53—Employment discrimination. One commenter suggested that handicapped and age discrimination be added to this section. This section is not meant to apply to handicapped and age discrimination, which are best handled separately. Section 51.55(g) of the final regulations covers employment discrimination on the basis of handicap. The Revenue Sharing Act does not cover employment discrimination on the basis of age.

Proposed § 51.53(b) of the proposed rule entitled "Uniform Guidelines on Employee Section Procedures" was amended to clarify that a violation of the Guidelines violates these regulations.

Section 51.53(c) of the proposed rule entitled, "Recruitment practices of recipient governments," has been deleted and combined with the provision for self-review.

Proposed § 51.53(d) "Preemployment inquiries" was redesignated § 51.53(c) and amended in response to comments to be consistent with the Uniform Guidelines.

Proposed § 51.53(d) entitled, "Self-review," was amended to clarify that recipient governments are encouraged to voluntarily review all of their employment practices, including their recruitment practices and should undertake affirmative action where practices that are not in compliance with the Uniform Guidelines or these regulations are discovered.

Section 51.55—Nondiscrimination on basis of handicap. Section 51.55, "Discrimination on the basis of handicap," was published in the **Federal Register** on January 5, 1981 (46 FR 1120), it is currently in interim form (46 FR 41047). Certain provisions of this regulation remain deferred at this time, as is indicated in the regulation and the section-by-section analysis below. Once the government-wide Guidelines have been revised by the Department of Justice, those provisions, currently, deferred, which remain consistent with the Guidelines will be given effect. Those provisions which are determined to be inconsistent with the new Guidelines, whether currently in effect or deferred, will be deleted permanently.

Most of the approximately 50 comments on the 1979 proposed regulations concerned discrimination on the basis of handicap, as provided in Section 504 of the Rehabilitation Act of 1973. The majority of the comments expressed concern about the cost of compliance and objected to specific provisions such as the definition of handicapped individual, the self-evaluation requirement and the accessibility requirements. The Department has little discretion contained in these regulations. Executive Order 11914, "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs," requires Federal departments and agencies with Section 504 responsibility to issue regulations consistent with the standards and procedures established by HEW. Comments requesting elimination of or major revisions to these provisions were not acted upon due to the requirements of the Executive Order, which was issued to ensure consistent Federal enforcement of Section 504. The administrative provisions, such as the self-evaluation requirement have, however, been deferred and will not take effect until after the completion of the review of the HEW Guidelines. Revisions have primarily been made for clarification purposes and in some instances to make the substantive requirements conform more closely with the requirements for the General Revenue Sharing program.

One such revision is that all references in the proposed rule to special provisions for small recipient governments as those employing fewer than 15 employees have been changed to those receiving $25,000 or more in entitlement funds in each entitlement period. The reference to fewer than 15 employees has little relevance for the General Revenue Sharing Program which unlike grant programs, provides financial assistance to States and local governments, as opposed to particular departments and agencies or even private entities. The number of recipient governments which employ fewer than 15 persons is much less than the number which receives less than $25,000 in entitlement funds. Further, the independent

audit requirements in Section 123(c) of the Revenue Sharing Act exempt local governments receiving less than $25,000 in entitlement funds. In the interest of consistency with this Congressional guidance, the General Revenue Sharing Program's final regulations prohibiting discrimination on the basis of handicap, should also incorporate the $25,000 standard.

Section 51.55(b) entitled, "General prohibitions with respect to discrimination against a qualified handicapped individual" contains the prohibitions against discrimination in the provision of services. Sections 51.55(b)(1) (iii) and (iv) were amended in response to comments that the provisions did not provide sufficient guidance concerning how recipients can make communications and services available to persons with impaired sensory, manual and speaking skills. Examples of methods were added to the regulations. Section 51.55(b)(1)(v) was deleted and a new § 51.55(b)(4) was added to expand the discussion of how to provide appropriate auxiliary aids to individuals with impaired sensory, manual and speaking skills. It is noted that auxiliary aids must be provided only at the request of the handicapped individual. Further, recipient governments must consult with the individual to determine the most appropriate auxiliary aids to be used. It is expected that requiring such aids only upon request, as recommended by organizations representing the handicapped, will reduce the cost of providing handicapped individuals with access to programs and activities. It will do so in a manner that will meet as closely as possible the individual needs of the handicapped.

Section 51.55(b)(1)(iv), which requires that the public hearings required under the Act and regulations be accessible to the handicapped, was amended in response to comments as to how such hearings can be made more accessible.

Proposed §§ 51.55(b)(1) (vi), (vii) and (viii) are redesignated Section 51.55(b)(1) (v), (vi) and (vii). Further, § 51.55(b)(1)(ix) has been redesignated § 51.55(b)(1)(viii). One commenter suggested that subparagraph (C) had been drafted too narrowly, prohibiting discrimination by a secondary recipient only if subject to the common administrative control of a recipient government. This subparagraph was amended to delete the reference to the secondary recipient situation and to clarify that where a recipient government funds a particular department in whole or in part with revenue sharing funds, subdivisions of that department are subject to these regulations.

Section 51.55(b)(1)(x) has been redesignated § 51.55(b)(1)(ix). The effective date of this subparagraph is deferred.

Section 51.55(c) "Self-evaluation" is deferred.

Section 51.55(d), "Designation of responsible employee and adoption of grievance procedure" is deferred.

Section 51.55(e), "Notice" is deferred.

Section 51.55(f), "Administrative requirements for small recipient governments" is deferred.

Section 51.55(g) "Employment discrimination" was amended to add a new subsection (g)(1)(iii) because it is one of the basic prohibitions contained in the HEW Guidelines and is therefore required to be contained in the regulation. Proposed §§ 51.55(g)(1) (iii) and (iv) are redesignated (iv) and (v). In response to comments, § 51.55(g)(1)(iv) was amended to include examples of how communication can be made available to the sensory impaired. Concerning this section, one commenter questioned whether a recipient government can be required to undertake affirmative action to employ the handicapped. Section 504 does not require affirmative action, as does Section 503. Section 504 requires only that recipient governments refrain from discriminating and undertake remedial action where discrimination is found.

Section 51.55(h), "Reasonable accommodation" was amended in response to comments to add examples of reasonable accommodation for the sensory impaired. The section was also amended to provide that the accommodations shall be made in consultation with the handicapped individual. One commenter requested greater specificity concerning what is required for reasonable accommodation. Considering the broadness of the definition of handicapped individual, what constitutes reasonable accommodation must be determined on a case-by-case basis and the regulation must remain broad. A new sentence is added to subsection (h)(3)(iii) to reflect the fact that an accommodation that causes inconvenience to the recipient government or result in some economic cost is not per se unreasonable.

Section 51.55(i), "Employment criteria and policies" as revised to conform subparagraph (2) more closely to the HEW regulations. Several comments suggested the application of the Uniform Guidelines on Employee Selection Procedures to these provisions. The Guidelines specifically apply only to race, color, national origin, sex and religion. If they are formally revised to apply to handicapped discrimination, the Director will adopt that application. One commenter questioned the use of the phrase "class as a whole" in subsection (i)(3). The Director does not agree that the phrase should be changed. To be able to use a selection procedure which excludes a class of handicapped individuals as a whole, the recipient government must establish to the satisfaction of the Director that no member of that class of individuals would be able to perform the essential functions of the job in question.

Section 51.55(k), "Program accessibility" received a majority of the comments relating to the cost of compliance. It is emphasized that compliance with this subsection does not mean that recipient governments will be required to retrofit all of their public buildings. For a particular program or activity to be accessible, it is not required that the entire facility in which the program or activity is conducted be accessible. Structural changes to facilities are required only after all other means of making programs accessible have been pursued.

A number of comments were received on § 51.55(k)(10), "Leased facilities." The Director agrees that this provision as written needed clarification. It is important, however, to make it clear that a recipient government cannot avoid the program accessibility requirements merely by conducting its programs and activities in leased facilities. Accordingly, § 51.55(k)(10) has been eliminated and subsections (k)(1), (2), (k)(7) and (8) have been amended to clarify that programs and activities operated in existing facilities, owned or leased by the recipient government, must be accessible. Where a recipient government leases a facility, it must make whatever non-structural changes are necessary to make facilities accessible. Where an existing facility is leased, however, structural changes will not be required if the lessor refuses to make them and no other more readily accessible facility is available.

Existing facilities newly leased after January 1, 1977, or on which leases are renewed must meet the requirements of § 51.55(k)(2) for existing facilities. Leases of newly constructed facilities must meet the requirements set forth in § 51.55(k)(7) for new construction. Alterations to existing facilities which are leased must meet the requirements of Section 51.55(k)(8).

Section 51.55(k)(5), is deferred.

Section 51.55(k)(9) is amended to incorporate the 1980 American National Standard Institute Standards, as well as the 1961 version and allow compliance with either.

Proposed § 51.55(k)(10), was eliminated.

Proposed §§ 51.55(k) (11) and (12), have been redesignated §§ 51.55(k) (10) and (11). One commenter suggested that the definition of commencement of construction be amended to conform with the definition contained in the HEW regulations. In this instance, however, the provision being interpreted is one uniquely included in the Revenue Sharing Act and need not be consistent with HEW's definition.

One commenter suggested that subsection (k) should provide specific provisions concerning the need for structural changes to historical properties. However, the regulations with their emphasis upon program accessibility over structural changes to facilities, do not need specific treatment of historical properties.

A new § 51.55(l) is added to the regulations to cover the situation in which the ORS is requested to act upon a complaint concerning subject matters unresolved by another Federal agency, the agency in charge of coordination of Section 504, or by the courts. One example of such an unresolved issue is whether obesity should be considered a handicap. Another example is whether all public television broadcasting must be captioned for the deaf. The Department of Education is currently involved in litigation on this issue and at the same time the complainants have filed a complaint with the ORS. This provision is particularly needed because the ORS supports an almost unlimited range of programs and activities of State and local governments that are under the primary jurisdiction of other departments and agencies.

The Director has determined that the ORS may defer action on legal issues not resolved until the coordinating agency has had an opportunity to provide guidance in the interest of uniformity of Federal enforcement

of Section 504. In this way, the ORS will avoid conflicting Federal enforcement problems in this still evolving area of the law. The coordinating agency referred to is the Department of Justice pursuant to Executive Order 12250, which supersedes Executive Order 11914, which gave such authority to the Department of HEW.

At the same time, the Director is concerned that consultation with the coordinating agency may impede resolution of complaints in the expeditious manner required by the Revenue Sharing Act. In order to ensure that coordination will take place as expeditiously as possible, and at the same time allow for flexibility, the regulations would require the Director to consult with the coordinating agency within one week. The Director would also have to make a determination as to whether the Department of Justice will act within thirty (30) days. If guidance cannot be expected within thirty (30) days, the Director shall begin to obtain preliminary information needed to process the complaint while waiting for the guidance to be received. The ORS may defer making any findings until the Department of Justice has provided the necessary guidance. With these safeguards, possible deferral of action on the complaint should not result in undue delay in the processing of complaints. Accordingly, when a complaint concerning unresolved issues under Section 504 is received, the Director would immediately consult with the appropriate lead agency and act upon the guidance received.

Section 51.56—Nondiscrimination on the basis of age. Section 51.56 "Discrimination on the basis of age," has not been included in these regulations because the final regulation is currently under review by the Department of Health and Human Services (HHS). It will be published separately when approved.

EEOC Guidelines

ORS final regulations adopt the EEOC Guidelines concerning sex (§ 51.54), national origin (§ 51.57), and religion (§ 51.58). Violations of the provisions of these Guidelines are considered violations of the provisions of this subpart. The EEOC Guidelines are adopted to ensure that the Federal government will apply the same standards concerning employment discrimination, and that there will be consistency in the Federal civil rights enforcement effort. It is intended that the most current of the EEOC Guidelines be applicable to this subpart. Any subsequent revisions will also be adopted by ORS to the extent necessary to insure that is the case.

Section 51.59—Assurances required. This section was amended on July 24, 1978 (43 FR 31927) to eliminate the requirement that the copy of a holding to be submitted to the Director be certified. The final regulation also amends the 1979 proposed rule concerning delay of entitlement payments and constructive waivers to conform with the provisions of § 51.3(e) of subpart A and for other than nondiscrimination violations.

Section 51.60—Compliance information and reports. One commenter suggested that compliance reports be required to be made available for public inspection. The Director disagrees with this comment because in many cases, such reports contain confidential information. To require compliance reports to be made available for public inspection could foreseeably hinder compliance efforts. Paragraph (c) of this section, concerning constructive waiver is amended from its proposed form to be consistent with the provisions to § 51.3(e) of Subpart A.

Section 51.61—Compliance reviews and affirmative action. This provision was completely revised to provide more specificity concerning what a compliance review will consist of. The regulation is modeled after that of the Law Enforcement Assistance Administration of the Department of Justice (28 CFR 42.206) to enforce the Crime Control and Safe Streets Act of 1976.

One commenter suggested that § 51.61(a)(2)(i) be amended to reflect that the mere presence of minorities or women in the relevant labor market is not sufficient to indicate discrimination because they may not be available for employment. Subsection (a)(2) only suggests factors that may be considered in selecting a recipient government for a compliance review and are not to be considered evidence of discrimination. The Uniform Guidelines on Employee Selection Procedures will be used to evaluate the information obtained during the review.

Section 51.61(b) "Affirmative action," removes the reference to the Guidelines of the Equal Employment Opportunity Coordinating Council, which Council no longer exists. The EEOC has published Affirmative Action Guidelines, which supersede those of the Coordinating Council. Accordingly, the Director adopts these Guidelines in order to provide guidance concerning when affirmative action is appropriate.

Section 51.62—Administrative complaints and investigations. Section 51.62(b) "investigations," amends the interim regulation to clarify that ORS will investigate administrative complaints, which allege a discriminatory practice which, if true, would violate the Act. Information other than complaints, either generated within or outside of the ORS may also be the source of an investigation. This paragraph also provides that the Director may defer to the Attorney General in appropriate cases. The subsection, in conjunction with § 51.70(c), serves as the basis for a cooperative agreement with the Department of Justice. The final rule also provides that the scope of an investigation is not limited to the complaint or other information on which it is based, but may be expanded to include other matters.

Section 51.64—Notification of noncompliance. Sections 51.64 and 51.65 combine interim §§ 51.62, 51.65, 51.67 and 51.68 and generally reorganize the provisions describing the procedures for effecting compliance.

Section 51.64(a) provides that after an investigation or receipt of a determination of a State administrative agency, the Director shall if warranted by the facts and the record, make a finding that it is more likely than not that the recipient government has failed to comply with the provisions of this subpart. The Director shall within ten days of making a finding, issue a notice of noncompliance to the recipient government and inform the government that it has 30 days to enter into compliance, provide evidence to demonstrate compliance, or prove by clear and convincing evidence that revenue sharing funds were not used to fund the particular program or activity, or a determination of noncompliance will be issued.

Section 51.64(b) provides that within 10 days after receipt of a holding, the Director shall notify the recipient government of the holding and that the holding is conclusive on the issue of discrimination. The notice of noncompliance shall further inform the recipient government that it has 30 days to enter a compliance agreement or prove lack of funding by clear and convincing evidence, or a determination of noncompliance will be issued. This section also provides that the Assistant Attorney General for Civil Rights shall be notified of findings and holdings.

Section 51.64(b)(2) provides that where the remedial order issued on which the holding is stayed by a court, the stay will not affect action by the Director, unless the ORS is specifically included in the stay.

One commenter suggested that there was some confusion in the time limits for issuance of a finding. A finding is contemplated to be issued 90 days after the Director receives the administrative complaint or State administrative agency determination of discrimination. Accordingly, the two time periods are not contradictory. The preamble to the proposed regulations discussed the recommendations of the EEOC, pursuant to its coordination authority under Executive Order 12067. The EEOC recommended that the pre-finding process, an informal notice to recipients of possible noncompliance prior to the issuance of finding and notification of noncompliance set forth in § 51.64, be included in the regulations. Comments on this issue were requested, but none were received. Since the pre-finding process has since been eliminated by the Director, it is no longer necessary to add it to the regulation.

A new paragraph (c) is added to § 51.64 to describe the effect of a stay upon an administrative proceeding. This provision reflects an opinion received from the Department of Justice that the stay suspends the administrative proceeding to the extent that it covers the same issues.

Section 51.65—Determination by the Director. This section covers the action to be taken by the Director if the recipient government fails to enter into a compliance agreement after receipt of notification of noncompliance. Once a determination of noncompliance is issued, the recipient government has ten days to enter a compliance agreement, prove by clear and convincing evidence that the program or activity complained of was not funded with revenue sharing funds or request a hearing. If the recipient government does not take any of these actions within the 10-day period, the payment of revenue sharing funds to that government will be suspended until a compliance agreement is concluded. Section 51.65(b)(3) provides that administrative action based upon a holding will be

discontinued if that holding is reversed by an appellate tribunal.

This section is also amended to reflect that the Director has the discretion to issue both determinations of compliance and noncompliance and that the Assistant Attorney General for Civil Rights shall be notified of such determinations. The time periods contained in this section are statutorily derived and, therefore, cannot be expanded as requested in one comment.

Interim §§ 51.65, 51.68(c), 51.69, and 51.72 concerning administrative hearing procedures have been placed in appropriate sections of subpart G.

Section 51.66—Compliance agreements. Section 51.66(a) sets forth the requirements for compliance agreements where the ORS is not directly a party.

Section 51.66(b) provides that in the case of a holding, the remedial order issued pursuant to the holding, if any, will be the basis of a compliance agreement. If there is no extant remedial order, a compliance agreement will be modified, if necessary, to conform to the remedial order of the court.

Section 51.66(c) sets forth the requirements for a compliance agreement between the Director and a recipient government. It must be one document in writing and signed by the Director and the chief executive officer.

One commenter suggested that the ORS should monitor a recipient government's performance under compliance agreements. The Director agrees that reference to such monitoring should be included in the regulations. Accordingly, a new subsection (d) is added to the final regulation which provides that the Director will monitor compliance agreements and may require periodic reports which demonstrate continued compliance.

Interim § 51.66(d) is redesignated (e) and provides that if the Director believes that the recipient government has violated the provisions of the agreement, the Director may issue a determination of noncompliance based upon the alleged violation of agreement. A subsequent administrative hearing would be limited to the issue of whether the recipient government complied with the agreement.

"Notification to complainants of compliance agreement" is redesignated § 51.66(g). One commenter suggested that copies of compliance agreements be furnished to the complainant prior to their execution. The Director believes that to do so may interfere with the negotiation process and declines to accept this comment.

Section 51.67—Resumption of suspended entitlement payments. This section remains unchanged, except that the word "may" is replaced with "shall" since the Director has no discretion to continue to withhold revenue sharing funds if one of the events described occurs.

Section 51.68—Exclusion of administrative remedies. Interim § 51.64 is redesignated 51.68 and revised to provide additional clarity.

Section 51.69—Agreements between agencies. Interim § 51.74 is redesignated Section 51.69 and is revised to provide more specificity concerning the contents of a compliance agreement. Section 122(h) of the Act requires the Director to enter into agreements with other agencies to ensure consistent civil rights enforcement and efficient use of personnel and resources. Even without such agreements however, the ORS will cooperate with other Federal agencies to reduce the costs of compliance and burdens on recipient governments and to increase the efficiency of the Federal Civil Rights effort. Paragraph (c) of this section concerning review of preliminary decisions of the administrative law judge was eliminated because it was deemed unnecessary.

Section 51.70—Jurisdiction over property. Interim § 51.73 is redesignated Section 51.70.

Section 51.75—Authority of Attorney General of U.S. This section of the interim regulations was deleted due to the fact that it does not provide guidance concerning actions required of the ORS or revenue sharing recipients.

Subpart F—Fiscal Procedures and Auditing

Section 51.100—Definitions. This subpart is reorganized to take the definitions contained in § 51.101, "Auditing and evaluations," and 51.2 (of subpart A) general definitions, and create a new definition section for Subpart F, 51.100. Sections 51.100 (a) and (b) add the only new definitions. The definitions of "compliance" and "financial audit" reflect the current operating procedure of dividing the single independent audit requirement into two separate audits, a financial audit of all of a recipient government's funds and a compliance audit to determine that revenue sharing funds were spent in compliance with the provisions of the Act. The provisions of the Act referred to include the nondiscrimination provisions of Section 122, public participation requirements of Section 121, the prohibition against the use of revenue sharing funds for lobbying purposes and the requirements in section 123(a) that revenue sharing funds be spent in accordance with State and local laws and procedures.

The definition of "financial statements" in paragraph (c) is revised from the 1979 proposed rule to include the reference to the presentation of footnotes.

Section 51.101—Procedures applicable to the use of funds. Several commenters objected to the requirement contained in § 51.101(a) that revenue sharing trust funds established as separate sets of accounts to be classified and accounted for as special revenue funds. The comments correctly pointed out that this requirement conflicted with generally accepted accounting principles, and the reference to special revenue funds is eliminated.

Because the requirement that recipient governments spend their entitlement funds only in accordance with State or local laws and procedures has been moved to § 51.45 of Subpart D, current paragraph (d) is redesignated paragraph (c) and paragraph (e) is redesignated paragraph (d).

Section 51.102—Auditing and evaluation. Section 51.102(a) includes a reference to the separation of the single audit requirement into a financial audit and a compliance audit. A new paragraph (a)(2) is added to § 51.102 to inform recipient governments when audits must be submitted to the Director.

This section is amended to reflect the fact that the ORS encourages the use of the Office of Management and Budget's Circular A-102 Attachment P in meeting the audit requirements of the Act. A new paragraph (a)(3) reflects the acceptance of the Office of Management and Budget procedures.

Section 51.102(b) eliminates the requirement previously imposed that a recipient government submit a written assurance in order to elect to follow State or local law. The section also adds a new subsection to clarify that a compliance audit is required when a recipient government elects to follow State or local law in the performance of an audit.

Section 51.102(c) makes it clear that where a recipient government is required by State or local law to conduct an audit, though it receives less than $25,000 in entitlement funds, the audit must be performed. As stated above, Section 123(a)(4) of the Act requires the expenditure of revenue sharing funds in accordance with the laws and procedures applicable to the expenditure of a recipient governments own funds, unless that State or local law conflicts with Federal law. Additional requirements which go beyond those in the Revenue Sharing Act would not be considered conflicting. As stated in Section 123(c) of the Act, the performance of a locally required audit will be considered compliance with the Revenue Sharing Act. The audit performed pursuant to this subsection need not be submitted to the ORS, but shall be made available upon request by the Director.

Section 2(g) of the 1980 Amendments provided a special modification of the audit requirements for local governments within the State of Michigan. In this situation, the State agency had entered into an agreement with ORS to perform the required audits for county governments, but later found that it could not complete the audits. The affected counties are authorized to conduct the required audits in accordance with generally accepted auditing standards and only concerning fund accounts in which revenue sharing funds are placed. The final rule adds a new § 51.102(d), "Modification of audit requirement" to implement that special modification.

Section 51.102(d) of the proposed rule entitled, "Series of audits" is redesignated § 51.102(e). This subparagraph is also amended to require that financial and compliance audits must be performed in the same fiscal year.

Since the 1980 Amendments merely authorized, but did not appropriate revenue sharing funds for the State governments, an amendment to the regulations was needed to clarify when, if ever, the States would be required to conduct independent audits required by the Act. The Department has determined that a State government will be required to conduct such audits only if it receives entitlement funds for three consecutive entitlement periods. The same approach was taken for local governments which receive less than $25,000 in entitlement funds. A new paragraph (f) is added to § 51.102 to clarify our interpretation of this provision.

Section 51.103—Waiver of Audit Requirement. Section 2(f) of the 1980

Amendments provides an additional waiver for the situation in which the accounts of units of local government are audited by a State audit agency which either does not follow generally accepted auditing standards or which is not independent. The State agency must be demonstrating progress towards meeting the audit standards or becoming independent. The final rule revises proposed § 51.103 "Waiver of audit requirement" to include the new basis for granting a waiver and clarify the procedure by which the waiver will be granted. This section is also amended by the 1979 proposed rule to eliminate the requirement that the request for waiver be submitted before March 31, 1978.

Section 51.106—Audit opinions. This section is amended to clarify the notice of audit opinions and to eliminate the definition of generally accepted accounting principles as it is redundant.

Section 51.107—Scope of audits. The final rule would amend this section to clarify that the scope of audits include all of the financial statements for each separate fund. The section would further add the Statements on Auditing Standards as an additional guide for the type of audit to be conducted. This section is also amended to update the reference in paragraph (a)(4) to the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, from the 1972 edition to the 1981 edition.

Section 51.108—Retention and submission of audit reports and work papers. Sections 51.108 and 51.109 of the current regulations are combined into one section. Paragraph (a) contains the requirements of old § 51.109 that audit reports and other information needed to determine compliance be submitted to the Director upon request. Paragraph (b) contains the requirement of old § 51.108 that audit work papers be retained for three years after the issuance of the audit reports and be submitted to the Director or the Controller General upon request.

Section 51.109—Procedures for effecting compliance. A new § 51.109 is added by the final rule to point out that violations of the provisions of this subpart are redressed by the enforcement procedures contained in § 51.3 of Subpart A of this part.

Subpart G—Proceedings for Reduction in Entitlement, Withholding or Suspension of Funds

This subpart was revised by the 1979 proposed rule to differentiate between the requirements for administrative hearings concerning violations of Subpart E and those concerning Subparts B, D, and F. Section 122 of the Revenue Sharing Act sets forth the hearing procedures for nondiscrimination violations. Section 123(b) of the Act sets forth the hearing procedures for violations of the provisions of the Act other than Section 122. The current Subpart G does not make it clear where the two procedures are the same and where they differ. In the interest of consistency, the administrative hearing procedures contained in current Subpart E are added to Subpart G. This subpart is also amended to eliminate any reference to repayment of entitlement funds, for which the Act no longer provides authority.

Section 51.102—Reasonable notice and opportunity for hearing. Section 51.102 states that provisions for withholding, or reduction in revenue sharing payments apply to violations of the provisions of Subparts B, D, and F, while provisions for suspension or termination of the payment of revenue sharing funds apply to violation of the provisions of Subpart E.

Section 51.103—Opportunity for compliance. Section 51.103 is amended to reference the provisions pursuant to which a recipient government will be given the opportunity to enter into compliance prior to the initiation of an administrative hearing.

Section 51.204—Institution of an administrative hearing. The final rule provides for the institution of an administrative hearing. A hearing instituted under the provisions of Subpart E differs from the hearing instituted under other provisions because it is instituted by the Director only after the request of the recipient government and is required under Section 122(b)(3)(A) to be instituted within 30 days of receipt of the request by the Director.

Section 51.205—Complaint for administrative hearing: Section 51.206—Service of complaint and other papers. The final rule amends these sections to point out the shortened time frames under which complaints and answers for hearings under Subpart E must be filed pursuant to Section 122(b)(3)(A). Section 51.205 provides that for hearings under Subpart E, the complaint must require that the answer be filed within 10 days of receipt of the complaint by the recipient government. Section 51.206 requires that for hearings under Subpart E, the complaint must be served upon the recipient government within seven days of receipt of the request for a hearing from the recipient government.

Section 51.211—Administrative hearings. This section would set forth the procedures under which an administrative hearing is conducted. Section 51.211(b) is based upon §§ 51.66 and 51.68 of interim Subpart E.

Section 51.214—Depositions. The final rule would amend this section to provide for the taking of depositions in a shorter time period for hearings under the provisions of Subpart E. The summary hearing pursuant to § 51.211 must commence within 30 days of the request for an administrative hearing by the recipient government.

Section 51.217—Preliminary finding (for hearings under Subpart E). Section 51.217 sets forth the provisions currently contained in § 51.66 of the interim regulations concerning actions to be taken by the Director after the administrative law judge issues a preliminary finding under the provisions of Subpart E.

Section 51.218—Initial decision of the administrative law judge. The final rule would amend this section to clarify the nature of the decision of the administrative law judge. The administrative law judge's decision does not include the remedy for noncompliance. The decision sets forth the findings of fact and conclusions of law and whether the recipient government has failed to comply with the provisions of the Act. The final rule further revises this section to emphasize that the administrative law judge does not order suspension of entitlement funds. Only the Director has such authority. The Act does, however, provide for an order of termination of funds by the administrative law judge. The section further describes the actions to be taken by the Director depending upon the decision of the administrative law judge. The provisions of current § 51.223 is incorporated into this section and § 51.223 is eliminated.

Section 51.221—Procedure for review of decision of administrative law judge. The final rule removes the restriction in current § 51.221(b) that the Director appeal only in absence of appeal by respondent. Section 51.221(b) adds a new provision to state that the Secretary of the Treasury may review the decision of the administrative law judge absent appeal by either party. Current § 51.222 is added to this section as a new § 51.221(c). The subsection provides that the Secretary's decision is the final agency decision.

Section 51.222—Effect of absence of appeal or review of initial decision of administrative law judge. The final rule adds a new section to clearly state that the initial decision of the administrative law judge becomes the final agency decision if not appealed by either party or reviewed by the Secretary.

Section 51.223—Judicial review. Current § 51.213, "Effect of order of repayment, withholding of funds or suspension of funds is eliminated and merged into § 51.218. Current § 51.224 is redesignated § 51.223. The final rule also amends this section to provide that the Director may cross-appeal issues decided adversely to the Office of Revenue Sharing, unless those issues were ruled upon directly by the Secretary.

Section 51.224—Judicial review. Current § 51.225 is redesignated § 51.224.

[FR Doc. 81-28399 Filed 9-29-81; 8:45 am]

BILLING CODE 4810-25-M

federal register

Wednesday
September 30, 1981

Part XI

Federal Election Commission

Transfers of Funds; Collecting Agents, Joint Fundraising

FEDERAL ELECTION COMMISSION

11 CFR Part 102

[Notice 1981-9]

Transfers of Funds; Collecting Agents, Joint Fundraising

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission requests comments on proposed rules to govern joint fundraising activity and collecting agents. The proposed regulations would revise current 11 CFR 102.6 to cover transfers of funds and collecting agents. The proposed rules would also add a new section entitled "Joint Fundraising" to be designated as 11 CFR 102.7.

DATE: Comments must be received on or before October 30, 1981. A hearing will be scheduled after written comments are received. (See Supplementary Information for details.)

ADDRESS: Susan E. Propper, Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Susan E. Propper, Assistant General Counsel (202) 523-4143.

SUPPLEMENTARY INFORMATION: The proposed rules being published today make a distinction between two types of fundraising activity. "Joint fundraising" refers to the solicitation of contributions through the combined effort of two or more candidates or committees which are not affiliated for purposes of 2 U.S.C. 441a(a)(5). Possible combinations of committees conducting a joint fundraiser could be, for example, two candidates (one or both of whom are federal candidates), two multicandidate committees or a candidate committee and a party committee.

Joint fundraising is distinguished from a situation in which an unregistered organization, such as a union local or a trade association, collects contributions made to a separate segregated fund. In this situation, the unregistered organization, or "collecting agent," has a special relationship to the separate segregated fund. The collecting agent is either an unregistered affiliated committee of the separate segregated fund, such as a state PAC, or a connected organization of the separate segregated fund, such as a corporate subsidiary or union local. For example, a union local acting as a collecting agent might collect its membership dues and contributions to the separate segregated fund of the local's international union in one combined billing/solicitation.

The draft regulations provide separate procedures for these two forms of fundraising. To emphasize the distinction between true joint fundraising and the collecting agent situation, the proposed regulations would change the title of 11 CFR 102.6 from "Transfers of Funds; Joint Fundraising" to "Transfers of Funds; Collecting Agents." In addition, a new section entitled "Joint Fundraising" would be added at 11 CFR 102.7, thus necessitating a renumbering of subsequent sections of 11 CFR Part 102. To avoid confusion until the draft regulations are approved by the Commission, cross-references in the text are to current section numbers.

The proposed regulations are designed to cover joint fundraising activity by Presidential primary candidates electing to receive matching funds under Chapter 96 of Title 26 of the Internal Revenue Code in addition to fundraising activity by candidate committees and other political committees operating under Title 2 of the United States Code. If candidates receiving federal funding engage in joint fundraising activity, such candidates would continue to be subject to the stricter recordkeeping and reporting requirements of Chapter 96 and sections 9031 *et seq.* of the Commission's regulations. However, these proposed regulations do not address certain substantive issues unique to joint fundraising in the context of Title 26, such as whether contributions received may be submitted for matching funds.

The Commission will be scheduling a public hearing to be held after written comments are received. Persons or organizations interested in testifying at the hearing should so indicate in their written comments. The date of the hearing will be published in a future issue of the **Federal Register.**

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

It is proposed to revise 11 CFR 102.6 to read as follows:

§ 102.6 Transfer of funds; collecting agents.

(a) *Transfers of Funds.*—(1) *Who May Make Transfers.* (i) Transfers of funds may be made without limit on amount between affiliated committees whether or not they are political committees under 11 CFR 100.5.

(ii) Transfers of funds may be made without limit on amount between or among a national party committee, a State party committee and/or any subordinate party committee whether or not they are political committees under 11 CFR 100.5 and whether or not such committees are affiliated.

(iii) Transfers of joint fundraising proceeds may be made without limit on amount between organizations or committees participating in the fundraising activity provided that no participating committee or organization receives more than its allocated share of the funds raised. See 11 CFR 102.7, Joint Fundraising.

(2) *When Registration Required.* Except as provided in subsection (b), organizations or committees making transfers under 11 CFR 102.6(a)(1) shall count such transfers against the reporting thresholds of the Act for determining whether an organization or committee is a political committee under 11 CFR 100.5.

(b) *Collecting Agent Not Required to Report.* (1) A collecting agent is an organization or committee which collects and transmits contributions to a separate segregated fund. A collecting agent must be either:

(A) A committee affiliated with the separate segregated fund under 11 CFR 110.3; or

(B) The connected organization of the separate segregated fund as defined in under 11 CFR 100.6; or

(C) A parent, subsidiary, branch, division, department, or local unit of the connected organization of the separate segregated fund; or

(D) A local, national or international union collecting contributions on behalf of the separate segregated fund of any federation with which the local, national or international union is affiliated. See 11 CFR 114.1(e).

(2) A collecting agent which follows the procedures of 11 CFR 102.6(c) is not required to register and report as a political committee under 11 CFR Parts 102 and 104, provided that the organization does not engage in other activities such as making contributions or expenditures for the purpose of influencing federal elections.

(c) *Procedures for Collecting Agents.*—(1) *Solicitation for Contributions.* A collecting agent may include a solicitation for voluntary contributions to a separate segregated fund in a bill for membership dues or other payments such as conference registration fees or a solicitation for contributions to the collecting agent. The collecting agent may only solicit contributions from those persons permitted to be solicited under 11 CFR Part 114. The solicitation for contributions must meet all of the requirements for proper solicitations under 11 CFR 114.5.

(2) *Checks Combining Contributions with Other Payments.* In response to a solicitation under 11 CFR 102.6(c)(1), a contributor may write one check that represents both a contribution and payment of dues or other fees. The check must be drawn on the contributor's personal checking account or on a non-repayable corporate drawing account of the individual contributor. Under a payroll deduction plan, an employer may write one check on behalf of its employees to a union, which check represents a combined payment of union dues and voluntary contributions to the union's separate segregated fund.

(3) *Transmittal of Contributions.* All contributions collected by collecting agents shall be transmitted to the separate segregated fund within 10 or 30 days as required by 11 CFR 102.8. Cash contributions and checks made payable to the separate segregated fund shall be transmitted in accordance with 11 CFR 102.6(c)(4). To transfer all other contributions, a collecting agent shall either:

(i) Establish a transmittal account to be used solely for the deposit and transmittal of funds collected on behalf of the separate segregated fund. Funds deposited into this account are subject to the prohibitions and limitations of the Act. If any disbursement is made from the account, other than a transfer of funds to an affiliated committee, the account shall be considered a depository of the recipient committee and all activity of that account shall be reported; or

(ii) Deposit the contributions collected into its own account. The collecting agent shall keep separate records of all receipts and deposits that represent contributions to the separate segregated fund; or

(iii) Deposit the contributions collected into an account otherwise established solely for State or local election activity. The collecting agent shall keep separate records of all receipts and deposits that represent contributions to the separate segregated fund.

(4) *Transmittal of Cash Contributions and Checks Made Payable to a Separate Segregated Fund.* (i) Cash contributions collected by a collecting agent may be transmitted to the separate segregated fund through a transmittal account established by the collecting agent pursuant to 11 CFR 102.6(c)(3)(i). Cash contributions may also be transmitted by the collecting agent to the separate segregated fund in the form of money orders or cashier's checks.

(ii) Checks made payable to a separate segregated fund shall be transmitted by the collecting agent directly to the separate segregated fund in accordance with the provisions of 11 CFR 110.6 and 11 CFR 102.8.

(5) *Contributor Information.* The collecting agent shall comply with the requirements of 11 CFR 102.8 regarding transmittal of contributions and contributor information to the separate segregated fund, except that if contributions of $50 or less are received at a mass collection, a record shall be kept of the date, the total amount collected, and the name of the function at which the collection was made.

(6) *Retention of Records.* The collecting agent shall retain all records of contribution deposits and transmittals under this section for a period of three years and shall make these records available to the Commission on request.

(7) *Reporting of Funds Received Through Collecting Agents.* A separate segregated fund receiving contributions collected by a collecting agent shall report the total amount received as a transfer-in from the collecting agent. The recipient shall also file a memo Schedule A itemizing the total receipts as contributions from original contributors to the extent required by 11 CFR 104.3(a).

It is proposed to add new 11 CFR 102.7 as follows:

§ 102.7 Joint fundraising.

(a) *General.* (1) Political committees may engage in joint fundraising with other political committees or with unregistered committees or organizations. The participants in a joint fundraising effort under this section shall either: (i) Establish a separate committee; or (ii) select a participating committee; or (iii) hire a commercial fundraising agent or firm, to act as fundraising representative for all participants; or the participants may select any other reasonable fundraising arrangement which is approved by the Commission in advance of the fundraising effort. See 11 CFR Part 112, Advisory Opinions.

(2) A fundraising representative conducting joint fundraising under this section is distinguished from an unregistered organization acting as a collecting agent under 11 CFR 102.6(b).

(3) The procedures in 11 CFR 102.7(c) will govern all joint fundraising activity conducted under this section.

(b) *Fundraising Representatives.*—(1) *Separate Fundraising Committee as Fundraising Representative.* Participating committees may establish a separate political committee to act as fundraising representative for all participants. This separate committee shall be a reporting political committee and shall collect contributions, pay fundraising costs from gross proceeds and from funds advanced by participants, and disburse net proceeds to each participant.

(2) *Participating Committee as Fundraising Representative.* All participating committees may select one participant to act as fundraising representative for all participants. The fundraising representative must be a political committee as defined in 11 CFR 100.5. The fundraising representative and any other participating committees may collect contributions, however, all contributions received by other participants shall be forwarded to the fundraising representative. The fundraising representative shall pay fundraising costs from gross proceeds and from funds advanced by participants and disburse net proceeds to each participant.

(3) *Commercial Fundraising Firm or Agent as Fundraising Representative.* The participants may hire a commercial fundraising firm or agent to act as fundraising representative. The fundraising firm or agent shall collect contributions, pay fundraising costs from gross proceeds and from funds advanced by participants, and disburse net proceeds to each participant. If a fundraising firm or agent is hired, a participating political committee shall report all receipts and disbursements related to the joint fundraising activity.

(c) *Joint Fundraising Procedures.* The requirements of (c)(1) through (8) of this section shall govern joint fundraising activity conducted under this section.

(1) *Written Agreement.* The participants in a joint fundraising activity shall enter into a written agreement, whether or not all participants are political committees under 11 CFR 100.5. The written agreement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The participants shall also use the formula to allocate the expenses incurred for the fundraising activity. The fundraising representative shall retain the written agreement for a period of three years and shall make it available to the Commission on request.

(2) *Fundraising Notice.* In addition to any notice required under 11 CFR 110.11, a joint fundraising notice shall be included with every solicitation for contributions. This notice shall include the following information:

(i) The names of all committees participating in the joint fundraising activity whether or not such committees are political committees under 11 CFR 100.5; and

(ii) The allocation formula to be used for distributing joint fundraising proceeds; and

(iii) A statement informing contributors that the allocation formula may change if a contributor makes a contribution which would exceed the amount that contributor may give to any participant or if a participant receives sufficient funds to pay its outstanding debts; and

(iv) A statement informing contributors that, notwithstanding the stated allocation formula, they may designate their contributions for a particular participant or participants.

(3) *Separate Depository Account.* (i) The participants shall establish a separate depository account to be used soley for the receipt and disbursement of joint fundraising proceeds. All contributions deposited into the separate depository account must be permissible under the Act. Contributions from prohibited sources which may not be deposited in the separate depository account may be forwarded directly to an unregistered participating organization, although such contributions shall not be included in the total amount on which the allocation of expenses under 11 CFR 102.7(c)(7) is based. Each political committee shall amend its Statement of Organization to reflect the account as an additional depository.

(ii) The fundraising representative shall deposit all joint fundraising proceeds in the separate depository account within ten days of receipt as required by 11 CFR 103.3. The fundraising representative may delay distribution of the fundraising proceeds to the participants until all contributions are received and all expenses are paid.

(iii) For contribution reporting and limitation purposes, the date of receipt of a contribution by a participating political committee is the date that the contribution is received by the fundraising representative. The fundraising representative shall report contributions in the reporting period in which they are received. Participating political committees shall report joint fundraising proceeds in accordance with 11 CFR 102.7(c)(8) when such funds are received from the fundraising representative.

(4) *Recordkeeping Requirements.* (i) The fundraising representative shall screen all contributions received to insure that the prohibitions and limitations of 11 CFR Parts 110 and 114 are observed. Participating political committees shall make their contributor records available to the fundraising representative to enable the fundraising representative to carry out its duty to screen contributions.

(ii) The fundraising representative shall collect and retain contributor information with regard to gross proceeds as required under 11 CFR 102.8 and shall also forward such information to participating political committees.

(iii) The fundraising representative shall retain the records required under 11 CFR 102.9 regarding fundraising disbursements for a period of three years. Commercial fundraising firms or agents shall forward such information to participating political committees.

(5) *Contribution limitations.* Except to the extent that the contributor has previously contributed to any of the participants, a contributor may make a contribution to the joint fundraising effort which contribution represents the total amount that the contributor could contribute to all of the participants under the applicable limits of 11 CFR 110.1 and 110.2.

(6) *Allocation of Gross Proceeds.* (i) The fundraising representative shall allocate proceeds according to the formula stated in the fundraising agreement. If distribution according to the allocation formula extinguishes the debts of one or more participants and results in a surplus for those participants or if distribution under the formula results in a violation of the contribution limits of 11 CFR 110.1(a), the fundraising representative may reallocate the excess funds. If reallocation results in a violation of a contributor's limit under 11 CFR 110.1, the fundraising representative shall return to the contributor the amount of the contribution that exceeds the limit.

(ii) Designated contributions which exceed the contributor's limit to the designated participant under 11 CFR Part 110 may not be re-allocated by the fundraising representative absent the written permission of the contributor.

(7) *Allocation of Expenses and Distribution of Net Proceeds.* (i) If participating committees are not affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity and are not committees of the same political party:

(A) After gross contributions are allocated among the participants under 11 CFR 102.7(c)(6)(i), the fundraising representative shall determine each participant's share of expenses based on the percentage of the total receipts each participant has been allocated. See 11 CFR 102.7(c)(3)(i) regarding funds not included in total receipts for expense allocation purposes. To determine each participant's net proceeds, the fundraising representative shall subtract the participant's share of expenses from the amount that participant has been allocated from gross proceeds.

(B) A participant may only pay expenses on behalf of another participant subject to the contribution limits of 11 CFR Part 110.

(ii) If participating committees are affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity or if participants are committees of the same political party, expenses need not be allocated among those participants. Payment of such expenses by an unregistered committee or organization on behalf of an affilated political committee may cause the organization to become a political committee.

(iii) Payment of expenses may be made from gross proceeds by the fundraising representative.

(8) *Reporting of Receipts and Disbursements.*—(i) *Reporting Receipts.* (A) If the fundraising representative is a separate fundraising committee or a participating committee, the fundraising representative shall report all funds received in the reporting period in which they are received. If the fundraising representative is a commercial fundraising agent or firm, a participating political committee shall report gross receipts in the reporting period in which they are received by fundraising representative.

(B) After distribution of net proceeds, each participating political committee shall report its share of net proceeds received as a transfer-in from the fundraising representative. Each participating political committee shall also file a memo Schedule A itemizing its share of gross receipts as contributions from original contributors to the extent required under 11 CFR 104.3(a).

(ii) *Reporting Disbursements.* (A) If the fundraising representative is a separate fundraising committee or a participating political committee, the fundraising representative shall report all disbursements.

(B) If the fundraising representative is a commercial fundraising agent or firm, a participating political committee shall report all disbursements.

Certification of No Effect Pursuant to 5. U.S.C. 605(b) Regulatory Flexibility Act.

I certify that the attached proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that no entity is required to make any expenditures under the proposed rules.

Dated: September 25, 1981.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 81-28397 Filed 9-29-81; 8:45 am]

BILLING CODE 6715-01-M

federal register

Wednesday
September 30, 1981

Part XII

Occupational Safety and Health Review Commission

Equal Access to Justice Act; Interim Rules and Request for Comments

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2204

Rules Implementing the Equal Access to Justice Act

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Adoption of interim rules and request for comments.

SUMMARY: The Equal Access to Justice Act, Pub. L. 96-481, 94 Stat. 2325 (1980) ("EAJ Act"), authorizes agencies that conduct adversary adjudications to award attorney fees and other litigation expenses to certain parties other than the United States that prevail in such adjudications. The EAJ Act also requires agencies that conduct adversary adjudications to establish procedures for the submission and consideration of applications for the award of fees and other expenses. The Occupational Safety and Health Review Commission ("Commission") now adopts, on an interim basis, rules establishing such procedures. The Commission also seeks public comments on these interim rules.

DATES: The interim rules take effect on October 1, 1981. Comments on the interim rules must be received by December 1, 1981.

ADDRESS: Submit comments to Jonathan R. Ross, Acting Associate General Counsel, Occupational Safety and Health Review Commission, 1825 K Street, N.W., Suite 400, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Acting Associate General Counsel Jonathan R. Ross at the above address; telephone (202) 634-7965.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States ("ACUS") is charged with coordination of the procedural rules adopted by various agencies to implement the EAJ Act. To carry out this responsibility, ACUS issued model rules implementing the EAJ Act (46 FR 32900, June 25, 1981), after receiving public comment on draft model rules. (46 FR 15895, March 10, 1981). The Commission's rules implementing the EAJ Act are based on the model rules issued by ACUS. Since the preamble to the draft model rules explained their formulation and the preamble to the final model rules summarized and responded to the public comments submitted concerning the draft rules, the Commission does not repeat here the rationale of the model rules. Rather, we note where our rules differ from the model rules and explain significant provisions, as follows:

1. The Commission's rules constitute Part 2204 of 29 CFR. They are divided into three subparts, as are the model rules, and maintain the same numbering and sequence with the following exceptions:

a. The Commission's rules insert a definitions provision at § 2204.102, which does not appear in the model rules. Also, the Commission's rules omit model rules § 0.107, "Rulemaking on maximum rates for attorney fees," and § 0.108, "Awards against other agencies." The revised numbering causes Commission rules §§ 2204.103–2204.107 to correspond to model rules §§ 0.102–0.106, respectively, and Commission rule § 2204.108 to correspond to model rule § 0.109.

b. The Commission rule corresponding to model rule § 0.204, "When an application may be filed," does not appear in subpart B but rather is inserted in subpart C as § 2204.302. Therefore, Commission rules §§ 2204.303–2204.309 correspond to model rule §§ 0.302–0.308, respectively, and Commission rule § 2204.311 corresponds to model rule § 0.310. Model rule § 0.309, "Judicial review," is omitted from the Commission's rules, and a new provision, "Waiver," appears as Commission rule § 2204.310.

2. Sections 2204.101, 2204.105(a), and 2204.108 use the terms "attorney or agent fees" where the corresponding sections of the model rules use only "attorney fees." References to agent fees are included because the EAJ Act authorizes award of fees for both attorneys and agents, and parties in proceedings before the Commission may be represented by individuals who are not attorneys. See § 2200.22.

3. A definitions provision, not present in the model rules, appears as § 2204.102 and defines the terms "agent," "Commission," "EAJ Act," "judge," and "Secretary."

4. Section 2204.104, "Proceedings covered," is modified and simplified from model rule § 0.103 and identifies the specific proceedings before the Commission that are covered by the EAJ Act. Incorporation of paragraphs (b) and (c) of model rule § 0.103 into the Commission rules is not necessary, because it is clear which Commission proceedings are covered by the EAJ Act.

5. In § 2204.105, "Eligibility of applicants," the second sentence of paragraph (a) uses the language "satisfies the conditions" rather than the language "meets all conditions," which is used in the corresponding model rule, § 0.104(a). This wording change is to clarify that an applicant need satisfy only one of the alternative eligibility requirements of § 2204.105(b), not all of them.

6. In § 2204.105(b), the order of paragraphs is altered from that of the corresponding model rule, § 0.104(b). The paragraph corresponding to § 0.104(b)(1) appears as § 2204.105(b)(5), and the paragraphs corresponding to § 0.104(b)(2)–(b)(5) appear as § 2204.105(b)(1)–(b)(4). These provisions are rearranged because it is expected that the paragraph corresponding to model rule § 0.104(b)(1) is unlikely to have frequent application in Commission proceedings; therefore, it is not listed first in § 2204.105(b).

7. Section 2204.105(b)(4) uses the wording "employs not more than 500 employees" rather than the wording of model rule § 0.104 "with . . . not more than 500 employees." The purpose of this change is to make clear that the eligibility of a party such as a union that applies for an award is not affected by the number of employees it has as members but rather the number of employees the applicant employs. The term "employs" also is used in § 2204.105(b)(1) to maintain parallel construction.

8. In § 2204.105(d) the word "only" is added after the phrase "sole owner of an unincorporated business" to clarify that an applicant who owns an unincorporated business is classified as an "individual" only if the issues on which the applicant prevails are related primarily to personal, rather than business, interests. Thus, it is quite unlikely that a contesting employer in a Commission proceeding who is the sole owner of an unincorporated business could avoid the eligibility limit on number of employees for applicants by seeking classification as an individual under § 2204.105(b).

9. Section 2204.105(e) adopts without alteration the definition of "employee" for use in determining eligibility that appears in model rule § 0.104(e). The Commission rule does not use the definition of "employee" provided by section 3(6), 29 U.S.C. 652(6), of the Occupational Safety and Health Act of 1970 ("OSH Act"), even though that definition applies to the subject matter of the cases before the Commission. The OSH Act definition of employee is interpreted liberally to effectuate the remedial purposes of the OSH Act, *see, e.g., S & S Diving Co.*, 80 OSAHRC 85/D3, 8 BNA OSHC 2041, 1980 CCH OSHD ¶24,742 (No. 77-4234, 1980); *Griffin & Brand of McAllen, Inc.*, 78 OSAHRC 48/C13, 6 BNA OSHC 1702, 1978 CCH OSHD ¶22,829 (No. 14801, 1978), and arguably is broader than the definition

in § 2204.105(e). Use of an expansive definition of "employee" in EAJ Act proceedings could result in more applicants being found ineligible than otherwise would be the case. This outcome would tend to thwart the EAJ Act's purpose of diminishing the deterrent effect that attorney fees and other litigation expenses have on small businesses and other small entities defending against governmental action. Therefore, it is more appropriate to adopt the model rules' definition of "employee."

10. Paragraphs (f) and (g) of model rule § 0.104 do not appear in the corresponding Commission rule, § 2204.105. The Commission prefers to address on a case-by-case basis the issue addressed by § 0.104(f), *i.e.*, when to aggregate the net worth and number of employees of the applicant with those of other entities that control, or are controlled by, the applicant. Paragraph (g) of § 0.104, concerning applicants representing entities that would be ineligible, is omitted because such a situation is unlikely to arise in Commission proceedings. The Commission particularly invites comment on whether the net worth and number of employees of applicants should or should not be determined by aggregating the net worth and number of employees of organizations affiliated with the applicant on the terms set out in the model regulations of the ACUS.

11. Paragraph (a) of § 2204.106, "Standards for awards," permits an award of fees and expenses for a party that prevails in a "discrete substantive portion" of a proceeding, omitting from the corresponding model rule, § 0.105(a), the requirement that the portion on which the party prevails be "significant" as well as "discrete." A similar change is made in § 2204.302(a). The issue of whether a particular portion of a case before the Commission is "significant" is a relative matter and one that sheds little light on whether the award of fees and expenses incurred in litigating that portion is warranted. If a party prevails in a "discrete substantive portion" of a Commission proceeding, that should be a matter sufficient for an award, assuming the other requirements of the EAJ Act are met. For example, if the Secretary secures the affirmance of two items contained in a three-item citation, while the contesting employer persuades the Commission to vacate the third item, the latter item is a "discrete substantive portion" of the proceeding as to which the employer may seek an award of fees and expenses.

12. Section 2204.106(b) divides corresponding model rule § 0.105(b) into two sentences to clarify that no award, rather than a reduced award, should be made if special circumstances make an award unjust.

13. The first two sentences of paragraph (b) of § 2204.107, "Allowable fees and expenses," are revised from the corresponding model rule, § 0.106(b), so that they are phrased affirmatively. Also, a clause is added to the first sentence to note that the Commission by regulation may increase the maximum hourly rate that may be awarded for attorney or agent fees. Additionally, model rule § 0.106(b) contemplates that the rule will state the maximum rate that an agency may pay expert witnesses; however, § 2204.107(b) does not specify a rate, since that is a matter within the purview of the Secretary of Labor.

14. Model rule § 0.107, "Rulemaking on maximum rates for attorney fees," does not appear in the Commission rules. Since frequent rulemaking on this subject is not foreseen, a formal rule concerning it is not deemed necessary.

15. Section 0.108 of the model rules, "Awards against other agencies," does not appear in the Commission rules. It is duplicative of §§ 2204.101, 2204.104, 2204.106, 2204.311, and other sections that make clear these rules contemplate awards by the Commission against the Department of Labor, a separate agency.

16. Section 2204.108, "Delegation of authority," is revised from the corresponding model rule, § 0.109, in terms specifically applicable to Commission proceedings.

17. In § 2204.201, "Contents of application," the third sentence does not contain the introductory clause, "Unless the applicant is an individual," which appears in the corresponding model rule, § 0.201(a). It is not expected that individuals often will be applicants in proceedings before the Commission, and, when individuals are applicants, it is not detrimental for the third sentence of paragraph (a) to apply to them.

18. In § 2204.201(b), the second parenthesis in the first sentence does not contain the phrase "including their affiliates," that appears in the corresponding model rule, § 0.201(b). Additionally, in paragraph (a) of § 2204.202, "Net worth exhibit," the phrases "and any affiliates" and "and its affiliates" are omitted from the first and second sentences, respectively, although the corresponding model rule, § 0.202(a), contains these phrases. These omissions are made necessary by the omission of paragraph (f), concerning aggregation of applicants with their affiliates, from § 2204.105.

19. The first sentence of § 2204.202(a) employs the term "shall," rather than the term "must," which is used in model rule § 0.202(a).

20. Paragraph (b) of § 2204.202 varies from model rule § 0.202(b) in that it is divided into paragraphs (1) and (2) and the first sentence is reworded to use the term "shall," rather than "must."

21. Model rule § 0.204, "When an application may be filed," does not appear in subpart B. A Commission rule corresponding to this model rule appears instead as the second section of subpart C, § 2204.302, because it fits more logically at that location.

22. Commission rule § 2204.301, "Filing and service of documents," is modified slightly from the corresponding model rule, § 0.301. Section 2204.301 uses the wording "and any other pleading" rather than the wording employed by § 0.301, "or other pleading." The rule also incorporates the provisions of Commission rules §§ 2200.7 and 2200.8 concerning service and filing, respectively. Under the latter rule, an application for an award and related pleadings or documents are to be filed with the administrative law judge ("judge") when the case as to which the application is filed is before a judge. Any application or related pleading or document filed after the judge issues his decision in the case is to be filed with the Executive Secretary of the Commission.

23. Commission rule § 2204.302, "When an application may be filed," is modified from corresponding model rule § 0.204. Section 2204.302 contemplates in paragraph (a) that an application for an award may be filed whenever an applicant prevails in a proceeding or in a discrete substantive portion of a proceeding. If a party petitions for Commission review of a judge's decision as to which a fee application has been filed, or if the Commission directs review of such a decision, paragraph (b) of § 2204.302 provides that proceedings concerning the fee application are stayed until there is a final Commission disposition of the case. The purpose of paragraph (b) is to prevent the waste of resources of the parties and the judge that would occur if the fee application were litigated and resolved and subsequently the judge's decision as to which the award was sought was vacated or reversed by the Commission. The Commission particularly invites comments as to whether other procedures than those stated herein would better afford to the prevailing party the most efficient and fastest payment of fees. For instance, alternative procedures could include pleading and discovery with respect to eligibility requirements concurrent with

the underlying OSH Act proceedings. The Commission also invites opinions as to whether the stay provisions as provided for in § 2204.302(b) should be modified or eliminated.

24. If a petition for court of appeals review is filed concerning a Commission decision as to which a fee award has been sought, paragraph (c) of § 2204.302 provides that the fee application be dismissed. Paragraph (c) is made necessary by the EAJ Act's provision at 5 U.S.C. 504(c)(1), which provides that if a court reviews the underlying decisions of the agency adversary adjudication, a fee award may be made only by the court. The EAJ Act's provision at 28 U.S.C. 2412(d)(3) authorizes the court to make such an award. 28 U.S.C. 2412(d)(1)(B) provides that an application for a fee award by the court shall be submitted to the court. Thus, a fee application previously submitted to the Commission is not sufficient for that purpose.

25. Paragraph (d) of § 2204.302 defines the date of final Commission disposition. This is significant for paragraphs (a) and (b), both of which make reference to final Commission disposition. In particular, paragraph (a) reiterates the statutory provision, set forth at 5 U.S.C. 504(a)(2), that a party may file an application for an award as long as thirty days after the Commission's final disposition as to which the award is sought. It is noteworthy that, by providing for the filing of an application as long as thirty days after final disposition of the underlying case, the EAJ Act necessarily, though implicitly, grants jurisdiction to the Commission to entertain applications filed after the Commission's decision as to which an award is sought has become final.

26. Paragraph (a) of § 2204.303, "Answer to application," is altered from paragraph (a) of the corresponding model rule, § 0.302, in that "shall" rather than "may" is used in the first sentence, thereby making the Secretary's filing of an answer mandatory. Section 2204.303(a) omits the second sentence of model rule § 0.302(a), which provides that failure to file an answer within thirty days after service of an application may be treated as consent to the award requested. The Commission invites comments as to whether the omission of the second sentence of the model rule removes an effective sanction which aids in the processing of applications.

27. Paragraph (a) of § 2204.307, "Further proceedings," is divided into paragraphs (1) and (2) and the word "shall" rather than "may" is used in paragraph (1). The first sentence of paragraph (a)(2) is reworded from the corresponding language in model rule § 0.306(a) to provide that the judge may order "further proceedings as necessary, including discovery and an evidentiary hearing." Because this rephrasing incorporates the concept, expressed in the last sentence of model rule § 0.306(a), that further proceedings be held "as necessary," § 2204.307(a)(2) does not contain that sentence.

28. Section 2204.308, "Decision," revises corresponding model rule § 0.307 to require judges' decisions to accord with § 2200.90, the rule governing judges' decisions in cases under the Occupational Safety and Health Act. The last sentence of model rule § 0.307, which addresses awards made against more than one agency, is omitted because awards in Commission proceedings are to be made only against the Secretary of Labor. Also, the time limit contained in the model rule for the issuance of decisions on applications for award is omitted. Judges must be given discretion to efficiently apply their energies to the most pressing matters before them and must allocate their time between occupational safety and health matters and applications for fee awards. Thus, a rigid deadline for disposing of fee applications would be inappropriate.

29. Section 2204.309, "Commission review," is modified from corresponding model rule § 0.308 so that Commission review of a judge's decision concerning a fee application follows the same procedures as Commission review of a judge's decision concerning an occupational safety and health matter.

30. Model rule § 0.309, "Judicial review," is omitted from the Commission's rules. Court review of a Commission decision on a fee application is provided by the EAJ Act at 5 U.S.C. 504(c)(2). Since the Commission lacks authority to issue regulations governing the procedures of such court review, the Commission rules do not address this subject.

31. Section 2204.310, "Waiver," has no analogue in the model rules. Section 2204.310 permits the Commission to waive provisions of its rules under certain circumstances set forth in the rule.

32. Section 2204.311, "Payment of award," provides that payment is to be sought from the Secretary of Labor. It omits the second sentence and part of the first sentence of the corresponding model rule, § 0.310. The Commission lacks authority to prescribe the procedures the Secretary is to follow in processing and paying awards, which is the subject addressed by the omitted portion of the model rule. It would be appropriate for the Secretary to issue regulations concerning this matter.

For the reasons set out in the preamble and under authority granted by 5 U.S.C. 504(c)(1) and 29 U.S.C. 661(f), the Occupational Safety and Health Review Commission adopts as interim rules 29 CFR Part 2204 as follows:

PART 2204—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN PROCEEDINGS BEFORE THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Subpart A—General Provisions

Sec.

2204.101 Purpose of these rules.
2204.102 Definitions.
2204.103 When the EAJ Act applies.
2204.104 Proceedings covered.
2204.105 Eligibility of applicants.
2204.106 Standards for awards.
2204.107 Allowable fees and expenses.
2204.108 Delegation of authority.

Subpart B—Information Required From Applicants

2204.201 Contents of applicaton.
2204.202 Net worth exhibit.
2204.203 Documentation of fees and expenses.

Subpart C—Procedures for Considering Applications

2204.301 Filing and service of documents.
2204.302 When an application may be filed.
2204.303 Answer to application.
2204.304 Reply.
2204.305 Comments by other parties.
2204.306 Settlement.
2204.307 Further proceedings.
2204.308 Decision.
2204.309 Commission review.
2204.310 Waiver.
2204.311 Payment of award.

Authority: Sec. 203(c)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

Subpart A—General Provisions

§ 2204.101 Purpose of these rules.

The Equal Access to Justice Act, Pub. L. 96-481, 94 Stat. 2325 (1980), provides in 5 U.S.C. 504 for the award of attorney or agent fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Occupational Safety and Health Review Commission. An eligible party may receive an award when it prevails over the Secretary of Labor, unless the Secretary's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards and the procedures and

standards that the Commission uses to make awards.

§ 2204.102 Definitions.

For the purposes of this part,

(a) The term "agent" means any person other than an attorney who represents a party in a proceeding before the Commission pursuant to § 2200.22;

(b) The term "Commission" means the Occupational Safety and Health Review Commission;

(c) The term "EAJ Act" means the Equal Access to Justice Act, Pub. L. 96–481, 94 Stat. 2325 (1980);

(d) The term "judge" means an administrative law judge appointed by the Commission under 29 U.S.C. 661(i);

(e) The term "OSH Act" means the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678;

(f) The term "Secretary" means the Secretary of Labor.

§ 2204.103 When the EAJ Act applies.

The EAJ Act applies to any adversary adjudication pending before the Commission at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final Commission action hs not been taken before that date, and proceedings pending before the Commission on September 30, 1984, regardless of when they were initiated or when final Commission action occurs.

§ 2204.104 Proceedings covered.

The EAJ Act applies to adversary adjudications before the Commission. These are adjudications under 5 U.S.C. 554 and 29 U.S.C. 659(c) in which the position of the Secretary is represented by an attorney or other representative. The types of proceedings covered are the following proceedings under section 10(c), 29 U.S.C. 659(c), of the OSH Act:

(a) Contests of citations, notifications, penalties, or abatement periods by an employer;

(b) Contests of abatement periods by an affected employee or authorized employee representative; and

(c) Petitions for modification of the abatement periods by an employer.

§ 2204.105 Eligibility of applicants.

(a) To be eligible for an award of attorney or agent fees and other expenses under the EAJ Act, the applicant must be a party to the adversary adjudication. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it satisfies the conditions of eligibility set out in this subpart and subpart B.

(b) The types of eligible applicants are as follows:

(1) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and employs not more than 500 employees;

(2) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(3) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees;

(4) Any other partnership, corporation, association, or public or private organization that has a net worth of not more than $5 million and employs not more than 500 employees; and

(5) An individual with a net worth of not more than $1 million.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the notice of contest was filed, or, in the case of a petition for modification of abatement period, the date the petition was received by the Commission under § 2200.34(d).

(d) An applicant who owns an unincorporated business shall be considered as an "individual" rather than a "sole owner of an unincorporated business" only if the issues on which the applicant prevails are related primarily to personal interests rather than business interests.

(e) For the purpose of determining eligibility under the EAJ Act, the employees of an applicant include all persons who regularly perform services for remuneration for the applicant under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

§ 2204.106 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a discrete substantive portion of the proceeding, unless the position of the Secretary was substantially justified. The burden of proof that an award should not be made to an eligible prevailing applicant is on the Secretary, who may avoid an award by showing that his position was reasonable in law and fact.

(b) An award shall be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding. An award shall be denied if special circumstances make an award unjust.

§ 2204.107 Allowable fees and expenses.

(a) Awards shall be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) An award for the fee of an attorney or agent under these rules shall not exceed $75.00 per hour, unless the Commission determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for Commission proceedings, justifies a higher fee. An award to compensate an expert witness shall not exceed the highest rate at which the Secretary pays expert witnesses. However, an award may include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the Commission shall consider the following:

(1) If the attorney, agent, or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily perform services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 2204.108 Delegation of authority.

The Commission delegates to each judge authority to entertain and, subject to § 2204.309, take final action on applications for an award of fees and expenses arising from the OSH Act cases that are assigned to the judge under section 12(j) of the OSH Act, 29 U.S.C. 661(i). However, the Commission retains its right to consider an application for an award of fees and expenses without assignment to a judge

or to assign such an application to a judge other than the one to whom the underlying OSH Act case is assigned. When entertaining an application for an award of fees and expenses pursuant to this section, each judge is authorized to take any action that the Commission may take under this part, with the exception of actions provided in §§ 2204.309 and 2204.310.

Subpart B—Information Required From Applicants

§ 2204.201 Contents of application.

(a) An application for an award of fees and expenses under the EAJ Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Secretary that the applicant alleges was not substantially justified. The application also shall state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application also shall include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application also may include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It also shall contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true.

§ 2204.202 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association shall provide with its application a detailed exhibit showing the net worth of the applicant as of the date specified by § 2204.105(c). The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The Commission may require an applicant to file additional information to determine its eligibility for an award.

(b)(1) The net worth exhibit shall be included in the public record of the proceeding except as provided in subsection (b)(2) of this section.

(2) An applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit in a sealed envelope labeled "Confidential Information," accompanied by a motion to withhold the informaion from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on the Secretary but need not be served on any other party to the proceeding. If the Commission finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's procedures under the Freedom of Information Act, Part 2201.

§ 2204.203 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The Commission may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

Subpart C—Procedures for Considering Applications

§ 2204.301 Filing and service of documents.

An application for an award and any other pleading or document related to an application shall be filed and served on all parties to the proceeding in accordance with §§ 2200.7 and 2200.8, except as provided in § 2204.202(b) for confidential financial information.

§ 2204.302 When an application may be filed.

(a) An application may be filed whenever an applicant has prevailed in a proceeding or in a discrete substantive portion of the proceeding, but in no case later than thirty days after the Commission's final disposition of the proceeding.

(b) If Commission review is sought or directed of a judge's decision as to which an application for a fee award has been filed, proceedings concerning the award of fees shall be stayed until there is a final Commission disposition of the case and the period for seeking review in a court of appeals expires.

(c) If review of a Commission decision, or any item or items contained in that decision, is sought in the court of appeals under section 11 of the OSH Act, 29 U.S.C. 660, an application for an award filed with the Commission with regard to that decision shall be dismissed under 5 U.S.C. 554(c)(1) as to the item or items of which review is sought. If the petition for review in the court of appeals is thereafter withdrawn, the applicant may reinstate its application before the Commission within thirty days of the withdrawal.

(d) For purposes of this section, the date of final disposition is:

(1) The date on which the order of the judge disposing of the case becomes final under section 12(j) of the OSH Act, 29 U.S.C. 661(i); or

(2) The date on which the order of the Commission affirming, modifying, or vacating the Secretary's citation or proposed penalty or directing other appropriate relief becomes final under section 10(c) of the OSH Act, 29 U.S.C. 659(c).

§ 2204.303 Answer to application.

(a) Within 30 days after service of an application, the Secretary shall file an answer to the application.

(b) If the Secretary and the applicant believe that the issues in the fee application can be settled, they may

jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted upon request.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Secretary's position. If the answer is based on any alleged facts not already in the record of the proceeding, the Secretary shall include with the answer either supporting affidavits or a request for further proceedings under § 2204.307.

§ 2204.304 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 2204.307.

§ 2204.305 Comments by other parties.

Any party to a proceeding other than the applicant and the Secretary may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the Commission determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 2204.306 Settlement.

The applicant and the Secretary may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and the Secretary agree on a proposed settlement of an award before an application has been field, the application shall be filed with the proposed settlement.

§ 2204.307 Further proceedings.

(a)(1) The determination of an award shall be made on the basis of the written record except as provided in subsection (a)(2) of this section.

(2) On request of either the applicant or the Secretary, or on the judge's own initiative, the judge may order further proceedings as necessary, including discovery and an evidentiary hearing.

(b) A request that the judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 2204.308 Decision.

The preparation and issuance of decision shall be in accordance with § 2200.90. Additionally, the judge's decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Secretary's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

§ 2204.309 Commission review.

Commission review shall be in accordance with §§ 2200.91 and 2200.92. The applicant, the Secretary, or both may seek review of the judge's decision on the fee application, and the Commission may grant such petitions for review or direct review of the decision on the Commission's own initiative. The Commission delegates to each of its members the authority to order review of a judge's decision concerning a fee application. Whether to review a decision is a matter within the discretion of each member of the Commission. If the Commission does not direct review, the judge's decision on the application shall become a final decision of the Commission 30 days after it is received and docketed by the Executive Secretary of the Commission. If review is directed, the Commission shall issue a final decision on the application or remand the application to the judge for further proceedings.

§ 2204.310 Waiver.

After reasonable notice to the parties, the Commission may waive, for good cause shown, any provision contained in this part as long as the waiver is consistent with the terms and purpose of the EAJ Act.

§ 2204.311 Payment of award.

An applicant seeking payment of an award shall submit to the officer designated by the Secretary a copy of the Commission's final decision granting the award.

Signed this 25th day of September 1981.

Robert A. Rowland,

Chairman.

Timothy F. Cleary,

Commissioner.

Bertram Robert Cottine,

Commissioner.

[FR Doc. 81-28436 Filed 9-29-81; 8:45 am]

BILLING CODE 7600-01-M

federal register

Wednesday
September 30, 1981

Part XIII

National Labor Relations Board

Equal Access to Justice Act; Procedural Rules

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Equal Access to Justice; Procedural Rules for Award of Fees and Other Expenses of Litigation

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: These National Labor Relations Board procedural rules are issued in accordance with 5 U.S.C. 504(c)(1) to establish procedures for the submission and consideration of application to the Board for an award of fees and other expenses of litigation, as provided by the Equal Access to Justice Act, Pub. L. 96-481, October 21, 1980, 94 Stat. 2325.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, N.W., Room 701, Washington, D.C. 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act, Pub. L. 96-481, 94 Stat. 2325, provides for the award of fees and other expenses to eligible parties who prevail in litigation before administrative agencies and in the Federal courts over the position of a Federal agency as a party to the proceeding. The award is to be made unless the government can establish that its position in the litigation was substantially justified, or that because of other circumstances an award is unjust. The statute becomes effective October 1, 1981, and applies to complaint and backpay proceedings pending before the Board at any time between October 1, 1981, and September 30, 1984.

In preparing these rules, the Board has followed in substantial part the model rules prepared by the Administrative Conference of the United States (46 FR 32900, June 25, 1981), particularizing them to the extent appropriate to the procedures of this Agency and the types of its proceedings affected.

The statute provides for submission of an application for a fee award no later than 30 days after the Board's final decision, and for consideration of the application by the administrative law judge who conducted the proceeding. Rule procedures are designed to encourage disposition of the application without the necessity of a hearing, if at all possible. A Board decision on a fee application is subject to review upon petition to the Court of Appeals having jurisdiction to review the underlying Board order, but review will be only on an abuse of discretion standard.

The procedures established by the provisions of Subpart I are as follows:

Section 102.143—This section identifies the Board proceedings to which 5 U.S.C. 554, and therefore these rules, are applicable. Unfair labor practice proceedings in which a complaint issues, and backpay proceedings in which a notice of hearing issues, are the only two types of proceedings covered. Paragraph (b) incorporates the legislative history interpretation that "prevailing" includes prevailing in a significant and discrete substantive portion of the proceeding. The remaining portion of the section incorporates the statutory eligibility standards and methods for calculation of net worth.

Section 102.144—This section contains the operative statutory standard for awards. Under that standard the General Counsel is required to show that its position in the adversary proceeding was reasonable in law and fact.

Section 102.145—The statute provides that fees for attorneys and agents "shall be based upon prevailing market rates for the kind and quality of the services furnished" (5 U.S.C. 504(b)(1)(A)), but also establishes a $75 per hour maximum for such fees. The reasonableness standard of § 102.145(b) and the matters to be considered are essentially those of the ACUS model rules.

Section 102.147—The contents of the application are simple, but verification is required. Section 102.147(f) requires a detailed net worth statement. The administrative law judge may require such additional information concerning eligibility as is necessary.

The provisions of § 102.147(g) permitting withholding from public disclosure of confidential financial information contained in the net worth exhibit recognize considerations of confidentiality and privacy. However, it is up to the judge to determine whether the exhibit should be sealed. The sealing of the exhibit does not prohibit the General Counsel from disclosing information from the exhibit if required to verify the claim of eligibility.

The sealing of the exhibit by the administrative law judge is not determinative of the availability of the exhibit to a member of the public if a request is made for it under the Freedom of Information Act. Such a request would be handled under the procedures established by § 102.117 of the Board's rules, and the determination of availability made by the responsible official under those rules.

Section 102.148—The 30 day time limit for filing an application dates from entry of the Board's final order, even though a motion for reconsideration may thereafter be filed. Section 102.148(d) provides that withdrawal of a complaint before hearing is a final disposition for purposes of this section.

The application is to be filed in Washington with service on all parties to the underlying proceeding, and specifically on the Regional Director. The requirement for referral to the administrative law judge who heard the underlying proceeding is statutory. The designation of a new judge in the event of the first judge's unavailability conforms to usual procedures.

Since the time limit for filing the application is statutory, it must be filed within the 30 day time limit even though court review or reconsideration by the Board of the underlying adversary adjudication is being sought. Processing of the application, however, will be stayed pending final disposition of the underlying adversary adjudication.

Section 102.149—All motions or pleadings after the case is referred by the Board shall be filed with the administrative law judge directly, who has now been identified.

Motions for an extension of time are an exception to the requirement of filing with the judge. They are to be filed with the chief administrative law judge, since they must be acted upon promptly and the judge is sometimes not available.

Section 102.150—An answer is due 30 days after the service of the application. However, the filing of a motion to dismiss will stay the time for filing an answer until 30 days after its denial. Supporting documents may be filed in some circumstances. The granting of a motion to dismiss would be appealable to the Board under the 10 day time limit of § 102.27.

An applicant may file a reply to an answer, and the other parties may file comments, although any further participation by any party other than the applicant and the General Counsel is wholly within the discretion of the administrative law judge.

Section 102.152—This section permits the administrative law judge to develop a record of the issues through a variety of techniques which includes, where necessary, an evidentiary hearing. All orders directing further proceedings, including those directing hearings, will include specification of the issues to be considered. Only if an evidentiary hearing is held under paragraph (d) will subpoenas be available to the applicant or to the General Counsel. Rulings of the administrative law judge are reviewable by the Board pursuant to the special permission to appeal procedure provided in § 102.26.

Section 102.153—The judge is required to prepare a decision directed to the issues. Proceedings thereafter before the Board are the same as those in unfair labor practice proceedings.

Section 102.155—An applicant may obtain payment of an award by submitting a copy of the Board's final award decision to the Director of the Division of Administration, accompanied by a statement that the applicant will not seek review of that decision.

PART 102—RULES AND REGULATIONS, SERIES 8

Subpart T, §§ 102.143 through 102.155, is added to 29 CFR Chapter I, Part 102, to read as follows:

Subpart T—Awards of Fees and Other Expenses

Sec.

102.143 "Adversary adjudication" defined; entitlement to award; eligibility for award.
102.144 Standards for awards.
102.145 Allowable fees and expenses.
102.146 Rulemaking on maximum rates for attorney or agent fees.
102.147 Contents of application; net worth exhibit; documentation of fees and expenses.
102.148 When an application may be filed; place of filing; service; referral to administrative law judge; stay of proceeding.
102.149 Filing of documents; service of documents; motions for extension of time.
102.150 Answer to application; reply to answer; comments by other parties.
102.151 Settlement.
102.152 Further proceedings.
102.153 Administrative law judge's decision; contents; service; transfer of case to the Board; contents of record in case.
102.154 Exceptions to administrative law judge's decision; briefs; action of Board.
102.155 Payment of award.

Authority: Equal Access to Justice Act, Pub. L. 96-481, 94 Stat. 2325.

Subpart T—Awards of Fees and Other Expenses

§ 102.143. "Adversary adjudication" defined; entitlement to award; eligibility for award.

(a) The term "adversary adjudication," as used in this subpart, means unfair labor practice proceedings pending before the Board on complaint, and backpay proceedings under §§ 102.52 to 102.59 of these rules pending before the Board on notice of hearing, at any time between October 1, 1981, and September 30, 1984.

(b) A respondent in an adversary adjudication who prevails in that proceeding, or in a significant and discrete substantive portion of that proceeding, and who otherwise meets the eligibility requirements of this section, is eligible to apply for an award of fees and other expenses allowable under the provisions of § 102.145 of these rules.

(c) Applicants eligible to receive an award are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(d) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date of the complaint in an unfair labor practice proceeding or the date of the notice of hearing in a backpay proceeding.

(e) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(f) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(g) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless such treatment would be unjust and contrary to the purposes of the Equal Access to Justice Act (94 Stat. 2325) in light of the actual relationship between the affiliated entities. In addition financial relationships of the applicant other than those described in this paragraph may constitute special circumstances that would make an award unjust.

(h) An applicant that participates in an adversary adjudication primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 102.144 Standards for awards.

(a) An eligible applicant may receive an award for fees and expenses incurred in connection with an adversary adjudication or in connection with a significant and discrete substantive portion of that proceeding, unless the position of the General Counsel over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible applicant is on the General Counsel, who may avoid an award by showing that its position in the proceeding was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the adversary adjudication or if special circumstances make the award sought unjust.

§ 102.145 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the attorney or agent fees under these rules may exceed $75.00 per hour. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or expert witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the following matters shall be considered:

(1) If the attorney, agent or expert witness is in practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the

issues in the adversary adjudicative proceeding; and

(d) the reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of an applicant may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 102.146 Rulemaking on maximum rates for attorney or agent fees.

Any person may file with the Board a petition under § 102.124 of these rules for rulemaking to increase the maximum rate for attorney or agent fees. The petition should specify the rate the petitioner believes should be established and explain fully why the higher rate is warranted by an increase in the cost of living or a special factor (such as the limited availability of qualified attorneys or agents for the proceedings involved).

§ 102.147 Contents of application; net worth exhibit; documentation of fees and expenses.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the adversary adjudication for which an award is sought. The application shall state the particulars in which the applicant has prevailed and identify the positions of the General Counsel in that proceeding that the applicant alleges were not substantially justified. Unless the applicant is an individual, the application shall also state the number, category and work location of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes this Agency to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true.

(f) Each applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 102.143(g)) when the adversary adjudicative proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The administrative law judge may require an applicant to file such additional information as may be required to determine its eligibility for an award.

(g)(1) Unless otherwise directed by the administrative law judge, the net worth exhibit will be included in the public record of the fee application proceeding. An applicant that objects to public disclosure of information in any portion of the exhibit may submit that portion of the exhibit in a sealed envelope labeled "Confidential Financial Information", accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why public disclosure of the information would adversely affect the applicant and why disclosure is not required in the public interest. The exhibit shall be served on the General Counsel but need not be served on any other party to the proceeding. If the administrative law judge finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding.

(2) If the administrative law judge grants the motion to withhold from public disclosure, the exhibit shall remain sealed, except to the extent that its contents are required to be disclosed at a hearing. The granting of the motion to withhold from public disclosure shall not be determinative of the availability of the document under the Freedom of Information Act in response to a request made under the provisions of § 102.117. Notwithstanding that the exhibit may be withheld from public disclosure, the General Counsel may disclose information from the exhibit to others if required in the course of an investigation to verify the claim of eligibility.

(h) The application shall be accompanied by full documentation of the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the dates and the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 102.148 When an application may be filed; place of filing; service; referral to administrative law judge; stay of proceeding.

(a) An application may be filed after entry of the final order establishing that the applicant has prevailed in an adversary adjudication proceeding or in a significant and discrete substantive portion of that proceeding, but in no case later than 30 days after the entry of the Board's final order in that proceeding. The application for an award shall be filed in triplicate with the Board in Washington, D.C., together with a certificate of service. The application shall be served on the regional director and all parties to the adversary adjudication in the same manner as other pleadings in that proceeding, except as provided in § 102.147(g)(1) for financial information alleged to be confidential.

(b) Upon filing, the application shall be referred by the Board to the administrative law judge who heard the adversary adjudication upon which the application is based, or, in the event that proceeding had not previously been heard by an administrative law judge, it shall be referred to the chief administrative law judge for designation of an administrative law judge, in accordance with § 102.34, to consider the application. When the administrative law judge to whom the application has been referred is or becomes unavailable the provisions of §§ 102.34 and 102.36 shall be applicable.

(c) Proceedings for the award of fees, but not the time limit of this section for filing an application for an award, shall be stayed pending final disposition of the adversary adjudication in the event any person seeks reconsideration or review of the decision in that proceeding.

(d) For purposes of this section the withdrawal of a complaint by a regional director under § 102.18 of these rules shall be treated as a final order, and an appeal under § 102.19 of these rules shall be treated as a request for reconsideration of that final order.

§ 102.149 Filing of documents; service of documents; motions for extension of time.

(a) All motions and pleadings after the time the case is referred by the Board to the administrative law judge until the issuance of the judge's decision shall be filed with the administrative law judge in triplicate together with proof of service. Copies of all documents filed shall be served on all parties to the adversary adjudication.

(b) Motions for extensions of time to file motions, documents or pleading permitted by § 102.150 or § 102.152 shall be filed with the chief administrative law judge in Washington, D.C., the deputy chief administrative law judge in San Francisco, California, or the associate chief administrative law judge in New York, New York, or Atlanta, Georgia, as the case may be, not later than three days before the due date of the document. Notice of the request shall be immediately served on all other parties and proof of service furnished.

§ 102.150 Answer to application; reply to answer; comments by other parties.

(a) Within 30 days after service of an application the General Counsel may file an answer to the application. Unless the General Counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file a timely answer may be treated as a consent to the award requested. The filing of a motion to dismiss the application shall stay the time for filing an answer to a date 30 days after issuance of any order denying the motion. Within 15 days after service of any motion to dismiss, the applicant shall file a response thereto. Review of an order granting a motion to dismiss an application in its entirety may be obtained by filing a request therefore with the Board in Washington, D.C., pursuant to § 102.27 of these rules.

(b) If the General Counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate toward a settlement. The filing of such a statement shall extend the time for filing an answer for an additional 30 days.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the General Counsel's position. If the answer is based on alleged facts not already in the record of the adversary adjudication supporting affidavits shall be provided or a request made for further proceedings under § 102.152.

(d) Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on alleged facts not already in the record of the adversary adjudication supporting affidavits shall be provided or a request made for further proceedings under § 102.152.

(e) Any party to an adversary adjudication other than the applicant and the General Counsel may file comments on a fee application within 30 days after it is served and on an answer within 15 days after it is served. A commenting party may not participate further in the fee application proceeding unless the administative law judge determines that such participation is required in order to permit full exploration of matters raised in the comments.

§ 102.151 Settlement.

The applicant and the General Counsel may agree on a proposed settlement of the award before final action on the application. If a prevailing party and the General Counsel agree on a proposed settlement of an award before an application has been filed, the proposed settlement shall be filed with the application. All such settlements shall be subject to approval by the Board.

§ 102.153 Further Proceedings.

(a) Ordinarily the determination of an award will be made on the basis of the documents in the record. The administrative law judge, however, upon request of either the applicant or the General Counsel, or on his or her own initiative, may order further proceedings, including an informal conference, oral argument, additional written submissions or an evidentiary hearing. An evidentiary hearing shall be held only when necessary for resolution of material issues of fact.

(b) A request that the administrative law judge order further proceedings under this section shall specifically identify the disputed issues and the evidence sought to be adduced, and shall explain why the additional proceedings are necessary to resolve the issues.

(c) An order of the administrative law judge scheduling further proceedings shall specify the issues to be considered.

(d) Any evidentiary hearing held pursuant to this section shall be open to the public and shall be conducted in accordance with §§ 102.30 to 102.44 of these rules, except §§ 102.33, 102.34 and 102.38.

(e) Rulings of the administrative law judge shall be reviewable by the Board only in accordance with the provisions of § 102.26.

§ 102.153 Administrative law judge's decision; contents; service; transfer of case to the Board; contents of record in case.

(a) Upon conclusion of proceedings under §§ 102.147 to 102.152, the administrative law judge shall prepare a decision. The decision shall include written findings and conclusions as necessary to dispose of the application. The administrative law judge shall file the original of his decision with the Board and cause a copy thereof to be served on each of the parties. Upon the filing of the decision, the Board shall enter an order transferring the case to the Board and shall serve copies of the order, setting forth the date of such transfer, on all the parties. Service of the administrative law judge's decision and of the order transferring the case to the Board shall be complete upon mailing.

(b) The record in a proceeding on an application for an award of fees and expenses shall include the application and any amendments or attachments thereto, the net worth exhibit, the answer and any amendments or attachments thereto, any reply to the answer, any comments by other parties, motions, rulings, orders, stipulations, written submissions, the stenographic transcript of any oral argument, the stenographic transcript of any hearing, exhibits and depositions, together with the administrative law judge's decision and exceptions, any cross-exceptions or answering briefs as provided in § 102.46, and the record of the adversary adjudication upon which the application is based.

§ 102.154 Exceptions to administrative law judge's decision; briefs; action of Board.

Procedures before the Board, including the filing of exceptions to the administrative law judge's decision and briefs, and action by the Board, shall be in accordance with §§ 102.46, 102.47, 102.48 and 102.50 of these rules. The Board will issue a decision on the application or remand the proceeding to

the administrative law judge for further proceedings.

§ 102.155 Payment of award.

To obtain payment of an award made by the Board the applicant shall submit to the Director, Division of Administration, a copy of the Board's final decision granting the award, accompanied by a statement that the applicant will not seek court review of the decision. If such statement is filed the Agency will pay the amount of the award within 60 days, unless judicial review of the award or of the underlying decision has been sought.

Dated, Washington, D.C., September 25, 1981.

By direction of the Board:

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 81-28421 Filed 9-29-81; 8:45 am]

BILLING CODE 7545-01-M

federal register

Wednesday
September 30, 1981

Part XIV

Department of Education

Fund for the Improvement of Postsecondary Education

DEPARTMENT OF EDUCATION

34 CFR Parts 630 and 730

Fund for the Improvement of Postsecondary Education; Assistance Awards

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to revise the regulations governing assistance awards under the Fund for the Improvement of Postsecondary Education. These revisions clarify the provisions of the regulations and adopt a format that is consistent with other Department of Education regulations, without significantly affecting the Fund's approach or its existing priorities. These proposed regulations would also increase the Fund's ability to respond to the changing needs in postsecondary education by increasing flexibility in the application selection process.

DATE: Comments must be received on or before November 16, 1981.

ADDRESS: Comments should be addressed to Russell Y. Garth, Fund for the Improvement of Postsecondary Education, Department of Education (3123 FOB–6), 400 Maryland Avenue, S.W., Washington, D.C. 20202–3302.

FOR FURTHER INFORMATION CONTACT: Russell Y. Garth, telephone (202) 245–8091.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement of Postsecondary Education (the Fund) provides funds to institutions of postsecondary education and other public and private educational institutions and agencies to improve postsecondary educational opportunities.

This notice of proposed rulemaking would revise the regulations for the Fund in 34 Part 730 (formerly 45 CFR Part 1501).

The regulations would be rewritten to conform, for the most part, with the Education Department General Administrative Regulations (EDGAR) and would revise the existing regulations by—

- Redesignating the part number of these regulations in the Code of Federal Regulations (CFR) as Part 630 so that it will be located in the CFR with the other program regulations under the Office of Postsecondary Education;
- Adding a provision that enables the Fund to announce program priorities, selection criteria, and other program elements annually, in keeping with procedures recently established in EDGAR, 34 CFR 75.105 (46 FR 3205, January 14, 1981);
- Adding a provision that permits the Fund to request or require other information or additional materials after applications have been submitted under selected competitions, in order to assist in the final evaluation of applications of equal merit and quality;
- Adding several selection criteria that relate to the:

(1) Importance of the problem identified in the applications;

(2) Suitability of the applicant's proposed response to the problem; and

(3) Contribution to grantee collaboration (for National Project competitions only);

- Elaborating upon the criteria that concern the applicant's capacity to conduct the proposed project and its commitment to the project's success; and
- Reorganizing most of the selection criteria under two general headings—*Significance* and *Feasibility*.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations include small nonprofit organizations and small institutions of higher education. The regulations contain paperwork compliance and reporting requirements, but these will not have a significant economic impact on the small entities participating in the program.

Invitation to Comment

General Comments

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

Information From Institutions of Higher Education

The Secretary requests comments on whether these proposed regulations would require institutions of higher education to transmit informtion that is already being gathered by or is available from any other agency or authority of the United States.

Burden Reduction

To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall objective of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens imposed by these regulations, especially with regard to paperwork and compliance requirements.

Address for Comments

Written comments and recommendations may be sent to the address given at the beginning of this preamble. The Secretary will consider in the development of the final regulations all comments received on or before November 16, 1981.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3100, ROB–3, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: September 25, 1981.

T. H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.116, Fund for the Improvement of Postsecondary Education)

PART 730—REDESIGNATED AS PART 630

The Secretary redesignates Part 730 in Chapter VII of Title 34 of the Code of Federal Regulations as Part 630 in Chapter VI of Title 34 of the Code of Federal Regulations and proposes to revise redesignated Part 630 to read as follows:

PART 630—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

Subpart A—General

Sec.

630.1 Fund for the Improvement of Postsecondary Education.
630.2 Eligible parties.
630.3 Types of awards.
630.4 Regulations that apply to this program.
630.5 Definitions that apply to this program.

Subpart B—Projects the Secretary Assists Under This Program

630.11 Types of competition
630.12 Annual priorities.

Subpart C—How to Apply for Assistance

630.21 Annual announcement.

Subpart D—How the Secretary Makes an Award

630.31 How the Secretary evaluates an application.
630.32 Selection criteria.
630.33 State comment.
630.34 Other information and materials.

Authority: Title X of the Higher Education Act of 1965, as amended by section 1001 of the Education Amendments of 1980, Pub. L. 96-374, 20 U.S.C. 1135, *et seq.*, unless otherwise specified.

Subpart A—General

§ 630.1 Fund for the improvement of postsecondary education.

The Fund assists educational institutions and agencies in improving postsecondary educational opportunities.

(20 U.S.C. 1135)

§ 630.2 Eligible parties.

Institutions of posesecondary education, a combination of institutions of postsecondary education, and other public and private educational institutions and agencies are eligible to receive an award.

(20 U.S.C. 1135)

§ 630.3 Types of awards.

The Secretary awards grants and contracts under this program. The Secretary does not make grants to an educational institution or agency other than a nonprofit or public institution or agency.

(20 U.S.C. 1135)

§ 630.4 Regulations that apply to this program.

(a) The following regulations apply to applicants for and recipients of grants under this part:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 630.

(b) A different set of regulations apply to applicants for and recipients of contracts under this program (See EDGAR, 34 CFR 75.4 (Education Department Contracts)).

(c) The following provisions of EDGAR do not apply to this program:

(1) Section 75.201(a) (unweighted selection criteria);

(2) Section 75.202 through 75.206 (selection criteria); and

(3) Section 75.217(a)(2) (three or more persons to review applications).

(20 U.S.C. 1135, 1135a-2, 3474)

§ 630.5 Definitions that apply to this program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Contract
EDGAR
Grant
Nonprofit
Preapplication
Private
Project
Public
Secretary

(b) *Definitions that apply to this part:* The following definitions apply to this part:

"Combination of institutions of postsecondary education" means a group of institutions of postsecondary education that have entered into a joint arrangement for the purpose of carrying out a common objective, or a public or nonprofit private agency organization, or institution designated or created by a group of institutions of postsecondary education for the purpose of carrying out a common objective on their behalf.

"Educational institution or agency" means an entity that is either engaged in activities involving education or has jurisdiction over educational matters pursuant to State or local law.

"Fund" means the Fund for the Improvement of Postsecondary Education, the unit within the Department of Education that administers the program covered by this part.

(20 U.S.C. 1135, 1141, 3474, 41 U.S.C. 505)

Subpart B—Projects the Secretary Assists Under This Program

§ 630.11 Types of competitions.

The Secretary accepts applications for assistance in two program competition categories described in this section. Each year the Secretary announces, as described in § 630.21, the types of competitions to be conducted and the information required for submitting and reviewing preapplications, when applicable. (See EDGAR §§ 75.130 through 75.134)

(a) *The Comprehensive Program Competition.* In this competition, the Secretary supports a broad range of projects that respond to immediate problems or issues in a variety of categories and that seek to improve postsecondary educational opportunities. Preapplications are required of applicants under this competition.

(b) *Targeted Competitions.* In these competitions, the Secretary focuses on one or several problems areas or improvement approaches in postsecondary education. Preapplications may be required of applicants under these competitions. The Targeted competitions may include, for example—

(1) Special Focus competitions, in which the Secretary supports projects addressing a particular problem area or improvement approach in postsecondary education;

(2) National Project competitions, in which the Secretary supports projects addressing a particular problem area or improvement approach in postsecondary education. Grantees under National Project competitions shall collaborate in disseminating project results;

(3) Network competitions, in which the Secretary supports projects that bring together educational practitioners in a particular area of concern in a continuing association to improve practice in that area;

(4) Final Year Dissemination competitions, in which the Secretary supports efforts by grantees of the Fund to disseminate project ideas and results. Applicants in these competitions are limited to grantees of the Fund whose projects are in their final year of funding, except that a recipient of a single-year grant may apply for assistance under this competition within one year following the termination of its project; or

(5) Practitioner Scholars competitions, in which the Secretary supports efforts by postsecondary educational practitioners to contribute to knowledge about postsecondary education or to the improvement of postsecondary education by producing a document or other product or by engaging in an activity designed to share the practitioner's knowledge with others.

(20 U.S.C. 1135)

§ 630.12 Annual priorities.

(a) Each year the Secretary announces, as described in § 630.21, the program priorities applicable to each competition to be conducted that year and the method that will be used in applying the selected priorities.

(b) Program priorities describe problem areas or improvement approaches in postsecondary education and may include, for example—

(1) Increasing the availability of high quality programs for all postsecondary students by developing educational programs and services that allow currently enrolled students from groups previously excluded from postsecondary educational participation to complete their educational goals;

(2) Expanding professional education and employment for racial or ethnic minorities and women by increasing access to postsecondary educational institutions at the graduate level and by increasing employment opportunities

within postsecondary educational institutions for these populations;

(3) Expanding learning opportunities for the full-time worker by developing new educational programs and services for workers;

(4) Increasing the use of active modes of learning by using educational processes, such as internships, self-directed learning, learning groups, and interactive electronic technologies, that allow learners to take greater responsibility for their own learning;

(5) Enhancing the knowledge and abilities of postsecondary students by developing new or redefined curricular content and educational subject matters; and

(6) Improving leadership for new educational circumstances by encouraging efforts to renew and implement the educational missions of individual institutions or systems of institutions and to improve the management of postsecondary educational institutions.

(c) Under the Comprehensive Program Competition, projects that do not address a priority are eligible for support if they address other significant problems in postsecondary education.

(20 U.S.C. 1135, 1135a-2, 3474)

Subpart C—How To Apply for Assistance

§ 630.21 Annual announcement.

Each year the Secretary announces in one or more application notices published in the **Federal Register**, the following:

(a) The types of competitions to be conducted (see § 630.11).

(b) Those competitions requiring preapplications and information about the submission and review of preapplications (see § 630.11).

(c) Program priorities selected for each competition and the methods that will be used in applying the selected priorities. (see §630.12).

(d) Selection criteria applicable to each competition and the methods that will be used in applying these criteria (see § 630.32).

(e) These competitions in which other information may be requested or materials required of applicants after applications have been submitted and the kind of information or materials to be requested or required (see §630.34).

(20 U.S.C. 1135, 1135a-2, 3474)

Subpart D—How the Secretary Makes an Award

§ 630.31 How the Secretary evaluates an application.

The Secretary evaluates a preapplication or application on the basis of the applicable selection criteria in § 630.32. Any comments and recommendations received from State commissions as described in § 630.33, and other information requested or materials requested or required in § 630.34, may also be used in evaluating applications.

(20 U.S.C. 1135, 1135a-1, 1135a-2, 3474)

§ 630.32 Selection criteria.

Each year, in accordance with § 630.21, the Secretary announces the selection criteria that apply to each competition to be conducted that year. The selection criteria will be drawn from the criteria listed in paragraphs (a) through (c) of this section. Each year, in accordance with § 630.21, the Secretary also announces the methods that will be used in applying the selection criteria, in each competition. In applying the selection criteria, the Secretary first analyzes applications in terms of individual selection criteria, or groups of criteria, which may be given equal importance or ranked according to relative importance. The Secretary then bases the final judgment of an application on an overall assessment of the extent to which the application satisfactorily addresses the applicable selection criteria.

(a) *Significance for Postsecondary Education.* The Secretary reviews each project for its significance in improving postsecondary education by determining the extent to which it would—

(1) Achieve the purposes of the particular program competition as referenced in § 630.11;

(2) Address the program priorities for the particular program competition;

(3) Address an important problem or need.

(4) Represent an improvement upon, or important departure from, existing practice;

(5) Involve learner-centered improvements;

(6) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(7) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each projects for its feasibility by determining the extent to which—

(1) The project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the project, as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives and approaches;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the project, as evidenced by for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the project beyond the period of the Fund's support (unless the project is self-terminating);

(4) The activities of the project, if funded under a National Project competition, would contribute to a collaboration among other grantees under that competition; and

(5) The project demonstrates potential for dissemination to or adaption by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of the Fund's support.* The Secretary reviews each application to determine whether support of the project by the Fund is appropriate in terms of the availability of other funding sources for the proposed activities.

(20 U.S.C. 1135, 1135a-2, 3474)

§ 630.33 State comment.

The Secretary does not make an award for a project to a postsecondary institution applicant until the Fund affords each appropriate State entity having an agreement under section 1203 of the Higher Education Act of 1965, an opportunity to submit its comments and recommendations on the application to the Secretary.

(20 U.S.C. 1135a-1)

§ 630.34 Other information or materials.

Under some competitions in § 630.11, the Secretary may request other information or request or require additional materials after applications have been submitted. This information or these materials are relevant to applicable criteria or priorities and are used to verify or clarify information about projects or applicants in the final evaluation of applications of equal merit

and quality. The Secretary may request or require interviews, references, or samples of written materials. Each year the Secretary announces, as described in § 630.21, those competitions to which this section applies, and provides a list of the kinds of information or additional materials that may be requested or required.

(20 U.S.C. 1135, 1135a–2, 3474)

[FR Doc. 81-28258 Filed 9-28-81; 8:45 am]

BILLING CODE 4000-01-M

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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/FSIS**		DOT/FAA	USDA/FSIS**
DOT/FHWA	USDA/FSQS**		DOT/FHWA	USDA/FSQS**
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/MA*	MSPB/OPM		DOT/MA*	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: The Maritime Administration will begin Mon./Thurs. publication as of Oct. 1, 1981.
**Note: As of September 14, 1981, documents received from Food Safety and Inspection Service (formerly Food Safety and Quality Service) will no longer be assigned to the Tues./Fri. 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.

Deadlines for Comments on Proposed Rules for the Week of October 4 through October 10, 1981

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

45776 9–15–81 / Milk in the Lake Mead Marketing area; comments by 10–5–81

Food and Nutrition Service—

44452 9–4–81 / National School Lunch, School Breakfast, and Child Care Food Programs; meal pattern requirements; comments by 10–5–81

[Corrected at 46 FR 45354, 9–11–81; 46 FR 45776; 9–15–81]

Food Safety and Inspection Service—

40208 8–7–81 / Phosphates and sodium hydroxide; comments by 10–6–81

COMMERCE DEPARTMENT

International Trade Administration—

39585 8–4–81 / Commodity Control List (CCL) and Advisory Notes for Selected CCL Entries; export of commodities and technical data that are restricted for national security purposes; (interim rule); comments by 10–5–81

National Oceanic and Atmospheric Administration—

45174 9–10–81 / Amendments to the plans for squid, Atlantic mackerel, and butterfish; comments by 10–7–81

CONSUMER PRODUCT SAFETY COMMISSION

44992 9–9–81 / Walk-behind power lawn mowers; blade control requirements; comments by 10–9–81

ENERGY DEPARTMENT

Federal Energy Regulatory Commission—

45155 9–10–81 / Colorado; high-cost gas produced from tight formations; comments by 10–5–81

45624 9–14–81 / Inclusion of construction work in progress for public utilities; comments by 10–7–81

[*See also* 46 FR 39445, 8–3–81]

ENVIRONMENTAL PROTECTION AGENCY

44196 9–3–81 / Air quality implementation plans; delayed compliance; New Jersey; comments by 10–5–81

44783 9–8–81 / Approval and promulgation of implementation plans; Florida: Proposed Florida plan revision for point source emission testing; comments by 10–8–81

44785 9–8–81 / Approval and promulgation of implementation plans; Florida: Revision of sulfur dioxide rule for Tampa Electric Company's Gannon Station; comments by 10–8–81

39611 8–4–81 / Approval and promulgation of New Jersey State Implementation Plan; comments by 10–5–81

44785 9–8–81 / Commonwealth of Pennsylvania; Proposed revision of the Pennsylvania State Implementation Plan; comments by 10–8–81

39614 8–4–81 / Approval and promulgation of Ohio State Implementation Plan; comments by 10–5–81

44787 9–8–81 / Designation of areas for air quality planning; revisions to section 107 attainment status designations for New York State; comment by 10–8–81

44476 9–4–81 / Fuel and fuel additives; measure of octane of unleaded gasoline; comments by 10–5–81

40897 8–13–81 / Hazardous waste management system; standards applicable to owners and operators of waste treatment, storage and disposal facilities comments by 10–4–81

43472 8–28–81 / Texas Department of Water Resources; underground injection control primary application; comments by 10–5–81

FARM CREDIT ADMINISTRATION

40029 8–6–81 / Farm credit system; development of debt maturity guidelines, priorities and objectives, and authorities for banks for cooperatives; comments by 10–5–81

40028 8–6–81 / Federal intermediate credit bank lending authority regulations; institutions from which loans may be discounted or purchased; comments by 10–5–81

FEDERAL COMMUNICATIONS COMMISSION

44793 9–8–81 / Amendment of the commission's rules to reclassify coin-operated electronic games from Class B to Class A Computing Devices; comments by 10–5–81

37919 7-23-81 / FM broadcasting station, College, Alaska; changes in table of assignments; reply comments by 10-5-81

37925 7-23-81 / FM broadcast station in Tremonton, Utah; changes in table of assignments; reply comments by 10-5-81

40709 8-11-81 / FM broadcast station in Vernal, Utah; changes in table of assignments; comments by 10-6-81

38390 7-27-81 / Regulatory and deregulatory requirements for medical services radio systems operating in the 450-460 MHz band in the Special Emergency Radio Service; reply comments by 10-8-81

44790 9-8-81 / Petitions to exempt from measurement, recordkeeping and computing device rules those medical devices marketed for use in hospitals; comments by 10-5-81

40776 8-12-81 / Tulsa, Okla.; proposed changes in TV table of assignments; comments by 10-6-81

40707 8-11-81 / TV broadcast station in Fort Walton Beach, Fla.; proposed changes in table of assignments; comments by 10-5-81

40710 8-11-81 / TV broadcast station in Houston, Tex.; proposed changes in table of assignments; comments by 10-5-81

FEDERAL ELECTION COMMISSION

44964 9-8-81 / Communications by corporations and labor organizations; comments by 10-8-81

[Corrected at 46 FR 45784, 9-15-81]

FEDERAL TRADE COMMISSION

39833 8-5-81 / American Honda Motor Co., Inc. proposed consent agreement with analysis; comments by 10-5-81

[Corrected at 46 FR 40774, 8-12-81]

GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Service—

42686 8-24-81 / Revision of U.S. Government Bill of Lading, Standard Form 1103; comments by 10-8-81

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

40212 8-7-81 / General biological products standards; container label requirements; comments by 10-6-81

41102 8-14-81 / Radiological health; performance standards for Microwave and Radiofrequency-Emitting Products; amendments to microwave oven standard, measurement and test conditions; extension of comment period; comments by 10-23-81

INTERIOR DEPARTMENT

Geological Survey—

44994 9-9-81 / Outer Continental Shelf geological and geophysical exploration; deep stratigraphic test wells; requirement for completion of prelease drilling; comments by 10-9-81

Land Management Bureau—

45164 9-10-81 / Alaska Native Claims settlement; reduction of land overselections; comments by 10-10-81

Surface Mining Reclamation and Enforcement Office—

44475 9-4-81 / Modified Portions of the Maryland Permanent Regulatory Program; comments by 10-5-81

39855 8-5-81 / State-Federal cooperative agreement with Colorado on surface coal mining and reclamation operations on Federal lands under the permanent program; comments by 10-5-81

40050 8-6-81 / Surface Coal Mining and Reclamation operations on Federal lands under permanent program; State-Federal cooperative agreement; New Mexico; comments by 10-5-81

40212 8-7-81 / Surface Coal Mining and Reclamation Operations on Federal Lands Under the Permanent Program; State-Federal Cooperative Agreement; North Dakota; comments by 10-6-81

45082 9-9-81 / Surface Coal Mining and Reclamation Operations Permanent Regulatory Programs; reclamation bond and insurance requirements; comments by 10-9-81

2043 1-8-81 / Surface coal mining and reclamation enforcement operations; permanent regulatory program reporting and recordkeeping requirements; surface and underground mining activities, operations in alluvial valley floors and on steep slopes; comment period extended to 10-10-81

(*See also* 44 FR 35192, 6-18-79)

44995 9-9-81 / Wyoming; permanent regulatory program under Surface Mining Control and Reclamation Act; comments by 10-9-81

INTERSTATE COMMERCE COMMISSION

44999 9-9-81 / Appropriate methodologies for determining costs that should be borne by commuter services for use of Amtrak's properties; comments by 10-9-81

45000 9-9-81 / Costing methodology for determining right-of-way related costs Conrail should pay to Amtrak for use of Northeast Corridor; comments by 10-9-81

40778 8-12-81 / Railroad track structures; alternative method of accounting; comments by 10-5-81

MANAGEMENT AND BUDGET OFFICE

Federal Procurement Policy Office—

43218 8-27-81 / Equipment lease or purchase, negotiating advance agreements for independent research and development/bid and proposal costs, and use of Government sources by contractors; comments by 10-9-81

POSTAL SERVICE

44998 9-9-81 / Second-class eligibility information retention period; comments by 10-7-81

SECURITIES AND EXCHANGE COMMISSION

41791 8-18-81 / Revision of certain exemptions from registration provisions; transactions involving limited offers and sales; comments by 10-5-81

TRANSPORTATION DEPARTMENT

Coast Guard—

37006 7-16-81 / Annex II to Inland Navigation Rules—Additional signals for fishing vessels fishing in close proximity; comments by 10-14-81

37010 7-16-81 / Annex IV to Inland Navigation Rules—distress signals; comments by 10-14-81

42300 8-2-81 / Passenger vessel subdivision and damage stability; alternative regulations; comments by 10-5-81

National Highway Traffic Safety Administration—

40541 8-10-81 / Consumer information; performance data on new vehicle models; modification of initial preintroduction submissions by manufacturer; comments by 10-9-81

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau—

39853 8-5-81 / Provisions for transfer of wine, without payment of tax, to customs bonded warehouses for embassy removals and other purposes; comments by 10-5-81

Comptroller of the Currency—

40520 8-10-81 / Definition of capital and surplus for analytical and statutory purposes; comments by 10-9-81

Fiscal Service—

36715 7-15-81 / Service charges for allotments of pay to savings accounts of Federal civilian employees; comments by 10-8-81

[46 FR 27969, 5-22-81]

Deadlines for Comments on Proposed Rules for the Week of October 11 through October 17, 1981

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

45323 9-11-81 / Lemons grown in California and Arizona, minimum size requirements; comments by 10-13-81

45542 9-11-81 / Milk in the Alabama-West Florida Marketing Area; proposed marketing agreement and order; comments by 10-13-81

Commodity Credit Corporation—

41487 8-17-81 / Processed agricultural commodities; standards for approval of dry and cold storage warehouses for processed agricultural commodities, extracted honey and bulk oils; comments by 10-16-81

Food and Nutrition Service—

40764 8-11-81 / Food stamp administrative grants provisions; comments by 10-13-81

Forest Service—

40706 8-11-81 / Timber management planning provisions; comments by 10-13-81

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

45968 9-16-81 / Foreign fisheries; Bering Sea and Northeast Pacific; comments by 10-16-81

DEFENSE DEPARTMENT

Office of the Secretary—

45368 9-11-81 / Education of handicapped children in the DOD dependents schools; comments by 10-13-81

ENERGY DEPARTMENT

Federal Energy Regulatory Commission—

46142 9-17-81 / Utah; high-cost gas produced from tight formations; comments by 10-13-81

ENVIRONMENTAL PROTECTION AGENCY

45378 9-11-81 / Approval and promulgation of implementation plans, Connecticut revisions; comments by 10-13-81

41814 8-18-81 / Approval and promulgation of State implementation plans; Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin; comments by 10-17-81

45157 9-10-81 / Approval and promulgation of State implementation plans; Arkansas; prevention of significant deterioration regulations; comments by 10-13-81

45162 9-10-81 / Glyphosate; proposed tolerance; comments by 10-13-81

45159 9-10-81 / Revision of State implementation plan; Virginia; comments by 10-13-81

45381 9-11-81 / Revision of Pennsylvania State implementation plan; comments by 10-13-81

45160 9-10-81 / Revisons of Delaware air quality plans; comments by 10-13-81

FEDERAL COMMUNICATIONS COMMISSION

37923 7-23-81 / Amendment to permit increased antenna height to Class A FM commercial broadcast stations in Puerto Rico and the Virgin Islands; reply comments by 10-15-81

37920 7-23-81 / FM broadcast station, Delhi, La.; changes in table of assignment; reply comments by 10-13-81

42703 8-24-81 / FM broadcast stations in Greenfield and Springfield, Mo.; changes in table of assignments; comments by 10-13-81

42701 8-24-81 / FM broadcast stations in Hudson and Adrian, Mich., and Swanton, Ohio; changes in table of assignments; comments by 10-13-81

42474 8-21-81 / FM broadcast station in Hilo, Hawaii; changes in table of assignments; comments by 10-13-81

46147 9-17-81 / FM broadcast stations in Natchitoches, La.; table of assignments; reply comments by 10-13-81

[*See also* 46 FR 37058, 7-17-81]

42475 8-21-81 / FM broadcast station in Petosky, Mich.; changes in table of assignments; comments by 10-13-81

42477 8-21-81 / FM broadcast station in Redding, Calif.; changes in table of assignments; comments by 10-13-81

42483 8-21-81 / FM broadcast stations in Truth or Consequences, N. Mex.; changes in table of assignments; comments by 10-13-81

46147 9-17-81 / Future role of television translators and low-power television broadcasting; comments by 10-13-81

[*See also* 46 FR 42478, 8-21-81]

40899 8-13-81 / Policy regarding character qualifications in broadcast licensing; reply comments by 10-16-81

37927 7-23-81 / Release, allocation, assignments, and criteria for use of the remaining 250 channels in the 800 MHz private land mobile reserve band; reply comments by 10-14-81

41534 8-17-81 / TV broadcast station in Barstow, Calif.; changes in table of assignments; comments by 10-13-81

FEDERAL TRADE COMMISSION

41080 8-14-81 / Trade regulation rule: labeling and advertising of home insulation; comments by 10-13-81

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

42470 8-21-81 / Prescription drug products; patient package insert requirements; comments by 10-15-81

INTERSTATE COMMERCE COMMISSION

43721 8-31-81 / Certificate to construct, acquire or operate railroad lines; application procedures for a certificate to construct, acquire or operate railroad lines; comments by 10-15-81

JUSTICE DEPARTMENT

Prisons Bureau—

43812 8-31-81 / Control, custody, care, treatment and instructing of inmates; comments by 10-16-81

LABOR DEPARTMENT

Office of the Secretary—

41438 8-14-81 / Practice before the Board of Service Contract Appeals; comments by 10-13-81

41428 8-14-81 / Rules of practice for administrative proceedings enforcing labor standards in Federal and federally assisted construction contracts and Federal service contracts; comments by 10-13-81

Wage and Hour Division, Employment Standards Administration—

41456 8-14-81 / Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to nonconstruction contracts subject to the Contract Work Hours and Safety Standards Act); comments by 10-13-81

41444 8-14-81 / Procedures for predetermination of wage rates; comments by 10-13-81

41380 8-14-81 / Service Contract Act; Labor standards for Federal Service Contracts; comments by 10-13-81

NATIONAL CREDIT UNION ADMINISTRATION

45365 9-11-81 / Description of office, disclosure of official records; availability of information, promulgation of regulations; comments by 10-12-81

POSTAL SERVICE

45787 9-15-81 / Northern Mariana Islands; mail security; comments by 10-15-81

SECURITIES AND EXCHANGE COMMISSION

44775 9-8-81 / Recordkeeping by brokers and dealers; comments by 10-12-81

SMALL BUSINESS ADMINISTRATION

41523 8-17-81 / Business loan policy for small business lending companies; comments by 10-16-81

TRANSPORTATION DEPARTMENT

Coast Guard—

39460 8-3-81 / Operational visibility from navigational bridge of commercial vessels operating in U.S. water; comments by 10-12-81

43701 8-31-81 / Safety zone; vicinity Bascule Bridge, Ft. Lauderdale, Fla.; comments by 10-15-81

Federal Aviation Administration—

40646 8-10-81 / Certification: pilot and flight instructors; proposed amendment of instrument rating requirements; comments by 10-12-81

40529 8-10-81 / Need requirement and fees for certification of foreign airmen and air agencies; comments by 10-12-81

VETERANS ADMINISTRATION

45785 9-15-81 / Disclosure of loan guaranty information; comments by 10-15-81

Next Week's Meetings

AGRICULTURE DEPARTMENT

Forest Service—

44206 9-3-81 / Challis National Forest Grazing Advisory Board, Challis, Idaho (open), 10-9-81

46151 9-17-81 / Deerlodge National Forest Grazing Advisory Board, Butte, Mont. (open), 10-9-81

44018 9-2-81 / North Kaibab Grazing Advisory Board, Fredonia, Ariz. (open), 10-6-81

ARTS AND HUMANITIES, NATIONAL FOUNDATION

46451 9-18-81 / Music Panel, Festivals Section, Washington, D.C. (closed), 10-5 and 10-6-81

CIVIL RIGHTS COMMISSION

46151 9-17-81 / Louisiana Advisory Committee, New Orleans, La. (open), 10-9 and 10-10-81

45406 9-11-81 / Vermont Advisory Committee, Whiteriver Junction, Vt. (open), 10-6-81

46610 9-21-81 / Washington Advisory Committee, Seattle, Wash. (open), 10-7-81

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

46610 9-21-81 / Gulf of Mexico Fishery Management Council, Panama City, Fla. (open), 10-7-81

46154 9-17-81 / Pacific Fishery Management Council, El Segundo, Calif. (open), 10-6-81

44028 9-2-81 / Pacific Fishery Management Council, El Segundo, Calif. (partially open), 10-7-81

[Changed at 46 FR 47107, 9-24-81]

44028 9-2-81 / Pacific Fishery Management Council, Scientific and Statistical Committee, El Segundo, Calif. (partially open), 10-6 and 10-7-81

Office of the Secretary—

44213 9-3-81 / U.S. Delegation of the International Laboratory Accreditation Conference, Mexico City, Mexico; pre-conference meeting (open), Gaithersburg, Md., 10-6-81

DEFENSE DEPARTMENT

Army Department—

42501 8-21-81 / United States Army Medical Research and Development Advisory Panel, Viral and Rickettsial Diseases Subcommittee, Washington, D.C. (partially open), 10-6 and 10-7-81

Office of the Secretary—

45011 9-9-81 / Defense Science Board Task Force on Application of High Technology to Ground Forces, Fort Lewis, Wash. (closed), 10-7-81

45794 9-15-81 / Defense Systems Management College, Board of Visitors, Fort Belvoir, Va. (open), 10-8-81

42327 8-20-81 / Wage Committee, Washington, D.C. (closed), 10-6-81

EDUCATION DEPARTMENT

46987 9-23-81 / Indian Education National Advisory Council, Portland, Oreg. (open), 10-9 through 10-12-81

ENERGY DEPARTMENT

46155 9-17-81 / National Petroleum Council, Coordinating Subcommittee of the Committee on Arctic Oil and Gas Resources, Vail, Colo. (open), 10-5-81

ENVIRONMENTAL PROTECTION AGENCY

24987 5-4-81 / Health effects of diesel emissions, Raleigh, N.C., (open), 10-5 through 10-7-81

42752 8-24-81 / Interagency Toxic Substances Data Committee, Washington, D.C. (open), 10-6-81

45411 9-11-81 / Osage Beach and Lake Ozark, Mo., design and construction of wastewater collection and treatment facilities, Lake Ozark, Mo. (open), 10-6-81

FEDERAL EMERGENCY MANAGEMENT AGENCY

45193 9-10-81 / Board of Visitors for the National Fire Academy, Emmitsburg, Md. (open), 10-5 and 10-6-81

GENERAL SERVICES ADMINISTRATION

Office of the Federal Register—

35553 7-9-81 / Uniform Building Code, Indianapolis, Ind. (open), 10-4 through 10-9-81

HEALTH AND HUMAN SERVICES DEPARTMENT

Alcohol, Drug Abuse, and Mental Health Administration—

44885 9-8-81 / Federal Activities for Alcohol Abuse and Alcoholism Interagency Committee, Washington, D.C. (open), 10-6-81

47013 9-23-81 / Mental Health Research Education Review Committee, Rockville, Md. (partially open), 10-9-81

Food and Drug Administration—

46391 9-18-81 / Blood Products Advisory Committee, Bethesda, Md. (partially open), 10-9-81

46395 9-18-81 / Health professional organizations, Washington, D.C. (open), 10-6-81

National Institutes of Health—

41564 8-17-81 / Allergy and Infectious Diseases National Institute, Board of Scientific Counselors, Bethesda, Md. (partially open), 10-5 through 10-7-81

41567 8-17-81 / Behavioral and Neurosciences Study Section 2, Washington, D.C. (partially open), 10-5 and 10-6-81

46680 9-21-81 / National Cancer Advisory Board and Subcommittee, Bethesda, Md. (partially open), 10-4 through 10-7-81

41568 8-17-81 / Blood and its Substitutes Working Group, Bethesda, Md. (open), 10-7-81

39476 8-3-81 / Child Health and Human Development National Advisory Council, Bethesda, Md. (partially open), 10-5 and 10-6-81

45200 9-10-81 / National Diabetes Advisory Board, Washington, D.C. (open), 10-5-81

42769 8-24-81 / National Library of Medicine, Board of Scientific Counselors, Bethesda, Md. (partially open), 10-5 and 10-6-81

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Environmental Quality Office—

46004 9-18-81 / Scoping meeting, Tampa, Fla. (open), 10-8-81

INTERIOR DEPARTMENT

Fish and Wildlife Service—

44890 9-8-81 / Trinity River Basin Fish and Wildlife Management Program (all sessions open):

—McKinleyville, Calif., 10-5-81;

—Weaverville, Calif., 10-7-81;

—Sacramento, Calif., 10-9-81

Land Management Bureau—

44291 9-3-81 / Montana and North Dakota environmental impact statements:

—Hazen, N. Dak. (open), 10-7-81

—Garrison, N. Dak. (open), 10-8-81

45036 9-9-81 / Roswell District Advisory Council, Roswell, N. Mex. (open), 10-7-81

National Park Service—

45432 9-11-81 / National Park System Advisory Board (open), Gettysburg, Pa., 10-7-81; Washington, D.C., 10-8 and 10-9-81

46008 9-18-81 / National Park System Advisory Board, History Areas Committee, Washington, D.C. (open), 10-6-81

Office of the Secretary—

43752 8-31-81 / Alaska Land Use Council, Anchorage, Alaska (open), 10-5-81

LABOR DEPARTMENT

Occupational Safety and Health Administration—

46431 9-18-81 / Occupational Safety and Health Federal Advisory Council, Washington, D.C. (open), 10-7-81

Office of the Secretary—

47328 9-25-81 / International Labor Organization, President's Committee, Washington, D.C. (closed), 10-9-81

46854 9-22-81 / Labor Advisory Committee for Trade Negotiations and Trade Policy, Steering Committee, Washington, D.C. (closed), 10-6-81

NATIONAL SCIENCE FOUNDATION

46029 9-18-81 / Engineering Advisory Committee, Mechanical Engineering and Applied Mechanics Subcommittee, Washington, D.C. (partially open), 10-5 and 10-6-81

46705 9-21-81 / Environmental Biology Advisory Committee, Subcommittee on Ecosystem Studies, Washington, D.C. (closed), 10-8 and 10-9-81

46029 9-18-81 / Equal Opportunities in Science and Technology Committee, Washington, D.C. (open), 10-6 and 10-7-81

46028 9-18-81 / Physiology, Cellular and Molecular Biology Advisory Committee, Genetic Biology Subcommittee, Washington, D.C. (closed), 10-8 through 10-10-81

46029 9-18-81 / Physiology, Cellular and Molecular Biology Advisory Committee, Regulatory Biology Subcommittee, Washington, D.C. (closed), 10-7 through 10-9-81

STATE DEPARTMENT—

46265 9-17-81 / International Investment, Technology and Development Advisory Committee, Washington, D.C. (open), 10-7-81 (2 documents)

TRANSPORTATION DEPARTMENT

Coast Guard—

43789 8-31-81 / Chemical Transportation Advisory Committee, Washington, D.C. (open), 10-8-81

43789 8-31-81 / Chemical Transportation Advisory Committee, Chemical Vessels Subcommittee, Washington, D.C. (open), 10-7-81

National Highway Traffic Safety Administration—

Federal Highway Administration—

43692 8-31-81 / Highway Safety Programs; determination of effectiveness, Washington, D.C., 10-5-81

VETERANS ADMINISTRATION

45463 9-11-81 / Educational Allowances Station Committee, Muskogee, Okla. (open), 10-5 and 10-6-81

46275 9-17-81 / Educational Allowances Station Committee, Nashville, Tenn., 10-8-81

Next Week's Hearings

INTERIOR DEPARTMENT

Land Management Bureau—

46005 9-16-81 / Environmental Impact Statement for Proposed Outer Continental Shelf Oil and Gas Lease No. 57, Alaska, 10-5, 10-6, and 10-8-81

Surface Mining Reclamation and Enforcement Office—

44995 9-9-81 / Wyoming, permanent regulatory program; proposed amendment, Cheyenne, Wyo., 10-6-81

INTERNATIONAL TRADE COMMISSION

38779 7-29-81 / Clothespins, Portland, Maine, 10-5-81

TREASURY DEPARTMENT—

Internal Revenue Service—

42285 8-20-81 / Books and records of foreign corporations and operations, proposed regulations, Washington, D.C., 10-6-81

List of Public Laws

Last Listing: September 22, 1981

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.R. 2120 / Pub. L. 97-45 Product Liability Risk Retention Act of 1981 (Sep. 25, 1981; 95 Stat. 949) Price: $1.50.

H.R. 4416 / Pub. L. 97-46 To enable the Secretary of Agriculture to assist, on an emergency basis, in the eradication of plant pests and contagious or infectious animal and poultry diseases. (Sep. 25, 1981; 95 Stat. 953) Price: $1.50.

Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal grant programs which were published in the **Federal Register** during the previous week.

DEADLINES FOR COMMENTS ON PROPOSED RULES

46973 9-23-81 / FEMA—Disaster Assistance; individual and family grant program provisions; comments by 11-23-81

46750 10-21-81 / HHS/SSA—Aid to Families With Dependent Children; comments by 11-20-81

APPLICATIONS DEADLINES

47110 9-24-81 / ED—Transition program for refugee children; apply by 10-30-81

47111 9-24-81 / ED—Transition program for refugee children (Cuban and Haitian entrant domestic assistance); apply by 10-15-81

MEETINGS

47304 9-25-81 / HHS/NIH—Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications, Bethesda, Md. (partially open), 11-10 and 11-11-81

47304 9-25-81 / HHS/NIH—General Research Support Review Committee, Bethesda, Md. (partially open), 11-12 and 11-13-81

47305 9-25-81 / HHS/NIH—Minority Access to Research Careers Review Committee, Bethesda, Md. (partially open), 11-9 and 11-10-81

46679 9-21-81 / HHS/NIH—National Advisory Neurological and Communicative Disorders and Stroke Council and the Planning Subcommittee, Bethesda, Md. (partially open), 10-14 through 10-16-81

47305 9-25-81 / HHS/NIH—National Advisory Research Resources Council, Bethesda, Md. (partially open), 10-15 and 10-16-81

46680 9-21-81 / HHS/NIH—National Cancer Advisory Board and Subcommittees, Bethesda, Md. (partially open), 10-4 through 10-7-81

47134 9-24-81 / NFAH—National Council on the Arts, Special Projects Panel, Washington, D.C. (partially open), 10-13 through 10-16-81

46704 9-21-81 / NSF—Environmental Biology Advisory Committee, Subcommittee on Ecology, Washington, D.C. (closed), 10-29 and 10-30-81

46705 9-21-81 / NSF—Environmental Biology Advisory Committee, Subcommittee on Ecosystem Studies, Washington, D.C. (closed), 10-8 and 10-9-81

46704 9-21-81 / NSF—Environmental Biology Advisory Committee, Subcommittee on Population Biology and Physiological Ecology, Washington, D.C. (closed), 10-22 and 10-23-81

46704 9-21-81 / NSF—Environmental Biology Advisory Committee, Subcommittee on Systematic Biology, Washington, D.C. (closed), 10-15 and 10-16-81

46705 9-21-81 / NSF—Physiology, Cellular, and Molecular Biology Advisory Committee, Subcommittee on Molecular Biology, Group B (closed), 10-26 and 10-27-81

OTHER ITEMS OF INTEREST

46610 9-21-81 / Commerce/EDA—Single audit concept for grant recipients

46925 9-23-81 / ED—Continuing Education Outreach; State administered program; final regulations

47170 9-24-81 / VA—Manpower grants program; report availability