AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

3-19-82
Vol. 47 No. 54
Pages 11815-12124

federal register

Friday
March 19, 1982

GSA
373-81C
2/5

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.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers, free of postage, for $75.00 per year, or $45.00 for six months, payable in advance. The charge for individual copies is $1.00 for each issue, or $1.00 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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

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

Contents

Federal Register
Vol. 47, No. 54
Friday, March 19, 1982

Actuaries, Joint Board for Enrollment
NOTICES
11995 Privacy Act; system of records; annual publication

Agricultural Marketing Service
RULES
11816 Lemons grown in Ariz. and Calif.

Agriculture Department
See Agricultural Marketing Service; Food and Nutrition Service; Forest Service; Packers and Stockyards Administration; Rural Electrification Administration; Soil Conservation Service.

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcoholic beverages:
11884 Labeling and advertising; reopening of comment period

Arms Control and Disarmament Agency
RULES
11858 Conduct standards; Civil Service Commission references, nomenclature change

Blind and Other Severely Handicapped, Committee for Purchase From
NOTICES
11917, 11918 Procurement list, 1982; additions and deletions (2 documents)

Civil Aeronautics Board
RULES
11819 Employee protection program; airline employee applications for federal payments; reporting and recordkeeping requirements
NOTICES
11915 All-cargo air service certificate applications
11914 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications
Hearings, etc.:
11915 Former large irregular air service investigation; terminated
11915 Standard foreign fare level; establishment

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
11915 New Jersey

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration.

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
11918 Chicago Mercantile Exchange; leaded and unleaded regular gasoline

Defense Department
See also Defense Logistics Agency
NOTICES
Meetings:
11920 Science Board task forces (2 documents)

Defense Logistics Agency
NOTICES
11919 Privacy Act; systems of records

Drug Enforcement Administration
NOTICES
Registration applications, etc.; controlled substances:
11995 Eli Lilly & Co.
11995 Stepan Chemical Co.
11995 U.S. Pharmacopeial Convention, Inc.

Economic Regulatory Administration
NOTICES
Natural gas; fuel oil displacement certification applications:
11921 Salt River Project Agricultural Improvement & Power District
Remedial orders:
11921 Southern Natural Resources, Inc.

Education Department
RULES
Postsecondary education:
11866 Graduate and professional study institutional grants; correction
NOTICES
Meetings:
11920 Education Statistics Advisory Council
Postsecondary education:
11921 National direct student loan, college work-study, and supplemental educational opportunity grant; correction

Employment and Training Administration
NOTICES
Adjustment assistance:
11996 Cal Feather Products
11996 Labor surplus area classifications; annual list additions
Unemployment compensation; extended benefit periods:
11996 Arkansas and Illinois

Employment Standards Administration
NOTICES
12022 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (Calif., Fla., Iowa, Mass., Nev., N.J., Okla., Pa., R.I., S. Dak., Tenn., Wash., and Wis.)

Energy Department
See also Economic Regulatory Administration; Energy Information Administration; Federal Energy Regulatory Commission.

PROPOSED RULES
12038 Financial assistance; grants and cooperative agreements; update and clarification of requirements

Energy Information Administration
NOTICES
11921 Natural gas, high cost; alternative fuel price ceilings and incremental price threshold

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
11866 California
Air quality planning purposes; designation of areas:
11870 Ohio
NOTICES
Environmental statements; availability, etc.:
11960 Agency statements; weekly receipts
Toxic and hazardous substances control:
11957 Premanufacture notices receipts
11959 Premanufacture notification requirements; test marketing exemption applications

Federal Communications Commission
RULES
Radio stations; table of assignments;
11872 Alabama
11872 Louisiana
11873 Michigan
11873 Nevada
11874 Utah
PROPOSED RULES
Practice and procedure:
11886 Telecommunications licenses; random selection technique for choosing among mutually exclusive applicants; withdrawn
Radio stations; table of assignments:
11901 Colorado
11902 Georgia
11905 Hawaii
11906 Kansas
11908 North Carolina
11908 North Carolina; extension of time
11909 Texas; extension of time
Television stations; table of assignments:
11903 Hawaii
NOTICES
Hearings, etc.:
11960 Little Rock Radio Telephone Co., Inc., et al.
11965 Waterloo Communications, Inc., et al.

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
11923 Arkansas Louisiana Gas Co.
11923 Centralia, Wash.
11925 Cleveland Electric Illuminating Co.
11925 Columbia Gas Transmission Corp.
11925 Equitable Gas Co.
11926, 11927 Florida Gas Transmission Co. (3 documents)
11927 Gulf States Utilities Co.
11928 Howard, Charles D.
11929 Keizer, Kevin Jon
11928 Kentucky Utilities Co.
11929 Louisiana Intrastate Gas Corp.
11930 Mason County Public Utility District No. 1
11930 Mega Hydro, Inc.
11931 Metropolitan Water District of Southern California
11932 Natural Gas Pipeline Co. America
11932 Pacific Gas & Electric Co.
11933, 11934 Panhandle Electric Pipe Line Co. et al. (2 documents)
11934 Pennsylvania Power Co.
11935 Public Utility District No. 1 Lewis County, Wash.
11936 Resources Recovery (Dade County), Inc.
11937 Sea Robin Pipeline Co.
11938 Southern Indiana Gas & Electric Co.
11939 Transcontinental Gas Pipe Line Corp.
11939 United Gas Pipe Line Co.
Natural Gas Policy Act:
11938 Fuel oil displacement transportation certificates; applications filed by various companies (Coronado Transmission Co.)
11941-11950 Jurisdictional agency determinations (2 documents)

Federal Home Loan Bank Board
NOTICES
12009 Meetings; Sunshine Act

Federal Maritime Commission
NOTICES
Casualty and nonperformance, certificates:
11966 Alaska Tour & Marketing Services, Inc., et al.
11966 Exploration Cruise Lines
12009 Meetings; Sunshine Act
Tariff cancellations:
11966 Seatrain Lines, Inc., et al.

Federal Reserve System
RULES
International banking operations (Regulation K):
11817 Foreign customers offered certain investment management and economic advisory services in United States by Edge Corporations
NOTICES
Applications, etc.:
11967 Area Financial Corp.
11967 Canadian Imperial Holdings, Inc., et al.
11967 Central Capital Corp.
11967 Colonial Bancshares of Greenville, Inc.
11967 Commercial Bancorp
11968 Dakota Bankshares, Inc.
11968 Eagle Agency, Inc.
11968 Farmers National Bancorp
11968 First Ashland Corp.
11969 First Indiana Bancorp
11969 First Murphysboro Corp.
11969 Indiana Southern Financial Corp.
11969 Longmont National Bankshares, Inc.
11969 Patriot Bancorporation
11970 Peoples Bancorp, Inc.
11970 Rock Creek Bancshares, Inc.
11970 Santa Barbara Bancorp
11970 United Hamblen, Inc.
12009, 12010 Meetings; Sunshine Act (3 documents)

Fiscal Service
NOTICES
12006 Funds rate; Treasury current value

Surety companies acceptable on Federal bonds:
12006 Cotton Belt Insurance Co., Inc.

Fish and Wildlife Service
NOTICES
Meetings:
11979 Migratory bird hunting

Food and Drug Administration
RULES
Color additives:
11819 D&C Orange No. 4; effective date confirmed
11835 Food additives and GRAS or prior-sanctioned ingredients; incorporation by reference regulatory text
11820 Food for human consumption and food labeling; incorporation by reference regulatory text
Human drugs:
11856 Antibiotic drugs; cephradine dihydrate capsules
PROPOSED RULES
Medical devices:
11879 Clinical chemistry and toxicology, opthalmic, ear, nose, and throat, general and plastic surgery, and radiology devices; general provisions and classification; extension of time
11880 General hospital and personal use, anesthesiology, and immunology and microbiology devices; classification; various withdrawals
NOTICES
Committees; establishment, renewals, terminations, etc.:
11972 Gastrointestinal Drugs Advisory Committee
Food additives, petitions filed or withdrawn:
11970 Air Products & Chemicals, Inc.
11972 Centre Pharmaceutique European
11972 Ciba-Geigy Corp.
11971 E. I. du Pont de Nemours & Co.
11971 Toyo Seikan Kaisha, Ltd.
Human drugs:
11973 Cough, cold, or allergy prescription products; drug efficacy study implementation; exemption revoked and hearing
Meetings:
11971 Consumer information exchange
Radiological health:
11972 Clinical nuclear magnetic resonance (NMR) systems; electromagnetic exposure risk, evaluation guidelines; availability

Food and Nutrition Service
RULES
Food stamp program:
11815 Eligible household certification; thrifty food plan adjustment schedule; final rule
PROPOSED RULES
Child nutrition programs:
11877 School lunch program; "offer versus serve" method of meal service in elementary and below senior high level schools
Food stamp program:
11878 Shelter and medical deductions for elderly and disabled; reopening of comment period

Forest Service
NOTICES
Environmental statements; availability, etc.:
11911 Western Spruce Budworm Management, Oreg.

Health and Human Services Department
See Food and Drug Administration.

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office.
NOTICES
11980 Outer Continental Shelf oil and gas leasing program; proposed 5-year schedule; inquiry

Internal Revenue Service
PROPOSED RULES
Income taxes:
11882 Reinsurance transactions; treatment of certain amounts refunded; and allocation of certain items in modified coinsurance contracts
NOTICES
Meetings:
12006 Art Advisory Panel

International Trade Administration
NOTICES
Antidumping:
11916 Steel wire nails from Korea
Countervailing duties:
11916 Oleoresins of paprika from Spain

Interstate Commerce Commission
RULES
Railroad consolidation procedures; acquisition, control, mergers, etc.:
11875 Traffic protective conditions
PROPOSED RULES
Accounts, uniform system, and valuation:
11910 Railroad map specifications
NOTICES
Motor carriers:
11986 Compensated intercorporate hauling operations; intent to engage in
11986, 11987 Lease and interchange of vehicles (2 documents)
11987, 11992 Permanent authority applications (2 documents)
11994 Permanent authority applications; operating rights republication
Railroad services abandonment:
11994 Burlington Northern Railroad Co.
11994, 11995 Soo Line Railroad Co. (2 documents)

Justice Department
See Drug Enforcement Administration.

Labor Department
See also Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration; Wage and Hour Division.
NOTICES
Committees; establishment, renewals, terminations, etc.:
12000 Employee Welfare and Pension Benefit Plans Advisory Council; request for nominations
11999 Consumer price index, all items; U.S. city average

Meetings:
12000 Trade Negotiations and Trade Policy Advisory Committee

Land Management Bureau
RULES
Public land orders:
11871 Oregon
PROPOSED RULES
Forest management:
12078 Sales of forestry products; speculative bidding restrictions
NOTICES
Environmental statements; availability, etc.:
11979 San Gorgonio Wind Resource Study, Riverside County, Calif.
Exchange of public lands for private land:
11979 Utah
Meetings:
11975 Baker and Vale Districts; proposed district consolidation; rescheduled
11975 San Juan River Regional Coal Team

Mine Safety and Health Administration
NOTICES
Petitions for mandatory safety standard modifications:
11997 Inspiration Consolidated Copper Co.
11997 San Pedro Mining Corp.

National Aeronautics and Space Administration
NOTICES
Patent licenses, exclusive:
12000 Asian American Macromolecular Materials, Ltd.
12001 Inductron Corp.
12001 Kobayashi, Herbert S.

National Oceanic and Atmospheric Administration
NOTICES
Marine sanctuaries:
11917 St. Thomas, V.I.; removal from list of active candidates; correction

National Park Service
NOTICES
Historic Places National Register; pending nominations:
11980 Delaware

Navajo and Hopi Indian Relocation Commission
RULES
Commission operation and relocation procedures:
11858 Employee responsibilities and conduct

Nuclear Regulatory Commission
RULES
Organization, functions, and authority delegations:
11816 Executive Director for Operations; rulemaking authority
NOTICES
Environmental statements; availability, etc.:
12001 Detroit Edison Co.; Enrico Fermi Atomic Power Plant, Unit No. 2; Lake Erie, Monroe County, Mich.

Occupational Safety and Health Administration
PROPOSED RULES
Health and safety standards:
12092 Hazard communication; chemical manufacturers
NOTICES
State plans; standards approval, etc.:
11998, 11999 Washington (3 documents)

Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
11911 East Carolina Stockyard, N.C., et al.

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
11911 Wolverine Electric Cooperative, Inc.

Securities and Exchange Commission
RULES
Securities:
11819 Integrated disclosure system; correction (2 documents)
NOTICES
12010 Meetings; Sunshine Act
Self-regulatory organizations; proposed rule changes:
12002 Pacific Stock Exchange Inc.
12001 Stock Clearing Corp. of Philadelphia

Small Business Administration
NOTICES
Applications, etc.:
12005 City Ventures, Inc.
12005 Hamco Capital Corp.
12005 O.H.P. Capital Corp.

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
11913 Beaverdam Creek Watershed, Ga.
11912 Briar Creek Watershed Project, Pa.
11913 Dallas School District Land Drainage RC&D Measure, Pa.
11914 George Mason River Retreat, Mich.
11913 Northeast Moscow City Park Public Water-Based Recreation RC&D Measure, Idaho
11912 Northside Park Critical Area Treatment RC&D Measure, Md.

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent and interim regulatory programs:
12088 Auger mining
12082 Experimental practices mining
Permanent program submission; various States:
11885 West Virginia

Synthetic Fuels Corporation
NOTICES
12010 Meetings; Sunshine Act

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Fiscal Service; Internal Revenue Service.
NOTICES
Tax treaties, income; various countries:
12007 Sweden

Veterans Administration
NOTICES
Meetings:
12007 Rehabilitative Engineering Research and Development Scientific Review and Evaluation Board
12007 Wage Committee

Wage and Hour Division
RULES
11865 Wage order procedure for Puerto Rico, Virgin Islands, and American Samoa; compensation of committee members

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:

July 2, 1910
(Revoked in part by PLO 6228)..... 11871

7 CFR

273..... 11815
910..... 11816

Proposed Rules:

210..... 11877
272..... 11878
273..... 11878

10 CFR

1..... 11816

Proposed Rules:

600..... 12038

12 CFR

211..... 11817

14 CFR

314..... 11819

17 CFR

200..... 11819
201..... 11819
229..... 11819
230..... 11819
239..... 11819
240 (2 documents)..... 11819
249..... 11819
250..... 11819
260..... 11819
274..... 11819

21 CFR

74..... 11819
101..... 11820
102..... 11820
103..... 11820
114..... 11820
122..... 11820
131..... 11820
133..... 11820
135..... 11820
136..... 11820
137..... 11820
139..... 11820
145..... 11820
146..... 11820
150..... 11820
155..... 11820
160..... 11820
161..... 11820
163..... 11820
164..... 11820
166..... 11820
168..... 11820
169..... 11820
170..... 11835
172..... 11835
173..... 11835
175..... 11835
176..... 11835
177..... 11835
178..... 11835
179..... 11835
180..... 11835
181..... 11835
184..... 11835
186..... 11835
189..... 11835
436..... 11856
442..... 11856

Proposed Rules:

862..... 11879
866 (2 documents)..... 11879, 11880
868..... 11880
874..... 11879
878..... 11879
880..... 11880
892..... 11879

22 CFR

606..... 11858

25 CFR

700..... 11858

26 CFR

Proposed Rules:

1..... 11882

27 CFR

Proposed Rules:

4..... 11884
5..... 11884
7..... 11884

29 CFR

511..... 11865

Proposed Rules:

1910..... 12092

30 CFR

Proposed Rules:

785..... 12082
816..... 12088
819..... 12088
948..... 11885

34 CFR

648..... 11866

40 CFR

52..... 11866
81..... 11870

43 CFR

Public Land Orders:

6228..... 11871

Proposed Rules:

5440..... 12078
5450..... 12078
5460..... 12078

47 CFR

73 (5 documents)..... 11872–11874

Proposed Rules:

1..... 11886
73 (8 documents)..... 11901–11909

49 CFR

1111..... 11875

Proposed Rules:

1201..... 11910
1263..... 11910

Rules and Regulations

Federal Register
Vol. 47, No. 54
Friday, March 19, 1982

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

Food and Nutrition Service

7 CFR Part 273

[Amdt. No. 208]

Adjusting Thrifty Food Plan Amounts

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Stamp and Commodity Distribution Amendments of 1981 (Pub. L. 97–98), enacted on December 22, 1981, change the schedule for adjusting the amounts of the Thrifty Food Plan to reflect changes in the prices of the food groups included in the plan. This final rule implements this statutory change and will result in substantial Program savings. On September 4, 1981, the Department published an interim rule changing the adjustment schedule for the Thrifty Food Plan. This rule makes final changes in the adjustment schedule.

DATE: This final rule shall be effective on April 19, 1982.

ADDRESS: Thomas O'Connor, Chief, Policy and Regulations Section, Program Standards Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: If there are any questions, please contact Thomas O'Connor at the above address, or by telephone at (703) 756–3429.

SUPPLEMENTARY INFORMATION: .

Classification

The Office of Management and Budget has approved a waiver of the requirement that the Department prepare and make available a Final Impact Statement on this rule. The waiver has been granted because the only changes made by this rule are mandated in Section 1304 of Pub. L. 97–98. This rule makes no discretionary changes.

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department estimates that the rule will result in savings of about $400 million in fiscal year 1982. It is classified as "major" because the rule will have a significant annual effect on the economy, through program cost savings, of more than $100 million. However, the rule will not result in major increases in costs or prices, will not have a significant adverse effect on competition, employment, productivity, investment, or foreign trade, and will not require significant changes in the way State and local welfare agencies administer the Program. Further, this rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises.

This rule also has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

On September 4, 1981 (46 FR 44712), the Department published an interim rule (and a request for comments) which made several changes mandated by Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981. One of these changes was a revision of the schedule for adjusting the Thrifty Food Plan (TFP). Other changes made by the interim final rule include: the use of gross income to determine eligibility of most households; elimination of funding for outreach activities; proration of the initial month's benefits according to the date of application; changes in the definition of household; prohibition on consideration of boarders as household members; prohibition of any increase in benefits to a household due to a loss of income caused by a member going on strike; changes in the schedule and method for adjusting deductions; and a reduction in the earned income deduction.

This rule makes final changes in the schedule for adjusting the TFP to reflect price changes. The other changes made by the September 4, 1981, interim rule will be dealt with separately in future final rulemaking.

The Department has taken this action because any additional delay in implementation of this rule would conflict with the language of the statute. Without expeditious implementation of this rule, existing regulations would have required an adjustment in the Thrifty Food Plan on April 1, 1982. This would conflict with the provision of Pub. L. 97–98 which mandates that the next adjustment be deferred until October 1, 1982. Moreover, pursuant to section 4(a) of Executive Order 12291, the Department has determined that this rule is within the authority delegated by law and is consistent with Congressional intent.

Thrifty Food Plan Changes

The TFP constitutes the basis for determining food stamp allotments for households. As prescribed by the statute, the TFP amounts for each household size are based on the TFP for a four person household. The TFP amount represents the maximum benefit level payable to a household of a particular size. The maximum benefit is paid to households which have no net income. For households which have some income, the allotment is determined by reducing the TFP amount for the household's size by 30 percent of the household's net monthly income.

The TFP amounts have, by law, been adjusted in past years to reflect changes in price levels. Section 103 of Pub. L. 97–35, enacted on August 13, 1981, changed the schedule for adjusting the amounts of the TFP to reflect price changes. To implement this as well as a number of other changes mandated by Pub. L. 97–35, the Department issued the interim final rule discussed above, on September 4, 1981. However, after publication of that rule, Pub. L. 97–98 was enacted on December 22, 1981. Section 1304 of Pub. L. 97–98 mandates further changes in the schedule for adjustment of the TFP.

Prior to enactment of Pub. L. 97–35, the Food Stamp Act required that the TFP amounts be adjusted each January 1 to reflect price changes. Pub. L. 97–35 (and the September 4, 1981, interim rule) called for adjustments in the TFP: (1) on April 1, 1982, to reflect price changes between October 1, 1980, and December 31, 1981; (2) on July 1, 1983, to reflect price changes between January 1, 1982, and March 31, 1983; (3) on October 1, 1984, to reflect price changes between April 1, 1983, and June 30, 1984; and (4) on October 1 of each year thereafter, to reflect the price changes over the twelve months ending the preceding June 30. Because the two comments the Department received regarding this change recommended statutory changes,

they were not considered in the rulemaking process.

Consistent with the provisions of Pub. L. 97–98, which supersedes Pub. L. 97–35, this rule calls for TFP adjustments on October 1, 1982, and on each October 1 thereafter. The October 1, 1982, adjustment will reflect price changes over the 21 month period October 1, 1980, to June 30, 1982. Each subsequent October 1 adjustment will reflect price changes during the twelve months ending the preceding June 30.

The change in the schedule for TFP adjustments will result in substantial Federal savings during Fiscal Year 1982. The change also will make each adjustment effective the first day of the fiscal year, thus allowing better planning and projection of Program expenditures through each fiscal year.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

Accordingly, 7 CFR Part 273, § 273.10(e)(4)(ii) is revised as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) Calculation of net income and benefit levels.* * *

(4) Thrifty food plan.* * *

(ii) Adjustment.

(A) Effective October 1, 1982, the Thrifty Food Plan amounts shall be adjusted to the nearest dollar increment to reflect changes in the Consumer Price Index for All Urban Consumers for the cost of food during the twenty-one month period ending June 30, 1982.

(B) Effective October 1, 1983, and each October 1 thereafter, the Thrifty Food Plan amounts shall be adjusted to the nearest dollar increment to reflect changes in the Consumer Price Index for All Urban Consumers for the cost of food during the twelve month period ending on the preceding June 30.

* * * * *

(91 Stat. 958, (7 U.S.C. 2011–2077) and sec. 1304, Pub. L. 97–98, 95 Stat. 1282 (7 U.S.C. 2012))

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

Dated: March 15, 1982.

Mary Jarratt,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 82–7470 Filed 3–18–82; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 351; Lemon Reg. 350, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period March 21–27, 1982, and increases the quantity of lemons that may be shipped during the period March 14–20, 1982. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: The regulation becomes effective March 21, 1982 and the amendment is effective for the period March 14–20, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation and amendment are issued under the marketing agreement, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on July 7, 1981. The committee met again publicly on March 16, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is active.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

1. Section 910.651 is added as follows:

§ 910.651 Lemon regulation 351.

The quantity of lemons grown in California and Arizona which may be handled during the period March 21, 1982, through March 27, 1982, is established at 245,000 cartons.

2. Section 910.650 Lemon Regulation 350 (47 FR 10774) is revised to read as follows:

§ 910.650 Lemon regulation 350.

The quantity of lemons grown in California and Arizona which may be handled during the period March 14, 1982, through March 20, 1982, is established at 270, 000 cartons.

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

Dated: March 18, 1982

D. S. Kuryloski,

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

[FR Doc. 82–7670 Filed 3–18–82; 11:50 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 1

Statement of Organization and General Information; Delegation of Rulemaking Authority to Executive Director for Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its statement of organization to reflect the action of the Commission delegating additional rulemaking authority to the Executive Director for Operations. The delegated rulemaking authority, which is to be exercised subject to general policy guidance from the Commission, does not include the promulgation of proposed or final rules involving significant questions of policy or the promulgation of proposed or final rules relating to the conduct of employees, rules of practice, advisory committees, interpretations of Commission regulations, Government in the Sunshine Act, or export and import of nuclear facilities and materials. The amendment is necessary to inform the public how the Commission's rulemaking activities will be conducted.

EFFECTIVE DATE: March 19, 1982.

FOR FURTHER INFORMATION CONTACT: Jane R. Mapes, Office of the Executive Legal Director, Telephone: (301) 492–8695.

SUPPLEMENTARY INFORMATION: In response to suggestions contained in a study entitled "Review of Delegations of Authority Within NRC," October 4, 1979, and after careful review and consideration, including consideration of the provisions of Reorganization Plan No. 1 of 1980 (45 FR 40561, June 16, 1980), the Commission has approved the delegation of increased rulemaking authority to the Executive Director for Operations (EDO). The delegation of authority is limited to the development and promulgation of rules which do not involve significant questions of policy and provides that the EDO must exercise this authority subject to general policy guidance from the Commission. Rulemaking authority with respect to those parts of the Commission's regulations that relate exclusively to the conduct of Commission employees or to the activities of the Commission or its staff officers (10 CFR Parts 0—Conduct of Employees, 7—Advisory Committees, 8—Interpretations, 9 Subpart C—Government in the Sunshine Act Regulations) or that relate to the conduct of proceedings in which the staff participates as a party (10 CFR Parts 2—Rules of Practice for Domestic Licensing Proceedings, and 110—Export and Import of Nuclear Facilities and Materials) is specifically excluded from the delegation. Despite these limitations, the new delegation of rulemaking authority is significantly broader than that previously delegated to the Executive Director for Operations. Under the former delegation, the EDO was only authorized to issue amendments to the regulations in proposed and final form where the amendments were corrective or of a minor or nonpolicy nature and did not substantially modify existing regulations, or to issue amendments to the regulations in final form if no significant adverse comments or questions had been received on the notice of proposed rulemaking and no substantial changes in the text were indicated.

The Commission believes that delegation of increased rulemaking authority to the Executive Director for Operations should improve the efficiency and effectiveness of the NRC's rulemaking process in several respects. In addition to assuring that all rulemaking is conducted in accordance with the Commission's general policy guidance and that all rules involving significant questions of policy are considered by the Commission itself, the Commission expects this delegation of rulemaking authority to strengthen the systematic development and timely completion of NRC rulemaking initiatives and to expedite the NRC rulemaking process by providing a mechanism for the prompt resolution of differing staff views.

Since these amendments relate solely to matters of agency management and procedure, notice of proposed rulemaking and public procedure thereon are not required by 5 U.S.C. 553 and good cause exists for making the amendments effective March 19, 1982 without the customary thirty days' notice.

A Regulatory Flexibility Act statement is not necessary because that Act does not apply to final rules where notice of proposed rulemaking is not required. The rule contains no recordkeeping, or reporting, or other information collection requirements subject to the Paperwork Reduction Act.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the following amendments to Title 10, Chapter I, Code of Federal Regulations are published as a document subject to codification.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for 10 CFR Part 1 is revised to read as follows:

Authority: Secs. 23 and 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, and 209, Pub. L. 93–438, 88 Stat. 1242, 1244, 1245, 1246 and 1248, as amended by Pub. L. 94–79, 89 Stat. 413, Pub. L. 95–209, 91 Stat. 1482, Pub. L. 95–601, 92 Stat. 2949 (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

2. In § 1.40, paragraphs (c) and (d) are revised to read as follows:

§ 1.40 Office of the Executive Director for Operations.

* * * * *

(c) Recommends to the Commission proposed and final regulations involving significant questions of policy which are needed to protect public health and safety and the environment from effects associated with nuclear facilities and materials subject to licensing, to provide for security of licensed nuclear facilities and safeguarding of licensed radioactive materials, and to assure that activities under facility licenses would not be inconsistent with antitrust laws, as specified in section 105a. of the Atomic Energy Act of 1954, as amended.

(d)(1) Subject to general policy guidance from the Commission and subject to the limitations in paragraph (d)(2) of this section, develops and promulgates rules, as defined in 5 U.S.C. 551(4), in proposed and final form. Notifies the Commission before submitting a final rule to the Federal Register.

(2) The delegated authority in paragraph (d)(1) of this section does not extend to (i) the promulgation of proposed or final rules involving significant questions of policy, or (ii) the promulgation of proposed or final rules in the following areas: 10 CFR Parts 0—Conduct of Employees, 2—Rules of Practice for Domestic Licensing Proceedings, 7—Advisory Committees, 8—Interpretations, 9 Subpart C—Government in the Sunshine Act Regulations, and 110—Export and Import of Nuclear Facilities and Materials.

* * * * *

Dated at Bethesda, Maryland, this 12th day of March, 1982.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 82–7552 Filed 3–18–82; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Docket No. R–0366]

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is amending Regulation K on international banking operations by adding a new activity to the list of activities permissible for Edge Corporations in the United States. The amendment would permit Edge Corporations to offer certain investment and economic advisory and investment management services in the United States to their foreign customers, and such advice with respect to foreign investments to their U.S. customers. This action is being taken in response to a request from a member bank.

EFFECTIVE DATE: March 12, 1982.

FOR FURTHER INFORMATION CONTACT: Henry Schiffman, Division of Banking Supervision and Regulation, (202) 452–2523, James Keller, Senior Attorney, (202) 452–3582, or Melanie Fein, Attorney, (202) 452–3594, Legal Division, Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: Section

25(a) of the Federal Reserve Act (the "Edge Act"), 12 U.S.C. 611 *et seq.*, authorizes the organization of corporations ("Edge Corporations") for the purpose of engaging in international or foreign financial or banking operations. The Edge Act specifies certain powers and activities that are permissible for Edge Corporations and authorizes other activities that are incidental thereto. Section 211.4(e) of the Board's Regulation K, 12 CFR 211.4(e), lists activities that will ordinarily be considered incidental to an Edge Corporation's international or foreign business and may be conducted in the United States. These activities include certain foreign or internationally related deposit-taking, funding, and financing activities. Section 3(a) of the International Banking Act of 1978 ("IBA") (12 U.S.C. 611a note) states that it is the policy of Congress to eliminate restrictions that disadvantage or unnecessarily restrict Edge Corporations in competing with foreign-owned banking institutions in the United States or abroad, or impede the purposes of the Edge Act to foster United States international business activities.

The Board has been requested by Bank of America National Trust and Savings Association, San Francisco, California to include on the list of activities permissible in the United States for Edge Corporations certain investment and economic advisory and investment management services. These activities would include managing investment portfolios comprised or securities, other financial instruments, and real estate, on behalf of foreign persons. Bank of America states that the customers to whom the Edge Corporation would offer these services would be individuals residing outside the United States who visit the United States infrequently and are therefore unavailable for consultation on a continuing basis. Bank of America believes that such individuals desire to grant an Edge Corporation discretionary authority over their U.S. investments.

The Board published notice of a proposed rule to add this activity to Regulation K in the **Federal Register** of October 13, 1981 (46 FR 50975). Interested persons were invited to comment specifically on (1) whether the proposed activity would enable Edge Corporations to compete effectively with foreign-owned institutions in a manner consistent with the IBA and (2) whether the provision of such services should be extended to U.S. customers with respect to foreign investments.

The Board received 34 comments on the proposal, all but two of which favored the proposal. Generally, those favoring the proposal believed that it would enhance competitive equality between domestic and foreign banks operating in the United States, consistent with the IBA, by enabling domestic banks to offer a broader range of financial services to foreign customers through their Edge Corporations. Currently, a U.S. bank wishing to offer fiduciary services in more than one state may do so only through a bank holding company, whereas a foreign bank competitor may offer such services outside its home state through grandfathered operations or through limited federal or state branches. Several commenters observed that the proposal was a logical extension of the fiduciary services already permitted under § 211.4(e)(4)(ix) of Regulation K, which authorizes Edge Corporations to "hold securities in safekeeping for, or buy and sell securities upon the order and for the account and risk of a person."

Several commenters thought that the proposal could be improved by broadening the list of investments that Edge Corporations would be permitted to manage to include oil and gas interests and gold and silver. One commenter recommended that the term "other assets" be added to the list of investments to allow a wider range of investment activities.

All twenty-four of the commenters addressing the issue favored extending investment advisory and management services to U.S. customers with respect to foreign investments.

Only two commenters opposed the proposal. Their objections were that the proposal would benefit large money center banking organizations at the expense of smaller regional organizations. The smaller organizations cannot provide the range of services that the larger organizations provide, the opponents argued, and will lose customers if the large competitors are permitted to offer these services through Edge Corporations.

Based on a review of the public comments and consideration of the issues raised by the proposed activity, the Board has determined that the services are incidental to the international business of an Edge Corporation and would further the purposes of the International Banking Act. The addition of investment advisory and portfolio management services to Regulation K would eliminate restrictions that unnecessarily inhibit Edge Corporations in competing with foreign-owned banking institutions in the United States and that impede the purposes of the Act to foster U.S. international business activities. Accordingly,, the Board has determined to adopt the proposal. The Board believes that the same considerations support the provision of investment and economic advisory and investment management services to domestic customers with respect to foreign investments, and the Board also has determined to amend Regulation K to permit these activities.

In taking this action, the Board has used terminology similar to that contained in § 225.4(a)(5) (iii) and (iv) of Regulation Y (12 CFR 225.4(a)(5) (iii) and (iv)), which authorizes bank holding companies to provide portfolio investment advice and furnish general economic advice. The Board believes that the Regulation Y terminology would make more certain the scope of the advice permitted. For example, Regulation Y distinguishes the provisions of economic advice and industry studies from management consulting, which is not permitted. In addition, the Board has previously interpreted "portfolio investment advice" as including the power to determine what securities or other property shall be purchased and sold. Although the language of the amendment states that portfolio management is included in the activities being authorized, the Board does not intend by the use of this term to authorize management consulting, property management, land development or any other activity denied to section 4(c)(8) subsidiaries under the Bank Holding Company Act.

Use of the Regulation Y terminology also is responsive to comments citing the need to make explicit that real estate interests may be the subject of investment services. In addition, the Board has added "other investment assets" to the list of permissible investments to allow a wider range of normal investment alternatives. However, as in the case of section 4(c)(8) subsidiaries, the Board expects that in furnishing portfolio investment advice under this authorization, the Edge Corporation shall observe the standards of care and conduct applicable to fiduciaries.

Further, the Board expects any Edge Corporation engaging in this activity to adopt written policies and procedures suitable to its particular circumstances to ensure that any inside information in its possession obtained in connection with the commercial lending activities of the Edge Corporation or its bank and nonbank affiliates is not used for any recommendation or decision to purchase and sell securities for its investment advisory customers. See 64 Federal Reserve Bulletin 339 (1978).

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354; 5 U.S.C. 601 *et seq.*), the Board of

Governors of the Federal Reserve System certifies that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation. The proposed amendment would liberalize the existing regulations and does not have any particular effect on small entities.

Accordingly, pursuant to its authority under section 25(a) of the Federal Reserve Act, 12 U.S.C. 615, the Board of Governors of the Federal Reserve System amends 12 CFR Part 211 as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS

1. The authority citation for Part 211 reads as follows:

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*); and the International Banking Act of 1978 (Pub. L. 95–369; 92 Stat. 607; 12 U.S.C. 3101).

§ 211.4 [Amended]

2. Section 211.4 is amended as follows:

a. In paragraph (e)(4)(xii): delete the "and" at the end of the paragraph.

b. In paragraph (e)(4)(xiii): change the period (".") at the end of the paragraph to a semi-colon (";").

3. Section 211.4 is amended by adding the following paragraphs (e)(4) (xiv) and (xv):

§ 211.4 Edge and agreement corporations.

* * * * *

(e) * * *

(4) * * *

(xiv) Act as investment or financial adviser by providing portfolio investment advice and portfolio management with respect to securities, other financial instruments, real property interests and other investment assets,[3a] provided such services for U.S. persons shall be with respect to foreign assets only; and

(xv) Provide general economic information and advice, general economic statistical forecasting services and industry studies, provided such services for U.S. persons shall be with respect to foreign economies and industries only.

* * * * *

[3a] For purposes of this section, management of an investment portfolio does not include operational management of real property, industrial and commercial assets.

By order of the Board of Governors of the Federal Reserve System, March 12, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-7469 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 314

[Reg. PR-246; Amdt. No. 1 to Part 314]

Employee Protection Program; Approval by the Office of Management and Budget

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule gives notice that on March 1, 1982, the Office of Management and Budget (OMB) approved the filing requirements in § 314.11 of Part 314 of the Board's Procedural Regulations governing applications by airline employees for federal payments under the employee protection program in section 43 of the Airline Deregulation Act (PR-245, FR 9744, March 5, 1982).

DATES: Adopted: March 12, 1982. Effective: April 3, 1982.

FOR FURTHER INFORMATION CONTACT: Clifford M. Rand, Chief, Data Requirements Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-6042.

SUPPLEMENTARY INFORMATION:

PART 314—EMPLOYEE PROTECTION PROGRAM

§ 314.11 [Amended]

Accordingly, the Civil Aeronautics Board amends Part 314 of its Procedural Regulations (14 CFR Part 314) by adding a note at the end of §314.11 to read:

Note.—The filing requirement contained in § 314.11 has been approved by the Office of Management and Budget under number 3024–0053.

This amendment is issued by the undersigned pursuant to delegation of authority from the Board to the Secretary in 14 CFR 385.24(b). (Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324).

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-7421 Filed 3-18-82; 8:45 am]

BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, 229, 230, 239, 240, 249, 250, 260, and 274

[Release Nos. 33-6383; 34-18524; 35-22407; 39-700; IC-12264; AS-306]

Adoption of Integrated Disclosure System

Correction

In FR Doc. 82-7054, appearing at page 11380, in the issue of Tuesday, March 16, 1982, on page 11475, in the second column, change the file line to read as follows:

[FR Doc. 82-7054 Filed 3-12-82; 8:45 am]

BILLING CODE 1505-01-M

17 CFR Part 240

[Release Nos. 33-6383; 34-18524; 35-22407; 39-700; IC-12264; AS-306]

Adoption of Integrated Disclosure System

Correction

In FR Doc. 82-7054, appearing at page 11380, in the issue of Tuesday, March 16, 1982, make the following change: On page 11464, in the first column, change the section heading now reading, **"§ 230.3b-2 Definition of 'officer'."** to read **"§ 240.3b-2 Definition of 'officer'."**.

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 77C-0276]

D&C Orange No. 4; Listing of Color Additives Subject to Certification; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of February 27, 1981, of a color additive regulation that revised the specifications for D&C Orange No. 4 for use in externally applied drugs and cosmetics.

DATE: Effective date confirmed: February 27, 1981.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a regulation published in the **Federal Register** of January 27, 1981 (46 FR 8461), FDA revised the specification for D&C Orange No. 4 by amending § 74.1254 (21 CFR 74.1254) to include a tolerance of not more than 0.1 percent for 4,4'-(diazoamino)-dibenzenesulfonic acid. No objections or requests for a hearing were received in response to the final rule.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 706 (b)(c), and (d), 74 Stat. 399–403 as amended (21 U.S.C. 376 (b), (c), and (d))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), notice is given that no objections or requests for a hearing were filed in response to the final rule of January 27, 1981. Accordingly, the amendment promulgated thereby became effective on February 27, 1981.

Dated: March 15, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-7473 Filed 3-18-82; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Parts 101, 102, 103, 114, 122, 131, 133, 135, 136, 137, 139, 145, 146, 150, 155, 160, 161, 163, 164, 166, 168, and 169

[Docket No. 81N-0266]

Incorporation by Reference Regulatory Text

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the incorporating regulatory text in Title 21 of the Code of Federal Regulations to make clear that an incorporation by reference is intended. This action is being taken to meet the drafting requirements for incorporation by reference set forth in Title 1 of the Code of Federal Regulations (1 CFR Part 51).

DATES: Effective March 19, 1982; written comments by April 19, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Title 1 of the Code of Federal Regulations (1 CFR 51.6, 51.7, and 51.8) requires, in addition to other information, specific language in a regulation that makes clear that an incorporation by reference is intended.

FDA has reviewed all of its regulations that include materials incorporated by reference. The agency has concluded that it is necessary to amend a number of these regulations to bring them into compliance with the drafting requirements prescribed in 1 CFR 51.6, 51.7, and 51.8. This notice amends certain of the regulations concerned with food. The agency will publish additional notices revising the incorporation by reference in its regulations that cover food and other products in future issues of the **Federal Register.**

The agency is amending 21 CFR Parts 101, 102, 103, 114, 122, 131, 133, 135, 136, 137, 139, 145, 146, 150, 155, 160, 161, 163, 164, 166, 168, and 169 to include language that: Clearly indicates that an incorporation by reference is intended; contains a complete citation of the material incorporated; and contains a statement about the availability of the incorporated material. These amendments ensure compliance with the drafting requirements specified in Title 1.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Title 21 of the Code of Federal Regulations is amended as follows:

PART 101—FOOD LABELING

1. Part 101 is amended:

a. In § 101.9 by removing footnotes 1 and 2 and revising paragraph (c)(3) and (4), to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(c) * * *

(3) "Caloric content" or "Calories": A statement of the caloric content per serving (portion), expressed to the nearest 2-calorie increment up to and including 20 calories, 5-calorie increment above 20 calories and up to and including 50 calories, and 10-calorie increment above 50 calories. Caloric content shall be determined by the Atwater method as described in A. L. Merrill and B. K. Watt, "Energy Value of Foods—Basis and Derivation." USDA Handbook 74 (1955), which is incorporated by reference. Copies are available from the Division of Nutrition, Bureau of Foods (HFF–260), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. Caloric content may be calculated on the basis of 4, 4, and 9 calories per gram for protein, carbohydrate, and fat respectively unless the use of these values gives a caloric value more than 20 percent greater than the caloric value obtained when using the more accurate values determined by use of the Atwater method as found in USDA Handbook 74 (1955).

(4) "Protein content" or "Protein": A statement of the number of grams of protein in a serving (portion), expressed to the nearest gram except that if a serving (portion) contains less than one gram, the statement "Contains less than one gram" or "less than one gram" may be used as an alternative. Protein content may be calculated on the basis of the factor of 6.25 times the nitrogen content of the food as determined by the appropriate method of analysis of the Association of Official Analytical Chemists, 12th Ed. (1975), which is incorporated by reference, except when the official procedure for a specific food requires another factor. Copies are available from the Division of Nutrition, Bureau of Foods (HFF–260), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 101.25 by removing the footnote and revising paragraph (e)(3), to read as follows:

§ 101.25 Labeling of foods in relation to fat and fatty acid and chlesterol content.

* * * * *

(e) * * *

(3) Composites shall be analyzed for fat and saturated fatty acids by the methods of the Association of Official Analytical Chemists (AOAC), 13th Ed. (1980), which is incoporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044. The methods for fat, fatty acids, and cholesterol will be those of the Association of Official Analytical Chemists (AOAC), or other reliable and appropriate methods. Alternative methods of analysis may be submitted to the Food and Drug Administration to determine their acceptability. The determination of *cis, cis*-methylene-

interrupted polyunsaturated fatty acids will be the Canadian Food and Drug Directorate Method FA–59 for *cis, cis*-methylene-interrupted fatty acid, which is incorporated by reference. Copies are available from the Division of Nutrition, Bureau of Foods (HFF–260), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Both incorporations by reference are available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

2. Part 102 is amended:

a. In § 102.23 by removing the footnotes and revising paragraph (c) (1), (2), (3), (4), (5), (6), (7), (8), and (9), to read as follows:

§ 102.23 Peanut spreads.

* * * * *

(c) * * *

(1) Protein quantity: "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975) ('AOAC'), using the method described in section 27.007, which is incorporated by reference. Copies are available from the Division of Nutrition, Bureau of Foods (HFF–260), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) Biological quality of protein: AOAC, 12th Ed. (1975), using the method described in sections 43.183–43.187, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (c)(1) of this section.

(3) Niacin: AOAC, 12th Ed. (1975), using the method described in sections 43.044–43.046, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (c)(1) of this section.

(4) Vitamin B_6: AOAC, 12th Ed. (1975), using the method described in sections 43.159–43.164, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (c)(1) of this section.

(5) Folic acid: Using the method described in U.S. Department of Agriculture Handbook No. 29, modified by use of ascorbate buffer as described by Ford and Scott, *Journal of Dairy Research*, 35:85–90 (1968), which is incorporated by reference. Copies are available from the Division of Nutrition, Bureau of Foods (HFF–260), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(6) Iron: AOAC, 12th Ed. (1975), using the method described in sections 43.188–43.190, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (c)(1) of this section.

(7) Zinc: AOAC, 12th Ed. (1975), using the method described in sections 25.143–25.147, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (c)(1) of this section.

(8) Copper: AOAC, 12th Ed. (1975), using the method described in sections 25.035–25.040, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (c)(1) of this section.

(9) Magnesium: AOAC, 12th Ed. (1975), using the method described in sections 2.096–2.099, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (c)(1) of this section.

b. In § 102.33 by removing the footnote and revising the last sentence and adding a sentence in paragraph (b), to read as follows:

§ 102.33 Diluted fruit or vegetable juice beverages other than diluted orange juice beverages.

* * * * *

(b) * * * The soluble solids content of single-strength high-acid juice (lemon, lime, or cranberry juice) shall be the weight of soluble solids obtained from refractometer readings corrected for acidity as set forth in section 22.025, Official Methods of Analysis of the Association of Official Analytical Chemists, 13th Ed. (1980), which is incorporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L Street, NW., Washington, DC 20408.

PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

3. Part 103 is amended in § 103.35 by removing the footnotes, revising the introductory text of paragraphs (b) and (c), and revising paragraphs (d)(1)(ii) and (e)(2), to read as follows:

§ 103.35 Bottled water.

* * * * *

(b) *Microbiological quality.* Bottled water shall, when a sample consisting of analytical units of equal volume is examined by the methods described in applicable sections of "Standard Methods for the Examination of Water and Wastewater," 14th Ed. (1975), American Public Health Association, which is incorporated by reference (copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), meet the following standards of microbiological quality:

* * * * *

(c) *Physical quality.* Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the method described in applicable sections of "Standard Methods for the Examination of Water and Wastewater," 14th Ed. (1975), which is incorporated by reference (the availability of this incorporation by reference is given in paragraph (b) of this section), meet the following standards of physical quality:

* * * * *

(d) * * *

(1) * * *

(ii) Analyses conducted to determine compliance with paragraph (d)(1)(i) of this section shall be made in accordance with the methods described in the applicable sections of "Standard Methods for the Examination of Water and Wastewater," 14th Ed. (1975) or "Methods for Chemical Analysis of Water and Wastes," (1974), both of which are incorporated by reference. Analyses for organic substances shall be determined by appropriate methods described in "Methods for Organochlorine Pesticides in Industrial Effluents" and "Methods for Chlorinated Phenoxy Acid Herbicides in Industrial Effluents," November 28, 1973, which are incorporated by reference, and "Part I: The Analysis of Trihalomethanes in Finished Waters by the Purge and Trap Method," Method 501.1 and "Part II: The Analysis of Trihalomethanes in Drinking Water by Liquid/Liquid Extraction," Method 501.2 in 40 CFR Part 141, Appendix C (45 FR 68672; November 29, 1979). The availability of these incorporations by reference are given in paragraph (b) of this section.

(e) * * *

(2) Analyses conducted to determine compliance with paragraph (e)(1) of this section shall be made in accordance with the methods described in the applicable sections of "Standard

Methods for the Examination of Water and Wastewater," 14th Ed. (1975), and "Interim Radiochemical Methodology for Drinking Water," Environmental Monitoring and Support Laboratory, EPA–600/4–75–008 (Revised), March 1976, U.S. Environmental Protection Agency, both of which are incorporated by reference. The availability of these incorporations by reference is given in paragraph (b) of this section.

* * * * *

PART 114—ACIDIFIED FOODS

4. Part 114 is amended in § 114.90 by removing the footnotes, revising paragraph (a)(4)(ii), revising the fifth sentence and adding a new sentence after the revised sentence in paragraph (a)(4)(iv), revising the fourth sentence and adding a new sentence after the revised sentence in paragraph (a)(4)(v), and revising paragraph (c), to read as follows:

§ 114.90 Methodology.

* * * * *

(a) * * *

(4) * * *

(ii) Standardize the instrument and electrodes with commercially prepared standard 4.0 pH buffer or with freshly prepared 0.05 molar potassium acid phthalate buffer solution prepared as outlined in "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), section 50.007(c), page 943, which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. Note the temperature of the buffer solution and set the temperature compensator control at the observed temperature (room temperature is near 25° C).

* * * * *

(iv) * * * To check the operation of the pH meter, check the pH reading using another standard buffer such as one having a pH of 7.0, or check it with freshly prepared 0.025 molar phosphate solution prepared as outlined in "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), section 50.007(e), page 943, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a)(4)(ii) of this section. * * *

(v) * * * Electrodes should be rinsed with water, then blotted and immersed in a pH 9.18 borax buffer prepared as outlined in "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), section 50.007(f), page 943, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a)(4)(ii) of this section. * * *

* * * * *

(c) *Titratable acidity.* Acceptable methods for determining titratable acidity are described in "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), sections 22.060–22.061, page 401, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a)(4)(ii) of this section. The procedure for preparing and standardizing the sodium hydroxide solution is described in the same publication, sections 50.032–50.035, page 946, which is also incorporated by reference and available as set forth in paragraph (a)(4)(ii) of this section.

PART 122—SMOKED AND SMOKE-FLAVORED FISH

5. Part 122 is amended in § 122.3 by revising paragraph (d), to read as follows:

§ 122.3 Definitions.

* * * * *

(d) "Water phase salt" means the percent salt (sodium chloride) in the finished product as determined by the method described in sections 18.009 and 18.010 of the "Official Methods of Analysis of the Association of Agricultural Chemists," 10th Ed., page 273 (1965), which is incorporated by reference, multiplied by 100 and divided by the percent salt (sodium chloride) plus the percent moisture in the finished product as determined by the method described in section 18.006 of that edition. Copies of the material incorporated by reference are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 131—MILK AND CREAM

6. Part 131 is amended as follows:

a. In § 131.110 by removing the footnote, removing the "[2]" in paragraph (d)(1), (2), and (3), and revising the introductory text of paragraph (d), to read as follows:

§ 131.110 Milk.

* * * * *

(d) *Methods of analysis.* Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 110 L St., NW., Washington, DC 20408.

* * * * *

b. In § 131.111 by removing the footnote and revising the introductory text of paragraph (f), to read as follows:

§ 131.111 Acidified milk.

* * * * *

(f) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 131.112 by removing the footnote and revising the introductory text of paragraph (e), to read as follows:

§ 131.112 Cultured milk.

* * * * *

(e) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

d. In § 131.115 by removing the footnote, removing the "[2]" in paragraph (d) (1), (2), and (3), and revising the introductory text of paragraph (d), to read as follows:

§ 131.115 Concentrated milk.

* * * * *

(d) *Methods of analysis.* Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division

of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

e. In § 131.120 by revising paragraph (c), to read as follows:

§ 131.120 Sweetened condensed milk.

* * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), section 16.167, under "Fat—Official Final Action," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

f. In § 131.122 by removing the footnote and revising paragraph (c), to read as follows:

§ 131.122 Sweetened condensed skimmed milk.

* * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Anaylsis of the Association of Official Analytical Chemists," 12th Ed. (1975), section 16.167, under "Fat—Official Final Action," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

g. In § 131.123 by removing the footnote, removing the "2" in paragraph (d)(1), (2), (3), and revising the introductory text of paragraph (d), to read as follows:

§ 131.123 Lowfat dry milk.

* * * * *

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HHF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

h. In § 131.125 by removing the footnote, removing the "2" in paragraph (c)(1), and (2), and revising the introductory text of paragraph (c), to read as follows:

§ 131.125 Nonfat dry milk.

* * * * *

(c) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

i. In § 131.127 by removing the footnote, removing the "2" in paragraph (d)(1), (2), and (3), and revising the introductory text of paragraph (d), to read as follows:

§ 131.127 Nonfat dry milk fortified with vitamins A and D.

* * * * *

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

j. In § 131.130 by removing the footnote, removing the "2" in paragraph (d)(1), (2), and (3), and revising the introductory text of paragraph (d), to read as follows:

§ 131.130 Evaporated milk.

* * * * *

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

k. In § 131.132 by removing the footnote, removing the "2" in paragraph (d)(1), (2), and (3), and revising the introductory text of paragraph (d), to read as follows:

§ 131.132 Evaporated skimmed milk.

* * * * *

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

l. In § 131.135 by removing the footnote, removing the "2" from paragraph (d)(1), (2), and (3), and revising the introductory text of paragraph (d), to read as follows:

§ 131.135 Lowfat milk.

* * * * *

(d) *Methods of analysis.* Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

m. In § 131.136 by revising the introductory text of paragraph (f), to read as follows:

§ 131.136 Acidified lowfat milk.

* * * * *

(f) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal

Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

n. In § 131.138 by revising the introductory text of paragraph (e), to read as follows:

§ 131.138 Cultured lowfat milk.

* * * * *

(e) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

o. In § 131.143 by removing the footnote, removing the "[2]" from paragraph (d)(1), (2), and (3), and revising the introductory text of paragraph (d), to read as follows:

§ 131.143 Skim milk.

* * * * *

(d) *Methods of analysis.* Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

p. In § 131.144 by revising the introductory text of paragraph (f), to read as follows:

§ 131.144 Acidified skim milk.

* * * * *

(f) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

q. In § 131.146 by removing the footnote and revising the introductory text of paragraph (e), to read as follows:

§ 131.146 Cultured skim milk.

* * * * *

(e) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

r. In § 131.147 by removing the footnote, removing the "[2]" in paragraph (d)(1), (2), and (3), and revising the introductory text of paragraph (d), to read as follows:

§ 131.147 Dry whole milk.

* * * * *

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

s. In § 131.149 by removing the "[2]" from paragraph (c)(1) and (2) and revising the introductory text of paragraph (c), to read as follows:

§ 131.149 Dry cream.

* * * * *

(c) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

t. In § 131.150 by removing the footnote and revising paragraph (c), to read as follows:

§ 131.150 Heavy cream.

* * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), section 16.114, under "Fat, Roese-Gottlieb Method—Official Final Action," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

u. In § 131.155 by revising paragraph (c), to read as follows:

§ 131.155 Light cream.

* * * * *

(c) *Method of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), section 16.114, under "Fat, Roese-Gottlieb Method—Official Final Action," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

v. In § 131.157 by removing the footnote and revising paragraph (c), to read as follows:

§ 131.157 Light whipping cream.

* * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), section 16.114, under "Fat, Roese-Gottlieb Method—Official Final Action," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

w. In § 131.160 by removing the footnote and revising the introductory text of paragraph (c), to read as follows:

§ 131.160 Sour cream.

* * * * *

(c) *Methods of analysis.* Referenced methods in paragraph (c) (1) and (2) of this section are from "Official Methods

of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

x. In § 131.162 by revising the introductory text of paragraph (c), to read as follows:

§ 131.162 Acidified sour cream.

* * * * *

(c) *Methods of analysis.* Referenced methods in paragraph (c) (1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

y. In § 131.170 by removing the footnote and revising the introductory text of paragraph (f), to read as follows:

§ 131.170 Eggnog.

* * * * *

(f) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

z. In § 131.180 by removing the footnote and revising paragraph (c), to read as follows:

§ 131.180 Half-and-half.

* * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), section 16.114, under "Fat, Roese-Gottlieb Method—Official Final Action," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

aa. In § 131.185 by revising the introductory text of paragraph (c), to read as follows:

§ 131.185 Sour half-and-half.

* * * * *

(c) *Methods of analysis.* Referenced methods in paragraph (c) (1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

bb. In § 131.187 by removing the footnote and revising the introductory text of paragraph (c), to read as follows:

§ 131.187 Acidified sour half-and-half.

* * * * *

(c) *Methods of analysis.* Referenced methods in paragraph (c) (1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

cc. In § 131.200 by removing the footnote and revising the introductory text of paragraph (d), to read as follows:

§ 131.200 Yogurt.

* * * * *

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

dd. In § 131.203 by removing the footnote and revising the introductory text of paragraph (d), to read as follows:

§ 131.203 Lowfat yogurt.

* * * * *

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

ee. In § 131.206 by removing the footnote and revising the introductory text of paragraph (d), to read as follows:

§ 131.206 Nonfat yogurt.

* * * * *

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

7. Part 133 is amended:

a. In § 133.113 by revising paragraph (c), to read as follows:

§ 133.113 Cheddar cheese.

* * * * *

(c) Determine moisture by the method prescribed on page 262 (15.124) [Ed. note, 10th Ed. (1965), p. 247 section 15.157], under "Moisture—Official," and milk fat by the method prescribed on page 263 (15.131) [Ed. note, 10th Ed. (1965), p. 248, section 15.164], under "Fat—Official," of "Official Methods of Analysis of the Association of Official Agricultural Chemists," 7th Ed. (1950), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW.,

Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. Subtract the percent of moisture found from 100; divide the remainder into the percent milkfat found. The quotient, multiplied by 100, shall be considered to be the percent of milkfat contained in the solids.

* * * * *

b. In § 133.129 by removing the footnote and revising paragraph (a), to read as follows:

§ 133.129 Dry curd cottage cheese.

(a) Cottage cheese dry curd is the soft uncured cheese prepared by the procedure set forth in paragraph (b) of this section. The finished food contains less than 0.5 percent milkfat. It contains not more than 80 percent of moisture, as determined by the method prescribed under "Moisture—Official," on page 272 of "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 133.133 by revising paragraph (a), to read as follows:

§ 133.133 Cream cheese.

(a) Cream cheese is the soft uncured cheese prepared by the procedure set forth in paragraph (b) of this section. The finished cream cheese contains not less than 33 percent of milkfat and not more than 55 percent of moisture, as determined, respectively, by the methods prescribed under "Fat—Official" on page 302 and under "Moisture—Official" on page 301 of "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 5th Ed. (1940), which is incorporated by reference. (These methods appear in the 10th Ed. (1965), p. 248, section 15.164; p. 247, section 15.157, respectively.) Copies of the material incorporated by reference are available form the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

d. In § 133.162 by revising paragraph (a), to read as follows:

§ 133.162 Neufchatel cheese.

(a) Neufchatel cheese is the soft uncured cheese prepared by the procedure set forth in paragraph (b) of this section. The finished neufchatel cheese contains not less than 20 percent but less than 33 percent of milkfat and not more than 65 percent of moisture, as determined, respectively, by the methods prescribed under "Fat—Official" on page 302 and under "Moisture—Official" on page 301 of "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 5th Ed. (1940), which is incorporated by reference. (These methods appear in the 10th Ed. (1965), p. 248, section 15.164; p. 247, section 15.157, respectively.) Copies of the material incorporated by reference are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 135—FROZEN DESSERTS

8. Part 135 is amended:

a. In § 135.110 by removing the footnote and revising paragraph (d), to read as follows:

§ 135.110 Ice cream and frozen custard.

* * * * *

(d) *Methods of analysis.* The fat content shall be determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), section 16.228, under "Fat: Roese-Gottlieb Method—Official Final Action," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 135.130 by removing the footnote and revising the introductory text of paragraph (c), to read as follows:

§ 135.130 Mellorine.

* * * * *

(c) *Methods of analysis.* Fat and protein content, and the PER shall be determined by following the methods contained in "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 136—BAKERY PRODUCTS

9. Part 136 is amended:

a. In § 136.110 by removing the footnote and revising paragraph (d), to read as follows:

§ 136.110 Bread, rolls, and buns.

* * * * *

(d) Total solids are determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," (AOAC), 12th Ed. (1975), section 14.083(a), which is incorporated by reference, except that if the baked unit weighs 1 pound or more, one entire unit is used for the determination; if the baked unit weighs less than 1 pound, enough units to weight 1 pound or more are used. Copies of the material incorporated by reference are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 136.160 by removing the footnote and revising paragraph (a)(5), to read as follows:

§ 136.160 Raisin bread, rolls, and buns.

(a) * * *

(5) The total solids are determined by the method prescribed in § 136.110(d), except that section 14.083(b) on page 235 of "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), which is incorporated by reference, will apply. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 137—CEREAL FLOURS AND RELATED PRODUCTS

10. Part 137 is amended:

a. In § 137.105 by removing the footnote, revising the fourth sentence and adding a sentence after the revised

sentence in the introductory text of paragraph (a), and revising paragraph (c) (1) and (4), to read as follows:

§ 137.105 Flour.

(a) * * * When tested for granulation as prescribed in paragraph (c)(4) of this section, not less than 98 percent of the flour passes through a cloth having openings not larger than those of woven wire cloth designated "212 m (No. 70)" in Table I of "Annual Book of ASTM Standards, Part 30" published in 1972 by the American Society for Testing and Materials, which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

(c) * * *

(1) Ash is determined by the method prescribed in the book "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 5th Ed. (1940), page 212, under "Method I—Official," which is incorporated by reference. [Ed. note, 10th Ed. (1965), p. 191, section 13.006.] Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. Ash is calculated to a moisture-free basis by subtracting the percent of moisture in the flour from 100, dividing the remainder into the percent of ash, and multiplying the quotient by 100.

* * * * *

(4) Granulation is determined as follows: Use No. 70 sieve complying with specifications for wire cloth and sieve frames in "Standard Specifications for Sieves," published March 1, 1940, in L.C. 584 of the U.S. Department of Commerce, National Bureau of Standards, which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. Attach bottom pan to sieve in Ro-Tap sifter (or an equivalent sifter). Place half of a rubber ball or other sieving aid in the sieve. Pour 100 grams of the sample in the sieve and turn on the sifter with knocker. Sift exactly 5 minutes. Weigh the residue on the No. 70 sieve and convert to percentage.

b. In § 137.180 by revising the introductory text of paragraph (c), to read as follows:

§ 137.180 Self-rising flour.

* * * * *

(c) The method referred to in paragraph (a) of this section is the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 5th Ed. (1940), beginning on page 186 [Ed. note, 10th Ed. (1965), p. 119, sections 7.002, 7.003], under Gasometric Method with Chittick's Apparatus—Official," which is incorporated by reference (copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), except that the following procedure is substituted for the procedure specified therein under "6—Determination":

* * * * *

c. In § 137.190 by revising the last sentence in the section and adding a sentence, to read as follows:

§ 137.190 Cracked wheat.

* * * Cracked wheat contains not more than 15 percent of the moisture as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 5th Ed. (1940), page 353 [Ed. note, 10th Ed. (1965), p. 327, sections 22.002, 22.003], under "Preparation of Sample—Official" and "Moisture I. Drying with Heat—Official," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

d. In § 137.195 by revising the last sentence in the section and adding a sentence, to read as follows:

§ 137.195 Crushed wheat.

* * * Crushed wheat contains not more than 15 percent of moisture as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 5th Ed. (1940), page 353 [Ed. note, 10th Ed. (1965), p. 327, sections 22.002, 22.003], under "Preparation of Sample—Official" and "Moisture I. Drying with Heat—Official," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

e. In § 137.200 by revising paragraph (c)(1) and revising the first sentence and adding a sentence after the revised sentence in paragraph (c)(2), to read as follows:

§ 137.200 Whole wheat flour.

* * * * *

(c) * * *

(1) Moisture is determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 5th Ed. (1940), page 211, under "Vacuum Oven Method—Official" [Ed. note, 10th Ed. (1965), p. 191, sections 13.002, 13.005], which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) The method referred to in paragraph (a) of this section is as follows: Use No. 8 and No. 20 sieves, having standard 8-inch full height frames, complying with the specifications for wire cloth and sieve frames in "Standard Specifications for Sieves," published March 1, 1940, in L.C. 548 of the U.S. Department of Commerce, National Bureau of Standards, which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

f. In § 137.211 by revising the first sentence and adding a sentence after the revised sentence in paragraph (b)(2), to read as follows:

§ 137.211 White corn flour.

* * * * *

(b) * * *

(2) The method referred to in paragraph (a) of this section is as follows: Weigh 5 grams of sample into a tared truncated metal cone (top diameter 5 centimeters, bottom diameter 2 centimeters, height 4 centimeters), fitted at bottom with 70-mesh wire cloth complying with the specifications for No. 70 wire cloth in "Standard

Specifications for Sieves," published March 1, 1940, in L.C. 584 of the U.S. Department of Commerce, National Bureau of Standards, which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington DC 20408. * * *

g. In § 137.230 by revising the first sentence and adding a sentence after the revised sentence in paragraph (b)(2), to read as follows:

§ 137.230 Corn grits.

* * * * *

(b) * * *

(2) The method referred to in paragraph (a) of this section is as follows: Use No. 10 and No. 25 sieves, having standard 8-inch diameter full-height frames, complying with the specifications for wire cloth and sieve frames in "Standard Specifications for Sieves," published March 1, 1940, in L.C. 584 of the U.S. Department of Commerce, National Bureau of Standards, which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

h. In § 137.250 by revising paragraph (b)(1) and by revising the first sentence and adding a sentence after the revised sentence in paragraph (b)(2), to read as follows:

§ 137.250 White corn meal.

* * * * *

(b) * * *

(1) For the purposes of this section moisture is determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 6th Ed., p. 259, sections 20.70 and 20.71, which is incorporated by reference [Ed. note, 10th Ed. (1965), p. 202, sections 13.058, 13.059]; fat is determined by the method prescribed on pages 259 and 260, sections 20.70 and 20.73 [Ed. note, 10th Ed. (1965), p. 202, sections 13.058, 13.063]; and crude fiber determined by the method prescribed on pages 259 and 260, sections 20.70 and 20.74 [Ed. note, 10th Ed. (1965), p. 202, sections 13.058, 13.061]. Copies of the material incorporated by reference are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) The method referred to in paragraph (a) of this section is as follows: Use No. 12 and No. 25 sieves, having standard 8-inch diameter, full-height frames, complying with the specifications for wire cloth and sieve frames in "Standard Specifications for Sieves," published March 1, 1940, in L.C. 584 of the U.S. Department of Commerce, National Bureau of Standards, which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

i. In § 137.270 by revising the introductory test of paragraph (b), to read as follows:

§ 137.270 Self-rising white corn meal.

* * * * *

(b) The method referred to in paragraph (a) of this section is the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 6th Ed., beginning on page 208 [Ed. note, 10th Ed. (1965), p. 119, sections 7.002, 7.003], under "Gasometric Method (2) with Chittick's Apparatus—Official," which is incorporated by reference (copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), except that the following procedure is substituted for the procedure specified therein under "17.6—Determination":

* * * * *

j. In § 137.300 by revising the first sentence and adding a sentence after the revised sentence in paragraph (b)(2), to read as follows:

§ 137.300 Farina.

* * * * *

(b) * * *

(2) The method referred to in paragraph (a) of this section is as follows: Use No. 20 and No. 100 sieves, having standard 8-inch full-height frames, complying with the specifications for wire cloth and sieve frames in "Standard Specifications for Sieves," published March 1, 1940, in L.C. 584 of the U.S. Department of Commerce, National Bureau of Standards, which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.* * *

k. In § 137.350 by revising the thirteenth sentence and adding a sentence after the revised sentence in paragraph (e), to read as follows:

§ 137.350 Enriched rice.

* * * * *

(e) * * * Dilute an aliquot of filtrate with 0.1 *N* hydrochloric acid, so that each milliliter contains about 0.2 microgram of thiamine, and determine thiamine by the method entitled "Rapid Fluorometric Method—Official," beginning with section 38.32 of the book "Official Methods of Analysis of the Association of Official Agricultural Chemists," 8th Ed. (1955) [Ed. note, 10th Ed. (1965), p. 761, section 39.028], which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.* * *

* * * * *

PART 139—MACARONI AND NOODLE PRODUCTS

11. Part 139 is amended:

a. In § 139.110 by revising paragraph (a)(5), to read as follows:

§ 139.110 Macaroni products.

(a) * * *

(5) Gum gluten, in such quantity that the protein content of the finished food is not more than 13 percent by weight. The finished macaroni product contains not less than 87 percent of total solids as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 5th Ed. (1940), page 235 [Ed. note, 10th Ed. (1965), p. 209, section 13.115], under "Vacuum Oven Method—Official," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 139.117 by revising the introductory text of paragraph (a)(2), to read as follows:

§ 139.117 Enriched macaroni products with fortified protein.

(a) * * *

(2) Each such finished food, when tested by the methods described in the cited sections of the book "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference (copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), meets the following specifications:

* * * * *

c. In § 139.150 by revising paragraph (a)(4), to read as follows:

§ 139.150 Noodle products.

(a) * * *

(4) Concentrated glyceryl monostearate (containing not less than 90 percent monoester) in a quantity not exceeding 3 percent by weight of the finished food. The finished noodle product contains not less than 87 percent of total solids as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 5th Ed. (1940), page 235 [Ed. note, 10th Ed. (1965), p. 209, section 13.115], under "Vacuum Oven Method—Official," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. The total solids of noodle products contains not less than 5.5 percent by weight of the solids of egg, or egg yolk.

* * * * *

PART 145—CANNED FRUITS

12. Part 145 is amended:

a. In § 145.3 by removing the footnote, revising paragraph (m), and revising the third sentence and adding a sentence after the revised sentence in paragraph (n), to read as follows:

§ 145.3 Definitions.

* * * * *

(m) The procedure for determining the densities of the packing media means the following: The density of the packing medium, when measured 15 days or more after packing, or the density of the blended homogenized slurry of the comminuted entire contents of the container, when measured less than 15 days after canning, is determined according to "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), p. 526, which is incorporated by reference, section 31.011 (Solids) "By Means of the Refractometer—Official Final Action" (and 47.012 and 47.015) with result expressed as percent by weight of sucrose (degrees Brix) with correction for temperature to the equivalent at 20° C, but without correction for invert sugar or other substances. Copies of the material incorporated by reference are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(n) The bottom of the sieve is woven-wire cloth which complies with the specifications for the No. 8 sieve set forth in the "Definitions of Terms and Explanatory Notes," p. xviii, of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (m) of this section. * * *

* * * * *

b. In § 145.110 by removing the footnote and revising the last sentence and adding a sentence after the revised sentence in paragraph (a)(1), to read as follows:

§ 145.110 Canned applesauce.

(a) * * * (1) * * * The soluble solids content, measured by refractometer and expressed as percent sucrose (degrees Brix) with correction for temperature to the equivalent at 20° C (68° F), is not less than 9 percent (exclusive of the solids of any added optional nutritive carbohydrate sweeteners) as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), page 371, section 22.109, "Soluble Solids (by Refractometer) in Fresh and Canned Fruits, Jams, Marmalades, and Preserves—Official First Action," which is incorporated by reference, but without correction for invert sugar or other substances. Copies of the material incorporated by reference are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 145.125 by revising the third sentence and adding a sentence after the revised sentence in paragraph (b)(2)(ii), to read as follows:

§ 145.125 Canned cherries.

* * * * *

(b) * * *

(2) * * *

(ii) * * * The bottom of the sieve is No. 8 woven-wire cloth which complies with the specifications for such cloth set forth on page 3 of "Standard Specifications for Sieves," published October 25, 1938, by U.S. Department of Commerce, National Bureau of Standards, which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

d. In § 145.135 by revising the first sentence and adding a sentence after the revised sentence in paragraph (b)(1)(i) and revising the fourth sentence and adding a sentence after the revised sentence in paragraph (c)(1), to read as follows:

§ 145.135 Canned fruit cocktail.

* * * * *

(b) * * *

(1) * * *

(i) Not more than 20 percent by weight of the units in the container of peach or pear, or of pineapple if the units thereof are diced, are more than ¾ inch in greatest edge dimension, or pass through the meshes of a sieve designated as 5/16 inch in Table I of "Standard Specifications for Sieves," published March 1, 1940, in L.C. 584 of the National Bureau of Standards, U.S. Department of Commerce, which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

(c) * * *

(1) * * * The bottom of the sieve is woven-wire cloth which complies with the specifications for such cloth set forth under "2380 Micron (No. 8)" in Table I of "Standard Specifications for Sieves,"

published March 1, 1940, in L.C. 584 of the National Bureau of Standards, U.S. Department of Commerce, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (b)(1)(i) of this section. * * *

* * * * *

e. In § 145.145 by removing the footnotes, revising the introductory text of paragraph (a)(3)(iii), and revising the third sentence and adding a sentence after the revised sentence in paragraph (c)(2), to read as follows:

§ 145.145 Canned grapefruit.

(a) * * *

(3) * * *

(iii) The respective densities of packing media in paragraph (a)(3)(i)(*d*) to (*i*) of this section as measured on the refractometer, expressed as percent by weight sucrose (degrees Brix) with correction for temperature to the equivalent at 20° C (68° F), 15 days or more after the grapefruit are canned or the blended homogenized slurry of the comminuted entire contents of the container if canned for less than 15 days, according to the "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), page 526, section 31.011 (Solids) "By Means of Refractometer—Official Final Action" (and 47.012 and 47.015), which is incorporated by reference (copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), without correction for invert sugar or other substances, are as follows:

* * * * *

(c) * * *

(2) * * * The bottom of the sieve is woven-wire cloth which complies with the specifications for the No. 8 sieve set forth in the "Definitions of Terms and Explanatory Notes," page xviii, of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a)(3)(iii) of this section. * * *

* * * * *

PART 146—CANNED FRUIT JUICES

13. Part 146 is amended:

a. In § 146.113 by revising the third sentence and adding a sentence after the revised sentence in paragraph (a) and revising the seventh sentence and adding a sentence after the revised sentence in paragraph (b)(3), to read as follows:

§ 146.113 Canned fruit nectars.

(a) * * * The consistency of the finished product is such that the time of flow is not less than 30 seconds when tested by the method set forth in "Consistency Measurement of Fruit Nectars and Fruit Juice Products," published in the "Journal of the Association of Official Agricultural Chemists," p. 411, Vol. 42 (1959), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

(b) * * *

(3) * * * The weight of any fruit ingredient shall be determined as follows: Determine the percent of soluble solids in such fruit ingredient by the method prescribed in section 29.011 of "Official Methods of Analysis of the Association of Official Agricultural Chemists," 10th Ed. (1965), page 487, under "Solids," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

b. In § 146.114 by removing the footnote and revising the fifth sentence and adding a sentence after the revised sentence in paragraph (a)(1), to read as follows:

§ 146.114 Lemon juice.

(a) * * * (1) * * * When prepared from concentrated lemon juice, the finished food contains not less than 6 percent, by weight, of soluble solids taken as the refractometric sucrose value (of the filtrate), corrected to 20° C, but uncorrected for acidity, in accordance with the "International Scale of Refractive Indices of Sucrose Solutions" in table 52.012 of "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), which is incorporated by reference, and has a titratable acidity content of not less than 4.5 percent, by weight, calculated as anhydrous citrus acid. Copies of the material incorporated by reference are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

c. In § 146.120 by removing the footnote and revising the second sentence and adding a sentence after the revised sentence in paragraph (a), to read as follows:

§ 146.120 Frozen concentrate for lemonade.

(a) * * * The product contains not less than 48.0 percent by weight of soluble solids taken as the sucrose value determined by refractometer and corrected for acidity as given in "Correction of Refractometer Sucrose Readings for Citric Acid Content in Frozen Concentrate for Lemonade," by Yeatman, Senzel, and Springer, "Journal of the Association of Analytical Chemists," Vol. 59, page 368 (1976), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

d. In § 146.132 by removing the footnote and revising the seventh sentence and adding a sentence after the revised sentence in paragraph (a)(1), to read as follows:

§ 146.132 Grapefruit juice.

(a) * * * (1) * * * When prepared from concentrated grapefruit juice, exclusive of added sweeteners, the finished food contains not less than 9 percent, by weight, of soluble solids taken as the refractometric sucrose value (of the filtrate), corrected to 20° C, and corrected for acidity by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 22.025, "Frozen Concentrate for Lemonade (12)," under the heading "Soluble Solids by Refractometer—Official First Action," which is incorporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

e. In § 146.185 by revising paragraph (b)(2)(i), to read as follows:

§ 146.185 Canned pineapple juice.

* * * * *

(b) * * *

(2) * * *

(i) Determine the degrees Brix of the canned pineapple juice by the method prescribed in "Official Methods of Analysis of the Association of Official Agricultural Chemists," "Solids By Means of Spindle—Official" [Ed. note, 10th Ed. (1965), p. 486, section 29.009], which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 150—FRUIT BUTTERS, JELLIES, PRESERVES, AND RELATED PRODUCTS

14. Part 150 is amended:

a. In § 150.110 by revising paragraph (d) (3) and (5), to read as follows:

§ 150.110 Fruit butter.

* * * * *

(d) * * *

(3) The soluble solids content of the finished fruit butter is not less than 43 percent, as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), page 397, section 22.024, under "Soluble Solids (by Refractometer) in Fresh and Canned Fruits, Fruit Jellies, Marmalades, and Preserves—Official First Action," which is incorporated by reference, except that no correction is made for water-insoluble solids. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(5) The weight of fruit juice or diluted fruit juice or concentrated fruit juice (optional ingredient, paragraph (c)(6)) from a fruit specified in paragraph (b)(1) of this section is the weight of such juice, as determined by the method prescribed in paragraph (d)(2) of this section, except that the percent of soluble solids is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), page 566, section 31.011, under "Solids by Means of Refractometer—Official Final Action," which is incorporated by reference; the weight of diluted concentrated juice from any other fruit is the original weight of the juice before it was diluted or concentrated. The availability of this incorporation by reference is given in paragraph (d)(3) of this section.

* * * * *

b. In § 150.140 by removing the footnote and revising paragraph (d)(3), to read as follows:

§ 150.140 Fruit jelly.

* * * * *

(d) * * *

(3) The soluble-solids content of the finished jelly is not less than 65 percent, as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), page 526, section 31.001, "Solids by Means of Refractometer—Official Final Action," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 150.160 by removing the footnote and revising paragraph (d)(5), to read as follows:

§ 150.160 Fruit preserves and jams.

* * * * *

(d) * * *

(5) The soluble-solids content of the finished jam or preserve is not less than 65 percent, as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), page 371, section 22.019, "Soluble Solids (By Refractometer) in Fresh and Canned Fruits, Jams, Marmalades, and Preserves—Official First Action," which is incorporated by reference, except that no correction is made for water-insoluble solids. Copies of the material incorporated by reference are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 155—CANNED VEGETABLES

15. Part 155 is amended:

a. In § 155.3 by removing the footnote and revising paragraph (a), to read as follows:

§ 155.3 Definitions.

* * * * *

(a) The procedure for determining drained weight is set forth in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), sections 32.001–32.003, which is incorporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 155.120 by removing the footnote and revising the fourth sentence and adding a sentence after the revised sentence in paragraph (b)(2)(i), to read as follows:

§ 155.120 Canned green beans and canned wax beans.

* * * * *

(b) * * *

(2) * * *

(i) * * * The bottom of the sieve is woven-wire cloth that complies with the specifications for such cloth set forth in the "Definitions of Terms and Explanatory Notes," page xviii, of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

c. In § 155.130 by removing the footnote, revising the fourth sentence and adding a sentence after the revised sentence in paragraph (b)(2)(i), and revising paragraph (c)(1)(ii), to read as follows:

§ 155.130 Canned corn.

* * * * *

(b) * * *

(2) * * *

(i) * * * The bottom of the sieve is woven-wire cloth which complies with the specifications for such sieve set forth in the "Definitions of Terms and Explanatory Notes," page xviii, of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or

available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

(c) * * *

(1) * * *

(ii) In whole kernal corn, the drained weight of the corn ingredient, as determined by sections 32.001 and 32.002, "Canned Products—Drained Weight—Procedure," in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), page 559, which is incorporated by reference, shall not be less than 61 percent of the water capacity of the container. The availability of the incorporation by reference is given in paragraph (b)(2)(i) of this section.

* * * * *

d. In § 155.170 by removing the footnote and revising paragraph (b)(1)(vi), to read as follows:

§ 155.170 Canned peas.

* * * * *

(b) * * *

(1) * * *

(vi) *Alcohol-insoluble solids.* The alcohol-insoluble solids of smooth-skin or substantially smooth-skin peas, such as Alaska-type peas or hybrids having similar characteristics, may not be more than 23.5 percent and, of sweet green wrinkled varieties or hybrid having similar characteristics, not more than 21 percent based on the procedure set forth in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 30.012, which is incorporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

e. In § 155.191 by removing the footnote and revising the third sentence and adding two sentences after the revised sentence in paragraph (a)(7), to read as follows:

§ 155.191 Tomato paste.

(a) * * *

(7) * * * It contains not less than 24.0 percent of natural tomato soluble solids as determined by the following method set forth in "Collaborative Study of the Determination of Soluble Solids in Tomato Products by Refractive Index Expressed as Percent Sucrose" by Frank C. Lamb, National Canners Association, 1950 Sixth St., Berkeley, CA 94710, "Journal of the Association of Official Analytical Chemists," Vol. 52, No. 5 (1969), pages 1050–1054. Adopted as Official—First Action at the 1969 AOAC meeting: Determine the refractive index of the clear serum obtained from the product, corrected for temperature, converting the resultant index to "% Sucrose" in accordance with the "International Scale of Refractive Indices of Sucrose at 20° C," pages 828–830, Reference Tables 43.008 and 43.009 of the Book "Official Methods of Analysis of the Association of Official Agricultural Chemists," 10th Ed. (1965). The works cited are incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

f. In § 155.192 by removing the footnote and revising the seventh sentence and adding two sentences after the revised sentence in paragraph (a)(4), to read as follows:

§ 155.192 Tomato puree.

(a) * * *

(4) * * * It contains not less than 8.0 percent, but less than 24.0 percent, of natural tomato soluble solids, as determined by the following method set forth in "Collaborative Study of the Determination of Soluble Solids in Tomato Products by Refractive Index Expressed as Percent Sucrose" by Frank C. Lamb, National Canners Association, 1950 Sixth St., Berkeley, CA 94710, "Journal of the Association of Official Analytical Chemists," Vol. 52, No. 5 (1969), pages 1050–1054. Adopted as Official—First Action at the 1969 AOAC meeting: Determine the refractive index of the clear serum obtained from the product, corrected for temperature, converting the resultant index to "% Sucrose" in accordance with the "International Scale of Refractive Indices of Sucrose at 20° C," pages 931–933, 935. Reference Tables 47.012, 47.013, and 47.015 of the book "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970). The works cited are incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

g. In § 155.201 by revising the third sentence and adding a sentence after the revised sentence in paragraph (c)(4), to read as follows:

§ 155.201 Canned mushrooms.

* * * * *

(c) * * *

(4) * * * The bottom of the sieve is woven-wire cloth which complies with the specifications for such cloth set forth under "2380 Micron (No. 8)" in Table I of "Standard Specifications for Sieves," published March 1, 1940, in L.C. 584 of the U.S. Department of Commerce, National Bureau of Standards, which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

PART 160—EGGS AND EGG PRODUCTS

16. Part 160 is amended in § 160.180 by revising the first sentence and adding a sentence after the revised sentence, to read as follows:

§ 160.180 Egg yolks.

Egg yolks, liquid egg yolks, yolks, liquid yolks are yolks of eggs of the domestic hen, so separated from the whites thereof as to contain not less than 43 percent total egg solids, as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Agricultural Chemists," 10th Ed. (1965), page 257, sections 16.002 and 16.003, under "Total Solids," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

PART 161—FISH AND SHELLFISH

17. Part 161 is amended:

a. In § 161.145 by revising the fourth sentence and adding a sentence after the revised sentence in paragraph (c)(3), to read as follows:

§ 161.145 Canned oysters.

* * * * *

(c) * * *

(3) * * * The bottom of the sieve is woven-wire cloth which complies with the specifications for such cloth set forth under "2380 Micron (No. 8)" in Table I of "Standard Specifications for Sieves,"

published March 1, 1940, in L.C. 584 of the U.S. Department of Commerce, National Bureau of Standards, which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

b. In § 161.173 by removing the footnote and revising the sixth sentence and adding a sentence after the revised sentence in paragraph (c)(1), to read as follows:

§ 161.173 Canned wet pack shrimp in transparent or nontransparent containers.

* * * * *

(c) * * *

(1) * * * The bottom of the sieve is woven-wire cloth that complies with the specification for such cloth set forth as a 2.36-millimeter (No. 8) sieve in the "Definitions of Terms and Explanatory Notes," page xvi of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

c. In § 161.175 by removing the footnote and revising paragraph (g)(1)(v), to read as follows:

§ 161.175 Frozen raw breaded shrimp.

* * * * *

(g) * * *

(1) * * *

(v) U.S. Standard Sieve No. 20, 12 inch diameter. The sieves shall comply with the specifications for wire cloth and sieve frames in "Standard Specifications for Sieves," published March 1, 1940, in L.C. 584 of the U.S. Department of Commerce, National Bureau of Standards, which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

d. In § 161.190 by revising paragraph (a)(2), revising the second sentence and adding a sentence after the revised sentence in paragraph (a)(7), revising paragraph (a)(7)(iii), and revising the second sentence and adding a new sentence after the revised sentence in paragraph (c)(3)(iv), to read as follows:

§ 161.190 Canned tuna.

(a) * * *

(2) The fish included in the class known as tuna fish are:

Thunnus thynnus—Bluefin tuna [1]
Thunnus maccoyii—Southern bluefin tuna [1]
Thunnus orientalis—Oriental tuna [2]
Thunnus germo—Albacore
Thunnus atlanticus—Blackfin tuna [5]
Parathunnus mebachi—Big-eyed tuna [3]
Neothunnus macropterus—Yellowfin tuna [3]
Neothunnus rarus—Northern bluefin tuna [1]
Katsuwonus pelamis—Skipjack [1]
Euthynnus alleteratus—Little tunny [2]
Euthynnus lineatus—Little tunny [2]
Euthynnus yaito—Kawakawa [4]

The description of each species will be found in the text to which reference is made. All of these materials are incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(7) * * * Pass the combined portions through a sieve fitted with woven-wire cloth of ¼-inch mesh which complies with the specifications for such wire cloth set forth in "Standard Specifications for Sieves," published March 1, 1940, in L.C. 584 of the U.S. Department of Commerce, National Bureau of Standards, which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

[1] "A Comparison of the Bluefin Tunas, Geneus Thunnus, from New England, Australia, and California," by H. C. Godsil and Edwin K. Holmberg, State of California, Department of Natural Resources, Division of Fish and Game, Bureau of Marine Fisheries, Fish Bulletin No. 77 (1950).

[2] "Contributions to the Comparative Study of the So-called Scombroid Fishes," by Kamakichi Kishinouye, Journal of the College of Agriculture, Imperial University of Tokyo, Vol. VIII, No. 3 (1923).

[3] "A Systematic Study of the Pacific Tunas," by H. C. Godsil and Robert D. Byers, State of California, Department of Natural Resources, Division of Fish and Game, Bureau of Marine Fisheries, Fish Bulletin No. 60 (1944).

[4] "Descriptive Study of Certain Tuna-Like Fishes," by H. C. Godsil, State of California, Department of Fish and Game, Fish Bulletin No. 97.

[5] "Comparative Anatomy and Systematics of the Tunas, Genus Thunnus," by Robrt H. Gibbs, Jr. and Bruce B. Collette, Division of Fisheries, U.S. National Museum and Bureau of Commercial Fisheries, Fish and Wildlife Service, U.S. Department of the Interior, Fishery Bulletin Vol. 66, No. 1 (1967), pp. 65–130.

(iii) The standards with which comparisons are made are essentially neutral matte-finish standards, equivalent in luminous reflectance of light of 555μ wavelength to 33.7 percent of the luminous reflectance of magnesium oxide (for Munsell value 6.3) and 22.6 percent of the luminous reflectance of magnesium oxide (for Munsell value 5.3), as given by the relationship between Munsell value and luminous reflectance derived by a subcommittee of the Optical Society of America and published in the "Journal of the Optical Society of America," Vol. 33, page 406 (1943), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. N.W., Washington, DC 20408.

* * * * *

(c) * * *

(3) * * *

(iv) * * * The mesh in the top sieve complies with the specifications for 1½-inch woven-wire cloth as set forth in "Standard Specifications for Sieves," published March 1, 1940, in L.C. 584 of the U.S. Department of Commerce, National Bureau of Standards, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a)(7) of this section. * * *

* * * * *

PART 163—CACAO PRODUCTS

18. Part 163 is amended:

a. In § 163.110 by revising the last sentence and adding a sentence in paragraph (a), to read as follows:

§ 163.110 Cacao nibs.

(a) * * * The cacao shell content of cacao nibs is not more than 1.75 percent by weight (calculated to an alkali-free basis if they or the cacao beans from which they were prepared have been processed with alkali), as determined by the method prescribed under "Shell in Cacao Nibs—Tentative" beginning on page 208 [Ed. note, 10th Ed. (1965), p. 180, sections 12.009–12.013] of "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 5th Ed. (1940), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 163.111 by revising the last sentence and adding a sentence in paragraph (a)(5), to read as follows:

§ 163.111 Chocolate liquor.

(a) * * *

(5) * * * Unless the chocolate liquor is seasoned with butter, milk fat, or ground nut meats, the percentage of cacao fat is determined by the method prescribed under "Fat Method I—Official" beginning on page 202 [Ed. note, 10th Ed. (1965), p. 184, section 12.022] of "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 5th Ed. (1940), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 163.112 by revising the last sentence and adding a sentence in paragraph (a)(4), to read as follows:

§ 163.112 Breakfast cocoa.

(a) * * *

(4) * * * The finished breakfast cocoa contains not less than 22 percent of cacao fat, as determined by the method prescribed under "Fat Method I—Official" beginning on page 202 [Ed. note, 10th Ed. (1965), p. 184, section 12.022] of "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," 5th Ed. (1940), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 164—TREE NUT AND PEANUT PRODUCTS

19. Part 164 is amended in § 164.150 by revising the last sentence and adding a sentence in paragraph (a), to read as follows:

§ 164.150 Peanut butter.

(a) * * * The fat content of the finished food shall not exceed 55 percent when determined as prescribed in section 25.004, "Crude Fat—Official, First Action," paragraph (a) "Direct method," in "Official Methods of Analysis of the Association of Official Agricultural Chemists," 10th Ed. (1965), page 412, which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 166—MARGARINE

20. Part 166 is amended in § 166.110 by removing the footnote and revising the first sentence and adding a sentence after the revised sentence in paragraph (a), to read as follows:

§ 166.110 Margarine.

(a) Magarine (or oleomargarine) is the food in plastic form or liquid emulsion, containing not less than 80 percent fat determined by the method prescribed under section 16.163, "Indirect Method," of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

PART 168—SWEETNERS AND TABLE SIRUPS

21. Part 168 is amended:

a. In § 168.111 by removing the footnote and revising the introductory text of paragraph (d), to read as follows:

§ 168.111 Dextrose monohydrate.

* * * * *

(d) For purposes of this section, the methods of analysis to be used to determine if the food meets the specifications of paragraph (b) (1) and (2) of this section are the following sections in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 168.120 by removing the footnote and revising the introductory text of paragraph (d), to read as follows:

§ 168.120 Glucose sirup.

* * * * *

(d) For purposes of this section, the methods of analysis to be used to determine if a food meets the specifications of paragraph (b) (1) and (2) of this section are the following sections in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 168.122 by removing the footnote and revising the introductory text of paragraph (d)(1), to read as follows:

§ 168.122 Lactose.

* * * * *

(d)(1) The methods of analysis to be used to determine whether the food meets the requirements of paragraph (b) (1), (2), and (3) of this section are the following sections in "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 169—FOOD DRESSINGS AND FLAVORINGS

22. Part 169 is amended in § 169.3 by revising the third sentence and adding a sentence after the revised sentence in paragraph (b), to read as follows:

§ 169.3 Definitions.

* * * * *

(b) * * * The moisture content of vanilla beans is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Agricultural Chemists," 9th Ed. (1960), sections 22.004 and 22.005 [Ed. note, 10th Ed. (1965), p. 327, sections 22.004, 22.005], which is incorporated by reference, except that the toluene used is blended with 20 percent by volume of benzene and the total distillation time is 4 hours. Copies of the material incorporated by reference are available

from the Division of Food Technology, Bureau of Foods (HFF-210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

The agency has determined that because these amendments do not make any substantive changes in the regulations but merely are editorial, bringing the incorporation by reference text into compliance with the drafting requirements of 1 CFR 51.6, 51.7, and 51.8, notice, public procedure, and delayed effective date are unnecessary. However, interested persons may, on or before April 19, 1982 submit to the Dockets Management Branch (address above), written comments regarding these amendments. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

If the agency determines by the comments received that the amended text should be modified, a notice containing those modifications will be published in the **Federal Register.** Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 26, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-7232 Filed 3-18-82; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Parts 170, 172, 173, 175, 176, 177, 178, 179, 180, 181, 184, 186, and 189

[Docket No. 81N-0266]

Incorporation by Reference Regulatory Text

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the incorporating regulatory text in Title 21 of the Code of Federal Regulations, Parts 170-189, to make clear that an incorporation by reference is intended. This action is being taken to meet drafting requirements for incorporation by reference as set forth in Title I of the Code of Federal Regulations (1 CFR Part 51).

DATES: Effective March 19, 1982; written comments by April 19, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Title 1 of the Code of Federal Regulations (1 CFR 51.6, 51.7, and 51.8) requires, in addition to other information, specific language that makes clear that an incorporation by reference is intended.

FDA has reviewed all of its regulations that include materials incorporated by reference. The agency has concluded that it is necessary to amend a number of these regulations to bring them into compliance with the drafting requirements prescribed in 21 CFR 51.6, 51.7, and 51.8.

This notice amends Parts 170, 172, 173, 175, 176, 177, 178, 179, 180, 181, 184, 186, and 189 to include language that: clearly indicates that an incorporation by reference is intended; contains a complete citation of the material incorporated; and contains a statement about the availability of the incorporated material. These amendments ensure compliance with the essential requirements specified in Title 1.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Title 21 of the Code of Federal Regulations is amended as follows:

PART 170—FOOD ADDITIVES

1. Part 170 is amended in § 170.3 in the introductory tests of paragraphs (n) and (o) by revising the second sentence and adding a new sentence to read as follows:

§ 170.3 Definitions.

* * * * *

(n) * * * Individual food products will be included within these categories according to the detailed classifications lists contained in Exhibit 33B of the report of the National Academy of Sciences/National Research Council report, "A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe" (September 1972), which is incorporated by reference. Copies are available from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22151, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408:

* * * * *

(o) * * * They are adopted from the National Academy of Sciences/National Research Council national survey of food industries, reported to the Food and Drug Administration under the contract title "A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe" (September 1972), which is incorporated by reference. Copies are available from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22151, or available for inspection at the Office of the Federal Register, 1100 L St., NW., Washington, D.C. 20408:

* * * * *

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

2. Part 172 is amended as follows:

a. In § 172.215 by revising paragraph (b)(1) to read as follows:

§ 172.215 Coumarone-indene resin.

* * * * *

(b) * * *

(1) Soft point, ring and ball: 126° C minimum as determined by ASTM method E28-51T, "Tentative Method of Test for Softening Point by Ring and Ball Apparatus" (Revised 1951), which is incorporated by reference. Copies are available from University Microfilm International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

* * * * *

b. In § 172.250 by amending paragraph (b)(3) by revising footnote 1 under "APPARATUS" and by revising under "PROCEDURE" the paragraphs headed *"Determination of boiling-point range"* and *"Determination of nonvolatile residue,"* to read as follows:

§ 172.250 Petroleum naphtha.

* * * * *

(b) * * *

(3) * * *

[1] As determined by procedure using potassium chromate for reference standard and described in National Bureau of Standards Circular 484, Spectrophotometry, U.S. Department of Commerce, (1949). The accuracy is to be determined by comparison with the standard values at 290, 345, and 400 millimicrons. The procedure is incorporated by reference. Copies of the material incorporated by reference are available from the Division of Food and Color Additives,

Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal register, 1100 L St. NW., Washington, DC 20408.

Determination of boiling-point range. Use ASTM method D86-67, "Standard Method of Test for Distillation of Petroleum Products" (Revised 1962), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

Determination of nonvolatile residue. For hydrocarbons boiling below 250° F, determine the nonvolatile residue by ASTM method D1353-64, "Standard Method of Test for Nonvolatile Matter in Volatile Solvents for Use in Paint, Varnish, Lacquer, and Related Products" (Revised 1964); for those boiling above 250° F, use ASTM method D381, "Standard Method of Test for Existent Gum in Fuels by Jet Evaporation" (Revised 1965), which methods are incorporated by reference. Copies of the material incorporated by reference are available from the University Microfilms International, 300 N Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 172.320 by revising the introductory text of paragraph (b) (1) and (2), the last portion of paragraph (c)(1) beginning with "recommended by"; and the first sentence of paragraph (d) and by adding a new sentence immediately thereafter to read as follows:

§ 172.320 Amino acids.

* * * * *

(b) * * *

(1) As found in "Food Chemicals Codex," National Academy of Sciences-National Research Council (NAS-NRC), 2d Ed. (1972), which is incorporated by reference (copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408) for the following:

* * * * *

(2) As found in "Specifications and Criteria for Biochemical Compounds," NAS/NRC Publication, 3rd Ed. (1972), which is incorporated by reference (copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408) for the following:

* * * * *

(c) * * *

(1) * * * recommended by the National Academy of Sciences in "Recommended Dietary Allowances," NAS Publication No. 1694, 7th Ed. (1968), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(d) Compliance with the limitations concerning PER under paragraph (c) of this section shall be determined by the method described in secs. 39.166-39.170, "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

d. In § 172.372(d) by revising the first sentence and by adding a new sentence immediately thereafter to read as follows:

§ 172.372 N-Acetyl-L-methionine.

* * * * *

(d) Compliance with the limitations concerning PER under paragraph (c) of this section shall be determined by the method described in secs. 43.183-43.187, "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

e. In § 172.385(c) (1), (2), and (3) by adding a new sentence at the end of each to read as follows:

§ 172.385 Whole fish protein concentrate.

* * * * *

(c) * * *

(1) * * * The 10th Edition is incorporated by reference, and copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) * * * See paragraph (c)(1) of this section for availability of the material incorporated by reference.

(3) * * * See paragraph (c)(1) of this section for availability of the material incorporated by reference.

* * * * *

§ 172.510 [Amended]

f. In § 172.510 *Natural flavoring substances and natural substances used in conjunction with flavors,* paragraph (b) is amended by revising footnote 1 at the end of the paragraph, to read as follows:

[1] As determined by using the method (or, in other than alcoholic beverages, a suitable adaptation thereof) in sec. 9.091 of the "Official Methods of Analysis of the Association of Official Agricultural Chemists," 10th Ed. (1965), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

g. In § 172.615, paragraph (a) is amended in the table by revising the entry for "Paraffin," to read as follows:

§ 172.615 Chewing gum base.

* * * * *

(a) * * *

Masticatory Substances

Natural (Coagulated or Concentrated Latices) of Vegetable Origin

* * * * *

Synthetic	Specifications
* * *	* * * * *
Paraffin * * *.....	Synthesized by Fischer-Tropsch process from carbon monoxide and hydrogen which are catalytically converted to a mixture of paraffin hydrocarbon. Lower molecular weight fractions are removed by distillation. The residue is hydrogenated and further treated by percolation through activated charcoal. The product has a congealing point of 200°-210° F as determined by ASTM method D938-49—Congealing Point of Pharmaceutical Petrolatums, ASTM method D721-56T—Tentative Method of Test for Oil Content of Petroleum Waxes and ASTM method E131-61T—Definition of Terms and Symbols Relating to Absorption-Spectroscopy (Revised 1961), which are incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.
* * *	* * * * *

* * * * *

h. In § 172.804(b)(2) by revising that portion of the first sentence beginning with "in accordance" and adding after it a new sentence to read as follows:

§ 172.804 Aspartame.

* * * * *

(b) * * *

(2) * * * in accordance with the test for optical rotation described in the "Food Chemicals Codex," 2d Ed. (1972), page 939, which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

i. In § 172.810, the introductory text is revised to read as follows:

§ 172.810 Dioctyl sodium sulfosuccinate.

The food additive dioctyl sodium sulfosuccinate, which meets the specifications of the Food Chemicals Codex, 2d Ed. (1972), under "Dioctyl sodium sulfosuccinate," which is incorporated by reference (copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408) may be safely used in food in accordance with the following prescribed conditions:

* * * * *

j. In § 172.812 by revising paragraph (a) to read as follows:

§ 172.812 Glycine.

* * * * *

(a) The additive complies with the specifications for "Glycine" prescribed in "Food Chemicals Codex," 2d Ed. (1972), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St., NW., Washington, DC 20408.

* * * * *

k. In § 172.846 paragraph (b) is revised to read as follows:

§ 172.846 Sodium stearoyl lactylate.

* * * * *

(b) The additive meets the specifications under "Sodium stearoyl-2-lactylate" of the "Food Chemicals Codex," 2d Ed. (1972) which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

l. In § 172.860, paragraphs (c) (1), (2), and (3) are revised to read as follows:

§ 172.860 Fatty acids.

* * * * *

(c) * * *

(1) Unsaponifiable matter shall be determined by the method described in the 13th Ed. (1980) of the "Official Methods of Analysis of the Association of Official Analytical Chemists," which is incorporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) Chick-edema factor shall be determined by the bioassay method described in "Official Methods of Analysis of the Association of Official Analytical Chemists," 10th Ed. (1965), secs. 26.087 through 26.091, which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(3) The gas chromatographic-electron capture method for testing fatty acids for chick-edema shall be the method described in the "Journal of the Association of Official Analytical Chemists," Volume 50 (No. 1), pages 216-218 (1967), or the modified method using a sulfuric acid clean-up procedure, as described in the "Journal of the Association of the Offical Analytical Chemists," Volume 51 (No. 2), pages 489-490 (1968), which are incorporated by reference. See paragraph (c)(2) of this section for availability of these references.

* * * * *

m. In § 172.862 by revising paragraph (b) (1) and (2) to read as follows:

§ 172.862 Oleic acid derived from tall oil fatty acids.

* * * * *

(b) The additive meets the following specifications:

(1) Specifications for oleic acid prescribed in the "Food Chemicals Codex," 2d Ed. (1972), which is incorporated by reference, except that titer (solidification point) shall not exceed 13.5° C and unsaponifiable matter shall not exceed 0.5 percent. Copies of the material incorporated by reference are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) The resin acid content does not exceed 0.01 as determined by ASTM Method D1240-54, "Standard Method of Test for Rosin Acids in Fatty Acids" (Revised 1961), which is incorporated by reference. Copies are available from University Microfilms International, 300 N Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

n. In § 172.864 by revising paragraph (b)(2) and by amending paragraph (b)(3) by revising footnote 1 under "APPARATUS," to read as follows:

§ 172.864 Synthetic fatty alcohols.

* * * * *

(b) * * *

(2) Use ASTM method D86-62, "Standard Method of Test for Distillation of Petroleum Products" (Revised 1962), which is incorporated by reference, to determine boiling point range. Copies of the material incorporated by reference are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

[1] As determined by using potassium chromate for reference standard and described in National Bureau of Standards Circular 484, Spectrophotometry, U.S. Department of Commerce, (1949). The accuracy is to be determined by comparison with the standard values at 290, 345, and 400 millimicrons. Circular 484 is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

o. In § 172.878 by revising paragraph (a)(3) to read as follows:

§ 172.878 White mineral oil.

* * * * *

(a) * * *

(3) It meets the specifications prescribed in the "Journal of the Association of Official Analytical Chemists," Volume 45, page 66 (1962), which is incorporated by reference, after correction of the ultraviolet absorbance for any absorbance due to added antioxidants. Copies of the material incorporated by reference are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

p. In § 172.882, paragraph (a) is revised to read as follows:

§ 172.882 Synthetic isoparaffinic petroleum hydrocarbons.

* * * * *

(a) They are produced by synthesis from petroleum gases and consist of a mixture of liquid hydrocarbons meeting the following specifications:

Boiling point 200°–500° F as determined by ASTM method D86–62, "Standard Method of Test for Distillation of Petroleum Products" (Revised 1962), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

Ultraviolet absorbance:
260–319 millimicrons—1.5 maximum.
320–329 millimicrons—0.08 maximum.
330–350 millimicrons—0.05 maximum.

Nonvolatile residual: 0.002 gram per 100 milliliters maximum.

Synthetic isoparaffinic petroleum hydrocarbons containing antioxidants shall meet the specified ultraviolet absorbance limits after correction for any absorbance due to the antioxidants. The ultraviolet absorbance shall be determined by the procedure described for application of mineral oil, disregarding the last sentence of the procedure, under "Specifications" on page 66 of the *Journal of the Association of Official Analytical Chemists,* Volume 45 (February 1962), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. For hydrocarbons boiling below 250° F, the nonvolatile residue shall be determined by ASTM method D1353–64, "Standard Method of Test for Nonvolatile Matter in Volatile Solvents for Use in Paint Varnish, Lacquer, and Related Products" (Revised 1964); for those boiling above 250° F, ASTM method D381–64, "Standard Method of Test for Existent Gum in Fuels by Jet Evaporation" (Revised 1965) shall be used. These methods are incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

q. In § 172.886(b) by revising footnote 1 under "Apparatus" to read as follows:

§ 172.886 Petroleum wax.

* * * * *

(b) * * *

[1] As determined by using potassium chromate for reference standard and described in National Bureau of Standards Circular 484, Spectrophotometry, U.S. Department of Commerce, (1949). The accuracy is to be determined by comparison with the standard values at 290, 345, and 400 millimicrons. Circular 484 is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

3. Part 173 is amended as follows:

a. In § 173.25, paragraph (a)(2) is revised to read as follows:

§ 173.25 Ion-exchange resins.

* * * * *

(a) * * *

(2) Sulfonated anthracite coal meeting the requirements of ASTM method D388–38, Class I, Group 2, "Standard Specifications for Classification of Coal by Rank," which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 173.160, paragraph (b)(2) and (d) are revised to read as follows:

§ 173.160 Candida guilliermondii.

* * * * *

(b) * * *

(2) The toxonomic characteristics of the reference culture strain ATCC No. 20474 agree in the essentials with the standard description for *Candida guilliermondii* variety *guilliermondii* listed in "The Yeasts—A Toxonomic Study;" 2d Ed. (1970), by Jacomina Lodder, which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(d) The additive is so used that the citric acid produced conforms to the specifications of the "Food Chemicals Codex," 2d Ed. (1972), under "Citric acid," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

c. In § 173.165 paragraph (b)(2) is revised and paragraph (d) is amended by revising the introduction text to read as follows:

§ 173.165 Candida lipolytica.

* * * * *

(b) * * *

(2) The taxonomic characteristics of the culture agree in essential with the standard description for *Candida lipolytica* variety *lipolytica* listed in "The Yeasts—A Toxonomic Study," 2d Ed. (1970), by Jacomina Lodder, which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(d) The additive is so used that the citric acid produced conforms to the specifications of the "Food Chemicals Codex," 2d Ed. (1972), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. The additive meets the following ultraviolet absorbance limits when subjected to the

analytical procedure described in this paragraph:

* * * * *

d. In § 173.280 by revising paragraph (c), to read as follows:

§ 173.280 Solvent extraction process for citric acid.

* * * * *

(c) The citric acid so produced meets the specifications of the "Food Chemicals Codex," 2d Ed. (1972) and supplements thereto, under "citric acid," which is incorporated by reference, (copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408) and the polynuclear aromatic hydrocarbon specifications of § 173.165.

* * * * *

e. In § 173.310(c) by revising the entry for "Sodium carboxymethylcellulose" to read as follows:

§ 173.310 Boiler water additives.

* * * * *

(c) * * *

Substances	Limitations
* * * * *	
Sodium carboxy-methylcellulose.	Contains not less than 95 percent sodium carboxymethylcellulose on a dry-weight basis, with maximum substitution of 0.9 carboxymethylcellulose groups per anhydroglucose unit, and with a minimum viscosity of 15 centipoises for 2 percent by weight aqueous solution at 25° C; by method prescribed in the "Food Chemicals Codex," 2d Ed. (1972), in the monograph for sodium carboxymethylcellulose, which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.
* * * * *	

* * * * *

f. In § 173.395 paragraph (d) is revised to read as follows:

§ 173.395 Trifluoromethane sulfonic acid.

* * * * *

(d) No residual catalyst may remain in the product at a detection limit of 0.2 part per million fluoride as determined by the method described in "Offical Methods of Analysis of the Association of Official Analytical Chemists," sec. 25.046, 12th Ed. (1975), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVE COATINGS AND COMPONENTS

4. Part 175 is amended as follows:

a. In § 175.250 by revising paragraph (b) (1), (2), and (3) to read as follows:

§ 175.250 Parrafin (synthetic).

* * * * *

(b) * * *

(1) *Congealing point.* The substance has a congealing point of not less than 200° F nor more than 210° F as determined by ASTM method D938-49, "Congealing Point of Pharmaceutical Petrolatums" (Adopted 1949), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St., NW., Washington, DC 20408.

(2) *Oil content.* The substance has an oil content not exceeding 0.5 percent as determined by ASTM method D721-56T, "Tentative Method of Test for Oil Content of Petroleum Waxes" (Revised 1956), which is incorporated by reference. See paragraph (b)(1) of this section for availability of the incorporation by reference.

(3) *Absorptivity.* The substance has an absorptivity at 290 millimicrons in decahydronaphthalene at 190° F not exceeding 0.01 as determined by ASTM method E131-61T, "Definition of Terms and Symbols Relating to Absorption-Spectroscopy" (Revised 1961), which is incorporated by reference. See paragraph (b)(1) of this section for availability of the incorporation by reference.

* * * * *

b. In § 175.270, the introductory text of paragraph (b) is revised, and paragraph (b)(5) is amended by revising the introductory text, to read as follows:

§ 175.270 Poly (vinyl fluoride) resins.

* * * * *

(b) The poly (vinyl fluoride) basic resins have an intrinsic viscosity of not less than 0.75 deciliter per gram as determined by ASTM method D1243-66, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers" (Revised 1966), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St., NW., Washington, DC 20408.

* * * * *

(5) Calculation: The calculation method used is that described in appendix A1.2.2 (ASTM Method D1243-66, "Standard Method of Test for Dilute Solutions Viscosity of Vinyl Chloride Polymers" (Revised 1966), which is incorporated by reference; see paragraph (b) of this section for availability of the incorporation by reference) with the reduced viscosity determined for three concentration levels not greater than 0.5 gram per deciliter and extrapolated to zero concentration for intrinsic viscosity. The following formula is used for determining reduced viscosity:

* * * * *

c. In § 175.300 by revising in paragraph (b)(3)(xix) that portion of item "Maleic anhydride" beginning with "by a method"; in (b)(3)(xxix) by revising that portion of the first sentence in item "Poly[2-(diethylamino)ethyl methacrylate]" beginning with "as determined" and ending with "for use"; and in (b)(3)(xxxiii) by revising that portion of item "Cyclohexanone-formaldehyde" beginning with "as determined" and ending with "for use only"; to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(xix) * * *

* * * by a method titled "Method for Determination of Intrinsic Viscosity of Maleic Anhydride Adduct of Polypropylene," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(xxix) * * *

* * * as determined by ASTM method D1243-60, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers" (Reapproved 1961), which is incorporated by reference (copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St.,

NW., Washington, DC 20408), for use
* * *

* * * * *

(xxxiii) * * *

* * * as determined by ASTM method D2503–67, "Standard Method of Test for Molecular Weight of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure" (Revised 1967), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. For use only * * *

* * * * *

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

5. Part 176 is amended as follows:

a. In § 176.170(a)(5) under the "List of substances" column by revising items "Petroleum asphalt" and "Poly[(methylimino)" and by revising the first sentence of item "Poly[oxyethylene(dimethylimino)" and adding a new sentence immediately thereafter; in (b)(2) under the "List of substances column" the items "Cyclized rubber" and "Ethylene-acrylic acid" are revised, "Petroleum alicyclic hydrocarbon resins" and "Styrene-dimethyl-styrene * * *" are amended by revising that portion beginning with "as determined" and adding a new sentence; and in (d)(3), that portion of the paragraph beginning with "described in" and ending with "except that" is revised to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
Petroleum asphalt, steam and vacuum refined to meet the following specifications: Softening point 190° F–200° F, as determined by ASTM method D36–64T, "Tentative Method of Test for Softening Point of Asphalts and Tar Pitches (Ring and Ball Apparatus)" (Revised 1964); penetration at 77° F not to exceed 0.3 mm, as determined by ASTM method D5–61, "Standard Method of Test for Penetration of Bituminous Materials" (Revised 1961), which are incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408); and maximum weight loss not to exceed 3% when distilled to 700° F, nor to exceed an additional 1.1% when further distilled between 700° F and thermal decomposition.	
* * * * *	
Poly[(methylimino)(2-hydroxytrimethylene)hydrochloride] produced by reaction of 1:1 molar ratio of methylamine and epichlorohydrin so that a 31-percent aqueous solution at 25° C has a Stokes viscosity range of 2.5–4.0 as determined by ASTM method D1545–63, "Standard Method of Test for Viscosity of Transparent Liquids by Bubble Time Method" (Revised 1963), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408..	* * *
Poly[oxyethylene (dimethylimino) ethylene (dimethylimino) ethylene dichloride] produced by reacting equimolar quantities of *N,N,N,N*-tetramethylethylenediamine and dichlorethyl ether to yield a solution of the solid polymer in distilled water at 25° C with a reduced viscosity of not less than 0.15 deciliter per gram as determined by ASTM method D1243–66, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers" (Revised 1966), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *	
* * * * *	

(b) * * *

(2) * * *

List of substances	Limitations
* * * * *	
Cyclized rubber produced when natural pale crepe rubber dissolved in phenol is catalytically cyclized so that the finished cyclized rubber has a melting point of 293° F to 311° F as determined by ASTM method E28–58T ("Tentative Method of Test for Softening Point by Ring and Ball Apparatus" (Revised 1958), which is incorporated by reference; copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), and contains no more than 4000 ppm of residual-free phenol as determined by a gas liquid chromatographic procedure titled "Determination of Free Phenol in Cyclized Rubber Resin," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.	
* * * * *	
Ethylene-acrylic acid copolymers produced by the copolymerization of ethylene and acrylic acid and/or their partial ammonium salts. The finished copolymer shall contain no more than 25 weight percent of polymer units derived from acrylic acid and no more than 0.35 weight percent of residual monomeric acrylic acid, and have a melt index not to exceed 350 as determined by ASTM method D1238–73, "Standard Method of Measuring Flow Rates of Thermoplastics by Extrusion Plastometer" (Adopted 1973), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.	

List of substances	Limitations
* * * * *	
Petroleum alicyclic hydrocarbon resins * * * as determined by ASTM method E28–58T, "Tentative Method of Test for Softening Point by Ring and Ball Apparatus" (Revised 1958); aniline point 120° C minimum, as determined by ASTM method D611–64, "Standard Method of Test for Aniline Point and Mixed Aniline Point of Petroleum Products and Hydrocarbon Solvents" (Adopted 1964), which are incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *.	
* * * * *	
Styrene-dimethylstyrene-α-methylstyrene copolymers * * * as determined by ASTM method D2503–67, "Standard Method of Test for Molecular Weight of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure" (Revised 1967), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.	* * *
* * * * *	

* * * * *

(d) * * *

(3) * * * described in "Official Methods of Analysis of the Association of Official Agricultural Chemists," 10th Ed. (1965), secs. 7.034–7.039, under "Exposing Flexible Barrier Materials for Extraction, " (which is incorporated by reference; copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408); also described in ASTM method F34–63T, "Tentative Method for Exposing Flexible Barrier Materials to Liquids for Extraction" (Revised 1963) (which is incorporated by reference; copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), except that * * *.

b. In § 176.180(b)(2) by revising under the "List of substance" column the item "*N,N,*-Dioleoylethylenediamine" to read as follows:

§ 176.180 Components of paper and paperboard in contact with dry foods.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
* * * * *	
N,N-Dioleoylethylenediamine, *N,N*-dilinoeoyl-ethylenediamine, and N-oleoyl-N-linoleoyl-ethylenediamine mixture produced when tall oil fatty acids are made to react with ethylenediamine such that the finished mixture has a melting point of 212°–228° F, as determined by ASTM method D127–60, and an acid value of 10 maximum. ASTM Method D127–60 "Standard Method of Test for Melting Point of Petrolatum and Microcrystalline Wax" (Revised 1960) is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.	
* * * * *	

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

6. Part 177 is amended as follows:

a. In § 177.1020(b) by revising the item in the table; in (c)(2) by revising that portion of the paragraph beginning with "as determined"; and in (d)(2) by revising that portion of the paragraph beginning with "when analyzed", to read as follows:

§ 177.1020 Acrylonitrile/butadiene/styrene copolymer.

* * * * *

(b) * * *

Substance	Limitations
2-Mercapto-ethanol.	The finished copolymer shall contain not more than 100 ppm 2-mercaptoethanol acrylonitrile adduct as determined by a method titled "Analysis of Cycopac Resin for Residual β-(2-Hydroxyethylmercapto) propionitrile," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) * * *

(2) * * * as determined by a gas chromatographic method titled "Determination of Residual Acrylonitrile and Styrene Monomers-Gas Chromatographic Internal Standard Method," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(d) * * *

(2) * * * when analyzed by a polarographic method titled "Extracted Acrylonitrile by Differential Pulse Polarography," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 177.1030(b) by revising the item in the table; in (c)(2) by revising that portion of the paragraph beginning with "as determined"; and in (d)(2) by revising that portion of the paragraph beginning with "when analyzed" to read as follows:

§ 177.1030 Acrylonitrile/butadiene/styrene/methyl methacrylate copolymer.

* * * * *

(b) * * *

Substances	Limitations
2-Mercaptoethanol.	The finished copolymer shall contain not more than 800 ppm 2-mercaptoethanol acrylonitrile adduct as determined by a method titled "Analysis of Cycopac Resin for Residual β-(2-Hydroxyethylmercapto) propionitrile," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) * * *

(2) * * * as determined by a gas chromatographic method titled "Determination of Residual Acrylonitrile and Styrene Monomers-Gas Chromatographic Internal Standard Method," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(d) * * *

(2) * * * when analyzed by a polarographic method titled "Extracted Acrylonitrile by Differential Pulse Polarography," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 177.1040(c) by revising the footnote to read as follows:

§ 177.1040 Acrylonitrile/styrene copolymer.

* * * * *

* Use methods for determination of residual acrylonitrile monomer content, maxium extractable fraction, number average molecular weight, and solution viscosity, titled: "Determination of Residual Acrylonitrile and Styrene Monomers-Gas Chromatographic Internal Standard Method"; "Infrared Spectrophotometric Determination of Polymer Extracted from Barex 210 Resin Pellets; "Procedure for the Determination of Molecular Weights of Acrylonitrile/Styrene Copolymers," and "Analytical Method for 10% Solution Viscosity of Tyril, " which are incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

d. In § 177.1050(b) by revising the item in the table, in (c)(2) and (3) by revising the portion of each paragraph beginning with "as determined by", in the introductory text of (d) by revising the portion beginning with "are determined," and in (e)(4) by revising that portion of the paragraph beginning with "and analyzed" to read as follows:

§ 177.1050 Acrylonitrile/styrene copolymer modified with butadiene/styrene elastomer.

* * * * *

(b) * * *

Substances	Limitations
n-Dodecylmercaptan.	The finished copolymer shall contain not more than 500 parts per million (ppm) dodecylmercaptan as dodecylmercapto-propionitrile as determined by the method titled, "Determination of β-Dodecyl-mercaptopropionitrile in NR–16 Polymer," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St., NW., Washington, DC 20408.

(c) * * *

(2) * * * as determined by the method titled "Molecular Weight of Matrix Copolymer by Solution Viscosity," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(3) * * * as determined by a gas chromatographic method titled "Determination of Residual Acrylonitrile and Styrene Monomers-Gas Chromatographic Internal Standard Method," which is incorporated by

reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(d) * * * are determined by an infrared spectrophotometric method titled "Infrared Spectrophotometric Determination of Polymer Extracted from Borex® 210 Resin Pellets," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(e) * * *

(4) * * * and analyzed for acrylonitrile monomer by a gas chromatographic method titled "Gas-Solid Chromatographic Procedure for Determining Acrylonitrile Monomer in Acrylonitrile-Containing Polymers and Food Simulating Solvents," which is incorporated by reference. Copies, are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

e. In § 177.1200(c) by revising under the "List of substances" column that portion of item "*N,N*-Dioleoyethyl-enediamine" beginning with "as determined by" to read as follows:

§ 177.1200 Cellophane.

* * * * *

(c) * * *

List of substances	Limitations [1]
* * * * *	*
N,N'-Dioledyethylenediamine, "N,N'-dilinoleoylethylene-diamine and N-oleoyl-N'linoleoylethylene-diemine mixture * * *, as determined by ASTM method D127-60 ("Standard Method of Test for Melting Point of Petrolatum and Microcrystalline Wax" (Revised 1960), which is incorporated by reference; copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), and an acid value of 10 maximum. * * *.	

[1] Residue and limits of addition expressed as percent by weight of finished packaging cellophane.

* * * * *

f. In § 177.1320(c)(1)(iii) by revising that portion of the paragraph beginning with "as determined by" to read as follows:

§ 177.1320 Ethylene-ethyl acrylate copolymers.

* * * * *

(c) * * *

(1) * * *

(iii) * * * as determined by ASTM method D1505–68, "Test for Density of Plastic Gradient Technique" (Revised 1968), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

g. In § 177.1330 by revising paragraph (e)(4) to read as follows:

§ 177.1330 Ionomeric resins.

* * * * *

(e) * * *

(4) *Selection of test method.* The finished food-contact articles shall be tested either by the extraction cell described in the *Journal of the Association of Official Agricultural Chemists,* Vol. 47, No. 1, p. 177–179 (February 1964), also described in ASTM method F34–76, "Standard Test Methods for Liquid Extraction of Flexible Barrier Materials" (Revised 1976), which are incorporated by reference, or by adapting the in-container methods described in § 175.300(e) of this chapter. Copies of the material incorporated by reference are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, and American Society for Testing and Materials (ASTM), 1916 Race St., Philadelphia, PA 19103, respectively, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

h. In § 177.1360 by revising the portion of the introductory text of paragraphs (b) and (c) beginning with "meet the following" to read as follows:

§ 177.1360 Ethylene-vinyl acetate-vinyl alcohol copolymers.

* * * * *

(b) * * * meet the following extractives limitation when tested by ASTM method F34–63T, "Exposing Flexible Barrier Materials to Liquids for Extraction" (issued 1963), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) * * * meet the following extractives limitation when tested by ASTM method F34–63T, "Exposing Flexible Barrier Materials to Liquids for Extraction" (issued 1963), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

i. In § 177.1390(c)(3)(i) by revising that portion of the paragraph beginning with "as determined by" to read as follows:

§ 177.1390 High temperature laminates.

* * * * *

(c) * * *

(3) * * *

(i) * * * as determined by a method titled "Determination of Non-volatile Chloroform Soluble Residue in Retort Pouch Water Extracts," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

j. In § 177.1430(a)(1), (2), and (3) by revising the portion of the paragraphs beginning with "as determined by" to read as follows:

§ 177.1430 Isobutylene-butene copolymers.

* * * * *

(a) * * *

(1) * * * as determined by ASTM method D2503–67, "Standard Method of Test for Molecular Weight of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure" (Revised 1967), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) * * * as determined by ASTM mehtod D445–74, "Test for Kinematic Viscosity of Transparent and Opaque Liquids" (Revised 1974), which is incorporated by reference. Copies are available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philladelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(3) * * * as determined by ASTM method D1492–60, "Standard Method of Test for Bromine Index of Aromatic Hydrocarbons by Coulometric Titration" (Reapproved 1960), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

k. In § 177.1480, by revising paragraph (b)(1)(ii) and the introductory text of (b)(2) to read as follows:

§ 177.1480 Nitrile rubber modified acrylonitrile-methyl acrylate copolymers.

* * * * *

(b) * * *

(1) * * *

(ii) Intrinsic viscosity in acetonitrile at 25° C is not less than 0.29 deciliter per gram as determined by ASTM method D1243–60, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers" (Reapproved 1961), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) *Extractives limitations.* The following extractive limitations are determined by an infrared spectrophotometric method titled, "Infrared Spectrophotometric Determination of Polymer Extracted from Borex® 210 Resin Pellets," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

l. In § 177.1520, by revising paragraph (d)(1), (2) (i) and (ii), and the introductory text in (d)(5) and the first sentence in (d)(6) to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(d) * * *

(1) *Density.* Density shall be determined by ASTM method D1505–68, "Test for Density of Plastics-Gradient Technique" (Revised 1968), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) * * * (i) *Melting point.* The melting point shall be determined by ASTM method D2117–62T, "Tentative Method of Test for Melting Point of Semicrystalline Polymers" (issued 1962), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(ii) *Softening point.* The softening point shall be determined by ASTM method E28–58T, "Tentative Method of Test for Softening Point by Ring and Ball Apparatus" (Revised 1958), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(5) * * * The viscosity average molecular weight shall be determined from the kinematic viscosity (using ASTM method D445–74, "Test for Kinematic Viscosity of Transparent and Opaque Liquids" (Revised 1974), which is incorporated by reference; copies are available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408) of solutions of the copolymers in solvents and at temperatures as follows:

* * * * *

(6) * * * Mooney viscosity is determined by ASTM method D1646–63, "Standard Method of Test for Viscosity and Curing Characteristic of Rubber by the Shearing Disc Viscometer" (Revised 1963), which is incorporated by reference (copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), using the large rotor at a temperature of 212° F, except that a temperature of 260° F shall be used for those copolymers whose Mooney viscosity cannot be determined at 212° F.

* * * * *

m. In § 177.1550, by revising the first sentence of paragraph (d) (2) and (3) and by adding a new sentence immediately after each and by revising footnote "2" in paragraph (e) to read as follows:

§ 177.1550 Perfluorocarbon resins.

* * * * *

(d) * * *

(2) * * * Perfluorocarbon resins have a melt viscosity of not less than 10^4 poises at 380° C as determined by ASTM method D 1238–57T, "Standard Method of Test for Melt Viscosity in Perfluorocarbon" (Revised 1957), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

(3) * * * The thermal instability index of the tetrafluoroethylene homopolymer shall not exceed 50 as determined by ASTM method D1457–56T, "Test for Thermal Instablility index of Tetrafluoroethylene Homopolymer" (Revised 1956), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

(e) *Limitations.*[2] * * *

* * * * *

[2] A more detailed procedure of extraction conditions is entitled, "Preparation of Extracts," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

n. In § 177.1570(b)(1) (ii), (iii), and (iv) by revising that portion of the paragraphs beginning with "as determined by" to read as follows:

§ 177.1570 Poly-1-butene resins and butene-ethylene copolymers.

* * * * *

(b) * * *

(1) * * *

(ii) * * * as determined by ASTM method D1601–61, "Standard Method of Test for Dilute Solution Viscosity of Ethylene Polymers," (Revised 1961), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(iii) * * * as determined by ASTM method D1505–68, "Test for Density of Plastics-Gradient Technique" (Revised 1968), which is incorporated by reference. Copies are available from University Microfilms International, 300

N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(iv) * * * as determined by ASTM method D1238–73, condition E, "Standard Method of Measuring Flow Rates of Thermoplastics by Extrusion Plastometer" (Approved 1973), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

o. In § 177.1590, by revising the first portion of paragraph (c) ending with "using No. 50 emery abrasive" to read as follows:

§ 177.1590 Polyester elastomers.

* * * * *

(c) An appropriate sample of the finished polyester elastomer in the form in which it contacts food when subjected to method 6191 in Federal Test Method Standard No. 141, published in "Varnish, Lacquer, and Related Materials—Methods of Inspection and Sampling," which is incorporated by reference (copies are available from General Services Administration, Washington, DC 20507; also from Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), using No. 50 emery abrasive * * *

* * * * *

p. In § 177.1610(a) by revising that portion of the paragraph beginning with "as determined by ASTM Method D1303–55" and ending with "and has a 7.0" to read as follows:

§ 177.1610 Polyethylene, chlorinated.

* * * * *

(a) * * * as determined by ASTM method D1303–55 ("Standard Method of Test for Total Chlorine in Vinyl Chloride Polymers and Copolymers" (Reapproved 1961), which is incorporated by reference (copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), and has a 7.0

* * *

* * * * *

q. In § 177.1630(e)(4)(iii), under the entry for "Ethylene azelate-terephthalate copolymer" by revising that portion of the text beginning with "as determined by" and ending with "Total residual" to read as follows:

§ 177.1630 Polyethylene phthalate polymers.

* * * * *

(e) * * *

(4) * * *

(iii) * * * as determined by a method title "General Procedure of Determining the Relative Viscosity of Resin Polymers," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection, at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. Total residual * * *

* * * * *

r. In § 177.1650(c) by revising that portion of the paragraph beginning with "when subjected" and ending with "using No. 50" to read as follows:

§ 177.1650 Polysulfide polymer-polyepoxy resins.

* * * * *

(c) * * * when subjected to method 6191 in Federal Test Method Standard No. 141, published in "Varnish, Lacquer, and Related Materials—Methods of Inspection and Sampling," which is incorporated by reference (copies are available from General Services Administration, Washington, DC 20507; also from Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), using No. 50

* * *

s. In § 177.1670(b) by revising the end of the paragraph beginning with "when tested by" to read as follows:

§ 177.1670 Polyvinyl alcohol film.

* * * * *

(b) * * * when tested by ASTM method F34–63T, "Tentative Method for Exposing Flexible Barrier Materials to Liquids for Extraction" (issued 1963), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

t. In § 177.1680(c), by revising that portion of the paragraph beginning with "when subjected to" and ending with "using No. 50" to read as follows:

§ 177.1680 Polyurethane resins.

* * * * *

(c) * * * when subjected to "Method 6191 in Federal Test Method Standard No. 141," published in "Varnish, Lacquer, and Related Materials—Methods of Inspection and Sampling," which is incorporated by reference (copies are available from General Services Administration, Washington, DC 20507; also from Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), using No. 50 * * *.

u. In § 177.1810(c)(2)(i), by revising the beginning of the paragraph ending with "modified by" and by revising the beginning of (c)(2)(ii) ending with "by which the glass" to read as follows:

§ 177.1810 Styrene block polymers.

* * * * *

(c) * * *

(2) * * *

(i) ASTM method D2236–70 ("Standard Method of Test for Dynamic Mechanical Properties of Plastics by Means of Torsional Pendulum," which is incorporated by reference; copies are available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408) modified by

* * *

(ii) Direct reading viscoelastometric method titled "Direct Reading Viscoelastrometric Method for Determining Glass Transition Points of Styrene Block Polymers" (which is incorporated by reference; copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), by which the glass * * *

* * * * *

v. In § 177.1820(c)(3) by revising that portion of the paragraph beginning with "shall be determined" to read as follows:

§ 177.1820 Styrene-maleic anhydride copolymers.

* * * * *

(c) * * *

(3) * * * shall be determined by a gas chromatographic method titled "Determination of Residual Maleic Anhydride in Polymers by Gas

Chromatography," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

w. In § 177.1950(c)(1)(ii) by revising that portion of the paragraph beginning with "as determined by" to read as follows:

§ 177.1950 Vinyl chloride-ethylene copolymers.

* * * * *

(c) * * *

(1) * * *

(ii) * * * as determined by ASTM method D1243–60, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers" (Revised 1960), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

x. In § 177.1960(b)(1)(ii), by revising that portion of the paragraph beginning with "as determined by" to read as follows:

§ 177.1960 Vinyl chloride-hexene-1 copolymers.

* * * * *

(b) * * *

(1) * * *

(ii) * * * as determined by ASTM method D1243–66, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers" (Revised 1966), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

y. In § 177.1970(c)(1)(ii), by revising that portion of the paragraph beginning with "as determined by" to read as follows:

§ 177.1970 Vinyl chloride-lauryl vinyl ether copolymers.

* * * * *

(c) * * *

(1) * * *

(ii) * * * as determined by ASTM method D1243–60, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers" (Revised 1960), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

z. In § 177.1980(c)(1)(ii), by revising that portion of the paragraph beginning with "as determined by" to read as follows:

§ 177.1980 Vinyl chloride-propylene copolymers.

* * * * *

(c) * * *

(1) * * *

(ii) * * * as determined by ASTM method D1243–60, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers" (Revised 1960), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

aa. In § 177.2210, by revising the undesignated portion at the end of paragraph (b) to read as follows:

§ 177.2210 Ethylene polymer, chlorosulfonated.

* * * * *

(b) * * *

Methods for the specifications in this paragraph (b), titled "Chlorine and Bromine—Coulometric Titration Method by Aminco Chloridometer," "Hypolon® Synthetic Rubber—Determination of Sulfur by Parr Bomb," and ASTM method D2857–70, "Standard Method of Test for Dilute Solution Viscosity of Polymers", are incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

bb. In § 177.2440(a), by revising the end of the paragraph beginning with "in accordance with" to read as follows:

§ 177.2440 Polyethersulfone resins.

* * * * *

(a) * * * in accordance with ASTM method D2857–70, "Standard Method of Test for Dilute Solution Viscosity of Polymers" (Reapproved 1977), which is incorporated by reference. Copies are available from American Society for Testing and Materials (ASTM), 1916 Race St., Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

cc. In § 177.2450, by revising the introductory text of paragraph (b), that portion of (b)(1) beginning with "as set forth", and (b) (2) and (3) to read as follows:

§ 177.2450 Polyamide-imide resins.

* * * * *

(b) *Specifications.* Polyamide-imide resins identified in paragraph (a) of this section shall conform to the following specifications:

(1) * * * as set forth in "Official Method of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), page 123, secs. 7.017 to 7.024, which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) Solution viscosity: not less than 1.200 as determined by a method titled "Solution Viscosity," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(3) Residual monomers as determined by gas chromatography (the gas chromatographic method titled "Amide-Imide Polymer Analysis—Analysis of Monomer Content," is incorporated by reference; copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), in the polyamide-imide resin, heat cured at 600° F for 15 minutes: *p,p'*-diphenylmethane diisocyanate, not more than 100 parts per million; trimellitic anhydride, not more than 500 parts per million.

* * * * *

dd. In § 177.2460 in the introductory text of paragraph (c)(1) by revising that portion of the paragraph beginning with "as determined by", and in paragraph (c)(1)(iv) by revising the beginning of the paragraph ending with "with the reduced viscosity" to read as follows:

§ 177.2460 Poly(2,6-dimethyl-1,4-phenylene) oxide resins.

* * * * *

(c) * * *

(1) * * * as determined by ASTM method D1243–66, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers" (Revised 1966), modified as follows, which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(iv) Calculation: The calculation method used is that described in Appendix A1.2.2 (ASTM method D1243–66, cited and incorporated by reference in paragraph (c)(1) of this section) with the reduced viscosity * * *

* * * * *

ee. In § 177.2470(c)(2) by revising that portion of the paragraph beginning with "as determined by" to read as follows:

§ 177.2470 Polyoxymethylene copolymer.

* * * * *

(c) * * *

(2) * * * as determined by a method titled "Number Average Molecular Weight," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408

* * * * *

ff. In § 177.2480(c) (3) and (4) and (d)(2)(i) by revising that portion of the paragraphs beginning with "as determined by" to read as follows:

§ 177.2480 Polyoxymethylene homopolymers.

* * * * *

(c) * * *

(3) * * * as determined by ASTM method D1505–68, "Test for Density of Plastics—Gradient Technique" (Revised 1968), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(4) * * * as determined by ASTM method D2133–66, "Specifications for Acetal Resin Injection Molding and Extrusion Materials" (Revised 1966), which is incorporated by reference. Copies are available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(d) * * *

(2) * * *

(i) * * * as determined by a method titled "Formaldehyde Release and Formaldehyde Analysis," which is incorporated by reference. Copies are available from Division of Food and Color Additives, Bureau of Foods (HFF–330) Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

gg. In § 177.2490(a) introductory text beginning with "as determined by" is revised to read as follows:

§ 177.2490 Polyphenylene sulfide resins.

* * * * *

(a) * * * as determined by methods titled "Oxygen Flask Combustion-Gravimetric Method for Determination of Sulfur in Organic Compounds," "Determination of the Inherent Viscosity of Polyphenylene Sulfide," and "Analysis for Dichlorobenzene in Ryton Polyphenylene Sulfide," which are incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

hh. In § 177.2600(c)(4)(i) by revising the item "Silicone basic polymers" to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(i) * * * Silicone basic polymer as described in ASTM D1418–61T, "Tentative Recommended Practice for Nomenclature for Synthetic Elastomers and Latices" (Adopted 1961), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

7. Part 178 is amended as follows:

a. In § 178.1005(c) by revising that portion of the paragraph beginning with "Food Chemical Codex" and ending with "and the United States Pharmacopeia" to read as follows:

§ 178.1005 Hydrogen peroxide solution.

* * * * *

(c) * * * "Food Chemicals Codex," 2d Ed. (1972), under "hydrogen peroxide," which is incorporated by reference (copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), and the United States Pharmacopeia * * *

* * * * *

b. In § 178.2010(b) by revising under the "Substances" column that portion of items "Butylated, styrenated cresols," "Dicetyl thiopropionate," and "Dimyristyl thiodipropionate" beginning with "as determined by" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
Butylated styrenated cresols * * * as determined by ASTM method D1218–61, "Standard Method for Measurement of Refractive Index and Refractive Dispersion of Hydrocarbon Liquids" (Adopted 1961), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.	* * *
* * * * *	
Dicetyl thiodipropionate * * * as determined by ASTM method E324–69, "Relative Initials and Final Melting Points and the Melting Range of Organic Chemicals" (Revised 1969), and a saponification value in the range 176–183 as determined by ASTM method 1962–67, "Saponification Value of Drying Oils, Fatty Acids, and Polymerized Fatty Acids" (Revised 1967), which are incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.	* * *

Substances	Limitations
* * * * *	
Dimyristyl thiodipropionate * * * as determined by ASTM method E324-69, "Relative Initials and Final Melting Points and the Melting Range of Organic Chemicals" (Revised 1969), and a saponification equivalent in the range 280-290 as determined by ASTM method D1962-67, "Saponification Values of Drying Oils, Fatty Acids, and Polymerized Fatty Acids," (Revised 1967), which are incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.	* * *
* * * * *	

c. In § 178.2650(b)(1)(ii) by revising the end of the paragraph beginning with "as determined by" to read as follows:

§ 178.2650 Octyltin stabilizers in vinyl chloride plastics.

* * * * *

(b) * * *

(1) * * *

(ii) * * * as determined by an analytical method titled "Atomic Absorption Spectrometric Determination of Subpart-per-Million Quantities of Tin in Extracts and Biological Materials with Graphite Furnace," *Analytical Chemistry*, Vol. 49, pages 1090–1093, 1977), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

d. In § 178.3480(c) by revising the introductory text beginning with "as determined by" to read as follows:

§ 178.3480 Fatty alcohols, synthetic.

* * * * *

(c) * * * as determined by a method titled "Diols in Monohydroxy Alcohol by Miniature Thin Layer Chromatography (MTLC)," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

e. In § 178.3530(a) by revising the entry for "Boiling point" and that portion of the entry for "Synthetic isoparaffinic petroleum hydrocarbons" beginning with "under 'Specifications'" to read as follows:

§ 178.3530 Isoparaffinic petroleum hydrocarbons, synthetic.

* * * * *

(a) * * *

Boiling point 145°–500° F, as determined by ASTM method D86–62, "Standard Method of Test for Distillation of Petroleum Products" (Revised 1962), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

Synthetic isoparaffinic petroleum hydrocarbons * * * under "Specifications" on page 66 of the *Journal of the Association of Official Agricultural Chemists*, Vol. 45 (February 1962), which is incorporated by reference, disregarding the last sentence of that procedure. For hydrocarbons boiling below 250° F, the nonvolatile residue shall be determined by ASTM procedure D1353–64, "Standard Method of Test for Nonvolatile Matter in Volatile Solvents for Use in Paint, Varnish, Lacquer, and Related Products" (Revised 1964), for those boiling above 250° F, ASTM procedure D381–6, "Standard Method of Test for Existent Gum in Fuels for Jet Evaporation" (Adopted 1964), which are incorporated by reference. Copies of the material incorporated by reference are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

f. In § 178.3610(a) by revising that portion beginning with "as determined by" to read as follows:

§ 178.3610 α-Methylstyrene-vinyltoulene resins, hydrogenated.

* * * * *

(a) * * * as determined by methods titled "Determination of Softening Point (Drop Method)" and "Determination of Unsaturation of Resin 1977," which are incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

g. In § 178.3620, by revising (b)(1)(i); by revising that portion of (b)(1)(ii) beginning with "under 'Specification'" and ending with "disregarding the last"; by revising (c)(1)(ii); by revising the text of footnote "1" in (c)(3); by revising that portion of (d)(1)(i) beginning with "as determined by"; and by revising that portion of Paragraph (d)(3) item V.B. 19.b. beginning with "technique described in" and ending with "Correct each" to read as follows:

§ 178.3620 Mineral oil.

* * * * *

(b) * * *

(1) * * *

(i) Saybolt color 20 minimum as determined by ASTM method D156–64, "Standard Method of Test for Saybolt Color of Petroleum Products" (Adopted 1964), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(ii) * * * under "Specification" on page 66 of the *Journal of the Association of Official Agricultural Chemists*, Volume 45 (February 1962) (which is incorporated by reference; copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), disregarding the last * * *

(c) * * *

(1) * * *

(ii) Color 5.5 maximum as determined by ASTM Method D1500–64, "Standard Method of Test for ASTM Color of Petroleum Products" (Revised 1964), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

[1] As determined by procedure using potassium chromate for reference standard and described in National Bureau of Standards Circular 484, Spectrophotometry, U.S. Department of Commerce (1949). The accuracy is to be determined by comparison with the standard values at 290, 345, and 400 millimicrons. Circular 484 is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(d) * * *

(1) * * *

(i) * * * as determined by ASTM method D86–67; IP123/68 "Standard Method of Test for Distillation of Petroleum Products" (Revised 1968), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(3) * * *

V. * * *

B. * * *

19. * * *

b. * * * technique described in ASTM method E169–60T, "Tentative Recommended Practices for General Techniques of Ultraviolet Quantitative Analysis" (Issued 1960), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. Correct each * * *

* * * * *

h. In § 178.3690(b)(1), (2), (3), and (4) by revising that portion of the paragraph beginning with "as determined by" to read as follows:

§ 178.3690 Pentaerythritol adipate-stearate.

* * * * *

(b) * * *

(1) * * * as determined by ASTM method D566–76, "Standard Test Method for Dropping Point of Lubricating Grease" (Revised 1976), which is incorporated by reference. Copies are available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) * * * as determined by ASTM method D1386–78, "Standard Test Method for Saponification Number (Empirical) of Synthetic and Natural Waxes" (Revised 1978), which is incorporated by reference. Copies are available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(3) * * * as determined by ASTM method D1387–78, "Standard Test Method for Acid Number (Empirical) of Synthetic and Natural Waxes" (Revised 1978), which is incorporated by reference. Copies are available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(4) * * * as determined by Iodine Absorption Number, Hanus Method, of the "Official Methods of Analysis of the Association of Official Analytical Chemists," sec. 28.019, 12th Ed. (1975), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

i. In § 178.3740(b) by revising in the table under the "Substances" column the item "Polybutene, hydrogenated" to read as follows:

§ 178.3740 Plasticizers in polymeric substances.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
Polybutene, hydrogenated (minimum viscosity at 210°F, 39 Saybolt Universal seconds, as determined by ASTM method D445–74 ("Test for Kinematic Viscosity of Transparent and Opaque Liquids" (Revised 1974)) and D2161–66 ("Standard Method of Test for Conversion of Kinematic Viscosity of Saybolt Universal Viscosity or to Saybolt Furol Viscosity" (Adopted 1966)), and bromine number of 3 or less, as determined by ASTM mehtod D1492–60 ("Standard Method of Test for Bromine Index of Aromatic Hydrocarbons by Coulometric Titration" (Reapproved 1960)), which are incorporated by reference. Copies are available from American Society for testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (for method D445–74) and University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106 (for methods D1492–60 and D2161–66), or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408 * * *	
* * * * *	

j. In § 178.3770, by revising paragraphs (a)(1), (2), and (3); by revising footnote "1" in (a)(4); and by revising (b)(1), (2), and (3) to read as follows:

§ 178.3770 Polyhydric alcohol diesters of oxidatively refined (Gersthoffen process) montan wax acids.

* * * * *

(a) * * *

(1) Dropping point 76°–105° C, as determined by ASTM method D566–76, "Standard Method for Dropping Point of Lubricating Grease" (Revised 1976), which is incorporated by reference. Copies are available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) Acid value 10–20, as determined by ASTM method D1386–78 ("Standard Test Method for Saponification Number (Empirical) of Synthetic and Natural Waxes" (Revised 1978), which is incorporated by reference; copies are available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100, L St. NW., Washington, DC 20408) using as solvent xylene-ethyl alcohol in a 2:1 ratio instead of toluene-ethyl alcohol in a 2:1 ratio.

(3) Saponification value 100–160, as determined by ASTM method D1387–78 ("Standard Test Method for Acid Number (Empirical) of Synthetic and Natural Waxes" (Revised 1978), which is incorporated by reference; copies are available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408) using xylene-ethyl alcohol in a 2:1 ratio instead of ethyl alcohol in preparation of potassium hydroxide solution.

(4) * * *

[1] As determined by procedure using potassium chromate for reference standard and described in National Bureau of Standards Circular 484, Spectrometry, U.S. Department of Commerce (1949). The accuracy is to be determined by comparison with the standard values at 290, 345, and 400 millimicrons. Circular 484 is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(b) * * *

(1) Dropping point 77°–82° C, as determined by ASTM method D566–76, "Standard Method for Dropping Point of Lubricating Grease" (Revised 1976), which is incorporated by reference. Copies are available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) Acid value 25–35, as determined by ASTM method D1386–78 ("Standard Test Method for Saponification Number (Empirical) of Synthetic and Natural Waxes" (Revised 1978), which is incorporated by reference; copies are available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW.,

Washington, DC 20408) using as solvent xylene-ethyl alcohol in a 2:1 ratio instead of toluene-ethyl alcohol in a 1:2 ratio.

(3) Saponification value 135–150, as determined by ASTM method D1387–78 ("Standard Test Method for Acid Number (Empirical) of Synthetic and Natural Waxes" (Revised 1978), which is incorporated by reference; copies are available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408) using xylene-ethyl alcohol in a 2:1 ratio instead of ethyl alcohol in preparation of potassium hydroxide solution.

* * * * *

k. In § 178.3780(b) (1), (2), and (3) by revising the portion of the paragraphs beginning with "as determined by" to read as follows:

§ 178.3780 Polyhydric alcohol esters of long chain monobasic acids.

* * * * *

(b) * * *

(1) * * * as determined by the Fisher Johns method as described in "Semimicro Qualitative Organic Analysis—The Systematic Identification of Organic Compounds," by Cheronis and Entrikin, 2d Ed., Interscience Publishers, NY, which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) * * * as determined by the A.O.C.S. method Trla-64T "Titer Test," which is incorporated by reference. Copies are available from American Association of Oil Chemists, 36 East Wacker Drive, Chicago, IL 60601, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. The method is modified to use as the acid solvent a 1:1 volume mixture of anhydrous isopropyl alcohol and toluene. The solution is titrated with 0.1*N* methanolic sodium hydroxide.

(3) * * * as determined the A.O.C.S. method Trla-64T "Saponification Value," which is incorporated by reference. Copies are available from American Association of Oil Chemists, 36 East Wacker Drive, Chicago, IL 60601, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

l. In § 178.3870, by revising that portion of paragraph (f) (1), (2), (3), (4), and (5) beginning with "as determined by", and by revising that portion of (f)(6) beginning with "specifications not listed" to read as follows:

§ 178.3870 Rosin and rosin derivatives.

* * * * *

(f) * * *

(1) * * * as determined by ASTM method D509–55, "Standard Method of Sampling and Grading Rosin" (Revised 1955), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) * * * as determined by ASTM method D1747–62, "Standard Method for Refractive Index of Viscous Materials" (Reapproved 1978), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(3) * * * as determined by ASTM method D465–59, "Standard Test Method of Test for Acid Number of Rosin" (Revised 1959), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(4) * * * as determined by ASTM method D1824–66, "Standard Test Method for Apparent Viscosity of Plastisols" (Revised 1966), and in Saybolt seconds by ASTM method D88–56, "Standard Method of Test for Saybolt Viscosity" (Revised 1956), which are incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(5) * * * as determined by ASTM method E28–67, "Standard Test Method for Softening Point by Ring and Ball Apparatus" (Reapproved 1977), which is incorporated by reference. Copies are available from American Society for Testing and Materials (ASTM), 1916 Race St., Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(6) * * * specifications not listed under paragraph (f)(1) through (5) of this section, titled: (i) "Determination of Abeitic Acid and Dehydroabietic Acid in Rosins"; (ii) "Determination of Softening Point of Solid Resins"; (iii) "Determination of Saponification Number of Rosin Esters," and (iv) "Determination of Phenolic Modification of Rosin Derivatives," which are incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

m. In § 178.3910 by revising that portion of paragraph (a)(4)(i)(*a*), (*b*), and (*c*) beginning with "as determined by" and by revising footnote "1" in (a)(4)(iii) to read as follows:

§ 178.3910 Surface lubricants used in the manufacture of metallic articles.

* * * * *

(a) * * *

(4) * * *

(i) * * *

(*a*) * * * as determined by ASTM method D86–62, "Standard Method of Test for Distillation of Petroleum Products" (Revised 1962), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(*b*) * * * as determined by ASTM method D381–64, "Standard Method of Test for Existent Gum is Fuels by Jet Evaporation" (Adopted 1964), when the final boiling point is 250° F or above and by ASTM method D1353–64, "Standard Method of Test for Nonvolatile Matter in Volatile Solvents for Use in Paint, Varnish, Lacquer, and Related Products" (Revised 1964), when the final boiling point is below 250° F, which are incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(*c*) * * * as determined by ASTM method D156–64, "Standard Method of Test for Saybolt Color of Petroleum Products: Saybolt Chromometer Method" (Adopted 1964), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal

Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(iii) * * *

[1] As determined by procedure using potassium chromate for reference standard and described in National Bureau of Standards Circular 484, Spectrometry, U.S. Department of Commerce (1949), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. The accuracy is to be determined by comparison with the standard values at 210, 345, and 400 millimicrons.

* * * * *

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOODS

8. Part 179 is amended in § 179.45(b)(9) and (c)(2)(iv) by revising the first sentence beginning with "determined by" and adding a new sentence to read as follows:

§ 179.45 Packaging materials for use during the irradiation of prepackaged foods.

* * * * *

(b) * * *

(9) * * * determined by ASTM method D729-57, "Standard Specifications for Vinylidene Chloride Molding Compounds (Revised 1957), which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.* * *

* * * * *

(c) * * *

(2) * * *

(iv) * * * determined by ASTM method D1243-60, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers" (Revised 1960) Method A, which is incorporated by reference. Copies are available from University Microfilms International, 300 N. Zeeb Rd., Ann Arbor, MI 48106, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.* * *

* * * * *

PART 180—FOOD ADDITIVES PERMITTED IN FOOD ON AN INTERIM BASIS OR IN CONTACT WITH FOOD PENDING ADDITIONAL STUDY

9. Part 180 is amended as follows:

a. In § 180.22, by revising that portion of the introductory text of paragraph (a) beginning with "determined by" and by revising that portion of (b) beginning with "Analytical methods" to read as follows:

§ 180.22 Acrylonitrile copolymers.

* * * * *

(a) * * * determined by a method of analysis titled "Gas-Solid Chromatographic Procedure for Determining Acrylonitrile Monomer in Acrylonitrile-Containing Polymers and Food Simulating Solvents," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(b) * * * Analytical methods for the determination of acrylonitrile complexes with *n*-dodecyl-mercaptan, n-octyl mercaptan, and 2-mercaptoethanol, titled "Determination of β-Dodecyl-mercaptopropionitrile in NR-16R Aqueous Extracts" and "Measurement of β-(2-Hdroxyethylmercapto) Propionitrile in Heptane Food-Simulating Solvent," are incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 180.25, by revising paragraph (b) to read as follows:

§ 180.25 Mannitol.

* * * * *

(b) The ingredient meets the specifications of the "Food Chemicals Codex," 2d Ed. (1972), under "Mannitol," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 180.30 by revising paragraph (a) to read as follows:

§ 180.30 Brominated vegetable oil.

* * * * *

(a) The additive complies with specifications prescribed in "Food Chemicals Codex," 1st Ed. (1966), under "Brominated vegetable oil," which is incorporated by reference, except that free fatty acids (as oleic) shall not exceed 2.5 percent and iodine value shall not exceed 16. Copies of the material incorporated by reference are available from the Division of Food and Color Additivies, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

d. In § 180.37, by revising paragraph (b) to read as follows:

§ 180.37 Saccharin, ammonium saccharin, calcium saccharin, and sodium saccharin.

* * * * *

(b) The Food additives meet the specifications of the "Food Chemicals Codex", 2d Ed. (1972), under "Saccharin," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 181—PRIOR-SANCTIONED FOOD INGREDIENTS

10. Part 181 is amended in § 181.32(b) by revising that portion of the paragraph beginning with "determined by " to read as follows:

§ 181.32 Acrylonitrile copolymers and resins.

* * * * *

(b) * * * determined by using the method of analysis titled "Gas-Solid Chromatographic Procedure for Determining Acrylonitrile Monomer in Acrylonitrile-Containing Polymers and Food-Simulating Solvents," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

11. Part 184 is amended as follows:

a. In § 184.1007(b)(1), (6), and (7) by revising that portion of the paragraphs beginning with "Food Chemicals Codex" to read as follows:

§ 184.1007 Aconitic acid.

* * * * *

(b) * * *

(1) * * * "Food Chemicals Codex," 2d Ed. (1972), test for citric acid, which is incorporated by reference, and a molecular weight of 174.11. Copies of the material incorporated by reference are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(6) * * * "Food Chemicals Codex." 2d Ed. (1972), test for citric acid, which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(7) * * * "Food Chemicals Codex," 2d Ed. (1972), test for citric acid, which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 184.1021, by revising paragraph (b) to read as follows:

§ 184.1021 Benzoic acid.

* * * * *

(b) The ingredient meets the specifications of the "Food Chemicals Codex," 2d Ed. (1972), under "Benzoic acid," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 184.1025 by revising paragraph (b) to read as follows:

§ 184.1025 Caprylic acid.

* * * * *

(b) The ingredient meets the specifications of the "Food Chemicals Codex," 2d Ed. (1972), under "Caprylic acid," which is incorporated by reference. Copies are available from the Division of Food and Color Additives Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

d. In § 184.1069 by revising paragraph (b) to read as follows:

§ 184.1069 Malic acid.

* * * * *

(b) The ingredient meets the specifications of the "Food Chemicals Codex," 2d Ed. (1972), as amended by the Second Supplement (1975), under "Malic acid," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

e. In § 184.1091 by revising paragraph (b) to read as follows:

§ 184.1091 Succinic acid.

* * * * *

(b) The ingredient meets specifications of the "Food Chemicals Codex," 2d Ed. (1972), under "Succinic acid," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

f. In § 184.1095 by revising paragraph (b) to read as follows:

§ 184.1095 Sulfuric acid.

* * * * *

(b) The ingredient meets the specifications of the "Food Chemicals Codex," 2d Ed. (1972), under "Sulfuric acid," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

g. In § 184.1115 by revising paragraph (b) to read as follows:

§ 184.1115 Agar-agar.

* * * * *

(b) The ingredient meets the specifications of the "Food Chemicals Codex," 2d Ed. (1972), under "Agar-agar," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

h. In § 184.1143 by revising paragraph (b) to read as follows:

§ 184.1143 Ammonium sulfate.

* * * * *

(b) The ingredient meets the specifications of the "Food Chemicals Codex," 2d Ed. (1972), as amended by the First Supplement (1974), under "Ammonium sulfate," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

i. In § 184.1206 by revising paragraph (b) to read as follows:

§ 184.1206 Calcium iodate.

* * * * *

(b) The ingredient meets the specifications of the "Food Chemicals Codex," 2d Ed. (1972), under "Calcium iodate," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

j. In § 184.1230 by revising paragraph (b) to read as follows:

§ 184.1230 Calcium sulfate.

* * * * *

(b) The ingredient meets the specifications of the "Food Chemicals Codex," 2d Ed. (1972), as amended by the First Supplement (1974), under "Calcium sulfate," which are incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

k. In § 184.1257(b) by revising that portion of the beginning with "Food

Chemicals Codex" and ending with "As determined by" to read as follows:

§ 184.1257 Clove and its derivatives.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Clove leaf oil," "Clove oil," and "Clove stem oil," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. As determined by * * *

* * * * *

l. In § 184.1259(b) (3) and (6) by removing the footnote and revising the parenthetical text to read as follows:

§ 184.1259 Cocoa butter substitute from palm oil.

* * * * *

(b) * * *

(3) * * * (see page 920 of "Food Chemicals Codex," 2d Ed. (1972), under "Heavy metal test," which is incorporated by reference; copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408).

* * * * *

(6) * * * ("Official Methods of Analysis of the Association of Analytical Chemists," 12th Ed. (1975), which is incorporated by reference, residual fluorine; limit of detection 0.2 part per million F; multiply fluoride result by 2.63 to convert to residual catalyst. Copies of the material incorporated by reference are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.) * * *

* * * * *

m. In § 184.1271(b) by revising that portion of the text beginning with "Food Chemicals Codex" to read as follows:

§ 184.1271 L-cysteine.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "L-cysteine monohydrochloride," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

n. In § 184.1272(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1272 L-cysteine monohydrochloride.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "L-cysteine monohydrochloride," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–220), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

o. In § 184.1282(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1282 Dill and its derivatives.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Dill Seed oils," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

p. In § 184.1272(b) by revising that portion beginning with "Food Chemicals Codex" to read as follows:

§ 184.1293 Ethyl alcohol.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Ethyl alcohol," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–220), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

q. In § 184.1295(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1295 Ethyl formate.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Ethyl formate," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

r. In § 184.1317(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1317 Garlic and its derivatives.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Garlic oil ," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

s. In § 184.1330(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1330 Acacia (gum arabic).

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Acacia (gum arabic)," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

t. In § 184.1333(b)(4) by revising the first portion of the paragraph ending with "to 5 ml of a cold" to read as follows:

§ 184.1333 Gum ghatti.

* * * * *

(b) * * *

(4) *Identification test.* Add 0.2 ml of diluted lead acetate (basic lead acetate, Official Methods of Analysis of the Association of Official Analytical Chemists, 12th Ed. (1975), sec. 31.164(b), which is incorporated by reference; (copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal

Register, 1100 L St. NW., Washington, DC 20408), to 5 ml of a cold * * *

* * * * *

u. In § 184.1339 by revising paragraph (b), to read as follows:

§ 184.1339 Guar gum.

* * * * *

(b) The ingredient meets specifications of the "Food Chemicals Codex," 2d Ed. (1972), under "Guar gum," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

v. In § 184.1343(b) by revising that portion beginning with "Food Chemicals Codex" to read as follows:

§ 184.1343 Locust (carob) bean gum.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Locust bean gum," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

w. In § 184.1349(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1349 Karaya gum (sterculia gum).

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Karaya gum," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

x. In § 184.1351(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1351 Gum tragacanth.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Tragacanth," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

y. In § 184.1490(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1490 Methylparaben.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Methylparaben," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

z. In § 184.1555(b)(2) by revising the first sentence and adding a new sentence to read as follows:

§ 184.1555 Rapeseed oil.

* * * * *

(b) * * *

(2) The ingredient meets the specifications of the "Food Chemicals Codex," 2d Ed. (1972), relating to mono- and diglycerides, which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

aa. In § 184.1634(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1634 Potassium iodide.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Potassium iodide," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

bb. In § 184.1635(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1635 Potassium iodate.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Potassium iodate," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

cc. In § 184.1643(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1643 Potassium sulfate.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972) as amended by the First Supplement (1974), under "Potassium sulfate," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

dd. In § 184.1660(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1660 Propyl gallate.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Propyl gallate," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

ee. In § 184.1670(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1670 Propylparaben.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Propylparaben," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal

Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

ff. In § 184.1699(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1699 Oil of rue.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Rue oil," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

gg. In § 184.1733(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1733 Sodium benzoate.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Sodium benzoate," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

hh. In § 184.1807(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1807 Sodium thiosulfate.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), as amended by the First Supplement (1974), under "Sodium thiosulfate," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

ii. In § 184.1835(b) by revising that portion of the paragraph beginning with "Food Chemicals Cordex" to read as follows:

§ 184.1835 Sorbitol.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Sorbitol," which are incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

jj. In § 184.1973(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 184.1973 Beeswax (yellow and white).

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Beeswax, yellow," and "Beeswax, white," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

12. Part 186 is amended as follows:

a. In § 186.1025(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 186.1025 Caprylic acid.

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Caprylic acid," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 186.1330(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 186.1330 Acacia (gum arabic).

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Acacia (gum arabic)," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 186.1339(a) by revising the end of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 186.1339 Guar gum (technical grade).

* * * * *

(a) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Guar gum," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

d. In § 186.1343(a) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 186.1343 Locust (carob) bean gum.

* * * * *

(a) * * * "Food Chemicals Codex," 2d Ed. (1972), under "Locust bean gum," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

§ 186.1551 [Amended]

e. In § 186.1551 by removing footnote "1" and its text from paragraph (b).

f. In § 186.1807(b) by revising that portion of the paragraph beginning with "Food Chemicals Codex" to read as follows:

§ 186.1807 Sodium thiosulfate

* * * * *

(b) * * * "Food Chemicals Codex," 2d Ed. (1972), as amended by the First Supplement (1974), under "Sodium thiosulfate," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

13. Part 189 is amended as follows:

a. In § 189.110(c) by revising that portion of the paragraph beginning with "in the" to read as follows:

§ 189.110 Calamus and its derivatives.

* * * * *

(c) * * * in the *Journal of the Association of Official Analytical Chemists,* Volume 56, (Number 5), pages 1281 to 1283, September 1973, which is incorporated by reference. Copies are available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, also from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 189.130(c) by revising that portion of the paragraph beginning with "are in §§ 19.014 through 19.023" to read as follows:

§ 189.130 Coumarin.

* * * * *

(c) * * * are in secs. 19.014 through 19.023 of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 189.135(c) by revising that portion of the paragraph beginning with "are in secs. 20.127 through 20.132" to read as follows:

§ 189.135 Cyclamate and its derivatives.

* * * * *

(c) * * * are in secs. 20.127 through 20.132 of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

d. In § 189.145(c) by revising that portion of the paragraph beginning with "are in secs. 20.133 through 20.136" to read as follows:

§ 189.145 Dulcin.

* * * * *

(c) * * * are in secs. 20.133 through 20.136 of the "Official Methods of Analysis of the Association of Official Analytical Chemists," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

e. In § 189.155(c) by revising that portion of the paragraph beginning with "are in §§ 20.057 through 20.062" to read as follows:

§ 189.155 Monochloroacetic acid.

* * * * *

(c) * * * are in secs. 20.057 through 20.062 of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

f. In § 189.165 by revising paragraph (c) to read as follows:

§ 189.165 Nordihydroguiaretic acid (NDGA).

* * * * *

(c) The analytical method used for detecting NDGA in food is in sec. 20.008 of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

g. In § 189.175 by revising paragraph (c) to read as follows:

§ 189.175 P–4000.

* * * * *

(c) The analytical methods used for detecting P–4000 in food are in secs. 20.137 through 20.141 of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

h. In § 189.180(c) by revising that portion of the paragraph beginning with "is in the" to read as follows:

§ 189.180 Safrole.

* * * * *

(c) * * * is in the *Journal of the Association of Official Analytical Chemists,* Volume 54 (Number 4), pages 900 to 902, July 1971, which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

i. In § 189.190(c) by revising that portion of the paragraph beginning with "are in §§ 20.099 through 20.100" to read as follows:

§ 189.190 Thiourea.

* * * * *

(c) * * * are in secs. 20.099 through 20.100 of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

The agency has determined that because these amendments do not make any substantive changes in the regulations but merely are editorial, bringing the incorporation by reference text into compliance with drafting requirements of 1 CFR 51.6, 51.7, and 51.8, notice and public procedure and delayed effective date are unnecessary. However, interested persons may, on or before April 19, 1982 submit to the Dockets Management Branch (address above), written comments regarding

these amendments. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. If the agency determines by the comments received that the amended text should be modified, a notice containing those modifications will be published in the **Federal Register.** Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 1, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-7179 Filed 3-18-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 436 and 442

[Docket No. 81N-0407]

Antibiotic Drugs; Cephradine Dihydrate Capsules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the certification of a new antibiotic drug, cephradine dihydrate capsules. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective March 19, 1982; comments, notice of participation, and request for hearing by April 19, 1982; data, information, and analyses to justify a hearing by May 18, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of a new antibiotic drug, cephradine dihydrate capsules. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 436 and 442 (21 CFR Parts 436 and 442) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Parts 436 and 442 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. Part 436 is amended:

a. In § 436.33(b) by alphabetically adding a new item in the table as follows:

§ 436.33 Safety test.

* * * * *

(b) * * *

Antibiotic drug	Diluent (diluent number as listed in § 436.31)	Test dose: Concentration in units or milligrams of activity per milliliter	Test dose: Volume in milliliters to be administered to each mouse	Route of administration as described in paragraph (c) of this section
* * *	*	*	*	*
Cephradine dihydrate	10	40 mg	0.5	Oral.
* * *	*	*	*	*

* * * * *

b. In § 436.541, by amending paragraph (b) by alphabetically adding a new item into the table and by adding new paragraph (c)(5), to read as follows:

§ 436.541 Dissolution test.

* * * * *

(b) * * *

Dosage form	Dissolution medium	Stirring blade	Sampling time(s) (minutes)
* * *	*	*	*
Cephradine dihydrate capsules	900 mL 0.12*N* hydrocholoric acid	75	60
* * *	*	*	*

* * * * *

(c) * * *

(5) *Cephradine dihydrate*—(i) *Preparation of working standard solution.* Accurately weigh approximately 40 milligrams of cephradine working standard into a suitable-sized volumetric flask. Dissolve and dilute to volume with 0.12*N* hydrochloric acid. Further dilute with a buffer solution (prepared by dissolving 27.2 grams of sodium acetate trihydrate in a mixture of 12 milliliters of glacial acetic acid and sufficient distilled water to make 2 liters) to obtain a known concentration of 0.01 to 0.03 milligram of cephradine per milliliter.

(ii) *Preparation of sample solution.* Filter the sample and dilute an accurately measured portion of the filtrate with sufficient buffer solution, described in paragraph (c)(5)(i) of this section, to obtain a concentration of 0.01 to 0.03 milligram of cephradine per milliliter (estimated).

(iii) Proceed as directed in paragraph (c)(1) (iii) and (iv) of this section, except measure the absorbance at the absorption peak at approximately 262 nanometers.

* * * * *

PART 442—CEPHA ANTIBIOTIC DRUGS

2. Part 442 is amended:

a. By adding new § 442.41, to read as follows:

§ 442.41 Cephradine dihydrate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cephradine dihydrate is the dihydrate form of (6*R*,7*R*)-7-[(*R*)-2-amino-2-(1,4-cyclohexadien-1-yl)acetamido]-3-methyl-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid. It is so purified and dried that:

(i) Its potency is not less than 900 micrograms and not more than 1,050 micrograms of cephradine per milligram on an anhydrous basis.

(ii) It passes the safety test.

(iii) Its moisture content is not less than 8.5 percent and not more than 10.5 percent.

(iv) Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 3.5 and not more than 6.0.

(v) Its cephalexin content is not more than 5 percent on an anhydrous basis.

(vi) It passes the identity test.

(vii) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, safety, moisture, pH, cephalexin content, identity, and crystallinity.

(ii) Samples required: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Use any of the following methods; however, the results obtained from the hydroxylamine colorimetric assay shall be conclusive.

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with solution 1 to the reference concentration of 10.0 micrograms of cephradine per milliliter (estimated).

(ii) *Hydroxylamine colorimetric assay for cephradine.* Proceed as directed in § 442.40(b)(1)(ii).

(iii) *Liquid chromatographic assay.* Proceed as directed in § 442.40(b)(1)(iii).

(2) *Safety.* Proceed as directed in § 436.33 of this chapter.

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 10 milligrams per milliliter.

(5) *Cephalexin content.* Proceed as directed in § 442.40(b)(5).

(6) *Identity.* Proceed as directed in § 436.211 of this chapter, using the 1 percent potassium bromide disc prepared as described in paragraph (b)(1) of that section.

(7) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

b. By adding new § 442.141, to read as follows:

§ 442.141 Cephradine dihydrate capsules.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cephradine dihydrate capsules are composed of cephradine dihydrate and one or more suitable and harmless lubricants and diluents enclosed in a gelatin capsule. Each capsule contains 250 milligrams or 500 milligrams of cephradine. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of cephradine that it is represented to contain. Its moisture content is not more than 11.0 percent. It passes the dissolution test if the quantity Q is 85 percent at 60 minutes. The cephradine dihydrate used conforms to the standards prescribed by § 442.41(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The cephradine dihydrate used in making the batch for potency, safety, moisture, pH, cephalexin content, identity, and crystallinity.

(*b*) The batch for potency, moisture, and dissolution.

(ii) Samples required:

(*a*) The cephradine dihydrate used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch: A minimum of 100 capsules.

(b) *Tests and methods of assay*—(1) *Potency.* Use either of the following methods; however, the results obtained from the hydroxylamine colorimetric assay shall be conclusive.

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a high-speed glass blender jar containing sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to obtain a stock solution of convenient concentration. Blend for 3 to 5 minutes. Further dilute and aliquot of the stock solution with solution 1 to the reference concentration of 10.0 micrograms of cephradine per milliliter (estimated).

(ii) *Hydroxylamine colorimetric assay.* Proceed as directed in § 442.40(b)(1)(ii), except prepare the sample solution and calculate the cephradine content as follows:

(*a*) *Preparation of sample solution.* Blend a representative number of capsules in a high-speed glass blender jar with sufficient distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of this solution with distilled water to a concentration of 1 milligram of cephradine per milliliter (estimated).

(*b*) *Calculations.* Calculate the cephradine content as follows:

$$\text{Milligrams per capsule} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000 \times n}$$

where:

A_u = Absorbance of sample solution;
P_s = Potency of working standard in micrograms per milligram;
d = Dilution factor for sample;
A_s = Absorbance of working standard solution;
n = Number of capsules in the sample assayed.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *Dissolution.* Proceed as directed in § 436.541 of this chapter, except:

(i) A distance of 2.5±0.2 centimeters should be maintained between the lower edge of the stirring blade and the lowest inner surface of the vessel during test rather than 4.5±0.5 centimeters as specified in paragraph (a) of that section; and

(ii) In lieu of paragraph (d) of that section, use the interpretation described in the United States Pharmacopeia XX dissolution test.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act (21 U.S.C. 357), FDA permits the manufacturer to market this drug on a "release" status pending the regulation's becoming effective. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective March 19, 1982. However, interested persons may, on or before April 19, 1982, submit written comments on this rule to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified

with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday throught Friday.

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or before April 19, 1982, a written notice of participation and request for hearing, and (2) on or before May 18, 1982, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective March 19, 1982.

(Secs. 507, 701(f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371(f) and (g)))

Dated: March 10, 1982.

James C. Morrison,

Acting Assistant Director for Regulatory Affairs.

[FR Doc. 82-7225 Filed 3-18-82; 8:45 am]

BILLING CODE 4160-01-M

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 606

Conduct of Employees; Nomenclature Change

AGENCY: Arms Control and Disarmament Agency.

ACTION: Final rule; nomenclature change.

SUMMARY: This document amends regulations regarding conduct of employees to correct references to the Civil Service Commission which became obsolete upon establishment of the Office of Personnel Management on January 11, 1979.

EFFECTIVE DATE: January 11, 1979.

FOR FURTHER INFORMATION CONTACT: Walter L. Baumann, Assistant General Counsel, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451, (202) 632–3530.

SUPPLEMENTARY INFORMATION:

PART 606—CONDUCT OF EMPLOYEES

Accordingly, 22 CFR Part 606 is amended as follows:

§ 606.735–11 [Amended]

1. In 22 CFR 606.735–11 remove the words "Civil Service Commission" and insert, in their place, the words "Office of Personnel Management".

§ 606.735–74 [Amended]

2. In 22 CFR 606.735–74 remove the words "Chairman of the Civil Service Commission" and insert, in their place, the words "Office of Personnel Management".

William J. Montgomery,

Administrative Director.

March 12, 1982.

[FR Doc. 82-7437 Filed 3-18-82; 8:45 am]

BILLING CODE 6820-32-M

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

25 CFR Part 700

Employee Responsibilities and Conduct

AGENCY: Navajo and Hopi Indian Relocation Commission.

ACTION: Final rule.

SUMMARY: The Navajo and Hopi Indian Relocation Commission is establishing Subpart O, Employee Responsibilities and Conduct to 25 CFR Part 700. The purpose of Subpart O is to prescribe appropriate standards of conduct and responsibilities, financial disclosure reports, and rules of ethics in the conduct of Government business that are mandatory for all who serve with the Navajo and Hopi Indian Relocation Commission and in order to implement the requirements of law, Executive Order 11222 and 5 CFR Part 735.

EFFECTIVE DATE: March 19, 1982.

FOR FURTHER INFORMATION CONTACT: Paul M. Tessler, CFR Liaison Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002; Telephone No.: (602) 779–3311, Extension 1376; FTS: 261–1376.

SUPPLEMENTARY INFORMATION:

PART 700—COMMISSION OPERATIONS AND RELOCATION PROCEDURES

Accordingly, 25 CFR Part 700 is amended in its final form by adding Subpart O, Employee Responsibility and Conduct, to read as follows:

* * * * *

Subpart O—Employee Responsibility and Conduct

Sec.

700.501 Statement of purpose.
700.503 Definitions.
700.505 Coverage.
700.507 Responsibilities.
700.509 Duties of the designated agency ethics official.
700.511 Statements of employment and financial interest.
700.513 Business dealings on behalf of the government.
700.515 Conflicts of interest.
700.517 Affiliations and financial interests.
700.519 Gifts, entertainment and favors.
700.521 Outside work and interests.
700.523 Business relationships among employees.
700.525 Use of government information or expertise.
700.527 Endorsements.
700.529 Negotiations for employment.
700.531 Government property.
700.533 Restrictions affecting travel and travel expense reimbursement.
700.535 Nepotism.
700.537 Indebtedness.
700.539 Soliciting contributions.
700.541 Fraud or false statement in a Government matter.
700.543 Gambling.
700.545 Alcoholism and drug abuse.
700.547 Consuming intoxicants on government premises or during duty hours.
700.549 Employee organizations.
700.551 Franking privilege and official stationery.
700.553 Use of official titles.
700.555 Notary services.
700.557 Political activity.
700.559 Equal opportunity.
700.561 Sexual harassment.

Sec.

700.563 Statutory restrictions from 18 U.S.C. 207, which are applicable to former Government employees.
700.565 Miscellaneous statutory provisions.

Authority: Pub. L. 93-531, 88 Stat. 1712 as amended by Pub. L. 96-305, 94 Stat. 929 (25 U.S.C. 640d).

Subpart O—Employee Responsibility and Conduct

§ 700.501 Statement of purpose.

This part prescribes appropriate standards of conduct and responsibilites, financial disclosure reports, and rules of ethics in the conduct of Government business that are mandatory for all who serve with the Navajo and Hopi Indian Relocation Commission, and in order to implement the requirements of law, Executive Order 11222 and 5 CFR Part 735. The rules promulgated by the Commission as essential to agency operations are in addition to the criminal laws and other laws governing conduct of Federal employees. Like the laws, they will be strictly interpreted and firmly enforced. Ignorance of these rules or laxity in observance or enforcement of them will not be condoned. They are the prime responsibility of all Commission personnel.

§ 700.503 Definitions.

(a) "Special Government Employee": An officer or employee who has been employed to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis. (18 U.S.C. 202(a)).

(b) "Employee": Any officer or employee of the Commission who is not a special government employee.

(c) "Commission personnel": All officers and employees of the Commission, including special Government employees.

(d) "Persons": An individual, corporation, company, association, firm, partnership, society, joint stock company, or any other organization or institution.

(e) "Gratuity": Any gift, honorarium, favor, entertainment, hospitality, transportation, loan, or any other tangible thing, and any other intangible benefit (i.e. discounts) given to or on behalf of Commission employees or their spouses or dependent children for which fair market value is not paid by the recipient or by the Government.

§ 700.505 Coverage.

The regulations contained in this part apply to all Commission personnel. Exceptions applicable to special Government employees and members of the Senior Executive Service are noted in the body of this Part.

§ 700.507 Responsibilities.

(a) *Office of the Commission and Office of Executive Direction.* (1) The Chairman of the Commission shall prepare and submit to the Office of Personnel Management for approval, standards of employee conduct which implement requirements of law, Executive Order 11222 and provisions of 5 CFR Part 735; and prescribe additional standards of ethical and other conduct and reporting requirements that are appropriate to the agency. After OPM approval, the Chairman shall submit the agency's regulations to the **Federal Register** for publication. These requirements also apply to any amendments to agency regulations.

(2) The Commissioners shall appoint a Designated Agency Ethics Official and Deputy Ethics Official in accordance with 5 CFR 738.202(b). Responsibilities of these officials are described below in § 735.15.

(3) The Executive Director shall ensure that the regulations published under this part are disseminated to all Commission personnel and that staff are familiar with and understand the standards of conduct and statutes governing conflicts of interest and post Federal employment restrictions.

(4) The Executive Director shall ensure that disciplinary or remedial action is taken in the case of all agency personnel who violate these standards or related laws and regulations, and against supervisors who fail to carry out their responsibilities in taking disciplinary or remedial action in such cases.

(b) *Managers and Supervisors.* Managers and Supervisors shall ensure that all Commission personnel under their supervision are familiar with and understand these regulations governing standards of conduct, conflict of interest, and referenced statutory restrictions, and adhere to them at all times. Issues and problems which cannot be resolved through the discussion process inherent in the supervisor-employee relationship shall be referred to the Designated Agency Ethics Official. Managers and Supervisors shall ensure that disciplinary or remedial action is taken with all agency personnel who violate these regulations, and against subordinate supervisors who fail to carry out their responsibilities for effecting or recommending disciplinary or remedial action in these cases.

(c) *Employees.* All Commission personnel shall be familiar with the standards of conduct governed in this directive and the laws governing conflicts of interest and post employment restrictions, and shall comply with them. When in doubt as to the permissibility of an action under the terms of this directive, the employee shall not act without first consulting the immediate supervisor and as appropriate seeking the advice of the Designated Agency Ethics Official.

(d) *Office of Management Operations.* (1) The Office of Management Operations shall give each employee a copy of these regulations and shall conduct an oral briefing on their contents, within 30 days of approval. New personnel shall receive a copy and oral briefing promptly upon assuming their duties. Additions and amendments shall be similarly communicated upon approval.

(2) The Office shall conduct annual review sessions of these standards for all personnel.

(3) The Office shall provide the Designated Agency Ethics Official with necessary administrative and clerical staff support.

§ 700.509 Duties of the designated agency ethics official.

The Designated Agency Ethics Official shall coordinate and manage the agency's ethics program. The Deputy Ethics Official shall serve as alternate Agency Ethics Official in the absence of the Designated Agency Ethics Official, or upon his or her express delegation. Specific duties of the Officer include:

(a) *Liaison with Office of Government Ethics (OGE).* The Designated Agency Ethics Official shall establish and maintain close working relations with the OGE, and shall coordinate communications between the Commission and OGE through the Agency Liaison Division and Office of Ethics of the General Services Administration. If the Designated Agency Ethics Official receives a request which he or she believes should be answered by the Office of Government Ethics, a referral procedure is available. Requests for advisory opinions shall be submitted as specified in 5 CFR 738.304. The Designated Agency Ethics Official shall provide the OGE with records, reports and any other information which may be required under the Ethics in Government Act (Pub. L. 95-521, as amended) or requested by the OGE.

(b) *Review of statements.* The Designated Agency Ethics Official shall review the statements of employment and financial interest submitted by agency personnel assessing the application of conflict of interest laws

and regulations to the information reported. When the review discloses a conflict, or the appearance of a conflict, between the private interests of an employee and the performance of his or her duties as a Commission employee, the Designated Agency Ethics Official shall bring the conflict to the attention of the employee, grant the individual an opportunity to explain the conflict, and attempt to resolve it. If the conflict is not resolved at this point, the Designated Agency Ethics Official shall forward a written report on the conflict to the Chairman of the Commission recommending appropriate action. In developing the recommendation the Designated Agency Ethics Official may consult, as appropriate, with the agency General Counsel and the GSA Ethics Office.

(c) *Education and counseling program.* The Designated Agency Ethics Official shall design and conduct an education and counseling program for supervisors and employees on all ethics and standards of conduct matters, including post-employment matters. Records shall be kept as appropriate on the advice rendered.

(d) *Administrative systems review.* The Designated Agency Ethics Official shall ensure that these regulations and implementing administrative systems are evaluated annually to determine their adequacy and effectiveness in relation to current agency responsibilities. Amendments shall be developed and approved pursuant to the results of systems review.

§ 700.511 Statements of employment and financial interests.

(a) *Employees required to file statements.* (1) Members of the Commission shall submit Financial Disclosure Reports (SF–278) to the Deputy Ethics Counselor of the Department of Interior, according to instructions received from that office. Issues of real or apparent conflict of interest which involve employees of the Senior Executive Service shall be resolved by the Ethics Officer of the Department of the Interior.

(2) The Designated Agency Ethics Official shall submit SF–278 to the Office of Government Ethics for review.

(3) The employee appointed as Deputy Ethics Official and incumbents of the positions listed below shall file NHIRC form 738.1F with the Designated Agency Ethics Official:

(i) Executive Director.

(ii) General Counsel.

(iii) Assistant Director for Management Operations.

(iv) Assistant Director for Relocation Operations.

(v) Chief, Technical Services Division.

(vi) Chief, Realty Division.

(vii) Chief, Advisory Services Division.

(viii) Chief, Office of Research, Planning and Evaluation.

(ix) Procurement/Fiscal Officer.

(x) Realty Specialists.

(xi) Construction Inspectors.

(4) The Designated Agency Ethics Official may require Statements of Employment and Financial Interest from employees in other specified positions, if analysis of duties and responsibilities shows the positions meet the criteria listed in paragraph (b) of this section.

(5) Special Government Employees shall file NHIRC form 738.2F with the Designated Agency Ethics Official prior to beginning employment or service with the Commission. The Designated Agency Ethics Official may waive this requirement if the duties of the position held by the special Government employee are of a nature or at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Commission or the Government.

(b) *Criteria for selection of positions subject to filing requirements.* The following criteria govern selection of employees who must also file statements of Employment and Financial Interest (NHIRC Form 738.1F) with the Designated Agency Ethics Official.

(1) Statements of Employment and Financial Interest shall be required of employees holding positions which are responsible for:

(i) Contracting or procurement.

(ii) Administering or monitoring grants and subcontracts.

(iii) Other activities where the decision or action has an economic impact on the interests of any person or non-Federal enterprise.

(2) When a new position is established or the duties of an existing position are materially changed, the position shall be evaluated pursuant to the criteria of this section to determine whether or not it should be designated as one requiring the incumbent to submit a Statement of Employment and Financial Interests.

(c) *Interests of relatives.* The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. Reports must include but are not limited to identification of such an individual's employer, financial holdings and debts. These provisions also apply to special Government employees.

(d) *Employee complaint against filing requirements.* An employee who believes that his or her position has been improperly included among those requiring the submission of a Statement of Employment and Financial Interests may obtain review through the Commission's administrative grievance procedure.

(e) *Procedures for obtaining statements.* Following approval of these regulations, the Designated Agency Ethics Official shall give each employee and special Government employee required to file under this Part, a copy of the appropriate NHIRC form. An enclosure with the form shall advise that:

(1) The completed form shall be returned in a sealed envelope marked "personal-in confidence" to the Designated Agency Ethics Official within 30 days.

(2) The services of the Designated Agency Ethics Official are available to assist and advise in preparation of the statement.

(3) Any additions or deletions to the information furnished must be reported within 30 days of the time they occur, or in the case of a special Government employee, at the time the change occurs, and

(4) No later than June 1 of each year all employees and special Government employees required to file under paragraph (a)(3) of this section shall file an annual supplementary statement to update the information previously filed.

(5) New employees required to file under paragraph (a)(3) of this section shall submit a statement within 30 days of beginning employment with the Commission.

(e) *Confidentiality of statements.* Statements of employment and financial interest shall be held in confidence. Access to information from the statements shall not be disclosed except to carry out the purpose of this directive.

(f) *Resolving conflicts of interest.* When the Designated Agency Ethics Official determines from review of the statement that a conflict of interest may exist, the submitter shall have the opportunity to provide additional information, which shall become part of the record. The Designated Agency Ethics Official and the concerned employee shall make every effort to resolve the conflict in a manner that is mutually acceptable. If these efforts are not successful the Designated Agency Ethics Official shall forward a report and recommendation to the Chairman of the Commission for final action. Remedial action directed by the

Chairman may include but is not limited to:

(1) Disqualification for a particular assignment.

(2) Change in assigned duties.

(3) Divestment of the employee or special Government employee of the conflicting interests.

(4) Disciplinary action, including removal.

§ 700.513 Business dealings on behalf of the Government.

(a) All employees shall conduct themselves on the job so as to efficiently discharge the work of the Commission. Employees shall observe courtesy, consideration and promptness in dealing with clients, other governmental agencies, and members of the public.

(b) Commission personnel conducting business with contractors, realtors, vendors, service providers and other public and private agencies, organizations, business and individuals shall maintain strict impartiality in their business dealings. Commission employees shall not allow themselves to be placed in a position in which a conflict of interest might arise or might justifiably be suspected. Such a conflict may arise or appear to arise by the acceptance of gratuities or by any action which could reasonably be interpreted as influencing the strict impartiality that must prevail in all business relationships involving the Commission. However, this requirement of impartiality is not intended to prohibit advocacy of client interests, as is required as a stated duty of certain agency positions. Such advocacy may occur for example during warrantee representation or during technical representation with builders.

§ 700.515 Conflicts of interest.

(a) A conflict of interest may exist when an employee uses, or appears to use, his or her official position to obtain benefits for himself or herself, close friends, relatives, or business associates. A conflict of interest may also exist if an employee's private activities interfere with the proper discharge of his or her official duties. If an employee has any doubt about whether or not a particular situation is, or gives the appearance of being a conflict of interest, the situation should be discussed with the immediate supervisor. Should further review be required, the Designated Agency Ethics Official shall be consulted.

(b) Principal situations where conflict of interest may develop are regulated by the sections which follow. However, these regulations do not preclude other conflict of interest situations which may arise in connection whth the work of the Commission.

(c) These prohibitions apply to all Commission employees, whether or not they are required to file financial and employment disclosure statements.

§ 700.517 Affiliations and financial interests.

(a) Commission personnel shall not engage in any personal, business, or professional activity, or receive or retain any direct or indirect financial interest, which places them in a position of conflict or apparent conflict between their private interests and the public interests of the United States as related to the duties of their Commission positions.

(b) Employees are prohibited from accepting money, goods or services other than official compensation for any act performed by the employee as part of his or her official duties.

(c) Commission personnel shall not use, directly or indirectly, inside information for private gain for themselves, family members, or others if that information is not generally available to the public and was obtained as a result of Commission employment.

(d) Commission personnel are prohibited from using their official positions to induce, coerce, or in any manner influence any person, including subordinates, to provide any improper benefit, financial or otherwise, to themselves or others.

(e) Employees may not have any personal interest in transactions which are directed, regulated, or effected by the Commission pursuant to the authorities vested in the agency by Pub. L. 93–531 and Pub. L. 96–395. Specifically:

(1) No Commission employee shall have a personal interest in a contract, subcontract, memorandum of understanding or agreement, or other arrangement resulting in payment for the delivery of goods, services, or supplies to the Commission, to the Navajo or Hopi tribal governments, or to individual relocatees or groups of relocatees.

(2) No Commission employee shall have or seek an interest in real or personal property acquired for transfer to the Navajo or Hopi Tribes.

(3) No Commission employee shall have or seek an interest in any activity supported financially by the Commission through the award of Discretionary Funds.

(4) During the process of acquiring replacement housing for relocatees no employee may have a personal interest in the activities of a contractor, realtor, or other business entity selected by the relocatee to furnish replacement housing; nor may the employee influence the relocatee to select any realtor, contractor or other business entity with which the employee has personal or business affiliations.

(5) Nothing in this section shall restrict a relocatee's right to exercise free and independent judgment in selecting a realtor, contractor, or other vendor or service provider; regardless of any personal or business relationship of that entity to a Commission employee, provided the employee has not influenced the choice of the relocatee in any manner.

(6) Nothing in this section shall restrict a Commission employee who is eligible for relocation benefits from applying for and obtaining such benefits according to published criteria; nor to prevent the Commission from employing a member of the Hopi or Navajo Tribe who has been, or is in the process, of being relocated pursuant to the law.

(7) Commission employees shall disqualify themselves from investigating and preparing recommendations regarding eligibility determination for applicants to whom they are closely related by blood or marriage.

§ 700.519 Gifts, entertainment and favors.

(a) Acceptance of gratuities, including gifts, entertainment and favors, (no matter how innocently tendered or received) from those who have or seek business dealings with the Commission, is prohibited as it may be a source of embarrassment to the recipient, and may impair public confidence in the integrity of the conduct of the Government's business. It is emphasized that prohibited conflicts and apparent conficts of interest can sometimes arise even from relationships and transactions that the persons concerned perceive as inconsequential.

(b) Except as provided in paragraphs (c) and (d) of this section, Commission personnel and their spouses, minor children and members of their households shall not solicit nor accept, either directly or indirectly, any gift, gratuity, favor, entertainment loan or any other thing of monetary value from any person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission,

(2) Conducts operations or activities that are regulated by the Commission or significantly affected by Commission decisions, or

(3) Has interests that may be substantially affected by the

performance or non-performance of the employee's official duty.

(c) Employees are specifically prohibited from accepting gifts or favors from vendors, contractors, builders, realtors, tribal officials or other individuals with whom Commission employees do business. This prohibition extends to the acceptance of meals and refreshments offered by individuals conducting or seeking business with the Commission whether during duty or non-duty hours.

(d) The following circumstances are excepted from the prohibitions listed above:

(1) An employee may accept unsolicited advertising or promotional material with the name of the company imprinted, such as pencils, calendars and similar items of nominal intrinsic value.

(2) An employee may accept transportation and meals provided by a contractor in connection with official business when arrangements for Government or commercial transportation or meals are clearly impracticable and the supervisor has granted prior approval.

(3) An employee may accept an invitation extended by a relocatee to attend a housewarming, potluck, accept a meal and refreshments while traveling on the reservation, or similar social activity when circumstances would make it rude for the employee to refuse.

(4) Other circumstances may arise in which it would be to the Commission's advantage for an employee to participate in activities ordinarily prohibited. In such cases, the employee shall consult with his or her supervisor about the course of action to be followed. If prior consultation is not possible, the employee shall exercise prudent judgement and promptly inform the supervisor of the activity.

§ 700.521 Outside work and interests.

Commission employees may engage in outside work or other activity which does not create a conflict between the employee's private interests and official duties nor prevent employees from devoting their talents and energies to the Commission. An employee's outside work shall not reflect discredit upon the Commission.

(a) Employees engaged in or considering outside employment shall inform their supervisor of the work, and supply such additional details as may be required to determine whether the employment is compatible with the full and proper discharge of the employee's official duties.

(b) Similarly, employees shall inform the supervisor and request approval of other types of outside activities which may present an actual or apparent conflict of interest between the employees' official duties and their private lives. The supervisor shall determine if the outside employment or activity is prohibited by these regulations, and so inform the employee. The Designated Agency Ethics Official is available to assist supervisors in making such determinations.

(c) *Guidelines and limitations.* Outside employment or other outside activity is incompatible with the full and proper discharge of an employee's duties and responsibilities and hence is prohibited if:

(1) It would involve the violation of a Federal or State statute, a local ordinance, Executive Order, or regulation to which the employee is subject.

(2) It would be of such extent or nature as to interfere with the efficient performance of the employee's Government duties, or impair the employee's mental or physical capacity to perform them in an acceptable manner.

(3) It would tend to influence the exercise or impartial judgement on any matters coming before the employee in the course of his or her duties;

(4) It would involve work for contractors, subcontractors, realtors, tribal offices, clients or other entities and individuals which have business with or receive services from the Commission or conduct activities which are regulated by the Commission.

(5) Involves a person or enterprise that may be substantially affected by the performance or nonperformance of the employee's official duties.

(6) It involves the use of the employee's time during official working hours,

(7) It involves the receipt of salary or anything of monetary value from a private source as compensation for services to the Government.

(8) It involves acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value under circumstances in which acceptance might result in, or create the appearance of, a conflict of interest.

(9) It would be of a nature which might be construed by the general public to be an official act of the Commission, or would give the impression that a business or product which is involved in the relocation project is officially endorsed or approved by the Commission.

(10) It would involve use by the employee of official facilities, e.g., office space, office machines, or supplies, or the services of other employees during duty hours.

(11) It might bring discredit upon, or cause unfavorable criticism of, the Government or the Commission or lead to relationships which might impair public confidence in the integrity of the Government or the Commission.

(12) It would involve the use of information obtained as a result of Government employment that is not freely available to the general public in that it either has not been made available to the general public or would not be made available upon request.

§ 700.523 Business relationships among employees.

Business relationships among Commission employees which take place after working hours and away from Commission premises are not matters for regulation, unless they violate the restrictions listed above.

§ 700.525 Use of Government information or expertise.

(a) Commission personnel may engage in teaching, lecturing and writing about the relocation program, provided the Information which they present is public knowledge or would be made available to the public upon request.

(b) Employees shall inform their supervisors in advance of any teaching, writing, or lecturing activity which relates to the Commission operations. The Commissioners may at their discretion exercise the right of review and approval of materials to be presented.

(c) Employees must obtain supervisory approval for release of information considered confidential, and release of information not previously published as public information.

(d) Disclosure of information from records shall conform with the provisions of the Freedom of information and the Privacy Acts (5 U.S.C. 552). An employee may not release confidential information maintained by the Commission and available to the employee because of his position as an employee of the Commission. Violation of this prohibition may result in prosecution under the terms of the Privacy Act in addition to any disciplinary penalties levied by the employee's supervisor.

(e) Commission personnel may not accept compensation for an article, speech, consultant service, or other activity if it involves the use of information obtained as the result of Government employment which is not available to the general public as described in paragraph (a) of this

section, or results in an actual or appearance of conflict of interest.

(f) Unless there is a definite Commission position on a matter which is the subject of an employee's writing or speech, and the individual has been authorized by the Commissioners to present that position officially, the employee shall expressly present his or her views on the matter as his or her own and not as those of the Commission.

(g) The right of an employee to express personal opinions is respected. However, once the Commission has established policy and procedure, every employee is obligated to carry out all lawful regulations, orders, and assignments, and to support the programs of the Commission as long as they are part of recognized public policy.

(h) In dealing with the public and with relocatees, employees should avoid issuing opinions or decisions contrary to Commission policy which can be mistaken as official Commission policy.

§ 700.527 Endorsements.

Employees are prohibited from endorsing in an official capacity business products or processes or the services of commercial firms for advertising publicity or sale purposes. Use of materials, products or services, by the Commission does not constitute official endorsement. Employees may not recommend for or against any particular builder, supplier, realtor, contractor or other person or business seeking to sell any product or service to relocatees.

§ 700.529 Negotiations for employment.

An employee shall inform the supervisor and seek the advice of the Designated Agency Ethics Official if he or she wishes to negotiate for future non-Federal employment with persons or organizations having business with the Commission if the employee is involved in making recommendations or decisions affecting those persons or organizations.

§ 700.531 Government property.

Employees shall be held accountable for Government property and monies entrusted to their individual use or in connection with their official duties. An employee has a positive duty to protect and conserve Government property and to use it economically and for official purposes only, for example:

(a) Only official documents and materials may be reproduced on Government reproduction equipment.

(b) Government vehicles may be used only on official business and may not be used for personal use or for travel to or from an employee's place of residence, unless specifically authorized or assigned by the supervisor.

(c) An employee may not use FTS to make personal phone calls at Government expense.

(d) An employee may not use Government purchase authority for personal acquisitions even though reimbursement is made.

§ 700.533 Restrictions affecting travel and travel expense reimbursement.

(a) When an employee is on officially authorized travel his or her expenses are reimbursed by the Government. The employee may not request nor accept reimbursement in cash or kind for travel expenses from any other source, even when the employee's expenses exceed the maximum Government allowance.

(b) An employee who is authorized to attend a convention, seminar, or similar meeting while on official duty, whose travel is being paid by the sponsoring association, may not also claim travel expenses from the Government.

(c) An employee may accept accommodations and expense reimbursement for attending meetings, functions, etc. in his or her private capacity and on his or her own time, provided that such acceptance does not produce an actual or apparent conflict of interest. This restriction prohibits an employee from accepting accommodations or reimbursement from anyone having or seeking business with the Commission.

(d) Commission employees traveling on official business, as well as employees traveling on personal business, may not accept the use of private airplanes, cars, or other means of transportation offered at no expense by individuals conducting or seeking business dealings with the Commission, nor from clients of the Commission.

Exception: An employee may accept transportation and meals of modest value provided by a contractor or client in connection with official business when it is not practical to make arrangements for Government or commercial accommodations. The employee must receive prior approval of the supervisor in such case. This might occur, for example, if an employee were traveling to a remote area where no Government vehicle were available, or where there are no nearby restaurants or eating places. There is no prohibition against a contractor or private citizen traveling as a passenger in a Government vehicle driven by a Commission employee on official business, provided administrative procedures have been followed in making the travel arrangements.

§ 700.535 Nepotism.

An employee may not appoint or advocate the appointment to any position under his or her control, any individual who is a relative of the employee. No employee shall supervise a member of his or her own family except in emergency situations.

§ 700.537 Indebtedness.

(a) Commission personnel shall pay their just financial obligations in a timely manner, especially those imposed by law, such as Federal, state, or local taxes. For the purposes of this paragraph, "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court.

(b) Employees shall promptly refund any salary overpayments and excess travel advances.

(c) An employee's debts to private creditors are his or her personal concern. Any complaints or questions concerning such obligations will be referred to the employee for handling. Creditors and collectors shall not have access to employees on Agency premises during duty hours.

§ 700.539 Soliciting contributions.

(a) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior or accept a gift from an employee receiving less pay than himself or herself. (5 U.S.C. 7351) However, this paragraph does not preclude a voluntary gift of nominal value made on a special occasion.

(b) If authorized by the supervisor, an employee may solicit contributions for charitable causes. He or she may also be permitted to collect small donations for gifts for fellow employees for special occasions during slack moments.

§ 700.541 Fraud or false statement in a Government matter.

"Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly or wilfully falsifies, conceals or covers up by a trick, scheme or device a material fact, or makes or uses any false writing or document knowing the same to contain false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years or both (18 U.S.C. 1001)." Special attention is required in the certification of time and attendance reports, applications for employment, personnel security forms, requests for travel reimbursement, client certification documents, and purchase orders and receiving forms.

§ 700.543 Gambling.

An employee shall not sponsor or participate in any gambling activity during working hours on Government premises.

§ 700.545 Alcoholism and drug abuse.

An employee who habitually uses intoxicants to excess is subject to removal (5 U.S.C. 7352). The Relocation Commission recognizes alcoholism and drug abuse as serious and treatable illnesses. Excessive absence and poor work performance are two of the specific problems resulting from excessive use of alcohol and drugs. The Commission management will assist any employee who has such a problem to obtain professional help and will make reasonable allowance as permitted by work schedules to allow an employee approved leave for professional treatment. Anyone who seeks such assistance will be guaranteed confidential handling of his or her case. Disciplinary action will be considered if an employee rejects or ignores treatment or other appropriate assistance.

§ 700.547 Consuming intoxicants on Government premises or during duty hours.

Consuming alcohol or non-prescription drugs on agency premises, or while driving or riding in a Government vehicle, or during working hours are prohibited conduct and employees violating this regulation are subject to disciplinary acton, including discharge.

§ 700.549 Employee organizations.

An employee may not knowingly be a member of an organization of Government employees that advocates the overthrow of the United States' constitutional form of government (5 U.S.C. 7311). Employees are also prohibited from striking against the Federal Government. With these restrictions, an employee has the right to form, join, or assist lawful employee organizations. Similarly, an employee has also the right to refrain from such activity. In either case, the employee may exercise his or her right freely and without fear of penalty or reprisal and shall be protected in the exercise of such rights.

§ 700.551 Franking privilege and official stationery.

An employee is strictly prohibited from using Government franked envelopes with or without applied postage, or official letterhead stationery for personal business. (18 U.S.C. 1719)

§ 700.553 Use of official titles.

Employees are prohibited from using their official titles in conducting private business or participation in private or public group activities not concerned with official duties. Use is strictly limited to those occasions and circumstances where representation is official.

§ 700.555 Notary services.

An employee may not charge a fee for performing notarial services as part of his or her job duties (EO 977 Nov. 24, 1908).

§ 700.557 Political activity.

(a) Regulations on the political activity of Federal employees can be found in 5 U.S.C. 73. In general, the law and the rules prohibit using official authority or influence for the purpose of interfering with an election or affecting its results, and taking an active part in partisan political management or partisan political campaigns.

(b) Special Government employees of the Commission are subject to the political activity restrictions contained in 5 U.S.C. 73 and 18 U.S.C. 602, 603, 607 and 608 while on an active duty status only.

(c) Pursuant to provisions of the regulations cited, employees may take part in certain local elections. However, Commission employees are restricted from taking an active role in political elections of the Navajo and Hopi tribal governments, even though such elections are not partisan in the usual meaning of the word. With respect to tribal elections, employees may not:

(1) Run for tribal elective office.

(2) Organize, direct, nor actively participate in a tribal electoral campaign.

(3) Solicit or attempt to coerce fellow employees to contribute anything of value to an individual or group engaged in tribal political activity.

(4) Circulate petitions, posters, or other political materials during working hours or on Commission premises.

(5) Engage in any other type of tribal political activity which produces a conflict of interest between the employee's job responsibilities and the political activity.

§ 700.559 Equal opportunity.

Commission personnel shall scrupulously adhere to the Commission program of equal opportunity regardless of race, color, religion, sex, age, handicap, or national origin.

§ 700.561 Sexual harassment.

(a) Sexual harassment is a form of employee misconduct which undermines the integrity of the employment relationship. All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual overtures. Sexual harassment is defined by the Office of Personnel Management as "deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome." Sexual harassment does not refer to occasional compliments. It refers to behavior which is not welcome, which is personally offensive and debilitates morale, interfering with the work effectiveness of its victims and their co-workers.

(b) Sexual harassment is a prohibited personnel practice when it results in discrimination for or against an employee on the basis of conduct not related to performance.

For example:

—If submission to sexual advances is a condition of employment, whether expressed in explicit or implicit terms;

—If employment decisions, such as promotion, training, salary increases, rewards, etc., are based on an employee's submission to or rejection of sexual advances;

—If the sexual conduct substantially interferes with an affected person's work performance, or creates an intimidating, hostile or offensive work environment.

(c) Within the Federal Government, a supervisor who uses implicit or explicit coercive sexual behavior to control, influence, or affect the career, salary or job of an employee is engaging in sexual harassment. Similarly, an employee of an agency who behaves in this manner in the process of conducting agency business is engaging in sexual harassment. Finally, any employee who participates in deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome and interfere with work productivity is also engaging in sexual harassment.

(d) It is the policy of the Relocation Commission that sexual harassment is unacceptable conduct in the workplace and will not be condoned. An employee who believes that he or she is subject to sexual harassment may contact one or more of the following people within the Commission for assistance:

(1) The immediate supervisor or second level supervisor.

(2) The EEO Counselor.

(3) The agency EEO Officer.

(4) The EEO Counselor at the Agency Liaison Division of the General Services Administration.

§ 700.563 Statutory restrictions from 18 U.S.C. 207, which are applicable to former Government employees.

(a) *Restrictions applicable to all former officers and employees*—(1) *Permanent bar.* A former Government

employee is permanently barred from serving as agent or attorney for anyone other than the United States before any Government office or agency on any particular matter involving specific parties in which the former officer or employee had participated personally and substantially while with the Government.

(2) *Two year bar.* A restriction similar to the one summarized above prevents a former employee for two years from representational activities on all particular matters which were actually pending under the former employee's "official responsibility" during the one-year period prior to the termination of such responsibility.

(b) *Restrictions applicable only to "senior employees."* (1) Members of the Senior Executive Service are considered senior employees.

(2) Two-year ban on assisting in representation by personal presence. A former senior employee may not assist in the representation of another person by personal presence at an appearance before the Government on any particular matter in which the former employee personally and substantially participated while with the Government.

(3) One-year on attempt to influence former agency. A former senior employee may not represent another person or himself in attempting to influence his own former agency on a matter pending before, or of substantial interest to, such agency. Certain communications are exempted from this provision. These include communications by former senior employees who are employed by State or local governments or by certain educational or medical institutions, other exempt communications are those that are purely social or informational, communications on matters that are personal, including any expression of personal views where the former employee has no pecuniary interest, and response to a former agency's requests for information.

(c) *Implementing regulations.* (1) Detailed regulations implementing this law have been published by the Director, Office of Government Ethics (see 5 CFR Part 737). The Designated Agency Ethics Official should be consulted for any additional information.

§ 700.565 Miscellaneous statutory provisions.

Commission personnel shall acquaint themselves with Federal statutes which relate to their ethical and other conducts as employees of the Commission and of the Government. The attention of Commission personnel is directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress 2d Session, 72A Stat. B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graftm and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of the Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosures of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter.

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in subchapter III of chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607 and 608.

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Hawley Atkinson,

Chairman, Navajo and Hopi Indian Relocation Commission.

[FR Doc. 82-7355 Filed 3-18-82; 8:45 am]

BILLING CODE 6820-BB-M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 511

Wage Order Procedure for Puerto Rico, the Virgin Islands, and American Samoa; Compensation of Committee Members

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document increases from $146 to $153 a day the per diem allowance to which members of industry committees in Puerto Rico, the Virgin Islands and American Samoa are entitled. The industry committees, whose members include representatives of employees, employers and public as appointed by the Secretary of Labor, meet periodically to review the wage rates in various industries and to recommend wage increases where appropriate. The Committees meet pursuant to the Fair Labor Standards Act which authorizes the establishment of minimum wage rates in Puerto Rico, the Virgin Islands and American Samoa which are lower than the mainland minimum wage rate. This increase is in accord with changes in General Schedule salary rates effective October 4, 1981, for regular employees of the U.S. Department of Labor.

EFFECTIVE DATE: March 19, 1982.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S3502, Washington, DC 20210, 202-523-8305.

SUPPLEMENTARY INFORMATION: It is the standard practice to adjust compensation for Industry Committee members in accordance with changes in General Schedule salary rates. The purpose of this amendment is to increase the compensation of each member of an industry committee from $146 to $153 for each day spent in the work of the committee. It accords with changes in General Schedule salary rates effective October 4, 1981, for regular employees of the U.S. Department of Labor.

As this amendment concerns only a rule of agency practice, and is not substantive, notice of proposed rule making, opportunity for public participation and delay in effective date are not required by 5 U.S.C. 553. It does not appear that such participation or delay would serve a useful purpose. Accordingly, this revision shall be effective immediately.

Drafting Information

This document was prepared under the direction and control of Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: 202–523–8305.

Classification

The revision is not substantive in character. Therefore, this rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $400 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 completion, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., pertaining to regulatory analyses, do not apply to this rule.

List of Subjects in Part 511 [1]

Administrative Practice and procedure—8
Minimum Wages—11
Wage and Hour Division
Puerto Rico
Virgin Islands
American Samoa

[1] The Department of Labor, Wage and Hour Division is providing this list in compliance with 1 CFR 18.20. That regulation requires agencies to include a list of index terms for each CFR part affected in Rules and Proposed Rules documents published in the Federal Register beginning April 1, 1982.

PART 511—WAGE ORDER PROCEDURE FOR PUERTO RICO, THE VIRGIN ISLANDS, AND AMERICAN SAMOA

Pursuant to authority in section 5 of the Fair Labor Standards Act of 1938 (52 Stat. 1062 as amended; 29 U.S.C. 205) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp. p. 1004), I hereby revise 29 CFR 511.4 to read as follows:

§ 511.4 Compensation of committee members.

Each member of an industry committee will be allowed a per diem of $153 for each day actually spent in the work of committee, and will, in addition, be reimbursed for necessary transportation and other expense incident to traveling in accordance with Standard Government Travel Regulations then in effect. All travel expenses will be paid on travel vouchers certified by the Administrator or his authorized representative. Any other necessary expenses which are incidental to the work of the committee may be incurred by the committee upon approval of, and shall be paid upon certification of the Administrator or his authorized representative.

(Sec. 5.52 Stat. 1062, as amended (29 U.S.C. 205))

Signed at Washington, D.C. this 15th day of March 1982.

William M. Otter,

Administrator, Wage and Hour Division.

[FR Doc. 82-7567 Filed 3-18-82; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF EDUCATION

34 CFR Part 648

Institutional Grants for Graduate and Professional Study

AGENCY: Department of Education.

ACTION: Final regulation: Correction.

SUMMARY: In the final regulations which implemented the institutional grants for graduate and professional study programs, published in the **Federal Register** on July 22, 1981, pages 37866–37868, a technical correction is made to § 648.1.

FOR FURTHER INFORMATION CONTACT: Donald N. Bigelow, Department of Education, 400 Maryland Avenue, S.W. (Room 3060 ROB–3), Washington, D.C. 20202. Telephone (202) 245–2347.

SUPPLEMENTARY INFORMATION: The final regulations for the Institutional Grants for Graduate and Professional Study Program were published in the **Federal Register** on July 22, 1981 at 46 FR 37866.

In that document a sentence was inadvertently omitted. This sentence reflects a statutory provision. This document makes a technical correction to § 648.1 of the regulations to restore this statutory reference. Because this amendment to the regulations makes a purely technical amendment, no public comment is requested and this amendment constitutes a final regulation.

(Catalog of Federal Domestic Assistance No. 84.094, Institutional Grants for Graduate and Professional Study)

Dated: March 11, 1982.

T. H. Bell,

Secretary of Education.

PART 648—INSTITUTIONAL GRANTS FOR GRADUATE AND PROFESSIONAL STUDY

Accordingly, 34 CFR 648.1 is corrected to read as follows:

§ 648.1 Institutional grants for graduate and professional study.

Institutional Grants for Graduate and Professional Study—referred to in these regulations as the Institutional Grant Program—provide Federal financial assistance to enable institutions of higher education to maintain, strengthen, and improve the quality of graduate and professional programs leading to an advanced degree (other than a medical degree); to establish, strengthen, and improve programs designed to prepare graduate and professional students for public service; and to strengthen undergraduate degree programs when it is determined such undergraduate programs are prerequisite to undertaking graduate or professional programs leading to advanced degrees.

(20 U.S.C. 1134)

[FR Doc. 82-7426 Filed 3-18-82; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-1875-6]

Approval and Promulgation of Implementation Plans; San Francisco Bay Area Air Basin Nonattainment Area Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: On April 1, June 23, and July 18, 1980, the Environmental Protection

Agency (EPA) published notices of proposed rulemaking for the San Francisco Bay Area Air Basin nonattainment area plan (NAP) for carbon monoxide (CO) and ozone (O_3). Today's notice takes final action to approve, conditionally approve, and disapprove portions of the CO and O_3 NAP with respect to Part D of the Clean Air Act, "Plan Requirements for Nonattainment Areas."

EFFECTIVE DATE: March 19, 1982.

ADDRESSES: A copy of the NAP is located at:

The Office of the Federal Register, 1100 "L" Street NW., Room 8401, Washington, D.C. 20408;

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109;

Metropolitan Transportation Commission, Hotel Claremont, Berkeley, CA 94705.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105; Attn: Douglas Grano (415) 974–8222.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1979, the California Air Resources Board (ARB) submitted the "San Francisco Bay Area Air Basin Control Strategy"as a revision to the California SIP. In addition, on January 14 and February 7, 1980, the ARB submitted revisions to the California SIP consisting of volatile organic compound rules which reflect reasonably available control technology (VOC–RACT) and new source review (NSR) regulations for the San Francisco Bay Area. These revisions, which comprise the San Francisco Bay Area Air Basin NAP, are intended to provide for the attainment of the O_3 and CO National Ambient Air Quality Standards (NAAQSs) in the San Francisco Bay Area.

On April 1, June 23, and July 18, 1980 (45 FR 21282, 41983, and 48164) EPA published notices of proposed rulemaking for the San Francisco Bay Area Air Basin NAP. Those notices provided a description of the NAP, summarized the applicable Clean Air Act requirements into 14 criteria, compared the NAP to those criteria, and proposed to approve, conditionally approve or disapprove portions of the NAP. The notices mentioned above should be used as references in reviewing today's actions.

Supplemental Revisions

After the publication of the April 1, June 23, and July 18, 1980 notices, the State submitted revisions to the Bay Area Air Quality Management District's (BAAQMD) rules which supplement portions of the NAP. These revisions are discussed below.

New Source Review

In the June 23, 1980 notice, EPA proposed to conditionally approve the NSR permit program portion of the NAP, with respect to section 173 of the Clean Air Act (Criterion 9), and to approve the NSR alternatives analysis provision under the permit program portion of the NAP, with respect to section 172(B)(11)(A) of the Act (Criterion 13). EPA's propopsed action on the permit program was based on a review of NSR rules submitted on Feburary 7, 1980, as a supplement to the NAP. On May 13 and July 10, 1980, and June 22 and November 5, 1982, the ARB submitted the following revisions to the NSR rules:

May 13, 1980

Regulation 2, Rule 2–2–303.1: Offsets for nitrogen oxides (NO_x) and VOC for Ozone NAAQS

Regulation 2, Rule 2–2–303.2: Offsets for NO_x for the nitrogen dioxide (NO_2) NAAQS

July 10, 1980

Regulation 2, Rule 2–2–110: Exemption, Essential Public Services

Regulation 2, Rule 2–2–111: Exemption, Conversion from Use of Gaseous Fuels

Regulation 2, Rule 2–2–112: Exemption, New and Innovative Technology

Regulation 2, Rule 2–2–113: Exemption, Cogeneration Project

EPA has examined the supplemental revisions listed above and has determined that the submitted amendments are consistent with EPA criteria. Further, EPA finds that the June 23, 1980 notice has already provided for adequate public comment on these provisions and that additional notice and comment would be unnecessary, since:

1. The amendments to Rules 2–2–110, 2–2–111, 2–2–112, and 2–2–113 merely correct typographical errors, and do not change the substance or intent of the rules.

2. The amendments to Rules 2–2–303.1 and 2–2–303.2 concern offsets for NO_x, which are not required under EPA criteria since the Bay Area is attainment for NO_x.

3. The amendments to Rule 2–2–401.1 only clarify those sources to which the rule is intended to apply.

4. The amendments submitted on November 5, 1981 make only procedural changes or changes which correct deficiencies with respect to EPA requirements. Please refer to EPA's report on correction of deficiencies dated January 18, 1982.

EPA has determined that "good cause" exists (see Administrative Procedure Act, 5 U.S.C. 553(b)) to approve all of the above items without providing further notice and opportunity to comment. EPA has already provided opportunity to comment on the substance of those items which were addressed in the June 23, 1980 proposal notice. Additional comment would serve no practical purpose since these revisions merely satisfy certain conditions of approval or are minor changes.

Stationary Source VOC-RACT Regulations

The July 18, 1980 notice proposed to conditionally approve the VOC-RACT portion of the NAP with respect to Criteria 6 and 14. On July 10 and September 5, 1980, and July 30, 1981, the ARB submitted the following BAAQMD VOC rules which supersede rules addressed in the July 18, 1980 notice.

July 10, 1980

Regulation 8, Rule 2 (Paragraph 301) *Miscellaneous Operations*

September 5, 1980

Regulation 8, Rule 5, *Storage of Organic Liquids*

Regulation 8, Rule 6, *Terminals and Bulk Plants*

Regulation 8, Rule 12, *Paper, Fabric, and Film Coating*

July 30, 1981

Regulation 8, Rule 1, (Paragraph 202), *Definition, Organic Compound*

Regulation 8, Rule 16, (Paragraph 110), *Exemption—Cleaning Materials*

Rule 6, *Terminals and Bulk Plants,* was revised by adding a compliance schedule for bulk plants required to comply by January 1, 1983. This revision satisfies one of the proposed conditions of approval contained in the July 18, 1980 notice. Rule 6 has also been revised by the addition of a definition of "leak tight". This definition will provide a guideline for the enforcement of the requirement for vapor tightness.

Rule 12, *Paper, Fabric and Film Coating,* has been revised by adding an exemption for coating lines which would be subject to the District's Rule 20, *Graphic Arts Coating Operations.* This revision clarifies the coverage of Rules 12 and 20 and is consistent with EPA's

guidance. Rule 20 has been submitted to EPA and will be addressed in a separate Federal Register notice.

Rule 2, *Miscellaneous Operations* and Rule 5, *Storage of Organic Liquids*, have been revised slightly by minor wording changes which add clarity to the rule requirements. Rule 1, (Paragraph 202), *Definition—Organic Compound* and Rule 16, (Paragraph 110), *Exemption—Cleaning Materials* have been amended to exempt the non-photochemically reactive halogenated hydrocarbons.

Since these are only minor revisions to the rules described in the July 18, 1980 notice, EPA finds that for good cause additional notice and comment on these Rules are unnecessary (See U.S.C. 553(b)(B), Administrative Procedure Act), and therefore EPA is taking final action on these rules in today's notice.

Public Comments

During the public comment period, EPA received comments from the ARB, BAAQMD, Metropolitan Transportation Commission (MTC), Federal Highway Administration, California Association of Port Authorities, California Council for Environmental and Economic Balance, Chevron U.S.A., Inc., Citizens for a Better Environment, Pacific Gas and Electric Company, Urban Mass Transportation Administration, and Western Oil and Gas Association. All comments received are specifically identified and responded to in EPA's Public Comment Technical Support Document (contained in Document File NAP–CA–01 at the ARB, BAAQMD, MTC, Association of Bay Area Governments, EPA Library in Washington, D.C., and the Region 9 Office).

EPA Actions

Introduction

The criteria used in EPA's review are detailed in the General Preamble and four supplements referenced in the notice of proposed rulemaking.

While EPA's evaluation of the NAP for ozone includes use of "Control Technique Guidelines" ("CTG's") documents as a "presumptive norm," the states may adjust the recommended controls or develop requirements which are not based on the CTG's, provided that they submit information supporting their decisions.

It should be noted that action may be taken on a portion of the NAP for a specific pollutant or rule. Therefore, a portion of the NAP may be adequate for one pollutant but inadequate for others. Further, a rule may be adequate under section 110, but inadequate under section 172 or 173 of the Act. EPA is taking final action on all portions of the San Francisco Bay Area NAP for O_3 and CO. As a result, this notice contains a series of actions for each portion of the NAP for each pollutant rather than a single action. One of the following three actions may be taken for each portion of the NAP:

1. Disapproval where deficiencies are of such magnitude as to significantly interfere with the basic objective of the NAP; or

2. Approval where the portion of the NAP under consideration meets with all requirements; or

3. Approval with conditions where deficiencies exist, but where the effect of the deficiency is not judged to be major and the State has agreed to take those steps necessary to correct the deficiency. In this case, it is EPA's understanding that the State will proceed expeditiously to correct the noted deficiency by certain dates.

For further information, see the supplements to EPA's General Preamble.

EPA's final actions on each portion of the NAP for each pollutant is based on the proposed rulemaking notice, supplemental revisions submitted by the State and public comments received by EPA. Each action is described below.

Approved Portions of the NAP

EPA is taking final action under Section 110 of the Clean Air Act to approve all the following rules since they provide emission limits necessary to insure attainment of the CO and O_3 NAAQSs: Regulation 8, Rules 1, 2, 4, to 16 and 18 to 19. EPA is also taking final action under Section 172 of the Act to approve the following rules of Regulation 8, since they fully satisfy the requirement for RACT: Rules 5 to 16 and 19.

In the July 1980 proposed rulemaking, EPA stated that EPA policy for alternative proposals for controlling emissions from sources wishing the same CTG category (as allowed by Rules 11, 13 and 19) must be submitted as SIP revisions. On December 8, 1980 (45 FR 80824) EPA published a memorandum in the Federal Register which stated that EPA did not require source specific SIP revisions for can coating operations using a "daily-weighted average" basis for determining compliance. Since Bay Area AQMD Rules 11, 13 and 19 allow for determining compliance on a "daily-weighted average" basis, EPA is therefore not requiring source specific SIP revisions for sources choosing to use this provision of Rules 11, 13 and 19. For further details, please see page 17 of the Public Comment Technical Support Document.

EPA is also taking final action under section 173 of the Act to approve Rules 1, 2, and 3 of Regulation 2, since they fully satisfy the NSR requirements.

As proposed in the April 1, June 23, and July 18, 1980 notices and as discussed in the Public Comment Technical Support Document and the Supplemental Revisions section of this notice, EPA is taking final action to approve the following portions of the O_3 and CO NAP with respect to Part D of the Act: emission inventory, modeling, emission reduction estimates, attainment provision, reasonable further progress, emissions growth, permit program, annual reporting, public and governmental involvement, public hearing, and extension requirements for VOC-RACT.

Conditionally Approved Portions of the NAP

As discussed in the April 1, June 23, and July 18, 1980 notices and in the Public Comment Technical Support Document and the Supplemental Revisions section of this notice, the following portions of the O_3 and CO NAP contain minor deficiencies with respect to Part D of the Clean Air Act: resources and extension requirements for CO and O_3. The State and lead agencies have assured EPA that they will submit the material to correct the minor deficiencies noted in the April 1, June 23, and July 18, 1980 notices. Therefore, EPA is taking final action to approve these portions of the NAP with the following condition.

By June 17, 1982, the State must submit implementation commitments and schedules and additional commitments to provide annually the financial and personnel resources necessary to carry out the plan for transportation sources as required by section 172(b)(7) and (10) of the Clean Air Act.

Disapproved Portions of the NAP

Since the State has not provided the necessary legal authority, the vehicle emission control inspection and maintenance program (I/M) portion of the San Francisco Bay Area NAP for CO and O_3 is disapproved.

Final Action on the Overall NAP

Due to the I/M disapproval, today's actions result in a final overall disapproval of the NAP for CO and O_3 with respect to Part D of the Act.

This retains the current prohibition on construction of major new or modified VOC and CO sources in the San Francisco Bay Area Air Basin.

Regulatory Process

In those areas for which the State of California has submitted approvable or conditionally approvable NAPs in accordance with the requirements of Part D of the Clean Air Act, EPA has a responsibility to take final action as soon as possible in order to lift the construction prohibition. Since the State has submitted approvable or conditionally approvable NAPs for the area discussed in this notice, EPA finds that good cause exists for making this action immediately effective.

The new SIP requirements approved or conditionally approved by today's notice are an addition to the existing SIP and do not supersede or replace the "old" SIP requirements until a source comes into compliance with the new requirements. For further information, see EPA's General Preamble.

As a result of approval of certain portions of the NAP, EPA is taking final action to rescind the following analogous sections of 40 CFR 52:

§ 52.253 *Metal surface coating thinner and reducer* (in part only).

§ 52.254 *Organic solvent usage* (in part only).

§ 52.261 *Preferential bus/carpool lanes, San Francisco Bay Area.*

§ 52.262 *Submittal of studies—San Francisco Bay Area.*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The miscellaneous SIP approvals announced today are not major because they approve state actions. They impose no new regulatory requirements. The disapprovals are also not major because they preserve the status quo. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Under the Clean Air Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 18, 1982. This action may not be challenged later in proceedings to enforce its requirements.

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1981.

(Secs. 110, 129, 171–178, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7429, 7501–7508, and 7601(a))

Dated: March 11, 1982.

Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Supart F of Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(66)(ii)(A), (C)(72), (73), (86), (87), (101) and (104) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(C) * * *

(66) * * *

(ii) Bay Area AQMD.

(A) Regulation 8: Rule 1, 2 (except paragraph 301), 4, 7, 8, 9, 10, 11, 13, 14, 15, 16, 18 and 19.

* * * * *

(72) The San Francisco Bay Area Basin Control Strategy (Chapter 15 of the Comprehensive Revisions to the State of California Implementation Plan for the Attainment and Maintenance of Ambient Air Quality Standards) including appendices, submitted on July 25, 1979, by the Governor's designee.

(73) Revised regulations for the following APCD's submitted on January 14, 1980, by the Governor's designee.

(i) Bay Area AQMD.

(A) Regulation 2: Rule 1: 2–1–200, 2–1–300, 2–1–307, and 2–1–400, Rule 2: 2–2–100, 2–2–200, 2–2–209, 2–2–210, 2–2–300, and 2–2–400; Rule 3: 2–3–100, 2–3–101, 2–3–200, 2–3–201, 2–3–300, 2–3–301, 2–3–302, 2–3–401, 2–3–401.1 to 2–3–401.3, 2–3–402, 2–3–403, 2–3–404, and 2–3–405.

* * * * *

(86) Revised regulations for the following APCD's submitted on July 10, 1980 by the Governor's designee.

(i) Bay Area AQMD.

(A) Regulation 8: Rule 2 (Paragraph 301).

* * * * *

(87) Revised regulations for the following APCD's submitted on September 5, 1980 by the Governor's designee.

(i) Bay Area AQMD.

(A) Regulation 8: Rule 5, Rule 6, and Rule 12.

* * * * *

(101) Revised regulations for the following APCD's submitted on July 30, 1981 by the Governor's designee.

(i) Bay Area AQMD.

(A) Regulation 8, Rule 1 (Paragraph 202) and Rule 16 (Paragraph 110).

* * * * *

(104) Revised regulations for the following APCD's submitted on November 5, 1981 by the Governor's designee.

(i) Bay Area AQMD.

(A) Regulation 2, Rule 1: 2–1–101, 2–1–102, 2–1–111, 2–1–112, 2–1–201 to 2–1–205, 2–1–301 to 2–1–306, 2–1–401 to 2–1–410, and 2–1–420 to 2–1–423; Rule 2: 2–2–101 to 2–2–114, 2–2–201 to 2–2–208, 2–2–301 to 2–2–306, 2–2–310, and 2–2–401 to 2–2–410.

* * * * *

2. Section 52.223 is amended by adding paragraph (c)(2) as follows:

§ 52.223 Approval status.

* * * * *

(c) * * *

(2) San Francisco Bay Area Air Basin for ozone and CO.

* * * * *

3. Section 52.232 is amended by adding paragraph (a)(7)(i)(A) as follows:

§ 52.232 Part D conditional approval.

(a) * * *

(7) San Francisco Bay Area Air Basin.

(i) For ozone and CO:

(A) By June 17, 1982, submittal of implementation commitments and schedules and additional commitments to provide annually the financial and personnel resources necessary to carry out the plan for transportation sources.

* * * * *

4. Section 52.237 is amended by adding paragraph (a)(2), as follows:

§ 52.237 Part D disapproval.

(a) * * *

(2) The portions of the *San Francisco Bay Area Air Basin Control Strategy* that pertain to an I/M program.

* * * * *

5. In § 52.238, the entries for the San Francisco Bay Area Intrastate are revised as follows:

§ 52.238 Attainment dates for national standards.

* * * * *

Air quality control region and nonattainment area	Pollutants						
	TSP		SO_x		NO_x	CO	O_3
	Primary	Secondary	Primary	Secondary			
* * * * *							
San Francisco Bay Area Basin	(d)	(a)	(e)	(e)	(e)	(i)	(i).
* * * * *							

* * * * *

6. Subpart F of Part 52 is amended by adding § 52.239 to read as follows:

§ 52.239 Alternate compliance plans.

(a) Alternative compliance plans (bubble plans) developed under the District rules listed below must be submitted to EPA by the State of California as SIP revisions. The emission limits contained in the District rule will continue to be enforceable by EPA and private citizens under sections 113 and 304(a) of the Act until the alternative compliance plans are approved by EPA for inclusion in the SIP.

(1) Bay Area AQMD.

(i) Rule 4 of Regulation 8, submitted on February 7, 1980.

(b) Alternative compliance plans (bubble plans) developed under the District rules listed below are considered the applicable requirements in the SIP which are enforceable by EPA and private citizens under section 113 and 304(a) of the Act. Alternative compliance plans must be submitted to EPA after their approval by the District. The District rules do not apply to or supersede the conditions that a source must meet under nonattainment or PSD permit programs, new source performance standards, or national emission standards for hazardous air pollutants.

(1) Bay Area AQMD.

(i) Rules 11, 13 and 19 of Regulation 8, submitted on February 7, 1980.

7. Section 52.253 is amended by adding paragraph (b)(4)(i) to read as follows:

§ 52.253 Metal surface coating thinner and reducer.

* * * * *

(b) * * *

(4) In the San Francisco Bay Area Intrastate Region this section is rescinded for certain operations, subject to the conditions specified below:

(i) This section is rescinded for metal container, closure and coil coating operations, light and medium-duty motor vehicle assembly plants, large appliance and metal furniture coaters, and miscellaneous metal parts and products coating operations, which are subject to and in full compliance with Rules 11, 13, 14, and 19 of Regulation 8 in the Bay Area AQMD.

* * * * *

8. Section 52.254 is amended by revising paragraph (a)(4) to read as follows:

§ 52.254 Organic solvent usage.

(a) * * *

(4) This section is rescinded for the San Francisco Bay Area Intrastate Region except for paragraph (d), which is retained until December 31, 1982 for sources constructed prior to October 2, 1974. The following paragraphs, needed for interpretation and enforcement of paragraph (d) are also in effect: Paragraphs (e) through (l) and (o) through (q) of this section.

* * * * *

§§ 52.261 and 52.262 [Reserved]

9. Sections 52.261 and 52.262 are removed and reserved.

[FR Doc. 82-7468 Filed 3-18-82; 8:45 am]

BILLING CODE 6560-38-M

---

40 CFR Part 81

[A-5-FRL-2067-1]

Designations of Areas for Air Quality Planning Process; Attainment Status Designations; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This rulemaking revises the sulfur dioxide (SO_2) nonattainment designation for Allen, Erie, Franklin, Hamilton, Medina, Muskingum, Seneca, Washington (part), and Wood Counties, Ohio to attainment. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change.

DATES: This action will be effective May 18, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20480

Copies of the supporting material are also available at Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air Programs Branch, Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: The Clean Air Amendments of 1977 added section 107(d), which directed each State to determine the National Ambient Air Quality Standards (NAAQS) attainment status of each air quality control region within the State, and to submit to the Administrator of EPA a list of the attainment status of each area. 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.

On October 5, 1978 (43 FR 46013; 40 CFR 81.336) EPA designated portions of Allen, Erie, Franklin, Hamilton, Medina, Muskingum, Seneca, Washington, and Wood Counties as nonattainment for the primary SO_2 NAAQS.

At the time of the above designations, a number of sources in the nonattainment portions of these counties were not in compliance with the federally promulgated SO_2 emission limitations. EPA established the SO_2 limits for this area after a comprehensive analysis using reference modeling techniques. EPA demonstrated that these limits were adequate to ensure attainment and maintenance of the NAAQS. Certification of compliance with these emission limitations is, therefore an acceptable basis for redesignation.

The State of Ohio requested that the SO_2 nonattainment areas in these nine counties (only Belpre Township in Washington County) be redesignated to attainment. To support the redesignation request, the Ohio EPA and EPA certified that all sources in these areas were in compliance with the existing emission limitations contained in 40 CFR 52.1881(b).

Although the certifications of compliance support the redesignations, Ohio also submitted all available SO_2 monitoring data in these counties. The only reference monitors in the nine Ohio counties are in Allen, Franklin, and Hamilton counties. The data, although limited, support the current attainment status of the three counties since no violations of SO_2 NAAQS were recorded. Thus, the monitored data in these counties supplement the modeled attainment demonstration. In the other six counties, the redesignation is based solely on the modeled attainment demonstration and compliance certifications. For further discussion see the Technical Support Document for the Redesignation of Ohio SO_2 Nonattainment Areas which is available at Region V.

Therefore, EPA today is revising the SO_2 designation for those areas previously designated nonattainment in Allen, Erie, Franklin, Hamilton, Medina, Muskingum, Seneca, Washington (only Belpre Township), and Wood Counties to attainment; thus making all of the nine counties except Waterford Township in Washington County attainment for SO_2. In order to expedite rulemaking, this action will be effective May 18, 1982. However, if EPA is notified within 30 days that someone wishes to submit adverse or critical comments, this action or portions thereof will be withdrawn and a new rulemaking will propose the action and establish a comment period.

Pursuant to Executive Order 12291 (Order) EPA must judge whether a regulation is "Major" and therefore subject to the requirement of preparing a regulatory impact analysis. Today's action does not constitute a major regulation because it only changes an area's air quality designation; it does not impose any new regulatory requirements.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified that revisions of attainment status designations under Section 107(d) of the Clean Air Act will not have a significant economic effect on a substantial number of small entities (46 FR 8709). This action, constitutes a revision to an attainment status designation within the terms of this certification and it imposes no additional regulatory requirements.

If no comments are received on today's action and it, therefore, becomes final, judicial review of this action under Section 307(b)(1) of the Clean Air Act 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 from today. If comments are received on today's action, as discussed earlier, EPA will withdraw its final approval and propose today's action for public comment. Under these circumstances, a petition for review must then be filed within 60 days from the date of EPA's ultimate 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.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: March 11, 1982.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

§ 81.336 [Amended]

1. Section 81.336 is amended by removing reference to the following counties for sulfur dioxide: Allen, Erie, Franklin, Hamilton, Medina, Muskingum, Seneca, and Wood, and revising the reference to Washington County as follows:

OHIO SULFUR DIOXIDE

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
• • • • • • •				
Washington:				
Waterford Township		X		
The remainder of Washington County				X.

[FR Doc. 82-7430 Filed 3-18-82; 8:45 am]

BILLING CODE 6560-38-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6228

[OR-19028]

Oregon; Powersite Restoration No. 695; Partial Revocation of Powersite Reserve No. 62

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive Order in part as to 1,360 acres of lands withdrawn for a powersite reserve. This action will restore the public lands involved to operation of the public land laws generally.

EFFECTIVE DATE: April 17, 1982.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and pursuant to the determination by the Federal Energy Regulatory Commission in DA-545-Oregon, it is ordered as follows:

1. The Executive Order of July 2, 1910, which created Powersite Reserve No. 62, is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

Powersite Reserve No. 62

T. 5 S., R. 11 E.,
Sec. 9, SW¼, NW¼SE¼, and S½SE¼;
Sec. 10, SW¼SW¼;
Sec. 13, N½N½ and SW¼NW¼;
Sec. 14, N½NE¼, SW¼NE¼, NE¼NW¼, and S½NW¼;
Sec. 15, S½NE¼, N½NW¼, SE¼NW¼, and NW¼SE¼.
T. 5 S., R. 12 E.,
Sec. 7, S½SE¼;
Sec. 8, S½NE¼, SW¼SW¼, and NW¼SE¼;
Sec. 9, NW¼NW¼;
Sec. 18, N½NW¼.

The areas described aggregate 1,360 acres in Wasco County.

2. The State of Oregon has waived its preference right for highway rights-of-way or material sites as provided by the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

3. At 10 a.m., on April 17, 1982, the public lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on April 17, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The lands have been open to applications and offers under the mineral leasing laws and to location under the United States mining laws subject to the provisions of the Act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621).

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 12, 1982.

[FR Doc. 82-7512 Filed 3-18-82; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-613; RM-3901]

FM Broadcast Station in Greenville, Ala.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 232A to Greenville, Alabama, in response to a petition filed by Greenville Broadcasting Corporation. The assignment could provide Greenville with a first competitive FM outlet.

DATE: Effective May 14, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Greenville, Alabama), BC Docket No. 81-613, RM-3901.

Report and Order Proceeding Terminated

Adopted: March 5, 1982.

Released: March 16, 1982.

1. The Commission has before it for consideration the Notice of Proposed Rule Making, 46 FR 45167, published September 10, 1981, in response to a petition filed by Greenville Broadcasting Corporation ("petitioner"), proposing the assignment of Channel 232A to Greenville, Alabama, as that community's second FM assignment. Petitioner filed supporting comments in which it reaffirmed its intent to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Greenville (population 7,807), [1] in Butler County (population 21,680), is located approximately 64 kilometers (40 miles) south-southwest of Montgomery, Alabama. It is presently served by daytime-only AM Station WGYV and FM Station WKXN (Channel 240A).

3. In support of its proposal, petitioner submitted information with respect to Greenville which is persuasive as to its need for the channel assignment.

4. As stated in the Notice, assignment of Channel 232A to Greenville would cause preclusion to occur on the co-channel within 65 miles. However, petitioner states that there are no communities which contain a population in excess of 2,500 persons within the precluded area.

5. We believe that the public interest would be served by the assignment of Channel 232A to Greenville, Alabama. An interest has been shown for its use, and such an assignment could provide the community with a first competitive FM outlet. The transmitter site must be located approximately 6.1 kilometers (3.8 miles) north of Greenville, in conformity with § 73.207(a) of the Commission's rules, to avoid short-spacing to Station WMEZ (Channel 231), Pensacola, Florida.

6. In view of the foregoing and pursuant to the authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's rules, it is ordered, That effective May 14, 1982, the FM Table of Assignments, § 73.202(b) of the Commission's rules, is amended with regard to the following community:

[1] Population figures are derived from the 1980 U.S. Census, Advance Reports. However, petitioner advises that the Greenville City Council estimates that community's population to be 10,200.

City	Channel No.
Greenville, Alabama	232A, 240A

7. It is further ordered, That this proceeding is terminated.

8. For further information concerning the above, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-7508 Filed 3-18-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-437; RM-3840]

FM Broadcast Station in Delhi, La.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns FM Channel 228A to Delhi, Louisiana, in response to a petition filed by Baker Broadcast Enterprises. The assignment could provide for a first local broadcast service to Delhi.

DATE: Effective May 14, 1982.

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

FOR FURTHER INFORMATION CONTACT: Mark Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the Matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Delhi, Louisiana), BC Docket No. 81-437; RM-3840.

Report and Order Proceeding Terminated

Adopted: March 3, 1982.

Released: March 16, 1982.

1. The Commission herein considers a Notice of Proposed Rule Making, 46 FR 37920, published July 23, 1981, proposing the assignment of FM Channel 228A to Delhi, Louisiana, as that community's first FM assignment [1] at the request of Baker Broadcast Enterprises ("petitioner"). Supporting comments were filed by the petitioner in which it restated its intent to apply for the

[1] Petitioner originally requested Channel 221A. However, due to a conflict with 221A in Rayville, Louisiana, the Commission proposed Channel 228A.

channel, if assigned. No oppositions to the proposal were received.

2. Delhi (population 3,289)[2] is located in Richland Parish (population 22,096) approximately 26 kilometers (16 miles) west of Rayville, the Parish seat. Delhi presently has no local aural service.

3. Petitioner has submitted information showing Delhi not only as a thriving agricultural community, but also as a community with small businesses such as the manufacturing of boats and antique automobile bodies. This information is persuasive as to Delhi's need for a first local FM service.

4. We believe the public interest would be served by the assignment of Channel 228A to Delhi, Louisiana. An interest has been shown for its use and such an assignment would provide the community with an FM station which could render a first full-time local aural broadcast service.

5. Accordingly, it is ordered, That effective May 14, 1982, pursuant to authority contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's rules, the FM Table of Assignments, § 73.202(b) of the Commission's rules, is amended with regard to the community listed below as follows:

City	Channel No.
Delhi, Louisiana	228A

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

7. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-7509 Filed 3-18-82; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 81-596; RM-3904]

FM Broadcast Station in Cadillac, Mich.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 296A to Cadillac, Michigan, in response to a petition filed by MacDonald Broadcasting Company. The assignment could provide a third local FM service to Cadillac.

DATE: Effective May 14, 1982.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Cadillac, Michigan), BC Docket No. 81-596, RM-3904.

Report and Order Proceeding Terminated

Adopted: March 9, 1982.

Released: March 16, 1982.

1. The Commission has under consideration a Notice of Proposed Rule Making, 46 FR 44480, published August 4, 1981, which seeks the assignment of Channel 296A to Cadillac, Michigan, as its third FM assignment. The Notice was issued in response to a petition filed by MacDonald Broadcasting Company ("petitioner"). Supporting comments were filed by the petitioner reaffirming its intent to apply for the channel, if assigned.[1] No oppositions to the proposal were received.

2. Cadillac (population 10,199)[2], seat of Wexford County (population 25,102), is located approximately 280 kilometers (175 miles) northwest of Detroit, Michigan. It is served by two fulltime AM Stations (WATT and WWAM) and two FM stations (WITW, Channel 244A, and WKJF, Channel 225).

3. In its comments, petitioner incorporated by reference the information in the Notice which demonstrated the need for a third FM assignment to Cadillac. As requested by the Notice, petitioner submitted information with regard to preclusion which indicates that three communities, Frankfort (pop. 1,603), Harrison (pop. 1,700), and Manistee (pop. 7,566), would be affected by the proposed assignment. Each precluded community is currently served by one local FM station.

4. After careful consideration of the proposal, we believe that the public interest would be served by the proposed assignment of Channel 296A to Cadillac, Michigan. Although the assignment would exceed the guidelines set down for the number of channels to a community of its size, we believe there is a basis for the assignment. Since no other precluded community is in greater need of the assignment, we would not be disposed to reserve the channel elsewhere for future use. Rather, since an interest has been shown in another channel allocation to Cadillac and the preclusion impact is not an impediment, we believe the public interest will be served by the assignment, as requested. See *Naples, Florida*, 49 R.R. 2d 716 (1981); *Waycross, Georgia*, 47 R.R. 2d 319 (1980). The transmitter site is restricted to 5.4 kilometers (3.4 miles) south of Cadillac to meet spacing requirements to Station WWRM (Channel 294), Gaylord, Michigan.

5. Canadian concurrence in the assignment of Channel 296A to Cadillac, Michigan, has been obtained.

6. Accordingly, pursuant to Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's rules, it is ordered That, effective May 14, 1982, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended with respect to the following community:

City	Channel No.
Cadillac, Michigan	225, 244A, and 296A.

7. It is further ordered, That this proceeding is terminated.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-7510 Filed 3-18-82; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 81-568; RM-3861]

FM Broadcast Station in Las Vegas, Nev.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Class C Channel 277 to Las Vegas, Nevada, as its eighth FM assignment, in

[2] Population data are taken from the 1970 U.S. Census.

[1] Petitioner filed reply comments noting that no other party had expressed an interest in the proceeding.

[2] Population figures are taken from the 1980 U.S. Census, Advance Reports.

response to a petition filed by Doctor R. Grants.

DATE: Effective May 14, 1982.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations. (Las Vegas, Nevada), BC Docket No. 81-568, RM-3861.

Report And Order Proceeding Terminated

Adopted: March 5, 1982.
Released: March 16, 1982.

1. The Commission has before it the Notice of Proposed Rule Making, 46 FR 43207, published August 27, 1981, which proposed the assignment of Class C Channel 277 to Las Vegas, Nevada, as its eighth FM assignment, in response to a petition filed by Doctor R. Grants ("petitioner"). Supporting comments were filed by the petitioner, restating his interest in the channel. Comments in opposition to the proposal were filed by Western Cities Broadcasting, Inc. ("Western Cities"),[1] to which the petitioner responded.

2. Las Vegas (population 164,674),[2] in Clark County (population 461,816), is located at the southern tip of Nevada. It is presently served by seven AM stations (KEWN, KENO, KLAV, KMJJ, KNUU, KORK and KRAM); five FM stations (KENO-FM, KFMS, KLUC, KORK-FM, KUDO, Channel 242 (CP issued) and Channel 293 (applications pending); and three noncommercial educational FM stations (KCEP, KUNV and KNPR).

3. In his comments, the petitioner incorporated by reference the information contained in the Notice, which demonstrated the need for an additional FM assignment to Las Vegas. Paragraph 4 of the Notice requested the petitioner to provide information regarding specific channels available to precluded communities with a population greater than 1,000. In response, the petitioner submits that twelve communities, five of which have no FM service, would be affected by the assignment of Channel 277 to Las Vegas. At least two alternate channels are said to be available to each of the precluded communities.

4. Western Cities, in opposition to the proposal argues that under the Commission's current population guidelines, Las Vegas would inappropriately receive an eighth channel, more than its fair share. It recognizes the population criteria to be merely guidelines for determining the number of channels to be assigned to various communities, not fixed limits, and therefore exceedable in appropriate situations. However, in view of the Commission's recent assignment of Channel 293 to Las Vegas and Channel 281 to North Las Vegas (both of which remain unoccupied), the assignment of still another channel to Las Vegas at this time is clearly unwarranted, according to Western Cities. Western also argues that although the petitioner claims that numerous channels are available to the precluded region, the preclusive impact of the proposed assignment cannot be dismissed as insignificant. Based on the 1980 Census and consideration of growth patterns, six communities in the precluded area would qualify for a channel assignment if the demand were to arise. Thus, it is unlikley that the future needs of these communities could be met. Finally, Western Cities argues, that in view of this potential demand, and the fact that the Las Vegas area currently has two vacant channels, the proposed assignment would be contrary to public interest, and should therefore be denied.

5. Petitioner in response to the opposition, notes that two applications have already been filed for Channel 293, thus making a comparative hearing for a construction permit inevitable, and participation in the proceeding even more burdensome. Petitioner asserts that he is not interested in the North Las Vegas channel (281). He contends that the six communities identified by the opposition have several channels available for assignment, and there exists the possibility for additional channels should the Commission adopt BC Docket 80-90.[3] Petitioner also argues that Western Cities has raised no matters posing any serious impediment to the proposed assignment and urges the Commission to adopt the proposal to assign Channel 277 to Las Vegas.

6. After careful consideration of the proposal and comments, the Commission feels that the public interest would be served by assigning Channel 277 to Las Vegas. As stated in the *Notice* and discussed in the opposition's comments, and eighth assignment to Las Vegas exceeds current population guidelines. However, where an interest has been shown in a channel allocation and the preclusion impact is found to be insignificant, due to the availability of channels to the precluded area, the Commission feels that the public interest would be served by exceeding our population guidelines.[4] See *Naples, Florida*, 49 R.R. 2d 716 (1981), *Missoula, Montana*, 46 FR 53417 (1981), and *Waycross, Georgia*, 47 R.R. 2d 319 (1980). Moreover, here we have determined that channel availability is not a problem to this area and therefore to restrict the number of channels assigned to Las Vegas on that basis would be unwarranted. Further the controversy in this proceeding involving Channel 281, allocated to North Las Vegas, Nevada, should not be an issue here, since the Commission determined in an earlier proceeding (BC Docket No. 80-700) that North Las Vegas was a communty separate from Las Vegas. Thus, we find the proposal justified.

7. In view of the above and pursuant to authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281, 0.204(b) of the Commission's rules, it is ordered, That effective May 14, 1982, the FM Table of Assignments, § 73.202(b) of the Commission's rules, is amended with respect to the community listed below:

City	Channel No.
Las Vegas, Nevada	222, 226, 242, 246, 253, 270, 277, 293.

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-7511 Filed 3-18-82; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 81-492; RM-3802]

FM Broadcast Station in Vernal, Utah; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

[1] Western Cities is the licensee of AM Station KMJJ, North Las Vegas, Nevada, and FM Station KLUC, Las Vegas, Nevada.

[2] Population figures are taken from the 1980 U.S. Census.

[3] *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments. (Notice)* 78 F.C.C. 2d 1235 (1980).

[4] We also note in this regard that the population of Las Vegas has been increasing substantially in the last decade (+30.9%).

ACTION: Final rule.

SUMMARY: This action substitutes FM Channel 290 for 224A in Vernal, Utah, and modifies KUIN's license to specify operation on Channel 290 in response to a petition filed by KVEL, Inc.

DATE: Effective. May 14, 1982.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations. (Vernal, Utah), BC Docket No. 81-492, RM-3802.

Report and Order Proceeding Terminated

Adopted: March 3, 1982.

Released: March 16, 1982.

1. The Commission has under consideration a Notice of Proposed Rule Making, 46 FR 40709, published August 11, 1981, proposing the substitution of Class C Channel 290 for Channel 224A in Vernal, Utah, in response to a petition filed by KVEL, Inc. ("petitioner"), licensee of FM Station KUIN (Channel 224A) and AM Station KVEL in Vernal, Utah. The Notice also proposed modification of KUIN's license to specify operation on Channel 290. Supporting comments were filed by petitioner, restating its interest in the Class C channel. No oppositions to the proposal were received.

2. Vernal (population 6,600),[1] seat of Uintah County (population 20,506) is located approximately 200 kilometers (125 miles) east of Salt Lake City, Utah. It is served by FM Station KUIN, AM Station KVEL (both licensed to petitioner), and noncommercial FM Station KUIB.

3. Petitioner incorporated by reference the information contained in the Notice which demonstrated the need for a Class C assignment, reemphasizing the recent and potential growth pattern of Vernal and Uintah County.

4. As stated in the Notice, the proposed substitution of channels will cause preclusion on the co-channel as well as five of the six adjacent channels. Petitioner, however, provided a list of alternative channels for the precluded communities. Further, petitioner stated that the proposed station would provide a first FM service to 8,980 square kilometers (3,508 square miles) and a second FM service to a 217 square kilometer (85 square miles) area.

[1] Population figures are taken from the 1980 U.S. Census.

5. After careful consideration of the proposal, we have determined that the public interest would be served by the substitution of channels. Although a community of this size is not normally assigned a Class C channel, the proposed substitution would provide substantial first and second FM services to persons in sparsely populated areas. Further, we believe the preclusion impact is minimal since alternative channels are available in the precluded areas. We have also authorized in paragraph 7, modification of petitioner's license, Station KUIN, to specify operation on Channel 290, since there has been no other expression of interest in the Class C channel. See, *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976).

6. In view of the foregoing, it is ordered, That effective May 14, 1982, pursuant to authority contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's rules, the FM Table of Assignments, § 73.202(b) of the Commission's rules is amended for the community listed as follows:

City	Channel No.
Vernal, Utah	290

7. It is further ordered, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, That the license of Station KUIN, Vernal, Utah, is modified to specify operation on Channel 290 subject to the following conditions:

(a) At least 30 days before operating on the newly specified channel, the licensee shall file with the Commission a minor change application for a construction permit (Form 301).

(b) Within 10 days after commencing operation on the newly specified channel, the licensee shall submit a license application (Form 302) for the new channel.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-7519 Filed 3-18-82; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1111

[Ex Parte No. 282 (Sub-No. 5)]

Traffic Protective Conditions in Railroad Consolidation Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission finds that the "DT&I" traffic protective conditions in railroad consolidation proceedings are anticompetitive and contrary to the public interest. All DT&I Conditions and other similar conditions which were imposed in past consolidations will be revoked unless the parties to those consolidation proceedings demonstrate a public interest in continuing them and the Conditions will not be imposed in the future. The Commission's approval of Conditions entered into by stipulation also will be removed. In the future, the Commission will impose only those specific conditions which meet the criteria which were listed in our recent merger policy statement .

DATES: This rule will be effective on April 19, 1982. Parties which believe that any specific existing conditions must remain in effect in some form will have until May 19, 1982, to file pleadings to that effect. Responses will be due within 45 days. Absent a Commission order reinstating a specific existing condition, all DT&I Conditions will be voided on July 1, 1982.

ADDRESSES: Send pleadings to: Interstate Commerce Commission, Section of Finance, Room 5417, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ernest B. Abbott (202) 275-3002 or Wayne Michel (202) 275-7657.

Copies: For copies of the full decision write to: Interstate Commerce Commission, Room 2227, Washington, DC 20423 or call toll-free—800-424-5403.

SUPPLEMENTARY INFORMATION: Standard traffic protective conditions known as the "DT&I Conditions" have been imposed by the Commission in most rail consolidation proceedings since 1950. See *Detroit T.& I.R. Co., Control*, 275 I.C.C. 455 (1950). These Conditions were

perceived as necessary to mitigate the potentially adverse consequences of a rail consolidation on non-applicants. It was feared that the newly formed carrier would be able to use its market power to close routes or gateways and thereby drive competitors from the marketplace.

We have reconsidered this policy in this proceeding, instituted on our own motion by a Notice served July 7, 1980, and published on July 10, 1980 at 45 FR 46461. We received 50 comments in response to our Notice with the majority favoring continuation of the Conditions. However, most of the major long-haul carriers and the Departments of Justice and Transportation favored the elimination of the Conditions.

After analyzing the comments we conclude that the Conditions tend to keep rates artifically high. Indeed, they often eliminate price competition entirely by preventing carriers from reducing rates on more efficient routes. We recoginze that the transportation industry has changed significantly in the last 30 years. There has been tremendous growth in intermodal competition, as well as the creation (through mergers and consolidations) of strong rail competitors. As a result it appears to us that market forces generally are able to ensure that the potential anticompetitive excesses of rail consolidations do not occur. At the same time, rail carriers have a greater need to respond to competition from other modes, especially motor carriage. Thus, we believe the Conditions are no longer needed nor do they benefit the public any longer.

Unfortunately, the Conditions continue to affect carriers' ability to compete. There is no doubt that when the Conditions preserve inefficient joint through routes or artificially high rates the public is harmed and the Conditions must be eliminated. The more difficult situation occurs when the Conditions appear to preserve efficient joint through routes. However, we believe that appearance is misleading. Efficient routes would remain open without the conditions because the newly consolidated entity would not benefit from the elimination of efficient routings for several reasons.

First, use of a more efficient route would provide the single-line carrier with a better return on its investment. Second, establishment of a rail monopoly does not help the single-line carrier because its prices will be kept down by either intermodal competition or Commission action if a finding of market dominance is made. Third, shippers can determine the routing and are likely to favor the most efficient routing. Finally, the Commission will scrutinize attempts to cancel joint routes if they conflict with statutory provisions.

Carriers must be free to compete without artificial restraints. In the last 5 years Congress has given carriers greater rate-making freedom for that purpose. Continued existence of the Conditions would work against Congessional intent explicit in recent legislation.

Therefore, we have decided not to impose the standard DT&I Conditions in future proceedings and to void those that have been imposed in the past. We will allow parties, however, to demonstrate the need for continuance of specific, limited traffic protective conditions.

PART 1111—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS AND LEASE PROCEDURES

Accordingly, we amend Title 49 of Chapter X of the Code of Federal Regulations by designating the existing text (recently revised at 47 FR 9844, March 8, 1982) of § 1111.1(d) as paragraph (d)(1) and existing paragraphs (d)(1) through (4) as (d)(1)(i) through (iv), and by adding a paragraph (d)(2) to read as follows:

§ 1111.1 General policy statement for merger or control of at least two Class I railroads.

* * * * *

(d)(1) * * *

* * * * *

(2) As of July 1, 1982, Conditions previously imposed are revoked unless the parties to specific consolidation proceedings demonstrate a public interest in continuing the Conditions in those proceedings.

This action is taken under the authority of 49 U.S.C. 10321, 11344, and 11346 and 5 U.S.C. 553.

Because this proceeding was instituted in July 1980, the Regulatory Flexibility Act is not applicable.

This proceeding does not significantly affect the quality of the human environment, or the conservation of energy resources.

Dated: March 9, 1982.

Agatha L. Mergenovich,

Secretary.

Vice Chairman Gilliam, Concurring

Consistent with the Merger Policy Statement standards, there is one area of concern in this decision that merits increased vigilance in both future and past consolidations. My concern is with the concept that intermodal competition will universally provide pressure to hold rates down.

The decision and the Staggers Act state "nearly two-thirds of the Nation's intercity freight is transported by modes of transportation other than railroads" and therefore implied that the railroads will have intermodal competition. This is true for most commodities, however, as pointed out by one commentor in particular and supported by others in the shipper community, a large number of captive shippers do not enjoy the benefit of this type of competition, e.g., superphosphate (95.6% moves by rail), wheat flour (94.1%), veneer and plywood (91.1%), primary aluminum, pig, slab and ingots (86.0%), newsprint (85.6%), automobile stampings (85.2%), sugar (84.8%), motor vehicles and equipment (83.6%), and liquified petroleum and coal gases (83.0%) and are dependent on intramodal competition for reasonable rates. When these situations arise a carrier and/or shipper, if adversely affected, must make the case to show how a particular aspect of the consolidation is not in the public interest and should propose innovative solutions as an alternative to DT&I conditions.

[FR Doc. 82-7553 Filed 3-18-82; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 47, No. 54
Friday, March 19, 1982

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

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program; Offer Versus Serve

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National School Lunch Program regulations to: (1) Implement the provisions of the Omnibus Budget Reconciliation Act of 1981 that authorize local school authorities to extend to elementary schools the "offer versus serve" method of meal service; and (2) modify the regulations governing the "offer versus serve" method with respect to meals served in schools below the senior high level. The Department is proposing this rule to increase local flexibility and reduce cost.

DATES: To be assured of consideration, comments must be postmarked on or before May 18, 1982.

ADDRESSES: Comments should be sent to Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public viewing in Room 509, 3101 Park Center Drive, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Garnett at the address listed above, or call (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under Executive Order 12291 and has been classified *not major*. We anticipate that this proposal will not have an impact on the economy of more than $100 million. The proposed rule will decrease costs by providing School Food Authorities and institutions more flexibility in administering the National School Lunch Program. No major increase in cost or prices for program participants, individual industries, Federal agencies, or geographic regions is anticipated. We do anticipate decreased administrative costs at the State and local School Food Authority levels. This proposal is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This proposal has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service (FNS) has certified that this proposal will not have a significant economic impact on a substantial number of small entities.

Offer Versus Serve

The offer versus serve method of food service permits students to decline food they do not intend to eat. Prior to enactment of the Omnibus Budget Reconciliation Act of 1981 this method of food service was limited to senior high, and at the option of local school food authorities, junior high and middle school students. The Act extended this optional use of offer versus serve to grades below middle school. The Department proposes to incorporate this change into the regulations.

Offer versus serve has been widely accepted by students, parents and food service workers in schools that have adopted it. However, state and local school food service officials have expressed concern that allowing younger school children to decline two lunch items lessens the nutrition education aspect of the school lunch program. These officials believe that younger children need more guidance as to the value of consuming different types of foods.

In response to these concerns, we are proposing that local school food authorities be given some flexibility in determining how offer versus serve will operate in grades below the senior high level. Under the current regulations governing the offer versus serve methods, schools are required to offer a full portion of five items (a meat or meat alternate, bread or bread alternate, milk, and two fruits/vegetables), but students are allowed to decline up to two of the items. The Department proposes that school food authorities still be required to allow senior high students to decline up to two items. However, in grades below the senior high level, school food authorities would be permitted to determine whether students may decline up to two items or only one item under offer versus serve. When a student has declined a full portion of an item, schools at all grade levels may offer the student a smaller portion of the item.

Offer versus serve has reduced plate waste while maintaining student consumption of a wide variety of nutrients, and has reduced local program costs. The goal of the lunch program is still to provide one-third of a student's Recommended Dietary Allowances (RDA) and students are encouraged to choose all five food items at no extra cost; however, offer versus serve means students are not forced to take food that they do not intend to consume.

At the same time, the Department continues to encourage schools to promote their lunches and educate children about nutrition so that they will choose and consume all five items. For example, innovative service systems, such as salad bars and family style service, and the offering of choices, which can improve participation and consumption, are encouraged.

Students, particularly young students, benefit from the conumption of a wide variety of foods. The Department continues to require parent and student involvement in the school food service, and particularly in the menu planning process, to insure that menus reflect student preferences. The Department believes that a cooperative effort of parents, students, and school officials will result in menus which reflect student preferences to a degree that most students will choose and consume all five items of the lunch. School officials planning meals are aware that meals served must be nutritious and desirable to maintain student participation.

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Accordingly, § 210.10, paragraph (a)(5) is proposed to be revised to read as follows:

§ 210.10 Requirements for lunches.

(a) * * *

* * * * * *

(5) Each school shall offer its students all five food items of the lunch. Senior high students must be permitted to decline up to two items. Students below the senior high level may be permitted to decline up to two items, or only one item, at the discretion of the local school food authority. A student's decision to decline food items shall not affect the charge for the lunch. State educational agencies shall define "senior high".

* * * * * *

(Sec. 9, Pub. L. 79–396, 60 Stat. 233 (42 U.S.C. 1758(a)); Sec. 811, Pub. L. 97–35, 95 Stat. 521,535 (42 U.S.C. 1758))

Dated: March 15, 1982.

Mary C. Jarratt,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 82-7272 Filed 3-15-82; 12:38 am]

BILLING CODE 3410-30-M

---

7 CFR Parts 272 and 273

Food Stamp Program; Shelter and Medical Deductions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice reopening comment period.

SUMMARY: On September 25, 1979, the Department published an emergency final rule on changes in allowable deductions for the elderly and disabled as mandated by the 1979 Amendments to the Food Stamp Act. The effect date of this interim final rule was September 21, 1979, and the comment period closed November 21, 1979. The implementation date mandated for the changes was January 1, 1980. In preparation for changing from emergency final (interim) to a final rulemaking, the Department is reopening the comment period so we will have the opportunity to learn of any problems or suggested modifications, refinements or clarifications arising out of experience under the interim rules. Although the September 25, 1979, emergency final rulemaking remains currently in effect, because of the length of time since publication, copies of these regulations will be provided to any interested parties.

DATE: The reopened comment period will extend 120 days from March 19, 1982, to allow ample opportunity for interested parties to communicate with the Department. Thus to be assured of consideration, comments must be received by July 19, 1982.

ADDRESSES: Comments should be sent to Thomas O'Connor, Supervisor, Policy and Regulation Section, Program Standards Branch, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Alexandria, Virginia 22302. Copies of the September 25, 1979, emergency final rulemaking are available from Mr. O'Connor at this address.

All written comments will be open to public inspection at the offices of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 708.

FOR FURTHER INFORMATION CONTACT: Mr. O'Connor, at the above address. Phone number: (703) 756–3429.

SUPPLEMENTARY INFORMATION: The Food Stamp Act of 1964 (Pub. L. 88–525), as amended, provided for eligibility and benefit level determination to be based on net monthly income arrived at by subtracting many itemized deductions from a household's gross monthly income. This system of itemized deductions had been criticized for many reasons: it was difficult for applicants to understand leading to many client errors, and it was adminsitratively complex cuasing many eligibility worker errors. Perhaps the greatest cause of criticism was the perception that the deduction system allowed a household with relatively high income to become eligible by legitimately claiming many of the long list of deductions. The Food Stamp Act of 1977 (Pub. L. 95–113) replaced this long deduction list (which had included itemized medical and shelter deductions) with monthly deductions for only the following: a standard deduction for all households, now set at $85; an earned income deduction, now set at 18 percent of gross earned income; and a combined child care/excess shelter deduction, now "capped" at $115.00.

The 1979 Amendments to the Food Stamp Act (Pub. L. 96–58) amended the 1977 Act to allow certain households to deduct medical expenses over $35 per month, and the full amount of shelter expenses that exceeds 50 percent of income after all the other deductions. The affected group was defined in the law as persons who are 60 years old or older or who receive disability benefits under title II of the Social Security Act or Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act. (Pub. L. 96–249, Section 106, in effect as of October 1, 1981, extended eligibility for these deductions also to those receiving benefits under Titles I, X, and XIV of the Social Security Act.)

Regulations implementing Pub. L. 96–58 were published by the Department on September 25, 1979 (44 FR 55160) as an emergency final rule, with an effective date of September 21, 1979 and comment period ending on November 21, 1979. Pub. L. 96–58 mandated an implementation date for these provisions of January 1, 1980. During the short comment period necessitated by the implementation deadline, the Department received just thirty-three comments. We think that State and local agencies, usually sources of a great many comments, may have been constrained by the tight timeframe provided for implementation preparations from commenting to the extent they may have wished: only nineteen comments were received from State and local agency representatives. (One state agency commented after the comment period closed; this comment is being included in our consideration.) We also think that, in general, people may have refrained from commenting because the rules were issued as interim final. Therefore, we are reopening the comment period on these rules.

During the period that the medical and shelter deductions have been in effect under the interim final rule, the Department received many requests for policy interpretation or clarification. Some of these questions have been easy to resolve and presented no continuing operational problems. However, the issues of allowing deductions either as they are billed or as they are paid and the treatment of reimbursements for expenses paid by the household have been the sorce of most deduction policy questions we have received.

Under regulations and instructions based on the 1964 Act, an expense was deductible in the month paid. The "as-paid" approach proved to be administratively complex, difficult for eligibility workers and participants to verify, resulted in the same expense being deducted more than once, and contributed to quality control errors. The current approach considers an expense deductible in the month billed regardless of when the bill is paid. This approach removed the uncertainty and resultant errors in anticipating when an expense would actually be paid and made verification easier for the eligibility worker and participant. It also removed the potential for multiple

deductions for the same expense. However, it has been critized as not eliminating all the anticipation problems in allowing deductions and in providing deductions for expenses which may never be paid.

The medical expense deduction is further complicated because households who are covered by a medical insurance plan often do not know or cannot verify when they will be reimbursed or how much of the expense will be refunded. Regulations issued under the 1964 Act allowed a deduction if payments were being made pending reimbursement. The household was required to report receipt of reimbursements, and no further deducation would be allowed if the reimbursement covered the remaining unpaid expense. If the reimbursement exceeded the unpaid balance, the excess would be treated as a nonrecurring lump sum payment. The Food Stamp Act of 1977, however, requires that medical reimbursments be totally excluded from income. The exclusion, combined with the current "as-billed" deduction procedure, would result in households benefitting twice for the same expense by receiving a deduction when the bill came due and receiving an income exclusion for the reimbursement. Therefore, the Department adopted a policy of deferring the deduction until after reimbursement has occurred or until the household learns the amount and timing of the reimbursement. Under this modification, some deductions are delayed, but a household would eventually be allowed all the deductions it was entitled to without permitting deductions paid by noncountable income. The Department thinks this possible delay is acceptable considering the small number of households likely to be affected, and the lower error rate expected as a result of the greater administrative simplicity of this approach.

As we mentioned, we received thirty-four comments on the interim rulemaking. Slightly more than half of the commenters (nineteen) addressed some aspect of the as-billed/as-paid problem, or the treatment of reimbursements.

We have provided this short recapitulation of our position on the comments received and policy clarifications requested to suggest areas in which further comments may be useful as we prepare to publish these rules in final form. All comments already made are part of our records and need not be reiterated unless the commenter wishes to amplify or re-emphasize some aspect of the comment. Policy clarifications that have proven functional also need not be readdressed, but comments would be most useful on any areas of policy still causing difficulty.

This action has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. No. 96-354, 94 Stat. 1164, September 9, 1980).

The Administrator, Food and Nutrition Service (FNS), has certified that this action does not have a significant economic impact on a substantial number of small entities.

(91 Stat. 958 (7 U.S.C. 2011-2027))

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

Dated: March 9, 1982.

Samuel J. Cornelius,

Administrator, Food and Nutrition Service.

[FR Doc. 82-7158 Filed 3-18-82; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 862, 866, 874, 878, and 892

[Docket Nos. 78N-2285, 78N-3128, 78N-1549, 78N-2646, 78N-2742]

Classification of Clinical Chemistry and Clinical Toxicology Devices; Ophthalmic Devices; Ear, Nose, and Throat Devices; General and Plastic Surgery Devices; Radiology Devices; Extension of Comment Periods

AGENCY: Food and Drug Administration.

ACTION: Proposed rules; extension of comment periods.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period for five proposed regulations recently published in the **Federal Register** concerning the classification of the following types of medical devices: general and plastic surgery devices (Docket No. 78N-2646); ear, nose, and throat devices (Docket No. 78N-1549); ophthalmic devices (Docket No. 78N-3128); radiology devices (Docket No. 78N-2742); and clincial chemistry and clinical toxicology devices (Docket No. 78N-2285). Comments should be addressed to the appropriate docket numbers.

DATES: The deadlines for submitting comments on the five device classification proposals are extended in accordance with the following schedule:

Proposed device classification regulation	Comment period extended to
General and Plastic Surgery Devices	July 1, 1982.
Ear, Nose, and Throat Devices	July 1, 1982.
Radiology Devices	July 1, 1982.
Ophthalmic Devices	Sept. 1, 1982.
Clinical Chemistry and Clinical Toxicology Devices.	Sept. 1, 1982.

ADDRESS: Written comments to the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sandra D. Levine, Bureau of Medical Devices, Food and Drug Administration (HFK-401), 8757 Georgia Ave., Silver Springs, MD 20910, 301-427-7230.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 19, 1982 (47 FR 2810), January 22, 1982 (47 FR 3280), January 26, 1982 (47 FR 3694), January 29, 1982 (47 FR 4406), and February 2, 1982 (47 FR 4802), FDA published for public comment five proposed rules to classify under section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c) all general and plastic surgery devices; ear, nose, and throat devices; ophthalmic devices; radiology devices; and clinical chemistry and clinical toxicology devices, respectively. FDA proposed to establish new Parts 862, 866, 874, 878, and 892 in Title 21 of the Code of Federal Regulations, which parts would each consist of general provisions together with individual sections identifying each generic type of device with a brief narrative description and stating the classification of that device.

FDA has received several requests to extend the comment periods on these proposals. The requests stated that classification has enormous ramifications for future regulation of these devices, and therefore more time was needed for review of the numerous devices in the regulations involved. After due consideration, FDA agrees that more time is needed for interested persons to submit comments on the classification of the numerous devices in the proposed regulations. FDA is granting extensions of the comment periods according to the schedule set forth above. FDA has chosen to stagger the comment periods rather than give uniform extensions to allow review of the proposals in an orderly fashion.

FDA finds in accordance with section 520(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 360j(d)(2)) that good cause exists to grant and is granting, extensions of the comment periods as set forth above.

Interested persons may, on or before July 1, 1982 (for general and plastic surgery devices; ear, nose, and throat devices; and radiology devices) and September 1, 1982 (for ophthalmic devices and clinical chemistry and clinical toxicology devices) submit to the Dockets Management Branch (address above) writtem comments regarding these proposals. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the appropriate docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 12, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-7354 Filed 3-18-82; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Parts 866, 868 and 880

[Docket Nos. 78N-1653 et al.]

Medical Devices; Various Proposed Rules for Device Classification; Withdrawal of Proposed Rules

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed rules.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing various proposed rules related to classification of general hospital and personal use devices, anesthesiology devices, and immunology and microbiology devices to eliminate unnecessary regulations.

FOR FURTHER INFORMATION CONTACT: Eugene W. Rice, Bureau of Medical Devices (HFK-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7559.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 24, 1979 (44 FR 49844-49954), November 2, 1979 (44 FR 63292-63426), and April 22, 1980 (45 FR 27204-27359), FDA proposed that various general hospital and personal use devices, anesthesiology devices, and immunology and microbiology devices be classified. This action was taken as part of the agency's overall implementation of the Medical Device Amendments of 1976 (the amendments) that established a system for the regulation of medical devices for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: class I (general controls), class II (performance standards), and class III (premarket approval). The amendments also established a procedure for the agency to promulgate regulations classifying each generic type of device into one of these three classes. Because the same generic type of device may be used in different medical specialty areas (anesthesiology, neurology, general and plastic surgery, etc.) under different names, the agency continues to consolidate its list of generic types of devices.

Docket No. 78N-1286; Urine Collection Bag for Infants

After publication of the proposal (44 FR 49868; August 24, 1979) to classify the urine collection bag for infants as part of the general hospital and personal use device classification proceeding, the agency determined that the urine collection bag for infants is essentially the same as another generic type of device, the urine collector and accessories, that has been the subject of a proposed classification into class II as part of the classification proceeding for gastroenterology-urology devices. No comments were received on the proposed regulation to classify the urine collection bag for infants. The proposed regulation to classify the urine collector and accessories into class II was published in the Federal Register of January 23, 1981 (46 FR 7607).

The agency has determined that the urine collection bag for infants is essentially the same as the urine collector and accessories. Accordingly, to avoid unnecessary device classification regulations, the agency withdraws the August 24, 1979 proposal to classify the urine collection bag for infants. The administrative record for the August 24, 1979 proposal shall be included in the administrative record (Docket No. 78N-2010) for the proceeding to classify the urine collector and accessories into class II.

Docket No. 78N-1327; Nasogastric Tube

After publication of the proposal (44 FR 49908; August 24, 1979) to classify the nasogastric tube as part of the general hospital and personal use device classification proceeding, the agency determined that the nasogastric tube is essentially the same as another generic type of device, the gastrointestinal tube and accessories, that has been the subject of a proposed classification into class II as part of the classification proceeding for gastroenterology-urology devices. No comments were received on the proposed regulation to classify the nasogastric tube. The proposed regulation to classify the gastrointestinal tube and accessories into class II was published in the Federal Register of January 23, 1981 (46 FR 7639).

The agency has determined that the nasogastric tube is essentially the same as the gastrointestinal tube and accessories. Accordingly, to avoid unnecessary device classification regulations, the agency withdraws the August 24, 1979 proposal to classify the nasogastric tube. The administrative record for the August 24, 1979 proposal shall be included in the administrative record (Docket No. 78N-2072) for the proceeding to classify the gastrointestinal tube and accessories into class II.

Persons who disagree with the final classification of a device may petition for reclassification of the device under Subpart C of Part 860 (21 CFR Part 860).

Docket No. 78N-1653; Nonindwelling Blood Carbon Monoxide Analyzer

After publication of the proposal (44 FR 63303; November 2, 1979) to classify the nonindwelling blood carbon monoxide analyzer as part of the anesthesiology device classification proceeding, the agency determined that the nonindwelling blood carbon monoxide analyzer is part of another generic type of device, the carbon monoxide test system, that has been the subject of a proposed classification into class II as part of the classification proceeding for clinical chemistry and clinical toxicology devices. No comments were received on the proposed regulation to classify the nonindwelling blood carbon monoxide analyzer. FDA published the proposal to classify the carbon monoxide test system into class II in the Federal Register of February 2, 1982 (47 FR 4802).

The agency has determined that the nonindwelling blood carbon monoxide analyzer is part of the carbon monoxide test system. Accordingly, to avoid unnecessary device classification regulations, the agency withdraws the November 2, 1979 proposal to classify the nonindwelling blood carbon monoxide analyzer. The administrative record for the nonindwelling blood carbon monoxide analyzer proposal shall be included in the administrative record (Docket No. 78N-2503) for the proceeding to classify the carbon monoxide test system into class II.

Docket No. 78N-1655; Nonindwelling Blood Oxyhemoglobin Concentration Analyzer

After publication of the proposal (44 FR 63305; November 2, 1979) to classify

the nonindwelling blood oxyhemoglobin concentration analyzer as part of the anesthesiology device classification proceeding, the agency determined that the nonindwelling blood oxyhemoglobin concentration analyzer is part of another generic type of device, the whole blood hemoglobin assays, that has been classified into class II as part of the classification proceeding for hematology and pathology devices. No comments were received on the proposed regulation to classify the nonindwelling blood oxyhemoglobin concentration analyzer. FDA published a final rule to classify the whole blood hemoglobin assays into class II in the **Federal Register** of September 12, 1980 (45 FR 60622). Therefore, the agency has determined that the anesthesiology nonindwelling blood oxyhemoglobin concentration analyzer device has already been classified into class II, following opportunity for public comment.

The agency has determined that the nonindwelling blood oxyhemoglobin concentration analyzer is part of the whole blood hemoglobin assays. Accordingly, to avoid unnecessary device classification regulations, the agency withdraws the November 2, 1979 proposal to classify the nonindwelling blood oxyhemoglobin concentration analyzer. The administrative record for the nonindwelling blood oxyhemoglobin concentration analyzer proposal shall be included in the administrative record (Docket No. 78N–1896) for the proceeding to classify the whole blood hemoglobin assays into class II.

Docket No. 78N–1658; Nonindwelling Blood Carbon Dioxide Partial Pressure (PCO_2) Analyzer

After publication of the proposal (44 FR 63307; November 2, 1979) to classify the nonindwelling blood carbon dioxide partial pressure (PCO_2) analyzer as part of the anesthesiology device classification proceeding, the agency determined that the nonindwelling blood carbon dioxide partial pressure (PCO_2) analyzer is part of another generic type of device, the blood gases (PCO_2, PO_2) and blood pH test system, that has been the subject of a proposed classification into class II as part of the classification proceeding for clinical chemistry and clinical toxicology devices. No comments were received on the proposed regulation to classify the nonindwelling blood carbon dioxide partial pressure (PCO_2) analyzer. FDA published the proposal to classify the blood gases (PCO_2, PO_2) and blood pH test system into class II in the **Federal Register** of February 2, 1982 (47 FR 4802).

The agency has determined that the nonindwelling blood carbon dioxide partial pressure (PCO_2) analyzer is part of the blood gases (PCO_2, PO_2) and blood pH test system. Accordingly, to avoid unnecessary device classification regulations, the agency withdraws the November 2, 1979 proposal to classify the nonindwelling blood carbon dioxide partial pressure (PCO_2) analyzer. The administrative record for the nonindwelling blood carbon dioxide partial pressure (PCO_2) analyzer proposal shall be included in the administrative record (Docket No. 78N–2305) for the proceeding to classify the blood gases (PCO_2, PO_2) and blood pH test system into class II.

Docket No. 78N–1660; Nonindwelling Blood Hydrogen Ion Concentration (pH) Analyzer

After publication of the proposal (44 FR 63309; November 2, 1979) to classify the nonindwelling blood hydrogen ion concentration (pH) analyzer as part of the anesthesiology device classification proceeding, the agency determined that the nonindwelling blood hydrogen ion concentration (pH) analyzer is part of another generic type of device, the blood gases (PCO_2, PO_2) and blood pH test system, that has been the subject of a proposed classified classification into class II as part of the classification proceeding for clinical chemistry and clinical toxicology devices. No comments were received on the proposed regulation to classify the nonindwelling blood hydrogen ion concentration (pH) analyzer. FDA published the proposal to classify the blood gases (PCO_2, PO_2) and blood pH test system into class II in the **Federal Register** of February 2, 1982 (47 FR 4802).

The agency has determined that the nonindwelling blood hydrogen ion concentration (pH) analyzer is part of the blood gases (PCO_2, PO_2) and blood pH test system. Accordingly, to avoid unnecessary device classification regulations, the agency withdraws the November 2, 1979 proposal to classify the nonindwelling blood hydrogen ion concentration (pH) analyzer. The administrative record for the nonindwelling blood hydrogen ion concentration (pH) analyzer proposal shall be included in the administrative record (Docket No. 78N–2305) for the proceeding to classify the blood gases (PCO_2, PO_2) and blood pH test system into class II.

Docket No. 78N–1663; Nonindwelling Blood Oxygen Partial Presssure (PO_2) Analyzer

After publication of the proposal (44 FR 63311; November 2, 1979) to classify the nonindwelling blood oxygen partial pressure (PO_2) analyzer as part of the anesthesiology device classification proceeding, the agency determined that the nonindwelling blood oxygen partial pressure (PO_2) analyzer is part of another generic type of device, the blood gases (PCO_2, PO_2) and blood pH test system, that has been the subject of a proposed classification into class II as part of the classification proceeding for clinical chemistry and clinical toxicology devices. No comments were received on the proposed regulation to classify the nonindwelling blood oxygen partial pressure (PO_2) analyzer. FDA published the proposal to classify the blood gases (PCO_2, PO_2) and blood pH test system into class II in the **Federal Register** of February 2, 1982 (47 FR 4802).

The agency has determined that the nonindwelling blood oxygen partial pressure (PO_2) analyzer is part of the blood gases (PCO_2, PO_2) and blood pH test system. Accordingly, to avoid unnecessary device classification regulations, the agency withdraws the November 2, 1979 proposal to classify the nonindwelling blood oxygen partial pressure (PO_2) analyzer. The administrative record for the nonindwelling blood oxygen partial pressure (PO_2) analyzer proposal will be included in the administrative record (Docket No. 78N–2305) for the proceeding to classify the blood gases (PCO_2, PO_2) and blood pH test system into class II.

Docket No. 78N–2253; Hemolytic Immunological Test System

After publication of the proposal (45 FR 27331; April 22, 1980) to classify the hemolytic immunological test system as part of the immunology and microbiology device classification proceeding, the agency determined that licensed biologic products regulated by FDA's Bureau of Biologics do not need to be the subject of device classification regulations. Thus, because the hemolytic immunological test system is a licensed biologic, and to avoid unnecessary regulations, the agency is withdrawing its April 22, 1980 proposal to classify the hemolytic immunological test system.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly § 5.1; see 46 FR 26052; May 11, 1981)), the following proposals are withdrawn: Urine collection bag for infants (Docket No. 78N–1286; 44 FR 49868; August 24, 1979); Nasogastric tube (Docket No. 78N–1327; 44 FR 49908; January 23, 1981).

Nonindwelling blood carbon monoxide analyzer (Docket No. 78N–1653; 44 FR 63303; November 2, 1979); Nonindwelling blood oxyhemoglobin concentration analyzer (Docket No. 78N–1655; 44 FR 63305; November 2, 1979); Nonindwelling blood carbon dioxide partial pressure (PCO_2) analyzer (Docket No. 78N–1658; 44 FR 63307; November 2, 1979); Nonindwelling blood hydrogen ion concentration (pH) analyzer (Docket No. 78N–1660; 44 FR 63309; November 2, 1979); Nonindwelling blood oxygen partial pressure (PO_2) analyzer (Docket No. 78N–1663; 44 FR 63311; November 2, 1979); Hemolytic immunological test system (Docket No. 78N–2253; 45 FR 27331).

Dated: March 15, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-7472 Filed 3-18-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-276-81]

Certain Amounts Refunded in Reinsurance Transactions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of certain amounts refunded in reinsurance transactions and the allocation of certain items in modified coinsurance transactions. The proposed regulations affect all life insurance company taxpayers that engage in reinsurance transactions in which certain amounts are refunded, or that enter into modified coinsurance contracts to which the rules of section 820 apply, and provide them with the guidance to comply with the law.

DATES: Written comments and requests for a public hearing must be delivered or mailed by May 18, 1982.

Except as otherwise provided, the proposed regulations are proposed to be effective for certain amounts refunded after March 18, 1982.

ADDRESS: Send comments and a request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–276–81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Alice M. Bennett of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3238).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 809, 811 and 820 of the Internal Revenue Code of 1954. The proposed regulations provide rules clarifying the treatment by life insurance companies of certain amounts refunded in reinsurance transactions. The proposed regulations also clarify the circumstances under which a proper consent may be made to the application of section 820 to modified coinsurance contracts by providing rules with respect to the allocation of certain items in the contract.

The proposed regulations are to be issued under the authority contained in sections 820(c) and 7805 of the Internal Revenue Code of 1954 (73 Stat. 112; 68A stat. 917; 26 U.S.C. 820(c) and 7805).

Amounts Refunded in Reinsurance Transactions

The proposed regulations clarify the treatment of amounts refunded in reinsurance transactions where the amount of the refund depends on the experience of the reinsurer with respect to the policies reinsured. These amounts refunded often referred to as experience refunds or experience rated refunds, are treated under present regulations as a return premium of the reinsurer and, with respect to modified coinsurance, as premium income of the reinsured. This treatment under present regulations, however, does not reflect the fact that all or part of the refund may reflect a return of investment income rather than premium income.

Accordingly, effective for amounts refunded or credited for refund after March 18, 1982, the proposed regulations provide that the portion of the refund allocable to investment income derived from the assets relating to the reserves on the policies reinsured is to be treated as investment income of the reinsured and as a corresponding reduction in investment income of the reinsurer. The refund is considered allocable to investment income to the extent of the gross investment income derived from the assets relating to the reserves on the policies reinsured less the sum of the required interest computed with respect to those reserves and the investment expenses of the reinsurer attributable to such gross investment income. The excess, if any, of the amount of the refund over the portion allocable to investment income is treated as premium income of the reinsured and as a return premium of the reinsurer. The rules apply to refunds generated by coinsurance and modified coinsurance contracts.

Allocation Rules for Modified Coinsurance Contracts

The proposed regulations also contain rules to clarify the circumstances under which consent may be made to the application of section 820 to modified coinsurance contracts. Effective for contracts entered into or modified after March 18, 1982, and for other contracts to the extent of any policies reinsured after March 18, 1982, the proposed regulations provide that there must be a proportional allocation between the reinsurer and the reinsured of the premiums, gross investment income, capital gains and losses, reserve, assets and expenses relating to the reinsured policies in order to consent to the application of section 820 to the contract. The proposed regulations, however, do not create any inference as to what rule will apply before the effective date of these regulations with respect to allocations of such items in modified coinsurance contracts.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of this regulation is Alice M. Bennett of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other

offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Income Tax Regulations

Paragraph 1. Paragraph (a) of § 1.809–4 is amended by revising paragraph (a)(1)(ii), redesignating paragraph (a)(1)(iii) as paragraph (a)(1)(iv), and by adding new paragraph (a)(1)(iii) to read as follows:

§ 1.809–4 Gross amount.

(a) *Items taken into account.* * * *

(1) Premiums—(i) * * *

(ii) The term "return premiums" means amounts returned or credited which are fixed by contract and do not depend on the experience of the company or the discretion of the management. Thus, such term includes amounts refunded due to policy cancellations or erroneously computed premiums. Furthermore, amounts of premiums or other consideration returned to another life insurance company in respect of reinsurance ceded shall be included in return premiums.

In the case of an amount refunded or credited for refund by the reinsurer to the reinsured after March 18, 1982, where the amount of the refund depends on the experience of the reinsurer with respect to the policies reinsured, the term "amounts of premiums and other consideration returned to another life insurance company in respect of reinsurance ceded" includes only that portion of such refund which exceeds the allocable investment income of the reinsurer. For purposes of the preceding sentence, the term "allocable investment income of the reinsurer" means the gross investment income of the reinsurer derived from the assets held with respect to the reserve on the policy reinsured less the sum of the required interest (as defined in section 809(a)(2)) with respect to such reserve and the investment expenses (as defined in section 804(c)(1)) of the reinsurer attributable to such gross investment income. To the extent of the allocable investment income of the reinsurer, the amount refunded or credited for refund shall be treated as a reduction in gross investment income of the reinsurer under section 804(b)(1) and as gross investment income received by the reinsured under section 804(b)(1). The gross investment income so treated shall be considered as derived proportionately from each of the various sources of gross investment income of the reinsurer allocable to the assets in relation to the reserve on the policy reinsured. For the treatment of other amounts which do not meet the requirements of return premiums, see section 811 (relating to dividends to policyholders).

(iii) The provisions of paragraph (a)(1)(ii) of this section may be illustrated by the following examples:

Example (1). R, a life insurance company reinsures a block of its pre-existing policies with S, a life insurance company, under a coinsurance agreement entered into on January 1, 1979. Under the agreement, R will pay to S the premium income received on the policies reinsured and will transfer to S assets equal in value to the reserve established with respect to the policies reinsured. S will pay to R an amount equal to all death benefits and certain expenses relating to the policies reinsured. S will pay all other expenses relating to the policies reinsured. In addition, S agrees to refund to R an amount which depends on the experience of S with respect to the policies reinsured. Under the agreement, this refund will be computed by subtracting the death benefits, expenses and other deductions (including any increases in reserves) relating to the policies reinsured, along with the fee charged by S for reinsuring the policies, from the premium income, investment income and any other items of income (including any decreases in reserves) relating to the policies reinsured. During 1982, R pays to S premium income of $100x on the policies reinsured. S receives gross investment income of $80x on the assets held with respect to the reserves on the policies reinsured. S pays to R an amount equal to death benefits of $25x and expenses of $5x on the reinsured policies. S incurs expenses and other deductions relating to the policies of $63x (which includes an increase in reserves of $40x and investment expenses of $10x), and charges a fee of $2x. On December 31, 1982, the amount credited for refund by S to R as computed under the agreement is $85x. Assume that the required interest with respect to the reserves on the policies reinsured is $33x. The amount credited for refund of $85x shall be treated by R and S in the following manner for the taxable year ending December 31, 1982: Since the amount of the allocable investment income of S is $37x ($80x−($33x+10x)), R will increase its gross investment income by $37x and S will reduce its gross investment income by $37x. The amount of $48x, which is the excess of the amount credited for refunded over the allocable investment income ($85x−$37x), is treated as premium income of R and a return premium of S.

Example (2). Assume the same facts as in example (1) except that the contract is a modified coinsurance contract for which the parties have consented to the application of section 820. The amount credited for refund of $85x shall be treated in the same manner as in example (1). Therefore, R will include $37x as gross investment income received and $48x as premium income. S will reduce its gross investment income by $37x and will treat $48x as a return premium.

(iv) * * *

* * * * *

Par. 1a. Paragraph (a) of § 1.809–5 is amended by revising paragraph (a)(7) to read as follows:

§ 1.809–5 Deductions.

(a) *Deductions allowed.* * * *

(7) *Assumption by another person of liabilities under insurance, etc., contracts.* (i) The consideration (other than consideration arising out of reinsurance ceded as defined in paragraph (a)(1)(iv) of § 1.809–4) in respect of the assumption by another person of liabilities under insurance and annuity contracts (including contracts supplementary thereto) of the taxpayer.

(ii) For purposes of section 809(d)(7) and this subparagraph, the term "assumption reinsurance" means an arrangement whereby another person (the reinsurer) becomes solely liable to the policyholders on the contracts transferred by the taxpayer. Such term does not include indemnity reinsurance or reinsurance ceded (a defined in paragraph (a)(1)(iv) of § 1.809–4).

* * * * *

Par. 2. Paragraph (a) of § 1.811–2 is amended to read as follows:

§ 1.811–2 Dividends to policyholders.

(a) *Dividend to policyholders defined.* Furthermore, any portion of an amount refunded or credited for refund by the reinsurer to the reinsured after March 18, 1982, which depends on the experience of the reinsurer in respect of reinsurance ceded and which does not constitute an amount of preimum or other consideration returned to another life insurance company in respect of reinsurance ceded, as defined in paragraph (a)(1)(ii) of § 1.809–4, shall be treated in the manner prescribed in paragraph (a)(1)(ii) of § 1.809–4 and not as a dividend to policyholders.

* * * * *

Par. 3. Paragraph (a) of § 1.820–3 is amended by revising paragraph (a)(1) and by adding new paragraph (a)(9) to read as follows:

§ 1.820–3 Special rules.

(a) *In general.* * * *

(1)(i) Premiums (to the extent allocable to the participation of the reinsurer therein) received for the policy reinsured shall be treated as received by the reinsurer and not by the reinsured. Amounts returned by the reinsurer to the reinsured shall be treated as reductions in premium income of the reinsurer under section 809(c)(1) and as

other amounts received by the reinsured under section 809(c)(1).

(ii) In the case of an amount refunded or credited for refund by the reinsurer to the reinsured after March 18, 1982, where the amount of the refund depends on the experience of the reinsurer with respect to the policies reinsured (often referred to as an experience refund or experience rated refund), the term "amounts returned by the reinsurer to the reinsured" referred to in paragraph (a)(l)(i) of this section includes only that portion of such refund which exceeds the allocable investment income of the reinsurer. For purposes of the preceding sentence, the term "allocable investment income of the reinsurer" means the gross investment income allocated under paragraph (a)(2)(i) of this section to the reinsurer with respect to the policy reinsured less the sum of the required interest (as defined in section 809(a)(2)) with respect to the reserve on the policy reinsured and the investment expenses (as defined in section 804(c)(1)) attributable to such gross investment income and allocated to the reinsurer under paragraph (a)(6)(ii) of this section. To the extent of the allocable investment income of the reinsurer, the amount refunded or credited for refund shall be treated as a reduction in gross investment income of the reinsurer under section 804(b)(1) and as gross investment income received by the reinsured under section 804(b)(1). The gross investment income so treated shall be considered as derived proportionately from each of the various sources of gross investment income of the reinsured in the manner prescribed in paragraph (a)(2)(i) of this section.

* * * * *

(9)(i) With respect to modified coinsurance contracts entered into or modified after March 18, 1982, and to other modified coinsurance contracts to the extent of any policies reinsured after March 18, 1982, the items described in paragraphs (a)(1) through (a)(6) of this section shall be allocated proportionately between the reinsured and the reinsurer.

(ii) The provisions of paragraph (a)(9)(i) of this section may be illustrated by the following examples:

Example (1). R, a life insurance company enters into a modified coinsurance contract with S, a life insurance company on December 31, 1981. Under the terms of the contract, R will cede 90 percent of the risk on a block of its pre-existing policies to S as of the effective date of the contract. Under the contract, R also agrees to reinsure with S on December 31, 1982, 90 percent of the risk on any policies issued by R during 1982. The contract provides for an allocation to S of 80 percent of the premiums, gross investment income, capital gains and losses, reserve, assets and expenses relating to the policies reinsured. Dividends are to be allocated under a reimbursement agreement between R and S. The allocations under the contract have satisfied the proportional allocations requirement of paragraph (a)(9)(i) of this section with respect to the policies reinsured after March 18, 1982.

Example (2). Assume the same facts as in example (1) except that under the contract, only 60 percent of the premiums relating to the policies reinsured are allocated to S. The allocations under the contract have not satisfied the proportional allocations requirement of paragraph (a)(9)(i) of this section with respect to the policies reinsured after March 18, 1982. Thus, R and S have not consented to the special rules of section 820(c) with respect to those policies that were reinsured on December 31, 1982.

* * * * *

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 82-7450 Filed 3-16-82; 12:28 pm]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 407; Re: Notice No. 362]

Labeling and Advertising Regulations Under the Federal Alcohol Administration Act (Reopening of the Comment Period)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Reopening of the comment period.

SUMMARY: This notice reopens the comment period for an additional 30 days on issues relating to the proposed labeling and advertising regulation changes published in the **Federal Register** on December 19, 1980 (Notice No. 362, 45 FR 83530). This notice is the result of a request from the Wine Institute for an additional opportunity to submit further comment. Due to the sensitive and controversial nature of these proposed changes the Bureau believes an additional comment period should be given to provide an opportunity for all interested persons to present further comments.

DATE: Comments must be received on or before April 19, 1982.

ADDRESS: Comments should be addressed to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 407).

FOR FURTHER INFORMATION CONTACT: Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On December 19, 1980, ATF published Notice No. 362 to obtain comment on proposed regulatory changes regarding the labeling and advertising regulations for wine, distilled spirits, and malt beverages. A total of 396 individual comments were received on this notice. Although most commenters supported the Bureau's intent and purpose of the proposed changes, many commenters submitted substantial suggestions and possible modifications to the proposed regulatory language. Furthermore, a number of commenters suggested that public hearings be held to provide a full discussion of these issues.

ATF believed that hearings were essential in order that all possible information concerning the regulatory proposals be obtained and evaluated. Therefore, ATF held hearings in Washington, DC, on September 9 and 10, 1981, and in San Francisco, California on December 10, 1981. Twenty-five persons testified at these hearings and substantial changes and modifications were suggested by some witnesses.

Since these proposed changes to the regulations are sensitive and controversial, ATF believes an opportunity should be given for all interested persons to submit further comments on these issues or on any testimony presented at the hearings. This will ensure that all pertinent information is made available to ATF before any final decisions are reached.

ATF specifically requests comments concerning the following issues:

(a) The proposed standards for the use of the word "light" or other phonetically similar words;

(b) The proposed definition of "natural";

(c) The use of athletes and athletic events;

(d) The guidelines proposed under which taste tests may be conducted for comparatively advertising;

(e) The use of curative or therapeutic claims such as, "relax" and "refresh";

(f) The proposed definitions for "false" and "disparaging"; and

(g) The use and definition of subliminal and similar techniques.

Although ATF specifically requests comments on these issues, this is not to preclude anyone from commenting on any relevant subject concerning the proposed regulations. All comments previously submitted on this issue will

remain a part of the record and no resubmission of comments will be necessary unless the commenter wishes to furnish additional information.

Disclosure Of Comments

ATF will not recognize any material and comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting comments is not exempt from disclosure.

Copies of all notices, all written comments, and the hearing transcripts will be available for public inspection at: ATF Reading Room, Room 4405, Federal Building, 12th and Pennsylvania Avenue NW., Washington, DC.

Drafting Information

The principal author of this document is Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel in the Bureau participated in the preparation of this document, both in matters of substance and style.

Authority and Issuance

This notice is issued under the authority contained in Section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended; 27 U.S.C. 205.

Signed: February 5, 1982.

G. R. Dickerson,

Director.

Approved: February 25, 1982.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations)

[FR Doc. 82-7507 Filed 3-18-82; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

Permanent State Regulatory Program of West Virginia

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining (OSM) has under consideration a request by West Virginia to extend the deadline for the State to meet the conditions of approval of its State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Pursuant to this request, the Secretary is requesting public comment on extending the deadline for the State to resolve the conditions until May 1, 1983.

DATE: Comments must be received by 5:00 p.m. on April 5, 1982, at the address below.

ADDRESS: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, West Virginia State Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

Copies of the West Virginia request for an extension, and the West Virginia program are available for review at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, West Virginia State Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone (304) 347–7158.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5315, Washington, D.C., Telephone (202) 343–4728.

West Virginia Department of Natural Resources, Room 630, Building 3, 1800 Washington Street, East, Charleston, West Virginia 25305, Telephone (304) 348–9160.

FOR FURTHER INFORMATION CONTACT: David H. Halsey, Director, West Virginia State Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION: Under 30 CFR 732.13(i), the Secretary may conditionally approve a Stae permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval. The correction of each deficiency is a condition of the approval. The conditional approval terminates if the conditions are not met according to the schedule. The date are established in consultation with the State based on regulatory and administrative needs of the State's permanent program, the time required for changes to be adopted under State procedures or legislative schedules, and impact on SMCRA implementation.

The West Virginia program was conditionally approved on January 21, 1981 (46 FR 5915–5956). In the notice of approval the Secretary published the schedule for West Virginia to resolve each of 35 conditions on the approval of that State's regulatory program. On October 30, 1981, a notice was published in the **Federal Register** modifying the deadlines for seven States, including West Virginia, to meet conditions of their approved State programs (46 FR 54070–54071). In that notice the Secretary modified the original deadline for 32 of the conditions in the Secretary's approval of the West Virginia program. In a letter to the Director, OSM, dated February 23, 1982, the West Virginia Department of Natural Resources indicated that it would like an extension for meeting the conditions of approval as listed at 46 FR 5955–5956, January 21, 1981 (See Administrative Record No. WV 423). Copies of the State's letter of request and the above-cited **Federal Register** notices are available for public review during regular business hours at the locations listed above under "ADDRESSES."

The State indicated in its February 23, 1982 letter that it needs sufficient time for the West Virginia Legislature to act during the next regular session, thus a six month extension of the November 1, 1982 deadline is requested. Also, the State indicated that in the interest of consistency and stability, an extension of the April 1, 1982 deadline to coincide with the requested six month extension of the November 1, 1982 deadline, should be considered. The Secretary, based on the State's request, proposes to allow the State until May 1, 1983, to meet the conditions.

The Secretary believes that under the circumstances, an extension of the current deadlines does not render the deficiencies major. However, the Secretary specifically requests comments on whether extension of the deadlines would render any particular deficiency major, as that term is used in 30 CFR 732.13(i).

The Office of Management and Budget has granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for all actions to approve or conditionally approve State regulatory programs, actions or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB are not needed for this proposed extension.

This rule is deemed not to be a major Federal action within the meaning of section 102(2)(c) of NEPA. It is hereby designated as a categorical exclusion from the NEPA process. Therefore, this rule is exempt from the requirements of an Environmental Assessment or EIS.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96-354, I have certified that this rule will not have a significant economic effect on a substantial number of small entities as the rule is essentially a timing change with no direct or indirect impact on small entities.

Dated: March 16, 1982.

J. S. Griles,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

PART 948—WEST VIRGINIA

For the reasons set out in the preamble, 30 CFR Part 948 is proposed to be amended by amending § 948.11 as follows:

§ 948.11 [Amended]

30 CFR 948.11 (1)-(35) is proposed to be amended by substituting "May 1, 1983" for each date contained therein.

[FR Doc. 82-7502 Filed 3-18-82; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[General Docket No. 81-768; FCC 82-68]

Selection From Among Mutually Exclusive Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings

AGENCY: Federal Communications Commission.

ACTION: Termination of Proposed Rule (Report and Order).

SUMMARY: Action taken herein declines to adopt rules to implement a system of random selection or lotteries to be used to choose among mutually exclusive applications for initial telecommunications licenses. The Commission declined to exercise its discretionary authority to implement a lottery system to select telecommunications licensees because it found that the lottery statute would not significantly reduce the delay and expense associated with the current comparative hearing process.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Randy Thomas, Office of General Counsel, (202) 632-6990.

SUPPLEMENTARY INFORMATION:

Report and Order—Proceeding Terminated

Adopted: February 8, 1982.

Released: February 25, 1982.

By the Commission: Commissioners Fowler, Chairman; Quello and Dawson issuing separate statements; Commissioners Washburn and Rivera concurring and issuing separate statements; Commissioner Fogarty dissenting and issuing a statement; Commissioner Jones absent.

I. Introduction

1. In this *Report and Order* we decline to implement a system of random selection ("lottery") for choosing among mutually exclusive applicants for initial telecommunications licenses. The discretionary authority to institute such a system was granted in Public Law No. 97-35, the Omnibus Budget Reconciliation Act of 1981, 95 Stat. 736-737, which added Section 309(i) to the Communications Act of 1934 (the "Act"), 47 U.S.C. 309(i). On November 17, 1981, we issued a *Notice of Proposed Rulemaking* in General Docket No. 81-768 (the *"Notice")* FCC 81-524, 46 FR 58110-58122 (Nov. 30, 1981), requesting comments on the first phase of the proposed implementation of this new authority. In response thereto we received numerous comments and reply comments, as indicated in Appendix A. Because of the 180-day time restriction on our rulemaking authority in this proceeding, 47 U.S.C. 309(i)(4)(A), we imposed an expedited comment schedule and have adopted this Report and Order prior to February 9, 1982.

2. We wish to emphasize at the outset that we recognize that, in general, use of a lottery to select initial licensees can offer distinct advantages as compared to the traditional comparative hearing process. As the Commission has expressed in the past,[1] we continue to believe that a simple, straightforward lottery is needed to help speed service to the public, reduce processing expenses to both applicants and the Commission and provde a fair and efficient means of allocating spectrum resources. In those situations where there are no significant differences between competing applicants, we need statutory authority, with sufficient administrative flexibility, to use a lottery to select an initial licensee.

3. It has been estimated that the average delay caused by a mutually exclusive hearing is three years.[2] There is enormous economic loss associated with this delay. First, there are unrealized profits on the use of the idle spectrum. Second, there are the tangible costs to the applicants and the Commission for legal and engineering expertise. Third, there are costs in terms of the loss of consumer satisfaction by not having, for example, a second FM station or a first MDS service. A lottery can, in certain instances, significantly reduce the delay and expense now associated with comparative hearings.

II. Background

4. Section 309(i) reads:

(1) If there is more than one applicant for any initial license or construction permit which will invlolve any use of the electromagnetic spectrum, then the Commission, after determining the qualifications of each such applicant under Section 308(b), shall have authority to grant such license or permit to a qualified applicant through the use of a system of random selection.

(2) The determination of the Commission under paragraph (1) with respect to the qualifications of applicants for an initial license or construction permit shall be made after notice and opportunity for a hearing, except that the provisions of section 409(c)(2) shall not apply in the case of any such determination.

(3)(A) The Commission shall establish rules and procedures to ensure that, in the administration of any system of random selection under this subsection, groups or organizations, or members of groups or organizations, which are underrepresented in the ownership of telecommunications facilities or properties will be granted significant preferences.

(3)(B) The Commission shall have authority to require each qualified applicant seeking a significant preference under subparagraph (A) to submit to the Commission such information as may be necessary to enable the Commission to make a determination regarding whether such applicant shall be granted such preference. Such information shall be submitted in such form, at such times, and in accordance with such procedures, as the Commission may require.

(4)(A) The Commission, not later than 180 days after the effective date of this subsection, shall, after notice and opportunity for hearing, prescribe rules establishing a system of random selection for use by the Commission under this subsection in any instance in which the Commission, in its discretion, determines that such use is appropriate for the granting of any license or permit in accordance with paragraph (1).

(4)(B) The Commission shall have authority to amend such rules from time to time to the extent necessary to carry out the provisions of this subsection. Any such amendment shall be made after notice and opportunity for hearing.

5. This provision was added to the Omnibus Budget Reconciliation Act of 1981 by the Conference Committee. Consequently, its immediate legislative history consists of that Committee's Report, H.R. Rep. No. 97-208 (1981) at 896-898, and the statements of Senators Goldwater and Packwood, 127 Cong. Rec. S9008-9009 (July 31, 1981) and Representative Wirth, 127 Cong. Rec. H5811-5812 (July 31, 1981).

[1] *See Notice of Inquiry and Proposed Rulemaking* in CC Docket No. 80-116 (Multipoint Distribution Service) 45 FR 29335 (May 2, 1980).

[2] *Id.*, at ¶ 22.

6. In enacting this statute, Congress made clear its desire not to mandate the use of lotteries. The Conference Report states that the

> conferees wish to emphasize that a random selection proceeding is to be used by the Commission *in its discretion* and that the conferees do not intend to discourage the use of the comparative hearing process by the Commission where, due to a sufficiently small number of applicants or for other reasons, a comparative proceeding would better serve the public interest, convenience and necessity. (Emphasis added) H.R. Rep. No. 97-208 at 897.

As Representative Wirth subsequently stated on the House floor, the decision to implement this statute "is entirely up to the FCC's discretion, with no presumption either way imposed by the law." 127 Cong. Rec. H5811.

7. In addition, the legislative history of section 309(i) includes the fact that earlier in the session, two bills were introduced to authorize the use of a lottery in the broadcast services. S. 270, section 3 (radio), (introduced by Sen. Schmitt) and S. 601, section 3 (television) (introduced by Sen. Goldwater). The legislation finally enacted was significantly different from S. 270 and S. 601 due to the addition of three new requirements. Section 309(i)(1) and (2) requires that the Commission determine the qualifications of an applicant under Section 308(b) prior to conducting the lottery. *See also*, H.R. Rep. No. 97-208 at 896-897. Section 309(i)(3) was added to require that the Commission grant "significant preferences" to groups, organizations and their members who are "underrepresented in the ownership of telecommunications facilities or properties". Finally, the scope of the lottery's application was expanded from merely radio and television licenses to "any use of the electromagnetic spectrum."

III. Summary of Comments

8. The *Notice* raised a wide variety of questions concerning our proposed methods of implementing our lottery authority. These questions can be grouped into four general areas: (1) Should a lottery be implemented at all?, (2) To which applications should a lottery apply?, (3) How should a lottery operate?, and (4) How should preferences be granted? In addition to responding to these issues, many commenters raised other issues, including several that we expressly stated in the *Notice* we would not address in this proceeding. We will summarize and discuss each of these areas in turn.

9. There are several comments directed at the general issue of licensing through a lottery scheme. These comments also tended to address the feasibility of using lotteries in particular services, e.g. low-power, common carrier radio; the need to retain and improve the current comparative hearing process; the effective date of a lottery; and the use of a lottery on an ad hoc, universal or service by service basis. These comments also address the applicability of preferences in each instance of proposed lottery use.

10. *Lotteries in Certain Services.* Although it was expressly not an issue intended to be resolved in this rulemaking, the Commission listed several "candidate" services for a lottery in the *Notice*. The potential list of services subject to a lottery and the preferences that should be awarded, if any, in the various services, brought forth a flood of opposition to lotteries and preferences from licensees in the common carrier and private radio services. These commenters argue that there are generally no licensing delays in the common carrier and private radio services, that industry frequency coordination reduces "exclusive use" problems that arise in broadcasting, that these services do not constitute the "media outlets" whose ownership Congress indicated it was concerned with diversifying, *see* H.R. Rep. No. 97-208 at 897, *see also Notice* ¶ 29, n.20, and, given the special purposes of many of these services, that the public interest would not be served by license assignment by lottery.

11. Commenters generally opposing use of lotteries and preferences in the common carrier and private radio services include MCI Telecommunications Corporation, Mobile Marine Radio, Inc., Motorola, Inc., National Association of Business and Educational Radio, Inc., United Telecommunications, Inc., Special Industrial Radio Service Association, Inc., Satellite Business Systems, Inc., RBC Communications Corporation, Land Mobile Communications Council, GTE Service Corporation, Graphic Scanning Corporation, Forest Industries Telecommunications, Central Committee on Telecommunications of the American Petroleum Institute, Cellular Systems, Inc., Los Angeles County Sheriff's Department, Associated Public-Safety Communications Officers, Inc., American Association of State Highway and Transportation Officials Special Committee on Communications, Association of American Railroads, Central Telephone and Utilities Corporation and American Telephone and Telegraph Co. However, Private Networks, Inc., a minority-owned Multipoint Distribution Service ("MDS") applicant, argues that the Commission should now specify the services, "such as MDS, where clearly a lottery procedure is efficient and necessary." Heated opposition to this suggestion was submitted by some commenters including Microband Corporation of America ("Microband"), Multipoint Information Systems, Inc. ("MIS"), and a group of respondents including Cross Country Networks, Inc., Dayton Communications Corporation, Midwest Corporation, Multi-Communications Services, Inc., Multi-Point Communications Corp., and H. L. Woodbury.

12. Several commenters, including American Women in Radio and Television ("AWRT"), urge the Commission initially to utilize the lottery in the broadcast services only for low power television ("LPTV"). AWRT states that because LPTV is a new service with no adopted licensing procedures, the Commission has an opportunity to design new administrative procedures particularly suited to applicants such as women whose past access to capital markets has been restricted. AWRT supports continuation of traditional processing in full service broadcasting, but believes that women should receive the same preferences and assistance presently enjoyed by minorities in this system.

13. Defiance Broadcasting Company ("Defiance") also recommends that the Commission use a lottery in low power and retain the traditional comparative process for other broadcast services. Defiance argues that in most AM, FM, or TV cases, the Commission is dealing with the last one or two channels available in a community. A lottery, Defiance states, is not the best way to choose which of four applicants will operate the only local FM station in a community. Similar views can be found in comments such as those of MCB Holding, Inc., Quality Broadcasting Corporation and Capital City Broadcasting Company.

14. Some commenters oppose the use of lotteries (and related preferences) in certain particular proceedings. For example, Beneficial Management Corporation ("BMC"), a New Jersey Corporation, argues that if a VHF channel is reallocated to that State, its license should not be awarded by random selection. The public interest would not be served, BMC asserts, by selecting the only New Jersey VHF licensee by lottery. East Tennessee Broadcasting, one of several applicants for VHF "drop-in" Channel 8 in

Knoxville, argues that a lottery should not be used in that proceeding since the parties to that proceeding have already incurred the "burdensome costs" Congress sought to avoid, and no "barriers to entry" can be eliminated by lottery use as the cut-off dates for applications have passed.

15. Finally, Contemporary Communications Corporation ("CCC"), a common carrier licensee and low power television applicant, argues that "a lottery procedure should apply to all comparable mutually exclusive situations without exception," but believes that Congress did not intend to award a significant preference in lotteries involving common carrier radio applicants. CCC believes, however, that there is such great uncertainty on this point, the Commission should ask for Congressional clarification. The Commission should also, CCC suggests, "seek clarification as to the extent of the preference to be awarded, and, more importantly, who exactly it is to be awarded to." CCC argues that the present law is "simply an invitation for lawyers to play ethnic poker," and that, while it "admires the Commission's attempt to resolve these issues," it notes that "without Congressional standards, anybody's guess is as good as another."

16. *Applicability of Preferences in Particular Lottery Proceedings.* The Florida AFL–CIO states that it has no strong views regarding preferences in non-broadcast services, but that perhaps there should be preferences in all media services. The national AFL–CIO believes that the use of a lottery with "significant preferences" awarded to the underrepresented should be applied broadly and would "be particularly appropriate for the broadcasting services and the Multipoint Distribution Service." National Black Media Coalition ("NBMC") states that, assuming the continuation of comparative preferences, it opposes the use of a lottery for full service television, but believes that Congress did intend the preferences to apply to non-broadcast services. MDS, NBMC argues, is clearly a form of media, even though it is regulated as a common carrier. NBMC argues that DBS will be media as well, whether it is regulated as broadcasting or common carrier. The Commission, NBMC contends, should construe Congress' intention as broadly as possible.

17. *Commenters Contrasting Comparative Hearings With Lotteries.* Numerous commenters in this proceeding believe that the present comparative application process is preferable to the lottery system proposed in the *Notice*. Commenters generally take this position either because they believe that various groups, such as minorities, and, to some degree, women, fare better under the present comparative criteria than would be the case in a lottery, or because they believe that the public interest is well served by the Commission's attempts to select the "best" applicant for a given frequency in the comparative context.

18. Citizen's Television System, Inc. ("CTVS"), the International Union of Operating Engineers ("IUOE"), Spanish Radio Broadcasters Association of America, Inc. ("SRBA"), Defiance, National Association of Broadcasters ("NAB"), MCB Holding, Inc., National Radio Broadcasters Association ("NRBA") and "Attorneys Practicing Before the Commission" state that the Commission would be better served by focusing on improving the current comparative hearing process rather than trying to implement the section 309(i) lottery authority. BML Associates offers several specific areas for reform of the Commission's adjudicative process.

19. In general these comments argue that the current comparative hearing process virtually ensures selection of minority applicants, and provides similar benefits to women, whereas the operation of a lottery *may* result in an ineffective preference for minority and female ownership.[3] Seven Parties, CBS, NCSC, NRBA, SRBA, IUOE and others submit that the lottery system as proposed will generally lead to greater inefficiency due to the bulk of "speculative" filings that a lottery is sure to engender with a concomitant increase in workload on the Commission staff.

20. The general comments also contend that a lottery system would ignore important distinctions between applicants regarding programming, integration of ownership and management, local control and diversification of ownership. *See,* NAB, Neighborhood TV Company and Seven Parties' Comments.[4] Several commenters, including Cosmos Broadcasting Corporation, Cox Broadcasting Corporation and Multimedia, Inc., filing jointly, BML Associates, Wyoming Family Broadcasting and National Association of Black Owned Broadcasters ("NABOB") assert that the Commission's public interest responsibility mandates that it strive to select the best qualified from among competing applicants. Other commenters, such as Community Television Network, Inc. ("CTN") and Clarksville, are of the view that a lottery should not be held where an applicant may win or have distinct advantages in a comparative proceeding; *e.g.*, an applicant consisting of local shareholders or owning no other broadcast interests.

21. NAB argues that "the basic premise of the lottery proposal—that the Commission will grant a license to a qualified although less desirable applicant—is fundamentally inconsistent with the Commission's duty to license in the public interest." NAB believes that Congress delegated to the Commission the responsibility to determine, in the context of the public interest, whether random selection is appropriate for *any* telecommunications service, and that "the Commission has addressed neither the magnitude nor the complexity of this task."

22. Similarly, KIRO, Inc., a Commission broadcast licensee, states that it "is opposed to the Commission's proposal because it necessarily assumes that the public interest can be served equally well by any applicant with bare minimum qualifications * * *." Further, KIRO argues, the statutory framework within which the lottery must operate is "totally unworkable", and in many cases could actually frustrate the goal of increased ownership of broadcast facilities by minorities and other underrepresented groups. KIRO argues that this is the case both because the classification "underrepresented in the ownership of telecommunications facilities" is "so broad and amorphous as to be virtually meaningless," engendering numerous disputes as to preference entitlement, and because "a minority applicant which would be a clear winner in a comparative hearing under today's standards might lose to

[3] NAB argues that "by transforming meaningful consideration of minority ownership and participation into mere statistical probabilities, the Commission's proposal threatens to undermine existing minority ownership policies." NAB states that the preferences for minorities proposed in the *Notice* are less than those presently available in the comparative hearing process under the Court of Appeals' holding in *TV–9, Inc. v. FCC,* 495 F. 2d 929 (D.C. Cir. 1973), *cert. denied,* 418 U.S. 986 (1974). In *TV–9,* NAB states, the Court found that the individual and combined stock ownership of two local Black individuals, who held a 7.17 percent and 7 percent voting stock interest in the applicant, was "substantial", since the highest interest owned by any of the principals of the applicant was 10 percent. The Court ordered the Commission to award "comparative merit" to the applicant. In the *Notice,* however, the Commission proposes an "over fifty percent" ownership standard similar to that applied in tax certificate and distress sale situations.

[4] "Seven Parties" includes Alegria I, Inc., Alegria II, Inc., Alegria III, Inc., El Sol Broadcasting, Inc., the Orange County Broadcasting Corporation, Sonrisa, Inc., and the United Public Broacasting Company, Inc.

Dame Fortune in a lottery." KIRO's viewpoint regarding the comparative process is shared by commenters such as New Mexico Visions, Inc., the Hispanic-owned licensee of KLKK–TV, Albuquerque, New Mexico. New Mexico Visions argues that a lottery system "would quickly become a game of the wealthy simply preparing enough applications and submitting them enough times so that by the law of averages they will win a few." New Mexico Visions suggests that as an option to the lottery proposal, the Commission might wish to consider a system in which minority-controlled applicants would be given the option of determining whether they wish the proceeding to be resolved by lottery (with a preference) or in the current comparative process.

23. NRBA argues that the question posed by the *Notice*, recognizing the "obvious defects" in the comparative hearing process, is whether "the Commission should opt to discard that process and adopt a lottery selection system which has absolutely no public interest nexus other than expedition." NRBA asserts that as to preference for women and minorities, "the disadvantaged groups and the Commission would be better served by the formulation of policies such as have been adopted over the past few years—tax certificates and distress sales—policies which are calculated to provide them with a more concrete expectancy for achieving their goals as well as societal goals of parity." NRBA suggests that an initial improvement might be to allow distress sales at whatever price a buyer is willing to pay and also "to allow such sales to be effectuated up to and including a final decision in a renewal or revocation proceeding."

24. IUOE maintains the lottery statute language constitutes a finding that unions are underrepresented and that the Commission must award preferences to unions in all mutually exclusive proceedings. IUOE further argues that effectuation of the "national policy" of giving preference to unions and other underrepresented groups should not be left to "mere chance," and that the comparative hearing process remains the "best means" for assuring diversification and underrepresented preferences.

25. The Corporation for Public Broadcasting ("CPB") argues that the Commission has construed the Congressional grant of authority to institute lotteries as a mandate to abolish the comparative hearing process, which Congress never considered, let alone endorsed. Further, CPB argues that in view of the requirements of section 396(a) of the Communications Act, the Commission cannot eliminate consideration of the comparative qualifications of noncommercial applicants. CPB states that it might be appropriate, however, to use lotteries as tie-breakers, a view in which the National Association of Public Television Stations ("NAPTS") concurs.

26. *Date of Lottery Implementation.* Those commenters who address the issue of the date prior to which applications filed would not be subject to a lottery all focus on the question of fairness. While some prefer the effective date of the *Report and Order* that would implement the lottery in the particular service, some preferred August 13, 1981, the date on which Section 309(i) was enacted. Some commenters urge that each implementing *Report and Order* specify a future effective date. In each case, however, the commenters stress that due process considerations of notice require protection of those applicants who had expended substantial funds in preparing their applications and who had structured their applications in order to take advantage of the comparative criteria existing at the time of application. Most of the commenters recognize the unique status of the low power television service, where all applications were filed under interim rules proposing use of lottery-type licensing procedures.

27. *Application of Lottery.* Several commenters address the issue of whether the lottery should be applied on an *ad hoc*, a service-by-service or a universal basis. Some commenters favor a service-by-service approach, as preferred in the *Notice*, for the reasons there stated. There was some support for use of a lottery only as a "last resort" when the applications were otherwise equal, a form of *ad hoc* determination, and at least one commenter favored an *ad hoc* approach within only specified services. These last commenters seek to preserve what they perceive to be the public interest benefits of the comparative criteria. CCC favors universal application of the lottery, finding no meaningful distinctions between several of the suggested candidate services.

28. *Other Lottery Procedures.* Relatively few commenters address the mechanics of the proposed lottery procedures. The National Association of Spanish Broadcasters ("NASB") and Private Networks suggested that if a lottery system is established, there should only be one drawing per license awarded. Thus, if the first winner is subsequently disqualified, a second drawing should be held to determine the winner. NABOB's comments suggest that a separate staff be established in the Secretary's office solely to administer the lottery, which would be conducted by a random drawing of numbered chances from a container. Furthermore, NABOB proposes the use of an audit firm to select which of several drawings, apparatus and FCC employees should engage in the drawing. NABOB also suggests that the lottery apparatus be stored under lock and seal, with periodic checks by an outside audit firm.

29. NBMC presents a unique mathematical model for conducting a license lottery. The model uses a two stage approach; first, with separate drawings for minorities and all non-minorities, followed by a final two entrant drawing between the minority and non-minority winners of the first stage. Johnson and Associates advocates the idea that an independent contractor, preferably a "Big 8" accounting firm, operate the lottery. Johnson and Associates, as well as Consumers Union ("CU"), suggest that computer techniques should be used for making the random selection. CU suggests that the Chief Administrative Law Judge be responsible for conducting the lottery.

30. *Arguments Against General Use of Lotteries.* In large part due to the "significant preference" aspect of the "random selection" scheme enacted by Congress, numerous commenters urge the Commission not to effectuate licensing by lottery, or to use the lottery only for very limited purposes, if at all. However, the Federal Trade Comission's Bureau of Competition, Bureau of Consumer Protection and Bureau of Economics ("FTC") submitted comments generally in favor of the *Notice* proposals. The FTC staff note that while "lotteries may not represent the ideal method of license allocation * * * they are probably preferable * * * to other methods presently available to the FCC." Factors militating in favor of lotteries, FTC notes, are reduced costs, partial elimination of idle spectrum space and increased competition in certain communications markets. On the other hand, the FTC staff argues that auctions may be a superior technique to lotteries because they allocate licenses on the basis of actual market value, not random selection.

31. Cosmos/Cox/Multimedia assert that, "absent clarification from Congress, the proposal cannot be effectively administered." They believe that the proposed system "raises serious

constitutional questions" and argue, further, that the process as set forth in the *Notice* "would deter rather than expedite processing of telecommunications applications." Neighborhood TV states that only approximately 200 out of the estimated 5,000 LPTV applications on file were submitted by minority applicants, and argues, "That being the negligible dimension of the interest, it would seem reckless for the Commission not to consider alternatives to the cumbersome proposal for selection by preference." Neighborhood TV notes "that reassessment may require going back to the Congress with a new proposal," but contends that such action would surely be "better than having to face the realistic prospect of a looming decade-long struggle with the impossible-to-manage processing arrangement that is built into the lottery scheme." CBS "foresees insuperable difficulties in rationally distinguishing" one underrepresented group from another, and states that "perhaps the only solution to the problem may be for Congress to revisit this matter," a conclusion shared by American Broadcasting Companies, Inc. ("ABC").

32. The National Council of Senior Citizens urges that the lottery "as permitted by the new Act and as proposed by the Commission" would worsen the Commission's ability to apportion spectrum. The Council contends that "the statute would specifically require that all of the formalities be retained except for the oral evidentiary hearing itself," and that oral hearings are "but a minor source of the costs and delays in application formalities." The Council suggests that use of the random selection process would generate a significant increase in application volume." A three-fold increase is not an unusual estimate", because "the rational applicant desiring one facility will file two, three, four or more applications." The Council concludes that "the pro-diversity criterion in existing broadcast hearings is worth preserving in some form, and is worth extending to common carrier and private radio services, where it will be increasingly appropriate in the future." "Even" the present system, the Council states, "is preferable to the use of the lottery as proposed."

33. In a similar vein, a group of "attorneys practicing before the Commission," filing jointly, contend that "use of a lottery to select broadcast licensees would disserve the public interest and that an improved comparative hearing process is a surer, fairer, and more efficient means of increasing minority ownership and reaching other public interest goals," a viewpoint also held by NRBA. Henry Geller and Ira Barron ("Geller and Barron") state that "the crucial point is that the Commission has been assuming that if it does not use the lottery to do the whole process, the only alternative is a lengthy evidentiary hearing." They argue that the Commission can hold "full hearings" by "paper" proceedings, and suggest the use of such processes in broadcasting, turning to lottery only as a last resort in a given case. They believe, however, that auctioning frequencies may be the best method of allocation in various common carrier services.

34. A few commenters address the potential conflict between license allocation by lottery and section 307(b) of the Act which requires the Commission fairly and equitably to allocate radio service among the several states. Cosmos/Cox/Multimedia asserts that a lottery system contravenes the provisions of section 307(b). Association for Broadcast Engineering Standards, Inc., ("ABES") comments reflect similar section 307(b) concerns.

35. *Implementing the Preference Provisions.* As we have indicated above, new Section 309(i)(3)(A) provides that if the Commission implements a lottery system it must—

> ensure that * * * groups or organizations, or members of groups or organizations, which are underrepresented in the ownership of telecommunications facilities or properties will be granted significant preferences.

36. The Conference Report further identifies the intended "underrepresented" recipients of these preferences by stating that

> * * * Ownership by minorities, such as Blacks and hispanics, as well as by women, and ownership by other underrepresented groups, such as labor unions and community organizations is to be encouraged through the award of significant preferences in a random selection proceeding.

37. The Commission concluded in the *Notice* that it appeared that Congressional intent in establishing the preference system was to remedy underrepresentation *per se.* However, the *Notice* also recognized that Congress' emphasis on the underrepresentation of minorities and women, as well as judicial decisions concerning the permissible bases of preferential government treatment, suggest that the program might have been enacted only to remedy underrepresentation resulting from past discrimination. We solicited comment on various aspects of this issue, including the First Amendment and equal protection implications of Congress' action.

38. We noted that our broad discretion in implementing a lottery required us to raise and resolve many issues in this proceeding, including:

—How to define "significant" preferences;
—How to evaluate an applicant's ownership to determine whether it is eligible for a preference, including such issues as a 50% underrepresented ownership requirement, grant of multiple preferences and determination of preference beneficiaries in trust and partnership situations;
—Which groups are "underrepresented" in telecommunications ownership;
—What documentation, if any, should be required of an applicant to prove its "underrepresentation";
—Whether findings of "underrepresentation" should be made on a national, regional or market basis.

39. *Definition of "Significant" Preference.* In the *Notice* we solicited comments on the issue of how significant preferences should be defined for the purpose of weighing the lottery to favor certain preferred groups. Comments were elicited on two options. One option was a fixed, relative 2 to 1 preference for all underrepresented applicants. The second option was a sliding scale preference that would accord a 4 to 1 preference for minorities, 3 to 1 preference for women and a 2 to 1 preference for labor unions, community organizations and other underrepresented groups. The *Notice* also requested comments on other means of apportioning the preference.

40. Section 309(i)(3)(A) of the lottery legislation requires the Commission to grant "signficant preferences" to certain groups or members of groups if a lottery is used to award licenses. The definition of the significant preferences is an important aspect of this proceeding since it would influence applicants' chances of a license grant. East Tennessee Broadcasting recommends the Commission give a higher fixed relative chance of winning to preference applicants, *e.g.,* 4 to 1. The AFL–CIO believes the authorizing statute and legislative history support the Commission's proposal for a fixed relative increase of 2 to 1. The AFL–CIO believes this is a fair, reasonable and equitable approach. Citizens Television System, Inc. ("CTVS"), on the other hand, advocates a preference weighting system that would ensure that the odds of any individual preferred applicant must exceed the collective odds of all non-preferred applicants competing for the same license.

41. Dr. Theodore Glasser ("Glasser") of the University of Minnesota's School of Journalism and Mass

Communications interprets "significant preferences" to require that underrepresented applicants for a given license, as a group, have a greater chance of winning than the group of non-preference applicants vying for the same license. To avoid causing undue harm to non-preference applicants, Glasser argues that the underrepresented preference should be just the threshold or marginal increase necessary to assure that underrepresented applicants have a better chance of winning the license.

42. NABOB advocates a "graduated preference" system that would accord applicants with underrepresented members a minimum numerical value; such value to progressively increase to reflect increased participation by minorities or women. This system would give weight to any amount of underrepresented ownership in the applicant, with the maximum weight being assigned to applicants with an over 50% minority or female ownership interest.

43. The Florida AFL–CIO opposes a weighted preference on practical and policy grounds. It further argues that if the Commission does implement a weighted preference system, the labor laws may demonstrate a sufficient finding of discrimination against organized labor to require a high weighted preference.

44. The National Federation of Local Cable Programmers ("NFLCP"), directing its comments primarily at the proposed low power television service, supports a three-tiered, cumulative preference system. Specifically, it suggests a 4 to 1 preference for non-commercial applicants; 3 to 1 preference for minority and women owned applicants; and a 2 to 1 preference for applicants that are either non-profit, locally owned, locally operated, or have no other telecommunications holdings. These preferences would be cumulative, *e.g.*, a non-commercial, minority organization would be accorded a relative 7 to 1 preference.

45. The comments filed by CTVS suggest that if the Commission implements a lottery (to which it is generally opposed), the weight of the lottery preference should be such that "any individual preferred applicant for a given frequency would have a significantly greater probability of success in a lottery than all non-preferred applicants for the same frequency would have collectively." On the other hand, NASB recommends "a lottery mechanism which will assure minority applicants a fixed, absolute minimum statistical probability of success in a lottery, granted the presence of at least one minority applicant in a given lottery pool." NASB is opposed to the Commission's suggestion of a 4/3/2 to 1 preference on the grounds that an increased number of applicants would make the preference insignificant.

46. CTN disfavored the 2 to 1 weighting preference alternative proposed in the *Notice*. CTN's comments suggest that a 4/3/2 to 1 weighting procedure, in conjunction with a 51% cumulative minimum statistical chance of winning for all preference applicants for a given license would comply with Congressional intent. Neighborhood TV presents as an alternative the concept of set-asides to achieve a preference, similar to the set-aside used in FM and TV broadcast for noncommercial broadcast Services.

47. *Evaluation of Applications' Ownership.* One of the issues on which the Commission solicited comment was the degree of underrepresented ownership necessary to be eligible for a lottery preference. We proposed an "over 50%" ownership requirement in the Notice. Many commenters address issues regarding Commission evaluation of an applicant's ownership for purposes of determining whether it is eligible for preference. There is general agreement with a 50% test, either as a "greater than 50%" or a "50% or greater" standard. Two alternatives are, however, suggested. Three Cities FM, Inc. ("Three Cities") urges use of a "control of the applicant" test, which would be more flexible and subjective than a flat 50% rule. It argues that such a standard is already used by the Commission in transfer cases and would require no additional administrative costs. AWRT, on the other hand, suggests that the Commission determine whether 50% of policymaking positions or ownership is exercised by preference-eligible individuals.

48. We also queried whether ownership interests could be aggregated in order to meet the over 50% requirement. The commenters, in general, favor a rule permitting such aggregation but oppose the granting of multiple preferences to, *e.g.*, a Black woman. Those parties that address the issue of whether only corporations with a limited number of stockholders should be eligible for a preference, oppose such a limitation, citing the lack of any compelling rationale supporting such distinction. Reliance on Internal Revenue Code Subchapter S standards, 26 U.S.C. 1371–1379, is opposed as being based on tax policies irrelevant in the telecommunications context. Three Cities suggests use of a 50-shareholder test as noted in Section 76.501 of our Rules. Radio and Television Commission of the Southern Baptist Convention and American, Christian Television System, Inc. ("RTVC/ACTS") note that, in any case, non-stock/non-profit corporations should be exempt from any such limitation.

49. In response to the Commission's inquiry, there was general support for looking to the "underrepresented" status of the beneficiary of a trust and not the trustee and, similiarly, of only looking to the general partners of a partnership. East Tennessee, however, argues that all partners should be considered in order to avoid the problems caused by the deceptive structuring of applicants.

50. *Determination of Underrepresented Groups.* Commenters on the matter of which groups are "underrepresented" in telecommunications ownership may generally be divided into three categories: (a) Those who, believing the preference established by Congress to be based on diversity, view as "underrepresented" at least those groups named in the Conference Report—minorities, women, unions and community organizations; (b) those who assert that the preference should only go to those who are underrepresented as a result of past discrimination—that is, minorities and, perhaps, women; and (c) those who have suggestions as to what groups, other than those named by Congress, should also be included.

51. Thus, for example, the AFL–CIO concludes that "the statute and the legislative history clearly refer to current disparities rather than historical discrimination." The preference provision, the AFL–CIO states, promotes ownership diversity, which "leads to diversity of voices, and the Supreme Court has repeatedly held that the encouragement of such diversity is a central goal of the First Amendment." Labor unions are specifically identified as one of the groups that should receive a preference. Therefore, in the AFL–CIO view, there should "be a presumption in favor of granting the preference to any labor union that applies for a license."

52. Similarly, CU asserts that "although the Commission may expand the list of beneficiaries under the statute, it cannot restrict the right of minorities, women, labor unions and community organizations to receive a significant preference in any random selection system." CU argues that without these preferences, "the Commission would fail to promote the statutory and First Amendment policies of diversifying information sources and media ownership, objectives which form the foundation for the current

comparative hearing process." CU states that "Congress did not care *why* or *how* or *when* these groups came to be underrepresented; it did care that underrepresentation existed and that the First Amendment goals of information and ownership diversity remained unfulfilled."

53. The CU viewpoint is echoed by such commenters as "CTVS", and the International Union, United Automobile, Aerospace and Agricultural Workers of America ("UAW"), low power television applicants, and by Glasser. Glasser argues that "Congress was pursuing diversity of media ownership *per se* in exercise of its plenary commerce power and was not merely seeking redress of the effects of any past discrimination."

54. The opposing interpretation, that preferences only or primarily should go to those groups underrepresented as a result of past discrimination, is advanced by a number of commenters including AWRT. AWRT states, "In order to avoid offense to the equal protection component of the due process clause of the Fifth Amendment, preferences should be granted only to groups, such as women and racial and ethnic minorities, which have been victims of historic discrimination since this has a continuing effect in their underrepresentation in ownership of the broadcast media." A similar position is taken by NABOB, which argues that a preference system based on diversity would "run afoul of the First Amendment as well as the equal protection aspect of the Fifth Amendment."

55. The law firm of Paul, Hastings, Janofsky, and Walker, supporting the award of preferences only to women and minorities, asserts that ownership by the "underrepresented" means little, "if anything, Without integration of ownership and management." Granting a preference to any "group," the firm states, would not achieve true integration of ownership and management. Thus, "the focus of the policy must be on the individuals seedking license authority" who can achieve the goal of ownership/management integration.

56. NBMC argues that while it believes that preferences only should go to minorities as victims of past discrimination, minorities should be the only preference recipients even if the Congressional intent was to further ownership diversity as such. NBMC alleges that past discrimination has not been a significant factor depriving women, labor unions or community organizations of broadcast station ownership. NBMC acknowledges that women to some degree may suffer from discrimination, but argues that the type of systemic discrimination minorities have faced has "never applied to women with full force, over so long a time." Further, NBMC states, "women have had and continue to have stock ownership in major broadcasting corporations * * * perhaps the majority own it by virtue of their marriages or former marriages." NBMC argues that the free transferability of stock within a marriage would allow the preference for women to be subject to extensive abuse unless it only applied to single women. For this reason, and because, as to diversity, "there is no evidence that female ownership results in any more substantial service to females *per se* than does non-female ownership," NBMC concludes that there should be no preference for women.

57. NBMC contends that no preference should go to labor unions because they have not been discriminated against in owership efforts and because "far from energetically seeking media ownership, unions have seldom attempted to own stations." As to community organizations, NBMC states that non-commercial groups already have an FM and TV set-aside, and for-profit groups ("businesses") own most other stations.

58. Another interpretation of Congressional intent is set forth by Johnson & Associates. Johnson takes the position that while women and minorities clearly are underrepresented groups Congress intended be given a preference, labor unions and community groups merely are examples of groups that might be found qualified. All such groups should carry the burden, states Johnson, of showing their specific lack of representation in ownership of telecommunications facilities nationwide. Additionally, Johnson proposes, any labor union or community organization "should present an historic account demonstrating the reasons why this applicant has been thwarted in its effort to gain licenses for communications facilities."

59. As indicatied above, a number of commenters had specific proposals as to what groups, other than those enumerated by Congress, should receive lottery preferences. This category includes that Daytime Broadcasters Association ("DBA"), which states that "the daytime-only broadcasters are an "underrepresented group" whose members should be accorded a significant competitive preference * * * when they apply for unlimited-time radio droadcast licenses which could serve their existing communities of license" and supports implementation of a lottery "only if the daytime-only broadcasters are accorded such preference. However, ABES finds DBA's claim that daytime broadcasters are "underrepresented" within the meaning of the statute "incredible on its face." ABES argues that DBA "would be on firmer ground" were it to argue that in specific cases involving nighttime facilities in a daytime-only station's community of license, the daytimer should be given preference under section 307(b) of the Act because it proposes "to meet a significant public need for local service."

60. Defiance and High County Broadcasting, Inc. ("High County") applicants for construction permits for new FM stations at Defiance, Ohio and Eagle, Colorado, respectively, argue that if the Commission institutes the use of lottery procedures, the party which sought and obtained the addition of an FM or TV Table of Assignments allocation should receive a preference equal to that awarded minority applicants. If such parties do not receive a lottery preference, Defiance and High Country state, they will be discouraged from expending the funds and effort necessary to obtain a new allocation.

61. NFLCP asserts that non-commercial applicants for low power television licenses must be given a preference "in any system of mutual exclusivity resolution." Noncommercial broadcasters, NFLCP states, "have placed community service as their primary and often exclusive priority." Such applications must receive a preference, NFLCP states, because there will be no non-commercial reservations in the low power television service.[5]

62. *Qualifying as an Underrepresented Group or Group Member.* Parties commenting in response to the Commission's inquiry regarding submission of documentation of underrepresented status were divided primarily between those arguing that the burden on labor unions and community organizations generally should be no greater than that placed on others and those of the view that a special showing should be made by all preference applicants other than minorities and, perhaps, women. There was also significant comment on the definitional problems involved.

63. For example, CTN, a minority owned applicant for low power television licenses, asserts that requiring a showing of underrepresentation from labor unions and community organizations would be "blatantly

[5] Other parties commented in even greater detail on the specifics of preferences to be utilized in LPTV including the scheme proposed in the LPTV NPRM. These comments go beyond the scope of the NPRM currently before us.

unlawful." CTN states that "Congress has made an affirmative finding that each group is underrepresented," and that the Commission's proposed requirement for a showing "is simply a quarrel with the legislative mandate." CTN remarks, however, that it is appropriate to require some type of showing of underrepresentation from groups other than those specifically identified by Congress.

64. In opposition to this view, NASB comments that the Commission should utilize a system of "self-certification" for minorities, with any questions resolved through a "paper hearing." However, NASB argues that other groups should receive a preference only upon a "clear and convincing showing" of underrepresentation, considering factors such as data indicating the applicant's or group's underrepresentation, a "full explanation of the direct or indirect discriminatrory practices which have led to their underrepresentation," and the group's prior record of efforts to influence Commission policies in order to expand its avenues of expression. A related position is taken by RTVC/ACTS. Although RTVC/ACTS do not propose that the Commission require evidence of past discrimination, they do believe that the very fact that Congress used the term "community organization," which lacks any precise meaning, indicates that "Congress intended to rely upon the Commission's expertise in this matter." The term "community organization," RTVC/ACTS note, "could arguably include organizations ranging from a KKK clan to a local chapter of the NAACP." Thus, RTVC/ACTS propose, groups other than minorities and women "should be allowed to make a special showing on an *ad hoc* basis supporting their claim" of underrepresentation in telecommunications ownership. The Commission should, RTVC/ACTS propose, define "community organizations" as organizations with a genuine local presence and a history in the community. This emphasis on localism, it is argued, "ensures that there is some nexus between the decision to apply for authorizations and the needs of the local community which the authorizations ostensibly propose to serve." RTVC/ACTS also state that the organizations should be nonprofit or applicants that will "utilize the authorization for furtherance of a nonprofit or exempt purpose."

65. NFLCP suggests that (as to LPTV) the definition of "labor unions should be recognized by the National Labor Relations Board ("NLRB") and community organizations should be [defined as] not-for-profit, tax exempt corporations and at least 51% of the organizations board of directors should reside in the area to be served by the LPTV station." Similar recommendations regarding use of NLRB certification and tax exempt status (or eligibility) were made by such commenters as CTVS.

66. *Geographic Limits on Underrepresentation.* Another factor on which we solicited comment was whether the matter of "underrepresentation" should be considered on a national, regional, or market basis. Of the limited number of comments received on this issue, most favored consideration of the matter on a "market" basis. Tymnet, Inc., ("Tymnet") and Microband, subsidiaries of Tymshare, Inc., a value-added common carrier, state that "only by making the determination on a market by market basis can the Commission meet its goal of providing increased programming directed to those who are underserved, without arbitrarily limiting the opportunities open to others." Tymnet/Microband argue that it is clear that Congress "did not intend for the Commission to blindly grant preference without regard to local market conditions and the need for additional media voices."

67. Similarly, Neighborhood TV, an applicant for numerous translator licenses, contends that preference can be assigned reasonably only on a market basis because there will otherwise be "no handle for barring such bizzare results as an Aleut prevailing for a new station to serve Harlem in New York City." Additionally, Neighborhood TV suggests that preferences be set in proportion to audience numbers of particular groups.

68. Commenters such as Thomas B. and Margrethe T. Friedman and East Tennessee Broadcasting argue that minorities receiving preference should be bona fide residents of the proposed service area. The Friedmans contend that there should be a demonstrable underserved minority population within that area.

69. A middle-ground approach, taken by CTVS, argues the Commission should establish a numerical test of underrepresentation which might be either national (such as, no union-owned stations) or market-by-market (group X operates no stations in market Y). The Florida AFL–CIO, however, asserts that underrepresentation should be determined nationally. There should be a union voice available to all parts of the country, the Florida AFL–CIO states. Thus, it may be that unions need more of an electronic voice where there are fewer union members.

70. *Constitutionality of Lottery Preferences.* Widely divergent views were set forth by those parties commenting in response to our analysis of the constitutional basis of the proposed preference system. For example, Cosmos/Cox/Multimedia, Inc., argue that the proposed preference system is "constitutionally defective" because Congress did not make specific findings of past discrimination in the allocation of broadcast and nonbroadcast facilities. Absent such findings, Cosmos/Cox/Multimedia find the facts in this rulemaking "similar to the situation in *Regents of the University of California* v. *Bakke*, 438 U.S. 265 (1978)" where the Supreme Court overturned a medical school admissions program which set aside a specific number of places for minorities "because there were no specific findings by a competent body of past discrimination which justified a race conscious admissions program." 438 U.S. at 305–310. Cosmos/Cox/Multimedia also urge that preferences for labor unions and community organizations "may also run afoul of the First Amendment" if religious organizations qualify as community organizations, and, additionally, because these preferences "appear based on promoting a certain social political viewpoint."

71. Similarly, CBS argues that "the apparent purpose of the preference is to diversify ownership of mass media in order to promote competition in the economic and ideologic marketplace." CBS states that the proposal of racial preferences in lotteries "falls remarkably close to the *Bakke* facts," and believes if the Commission establishes a system that gives minorities a certain percentage probability of winning, such policy might well suffer from the same defects as the program overturned in *Bakke*. Other commenters, such as Tymnet/Microband, also set forth this type of analysis. BML Associates assert that the preference section places restrictions on First Amendment expression that are arbitrary and vague and therefore cannot withstand judicial review.

72. However, other commenters, such as NABOB, argue that Congress "could not possibly have intended to premise the adoption of a preference system on its utility as a vehicle for increased diversity, because there is serious doubt as to the constitutionalty of establishing a preference system for such a purpose." To do so would run afoul of the First Amendment as well as the equal protection aspect of the Fifth

Amendment. "On the other hand, there is clear precedent justifying use of preferences to remedy effects of past discrimination."

73. NABOB argues that for the Commission to grant a preference to labor unions and community organizations "would be to trample the First Amendment right of the public to an unfettered marketplace of ideas." Such "a system which would award preferences to labor unions and/or community groups would be arbitrary, capricious, and violative of due process, and therefore invalid." Thus, NABOB concludes, "at this time preferences may constitutionally be granted only to minorities and women." However, such commenters as AFL–CIO and CU argue that the granting of preferences to unions and community groups is clearly intended by Congress and is consistent with the First Amendment-based goal of diversity.

IV. Discussion

A. The 308(b) Problem

74. The primary purpose of this statute is to "reduce the expense, delays and backlogs incurred by comparative proceedings." Such a step would ease administrative burdens on the Commission and would eliminate "a substantial barrier to entry into telecommunications markets * * *" 127 Cong. Rec. S9008. *See also* H.R. Rep. No. 97–208 at 897–898. This approach formed the basis of our analysis of the issues in this document. Because of the procedural constraints on when and whether we must evaluate the qualifications of *all* applicants, we do not believe the statutory purpose can be attained. Additionally, the mandatory requirement for "significant preferences" for those who are "underrepresented" in the ownership of telecommunications facilities raises a complex of constitutional, legal, policy and practical issues that militate against the use of this lottery plan.

75. Section 309(i) (1) and (2) requires that any lottery be preceded by a determination, after notice and opportunity for hearing, of the qualifications of *all* applicants pursuant to Section 308(b) of the Act. Furthermore, Section 309(a) requires the Commission to "determine, in the case of *each application* filed with it * * * whether the public interest, convenience, and necessity will be served by the granting of such application * * *." (emphasis added). These requirements significantly reduce any potential for elimination of the delays in and administrative costs of granting licenses in a mutually-exclusive context as compared with the current comparative hearing process.

76. Our major concern is that these procedural requirements do not permit us to realize the significant savings which Congress sought to provide us. *See* 127 Cong. Rec. S9008 (statement of Sen. Packwood). We note that, in his testimony on S. 601, a predecessor of section 309(i), former Chairman Lee urged Congress to amend the bill to enable the Commission to evaluate all the qualifications of applicants subsequent to the lottery selection. As he stated, such a procedure

> would allow the Commission to avoid the inefficiency in the present system of delaying an authorization in order to hold a hearing on the qualifications of an applicant not chosen by the random process.
>
> The procedure we recommend not only would save time and resources for the Commission and applicants, but would also reduce the time between the filing and grant of an application, allowing new broadcast service to the public. TV Licensing and Renewal Act of 1981: Hearings on S. 601 Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science and Transportation, 97th Cong., 1st Sess. 22 (1981) ("Hearings on S. 601").

We reiterate our general support for the provisions in those bills as expressed by former Chairman Lee in his testimony on them, bearing in mind the additional views of Commissioners Fogarty and Washburn. Hearings on S. 601 at 7–25. Notwithstanding this recommendation, Congress expressly required determinations of applicants' qualifications to precede any lottery.

77. The mechanical procedures necessary to implement a lottery, *per se*, under the current statute, could be simple and expeditious. However, prior to using the actual lottery mechanism, the qualifications of each applicant under Section 308(b) must be evaluated. We believe this to include issues raised by petitions to deny and related pleadings. The Conference Report apparently permits us to use "paper" hearings (*i.e.*, without oral testimony) when appropriate, in an effort to expedite processing. However, the time required to conduct the oral hearing is but a small franction of the time between the date on which all applications within a mutually-exclusive group are accepted for filing and the date on which the Administrative Law Judge ("ALJ") releases his Initial Decision. The great bulk of this time consists of discovery, drafting of issues pleadings, preparation of evidence for the hearing (be it written or oral), drafting proposed findings of fact and conclusions of law and, of course, the time required by the ALJ to evaluate the record and draft his decision. The delays caused by these other factors would not be altered by the current statute.

78. Additionally, we continue to believe that any relaxation in comparative or qualifying criteria which is likely to accompany the implementation of a lottery will induce a substantial number of parties to file applications who would not otherwise do so. While we do not share the fears of some commenters that the public interest would be trampled by such a stampede, we recognize that the greater number of applicants will necessarily increase the burdens on our processing and hearing staffs, with concomitant costs and delays. Further, the increased number of parties participating in these proceedings will require more extensive discovery and drafting, and a more massive record to be evaluated by the ALJ.

79. It is only when the ALJ is prepared to make his Initial Decision that the current lottery statute can provide any material assistance. The effect of this new authority would be to enable the ALJ to declare that the licensee could be selected from among the "deadlocked" applicants (*i.e.*, that there is no material public interest basis for selecting one over another) by a lottery.

80. By then, the ALJ and the parties would have expended the same time and money that they would have under the present system. The ALJ, instead of finding applicant A superior to applicant B, would find them able to serve the public interest equally well. This determination would be subject to the same lengthy and costly administrative and judicial review as currently exists. Indeed, this review might well be more extensive due to findings regarding preference rights which would be included. Moreover, at least in the intial cases decided in this manner, substantial resources would have to be devoted to defining, in terms of whatever criteria are used, the "material" distinctions between applicants (*e.g.*, is an applicant with 30% integration, 10% of which is local, "equal" to an applicant with 22% integration, all of which is local?).

81. To be sure, the number and precision of the qualifying and comparative criteria will determine how many "deadlocked" cases would be present. Nonetheless, unless a wholesale relaxation of selection criteria is adopted, we do not expect the number of deadlocked cases to be signficant. In addition, there is likely to be a direct correlation between the relaxation of these criteria, the number

of additional applicants and the resultant processing delays.

82. As a result, the present statutory scheme provides no relief to either our administrative processes, our costs or the costs to the applicants, and would prevent us from fulfilling the basic purpose of the statute.

B. The Preference Provisions

83. As indicated above there are serious obstacles to implementation of the preference-based random selection system that stem in large part from the lack of specificity in both the statute and the legislative history. This lack of specificity, which was highlighted in many comments, opens any scheme devised by the Commission to serious and repeated legal challenge and, further, raises the spectre of repeated case-by-case administrative and judicial challenge to the Commission's preference-related determinations.

84. Taken to the extreme, the class which is eligible for a preference—"groups or organizations, or members of groups or organizations, which are underrepresented in the ownership of telecommunications facilities or properties"—could conceivably include virtually everyone in the general population except unaffiliated white males. While we do not believe that such a result would fulfill Congress' intent, neither the statute nor legislative history provide any guidance as to how this class may be limited. This difficulty is exacerbated by the undefined relationship that a "member" of an underrepresented group must have to the group itself in order to qualify for a preference. It might well be, for example, that union members totally uninvolved in the activities of their union would claim such a preference merely on the basis of the dues paid.[6]

85. Based on the record developed in this proceeding, if the lottery system were implemented, challenges to various parties' preference claims might well be a source of significant additional staff work, processing delay, and litigation. Although we do not reach any decision on the issue at this time, if we were to view "underrepresentation" in a local context, as we presently do in initial applications processing, and to require some nexus between the nature of the applicant and the community to be served, further problems would be posed by the grant of licenses in non-broadcast services where, since no "city of license" designation may be appropriate, a geographic market determination would be required. Thus, litigation could be expected regarding our initial determinations in this area.

86. Further, while the Conference Report's reference to the "objective of increasing the number of *media outlets* owned by such persons or groups" (emphasis added) raises questions as to whether Congress intended that preferences be awarded if lotteries are used in non-broadcast services, the matter cannot be definitely resolved by this Commission.[7] As the *Notice* and comments in a response thereto indicate, substantial difficulty also arises in defining the term "significant preference" and in resolving the impact of the award of a given preference. The fundamental question in this area is whether the Commission should award a fixed relative preference, which would provide an underrepresented applicant with a given advantage over all non-preference applicants (*e.g.*, 2:1). As we observed in the *Notice*, a fixed relative preference does not provide a fixed absolute increase in probability of winning. To reach that result, we would need to establish a minimum absolute preference for each or all underrepresented applicants (*e.g.*, 50%). Moreover, we might well be required to compute this value each time a license was to be awarded.

87. It may be, as many commenters contend, that the award of a fixed relative preference would actually reduce the likelihood that minority or female applicant would be the winner as compared with the present comparative hearing process. We find it unlikely that Congress intended such a result. However, as CBS and others contend, a minimum absolute preference may well be found unconstitutional under *Bakke*. Because Congress appears to have established the preference system to enhance diversity, the award of an absolute likelihood of success on the basis of race or sex would seem to bring the Commission's actions perilously close to the activity disapproved in *Bakke*.[8] A similar constitutional problem emerges if a limited number of comparative factors are considered. If preferences are due solely to the applicant's race or sex, it is likely that the process will be found unconstitutional.

88. The Commission already has noted the problems inherent in defining the term "underrepresented." The difficulty involved in determining the nature of a "community organization" is no less severe, and any such Commission efforts would be open to challenge. Commenters suggest considering such factors as the longevity of the organization in question and its members' ties to the community, as well as whether the organization is tax exempt or qualified to be so.[9] However, there is not communications policy rationale upon which to rely in utilizing these criteria. "Community" could mean the "community of license", but such a determination might exclude organizations which encompass a State, metropolitan area, SMSA or service area from receiving a preference due to the small portion of members tied to any given community of license. Alternatively, the Commission might have to provide such groups preference in any community of license within the area. Another matter open to challenge would be the size any "community organization" might have to be to qualify. Assuming, *arguendo*, that all tax-exempt organizations in the Chicago metropolitan area were qualified to receive a preference, the potentional number of preferred applicants would be in the thousands. Thus, some measure of organizational "significance" would need to be established. We have no basis upon which to make such judgments. Assuming that the Commission's generic findings survived judicial review, we then would be confronted with case-by-case challenges as to the qualifications of various applicants under the standards. Finally, as some commenters observe, the specific inclusion of labor unions in the list of groups (or members thereof) to be granted preferences raises the

[6] The category appears open to constitutional challenge as being overbroad and overinclusive and thus violative of First Amendment and Equal Protection requirements. *See, United States* v. *Robel*, 389 U.S. 265, 268 (1967); *Rinaldi* v. *Yeager*, 384 U.S. 305, 308–310 (1966); *Cox* v. *Louisiana*, 379 U.S. 536, 557–558 (1965); *Niemotko* v. *Maryland*, 340 U.S. 268, 271–273 (1951); Note, "The First Amendment Overbreadth Doctrine," 83 *Harv. L. Rev.* 844 (1970).

[7] *See United Steelworkers of America, AFL–CIO–CLC* v. *Weber*, 443 U.S. 193, 201–208, 216–219 (Burger, C.J., dissenting), 219–255 (Rehnquist, J., dissenting) (1979).

[8] It may also be that under the *Bakke* holding, the Commission's proposal to award additional preference only to women and minorities, due to past discrimination, would be open to question. While the Commission may have found that these groups have suffered from discrimination, Congress does not appear to have so found for the purposes of the amendments being discussed herein.

Compare H.R. Rep. No. 94–468 at 1–2 (1975), H.R. Rep. No. 94–1791 at 124–149, 182 (1977), explaining the minority business enterprise provision in the Public Works Employment Act of 1977, section 105(f)(2), Pub. L. No. 95–28, 91 Stat. 116 (1977), *codified* at 42 U.S.C. 6705(f)(2), *quoted in Fullilove* v. *Klutznik*, 448 U.S. 448, 465–467 (1980). Thus it is unclear whether the Commission, acting under these specific amendments, has authority to devise a preference scheme based on findings other than those made by Congress. *See* 438 U.S. at 305–320.

[9] To find that a presently non-exempt organization is so qualified would, of course, essentially place the Commission in the position of making findings appropriately within the jurisdiction of the Internal Revenue Service.

possibility that the Commission is being instructed to grant preferences due to the potential licensees "political, economic or social views," thus raising serious First Amendment questions. *FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S.775, 801 (1978), citing *National Broadcasting Co.*, v. *United States*, 319 U.S. 190, 226 (1943).

89. These examples raise the issue of the nature of the showings that may be required of various applicants. In the *Notice*, the Commission proposed that minority and female applicants "self-certify" themselves as eligible, with "paper hearings" to be held as to any substantial questions of fact regarding such certification. Under the proposal set forth in the *Notice*, unions, community organizations and others seeking a preference would have to make an affirmative showing of underrepresentation.

90. Based upon the comments submitted, it is clear that the issue of documentation regarding community organizations would be extremely difficult to resolve. Presumably "other groups" considering themselves underrepresented would remain free, through rule making or application, to press their claims. As we have indicated above, the establishment of criteria defining such "other groups" would be a matter of considerable difficulty, since arguably, all those who do not presently own communications facilities are potentially within the "underrepresented" class. As the comments already received indicate, there is a virtually unimaginable range of groups who might claim "underrpresentation". Any narrowing would be extremely difficult as a legal matter, since it essentially puts the Commission in the position, with virtually no statutory or policy guidance, of setting standards by which to determine what constitutes such a "group" and of picking and choosing among applicants based on no more than perceived degrees of "underrepresentedness."

V. Conclusions

91. Congress enacted section 309(i) in an effort to speed the authorization of services to the public while reducing the processing costs of the Commission. We remain convinced that a lottery can help accomplish these goals. The comments submitted in this proceeding illustrate, we believe, the problems of implementing the preference requirement discussed above. We are submitting to Congress copies of these comments for its consideration. We note, in addition, that the inevitable succession of administrative and judicial reviews would prevent us from actually granting licenses through a lottery in the foreseeable future. Finally, we believe that the requirement that we determine section 308(b) qualifications of all applicants prior to holding a lottery would not produce the operating economies which Congress sought to provide us. For these reasons, therefore, we are constrained to conclude that the public interest would best be served by declining to implement this statute.[10]

VI. Proposed Legislation

92. As the discussion above reflects, we believe that the proposals originally advanced by Senators Schmitt and Goldwater in S. 270 and S. 601, respectively, provide the best framework for implementing the goals of authorizing service faster and at less cost. Thus, we request that Congress reconsider those provisions as a basis for amending the Act along the lines of the following suggested language:

Section 309(i) of the Communications Act of 1934, 47 U.S.C. 309(i), is hereby amended to read as follows:

(1) If there is more than one application for any initial construction permit or license, the Commission shall have authority to select the applicant to whom such permit or license is granted through a system of random selection.

(2) No permit or license shall be granted to an applicant pursuant to paragraph (1) unless the Commission determines, after notice and opportunity for hearing, the qualifications of such applicant pursuant to section 308(b).

(3) For purposes of making the determination pursuant to paragraph (2), the Commission may, by rule, after notice and opportunity for hearing,

(a) Notwithstanding the provisions of Section 556(d) of Title 5, U.S. Code, adopt procedures for the submission of all or part of the evidence in written form, and

(b) Notwithstanding the provisions of the first sentence of 556(b) of Title 5, U.S. Code, and the last sentence of Section 5(d)(1), delegate its functions, and

(c) Notwithstanding the provisions of Section 309(a), omit the determinations of whether the public interest, convenience and necessity will be served by granting any application other than the one selected pursuant to paragraph (1).

93. While we have not recommended the inclusion of a preference requirement, should Congress include one, we would request that it consider the following issues so we can confidently carry out its intent.

(1) Is the purpose of the preference to increase the diversity of voices in the mass media or to equalize the opportunities for economic participation in telecommunications business?

(2) If the purpose of the preference is to promote the diversity of voices, should those who seek a preference be required to operate the station for any minimum period of time?

(3) Are preferences to be used in non-media services?

(4) Are all individuals who are members of unions, community organizations or other "underrepresented" organizations eligible for a preference and, if not, what selection standard should be used?

(5) What is a "community organization"?

(6) What preference is "significant"?

(7) What factors should the Commission examine in order to determine "underrepresentation":

Past discrimination by the Commission?

Past discrimination by society?

Ownership by members of the "underrepresented" group or organization?

Ownership in service markets other than the one in question?

Ownership in geographic markets other than the one in question?

VII. Administrative Matters

94. Accordingly, it is ordered that all motions to accept late filed comments and reply comments are granted.

95. It is further ordered that the Secretary transmit copies of this report and order and all comments received in this proceeding to the Chairmen of the Committee on Commerce, Science and Transportation of the Senate, the Committee on Energy and Commerce of the House of Representatives, the Subcommittee on Communications of the Senate and the Subcommittee on Telecommunications, Consumer Protection and Finance of the House of Representatives.

96. It is further ordered that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

1. Alegria I, Inc., Alegria II, Inc., Alegria III, Inc., El Sol Broadcasting, Inc., Orange County

[10] Our decision here not to establish rules governing a lottery system is consistent with the discretion afforded the Commission in section 309(i). The Commission must reach its determination using accepted rules of statutory construction. Section 309(i)(4)(a), read in conjunction with the remainder of the statute, permits the Commission to establish or not to establish a lottery system. Section 309(i)(1) states only that we "shall have authority" to use lotteries, not that we *must* use them. This analysis of the statutory language is supported by the Conference Report which repeatedly and explicitly uses discretionary language. We do not believe that Congress would intend for us to expend our limited resources to draft and defend rules creating a lottery framework which would not be used.

Broadcasting Corporation, Sonrisa, Inc., and Public Broadcasting Co., Inc.
2. American Association of State Highway and Transportation Officials.
3. American Broadcasting Companies, Inc.
4. American Federation of Business and Educational Radio, Inc.
5. American Telephone and Telegraph Company.
6. American Women in Radio and Television, Inc.
7. Associated Public-Safety Communications Officers, Inc.
8. Association for Broadcast Engineering Standards, Inc.
9. Association of American Railroads.
10. Attorneys Practicing Before the Commission.
11. Beneficial Management Corporation.
12. BML Associates, Inc.
13. Cannon Communications Corp., Flamingo Broadcasters, and Harmony Broadcasting Corp.
14. CBS, Inc.
15. Cellular Systems, Inc.
16. Central Committee on Telecommunications of the American Petroleum Institute.
17. Citizens Television System, Inc.
18. Clarksville Broadcasting Company.
19. Commonwealth Communications, Inc.
20. Community Television Network, Inc.
21. Consumers Union.
22. Contemporary Communications, Inc.
23. Corporation for Public Broadcasting.
24. Cosmos Broadcasting Corporation, Cox Broadcasting Corporation and Multimedia, Inc.
25. Daytime Broadcasters Association.
26. Defiance Broadcasting Company.
27. East Tennessee Broadcasting.
28. Federal Trade Commission.
29. Florida AFL–CIO.
30. Forest Industries Telecommunications.
31. Thomas B. and Margrethe T. Friedman.
32. Henry Geller and Ira Barron.
33. Theodore L. Glasser.
34. Graphic Scanning Corporation.
35. GTE Service Corporation.
36. International Broadcasting Network.
37. International Union of Operating Engineers.
38. KIRO, Inc.
39. Edward M. Johnson & Associates.
40. James M. Jones.
41. Land Mobile Communications Council.
42. Local Power Television, Inc.
43. Victor M. Lopez.
44. Los Angeles County Sheriff's Department.
45. MCB Holding, Inc.
46. MCI Telecommunications Corporation.
47. Mobile Marine Radio, Inc.
48. Richard L. and Ladona L. Moore.
49. Motorola, Inc.
50. National Association of Black Owned Broadcasters.
51. National Association of Broadcasters.
52. National Association of Business and Educational Radio, Inc.
53. National Association of Regulatory Utility Commissioners.
54. National Association of of Spanish Broadcasters.
55. National Black Media Coalition.
56. National Council of Senior Citizens.
57. National Federation of Local Cable Programmers.
58. National Radio Broadcasters Association.
59. Neighborhood TV Company.
60. New Mexico Visions, Inc.
61. Paul, Hastings, Janofsky & Walker.
62. Private Networks, Inc.
63. Quality Broadcasting Corporation and Capital City Broadcasting Company.
64. Radio and Television Commission of the Southern Baptist Convention and American Christian Television System, Inc.
65. RBC Communications Corporation.
66. Satellite Business Systems.
67. Spanish Radio Broadcasters Association of America, Inc.
68. Special Industrial Radio Service Association, Inc.
69. Albert B. Sturges.
70. Texas Professional Communications, Inc.
71. Three Cities FM, Inc.
72. Ray D. Thrower and Associates, Inc.
73. Relay Communications Center.
74. Tymnet, Inc. and Microband Corporation of America.
75. United States Catholic Conference.
76. United Telephone System, Inc.
77. Utilities Telecommunications Council.
78. Wyoming Family Broadcasting, Inc.

Reply Comments

1. American Federation of Labor and Congress of Industrial Organizations.
2. American Telephone and Telegraph Company.
3. Association for Broadcast Engineering Standards, Inc.
4. Cental Telephone and Utilities Corporation.
5. Community Television Network, Inc.
6. Contemporary Communications Corporation.
7. Cross Country Networks, Inc., Dayton Communications Corporation, Midwest Corporation, Multi-Communications Services, Inc., Multi-Point Communications Corp., and H. L. Woodbury.
8. Frontier Broadcasting Companies.
9. High Country Broadcasting, Inc.
10. International Union, UAW.
11. McMillen Communications Corporation.
12. Microband Corporation of America.
13. Mobile Communications Corporation of America.
14. Multipoint Information Systems, Inc.
15. National Association of Broadcasters.
16. National Association of Public Television Stations.
17. National Black Media Coalition.
18. Radio and Television Commission of the Southern Baptist Convention and American Christian Television System, Inc.
19. Texas Professional Communications, Inc.

Separate Statement of Chairman Mark S. Fowler

In re: Lottery Proceeding, February 8, 1982

It's said that the only thing worse than not getting what you need is *almost* getting what you need. I have had to vote on more difficult issues, but I have not had to make a more difficult decision than I have had to make in voting not to implement this lottery legislation.

This decision has been particularly hard for me because I believe the Commission badly needs a lottery. We must replace cumbersome, lengthy hearings that often force us to compare imponderables to choose indistinguishables. As our analysis of the lottery statute progressed, however, it became increasingly obvious that the legislation possessed serious flaws which could prevent it from being the simple, efficient alternative to comparative hearings that had been envisioned. The *Notice* described the problems we perceived. The comments not only confirmed our general assessment of the problems but highlighted the practical impossibility of solving them quickly and definitively.

The legislation's requirement that applicant qualifications be determined prior to the actual lottery is a serious, but perhaps not fatal, stumbling-block. It would doubtless take time for the Commission to reach a consensus on how to simplify the procedural and substantive aspects of our different applications processes, but I believe we could achieve agreement, at least regarding some types of applications. But having hurdled that obstacle, we would then confront the really insuperable problem—the preference provisions.

In my statement accompanying the *Notice* I explained my disfavor of preferences in lotteries. My vote today, however, is not dictated by this view. My vote today is cast because the comments show that this particular preference scheme is so riddled with legal and conceptual problems that it could well take years before we would actually be able to use the lottery. That cannot have been the result the Congress intended.

The Commission has worked for almost a decade to secure the passage of lottery legislation. I would not vote to forego this lottery if it were not for the critical problems with the preference scheme—problems which the comments have not aided us in resolving. So the bottom line for me is this: I cannot vote to consign the Commission, with its already limited resources, to the protracted administrative and judicial proceedings that the comments show would inevitably follow the implementation of this statute's preference provisions. And so I have voted against implementation.

I know that some will be disappointed by our action today. I believe this disappointment, which I share, should spur us to a renewed effort to work together to achieve the passage of workable lottery legislation. For this purpose, we are transmitting to the Congress a full copy of the record in this proceeding. We stand ready to participate in further efforts to secure our common goal of a usable, principled lottery. In the interim, we shall continue our efforts to simplify the comparative hearing process in order to speed authorization of service to the greatest extent possible without a lottery.

Statement of FCC Commissioner James H. Quello

In re: Report and Order in General Docket No. 81-768, Use of Lotteries To Select Initial Licensees

The random selection approach to licensing has a certain appeal to those of us who are often frustrated by the sometimes protracted delays imposed by the comparative process. But the appeal of lotteries to facilitate the process may be largely illusory. As we have seen in our consideration of this docket, implementation of the concept is an extremely difficult task if the rights of all parties are to be maintained. The statutory requirement that "significant preferences" be accorded all "underrepresented" groups or organizations or members of such groups or organizations would appear to place an extremely heavy burden on the process.

In authorizing the Commission to implement a random selection process, Congress appears to have acceded to past Commission requests that it be granted such authority. After careful consideration, the Commission has determined that implementation of the present statutory authority is not appropriate.

It may be argued that the Congress meant for the Commission to adopt a random selection rule whether or not it intended to use it or whether or not a workable rule could be devised. However, the statute repeatedly speaks in terms of "authorization" which implies Commission discretion. Furthermore, it is clear that the Congress was acting in a constructive effort to facilitate the Commission's processes and not attempting to burden those processes by mandating additional requirements.

After reviewing the comments in this proceeding, it seems clear that the Commission must vigorously pursue other means of expediting the licensing process.

Concurring Statement of Commissioner Abbott Washburn

Re: Use of Lotteries To Select Initial Licenses

February 8, 1982.

I agree with today's decision of the Commission declining to implement the discretion granted to us in section 309(i) of the Act to use lotteries for selecting initial licensees from among mutually exclusive applications. I differ somewhat, though, in holding the belief that lotteries should only be used in resolving generally "deadlocked" comparative proceedings.

There is no doubt that comparative hearings are costly and time consuming. However, lotteries, in my judgment, should not replace the Commission's responsibility to make refined public interest comparative judgments wherever that is possible. Before it resorts to random selection (which necessarily is arbitrary), the Commission has an obligation to exhaust the search for public interest criteria to distinguish and choose among competing applicants, in order to effectuate the "best practical service" standard of the Communications Act. Such an effort should be considered the bare minimum required as a legal predicate for utilizing random selection in the licensing process. Again, in my view, lotteries are only an appropriate alternative in resolving genuinely "deadlocked" comparative hearings.

Dissenting Statement of Commissioner Joseph R. Fogarty

In Re: Amendment of Part 1 of the Commission's Rules To Allow the Selection From Among Mutually Exclusive Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings—Report and Order.

I dissent from this *Report and Order* which "declines" to prescribe rules and procedures establishing a lottery system for use by the Commission in those initial licensing cases in which it might exercise its discretion in favor of determination by random selection. I dissent both because I believe the prescription of such rules and procedures is *Mandated* by the statute enacted by the Congress and because the reasons advanced by the *Report and Order* for not complying with this mandate are fallacious, if not also an affront to congressional prerogatives and judgments.

My own views on the use of lotteries in FCC licensing proceedings have been previously stated:

While a lottery may be an appropriate and lawful alternative in resolving genuinely "deadlocked" comparative proceedings, the Commission cannot evade its responsibility for making refined public interest judgments where that more rational and less arbitrary mode of decisionmaking is clearly available and applicable. Here, I believe it axiomatic that *resolution by lottery or chance is the very antithesis of the system of rational, principled determination which has been the hallmark of administrative law and process* * * *. Before the Commission rushes to embrace the "easy out" of lottery, we have a clear statutory obligation to exhaust the search for public interest criteria to distinguish and choose among applicants so as to effectuate the "best practicable service" standard of the [Communications] Act.[1]

Congress, in its wisdom, has seen fit to confer discretionary lottery authority on the FCC through its enactment of the Omnibus Reconciliation Act of 1982,[2] which added section 309(i) to the Communications Act,[3] and this proceeding was accordingly launched to prescribe the requisite implementing rules and procedures.[4] In establishing this rulemaking, the Commission proposed an "initial list" of services which it viewed as potential candidates for a lottery system; however, the Commission emphasized that "this docket is not designed to determine which services will be subject to lotteries," and that "We intend that comments in this docket should be limited to the general procedures for implementing the lottery * * *."[5] This *Report and Order* reviews the comments and terminates this proceeding, stating that the Commission is "constrained to conclude that the public interest would best be served by declining to implement this statute."

I think it totally clear that the Commission is "constrained" *not* to "decline" to implement this statute. By adding new section 309(i) to the Communications Act, Congress plainly intended to vest this Commission with the authority to use a system of random selection or lottery in determining initial licensing or construction permit proceedings involving mutually exclusive competing applicants.

As section 309(i)(1) states, "[T]he Commission, after determining the qualifications of each such applicant under section 308(b), *shall have authority* to grant such license or permit through the use of a system of random selection."[6] The congressional intent underlying this grant of authority was succinctly stated in the Conference Report on the Omnibus Reconciliation Act:

The conferees note that the current system (based on comparative proceedings) of awarding licenses where mutually exclusive applicants exist often produces delays and burdensome costs on both the applicant and the Commission. It is the intention of the conferees *by authorizing* the Commission to conduct random selection of licenses that these costs and burdens be alleviated.[7]

It should be clear that Congress intended the Commission to have lottery authority with respect to initial licensing cases—whether the Commission wanted to have it or not.

It should be equally plain that Congress intended the Commission not only to have this authority in the abstract but to implement it in the concrete. Section 309(i)(4)(A) provides:

The Commission, not later than 180 days after the effective date of this subsection, *shall*, after notice and opportunity for hearing, *prescribe* rules establishing a system of random selection for use by the Commission under this subsection in any instance in which the Commission, in its discretion, determines that such use is appropriate for granting of any license or permit in accordance with paragraph 1.[8]

The Conference Report similarly states:

The Senate bill included amendments to Section 309 of the Communications Act which permitted the Federal Communications Commission, in its discretion, where there is more than one applicant for a radio or television broadcast frequency that becomes available, to grant the application based on a system of random selection (i.e., lottery) *to be developed by the Commission*. The conference agreement adds a new subsection to Section 309 *directing the FCC to establish rules* within 180 days of enactment of this legislation, setting forth the procedures to be followed in any Commission proceeding in

[1] Low Power Television Broadcasting, Separate Statement of Commissioner Joseph R. Fogarty, Concurring in Part, 82 FCC 2d 82, 87 (1980) (Original emphasis).

[2] Pub. L. No. 97-35, 95 Stat. 736-737 (effective August 13, 1981).

[3] 47 U.S.C. Sec. 309(i).

[4] Notice of Proposed Rulemaking in General Docket No. 81-768, FCC 81-524, 46 FR 58110-58122 (November 30, 1981).

[5] *Id.* at 58112.

[6] 47 U.S.C. Sec. 309(i)(1) (Emphasis supplied).

[7] H.R. Rep. No. 97-208, 97th Cong., 1st Sess. 896 (1981) (Emphasis supplied).

[8] 47 U.S.C. Sec. 309(i)(4)(A) (Emphasis supplied).

which the FCC, in its discretion, decides to grant any initial license or construction permit on the basis of random selection.[9]

* * * * *

Section 309(i)(4) *directs the Commission,* after notice and opportunity for hearing, *to prescribe* rules establishing a system of random selection. The conferees intend that the Commission *will implement* this section in accordance with 5 U.S.C. 553.[10]

The plain meaning of this statutory and conference report language, read in the context of the legislation as a whole, is that while the Commission has full discretion to decide whether or not to *use* a random selection or lottery for granting initial licenses or CPs in a particular service or competing application case, it has *no* discretion to decline to issue rules and procedures establishing the mechanics of the lottery system to be employed in instances where it may affirmatively exercise its random selection authority. The Commission "shall prescribe" and is "directed to prescribe" these rules and procedures, just as it "shall have" the basic lottery authority. In "declining" to prescribe such rules and procedures "within 180 days," as the statute commands and the conference report directs, the Commission is in essence and effect "declining" the authority which Congress plainly intends to vest. This refusal is beyond the Commission's competence as a creature and servant of the Congress, and, I would have hoped, beyond even this agency's penchant for political temerity.[11]

The Commission bases its refusal to implement this statute on two grounds: first, the "delay" which allegedly would attend compliance with the requirement of section 309(i)(1) that applicant basic qualifications be determined pursuant to section 308(b) before rather than after a lottery; and second, the "practical" and "constitutional" "problems" which allegedly inhere in complying with the requirement of section 309(i)(3)(A) that lotteries be administered so that groups or organizations, or members thereof, which are underrepresented in the ownership of telecommunications facilities or properties will receive "significant preferences." These grounds are spurious in the face of the clear and unequivocal congressional mandate set forth in the statute and conference report.

Section 309(i)(1) provides that the Commission may resort to lottery only "after determining the qualifications of each * * * applicant under Section 308(b)" * * * The conference report states that "the Commission is to determine, prior to conducting any random selection procedure, that each applicant who is to be included in the random selection meets the minimum or basic qualifications set forth in section 308(b) of the Act," [12] and that "The conferees direct that the random selection proceeding itself not be delayed" [13] thereby. This is not an open invitation to come back and debate whether the Section 308(b) pre-determination requirement will or will not result in undue "delay" or is otherwise sound policy; it is a command.

Similarly, section 309(i)(3)(A) provides that—

The Commission *shall establish* rules and procedures to ensure that, in the administration of any system of random selection under this subsection, groups or organizations, or members of groups or organizations, which are underrepresented in the ownership of telecommunications facilities or properties will be granted significant preferences.[14]

Again, this is the language of command not an option to debate. Again, the intent of Congress, as expressed in the Conference Report, is plain:

It is the firm intention of the conferees that ownership by minorities, such as blacks and hispanics, as well as by women, and ownership by other underrepresented groups such as labor unions and community organizations, is to be encouraged through the award of significant preferences in any such random selection proceeding.[15]

While I noted at the outset of this proceeding that "Development of the requisite framework for awarding preferences for underrepresentation is fraught with conceptual and practical difficulty," [16] this difficulty does not provide the Commission with a valid excuse for failing to comply with the ennunciated statutory requirement and obligation imposed on it.[17] The *Report and Order,* however, also suggests that there is "uncertainty" as to whether Congress intended the lottery preference system to remedy "past discrimination" in media ownership, "to increase the diversity of voices in the mass media" or "to equalize the opportunities for economic participation in telecommunications business." It further darkly hints that "serious constitutional issues" lie lurking in this "uncertainty." I find the "uncertainty" belied by the plain meaning of the conference report and the hint of possible constitutional infirmities equally ephemeral, if not also insidious.

The intent of Congress in prescribing a preference component for the lottery process is plainly and succinctly stated in the conference report. In referring to the intended beneficiaries of the preference system, the report states:

These are groups which are inadequately represented in terms of nationwide *telecommunications ownership,* and it is the intention of the conferees in establishing a random selection process that the objective of increasing the number of media outlets *owned* by such persons or groups be met.[18]

As I noted at the beginning of the proceeding—

It should be clear that Congress was pursuing diversity of media ownership *per se* in exercise of its plenary commerce power and was not merely seeking redress of the effects of any past discrimination.[19]

* * * * *

This Congressional intent recognizes—properly so in my judgment—that as we move toward more deregulation of licensee conduct in reliance on marketplace forces and competition, diversification of ownership at the entry level becomes all the more critical.[20]

It should be self-evident that this legislation is entirely within the Congressional commerce power as applied to the formulation of national telecommunications policy and recognized and affirmed by the judiciary. In reviewing

---

[9] H.R. Rep. No. 97-208 at 896 (Emphasis supplied).

[10] *Id.* at 898 (Emphasis supplied).

[11] In the area of comparative hearings, the Commission's conflicts with the Judicial Branch of government are now legendary. *See* Central Florida Enterprises, Inc. v. FCC, 598 F. 2d 37 (D.C. Cir. 1978) ["The development of Commission policy on comparative renewal hearings has now departed sufficiently from the established law, statutory and judicial precedent, that the Commission's handling of the facts of this case make embarrassingly clear that the FCC has practically erected a presumption of renewal that is inconsistent with the full hearing requirement of Section 309(e)."], *reh. en banc denied and modified,* 598 F. 2d 58 (D.C Cir. 1979), *pet. for cert. dismissed,* 441 U.S. 957 (1979); *On remand* Cowles Broadcasting, Inc., 86 FCC 2d 993 (1981) and Dissenting Statement of Commissioner Joseph R. Fogarty, *id.* at 1024-1055, *appeals pending sub nom.* Central Florida Enterprises, Inc. v. FCC, D.C. Cir. Case No. 81-1795, and National Black Media Coalition v. FCC, D.C. Cir. Case No. 81-1796. It appears from this Report and Order that the Commission is now bent on making a similar showing of lack of allegiance and fidelity to the Legislative Branch.

[12] H.R. Rep. No. 97-208 at 896.

[13] *Id.* at 897.

[14] 47 U.S.C. Sec. 309(i)(3)(A) (Emphasis added).

[15] H. Rep. No. 97-208 at 897.

[16] 46 FR at 58121.

[17] I will not burden the body of this dissent with a point-by-point rebuttal of the "parade of administrative horribles" conjured up by the Commission's Report and Order because that parade simply cannot prevail against the fundamental command of Congress or justify the Commission's patent and inexcusable failure to comply therewith. I do note, however, that the "problems" perceived by the Report and Order with regard to the eligibility of individual group or organization members for preferences could be reasonably cured by application of a standard of "bona fide" representation. As to the issue of "ranking" the eligibles, the statute leaves the Commission with the discretion to rank or not to rank according to a reasonable assessment of the comparative degree of underrepresentation. As might have been expected, the comments in this proceeding represent a a contentious scrimmage for "priority preference status" under a lottery system. However, the Commission's longstanding appointed role in government is to referee and decide such telecommunications policy disputes according to the general public interest standard of the Act, and I see no reason why it should suddenly shrink from discharging that responsibility pursuant to an "underrepresentation" standard which is more specific than that to which it is habitually accustomed. The basic point I make here is that if the Commission were as diligent in seeking to resolve the administrative issues as it has been in spotting them, the difficulties might not be so overpowering.

[18] H. Rep. No. 97-208 at 897 (Emphasis supplied).

[19] 46 FR at 58121 n.5.

[20] 46 FR at 58121. The report's use of the term "media outlets" is no source of mystery or confusion. The statutory language of Section 309(i)(3)(A) speaks to the ownership of all "telecommunications facilities or properties," not merely those subject to the Title III-Broadcasting provisions of the Act. *Webster's Third New International Dictionary* defines "media" in terms of the singular "medium" and as follows: "3: something through or by which something is carried on: as * * * c: an intermediate or direct instrumentality or means * * *; *esp: a channel, method, or system of communication, information, or entertainment* * * *" At 1403 (Emphasis supplied).

the reach of the FCC's delegated authority under the Communications Act of 1934, the Supreme Court long ago observed that—

[T]he Act does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic. The facilities of radio are not large enough to accommodate all who wish to use them. Methods must be devised for choosing from among the many who apply.[21]

Congress has seen fit to devise a new method for choosing among the many who apply, and there is no constitutional infirmity apparent in its judgments.

In particular, I see no First Amendment, Equal Protection, or unconstitutional discrimination "problems" inherent in this statute. Congress has not dictated that any lottery preference for "underrepresented" groups or individuals be absolute and controlling to the exclusion of any chance for a non-eligible to "win." More fundamentally, I find it ironic and troubling that the Commission would imply that a selection process which is arbitrary and devoid of "merit" content to begin with is somehow rendered constitutionally suspect by the inclusion of an element of rational policy value and content. While it is plain from the "legislative recommendations" advanced by the *Report and Order* that the Commission thinks it has a "better idea"—e.g., a straight roll of the dice devoid of any diversification of ownership considerations—any slight felt by the Commission as a result of not having its idea legislatively accepted does not justify its attempted nullification of what Congress has prescribed. I also think that the Commission would not have been remiss to give the Congress the benefit of a presumption that, as a co-equal branch of government, it is well aware of its rightful constitutional powers and prerogatives and exercises them appropriately. The Judicial Branch customarily accords this courtesy to our Legislature, and I see no good reason why this Commission, as an "arm of the Congress" should not extend the same civility to its creator.

In summary, as I observed at the outset of this proceeding—

[T]he Commission did not get precisely what it wanted by way of lottery authority. The FCC sought full, unfettered discretion to order lotteries unencumbered by diversification of ownership or other public interest considerations. Congress, however, has said that the Commission may utilize random selection methods, but only if it pays attention to concerns of media diversity by awarding lottery preferences to underrepresented groups, such as minorities, women, labor unions, and community organizations. While there may be considerable discomfiture with this Congressional directive in some Commission quarters, the mandate is nonetheless binding.[22]

The Commission tries to slip its statutory bindings by confusing its discretion to refrain from using lotteries in particular cases or services with a discretion to ignore or engage in debate on policy judgments which Congress has made in exercise of its legislative powers. Congress has spoken, and it is unseemly for its administrative agency to play the willful and precocious child and pretend it has not clearly heard what its parent had to say.

I conclude this dissent as I began, with the statement of personal view that random selection or lottery is not the best way to allocate, assign, and license scarce radio spectrum affected with the public interest.[23] However, neither my personal regulatory philosophy—nor that of my colleagues—is the issue here. Congress has wisely left discretion to lottery or not to lottery in particular cases and services to the Commission, but it has prescribed the system of random selection it wants the Commission, but it has prescribed the system of random selection it wants the Commission refuses to acknowledge this distinction and mandate, and I dissent.

Separate Statement of Commissioner Mimi Weyforth Dawson re the Use of Lotteries To Select Initial Licensees

This Commission favors the use of a lottery as an alternative to the hearing process and we had hoped to utilize this new tool given us by the Congress. However, the comments in this proceeding illustrate that the requirements of awarding preferences and pre-determining qualifications would negate the benefits Congress intended. The goals of reducing the expense and delay of comparative proceedings, thereby bringing service to the public expeditiously, remain despite our action not to implement this particular lottery scheme. As difficult as this decision was, I think that in making it, we are being open and honest with the Congress about our ability to work with something they had hoped would be a useful tool. Even though this action creates a controversy, I believe that out of that controversy will come even better communication. In fact, our Order asks Congress for further guidance in this area.

As for the question of whether the Commission, pursuant to section 309(i)(4)(B) has the discretion to decline to establish a system of random selection, I think that reasonable people can differ. I think it is clear, however, that Congress gave us the discretion to utilize or not to utilize such a scheme. So, in considering the first question, I believe common sense must prevail and supports our decision not to prescribe an elaborate system which we would never use. If we had followed that course, then Congress and others would have an obligation to criticize that waste of resources. To try to fool anyone, the Congress, the public or ourselves, that the legislation could achieve its objective of reducing the expense and delays of comparative hearings would be a price that is too dear for any of us to pay.

Concurring Statement of Commissioner Henry M. Rivera

In the Matter of Amendment of Part 1 of the Commission's Rules To Allow the Selection From Among Mutually Exclusive Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings

The Commission has chosen not to implement the lottery legislation enacted by Congress in the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 736-737. I do not agree with a number of assumptions underlying the implementation nightmare painted by the *Report and Order*. However, I do believe that the decision not to implement section 309(i) on the record developed was reasonable; therefore, I shall not here debate every point over which I differ with the majority.

Preferences

The decision to forego implementation of section 309(i) was correct, in my view, because the record developed by the Commission did not furnish a rational scheme—about whose prospects the Commission could feel confident on judicial review—to confer genuinely significant preferences upon the enumerated groups.

With the benefit of hindsight, I believe our deliberations were not terribly productive because of: (i) The disjointed manner in which the Commission set out to implement the statute;[1] and (ii) the challenge posed by properly translating congressional intent into a workable, efficient scheme. Having labored this long without satisfactory results, it is evident that effective resolution of this Rubic's cube would require a considerable amount of time—in any event, far more time than that allotted under section 309(i)(4)(A) to establish a lottery mechanism. Candidly, the stakes for all concerned are simply too high for me to have acquiesced in an ill-conceived or improperly formulated preference standard.

Proposed Legislation

The Commission's decision to recommend substitute legislation to Congress is inappropriate given that Congress recently considered—and specifically declined to

[21] National Broadcast Co. v. U.S. 190, 216 (1943).
[22] 46 FR at 58121.

[23] In this regard, I share the thoughtful views expressed in a *Telephony* editorial of January 25, 1982:

The troubling question is not the legality of these "easy out" methods but the wisdom of applying them to the critical and complex telecommunications issues attending the dawn of a new age.

Wealth wins auctions; luck, lotteries.

Using these methods, the nation could solve all of its telecommunications problems and select the cast of players by next Saturday. There would be no need for the FCC, the Congress or the courts.

Just money, dice or a fresh deck of cards and a few elected pit bosses to keep the game honest!

As we see it, the United States uniquely depends on the abrasive and, often tedious process of achieving a consensus.

In telecommunications, the nation ought not to settle for less.

[1] Because of the 180-day statutory deadline, the Notice of Proposed Rulemaking herein was generic in nature, postponing to later proceedings core issues like which services would be subject to the lottery procedure and minimum eligibility criteria for affected services. Nevertheless, many commenters devoted substantial discussion to these collateral issues rather than to those put out for comment. As a result, the record developed on the preference issue was not overly useful.

adopt—comparable legislation.[2] Indeed, those earlier legislative initiatives were far narrower than the Commission's proposed approach. In any event, I must record my opposition to this proposed legislation. If enacted, the legislative recommendation would enable the Commission to decide *all* of its many initial licensing proceedings by chance, without regard to the characteristics of the various individual services,[3] and with a concomitant clear and permanent break from bedrock FCC policies fostering diversity of ownership.[4] To my mind, this posture seriously erodes the Commission's public interest mandate and I cannot lend my support.

[FR Doc. 82-7362 Filed 3-18-82; 8:45 am]

BILLING CODE 6712-01-M

[2] See S. 270 § 3, 97th Cong., 1st Sess. (1981); S. 601 § 3, 97th Cong., 1st Sess. (1981). As I read the underlying Notice of Proposed Rulemaking in this docket, the Commission was unhappy about its obligation to choose from among competing applicants for spectrum because that process takes time and money and is in a great number of instances devoid of significant counterveiling public policy objectives. I remarked then that the NPRM evinced a predisposition toward indiscriminate use of lotteries as a panacea for these purported ills, and stated that I was not similarly predisposed. *See* Concurring Statement of Henry M. Rivera, 46 FR 58110, 58122 (November 30, 1981). To the extent that the draft legislation approved today is in furtherance of that general philosophy—and I believe it is—I must again disagree with the majority.

[3] It is indisputable that a "straightforward" lottery can yield considerable time savings. The benefits to be derived from such a lottery cannot be calculated in the abstract. Identifying candidate services would depend not only upon the volume of pending applications, but upon the nature of the service, whether material distinctions relevant to the public interest are likely to exist among the applicants, and whether the benefit to be achieved from identifying the "best" applicant outweighs the potential delay of service to the public and the costs incurred in the interim. The proposed legislation obviously does not reflect any particularized weighing of these considerations.

[4] *See, e.g., TV 9, Inc.*, v. *FCC*, 495 F. 2d 929 (D.C. Cir. 1973), *cert. denied*, 418 U.S. 986 (1974); *Garrett* v. *FCC*, 513 F. 2d 1056 (D.C. Cir. 1975). *See also Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979 (1978).

47 CFR Part 73

[BC Docket No. 82-146; RM-4042]

FM Broadcast Station in Parachute, Colo.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign FM Channel 252A to Parachute, Colorado, at the request of Timothy G. Taylor and William Koenigh, III. The assignment could provide Parachute with a first local FM Service.

DATES: Comments must be filed on or before April 29, 1982, and reply comments must be filed on or before May 14, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: March 9, 1982.

Released: March 17, 1982.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Parachute, Colorado), BC Docket No. 82-146 RM-4042. Notice or proposed rulemaking.

1. A petition for rule making was filed by Timothy G. Taylor and William Koenigh III ("petitioner") requesting allocation of FM Channel 252A to Parachute, Colorado,[1] as that community's first assignment. Petitioner stated an intent to file for the channel if assigned. The assignment can be made consistent with the minimum distance separation requirements of § 73.207 of the Commission's rules.

2. Parachute (population 338),[2] in Garfield County (population 22,514), is located approximately 264 kilometers (165 miles) west of Denver, Colorado. It presently is devoid of any local aural service.

3. According to petitioner, Parachute is the most rapidly growing community in Garfield County. Although located in the Rocky Mountains, it is accessible via an interstate highway which parallels its southern city limits. Petitioner adds that Parachute has its own government unit, municipal services, churches and schools. Additionally, petitioner advises that the predominant business in the area is oil shale mining, although the cultivation of fruit and the construction of roads also contribute to its economic base.

4. Petitioner states that in spite of the rapidity of growth, Parachute remains without local service. Thus, it asserts, assignment of an FM channel could provide a local broadcast outlet for the dissemination of programming in the public interest.

5. In view of the fact that the proposal could provide a first local broadcast service, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules, as follows:

[1] Petitioner advises that "Parachute" is a recently designated name. The community was formerly know as "Grand Valley," Colorado.

[2] Population figures are derived from the 1980 U.S. Census, Advance Reports.

City	Channel No.	
	Present	Proposed
Parachute, Colorado		252A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before April 29, 1982, and reply comments on or before May 14, 1982, and are advised to read the Appendix for the proper procedures.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the

Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the notice of proposed rule making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rulemaking to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-7513 Filed 3-18-82; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-143; RM-4018]

FM Broadcast Station in Brunswick, Ga.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Channel 292A to Brunswick, Georgia, as its third FM assignment, in response to a petition filed by Burrows Broadcasting Company.

DATES: Comments must be filed on or before April 29, 1982, and reply comments must be filed on or before May 14, 1982.

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

FOR FURTHER INFORMATION CONTACT: Mark Kipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: March 5, 1982.

Released: March 15, 1982.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Brunswick, Georgia), BC Docket No. 82-143 RM-4018. Notice of proposed rulemaking

1. The Commission has before it a petition for rule making filed by Burrows Broadcasting Company ("petitioner"), licensee of Station WMOG in Brunswick, Georgia, requesting the assignement of FM Channel 292A to Brunswick as that community's third FM assignment. Petitioner states it will apply for the channel, if assigned. The assignment of Channel 292A to Brunswick would require a site restriction of approximately 3.4 kilometers (2.1 miles) southeast of the community to meet the separation to Station WKIG in Glennville, Georgia.

2. Brunswick (pop. 17,605),[1] the seat of Glynn County (pop. 54,981), is located approximately 104 kilometers (65 miles) south of Savannah, Georgia. It is served locally by AM Stations WGIG, WMOG, and WYNR and by FM Stations SWBI (264) and WPIQ (268).

3. According to petitioner the assignment of Channel 292A to Brunswick, Georgia, will cause preclusion only on the co-channel. Petitioner states that within the precluded area there is only one community having a population in excess of 1,000 without an FM assignment, Kingland, Georgia. Since the request seeks a third assignment to a community of less than 50,000, preclusion data is important to establish a basis for exceeding our population guidelines which places a limit of two channels to such communities. Petitioner should list alternative channels which could be assigned to Kingland as well as any other information it believes would indicate the need for a third FM assignment. This data should be submitted by the date set forth herein for filing comments to justify an exemption to our population criteria.

4. The proposed assignment would result in intermixing a Class A channel with a Class C channel. The Commission has a policy of avoiding such intermixture in the classes of FM channel assignments. However, exceptions have been made where, as here, a Class C channel is unavailable and the petitioner is willing to apply for a Class A channel in spite of the unfavorable competitive situation. See *Yakima, Washington*, 42 F.C.C. 2d 548, 550 (1973); *Key West, Florida*, 45 F.C.C. 2d 142, 145 (1974).

5. In view of the foregoing, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules as follows:

City	Channel No.	
	Present	Proposed
Brunswick, Ga	264 and 268	264, 268, and 292A.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before April 29, 1982, and reply comments on or before May 14, 1982, and are advised to read the Appendix for the proper procedures.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, Certification that sections 603 and 604 of the Regulatory Flexibility Act Do

[1] Population figures are taken from the 1980 U.S. Census.

Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Mark Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934 , as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the notice of proposed rule-making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the notice of proposed rule making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of proposed rulemaking to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

5. Number of Copies. In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleading, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-7514 Filed 3-18-82; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 82-134; RM-3467]

TV Broadcast Station in Honolulu, Hawaii; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign VHF television Channel 5 to Honolulu, Hawaii, as its ninth commercial television channel in response to a request from Lee M. Holmes.

DATES: Comments must be filed on or before April 29, 1982, and reply comments on or before May 14, 1982.

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

FOR FURTHER INFORMATION CONTACT: Philip S. Cross, Broadcast Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Honolulu, Hawaii), BC Docket No. 82-134 RM-3467. Notice of proposed rulemaking

Adopted: March 5, 1982.

Released: March 15, 1982.

1. The Commission has before it for consideration a petition by Lee M. Holmes ("petitioner") to institute a rule making proceeding to amend the Television Table of Assignments, § 73.606(b) of the Commission's rules, by adding VHF television Channel 5 or 6 to Honolulu.

2. The Commission issued a Report and Order in Gen. Docket No. 80-710 (RM-3467 and RM-3782), released October 2, 1981, removing 73.220(c) and amending § 73.603(b) so as to reallocate the bands 76-88 MHz (VHF television Channels 5 and 6) and 98-108 MHz (FM Channels 251-300) from the Common Carrier Rural Radio Service to the Broadcast Services in the State of Hawaii. This spectrum space had been used by the local telephone company to provide reliable inter-island telephone service. The telephone company, however, in recent years phased out its VHF equipment and finally replaced it with microwave equipment, making the 22 megahertz of spectrum available for other uses.

3. In the Report and Order, the Commission stressed that the only issue with which that proceeding was concerned was the reallocation of the bands 76-88 and 98-108 MHz to the Broadcast Services in the State of Hawaii, "after which we may initiate action to examine the outstanding requests to allot a television and FM radio channel to certain Hawaiian markets" and that "[s]uch action will require further proceedings where pertinent comments will be considered."

4. First, we would point out that comments and reply comments in the proceeding in Gen. Docket No. 80-710 (paragraph 2, *supra)* pertained for the most part to whether such spectrum should be reallocated to the Broadcast Service in Hawaii. Some related to the specific assignment request for Channel 5 or 6 to Honolulu. We stated in the report and order in Gen. Docket No. 80-710 that since we were not there closing the instant rule making proceeding (and another), "none of these parties will have to refile comments." Since, however, consideration is here given

only to such of those comments as relate directly to the matter now before us, any further and more pertinent filings by those parties will, of course, be accepted.

5. In support of its proposal, petitioner "believes that Honolulu is entitled to more local news, local public affairs and English language independent television than is now offered in the market." Petitioner states that the City and County of Honolulu are the business and governmental centers for the state and contain 80 percent of the population. The 1980 population was estimated to be 753,700 and to reach 803,800 by 1985. Growth of television revenues for the commercial stations in Honolulu was shown to be up from $5,301,338 in 1967 to $18,855,099 in 1977, and growth of television households in Honolulu County from 156,220 in 1967, to 219,030 in 1977. Petitioner asserts that Honolulu is a strong televisiohn market in need of additional VHF service.

6. Presently Honolulu has eight commercial television assignments—Stations KHON–TV (Channel 2); KITV (Channel 4); KGMB–TV (Channel 9); KIKU–TV (Channel 13); Station KHAI–TV (construction permit—Channel 20); Station KSHO–TV (construction permit—Channel 26); two applications pending for Channel 14 and unoccupied Channel 32. Also, there are three noncommercial educational assignments—Station KHET (Channel *11) and unoccupied Channels *38 and *44.

7. Petitioner's proposal was supported by Hawaiian Islands Public Radio to the extent of assigning Channel 5 to Honolulu. Assignment of Channel 6 to Honolulu was opposed on the ground that interference may be caused to its new FM Station KHPR on Channel 201.

8. Oppositions to the petitioner's proposal were filed separately by Lee Enterprises, Incorporated, and Western Telestation, Inc., licensees, respectively, of VHF television Stations KGMB–TV and KITV, Honolulu, and by Mauna Kea Broadcasting Company, and Sunset Communications Corporation, permittees of new UHF television stations to operate on Channels 26 and 20, respectively, in Honolulu. These oppositions were based on allegations that there is no public interest justification for the proposed assignment; that Honolulu already has adequate VHF and UHF assignments, with a number of the latter not now used; and that it would be inconsistent with the Commission's long established policy of fostering the development of UHF television.

9. The threshold issue before us is whether a rule making proceeding should be instituted to consider the requested assignment of Channel 5 or 6 to Honolulu, Hawaii, in light of our action in Gen. Docket No. 80–710 (paragraph 2, *supra*). We believe that it should. We are not persuaded by the showings before us that the addition of another channel to the assignments for Honolulu would disserve the public interest. To the contrary, there has been an interest shown in implementing additional service. The fact that existing UHF channels have not been fully utilized does not, in our opinion, justify continuing the nonuse of another VHF channel. As to the possible UHF impact from the proposed VHF channel, that matter is more appropriately considered at the application stage as an economic impact (or *Carroll*) issue.[1] We are not persuaded that our policy of fostering UHF development would be denigrated under the unique circumstances of this case where, as the petitioner points out, for "the first time in recent years the Commission has the ready opportunity to make a VHF assignment, without significant technical restraints, in a major market."

10. It is our judgment that Channel 5 should be proposed for Honolulu rather than Channel 6 (the petitioner's alternative proposal), to avoid interference from FM Channel 201.

11. In view of the foregoing, the Commission believes it appropriate to propose amending the Television Table of Assignments, § 73.606(b) of the Commission's rules with regard to Honolulu, Hawaii, as follows:

City	Channel No.	
	Present	Proposed
Honolulu, Hawaii....	2+, 4–, 9–, *11+, 13–, 14, 20, 26, 32, *38, and *44.	2+, 4–, 5, 9–, *11+, 13–, 14, 20, 26, 32, *38, and *44.

12. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

13. Interested parties may file comments on or before April 29, 1982, and reply comments on or before May 14, 1982, and are advised to read the Appendix for the proper procedures.

14. The Commission has determined that the relevant provisions of the Regulatory Flexiblity Act of 1980 do not apply to rule making proceedings to amend the Television Table of Assignments, § 73.606(b) of the Commission's rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504, 73.606(b) of the Commission's rules, 46 F.R. 11549, published February 9, 1981.

15. For further information concerning this proceeding, contact Phillip S. Cross, Broadcast Bureau, (202) 632–5414. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the notice of proposed rulemaking to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the notice of proposed rulemaking to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

[1] See *Carroll Broadcasting Co.* v. *FCC*, 258 F. 2d 440 (D.C. Cir. 1958), and *FCC* v. *Sanders Bros.*, 309 U.S. 470 (1940).

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rulemaking to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-7518 Filed 3-18-82; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 82-144; RM-3993]

FM Broadcast Station in Paauilo, Hawaii; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign FM Channel 240A to Paauilo, Hawaii, in response to a petition filed by Jack N. Wheeler, The assignment could provide Paauilo with a first local aural broadcast service.

DATES: Comments must be filed on or before April 29, 1982, and reply comments on or before May 14, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Paauilo, Hawaii), BC Docket No. 82-144 RM-3993. Notice of proposed rulemaking.

Adopted: March 5, 1982.

Released: March 16, 1982.

1. Jack N. Wheeler ("petitioner") has filed a petition for rule making,[1] Seeking assignment of FM Channel 240A to Paauilo, Hawaii, as that community's first FM assignment. The assignment can be made consistent with the minimum distance separation requirements of § 73.207 of the Commission's rules, and petitioner states that he will apply for the channel, if assigned.

2. Paauilo is part of the Paauhau-Paauilo Division (population 1,841)[2] in Hawaii County (population 92,053) and is located on the Island of Hawaii approximately 48 kilometers (30 miles) northeast of Hilo. It currently has no local aural service.

3. Petitioner asserts that Paauilo has shown a steady population growth based on the 1980 Census. Further, it claims that the mountainous terrain surrounding Paauilo effectively hinders the reception of AM radio signals, and that the closest FM facility is located 80 miles distant on Maui Island. Beyond these assertions, petitioner has failed to set forth justification for the proposed assignment. Therefore, he should provide in his comments sufficient demographic and economic information to demonstrate the need for the channel. Failure to do so could result in a denial of the petition.

4. In view of the fact that the proposed FM assignment could provide a first local aural broadcast service to Paauilo, the Commission believes it appropriate to propose amending the FM Table of Assignments (§ 73.202(b) of the Commission's rules) with regard to the listed community, as follows:

City	Channel No.	
	Present	Proposed
Paauilo, Hawaii		240A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before April 29, 1982, and reply comments on or before May 14, 1982, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, Certification that Sections 603 and 604 of the Regulatory Flexiblity Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 F.R. 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitues an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

---

[1] Public Notice of the petition was given October 22, 1981, Report No. 1314.

[2] Population figures are derived from the 1980 U.S. Census, Advance Reports.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's Rules, It is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the notice of proposed rule making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *notice of proposed rulemaking* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-7515 Filed 3-18-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-145; RM-4030]

FM Broadcast Station, Phillipsburg, Kans.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes optional assignment plans for the provision of Class C FM service to Phillipsburg, Kansas, in response to a request filed by Northwest Enterprises, Inc.

DATES: Comments must be filed on or before April 29, 1982, and reply comments on or before May 14, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Phillipsburg, Kansas), BC Docket No. 82-145, RM-4030. Notice of proposed rulemaking.

Adopted: March 4, 1982.

Released: March 16, 1982.

1. A petition for rule making was filed December 17, 1981, by Northwest Enterprises, Inc. ("petitioner"), requesting the substitution of Class C Channel 223 for Channel 221A [1] at Phillipsburg, Kansas. Petitioner states that it will apply for the channel, if assigned as proposed. The channel can be assigned consistent with the minimum distance separation requirements of § 73.207 of the Commission's rules.

2. Phillipsburg (population 3,229),[2] the seat of Phillips County (population 7,406), is located approximately 280 kilometers (175 miles) northwest of Wichita, Kansas. It is served by fulltime AM Station KKAN, and is assigned unused FM Channel 221A, for which an application is pending.

[1] An application for Channel 221A at Phillipsburg has been filed by Bengel Broadcasting, Inc. ("Bengel") (File No. 810922AJ), licensee of KKAN(AM), Phillipsburg.

[2] Population figures are derived from the 1980 U.S. Census, Advance Reports.

3. Petitioner states that Phillipsburg's economy is derived from agriculture, and such major industries as the manufacture of asphalt products, an oil refinery, and a natural gas company. Additionally, it asserts that Phillipsburg's numerous retail outlets attract shoppers from neighboring communities in Kansas and Nebraska. Petitioner adds that Phillipsburg has its own financial institutions, a library, churches, schools, health-care facilities, recreational outlets, and social and civic organizations. It also has one local weekly newspaper available to its residents. Petitioner asserts that Phillipsburg is accessibly located at the junction of two major highways and is served by a multiplicity of transportation services.

4. In support of its request for a wide-coverage area Class C channel, petitioner states that other than the existing AM station, Phillipsburg presently receives service from a daytime-only AM station (KQNK) in Norton, Kansas, 30 miles distant, and a daytime-only AM station (KUVR) in Holdrege, Nebraska, 47 miles distant, whose co-owned FM station (KUVR-FM) duplicates 50 percent of the sister station's programming. Therefore, it asserts that these stations offer little programming suitable to the specific needs of Phillipsburg. It observes that since these stations are located to the west and north of Phillipsburg, areas to the south and east are left basically without service except for the AM station in Phillipsburg. It indicates that at night, areas to the west of Phillipsburg receive only one source of radio programming. Thus, a Class C station is said to be needed to provide Phillipsburg and surrounding areas with a diverse facility for the dissemination of news, weather, sports and public affairs programming.

5. Petitioner advises that assignment of Channel 223 will cause preclusion on Channels 222 within 150 miles, 223 within 180 miles, and 224A within 105 miles. Petitioner listed those communities containing a population in excess of 1,000 persons which would sustain preclusion as a result of the proposed assignment, and advises that with the exception of Ellsworth, Kansas (population 2,465), alternate channels would be available thereto.

6. According to petitioner, a Class C assignment would provide a first nighttime aural service to an area of 236 square kilometers (92.1 square miles),

containing 478 persons,[3] and a second nighttime aural service to an area of 1,924 square kilometers (751.4 square miles), containing 6,916 persons. By comparison, it notes that a maximum Class A station would provide no first nighttime aural service and its second nighttime aural service would cover an area of 78 square kilometers (34 square miles) serving 185 persons.

7. Initially, we note that the Commission does not normally assign high-power Class C channels to communities the size of Phillipsburg, absent some showing that substantial unserved and underserved population will receive service from the proposed operation. Here, petitioner indicates that additional nighttime service will be provided to a substantial population in currently underserved areas. We believe this showing is sufficient to justify proposing a Class C assignment to Phillipsburg.

8. Since an application is pending for Channel 221A in Phillipsburg, we believe it would be in the public interest to propose an optional proposal to provide the applicant for Channel 221A, Bengel Broadcasting, Inc., an opportunity to determine whether it would apply for a Class C assignment, if one is available, or whether it desires to amend its application to specify another Class A channel. The amendment would be required in the latter case since § 73.207 of the Commission's Rules requires a minimum distance separation of 65 miles between a Class A and second adjacent Class C channels. Therefore, both 221A and 223 could not be assigned to Phillipsburg. Our engineering analysis has determined that either Channel 237A or 285A may be substituted for Channel 221A, and, of the two, we have selected Channel 237A.

9. Option I below would substitute Class C Channel 223 for current Channel 221A, while Option II would intermix Channel 237A with 223. The latter option would provide a second local FM service to Phillipsburg but would require an expression of interest from some party recognizing the intermixture considerations of competing with a Class C station. If Bengel Broadcasting, Inc. desires a Class A station rather than a Class C station, then it could later amend to Channel 237A, if assigned. We would also consider other options suggested by Bengle in its comments. In view of the above, we seek comment on the two optional plans in order to determine which best serves the public interest.

[3] Petitioner's study was based on 1970 population figures.

10. Accordingly, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the rules, according to one of the optional assignment plans listed below, as follows:

City	Channel No.	
	Present	Proposed
Option I		
Phillipsburg, Kansas	221A	223
Option II		
Phillipsburg, Kansas	221A	223, 237A

11. It is ordered, That the Secretary of the Commission shall send by certified mail, return receipt requested, a copy of this Notice of Proposed Rule Making to Bengel Broadcasting, Inc., P.O. Box 302, Phillipsburg, Kansas 67661, the applicant for Channel 221A at Phillipsburg.

12. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

13. Interested parties may file comments on or before April 29, 1982, and reply comments on or before May 14, 1982, and are advised to read the appendix for the proper procedures.

14. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

15. For further information concerning this proceeding, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the notice of proposed rulemaking to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the notice of proposed rulemaking to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rulemaking to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply

comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be seved on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-7518 Filed 3-18-82; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 81-881; RM-3435, RM-4053]

FM Broadcast Station in Washington and Wilmington, N.C.; Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Extension of Reply comment period.

SUMMARY: On January 29, 1982, a petition for rulemaking was filed by Genesis Communications, Inc. requesting the assignment of FM Class C Channel 253 to Wilmington, North Carolina. A closer examination has determined that the petition conflicts with the proposed assignment of Channel 252A to Washington, North Carolina. Action herein extends the time for filing reply comments in a proceeding involving requested channel allocations to Washington and Wilmington, North Carolina.

DATE: Reply comments must be filed on or before March 15, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Washington and Wilmington,[1] North Carolina), BC Docket No. 81-881, RM-3435, RM-4053. Order extending time for filing reply comments.

Adopted: February 26, 1982.

Released: March 3, 1982.

1. On December 15, 1981, the Commission adopted a Notice of Proposed Rule Making, 46 FR 6875, published December 29, 1981, in the above-entitled proceeding. Comments were due January 29, 1982, and reply comments were due February 16, 1982.

2. On January 29, 1982, a petition for rule making was filed by Genesis Communications, Inc. ("Genesis"), requesting the assignment of Class C Channel 253 to Wilmington, North Carolina. Although styled as a petition for rule making, a closer examination has determined that the petition conflicts with the proposed assignment of Channel 252A to Washington, North Carolina (RM-3435), since the distance between the two communities is 98 miles, whereas a separation of 105 miles is required between a Class A and first adjacent Class C channel. Therefore, the Genesis petition will be treated as a counterproposal herein.

3. In view of the above circumstances, a comment period is needed to permit interested parties an opportunity to discuss the needs of the two communities for the conflicting channel assignments. Thus, an extension of time is warranted for responses to the counterproposal.

4. Accordingly, it is ordered, on the Commission's own motion, that the time for filing reply comments to the counterproposal (RM-4053), is extended to and including March 15, 1982.

5. This action is taken pursuant to the authority contained in Sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's rules.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-7506 Filed 3-18-82; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 82-133; RM-4035]

FM Broadcast Station in Shallotte, N.C.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of a second FM channel to Shallotte, North Carolina, in response to a petition filed by Shallotte Broadcasting Company.

DATES: Comments must be filed on or before April 29, 1982, and reply comments on or before May 14, 1982.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Shallotte, North Carolina), BC Docket No. 82-133, RM-4035. Notice of proposed rulemaking.

Adopted: March 3, 1982.

Released: March 15, 1982.

1. The Commission herein considers a petition for rule making filed by Shallotte Broadcasting Company ("petitioner") on January 4, 1982, seeking the assignment of Channel 292A to Shallotte, North Carolina, as its second FM assignment. Petitioner stated its intent to apply for the channel, is assigned.

2. Shallotte (population 680),[1] in Brunswick County (population 35,767), is located approximately 200 kilometers (125 miles) south of Raleigh. It is served by AM Station WVCB (licensed to the petitioner) and FM Station WDZD (Channel 228A).

3. Petitioner states that its AM facility cannot provide the desired service to the community and its revenues have declined in the past years. It contends that competiton with other FM stations in the area and the poor reception of its AM signal in a swamp area and other the Atlantic Ocean accounts for its present hardship.

4. Petitioner did not submit a preclusion study for the proposed assignment of a second FM allocation to Shallotte (Channel 292A). It is requested to do so in comments to this proposal listing the communities with a population greater than 1,000 precluded by the proposed assignment and whether alternate channels are available to those communities.

5. In view of the fact that the proposed assignment would provide a second FM broadcast service to Shallotte, we shall issue the *Notice* to seek comments on the need for a second FM assignment to Shallotte by amending the FM Table of Assignments, § 73.202(b) of the Commission's rules, as follows:

[1] This community has been added to the caption.

[1] Population figures are taken from the 1980 U.S. Census.

City	Channel No.	
	Present	Proposed
Shallotte, North Carolina	228A	228A, 292A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before April 29, 1982, and reply comments on or before May 14, 1982, and are advised to read the Appendix for the proper procedures.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Montrose Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rule and regulations, as set forth in the notice of proposed rulemaking to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the notice of proposed rulemaking to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rulemaking to which this Appendix is attached. All submission by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-7517 Filed 3-18-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-234; RM-3744, RM-3774]

FM Broadcast Station in Beaumont, Lake Jackson, and Port Lavaca, Tex.; Order Extending Time for Filing Replies to Opposition To Petition for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Order extending time for filing replies.

SUMMARY: Action taken herein extends the time for filing replies to an opposition to the petition for reconsideration concerning the Commission's action substituting certain FM channels at Beaumont and Lake Jackson, Texas, in response to a request from Turner Broadcasting Corporation.

DATE: Replies must be filed on or before March 4, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (*Beaumont, Lake Jackson,* and Port Lavaca, Texas), BC Docket No. 81-234, RM-3744, RM-3774.

Order Extending Time for Filing Replies To Opposition to Petition for Reconsideration

Adopted: March 1, 1982.

Released: March 3, 1982.

1. On January 22, 1982, a petition for reconsideration was filed by Turner Broadcasting Corporation ("Turner"), licensee of Station KBUC-FM, San Antonio, Texas, in the above-entitled proceeding. A timely opposition was filed by ABC Radio Houston, Inc. ("ABC Radio"), licensee of Station KSRR-FM, Houston, Texas. The date for filing replies to the opposition is currently March 1, 1982.[1]

2. On February 23, 1982, Turner filed a request for extension of time to and including March 4, 1982, in which to respond to the opposition. Counsel states that although listed as being

[1] Turner recites that the date for filing replies was February 25, 1982. We have determined that the date is in fact March 1, 1982. See § 1.429(g) of the Commission's Rules.

served on the certificate of service accompanying the opposition, it did not, in fact, receive a copy of the pleading until February 23, 1982. Therefore, it states there is insufficient time to formulate an adequate reply thereto under the present filing schedule. Counsel advises that counsel for ABC Radio has been contacted and indicated that it will interpose no objection to the requested extension of time.

3. We are of the view that the public interest would be served by granting the additional time to file further information which might be beneficial to the Commission in reaching a decision in this proceeding.

4. Accordingly, it is ordered, that the time for filing replies to the opposition to the petition for reconsideration in BC Docket No. 81–234 (RM–3744), is extended to and including March 4, 1982.

5. This action is taken pursuant to authority contained in §§ 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's Rules.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82–7505 Filed 3–18–82; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1201 and 1263

[No. 38770]

Railroad Map Specifications

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Interstate Commerce Commission is proposing to eliminate Part 1263, Map Specifications, from the Code of Federal Regulations. Due to vastly improved technology in map making it is no longer necessary to require railroad companies to maintain the detailed records that were kept in the past. However, the Commission considers it essential for accounting and valuation purposes that Class I railroad companies still be required to maintain certain basic information. The instructions to be kept will be included in Part 1201, Railroad Companies.

DATES: This action is to be effective for the reporting year beginning January 1, 1982. Comments are due on or before May 3, 1982.

ADDRESS: Copies of this Notice may be obtained by writing to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, or by calling toll-free, 800–424–5403.

An original and 10 copies of any comments should also be sent to the above address within 45 days.

FOR FURTHER INFORMATION CONTACT: Wayne D. Howard, (202) 275–7448.

SUPPLEMENTARY INFORMATION: The Commission is authorized by the Interstate Commerce Act (49 U.S.C. 10781) to establish the value of all property owned or used by railroad companies subject to Subchapter I of Chapter 105, Title 49, Transportation. Carriers providing rail service subject to the Commission's jurisdiction are required to cooperate with the Commission in the valuation of their property. In so doing, the Commission may require carriers to provide maps, profiles, contracts, engineering reports and other records to assist it in establishing the value of the carrier's property.

Part 1263 of the Code of Federal Regulations sets forth the requirements railroad companies must follow in maintaining maps of their property. Many of these requirements are now obsolete due to vastly improved technology in map preparation. It is no longer necessary to require railroad companies to maintain the detailed records that were kept in the past. However, the Commission still considers it essential that certain basic information by maintained by Class I line-haul railroad companies for accounting and valuation purposes.

In keeping with the Commission's policy not to require information that is not being used regularly, we are proposing to eliminate Part 1263, Map Specifications, and to include in Part 1201, Railroad Companies, the instructions still considered essential (See Appendix).

The public and affected carriers are requested to study the proposed revisions concerning map specifications and to submit their views and comments. After the comments have been reviewed, the Commission will publish a final rule in this matter.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b), the Secretary of the Commission has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. In this proceeding, we do not propose new reporting requirements; rather, we seek to eliminate the existing burden on Class II and III railroad companies and reduce the reporting requirements for Class I railroad companies. However, the rule will only affect the reporting procedures of a small number of carriers and the economic impact, though beneficial, will not be significant.

This decision does not significantly affect the quality of the human environment or the conservation of energy resources.

Accordingly, we propose to amend 49 CFR Part 1201 and to remove 49 CFR Part 1263, as shown in the Appendix.

These rules are proposed under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: March 12, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Clapp and Sterrett.

Agatha L. Mergenovich,

Secretary.

Appendix

The following changes are proposed:

PART 1201—RAILROAD COMPANIES [AMENDED]

1. 49 CFR Part 1201 would be amended by adding instruction 2–21, Map Specifications, to the Instructions for Property Accounts.

2–21 *Map specifications.* (a) Railroad companies shall maintain current maps of its property and shall promptly record any changes that may take place.

(b) Companies shall furnish, on request, copies of maps showing its property as it exists on such date or dates as may be fixed by the Commission.

(c) Companies shall maintain planimetric maps that show right-of-way, track and other important facilities at a scale to show sufficient detail.

(d) Maps shall be indexed and titled to clearly indicate the specific area depicted.

(e) All maps shall be prepared in accordance with generally accepted mapping practice.

PART 1263—MAP SPECIFICATIONS [REMOVED]

2. 49 CFR Part 1263 would be removed.

[FR Doc. 82–7478 Filed 3–18–82; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 47, No. 54
Friday, March 19, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Western Spruce Budworm Management in Northeast Oregon; Baker, Grant, Morrow, Umatilla, Union, and Wheeler Counties, Oreg.; Decision Notice and Finding of No Significant Impact

An environmental assessment that discusses proposed alternatives for managing the current western spruce budworm outbreak in northeast Oregon is available for public review in the following places: Forest Supervisors' offices in John Day, Pendleton and Baker, Oregon; local Ranger District offices of the Malheur, Umatilla and Wallowa-Whitman National Forests; and the Oregon State Department of Forestry offices in Baker, John Day, LaGrande and Pendleton. The affected area consists of approximately 359,000 acres of mixed-ownership lands on or adjacent to the Malheur, Umatilla and Wallowa-Whitman National Forests in Baker, Grant, Morrow, Umatilla, Union and Wheeler Counties. Of this 359,000 acres, approximately 234,000 acres would be directly affected by the western spruce budworm. These 234,000 acres have been divided into 60 geographical areas, each of which called an entomological unit.

It is my decision to adopt Alternative B, direct suppression with insecticides, on approximately 50 entomological units covering an estimated 208,000 acres and Alternative A, no action, on approximately 10 entomological units covering an estimated 25,000 acres. This is dependent upon (1) the estimated cost of insecticide application after contract bids are received which may affect cost/benefit ratios, and (2) results of larval sampling during Spring 1982. The majority of the area proposed for suppression with insecticides will be treated with carbaryl while some sensitive areas will be treated with acephate or *Bacillus thuringiensis*.

Evaluation of each entomological unit was done separately and is based, along with other environmental considerations, upon criteria to minimize wood fiber loss on managed commerical lands, minimize adverse effects on water resources and wildlife, and maximize economic efficiency. Considered in the evaluation were volume loss projections, projected stumpage values, projected cost of insecticide application and environmental considerations as outlined in the environmental assessment.

Based upon current projections, Alternative B, with mitigation measures and monitoring, provides the best combination of physical, biological, economic and social benefits and is considered to be the most environmentally preferable on approximately 208,000 acres and Alternative A on approximately 25,000 acres.

I have determined, based on the environmental analysis, that this is not a major Federal action and would not significantly affect the quality of the human environment. Therefore, an environmental impact statement is not needed. This determination was made considering the following factors: (a) A long history of similar operational suppression projects has shown no significant adverse effects to the human or physical environment; (b) there are no apparent adverse cumulative or secondary effects; (c) there will be no adverse effects on the bald eagles which migrate through the affected environment during the winter months or on the American peregrine falcon which is suspected to occur in the affected area; (d) no other known threatened or endangered plants or animals are known to inhabit the affected environment; (e) all insecticides considered are registered by the U.S. Environmental Protection Agency for the proposed use, and (f) application of insecticides will comply with applicable State and Federal laws, and with Forest Service and Oregon State Department of Forestry policies.

Project implementation will take place no sooner than March 27, 1982.

This Decision is subject to administrative review (appeal) pursuant to 36 CFR 211.19.

Dated: February 25, 1982.

Jeff M. Sirmon,

Regional Forester.

[FR Doc. 82-7491 Filed 3-18-82; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Posted Stockyards; East Carolina Stockyard, Ayden-Grifton, North Carolina, et al.

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on the respective dates specified below.

Facility No., name, and location of stockyard	Date of posting
NC-151 East Carolina Stockyard, Ayden-Grifton, North Carolina.	Feb. 23, 1982.
SD-165 Herreid Livestock Market, Herreid, South Dakota.	Feb. 4, 1982.

Done at Washington, D.C., this 16th day of March 1982.

Jack W. Brinckmeyer,

Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 82-7487 Filed 3-18-82; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

Wolverine Electric Cooperative, Inc., Finding of No Significant Impact

The Rural Electrification Administration (REA) has prepared a Finding of No Significant Impact (FONSI) for the proposed financing assistance by REA for Wolverine Electric Cooperative, Inc., (Wolverine) of Big Rapids, Michigan, to construct 29 km (18 mi) of 138 kV transmission line from the Pere Marquette Substation in Mason County, Michigan, to the Lake County Substation in Lake County, Michigan. This finding, in accordance with REA Bulletin 20-21:320-21, Part I, was based on REA's independent evaluation, REA's Environmental

Assessment (EA), and Wolverine's Borrower's Environmental Report (BER).

Threatened and endangered species, important farmland, archaeological and historic sites, wetlands, floodplains and other potential impacts of the proposed project have adequately been investigated in the BER and EA. The transmission line will cross approximately 0.8 km (0.5 mi) of wetland and no floodplain. Approximately 9.6 km (6 mi) of prime farmland will be crossed by the proposed project, however, there will be no significant effect as only 0.2 ha (0.6 a) will actually be removed from production due to pole placement.

Several alternatives were evaluated including no action, alternate interconnections, alternate sources of power generation, alternate routes and alternate construction methods. After construction, REA has determined that the proposed project is an acceptable alternative because it meets Wolverine's needs with a minimum of adverse impacts.

Copies of the Finding of No Significant Impact, the EA and the BER may be obtained from or reviewed in the Office of the Director, Power Supply Division, Room 0230, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, or may be reviewed in the offices of Wolverine Electric Cooperative, Inc., 302 South Warren Avenue, Big Rapids, Michigan 49307.

This Program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 11th day of March 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-7150 Filed 3-18-82; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Briar Creek Watershed Project, Pennsylvania; Environmental Impact Statement; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Graham T. Munkittrick, State Conservationist, Soil Conservation Service, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108, telephone (717) 782-2202.

NOTICE: 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, United States Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Briar Creek Watershed Project, Columbia and Luzerne Counties, Pennsylvania.

A notice of intent to prepare an environmental impact statement was published in the **Federal Register** on November 29, 1978. Based upon the environmental evaluation and resulting environmental assessment, it has been determined that installation of the recommended action will not result in significant adverse impacts on the human environment. As a result of these findings, Mr. Graham T. Munkittrick, State Conservationist, has determined that an environmental impact statement is not needed for this action.

The project concerns a plan for watershed protection, flood prevention and recreation. The planned works of improvement, as supplemented, include accelerated land treatment measures, a floodwater retarding dam, and a multiple-purpose dam with recreation facilities.

To date, all of the accelerated land treatment and the multiple-purpose dam with recreation facilities have been installed. The accelerated land treatment program installed in the watershed adequately meets an acceptable level of treatment needed to protect the soil and water resources.

The finding of no significant impact (FONSI) is based on constructing the remaining floodwater retarding dam. The FONSI indicates that completion of the project would not cause significant impacts on the environment.

The finding of no significant impact has been forwarded to the Environmental Protection Agency. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Graham T. Munkittrick, State Conservationist. The FONSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until April 19, 1982.

Dated: March 8, 1982.

(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)

Graham T. Munkittrick,

State Conservationist.

[FR Doc. 82-7110 Filed 3-18-82; 8:45 am]

BILLING CODE 3410-16-M

Northside Park; Critical Area Treatment R.C. & D. Measure, Maryland; Environmental Impact Statement; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Calhoun, State Conservationist, Soil Conservation Service, 4321 Hartwick Road, College Park, Maryland 20740, telephone 301-344-4180.

Notice: 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 Northside Park Critical Area Treatment Measure, Worcester County, Maryland.

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. Gerald R. Calhoun, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment. The area to be treated will be seeded.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation are on file and may be reviewed by contacting Mr. Gerald R. Calhoun. 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 April 19, 1982.

Dated: March 10, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular No. A–95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Gerald R. Calhoun,

State Conservationist.

[FR Doc. 82–7111 Filed 3–18–82; 8:45 am]

BILLING CODE 3410–16–M

Beaverdam Creek Watershed, Elbert, Franklin, and Hart Counties; Environmental Impact Statement; Finding of No Significant Impact

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, Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Beaverdam Creek Watershed, Elbert, Franklin, and Hart Counties, Georgia. 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, Dwight M. Treadway, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The measure concerns a plan for the treatment of critically eroding roadbank areas. The planned works as described in the Finding of No Significant Impact consist of the establishment of erosion control vegetation on 17 acres. The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. Basic data developed during the environmental assessment are on file and may be reviewed by contracting Dwight M. Treadway, State Conservationist, Soil Conservation Service, Federal Building, 355 East Hancock Avenue, Athens, Georgia 30613, telephone 404–546–2273. 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. No administrative action on implementation of the proposal will be taken until April 19, 1982.

The project concerns a plan for the treatment of critically eroding areas. The planned works as described in the Finding of No Significant Impact consist of the establishment of erosion control vegetation on 17 acres.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Dwight M. Treadway, State Conservationist, Soil Conservation Service, Federal Building, 355 East Hancock Avenue, Athens, Georgia 30613, telephone 404–546–2273. 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.

No administrative action on implementation of the proposal will be taken until April 19, 1982.

Dated: March 10, 1982.

(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)

Donald K. Stewart,

Assistant State Conservationist.

[FR Doc. 82–7285 Filed 3–18–82; 8:45 am]

BILLING CODE 3410–16–M

Dallas School District Land Drainage R. C. & D. Measure, Pennsylvania; Environmental Impact Statement; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Graham T. Munkittrick, State Conservationist, Soil Conservation Service, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108, telephone (717) 782–2202.

NOTICE: 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 Dallas School District Land Drainage RC&D Measure, Luzerne County, Pennsylvania.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Graham T. Munkittrick, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns land drainage. The planned works of improvement include subsurface drainage and inlets, minor grading and shaping, and two acres of revegetation with mulch to stabilize a heavy use area.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Graham T. Munkittrick. A FONSI has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until April 19, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation Development 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: March 11, 1982.

Graham T. Munkittrick,

State Conservationist.

[FR Doc. 82–7286 Filed 3–18–82; 8:45 am]

BILLING CODE 3410–16–M

Northeast Moscow City Park Public Water-Based Recreation R.C. & D. Measure, Idaho; Environmental Impact Statement; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Amos I. Garrison, Jr., State Conservationist, Soil Conservation Service, 304 No. 8th St., Rm. 345, Boise, Idaho 83702, telephone (208) 334–1601.

NOTICE: 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 Northeast Moscow City Park Public Water-Based

Recreation RC&D Measure, Latah County, Idaho.

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, Amos I. Garrison, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for recreation facilities and critical area treatment. The planned works of improvement include picnic tables, grills and benches, a picnic shelter, a water well, confort station, and a parking area. Conservation practices include subsurface drains, diversions, a stone waterway, streambank stabilization, and seeding.

The Notice of Finding of No Significant Impact (FONSI) 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 Amos I. Garrison, Jr. The FONSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until April 19, 1982.

Dated: March 8, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development 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)

Amos I. Garrison, Jr.,

State Conservationist.

[FR Doc. 82–7267 Filed 3–18–82; 8:45 am]

BILLING CODE 3410–16–M

George Mason River Retreat, Michigan; Environmental Impact Statement; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

NOTICE: 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 George Mason River Retreat R.C. & D. Measure, Crawford County, Michigan.

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. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for public water-based recreation and critical area treatment. Items to be installed are one canoe beaching area, two toilets, signs, one acre seeding, 450 feet of stairway, relocation of access road, barrier posts and streambank protection. Total construction cost is estimated to be $445,300; $227,800 RC & D funds and $217,500 local funds.

The Notice of a 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. Homer R. Hilner. 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.

Dated: March 8, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, 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)

Homer R. Hilner,

State Conservationist.

[FR Doc. 82–7301 Filed 3–18–82; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations (See, 14 CFR 302.1701 et seq.); Week Ended March 12, 1982

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Mar. 8, 1982	40508	Air Atlanta, Inc., c/o Eric L. Martin, Verner, Liipfert, Bernhard and McPherson, Suite 1100, 1660 L Street, N.W., Washington, D.C. 20036. Application of Air Atlanta, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests a certificate of public convenience and necessity to engage in interstate and overseas air transportation and, to the extent required, approval of Section 409 relationships. Conforming Applications, motions to modify scope, and Answers may be filed by April 5, 1982.
Mar. 9, 1982	40515	American Airlines, Inc., P.O. Box 61616, DFW Airport, Texas 75261. Application of American Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests the Board to issue it a certificate of public convenience and necessity to engage in foreign air transportation of persons, property and mail between the terminal point Dallas-Ft. Worth, Texas, and the terminal point London, England. Conforming Applications, motions to modify scope, and Answers may be filed by April 6, 1982.

Phyllis T. Kaylor,
Secretary.
[FR Doc. 82-7496 Filed 3-18-82; 8:45 am]
BILLING CODE 6320-01-M

Application for an All-Cargo Air Service Certificate

In accordance with Part 291 (14 CFR Part 291) of the Board's Economic Regulations effective November 8, 1978, notice is hereby given that the Civil Aeronautics Board has received an application, Docket 40453, from Air National Aircraft Sales and Service, Inc., 1138 Coleman Avenue, San Jose, California 95110, for an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of § 291.12(c) of Part 291, interested persons may file an answer in opposition to this application on or before April 9, 1982. An executed original and six copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,
Secretary.
[FR Doc. 82-7497 Filed 3-18-82; 8:45 am]
BILLING CODE 6320-01-M

[Docket 37554; Order 82-3-79]

Establishment of the Standard Foreign Fare Level; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 12th day of March 1982.

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Board establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base [1] periodically by percentage changes in actual operating costs per available seat-mile (ASM). The SFFL thus computed becomes the benchmark for measuring the statutory nonsuspend zone similar to the zone of reasonableness established by the Airline Deregulation Act and set forth in section 1002(d) of the Federal Aviation Act of 1958. Order 80-2-69 established the first interim SFFL and subsequent Order 82-1-107 established the currently effective two-month SFFL applicable through March 30, 1982.

In establishing the SFFL for the two-month period commencing April 1, 1982 we have projected nonfuel costs based on the year ended September 30, 1981, and have adjusted fuel prices to reflect the latest experienced monthly fuel cost levels.

Our calculations measure inflation from October 1, 1979, to May 1, 1982, the midpoint of the April-May projection period, for the three ratemaking entities: Atlantic, Latin America, and Pacific. The four-month average of October-January fuel cost increases produces the following rates of escalation: −.39 cents per gallon in the Atlantic; .12 cents per gallon in Latin America; and −.21 cents per gallon in the Pacific. Examination of the monthly and weekly fuel prices submitted to the Board by the carriers indicate to us that fuel prices are essentially level. The resulting projections are fuel prices 109.81 cents in the Atlantic, 109.31 cents in Latin America, and 115.43 cents in the Pacific at May 1, 1982.

Consequently, based on our calculations, we find the projected cost adjustment factor to be 1.3883 in the Atlantic, 1.3355 in Latin America, and 1.3512 in the Pacific, over the October 1, 1979 level (see Appendix A). This results in changes over the last two-month SFFL of .78 percent, 1.24 percent, and 1.35 percent, respectively.

We calculated both a two-month and a four-month SFFL effective February 1, 1982 in Order 82-1-107. The four-month period continues through May 31, 1982, and carriers whose filings utilized the four-month figures may not rely upon the increases permitted by this Order. The next four-month SFFL, along with the usual two-month projection, will be effective June 1, 1982.

Accordingly, pursuant to sections 102, 204(a), 403, 801 and 1002(j) of the Federal Aviation Act of 1958, as amended:

1. Effective April 1, 1982, fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic	1.3883
Latin America	1.3355
Pacific	1.3512

2. We shall serve a copy of this order upon all U.S. certificated air carriers and all foreign air carriers; and

3. We shall publish this order in the Federal Register.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,[2]
Secretary.
[FR Doc. 82-7499 Filed 3-18-82; 8:45 am]
BILLING CODE 6320-01-M

[1] As defined in section 1002(j)(7) of the Federal Aviation Act of 1958.

[2] All Members concurred.

[Order 82-3-83; Docket No. 33361-33363]

Order Terminating the Former Large Irregular Air Service Investigation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order 82-3-83 terminating the former large irregular air service investigation, dockets 33361, 33362 and 33363.

SUMMARY: By its order, the Board is terminating the *Former Large Irregular Air Service Investigation,* Dockets 33361, 33362 and 33363, instituted in Orders 78-3-159 and 78-7-106. The purpose of the investigation has been served and its continued existence is unnecessary and burdensome.

FOR FURTHER INFORMATION CONTACT: John F. Brennan, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 82-3-83 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 82-3-83 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board, March 12, 1982.

Phyllis T. Kaylor,
Secretary.
[FR Doc. 82-7498 Filed 3-18-82; 8:45 am]
BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

New Jersey Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 6:30 p.m., and will end at 8:00 p.m., on April 15, 1982, at the Great

Western Country Squier Inn, Route 70, Cherry Hill, New Jersey. The purpose of this meeting is to orientate the new members of the Committee, and discuss program plans for the remaining period of fiscal year 1982.

Persons desiring additional information or planning a presentation to the Committee, should contract the Chairperson, Clyde, C. Allen, 620 Sheridan Avenue, Plainfield, New Jersey 07060, (212) 572–7577 or the Eastern Regional Office, Jacob K. Javits Building, 26 Federal Plaza, Room 1639, New York, New York, 10278, (212) 264–0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 17, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-7435 Filed 3-18-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Certain Steel Wire Nails From the Republic of Korea; Amendment to Preliminary Determination of Sales at Less Than Fair Value and Exclusion From Preliminary Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Amendment to Preliminary Determination of Sales at Less Than Fair Value and Exclusion From Preliminary Determination.

SUMMARY: On February 3, 1982, we announced our preliminary determination that certain steel wire nails from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value. We directed the U.S Customs Service to suspend the liquidation of all entries of this merchandise, with the exception of entries of this merchandise produced by Samchok Industrial Company, Ltd. (Samchok), and that the Customs Service require the posting of a cash deposit, bond, or other security in an amount equal to the estimated dumping margin listed for each manufacturer investigated, except Samchok.

We are amending our preliminary determination of sales at less than fair value to exclude merchandise produced by Jin Heung Iron and Steel Co., Ltd. (Jin Heung). The order issued February 3, 1982, to suspend liquidation is hereby terminated with respect to Jin Heung. No cash deposit, bond, or other security will be required at the time of each entry, or withdrawal from warehouse, for consumption in the United States of this merchandise produced by this manufacturer. All other manufacturers, with the exception of Samchok and Jin Heung, will continue to be subject to our original notice. However, those manufacturers not specifically listed will now be subject to security in the amount of 3.6 percent. Customs officers are being instructed to refund all deposits of estimated duties paid by importers on entries of steel wire nails produced by Jin Heung.

EFFECTIVE DATE: March 19, 1982.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Richard Rimlinger, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, (202–377–1279).

Amendment

On February 18, 1982, we found an error in our comparisons for one of the firms investigated, Jin Heung Iron and Steel Co., Ltd. (Jin Heung). We had compared U.S. prices for 50 lbs. cartons with home market prices for 25 kilogram cartons (which equals 55.115 lbs.) and had not adjusted for the difference in weight. With this adjustment, Jin Heung's weighted-average dumping margin is reduced from 2.4 percent to .19 percent, which is *de minimis.* We, therefore, are excluding Jin Heung from the preliminary determination.

Accordingly, we are amending our preliminary determination of sales at less than fair value by directing the U.S. Customs Service to remove the suspension of liquidation earlier imposed on imports of steel wire nails manufactured by Jin Heung. This recalculation of the fair value comparison for Jin Heung had reduced the weighted-average fair value margin for all companies investigated to 3.6 percent which will represent the security amount to be required for any company which was not specifically included in the fair value investigation. Customs officers are being instructed to refund all deposits of estimated duties paid by importers on entries of steel wire nails produced by Jin Heung. Our preliminary determination is, otherwise, unchanged.

This determination is published in accordance with § 353.39, Commerce Regulations (19 CFR 353.39).

Dated: March 19, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-7434 Filed 3-18-82; 8:45 am]

BILLING CODE 3510-25-M

Final Results of Administrative Review of Countervailing Duty Order; Oleoresins of Paprika From Spain

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of countervailing duty order.

SUMMARY: On December 18, 1981, the Department of Commerce published in the Federal Register a notice of the preliminary results of its administrative review of the countervailing duty order with respect to oleoresins of paprika from Spain. The review is based upon information for the period January 1, 1979, through June 30, 1980.

Interested parties were invited to comment on the preliminary results. After analysis of the one comment received, we have decided not to change the preliminary results. Therefore, we have determined that countervailing duties in the amount of 2.05 percent of the f.o.b. invoice price shall be assessed on all unliquidated entries of the merchandise entered on or after February 28, 1979, the date of the original order, and exported on or before June 30, 1980. Further, due to a change in the Spanish law, we have determined that cash deposits of estimated countervailing duties shall not be collected on future entries, pending the results of the next administrative review.

EFFECTIVE DATE: March 19, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Lorenza Olivas, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–1775).

SUPPLEMENTARY INFORMATION:

Background

On December 18, 1981, the Department of Commerce ("the Department") published in the Federal Register (46 FR 61684) a notice of the preliminary results of its administrative review of the countervailing duty order on oleoresins of paprika from Spain (T.D. 79–71, 44 FR 61588). The Department has now completed that administrative review.

Scope of the Review

The merchandise covered by this review is oleoresins of paprika imported directly or indirectly from Spain. This merchandise is currently classifiable under item number 450.20 of the Tariff Schedules of the United States.

The review is based on information for the period January 1, 1979 through

June 30, 1980 and is limited to: (1) The Desgravacion Fiscal a la Exportacion, which was the only program found countervailable in the final determination, and (2) a working capital loans program, which was found countervailable in another investigation.

Analysis of Comments Received

We received only one comment, from a party objecting to our proposed change in policy now to consider an impurity physically incorporated in the final product. The party argues that, although a determinable amount of an impurity is "included" in the final product, it should not be considered "incorporated" in it. The physical incorporation test should be limited to those items which are "necessarily and purposefully incorporated in the product." Further, the Department's proposed change in policy is not consonant with legislative intent to the extent that it would weaken the definition of "subsidy."

After reviewing the comment, we have decided not to change the preliminary results of the review.

Since the impurity is physically present in and united with the product, we believe it is clearly "incorporated" in the product. Furthermore, our interpretation is consistent with the definition of "subsidy" in section 771(5) of the Tariff Act of 1930 ("the Tariff Act") and in Annex 1, paragraph 1, of the Commerce Department Regulations on countervailing duties (45 FR 4949, January 22, 1980). This test does not include a requirement that an ingredient be incorporated purposefully or by design in a product. Physical incorporation *per se*, for whatever reason, is the sole requirement.

In our notice of preliminary results, we invited foreign producers to submit evidence on impurities in order to permit calculation of such an allowance. Neither the foreign producers nor the Spanish government presented any information on the amount of impurities that remained in the final product. Thus, we have not made any such allowances.

As stated in our preliminary results, we do not allow any necessary waste for impurities, since all impurities ideally would be removed from the final product.

Final Results of the Review

As a result of our review, we determine that the benefits conferred by the two programs cited above during the period of review are 1.59 percent and 0.46 percent *ad valorem*, respectively. Accordingly, the Department will instruct the Customs Service to assess countervailing duties of 2.05 percent of the f.o.b. invoice price on all unliquidated entries of the merchandise entered or withdrawn from warehouse, for consumption on or after January 1, 1980 and exported on or before June 30, 1980.

The provisions of T.D. 79–71 and section 303(a)(5) of the Tariff Act, prior to the enactment of the Trade Agreements Act of 1979, apply to all entries prior to January 1, 1980. Treasury Decision 79–71 provides that "(t)o the extent that it can be established * * * that imports * * * are benefitting from a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected." Therefore, the Department will also instruct the Customs Service to assess countervailing duties of 2.05 percent of the f.o.b. invoice price on all unliquidated entries of this merchandise which were entered, or withdrawn from warehouse, for consumption on or after February 28, 1979, the date of the original order, through December 31, 1979.

The assessment of countervailing duties by the Customs Service is subject to the provisions of section 778 of the Tariff Act which requires interest to be paid on overpayments or underpayments of the amounts deposited as estimated countervailing duties. The rate at which such interest is payable is the rate in effect under section 6621 of the Internal Revenue Code of 1954 on the date of determination of these final results. That rate currently is 20 percent per annum. The interest shall be calculated at that rate from the date of payment of estimated duties through the date of liquidation. The provisions of section 778 of the Tariff Act do not apply to shipments entered, or withdrawn from warehouse, for consumption prior to January 1, 1980.

Normally we declare the rate determined during our review to be the estimated countervailing duty deposit rate for entries made on or after the date of publication of the final results. However, due to a change in the Spanish tax law effective January 1, 1981, the overrebate of indirect taxes from the Desgravacion Fiscal has been eliminated. The only subsidy remaining is that conferred by the working capital loans program, which we calculate to be 0.46 percent. The Department considers an aggregate net subsidy of less than 0.5 percent *ad valorem* to be *de minimis*.

Therefore, the Department will instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided for by section 751(a)(1) of the Tariff Act, on any shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This waiver of deposit shall remain in effect until publication of the final results of the next administrative review. The Department is beginning its next review, covering the period of July 1, 1980 through June 30, 1981. Consequently, the suspension of liquidation previously ordered will continue for all entries of this merchandise exported on or after July 1, 1980.

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 § 355.41 of the Commerce Regulations (19 CFR 355.41).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82–7488 Filed 3–18–82; 8:45 am]

BILLING CODE 3510–25–M

National Oceanic and Atmospheric Administration

St. Thomas, Virgin Islands; Announcement of Removal of the Southeastern St. Thomas Site From the List of Active Candidates

Correction

In FR DOC. 82–6361 appearing at page 10271 in the issue of Wednesday, March 10, 1982, make the following change:

On page 10271, middle column, under "SUMMARY:", twelfth line, the word "not" should read "now".

BILLING CODE 1505–01–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1982; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1982 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: March 19, 1982.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On January 8, 1982, December 18, 1981, and October 9, 1981, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (47 FR 999, 46 FR 61694, and 46 FR 50094) of proposed additions to Procurement List 1982, November 12, 1981 (46 FR 55740).

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodities and services are hereby added to Procurement List 1982:

Class 6530

Pad, Cooling, Chemical
6530–00–133–4299

Class 7930

Cloth, Filter
7930–00–NSH–0001 (18" x 18")
(Requirements for Naval Supply Center, Bremerton, Washington only)

SIC 7331

Mailing Service for the following locations in Washington, D.C.:
Architectural and Transportation Barriers Compliance Board, 300 C Street, SW.
Federal Election Commission, 1325 K Street, NW.
General Services Administration, National Archives and Records Service, 7th & Pennsylvania Avenue, NW.
International Communication Agency, 1717 H Street, NW.
U.S. Commission on Civil Rights, 1211 Vermont Avenue, NW.

SIC 7349

Janitorial/Custodial, U.S. Customs House, 101 E. Main Street, Norfolk, Virginia

SIC 7369

Commissary Shelf Stocking and Custodial Service, Nellis Air Force Base, Nevada

C. W. Fletcher,

Executive Director.

[FR Doc. 82–7489 Filed 3–18–82; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1982; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1982 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 21, 1982.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1982, November 12, 1981 (46 FR 55740):

Class 4130

Filter, Air Conditioning
4130–00–542–4482
4130–00–959–4734
4130–00–756–0978
4130–00–870–8796
4130–00–274–7800
4130–00–541–3220
4130–00–756–1840
4130–00–951–1208
4130–00–720–4143
4130–00–249–0966
4130–00–203–3318
4130–00–203–3321

Class 7920

Broom, Upright, 7920–00–292–4374

Class 8105

Coin Bags
Size 9 (11" x 17½")
8105–00–NSH–0005 (1 cent)
8105–00–NSH–0006 (5 cents)
8105–00–NSH–0008 (unmarked)
Size 1 (12½" x 17½")
8105–00–NSH–0009 (10 cents)
8105–00–NSH–0010 (25 cents)
8105–00–NSH–0011 (50 cents)
8105–00–NSH–0012 (unmarked)

Class 8465

Case, Map & Note, Field
8465–00–634–1903

SIC 7349

Janitorial Service
U.S. Postal Service
Mailbag Facility
7600 West Roosevelt Road
Forest Park, Illinois

Janitorial Service
U.S. Mission to the United Nations
799 U.N. Plaza
New York, New York

Janitorial Service
Federal Building
800 N. 8th Street
Richmond, Virginia

C. W. Fletcher,

Executive Director.

[FR Doc. 82–7490 Filed 3–18–82; 8:45 am]

BILLING CODE 6820–33–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Gasoline Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contracts.

SUMMARY: The Chicago Mercantile Exchange ("CME") has applied for designation as a contract market in both leaded regular gasoline and unleaded regular gasoline (Gulf Coast). The Commodity Futures Trading Commission (the "Commission") has determined that the terms and conditions of the proposed futures contracts are of major economic significance and that, accordingly, making the proposed contracts available for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before May 18, 1982.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CME Gulf Coast Gasoline Futures Contracts.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., (202) 254–7303.

SUPPLEMENTARY INFORMATION: A copy of the terms and conditions of the CME proposed Gulf Coast gasoline futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for inspection of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of its application, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by May 18, 1982. Such comment letters will be publicly available except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C. on March 16, 1982.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-7500 Filed 3-18-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Amendment to a System of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice of amendment to a system of records notice.

SUMMARY: The Defense Logistics Agency proposes to amend a notice for a system of records subject to the Privacy Act of 1974. The specific changes to the notice are set forth below followed by the system notice as amended in its entirety.

DATE: This system notice shall be amended as proposed without further notice on April 19, 1982.

ADDRESS: Any public comments should be addressed to the System Manager identified in the system notice below.

FOR FURTHER INFORMATION CONTACT: Mr. Preston B. Speed; DLA-XAM, Cameron Station, Alexandria, VA 22314. Telephone: (703) 274-6234.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency system of records notice subject to the Privacy Act of 1974, Title 5 United States Code, section 552a (Pub. L. 93-579, 88 Stat. 1896 *et seq.*) were published in the Federal Register at 46 FR 2544 (FR Doc. 82-674), January 18, 1982.

The proposed amendments do not require an altered system report under the U.S.C. 552a(o).

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

March 15, 1982.

Changes—Proposed Amendments

S434.87 DLA-C

System Name:

Debt Records for Individuals Changes.

Changes:

Categories of Individuals Covered by the System:

Delete entire entry and insert: "Individuals, including members of the general public, current and former civilian employees and military personnel, who are indebted to the Defense Logistics Agency (DLA). Also, included are individuals indebted to other Federal agencies for which DLA has assumed collection responsibility."

Categories of Records in the System:

Delete entire entry and insert: "Administrative reports with supporting documentation of individual's financial condition, such as—pay grade, salary, or financial documents furnished by individual; personnel actions and requests from the individuals for waiver of indebtedness."

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Use:

Add the following: "Information could be provided to other Federal activities in cases where an individual may be employed outside of DLA and such Federal activity is assisting DLA in its collection efforts."

Safeguards:

Delete entire entry and insert: "Files are located in the Finance Systems Branch, Accounting and Finance Division, Office of the Comptroller, HQ DLA. Access is limited to personnel of the Division except in those instances where other personnel may have an official requirement for the files, such as, counsel."

Records Source Categories

Delete entire entry and insert: "Records will be obtained from Primary Level Field Activities (disbursing offices and/or personnel officer) in the form of copies of official government documents. Records will also be obtained from other Federal Agencies, financial institutions, members of the general public and from the individual concerned. Accuracy of such records will be verified, as necessary, by requesting sworn or notarized statements, matching the various records and by comparison with official government records."

S434.87

SYSTEM NAME:

Debt Records for Individuals.

SYSTEM LOCATION:

Primary System—Accounting and Finance Division, Finance Systems Branch, Headquarters, Defense Logistics Agency (HQ DLA). Secondary System—DLA Primary Level Field Activities (PLFAs).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including members of the general public, current and former civilian employees and military personnel, who are indebted to the Defense Logistics Agency (DLA). Also included are individuals indebted to other Federal Agencies for which DLA has assumed collection reponsibility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative reports with supporting documentation of individual's financial condition; such as, pay grade, salary, or financial documents furnished by individuals; personnel action and requests from the individual for a waiver of indebtedness.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 951-953 (Federal Claims Collection Act of 1966), Pub. L. 92-453.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used to collect monies owed the U.S. Government. Information is maintained to support case files; financial statements provide an understanding of individuals financial condition with respect to requests for deferment of payments. When debts are uncollectible, case files are forwarded to U.S. General Accounting Office for further collection action. Information could be provided to other Federal activities in cases where an individual may be employed outside of DLA and such Federal activity is assisting DLA in its collection efforts.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Files are located in the Finance Systems Branch, Accounting and Finance Division, Office of the Comptroller, HQ DLA. Access is limited to personnel of the Division except in those instances where other personnel may have an official requirement for the files, such as counsel.

RETENTION AND DISPOSAL:

Records are destroyed ten years after all aspects of the case are closed. Collected in full claims are retained for six months and then destroyed. Claims terminated, compromised, or waived are retained for three years and subsequently retired to Federal Records Center, held for remaining years and destroyed. Claims settled by the U.S. General Accounting Office are retained one year after settlement and retired to the Federal Records Center, held for remaining years and retired.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Finance Systems Branch, Accounting and Finance Division, Office of the Comptroller, HQ DLA.

NOTIFICATION PROCEDURE:

Written or personal requests for information may be directed to the system manager.

RECORD ACCESS PROCEDURES:

Official mailing address is in the DoD Directory in the Appendix to the DLA system notice. Written requests from individuals should contain their full name, current address and telephone number. For personal visits, the individual should be able to provide acceptable identification, such as an employee badge or drivers license, etc.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records will be obtained from Primary Level Field Activities (disbursing offices and/or personnel offices) in the form of copies of official government documents. Records will also, be obtained from other Federal Agencies, financial institution, members of the general public and from the individual concerned. Accuracy of such records will be verified, as necessary, by requesting sworn or notorized statements, matching the various records and by comparison with official government records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82-7399 Filed 3-18-82; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Electronic Warfare (Future Systems Subgroup); Advisory Committee Meeting

The Future Systems Subgroup of the Defense Science Board Task Force on Electronic Warfare will meet in closed session on April 26–27, in 1982 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

At the meeting on April 26–27, 1982, the Task Force will discuss the application of technology to future systems designed to improve U.S. Electronic Warfare capabilities.

In accordance with 5 U.S.C. App. 1 10(d)(1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

March 16, 1982.

[FR Doc. 82-7453 Filed 3-18-82; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Rapid Deployment Forces (RDF); Advisory Committee Meeting

The Defense Science Board Task Force on Rapid Deployment Forces will meet in closed session on April 13, 14, 15, 1982 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

At the meetings on April 13, 14, 15, 1982, the Task Force will continue discussions on the application of technology to rapidly deploying forces.

In accordance with 5 U.S.C. App. 1 10(d)(1976), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

March 16, 1982.

[FR Doc. 82-7452 Filed 3-18-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education Statistics.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: April 19 and 20, 1982.

ADDRESS: Room 3000, 400 Maryland Ave., SW, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Theodore H. Drews, Executive Director, 400 Maryland Avenue SW (Presidential Bldg. 205), Washington, D.C. 20202. Telephone (301) 436-7876.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93-380. The Council is established to review general policies for the operation of the National Center for Education Statistics and is responsible for establishing standards to insure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence.

The meeting of the Council is open to the public. The proposed agenda includes:

A report by the Administrator, National Center for Education Statistics on recent activities of the National Center.

A presentation on teacher supply and demand including past and projected

statistical trends, to be the basis for Council comment and report.

A report and discussion on the National Center's program in response to the Congressional mandate to "assist State and local educational agencies in improving and automating their statistical and data collection activities."

A report and discussion on the policies of the Center in the planning and assignment of federally-supported travel and the relationship and contribution of travel to the achievement of program objectives.

Such new business as the chairman or the membership may put before the Council.

Records are kept of all Council proceedings, and are available for public inspection at the office of the Executive Director, Advisory Council on Education Statistics, 6525 Belcrest Rd., (Presidential Building, Room 205), Hyattsville, Maryland.

Dated: March 15, 1982.

Donald J. Senese,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 82-7492 Filed 3-18-82; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs; Deadline for Submitting Appeals and Average Program Expenditure

Correction

In FR Doc. 82-7115 appearing on page 11057 in the issue for Monday, March 15, 1982; third column, the signature was inadvertently omitted and should be placed directly above the FR Doc. line as follows:

"T. H. Bell,

Secretary of Education."

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 82-CERT-002]

Salt River Project Agricultural Improvement and Power District; Recertification of Eligible Use of Natural Gas To Displace Fuel Oil

On January 22, 1982, Salt River Project Agricultural Improvement and Power District (Salt River Project), P.O. Box 1980, Phoenix, Arizona 85001, filed an application with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 for recertification of an eligible use of approximately 19,106,000 Mcf of natural gas per year to displace approximately 1,850,000 barrels per year of residual fuel oil (0.9 percent sulfur) and 93,000 barrels per year of distillate fuel oil (0.5 percent sulfur) at its Agua Fria Steam Plant in Glendale, Arizona; 306,000 barrels per year of residual fuel oil (0.9 percent sulfur) and 100,000 barrels per year of distillate fuel oil (0.5 percent sulfur) at its Kyrene Steam Plant in Tempe, Arizona; and 749,000 barrels per year of distillate fuel oil (0.5 percent sulfur) at its Santan Steam Plant in Gilbert, Arizona. The eligible seller of the natural gas is Consumers Power Company and the gas will be transported by the Panhandle Eastern Pipe Line Company, the Trunkline Pipe Line Company, the Natural gas Pipeline Company of America, and the El Paso Natural Gas Company. Notice of that application was published in the **Federal Register** (47 FR 8316, February 25, 1982) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

On March 21, 1981, Salt River Project received a recertification (ERA Docket No. 81-CERT-003) of an eligible use of the identical volume of natural gas at the Agua Fria and Kyrene steam plants only for a period of one year, which will expire on March 20, 1982.

The ERA has carefully reviewed Salt River Project's application for recertification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Salt River Project's application satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted the recertification to be effective March 21, 1982, and transmitted that recertification to the Federal Energy Regulatory Commission. More detailed information, including a copy of the application, transmittal letter, and the actual recertification is available for public inspection at the Natural Gas Branch Docket Room, Room 6013, RG-631, 2000 M Street, NW., Washington, D.C. 20461, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., March 12, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-7429 Filed 3-18-82; 8:45 am]

BILLING CODE 6450-01-M

Southern Natural Resources, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Southern Natural Resources, Incorporated, P.O. Box 2563, Birmingham, Alabama 35202. This Proposed Remedial Order charges Southern Natural Resources, Incorporated, with pricing violations in the amount of $1,965,554.17 connected with sales of natural gas liquid products during the period September 1, 1972 through July 31, 1975.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Mr. William R. Gibson, Deputy Director, Atlanta Office, Economic Regulatory Administration, 1655 Peachtree Street, N.W., Atlanta, Georgia 30367, Telephone (404) 881-2661. On or before April 5, 1982 any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 12th & Penn Ave., NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Atlanta, Georgia on the 9th day of March 1982.

William R. Gibson,

Deputy Director, Atlanta Office, Economic Regulatory Administration.

Concurrence:

Susan P. Tate,

Deputy Regional Counsel.

[FR Doc. 82-7495 Filed 3-18-82; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate cost of gas to the industrial facility does not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA of 1978, Section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal

Energy Regulatory Commission (FERC) computed natural gas ceiling prices and high cost gas incremental pricing threshold which are to be effective April 1, 1982. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Energy Information Administration, Federal Building, 12th & Pa. Ave., NW., Rm 4121, Washington, DC 20461 (202) 633–9710.

Section I. Alternative Fuel Price Ceilings

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (Btu's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million Btu's
Alabama	3.78
Arizona [1]	3.68
Arkansas [1]	3.34
California	3.62
Colorado [1]	4.04
Connecticut [1]	3.95
Delaware [1]	3.70
Florida	3.79
Georgia	3.80
Idaho [1]	4.04
Illinois	3.68
Indiana [1]	3.72
Iowa [1]	3.61
Kansas [1]	3.61
Kentucky [1]	3.72
Louisiana [1]	3.34
Maine	3.85
Maryland [1]	3.70
Massachusetts	3.94
Michigan [1]	3.72
Minnesota	3.56
Mississippi	3.83
Missouri [1]	3.61
Montana [1]	4.04
Nebraska [1]	3.61
Nevada [1]	3.68
New Hampshire [1]	3.95
New Jersey	3.62
New Mexico	3.03
New York	3.70
North Carolina [1]	3.85
North Dakota [1]	3.61
Ohio [1]	3.72
Oklahoma	3.32
Oregon [1]	3.68
Pennsylvania	3.65
Rhode Island [1]	3.95
South Carolina [1]	3.85
South Dakota [1]	3.61
Tennessee [1]	3.85
Texas	3.16
Utah [1]	4.04
Vermont [1]	3.95
Virginia [1]	3.85
Washington [1]	3.68
West Virginia	3.57
Wisconsin [1]	3.72
Wyoming [1]	4.04

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM79–21.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during January 1982 was $41.69 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective April 1, 1982, is $9.34 per million BTU's.

Section III. Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous states on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of November 1981, December 1981, and January 1982.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State or Local) and the military are excluded.

B. Method Used To Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective April 1, 1982, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, November 1981, December 1981, January 1982. Reported prices for sales in November 1981 were adjusted by the percent change in the nationwide volume-weighted average price from November 1981 to January 1982. Prices for December 1981 were similarly adjusted by the percent change in the nationwide volume-weighted average price from December 1981 to January 1982. The volume-weighted 3-month average of the adjusted November 1981 and December 1981, and the reported January 1982 prices were then computed for each State.

(2) *Adjustment for Price Variation.* States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B.(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State's alternative fuel price ceiling base. The State's alternative fuel price ceiling base was

compared to the altenative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4.) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

(4) *Lag Adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 21 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending March 12, 1982, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of January 1982. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut	New Hampshire
Maine	Rhode Island
Massachusetts	Vermont

Region B

Delaware	New York
Maryland	Pennsylvania
New Jersey	

Region C

Alabama	North Carolina
Florida	South Carolina
Georgia	Tennessee
Mississippi	Virginia

Region D

Illinois	Ohio
Indiana	West Virginia
Kentucky	Wisconsin
Michigan	

Region E

Iowa	Nebraska
Kansas	North Dakota
Missouri	South Dakota
Minnesota	

Region F

Arkansas	Oklahoma
Louisiana	Texas
New Mexico	

Region G

Colorado	Utah
Idaho	Wyoming
Montana	

Region H

Arizona	Oregon
California	Washington
Nevada	

Issued in Washington, D.C., March 17, 1982.

J. Erich Evered,

Administrator, Energy Information Administration.

[FR Doc. 82-7597 Filed 3-18-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP82-219-000]

Arkansas Louisiana Gas Co., a Division of Arkla, Inc.; Application

March 16, 1982.

Take notice that on March 1, 1982, Arkansas Louisiana Gas Company, a Division of Arkla, Inc. (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP82-219-000 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 a tap and town border station on its Line R in South Shreveport, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Appliant asserts that because of the continued growth in the South Shreveport, Louisiana, area the construction and operation of a tap on its interstate Line R is necessary to maintain distribution gas service. Applicant explains that Line R passes through the South Shreveport metropolitan area. Applicant indicates that at the tap it also proposes to install a new town border station for metering and regulating purposes to provide an additional point of delivery of gas into the South Shreveport area.

Applicant estimates the costs of the proposed facilities to be $49,310 which costs would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1982, 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. 82-7521 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. E-6454-000]

City of Centralia; Order Providing for Hearing

Issued: March 12, 1982.

We are today ordering a further hearing in this docket to determine whether the City of Centralia's (Washington) Yelm Project ("Project") is subject to Commission jurisdiction, and, therefore should be the subject of a

license application, under Part 1 of the Federal Power Act.

Background in Brief

The Yelm Project is located on the Nisqually River and has an installed capacity of 10,000 kw. The Project supplies approximately 60% of Centralia's electricity; other power is supplied to the city by the Bonneville Power Administration ("BPA"). Normally all of the power generated by the Project is used by Centralia; however, occasionally there is an excess in power which flows intrastate on BPA lines to the Lewis County Public Utility District. The BPA power lines connecting Centralia and Lewis County form a closed loop; however, these lines are interconnected with BPA's interstate system.

This proceeding arose from motions by the City of Tacoma (Washington) and Commission staff in Docket No. P–1862 to either join Centralia as a necessary party in that docket [1] or require it to file for a license. A conference was held in this docket and resulted in an initial decision [2] that the Yelm Project was within the Commission's licensing jurisdiction.

We affirmed the result of the initial decision, but on other grounds.[3] We found jurisdiction over the Yelm Project to rest on its effect, however minor, on interstate commerce due to "(a) power being commingled with power from BPA's interstate grid which flows intrastate to third parties, and (b) its effect on power flows on BPA's interstate grid arising from its connection with that grid".[4] In so holding we relied on *FPC v. Union Electric Co.*, 381 U.S. 90 (1965) (*"Taum Sauk"*), which established the principle that our section 23(b) jurisdiction extended to projects on non-navigable streams when the interest of interstate commerce, including non-water commerce, were effected.

The Court of Appeals Decision

The U.S. Court of Appeals for the Ninth Circuit vacated our order in *Centralia v. FERC*, 661 F.2d 787 (9th Cir. 1981). The court held that there was no substantial evidence in the record that the Project had a real and substantial effect on interstate commerce. The court further found that the Commission did not identify any class of projects, to which the Project belonged, to show that operations at the individual projects within the class cumulatively had a substantial effect on interstate commerce.

In so holding the court stated that the Commission erred in disregarding those cases requiring a finding that the nexus between the local activity in question and interstate commerce be real and substantial. In short, the *Taum Sauk* basis for jurisdiction necessitated that the interests of interstate commerce be shown to be substantially affected—a minor effect is insufficient.

In vacating our order the court said that we were "not precluded from asserting jurisdiction in the future on the basis of navigability." Centralia, supra, at 793.

Further Proceedings

In fashioning the shape of further proceedings on the jurisdictional issue again placed before us, our duty, as always, is to follow the dictates ofthe Federal Power Act.[5] In discharging this duty we must adhere to the reviewing court's decision. We are also guided by principles which have long governed agencies acting in the wake of the remedial exercise of the power of judicial review.

The *Centralia* court, as stated above, explicitly acknowledged the right of this Commission to assert jurisdiction over the Project on the basis of navigability, a basis which an intervenor has asserted throughout the proceeding.[6] Beyond this statement the court does not address the scope of renewed Commission proceedings on the jurisdiction issue. Applicable precedents from the Supreme Court, however, instruct us to provide the Presiding Judge with the latitude to examine all relevant bases of jurisdiction.

As the Supreme Court stated in *FCC v. Pottsville Boradcasting Co.*, 309 U.S. 134 (1940),

> On review the Court may thus correct errors of law and on remand the Commission is bound to act upon the correction. But an administrative determination in which is embedded a legal question does not impliedly foreclose the administrative agency after its error has been corrected, from enforcing the legislative policy committed to its charge.

Id. at 145 (citations omitted).

In a companion case, *Fly v. Heitmeyer*, 309 U.S. 146 (1940) the Court held that the FCC could hold a further evidentiary hearing on remand.

> * * * the Commission's duty was to apply the statutory standard in deciding which of the applicants was to receive a permit after it fell into legal error as well as before. If, in the Commission's judgment, new evidence was necessary to discharge its duty, the fact of a previous erroneous denial should not * * * bar it from access to the necessary evidence for correct judgment. Id. at 148.[7]

The *Centralia* Court in this proceeding uncovered legal error in our interpretation of the magnitude of the effect on interstate commerce necessary to establish jurisdiction under *Taum Sauk*. It also noted that, having failed to demonstrate that the Project alone substantially affected interstate commerce, we also failed to identify a class of projects, to which the Yelm Project belongs, whose cumulative effect on interstate commerce may be sufficient to establish jurisdiction. These errors do not in accordance with the teaching of the *Pottsville Broacasting Co.* and *Heitmeyer* cases, preclude us from re-examining these bases for jurisdiction, including taking further relevant evidence, under a correct interpretation of the law. Further, our obligation to again apply the congressionally formulated policies of the Federal Power Act counsels us against excluding from consideration, in the hearing ordered below, all other possible grounds for asserting jurisdiction over the Yelm Project.

The Commission orders:

(A) Pursuant to the provisions of the Federal Power Act particularly sections 4(g), 23(b), 308, and the Commission's Rules of Practice and Procedure, a hearing will be held to determine whether the City of Centralia's Yelm Project is subject to the licensing jurisdiction of this Commission;

(B) The designated administrative law judge shall preside at the hearing in this proceeding. The Presiding Judge shall convene a prehearing conference in this proceeding at 10:00 a.m. on April 20, 1982, at the Commission's offices, 825 North Capitol Street, NE., Washington, D.C. 20426.

(C) At the hearing the Presiding Judge shall consider such issues and take such evidence as are relevant to the jurisdictional question, in accordance with the statements on scope contained in this Order.

---

[1] In Docket No. P–1862 the Nisqually Indian Tribe alleged that Tacoma's hydroelectric plant was harming anadromous fish in the Nisqually River.

[2] Issued March 22, 1978.

[3] City of Centralia, Docket No. E–6454: Opinion No. 40, "Opinion and Order affirming Initial Decision" (FERC, April 30, 1979); Opinion No. 40–A; "Opinion and Order Denying Petition for Rehearing and Motion for Stay of Order" (June 28, 1979).

[4] City of Centralia, Docket No. E–6454, *supra*, at p. 14.

[5] The Commission's jurisdiction under the Federal Power Act is mandatory, not discretionary. *Escondido Natural Water Co., et al.*, Project Nos. 176, *et al.*, Opinion No. 36 (February 26, 1979), slip op. at 37–39.

[6] Both the initial decision and the Commission's opinion noted that Washington State Department of Fish and Game has reserved the right to demonstrate that the Nisqually River is navigable.

[7] *See also FPC* v. *Idaho Power Co.*, 344 U.S. 17, 20 (1952): * * * the guiding principle * * * is that the function of the reviewing court ends when an error of law is laid bare."

(D) The Secretary shall cause prompt publication of this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-7522 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-374-000]

Cleveland Electric Illuminating Co.; Filing

March 16, 1982.

Take notice that on March 9, 1982, The Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 30 MW of power from the 345 kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI has reported waiver of the FERC's 60-day notice requirement in order to permit commencement of transmission service on March 1, 1982.

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, 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 April 1, 1982. 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. 82-7536 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-210-000]

Columbia Gas Trasnmission Corp.; Application

March 16, 1982.

Take notice that on February 25, 1982, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP82-210-000 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 certain natural gas facilities in Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Eastern Shore Natural Gas Company (Eastern Shore) is actively pursing new gas supplies in western Pennsylvania and other Appalachian production areas and in order to connect these new supplies into its system as expeditiously as possible Eastern Shore has requested that Applicant establish an interconnection between their systems.

Applicant, therefore, proposes to construct and operate an interconnecting tap facility in Chester County, Pennslyvania, at the point where the pipelines of Applicant and Eastern Shore cross in order to establish an emergency interconnection between the two companies. Applicant asserts that the proposed interconnection would also facilitate emergency gas transactions between Applicant and Eastern Shore or other parties.

The cost of the proposed tap facilities is estimated to be $3,950 which would be financed with internally generated funds. It is indicated that the facilities necessary to accommodate the redelivery of new gas supplies or emergency volumes between Applicant and Eastern Shore would be constructed by Eastern Shore and leased to Applicant for operation and maintenance.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1982, 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 of 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. 82-7523 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-200-000]

Equitable Gas Co.; Application

March 16, 1982.

Take notice that on February 12, 1982, Equitable Gas Company (Applicant), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No CP82-200-000 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 a main-line tap and a meter installation and the transportation of 430 Mcf of natural gas per year to one commercial customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Glory Coal Company, Inc., Lumberport, Harrison County, West Virginia, has applied to Applicant for natural gas service exclusively for space heating and water heating to its premises. Applicant proposes to provide such service off its Well Line No. W-1841 located in Lumberport, Harrison County, West Virginia. Applicant proposes to construct and operate a main-line tap and meter on its Well Line No. W-1841 at an estimated cost of $1,000. Such cost, it is asserted, would be financed from cash on hand.

Applicant asserts that the proposed service would require the transportation of approximately 430 Mcf of natural gas per year. Applicant further asserts that the proposed service to Glory Coal Company, Inc. would be a new service for an initial 10-year term.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1982, 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. 82-7524 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-209-000]

Florida Gas Transmission Co.; Application

March 16, 1982.

Take notice that on February 25, 1982, Florida Gas Transmission Company (Applicant), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. CP82-209-000 an application pursuant to section 7 of the Natural Gas Act and paragraphs (c), (e) and (g) of § 157.7 of the Regulations thereunder (18 CFR 157.7(c), 157.7(e) and 157.7(g)) (1) for a certificate of public convenience and necessity authorizing the construction, during the period April 1, 1982, through March 31, 1983, and operation of facilities to make miscellaneous rearrangements on its system; (2) for permission and approval to abandon during the period April 1, 1982, through March 31, 1983, direct sales service and facilities no longer required for deliveries of natural gas to Applicant's customers, and (3) for a certificate of public convenience and necessity authorizing the construction and for permission and approval to abandon during the period of April 1, 1982, through March 31, 1983, and operation of various field compression and related metering and appurtenant facilities, 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 pursuant to § 157.7(c) of the Regulations is to augment Applicant's ability to act with reasonable dispatch in making miscellaneous rearrangements which would not result in any material change in the transportation and sales service presently rendered by Applicant. Applicant states that the total cost of the proposed miscellaneous rearrangements would not exceed $390,000 which would be financed from internally generated funds.

The stated purpose of this budget-type application pursuant to § 157.7(e) of the Regulations 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 customer 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, it is asserted.

The stated purpose of this budget-type application pursuant to § 157.7(g) of the Regulations is to enable Applicant to act with reasonable dispatch in constructing and abandoning facilities which would not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application. Applicant states that the total cost of the proposed construction and abandonment would not exceed $4,000,000 and no single project would exceed $970,000. Applicant states that said cost would be financed from internally generated funds.

The proposed cost limitations are in excess of those prescribed by § 157.7(c) and (g) of the regulations. The proposed cost limitations are, however, the same as those authorized in Applicant's proceeding in Docket No. CP81-42-000 on April 6, 1981. Therefore, Applicant requests the same level of limitations in the instant docket.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1982, 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 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. 82-7525 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-198-000]

Florida Gas Transmission Co.; Application

March 16, 1982.

Take notice that on February 10, 1982, Florida Gas Transmission Company (Applicant), P.O. Box 44, Winter Park,

Florida 32790, filed in Docket No. CP82–198–000 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 approximately 4.4 miles of 6-inch pipeline in order to increase natural gas service for the City of Kissimee, Florida (Kissimee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate approximately 4.4 miles of 6-inch pipeline extending from Applicant's existing 20-inch mainline in Osceola County, Florida, to Kissimee's authorized existing point of delivery and further to modify its existing meter and regulator station.

Applicant states that Kissimee has experienced a substantial increase in demand and has authorized the purchase of and has ordered a fifty megawatt combined cycle plant. It is asserted that in order for Applicant to increase hourly and daily deliveries to Kissimee to serve the new facility it must construct the proposed pipeline.

Applicant estimates the cost of the proposed facilities to be $700,000. Applicant indicates that it would be reimbursed by Kissimee for 100 percent of the costs and expenses associated therewith.

It is asserted that there would be no increase in Kissimee's volumetric entitlement.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1982, 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. 82–7526 Filed 3–18–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–223–000]

Florida Gas Transmission Co.; Application

March 16, 1982.

Take notice that on March 1, 1982, Florida Gas Transmission Company (Applicant), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. CP82–223–000 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 approximately 4.7 miles of 26-inch mainline loop, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate 4.7 miles of 26-inch pipeline from Applicant's milepost 512.78 to 517.43 in St. Landry Parish, Louisiana. It is stated that the proposed construction is necessary to loop Applicant's existing 24-inch pipeline in St. Landry Parish to accommodate the volumes of gas anticipated from Sabin Pass Blocks 10 and 17 as well as volumes purchased from Matagorda Island Blocks 664 and 665, and Brazos Blocks 647 and 647L.

Applicant submits that with the maturation of its existing sources of supply in the eastern portion of its pipeline system Applicant has contracted for and attached new sources of supply further west. It is explained that the general westward shift of Applicant's gas supply has made it difficult at times of peak demand to maintain a fully loaded pipeline system from Louisiana eastward. Applicant avers that the proposed construction would eliminate the hydraulic problems that have developed as a result of this general westward trend and increase Applicant's system's reliability. Applicant further submits that the proposed construction would save approximately 125,000 Mcf per year in compressor fuel.

It is estimated that the proposed construction would cost approximately $6,781,000 which would be financed from funds on hand and, if necessary, as part of Applicant's long-range financial planning.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1982, 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. 82–7527 Filed 3–18–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–375–000]

Gulf States Utilities Co.; Filing

March 16, 1982.

Take notice that Gulf States Utilities Company (Gulf States) on March 10, 1982 tendered for filing proposed changes in its electric resale and transmission service rate schedules

presently on file with the Commission which are applicable to Rural Electric Cooperatives and Wholesale Municipalities. The proposed tariff would increase revenues from jurisdictional sales and service by $33,258,405 (exclusive of CWIP) and $63,689,451 (inclusive of CWIP), based upon the twelve (12) month period ending December 31, 1982.

Gulf States estimates its rate of return on its jurisdictional rate base, for sales for resale and transmission service for the calendar year ended December 31, 1980, was 1.32 percent. Gulf States futher states that such return is substantially below its weighted cost of capital, and therefore will not attract the capital for planned construction expansion programs. The proposed rates are based upon a 13.67 percent overall rate of return. Copies of the filing have been served on Gulf States' jurisdictional customers, upon the Public Utility Commission of the State of Texas and upon the Louisiana Public Service Commission. The proposed effective date of the tariff is May 9, 1982.

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, 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 April 1, 1982. 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. 82-7537 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6015-000]

Charles D. Howard; Application for Preliminary Permit

March 16, 1982.

Take notice that Charles D. Howard (Applicant) filed on February 22, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6015 to be known as the Rock Creek Hydro Project located on Rock Creek in Twin Falls 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. Charles D. Howard, 1139 Falls Avenue East, Falls Professional Center, Suite B, Twin Falls, Idaho 83301.

Project Description—The proposed project would consist of: (1) A 5-foot high diversion structure; (2) a 48-inch diameter, 2,600-foot long penstock; (3) a powerplant to contain three generating units with a combined rated capacity of 12,000 kW, operating under a head of 100 feet; (4) a 0.75-mile long transmission line to extend to an existing line. The average annual energy output is estimated at 8,725,000 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 engineering, environmental and economic feasibility studies and prepare an application for an FERC license. The estimated cost of conducting these studies and preparing an application for an FERC license is $35,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before May 25, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before May 25, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than July 26, 1982.

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 May 25, 1982.

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. 82-7538 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-377-000]

Kentucky Utilities Co.; Filing

March 16, 1982.

Take notice that on March 10, 1982, Kentucky Utilities Company (KU) tendered for filing an agreement for electric service to Jackson Purchase Electric Cooperative Corporation (JP) at the delivery point known as Smithland Substation.

KU states that no reasonable billing estimates can be made since the load served will build up over a period of time and other loads transferred from other delivery points from time to time.

KU requests an effective date of July 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been sent to JP and the Kentucky 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 April 1, 1982. 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. 82-7540 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5937-000]

Kevin Jon Keizer; Application for Preliminary Permit

March 16, 1982.

Take notice that Kevin Jon Keizer (Applicant) filed on January 11, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 5937 to be known as the Keizer Hydro No. 1 Water Power Project located on the Flat River in Montcalm County, Michigan. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Evelyn Keizer, Box 411 Hamilton Lake Road, Newberry, Michigan 49868.

Project Description—The proposed project would consist of: (1) An existing concrete dam 60 feet long and 10 feet high; (2) an existing reservior with a surface elevation of 815 feet m.s.l. and a usable storage capacity of 300 acre-feet; (3) an existing powerhouse to contain generating units with an estimated installed capacity of 300 kW; (4) existing transmission lines; and (5) appurtenant facilities. the proposed project is not located on Federal lands. The Applicant estimates that the average annual energy output would be 867,200 kWh. Power produced by the Applicant would be sold to the Consumers Power Company of Michigan.

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 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 $32,700.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before June 28, 1982, the competing application itself (see: 18 CFR 4.30 et seq. (1981)). A notice of intent to file a competing application for preliminary permit wil not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before May 28, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or § 4.101 et seq. (1981), as appropriate.

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 May 28, 1982.

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. 82-7539 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST79-23-001]

Louisiana Intrastate Gas Corp.; Extension Reports

March 16, 1982.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The Commission's regulations provide that the transportation or sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

Any person desiring to be heard or to make any protest with reference to said extension report should on or before April 5, 1982 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 party to a 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.

Docket No.	Transporter seller	Recipient	Date filed	Part 284sub-part	Effective date
ST79-23-002	Louisiana Intrastate Gas Corp., P.O. Box 1352, Alexandria, LA 71301	MID Louisiana Gas Co	2/1/82	D	5/5/82
ST80-186-001	Transor Pipe Line Co., P.O. Box 3008, Tulsa, OK 74101	Lone Star Gas Co	2/3/82	C	5/13/82
ST80-208-001	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001.	Northern Natural Gas Co	2/12/82	G	5/13/82
ST80-228-001	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77001.	Texas Gas Transmission Corp	2/8/82	D	5/29/82

[FR Doc. 82-7549 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6007-000]

Mason County Public Utility District No. 1; Application for Preliminary Permit

March 16, 1982.

Take notice that Mason County Public Utility District No. 1 (Applicant) filed on February 19, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6007 to be known as the Boulder Creek Hydroelectric Project located on Boulder Creek within the Olympic National Forest in Mason County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. John P. Robertson, P. E., Manager, Public Utility District No. 1 of Mason County, Route 5, Box 555, Shelton, Washington 98584.

Project Description—The proposed project would consist of: (1) A 15-foot high, 2,700-foot long diversion structure; (2) a 2.5-foot diameter, 6,000-foot long penstock; (3) a powerhouse to contain a single generating unit with a rated capacity of 3,000 kW, operating under a head of 1,060 feet; (4) a tailrace; and (5) a 11.8-mile long, 12-kV underground transmission line to connect to an existing line. Average annual energy output is estimated at 12,600,000 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 would conduct engineering, environmental, and economic feasibility studies and prepare an application for an FERC license. The estimated cost for conducting these studies and preparing an FERC license is $160,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before May 28, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981).

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before May 28, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than July 28, 1982.

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 May 28, 1982.

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 orignal and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commissin, 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, Rom 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. 82-7541 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6016-000]

Mega Hydro, Inc.; Application for Preliminary Permit

March 16, 1982.

Take notice that Mega Hydro, Inc. (Applicant) filed on February 22, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6016 to be known as the Olsen Power Project located on Old Crow 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. Castagna,

Maga Hydro, Inc., 2576 Hartnell Avenue, Redding, California 96002–2319.

Project Description—The proposed project would consist of: (1) A 4-foot high, 7-foot wide, 60-foot long diversion structure; (2) a 48-inch diameter, 700-foot long conduit; (3) a 42-inch diameter, 3,630-foot long penstock; (4) a powerhouse containing a turbine-generating unit with a rated capacity of 862 kW; and (5) a 0.5-mile long, 12.5-kV transmission line connecting to an existing Pacific Gas and Electric line. Applicant estimates a 4.1 million kWh annual energy production.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, and geological, environmental, and economic feasibility studies. The cost of forementioned activities along with preparation of an environmental impact report, obtaining agreements with Federal, State, and local agencies, and preparing a license application is estimated by the Applicant to be $43,000. Power would be sold to Pacific Gas and Electric.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before May 25, 1982, the competing application itself, or notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before Mary 25, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than July 26, 1982.

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 May 25, 1982.

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. 82–7542 Filed 3–18–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6010–000]

Metropolitan Water District of Southern California; Application for Exemption of Small Conduit Hydroelectric Facility

March 16, 1982.

Take notice that on February 19, 1982, The Metropolitan Water District of Southern California (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 Corona Small Conduit Hydroelectric Project (FERC Project No. 6010) would be located the Applicant's Lower Feeder Pipeline, in Riverside County, California. Correspondence with the Applicant should be directed to: Mr. Evan L. Griffith, General Manager, The Metropolitan Water District of Southern California, P.O. Box 54153, Terminal Annex, Los Angeles, California 90054.

Purpose of Project—The power generated by the project would be sold to a public or private utility.

Project Description—The project would consist of a powerhouse with an installed capacity of 2.8 MW. The powerhouse would operate under a head of 135 feet and would generate approximately 18 million kWhs annually.

Agency Comments—The U.S. 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 representatives.

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 proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protests, or petitions to intervene must be received on or before May 4, 1982. The

Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-7543 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-207-000]

Natural Gas Pipeline Company of America; Application

March 16, 1982.

Take notice that on February 23, 1982, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP82-207-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain gas purchase facilities located in the Chalkley Field, Cameron 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 abandon a 3-inch measuring facility, 583 feet of 3-inch lateral and related appurtenant facilities which were installed to receive gas purchased from Edwin L. Cox, *et al.* Applicant states that production from the well terminated on August 24, 1981, due to depletion of reserves. It is submitted that the well was plugged and abandoned by Cox on November 27, 1981. Applicant states that it has independently determined that there are no remaining salable, recoverable reserves that can be produced from the well connected to such facilities. Applicant indicates that it would remove all salvable facilities and retain them in stock until needed for reuse at another location.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1982, 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 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 on 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. 82-7528 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER81-679-003]

Pacific Gas & Electric Co.; Order Accepting for Filing and Suspending Revised Rates, Denying Motions for Summary Disposition and for Consolidation, and Establishing Hearing Procedures

Issued: March 12, 1982.

On January 28, 1982, Pacific Gas and Electric Company (PG&E) tendered for filing proposed amendments to Volume Nos. 2 through 7 of its proposed rates filed with the Commission on August 12, 1981, in Docket No. ER81-679-000.[1] The August 12, 1981 rate filing provides for a two step rate increase. By order of October 23, 1981, in Docket No. ER81-679-000, the Commission accepted for filing and suspended both steps of the rate increase (17 FERC ¶ 61,069). The Step II increase was suspended until March 12, 1982, to take effect thereafter subject to refund.[2] In the instant filing, PG&E seeks to reduce the Step II increase from $19.8 million to $9.6 million, also to take effect March 12, 1982, subject to refund, and requests waiver of the Commission's notice requirements.

The proposed increase in the Step II rates primarily reflects PG&E's revised forecast dates for commercial operation of its Diablo Canyon Nuclear Unit Nos. 1 and 2 and Helms Pumped Storage Unit Nos. 1, 2 and 3.[3] PG&E's revised in-service date forecasts contemplate that these units will become operational either later during the test period or beyond its close.[4] PG&E has also updated the operating costs associated with these units.

Notice of PG&E's January 28, 1982, filing was issued on February 8, 1982. On February 8, 1982, the City of Oakland, California, acting through its Board of Port Commissioners (Port of Oakland), filed a petition to intervene, protest, and motion for consolidation. The Port of Oakland states that it does not believe the proposed reduction would make PG&E's rates just and reasonable. It further moves to consolidate its complaint against PG&E in Docket NO. EL82-3-000 with the instant proceeding.

A timely protest and motion for summary judgment was also filed by the Northern California Power Agency (NCPA) and its members who purchase wholesale power from PG&E. NCPA does not oppose reduction of PG&E's rates, but moves for summary rejection of that portion of the filing reflecting increased operating costs for the nuclear and pumped storage units since the August 12, 1981 filing, with the exception of additional AFUDC.

On March 4, 1982, PG&E filed an answer in opposition to NCPA's motion for summary rejection of PG&E's revised operating costs. On March 5, 1982, PG&E filed an answer in opposition to the Port of Oakland's motion for consolidation of Docket No. EL82-3-000 with the instant docket.

Discussion

The rate schedule and cost support statements submitted by P&GE in the instant docket will be incorporated into the proceeding in Docket No. ER81-679-000, and the instant docket will be terminated. As the Port of Oakland and NCPA have already been permitted to intervene in Docket No. ER81-679-000,

[1] *See* Attachment A for rate schedule designations.

[2] The October 23, 1981 order suspended the Step I increase (approximately $24 million) until January 1, 1982, pursuant to the terms of a partial settlement agreement filed by PG&E in Docket No. ER81-679-000.

[3] The total $10.2 million reduction is the sum of (1) $9.4 million due to the slippage in on-line dates for the generating units, (2) $0.6 million due to PG&E's decision not to participate in the Cool Water Coal Gasification Program, and (3) $0.2 million due to a reduction in rate base by increased deferred tax reserves resulting from use of the accelerated cost recovery system for tax depreciation.

[4] December 31, 1982.

there is no need to grant intervenor status in the instant docket.

The Port of Oakland's motion to consolidate its complaint in Docket No. EL82–3–000 with PG&E's rate case will be denied because there is no commonality of issues between the proceedings as is required by section 1.20(b) of our regulations. The rate case in Docket No. ER81–679–000 concerns the justness and reasonableness of PG&E's existing wholesale rates, and has reference to several specific aspects of those rates. The complaint in Docket No. EL82–3–000 involves the entirely different questions of whether PG&E's sales to the Port of Oakland are justisdictional and, if so, what rate is appropriate for that service. The various filings in the complaint proceeding confirm that the points at issue there have not been raised in the rate case and ought not to be. In addition to the lack of common issues, there exists the likelihood that consolidation would work against the prompt resolution of the issues in the rate case.

NCPA's request for summary rejection of the updated operating expenses of the generating units will also be denied. NCPA would have us permit adjustment of the test period cost estimates where such adjustments are to its advantage, but not otherwise. To adopt such a position would be inequitable and would be counterproductive to the goal of making test period estimates as accurate as possible.

Our analysis of PG&E's revised filing indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

We have recently addressed the considerations underlying our suspension policy in *West Texas Utilities,* Docket No. ER82–23–000 (February 26, 1982). We stated there that, where our preliminary analysis indicates that the increased rates may be substantially excessive (as described in *West Texas*), we shall suspend the rates for the maximum period, unless extraordinary circumstances dictate a shorter suspension.

Such circumstances have been presented here. We note that the previously filed Step II rates were suspended for the maximum five month period by the order of October 23, 1981, and that the instant submittal represents a substantial reduction in the proposed increase. Under these circumstances, we do not believe another extended suspension is warranted. We also find that good cause has been shown to waive the requirements of § 35.17 of the regulations to permit filing of the revised rates during the Step II suspension period, and to waive the notice requirements. Accordingly, the Commission will suspend these rates to become effective, subject to refund, on March 12, 1982, consistent with our prior order suspending the Step II increase.

The Commission orders:

(A) The Port of Oakland's motion for consolidation and NCPA's request for summary disposition of PG&E's revised generating unit operating expenses are hereby denied.

(B) Waiver of the notice requirements and of the requirements of § 35.17 of the regulations are granted; the proposed rates are hereby accepted for filing, and are suspended to become effective, subject to refund, on March 12, 1982.

(C) The rate schedules and cost support statements filed by PG&E in Docket No. ER81–679–003 are hereby incorporated into the proceeding in Docket No. ER81–679–000.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of PG&E's rates.

(E) The Commission staff shall serve top sheets in the proceeding in Docket No. ER81–679–000, on or before April 9, 1982.

(F) The proceeding in Docket No. ER81–679–003 is hereby terminated.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A

Pacific Gas & Electric Co.—Rate Schedule Designations; Docket No. ER81–679–003

Dated: Undated.
Filed: January 28, 1982.

Designation	Description	Other party
(1) Supplement No. 18 to Rate Schedule FPC No. 6 (Supersedes Supplement No. 17).	Eighth Revised Sheet No. 1 and Fourth Revised Sheet No. 2.	Sierra Pacific Power Company.
(2) FPC Electric Tariff Original Volume No. 2.		
(a) Seventh Revised Sheet No. 4 (Supersedes Sixth Revised Sheet No. 4).	R–1 Rates	Tariff Customers.
(b) Third Revised Sheet No. 5A (Supersedes Second Revised Sheet No. 5A).	R–2 Rates	Do.

[FR Doc. 82–7529 Filed 3–18–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–212–000]

Panhandle Eastern Pipe Line Co. and Truckline Gas Co.; Application

March 16, 1982.

Take notice that on February 25, 1982, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, and Truckline Gas Company (Truckline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP82–212–000 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated January 7, 1982, Applicants propose to transport on behalf of Transco up to 1,300 Mcf of natural gas per day from wells in Dewey County, Oklahoma, to an existing interconnection of the facilities of Transco and Truckline in Ragley, Louisiana. It is stated that Panhandle would receive gas at a proposed point of interconnection between the facilities of Panhandle and Transco in Dewey County, Oklahoma, and Truckline would redeliver equivalent volumes at the existing interconnection of Truckline and Transco's facilities located in Beauregard Parish, Louisiana. It is asserted that facilities necessary to connect the wells would be constructed pursuant to Panhandle's budget-type authorization.

It is stated that Transco would pay Applicants a monthly charge of $7,098, subject to adjustment, of which Panhandle would pay Truckline 1.00 cent per Mcf redelivery charge for reimbursement of its out-of-pocket costs. It is noted that as additional consideration for performing the transportation service Panhandle would have the right to utilize a portion of the capacity of the line to be constructed to connect the wells. Applicants state that

an upward or downward adjustment of 17.95 cents per Mcf would be applied to any deficiency or excess in quantities taken.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1982, 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 of 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. 82-7530 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-211-000]

Panhandle Eastern Pipe Line Co. and Trunkline Gas Co.; Application

March 16, 1982.

Take notice that on February 25, 1982, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP82-211-000 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated December 23, 1981, Applicants propose to transport up to 750 Mcf of natural gas per day for Southern on a firm basis. It is stated that Panhandle would receive the gas from Southern in Custer County, Oklahoma, and that Panhandle would redeliver said volumes, less 6 percent fuel, to Trunkline as Tuscola, Illinois. It is stated that Trunkline would then deliver equivalent volumes to Southern in St. Mary Parish, Louisiana.

It is stated that Southern would construct pursuant to its budget-type authorization the necessary facilities to provide an interconnection between the Southern and Panhandle systems.

It is stated that Southern would pay Panhandle a monthly charge of $4,305 and a demand deficiency rate of 18.88 cents for the transportation service between the point of receipt and Trunkline's Tuscola, Illinois, point of redelivery. It is further stated that Panhandle would pay Trunkline 1.0 cent for out-of-pocket costs for its redelivery charge.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1982, 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 jurisdictional 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 Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-7531 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER81-779-000]

Pennsylvania Power Co.; Order Denying Rehearing and Petition for Reconsideration

Issued: March 12, 1982.

On February 19, 1982, the Boroughs of Ellwood City, Grove City, New Wilmington, Wampum, and Zelienople, Pennsylvania, (Boroughs) petitioned for rehearing and reconsideration of the Commission's January 23, 1982, order which accepted for filing and suspended for one day Pennsylvania Power Company's proposed rate increase in this docket.

Boroughs have raised no new facts or law which would cause us to reconsider our decision. However, we believe that one allegation warrants further comment.

In asserting that the Commission has ignored the allegations of price squeeze in failing to reject the Company's filing or to suspend it for the maximum five months, the Boroughs state (at p. 6):

> The Commission appears, despite concrete proof of price squeeze and other anticompetitive activities by Penn, to have no concern whatsoever for the prevention of harm or reaching discrimination at its incipiency.

To the contrary, although the Commission preliminarily found that Penn Power's rates were not excessive and that they would ordinarily have been accepted without a hearing, we nevertheless suspended the rates for one day in order to provide refund protection and ordered a hearing to permit the Boroughs to present their price squeeze case, as well as challenges to the rate level.[1]

[1] As noted by the courts, the Borough's are placed in a much more advantageous position by the one-day suspension than if we had decided not to suspend the rates at all. *Municipal Light Boards* v. *F.P.C.*, 450 F.2d 1341 (D.C. Cir. 1971) at 1351; *cert. denied*, 405 U.S. 989 (1972).

As we recently said in restating our electric rate suspension policy in *West Texas Utilities Company*:[2]

In evaluating appropriate suspension periods, the Commission has consistently stated that, barring extraordinary circumstances, it would not consider unproved price squeeze allegations as a separate factor in the deliberative process. (citations omitted).

No such extraordinary circumstances exist here. What the Boroughs characterize as "concrete proof" of a price squeeze is, in fact, their unproved allegation of price squeeze.[3] Absent a convincing showing of extraordinary circumstances,[4] we cannot make determinations on the merits of a complex question such as price squeeze on the basis of the preliminary pleadings. If we were to accept such allegations on their face, we would probably have to suspend all rate filings for the maximum period, since price squeeze would undoubtedly be alleged in every case.[5] This would nullify the Commission's suspension policy as set forth in *West Texas, supra.*

In the instant cases, we believe that we have struck a fair balance between the needs of Penn Power, which preliminarily appears to have filed a non-excessive rate, and the needs of the Boroughs, who have been assured refund protection and the opportunity for a hearing on anticompetitive as well as on rate level issues.

We further believe that the presiding law judge is in a better position to evaluate questions regarding price squeeze which are based on the evidentiary showings of the parties. We note that if the Borough's price squeeze case is as strong as they believe it to be, the presiding administrative law judge is authorized, upon a showing of good cause, to consolidate the price squeeze phase of the hearing and to issue an expedited initial decision if circumstances so require.

The Commission orders:

(A) The Borough's petitions for hearing and reconsideration are hereby denied.

(B) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-7532 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

---

[2] Docket No. ER82-23-000, issued February 26, 1982, n. 10.

[3] We note, for example, that difference in rates is not, alone, determinative of undue price discrimination, since the costs underlying the rates may justify the rate differential. *Cf., Illinois Cities of Bethany* v. *F.E.R.C.*, No. 80-1633 (D.C. Cir. October 30, 1981), slip op. *as modified on rehearing.*

[4] *Cf., Louisiana Power & Light Company*, Docket Nos. ER81-457-000 and EL81-13-000, issued July 10, 1981.

[5] We note that it is currently alleged in large number of electric rate increase proceedings.

[Project No. 6025-000]

Public Utility District No. 1 of Lewis County, Washington; Application for Preliminary Permit

March 16, 1982.

Take notice that Public Utility District No. 1 of Lewis County, Washington (Applicant) filed on February 25, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6025 to be known as the Backbone Ridge Waterpower Project located on Ohanapecosh River in Lewis County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Gary H. Kalich, Manager, Public Utility District No. 1 of Lewis County, P.O. Box 330, Chehalis, Washington 98532.

Project Description—The proposed project would consist of: (1) A 100-foot long, 15-foot high diversion dam; (2) a diversion conduit of 8,400-foot long, 7.5-foot diameter concrete-lined tunnel; (3) a 2,650-foot long, 90-inch diameter penstock; (4) a powerhouse with a total installed capacity of 10.2 MW; and (5) a 0.2-mile long, 115-kV transmission line from the powerhouse to an existing transmission line. The proposed project is entirely located on U.S. Federal lands owned by Gifford Pinchot National Forest.

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 the technical, environmental and economic studies, and also prepare an FERC license application. The Applicant estimates that the cost of undertaking these studies would be $250,000.

Competing Applications—This application was filed as a competing application to Western Power Incorporated's application for Project No. 5442 filed on October 2, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations no competing application for preliminary permit, or notices of intent to file an application for preliminary permit, or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

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 and 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 May 7, 1982.

Filing and Service of Responsive Documents—Any filings 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 Capital 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. 82-7544 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-225-000]

Resources Recovery (Dade County), Inc.; Order Denying Motion To Reject, Accepting Initial Rates, Conditionally Granting Waiver, Dismissing Petition for Declaratory Order, and Granting Intervention

Issued: March 12, 1982.

On January 12, 1982, Resources Recovery (Dade County), Inc. (RRD) tendered for filing a proposed initial rate schedule[1] applicable to sales of energy and capacity to Florida Power and Light Company (FPL) from a solid waste resource recovery facility operated by RRD in Dade County, Florida. RRD is currently the operator of a qualifying small power production facility as defined in section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and § 292.204 of the Commission's regulations.[2] RRD is also subject to the provisions of the Federal Power Act (FPA).[3]

RRD proposes that the rates under its rate schedule shall be the full avoided costs for FPL purchases from qualifying facilities as determined by the Florida Public Service Commission (FPSC) under Orders 9970, 10198 and 10331, and generally applicable orders amending those orders.[4] RRD requests waiver of the notice requirements so that the rate schedule may take effect as of the date of RRD's initial delivery to FPL.[5]

Additionally, RRD seeks waiver of the Commission's regulations regarding cost of service documentation, accounting practices, reporting requirements, and annual charges, as well as waiver as to property dispositions and consolidations, securities issuances or assumptions of liability, the holding of interlocking positions and such other matters as the Commission deems appropriate.

Notice of the filing was issued on January 21, 1982, with responses due on or before February 12, 1982. FPL filed a timely petition to intervene. FPL requests the Commission to reject RRD's rate filing on the grounds that the rate which FPL must pay RRD for the power it is required to purchase[6] must be determined in the first instance by the Commission, pursuant to rules established by the Commission, not by the unilateral filing of RRD. In the event the Commission rejects RRD's rate filing, FPL petitions the Commission to initiate proceedings pursuant to § 1.7(c) of the Commission's rules resulting in a declaratory order which determines the rate which FPL should pay RRD.

FPL argues that if the Commission does not reject RRD's filing in its entirety, the Commission should nevertheless reject Condition 7(b) of RRD's rate schedule. This condition requires FPL to maintain its service with RRD unless FPL obtains the prior approval of either RRD or this Commission to discontinue its service. In the alternative, if the Commission accepts RRD's filing, FPL requests that the Commission convene a hearing pursuant to section 206 of the FPA and allow FPL to participate as a party to that hearing.

FPL also raises objections with regard to certain of the waivers requested by RRD. Specifically, FPL objects to the granting of waivers from cost of service requirements, and the Commission's rules regarding dispositions of property and interlocking positions. FPL does not object to RRD's request for waiver of the 60 day notice requirement.[7]

On March 1, 1982, RRD filed an answer to FPL's petition. RRD objects to FPL's request that the Commission reject the rate filing on the grounds that FPL has not specified any "patent deficiency" in the filing. RRD also objects to FPL's petition for declaratory orders. RRD avers that no special rate consideration procedures are necessary inasmuch as they have already been provided under the FPA (Part 35 of the regulations), and are nowhere required by PURPA.

With regard to FPL's request that the Commission reject Condition 7(b), RRD asserts that such condition is in accord with the law and ought to be accepted as part of the rate filing. RRD further objects to FPL's request for a section 206 hearing and to FPL's request that the Commission deny in part RRD's petition for waivers.

Discussion

Initially, the Commission finds that participation in this proceeding by FPL is in the public interest. Therefore, the petition to intervene will be granted.

As a qualifying small power production facility subject to the Commission's jurisdiction under the FPA, RRD's initial rate filing presents a case of first impression. Although RRD is subject to FPA jurisdiction, the language of the Conference Report accompanying section 210 of PURPA clearly indicates that the Commission is to follow PURPA principles in establishing the rate for sale of power by RRD to FPL:

> In providing that the 30–80 megawatt class of small power production facilities may not be exempt from the Federal Power Act under subsection (e) [of PURPA section 210], the conferees intended that where such facilities are subject to the Federal Power Act jurisdiction, the Commission must set the rates for the sale of power by such facilities in accordance with the requirements of [section 210 of PURPA].[8]

Under section 210 of PURPA, the Commission must promulgate rates for the purchase of power by FPL from RRD which rates shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and which do not discriminate against qualifying cogenerators or qualifying small power producers. In establishing such rates, the Commission may not prescribe a rate for purchase which exceeds the incremental cost to the electric utility of alternative electric energy.[9]

When the Commission promulgated rules for State regulatory authorities and nonregulated electric utilities to follow in establishing purchase rates for qualifying facilities under section 210 of PURPA,[10] we noted that small power production facilities between 30 and 80 megawatts cannot be exempted from the FPA. We stated that procedures for the determination of rates for these facilities would be established in a separate proceeding. Because of the press of other responsibilities, we have not conducted such a generic proceeding.

---

[1] Designated as: *Resources Recovery (Dade County), Inc.* FERC Rate Schedule No. 1.

[2] See Order Dismissing Petition for Declaratory Order, Docket No. QF81-19-000 (issued February 19, 1982).

[3] RRD's facility is a 76 megawatt qualifying small power production facility. Section 210(e) of PURPA prohibits the Commission from exempting qualifying small power production facilities between 30 and 80 megawatts aggregate capacity from the provisions of the FPA.

[4] For the period from October 1, 1981, through March 31, 1982, the Florida Public Service Commission has mandated the following rates for purchases of energy by FPL from qualifying facilities with installed capacity of 0.1 megawatts or more: (1) On peak at 6.492¢ per kWh, (2) off peak at 5.093¢ per kWh, and (3) average at 5.443¢ per kWh. Under Florida Public Service Commission orders, these are minimum payment rates, subject to upward true-revisions to reflect the hourly actual decremental costs. These true-ups are to be determined every six months in conjunction with FPL's semi-annual fuel adjustment hearing.

[5] Service between RRD and FPL commenced on January 11, 1982.

[6] Section 210(a) of PURPA.

[7] *See* § 35.3 of the Commission's regulations.

[8] H.R. Rep. No. 95-1750, 95th Cong., 2nd Sess. 99 (1978).

[9] PURPA section 210(d) defines "incremental cost of alternative electric energy" as the cost to the electric utility of the electric energy which, but for the purchase from a qualifying facility, such utility would generate or purchase from another source.

[10] Order No. 69, Docket No. RM79-55 (issued Feb. 19, 1980), 45 FR 12214 (Feb. 25, 1980), vacated in part and affirmed in part, *See American Electric Power Service Corp., et al.* v. *FERC*, No. 80-1789 (D.C. Cir., Jan. 22, 1982) (*American Electric Power*). Pending rehearing the court has *sua sponte* stayed its mandate.

We must therefore review RRD's rate as a case of first impression under the Federal Power Act.

RRD has filed an initial rate schedule under section 205 of the FPA and Part 35 of the Commission's regulations. The rate proposed by RRD is a formula rate reflecting FPL's avoided costs as determined by the FPSC pursuant to this Commission's rules.[11] Because the rate filed by RRD is based on FPL's avoided cost, RRD filed no data relating to its own costs of service stating that: "No computation involving the costs of RRD or RRD's facility were used in arriving at the derivation of the level of the proposed rate * * *. RRD's cost of service is not relevant to the derivation of the proposed rates for FPL." Rather, RRD seeks waiver of the cost of service data requirements contained in § 35.12 of the Commission's regulations.[12]

Although RRD did not provide the cost of service data required by § 35.12 of the regulations, we find that RRD's submittal substantially complies with the Commission's filing requirements. FPL's motion to reject will, therefore, be denied.[13] As the first rate filing by a qualifying small power production facility under section 205 of the FPA, RRD reasonably relied on the Commission's rules implementing section 210 of PURPA (which, as noted, do not yet provide procedures for filings by FPA jurisdictional qualifying facilities) and the FPSC orders in presenting its initial rate filing under Part 35 of the Commission's rules. The "cost" data provided by RRD, reflecting the FPSC determination of FPL's avoided costs, was therefore an adequate presentation to comply with § 35.12 of the Commission's regulations.

The Commission finds good cause to grant a waiver of the cost of service requirements of § 35.12 of its regulations. In light of the fact that RRD and FPL are presently interconnected and, as noted above, RRD reasonably relied on the FPSC determination of rates for purchase by FPL in tendering the instant initial rate, the Commission believes that granting of this waiver is appropriate to allow RRD to be compensated for its service.

We further find that the FPSC rates which were set in accordance with the requirements of section 210 of PURPA under the Commission's rules for purchases from qualifying facilities exempted from the Federal Power Act are just and reasonable rates for sales by Resources Recovery under the Federal Power Act. We shall therefore accept the FPSC rates for filing without a hearing. Since RRD has been providing power to FPL since January 11, 1982, we find good cause to grant waiver of the notice requirements as conditioned below.

We note that FPL has sought review in the Florida courts of the FPSC's authority to set a full avoided cost rate for purchases from FPA-exempt qualifying facilities.[14] We further note that this Commission's rule requiring the States set full avoided cost rates for such qualifying facilities was vacated by the court's decision in *American Electric Power Service Corporation v. F.E.R.C.*, D.C. Circuit No. 80-1789, issued January 22, 1982, which has been stayed pending appeal. In order to provide refund protection to FPL in the event that either court should vacate or require modification of the FPSC rate, we shall condition our waiver of notice upon RRD's agreement to refund to FPL any and all overcharges, including appropriate interest, as may be determined to be required by the Commission in light of any relevant court decision or agency action on remand.

RRD has also requested waiver or blanket exemptions from a number of other Commission regulations or statutory requirements. Because of the number and complexity of the questions raised by these requests, we shall address these matters in a subsequent order.

The Commission orders:

(A) FPL's motion to reject the filing is hereby denied.

(B) RRD's petition for waiver of the sixty (60) day notice of filing requirement is hereby granted on the condition that RRD agrees to make any and all refunds, at the appropriate rate of interest, as shall be ordered by the Commission in light of any relevant court decision or agency action on remand as discussed above.

(C) RRD's initial Rate Schedule No. 1 is hereby accepted for filing to become effective January 11, 1982.

(D) FPL is hereby permitted to intervene in this proceeding subject to 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 a recognition by the Commission that it might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(E) FPL's petition for declaratory orders is hereby dismissed.

(F) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-7533 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP73-162-002]

Sea Robin Pipeline Co.; Petition To Amend

March 16, 1982.

Take notice that on February 16, 1982, Sea Robin Pipeline Company (Petitioner), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP73-162-002 a petition to amend the order issued April 18, 1977,[1] in the instant docket pursuant to section 7(c) of the Natural Gas Act so as to authorize an increase in the quantity of natural gas to be transported for Southern Natural Gas Company (Southern), 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 and Southern have entered into an amendatory agreement dated March 16, 1981, whereby the gas transportation agreement between the parties dated November 22, 1972, is further amended to provide for an increase in the transportation contract demand level applicable to Southern. Applicant states that it presently transports gas for Southern under its Rate Schedule X-6 from various blocks offshore Louisiana to the terminus of its pipeline system onshore near Erath, Vermillion Parish, Louisiana.

Petitioner submits that Southern is negotiating to purchase from Sonat Exploration Company gas to be produced at Platform B, Block 231, East Cameron area, offshore Louisiana, and desires that Petitioner transport such additional gas under the aforesaid amendatory agreement. Petitioner proposes to increase the total contract demand level applicable to Southern under its Rate Schedule X-6 from 21,400 Mcf per day to 31,400 Mcf per day.

---

[11] *See* FPSC Order No. 10331 (issued October 12, 1981).

[12] FPL argues that RRD's costs may be relevant to a Commission determination of the rate. Therefore, FPL urges the Commission to deny the request for this waiver.

[13] *See Municipal Light Boards of Reading and Wakefield, Massachusetts v. FPC*, 450 F. 2d 1341 (D.C. Cir. 1971).

[14] *Florida Power & Light Company v. Florida Service Commission, et al.*, case No. 60,671, Supreme Court of Florida.

[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.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before April 6, 1982, 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 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. 82-7534 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-373-000]

Southern Indiana Gas and Electric Co.; Filing

March 16, 1982.

The filing Company submits the following:

Take notice that Southern Indiana Gas and Electric Company on March 9, 1982, tendered for filing pursuant to the Interconnection Agreement between Southern Indiana Gas and Electric Company and Louisville Gas and Electric Company, a Sixth Supplemental Agreement to become effective upon the date it is accepted for filing by the Federal Energy Regulatory Commission.

Said Supplemental Agreement increases the demand charge for Short Term Power from $0.85 per kilowatt per week to $1.05 per kilowatt per week and from $0.14 per kilowatt of billing demand per day for each day of Short Term Power reservation (or portion thereof) of less than a full calendar week to $0.175.

Copies of the filing were served upon Louisville Gas and Electric Company and Southern Indiana Gas and Electric Company.

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 should be filed on or before April 1, 1982. 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 the filing are available for public inspection at the Federal Energy Regulatory Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-7545 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM79-34 and ST82-115

Transportation Certificates for Natural Gas Displacement of Fuel Oil and Coronado Transmission Co.; Self-Implementing Transactions

March 16, 1982.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

An "F" indicates a fuel oil displacement transaction implemented pursuant to § 284.202 of the Commission's regulations. Any interested person may file a complaint concerning such transaction pursuant to § 284.205(d) of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G (HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's regulations.

Kenneth F. Plumb,

Secretary.

Docket No. and transporter/seller	Recipient	Date filed	Part 284 subpart	Expiration date[1]	Transportation rate (c/MMBtu)
ST82-115 Corovado Transmission Co	United Gas Pipe Line Co	1/06/82	C		
ST82-116 Tennessee Gas Pipeline Co	Trunkline Gas Co	1/06/82	G		
ST82-117 Columbia Gas Transmission Corp	Consolidated Gas Supply Corp	1/07/82	G		
ST82-118 Tennessee Gas Pipeline Co	Louisiana State Gas Corp	1/08/82	B		
ST82-119 Natural Gas Pipeline Co. of America	Tennessee Gas Pipeline Co	1/07/82	G		
ST82-120 Northern Natural Gas Co	Southern Natural Gas Co	1/07/82	G		
ST82-121 Trunkline Gas Co	Columbia Gas Transmission Corp	1/11/82	G		
ST82-122 Valero Interstate Transmission Co	Esperanza Transmission Co	12/28/81	B		
ST82-123 Valero Interstate Transmission Co	Valero Transmission Co	1/08/82	B		
ST82-124 Cody Gas Co	Colorado Interstate Gas Co	1/11/82	C		
ST82-125 United Gas Pipe Line Co	Tennessee Gas Pipeline Co	1/12/82	G		
ST82-126 Mountain Fuel Resources, Inc	Western Slope Gas Co	1/13/82	B		
ST82-127 Liberty Natural Gas Co	Transcontinental Gas Pipe Line Corp	1/12/82	C		
ST82-128 Northern Natural Gas Co	Iowa Public Service Co	1/13/82	F		
ST82-129 Transcontinental Gas Pipe Line Corp	Columbia Gulf Transmission Co	1/13/82	G		
ST82-130 Consolidated Gas Resources, Inc	United Gas Pipe Line Co	1/13/82	C	6/12/82	18.57
ST82-131 El Paso Natural Gas Co	Natural Gas Pipeline Co. of America	1/15/82	G		
ST82-132 Southern Natural Gas Co	United Gas Pipe Line Co	1/20/82	G		
ST82-133 Northern Natural Gas Co	Northern States Power Co. of Wisc	1/15/82	B		

Docket No. and transporter/seller	Recipient	Date filed	Part 284 subpart	Expiration date[1]	Transportation rate (c/MMBtu)
ST82-134 Northern Natural Gas Co	Peoples Natural Gas Co	1/15/82	F		
ST82-135 Natural Gas Pipeline Co. of America	Transcontinental Gas Pipe Line Corp	1/15/82	G		
ST82-136 Natural Gas Pipeline Co. of America	El Paso Natural Gas Co	1/15/82	G		
ST82-137 Transcontinental Gas Pipe Line Corp	Zapata Gathering Co	1/15/82	G		
ST82-139 Tennessee Gas Pipeline Co	Texas Eastern Transmission Corp	1/18/82	G		
ST82-140 Midwestern Gas Transmission Co	Texas Eastern Transmission Corp	1/18/82	G		
ST82-141 Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	1/19/82	B		
ST82-142 Northern Gas Co	United Gas Pipe Line Co	1/20/82	D		
ST82-143 Southern Natural Gas Co	Northern Natural Gas Co	1/20/82	G		
ST82-144 Mississippi River Transmission Corp	Louisiana Intrastate Gas Corp	1/21/82	B		
ST82-145 Texas Eastern Transmission Corp	United Gas Pipe Line Co	1/21/82	G		
ST82-146 Panhandle Eastern Pipe Line Co	Trans-Louisiana Gas Co	1/21/82	B		
ST82-147 Louisiana State Gas Corp	United Gas Pipe Line Co	1/21/82	C	6/20/82	26.10
ST82-148 Transcontinental Gas Pipe Line Corp	Delhi Gas Pipeline Corp	1/22/82	B		
ST82-149 United Gas Pipe Line Co	Entex, Inc	1/25/82	B		
ST82-150 Transcontinental Gas Pipe Line Corp	Michigan Wisconsin Pipe Line Co	1/25/82	G		
ST82-151 Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	1/26/82	B		
ST82-152 Michigan Wisconsin Pipe Line Co	Michigan Gas Utilities Co	1/27/82	B		
ST82-153 Valero Transmission Co	Valero Interstate Transmission Co	1/11/82	C		
ST82-154 El Paso Natural Gas Co	Southwest Gas Corp	1/29/82	G		

[1] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(b)(2) of the Commission's regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 82-7550 Filed 3-18-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP79-389-003]

Transcontinental Gas Pipe Line Corp.; Petition To Amend

March 16, 1982.

Take notice that on February 16, 1982, Transcontinental Gas Pipe Line Corporation (Petitioner), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP79-389-003 a petition to amend the order issued April 16, 1980, in the instant docket pursuant to section 7(c) of the Natural Gas Act so as to authorize an extended term for Petitioner's transportation agreement with Public Service Electric and Gas Company (PSE&G), the establishment of Vermilion Block 310 as a new receipt point for firm transportation, the establishment of a monthly demand charge with an overrun and underrun adjustment to such demand charge, and an increase in the maximum daily quantities of natural gas transported by Petitioner, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that Petitioner and PSE&G are parties to a currently effective transportation agreement dated June 22, 1979. Petitioner states that such agreement provides for interruptible transportation up to a maximum daily quantity of 50,000 dekatherms (dt) equivalent from fields where Energy Development Corporation (EDC) owns gas which EDC sells to PSE&G and with utilization of points of receipt as may be mutually agreed upon from time to time.

Pursuant to an amendatory agreement dated December 5, 1980, Petitioner proposes herein to extend the term of the initial transportation agreement from one year to ten years. Petitioner further proposes to establish Vermilion Block 310, offshore Louisiana, as a new point of receipt for firm transportation. Petitioner proposes to establish a monthly demand charge of $5.41 per dt equivalent for the firm transportation from Vermilion Block 310 to South Marsh Island Block 66 and an overrun and underrun adjustment to such demand charge.

In accordance with an amendatory agreement dated November 19, 1981, Petitioner proposes herein to increase the maximum daily quantities from 50,000 dt equivalent per day to the thermal equivalent of 75,000 Mcf per day or such greater quantity as mutually agreed to from time to time during periods of field balancing.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before April 6, 1982, 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. 82-7546 Filed 3-18-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP82-220-000]

United Gas Pipe Line Co.; Application

March 16, 1982.

Take notice that on March 1, 1982, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP82-220-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of an existing farm tap located in Caddo 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 activate an existing tap on its Latex-Sarepta 16-inch line at MP. 191, Index 211, Caddo Parish, Louisiana. Applicant asserts that Arkansas Louisiana Gas Company has requested by letter dated August 27, 1981, the activation of the aforesaid tap in order to serve the residence of Ms. Delice Smith. Applicant indicates that the proposed activation would not increase the current contractual maximum daily quantity. Applicant estimates the cost of the proposed activation to be $250.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 6, 1982, 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 of 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. 82-7535 Filed 3-18-82; 8:45 am]

BILLING CODE 6717-01-M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: March 16, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
OHIO DEPARTMENT OF NATURAL RESOURCES									
-A & R COMPANY			RECEIVED: 02/22/82 JA: OH						
8219595		3416725075	107-DV			BERNICE WOOLEY #1 OH-30-1502	NEWPORT	10.0	COLUMBIA GAS TRAN
-ALLEN M ANDERSON			RECEIVED: 02/22/82 JA: OH						
8219598		3416726454	107-DV			CARLETON ANDERSON #2	INDEPENDENTS	10.0	NOT YET DETERMINE
8219597		3416725623	107-DV			VERNON BEAVER #1	GRANDVIEW	5.0	
-ALTHEIRS OIL INC			RECEIVED: 02/22/82 JA: OH						
8219596		3412725085	103			ST ALS #3	PIKE	9.0	COLUMBIA GAS TRAN
-AMERICAN EXPLORATION CO			RECEIVED: 02/22/82 JA: OH						
8219599		3411923178	108			R MCCORTY #1		10.0	NATIONAL OIL & GA
-AMERICAN PETROEL INC			RECEIVED: 02/22/82 JA: OH						
8219601		3416725908	107-DV			ELMER HERSHER #2	INDEPENDENCE	15.0	
8219603		3416726563	107-DV			GRIMES #1	INDEPENDENCE	15.0	
8219600		3416725911	107-DV			JOHN F WALTER #1	INDEPENDENCE	15.0	
8219602		3416726275	107-DV			USA/LINDAMOOD #2	LIBERTY	4.8	
-AMERICAN WELL MANAGEMENT COMPANY			RECEIVED: 02/22/82 JA: OH						
8219604		3408924211	103			LEONARD FEIGHTNER #1	HICKMAN	18.0	
8219605		3412725174	103			NEAL GAREY #1	FULTON HAM	18.0	
-APPALACHIAN EXPLORATION INC			RECEIVED: 02/22/82 JA: OH						
8219616		3410322532	103	107-TF		D CRISLIP #1	WADSWORTH	4.0	AMERICAN ENERGY S
8219615		3410322520	103	107-TF		D CRISLIP #2	WADSWORTH	4.0	AMERICAN ENERGY S
8219617		3415320793	103	107-TF		FABBRO #2	NORTON	91.3	AMERICAN ENERGY S
8219606		3410322254	103	107-TF		H FIX #1	WADSWORTH	5.8	AMERICAN ENERGY S
8219607		3410322266	103	107-TF		H FIX #2	WADSWORTH	8.0	AMERICAN ENERGY S
8219608		3410322379	103	107-TF		H FIX UNIT #6	WADSWORTH	5.8	AMERICAN ENERGY S
8219614		3410322510	103	107-TF		J LINCOLN #1	MEDINA	14.6	COLUMBIA GAS TRAN
8219618		3415320897	103	107-TF		L GABLE #2	COPLEY	8.0	AMERICAN ENERGY S
8219609		3410322397	103	107-TF		L SHANAFELT #3	SHARON	7.3	AMERICAN ENERGY S
8219611		3410322410	103	107-TF		R HARTMAN #1	SHARON	5.8	AMERICAN ENERGY S
8219612		3410322417	103	107-TF		S FARKAS #4	SHARON	4.0	AMERICAN ENERGY S
8219613		3410325090	103	107-TF		T HOGREFE #1	MEDINA	14.6	COLUMBIA GAS TRAN
8219610		3410322409	103	107-TF		W SEXAUR #2	SHARON	8.0	AMERICAN ENERGY S
-ARAPAHO VENTURES OF NEW YORK INC			RECEIVED: 02/22/82 JA: OH						
8219620		3416726095	103			UNION CARBIDE #1	AURELIUS	0.0	
8219619		3416726096	103			UNION CARBIDE #2	AURELIUS	0.0	
-ATLAS ENERGY GROUP INC			RECEIVED: 02/22/82 JA: OH						
8219622		3415521857	103	107-TF		CARSONE HETRICK #1	BROOKFIELD	21.0	COLUMBIA GAS TRAN
8219621		3415521845	102-2	107-TF		HUNKUS #1	VERNON	29.0	COLUMBIA GAS TRAN
-ATWOOD RESOURCES INC			RECEIVED: 02/22/82 JA: OH						
8219623		3407523594	103	107-TF		EARL SHENERMAN #1	BECKS MILLS	10.0	
-BADGER OIL & GAS CO INC			RECEIVED: 02/22/82 JA: OH						
8219624		3411122362	107-DV			BATES #1	WAYNE	0.0	COLUMBIA GAS TRAN

VOLUME 610 PAGE 002

JD NO	DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8219625		3416726709		107-DV		WINLAND #1	LUDLOW	0.0	COLUMBIA GAS TRAN
-BANDS COMPANY INC				RECEIVED: 02/22/82		JA: OH			
8219638		3411122620		107-DV		BLOCK 3	MALAGA	3.0	COLUMBIA GAS TRAN
8219630		3411122246		107-DV		DRAKE #1	MALAGA	1.8	COLUMBIA GAS TRAN
8219631		3411122247		107-DV		DRAKE #2	MALAGA	2.3	COLUMBIA GAS TRAN
8219632		3411122254		107-DV		ELLIS MERCER #1	MALAGA	2.5	COLUMBIA GAS TRAN
8219629		3411122244		107-DV		F CHRISTMAN #3	MALAGA	2.0	COLUMBIA GAS TRAN
8219628		3411121982		107-DV		LUTHER C HOTHEM #1	MALAGA	1.5	COLUMBIA GAS TRAN
8219626		3401320321		107-DV		LUTHER HOTHEM #3	SOMMERSET	3.0	COLUMBIA GAS TRAN
8219633		3411122255		107-DV		MERCER #2	MALAGA	2.0	COLUMBIA GAS TRAN
8219635		3411122294		107-DV		PAULUS-RUSH UNIT #1	MALAGA	2.0	COLUMBIA GAS TRAN
8219636		3411122553		107-DV		REISHMAN #2	MALAGA	2.0	COLUMBIA GAS TRAN
8219637		3411122554		107-DV		REISHMAN #3	MALAGA	2.0	COLUMBIA GAS TRAN
8219634		3411122257		107-DV		S DELONG #1	SENECA	2.0	COLUMBIA GAS TRAN
8219627		3411121980		107-DV		WILBUR COOPER #1	SUMMIT	1.8	RIVER GAS CO
-BELDEN & BLAKE & CO #79				RECEIVED: 02/22/82		JA: OH			
8219643		3415123659		103		C & L LINERODE-4-341161	MARLBORO	36.5	
8219640		3401921490		103		W & R BURNS 1-341151	BROWN	36.5	
-BELDEN & BLAKE & CO. 78				RECEIVED: 02/22/82		JA: OH			
8219639		3401921463		103	107-TF	D PICKERING 1-341109	BROWN	36.5	
8219641		3415123604		103	107-TF	GRABER 1-341122	MARLBORO	36.5	
8219642A		3415123608		103		N SCHUMACHER 1-341121	MARLBORO	36.5	
8219642B		3415123608	D	107-TF		N SCHUMACHER 1-341121	MARLBORO	36.5	
-BEREA OIL AND GAS CORPORATION				RECEIVED: 02/22/82		JA: OH			
8219647		3415521461		107-TF		BAXTER #1	MECCA	1.4	COLUMBIA GAS TRAN
8219644		3405923110		103	107-TF	BRADLEY #1	WESTLAND	0.0	COLUMBIA GAS TRAN
8219646		3415520800		107-TF		GOVERNOR #1	MECCA	1.8	COLUMBIA GAS TRAN
8219645		3411925992		103	107-TF	L FRAZIER #1	SALT CREEK	0.0	COLUMBIA GAS TRAN
8219648		3415521468		107-TF		TSALONIS UNIT #1	MECCA	2.0	COLUMBIA GAS TRAN
-BLAUSER WELL SERVICE INC				RECEIVED: 02/22/82		JA: OH			
8219652		3410522167		103	107-DV	EDGAR BREWER #1-86	LEBANON	8.6	COLUMBIA GAS TRAN
8219653		3410522237		107-DV		ROY E FICK #1	CHESTER	9.0	COLUMBIA GAS TRAN
8219654		3410522238		107-DV		ROY E FICK #2	CHESTER	8.9	COLUMBIA GAS TRAN
-BROWN PETROLEUM CORP				RECEIVED: 02/22/82		JA: OH			
8219656		3411925890		103	107-TF	KILPATRICK #3	LICKING	50.0	COLUMBIA GAS TRAN
8219655		3403124490		103	107-TF	ROSS #5B	BEDFORD	500.0	COLUMBIA GAS TRAN
-BUCKEYE OIL PRODUCING CO				RECEIVED: 02/22/82		JA: OH			
8219658		3411122654		103	107-DV	CLARENCE STEPHEN #1	MALAGA	12.0	COLUMBIA GAS TRAN
8219659		3411122684		103	107-DV	GEORGE BLOCK #1	MALAGA	12.0	COLUMBIA GAS TRAN
-BUCKHORN OIL COMPANY INC				RECEIVED: 02/22/82		JA: OH			
8219657		3407523535		103		FLOYD MCFADDEN #22-1	SPRING MOUNTAIN	10.0	COLUMBIA GAS TRAN
8219661		3407523536		103		FLOYD MCFADDEN #22-2	SPRING MOUNTAIN	12.0	COLUMBIA GAS TRAN
8219660		3407523520		103		LEONARD BROWN #3	RICHLAND	14.0	COLUMBIA GAS TRAN
8219662		3407523591		103		LEWIS MCFADDEN #25-1	SPRING MOUNTAIN	12.0	COLUMBIA GAS TRAN
8219663		3407523592		103		LEWIS MCFADDEN #25-2	SPRING MOUNTAIN	10.0	COLUMBIA GAS TRAN
-CA D* ORA INC				RECEIVED: 02/22/82		JA: OH			
8219664		3416726648		107-DV		HERMAN ARNOLD #1	WATERTOWN	12.0	
-CARLTON OIL CORP				RECEIVED: 02/22/82		JA: OH			
8219666		3411122626		107-DV		ANTILL #1	BENTON	50.0	
8219667		3411122627		107-DV		ROUSE #1	RINARD MILLS	50.0	
8219668		3416726343		103	107-DV	SEEVERS #1	BELMONT	50.0	
-CLINTON OIL CO				RECEIVED: 02/22/82		JA: OH			
8219670		3413322760		103	107-TF	H GRIFFITH #1-685	TWINSBURG	70.0	

VOLUME 610 PAGE 003

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-COASTAL PETROLEUM CORP				RECEIVED: 02/22/82 JA: OH					
8219671		3410322725		107-TF		MILICH #1	SHARON	9.0	COLUMBIA GAS TRAN
8219672		3410322726		107-TF		MILICH #2	SHARON	9.0	COLUMBIA GAS TRAN
8219673		3416923112		107-TF		SLABAUGH #1	RITTMAN	11.0	COLUMBIA GAS TRAN
-COLLINS-MCGREGOR OPERATING COMPANY				RECEIVED: 02/22/82 JA: OH					
8219674		3416726728		107-DV		SEMMLER #1	INDEPENDENCE	10.0	COLUMBIA GAS TRAN
-CONSOLIDATED RESOURCES OF AMERICA				RECEIVED: 02/22/82 JA: OH					
8219675		3405922558		107-RT		BLANEY LUMBER COMPANY #1	SENECAVILLE	27.0	COLUMBIA GAS TRAN
8219676		3405922559		107-RT		K D HALL-BRICE KELLER #1	SENECAVILLE	55.0	COLUMBIA GAS TRAN
8219677		3405922560		107-RT		SMITH-BANKER UNIT #1	KNOX	7.3	COLUMBIA GAS TRAN
-DERBY OIL & GAS CORP				RECEIVED: 02/22/82 JA: OH					
8219679		3405922926		103	107-TF	ALVIN FRITTER #1	WESTLAND	12.0	EAST OHIO GAS CO
8219682		3407523479		103	107-TF	ANDREW D MILLER #3	SALT CREEK	12.0	COLUMBIA GAS TRAN
8219680		3405922965		103	107-TF	BILLY G SMITH #1	SPENCER	12.0	COLUMBIA GAS TRAN
8219681		3407523406		103	107-TF	MARY ANN MILLER #1	SALT CREEK	12.0	COLUMBIA GAS TRAN
8219683		3407523484		103	107-TF	SAMUEL N MILLER #2	SALT CREEK	12.0	COLUMBIA GAS TRAN
-DERR #1 LTD ATTN FRANK BARTON				RECEIVED: 02/22/82 JA: OH					
8219678		3400523460		103		DERR #2	LOUDONVILLE	0.0	COLUMBIA GAS TRAN
-DIXIE ENERGY CO				RECEIVED: 02/22/82 JA: OH					
8219684		3400721860		107-TF		MENDOLIA #1	ORWELL	0.0	P O I ENERGY INC
8219685		3400721862		107-TF		MENDOLIA #2	ORWELL	0.0	P O I ENERGY INC
8219686		3400721869		107-TF		MENDOLIA #3	ORWELL	0.0	P O I ENERGY INC
-DOME DRILLING CO				RECEIVED: 02/22/82 JA: OH					
8219687		3407523451		103		MEISTER #6	KILLBUCK	0.0	COLUMBIA GAS TRAN
-DORAN & ASSOCIATES INC				RECEIVED: 02/22/82 JA: OH					
8219688A		3412724933		103		REX GARRABRANT #1	JACKSON	12.0	COLUMBIA GAS TRAN
8219688B		3412724933	D	107-TF		REX GARRABRANT #1	JACKSON	12.0	COLUMBIA GAS TRAN
-DORFMAN PRODUCTION CO				RECEIVED: 02/22/82 JA: OH					
8219691		3409921399		103	107-TF	BEHRINGER "A" #1	DAMASCUS	0.0	COLUMBIA GAS TRAN
8219690		3409921338		103	107-TF	HAWKINS "A" #1	DAMASCUS	12.0	COLUMBIA GAS TRAN
8219693		3409921406		103	107-TF	HINTON #2A	DAMASCUS	12.0	COLUMBIA GAS TRAN
8219692		3409921400		103	107-TF	SPENCER #1	DAMASCUS	0.0	COLUMBIA GAS TRAN
-EAST OHIO ENERGY CO				RECEIVED: 02/22/82 JA: OH					
8219694		3413322523		103	107-TF	MILLER #1	WINDHAM	30.0	EAST OHIO GAS CO
-EDCO DRILLING & PRODUCING INC				RECEIVED: 02/22/82 JA: OH					
8219695		3407523060		103		WB-1A DICKENS	BRINKHAVEN	18.0	
8219696		3407523601		103		WB-3A MARMET	GLENMONT	18.0	
-ELKHEAD GAS & OIL COMPANY				RECEIVED: 02/22/82 JA: OH					
8219697		3408323007		103		TAGGART #1	DANVILLE	0.0	COLUMBIA GAS TRAN
-ENERGY DEVELOPMENT CORP				RECEIVED: 02/22/82 JA: OH					
8219699		3400721828		103	107-TF	BESSIE ROBINSON #1	NEW LYME	15.0	AMERICAN ENERGY S
8219698		3400721797		103	107-TF	RATLIFF UNIT #1	ORWELL	14.0	PARK OHIO INDUSTR
8219700		3416922806		103	107-TF	SCHAFFTER #1	PLAIN	19.0	COLUMBIA GAS TRAN
-ENERGY UNLIMITED INC				RECEIVED: 02/22/82 JA: OH					
8219701		3400922413		107-DV		CARTER #2	LODI TOWNSHIP	0.0	COLUMBIA GAS TRAN
8219702		3400922457		107-DV		ELSEA #1	LODI TOWNSHIP	0.0	COLUMBIA GAS TRAN
8219703		3400922510		107-DV		KING BROTHERS #3	LODI TOWNSHIP	0.0	COLUMBIA GAS TRAN
-ENTERPRISE ENERGY CORP				RECEIVED: 02/22/82 JA: OH					
8219706		3415123668		103		DUTTON #2	BETHLEHEM	27.3	EAST OHIO GAS CO
8219707		3415123670		103		DUTTON #5	BETHLEHEM	27.3	
8219705		3405922845		103	107-TF	INDIAN LAKES & WOODLANDS #1	JACKSON	36.5	COLUMBIA GAS TRAN
8219704		3405922483		103	107-TF	LARRICK #1	CENTER	36.5	COLUMBIA GAS TRAN
-FRED R INGRAM DRILLING CONTR INC				RECEIVED: 02/22/82 JA: OH					

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8219736		3416920905		107-TF		JOHN E WISE #1	CANAAN	6.0	COLUMBIA GAS TRAN
-FREDERICK PETROLEUM CORP				RECEIVED:	02/22/82	JA: OH			
8219716		3416726815		107-DV		BAKER-NOON WELL #1	MACKSBURG WEST	250.0	
8219715		3412122727		103		BIG "C" RANCH #3	DEXTER CITY EAST	250.0	
8219717		3416726913		107-DV		CLINE #1 GRANDVIEW TWP	NEW MATAMORSE	100.0	
8219711		3411122616		103		CROSSON #1	FLY NORTH	50.0	
8219710		3411122623		103		MARSHALL #1 BETHEL TWP	MARR WEST	0.0	
8219714		3412122673		107-DV		ORANGE COAL CO #2 ENOCH TWP	MACKSBURG - NORTH	250.0	
8219708		3411122361		107-DV		REICH #3 SUMMIT TWP	LEWISVILLE NORTHWEST	50.0	
8219712		3411925963		103	107-TF	SAVAGE #1	NEW CONCORD SOUTH	250.0	
8219713		3411925964		103	107-TF	TEAGUE #2	NEW CONCORD SOUTH	300.0	
8219709		3411122365		107-DV		VERNON REICH #2	LEWISVILLE - NORTH	50.0	
-GASEARCH INC				RECEIVED:	02/22/82	JA: OH			
8219722		3400922350		103	107-TF	BAIRD BROS #4	YORK	30.0	
-GNC ENERGY CORP				RECEIVED:	02/22/82	JA: OH			
8219720		3411522597		103		CHARLES & THEA NICHOLS #1	RINGGOLD	15.0	TENNESSEE GAS PIP
8219721		3411522598		103		CHARLES & THEA NICHOLS #2	RINGGOLD	15.0	TENNESSEE GAS PIP
8219718		3411522378		103		ROBERT & ROSALIE BROCK #1	MALTA	15.0	TENNESSEE GAS PIP
8219719		3411522382		103		ROBERT & ROSALIE BROCK #2	MALTA	15.0	TENNESSEE GAS PIP
-GREEN GAS COMPANY				RECEIVED:	02/22/82	JA: OH			
8219724		3407523449		103		MEISTER #4	KILLBUCK	0.0	COLUMBIA GAS TRAN
8219725		3407523450		103		MEISTER #5	SPRING MOUNTAIN	0.0	COLUMBIA GAS TRAN
-HADCO INC				RECEIVED:	02/22/82	JA: OH			
8219726		3410322791		103	107-TF	SHADE #3	GRANGER	20.0	
-HARRY I GILBERT				RECEIVED:	02/22/82	JA: OH			
8219723		3415320421	D	108		HARRY I & ALFREDA M GILBERT #4		16.9	EAST OHIO GAS CO
-HERALD OIL & GAS CO				RECEIVED:	02/22/82	JA: OH			
8219727		3410521896		103		JAMES DREHEL #9	RUTLAND	0.0	COLUMBIA GAS TRAN
8219728		3410522145		103		MANNING WEBSTER #2	SALISBURY	0.0	COLUMBIA GAS TRAN
-HILLTOP DEVELOPMENT CORP				RECEIVED:	02/22/82	JA: OH			
8219730		3411925944		103		DANIEL MINNICH #1	JACKSON	2.0	NATIONAL GAS & OI
8219729		3411925939		103		WILLIAM WAGNER #2	CASS	1.0	NATIONAL GAS & OI
-HOFFMAN & KUHN INC				RECEIVED:	02/22/82	JA: OH			
8219731		3412725350		103	107-TF	J HOWDYSHELL #3	FULTONHAM	12.0	NATIONAL GAS & OI
-HOPCO RESOURCES INC				RECEIVED:	02/22/82	JA: OH			
8219734A		3412725206		103		GORDON #1	HOPEWELL	12.0	COLUMBIA GAS TRAN
8219734B		3412725206	D	107-TF		GORDON #1	HOPEWELL	12.0	COLUMBIA GAS TRAN
8219733		3411925925		103	107-TF	MOORE #2	DRESDEN	12.0	COLUMBIA GAS TRAN
8219732		3411925239		103	107-TF	PIEPER #2	MUSKINGHAM	12.0	COLUMBIA GAS TRAN
-HORTIN & HUFFMAN				RECEIVED:	02/22/82	JA: OH			
8219735		3403521136		103	107-TF	RADOS #1	N OLMSTEAD	1.5	COLUMBIA GAS OF O
-INLAND DRILLING CO INC				RECEIVED:	02/22/82	JA: OH			
8219737		3400921920		107-RT		BLACK DIAMOND #1	BERN	0.5	
8219740		3413321592		107-RT		GIVENS #1	STREETSBORO	0.2	
8219739		3413321586		107-RT		HEINER #1	STREETSBORO	0.2	
8219738		3413321320		107-RT		LUKENS #1	FRANKLIN	0.4	
8219745		3413321671		107-RT		POCHEDLY #3	HIRAM	0.3	
8219743		3413321669		107-RT		POCHEDLY #6	HIRAM	1.2	
8219744		3413321670		107-RT		POCHEDLY #7	HIRAM	1.2	
8219742		3413321668		107-RT		POCHEDLY #8	FREEDOM	0.4	
8219746		3413321793		107-RT		RESNICK #2	RAVENNA	0.3	
8219747		3413321791		107-RT		RESNICK #3	RAVENNA	0.3	
8219741		3413321655		107-RT		ZAHIRSKY #1	ROOTSTOWN	1.5	

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-IRVIN PRODUCING COMPANY				RECEIVED: 02/22/82 JA: OH					
8219748		3411925795		103	107-TF	PAUL SLACK #1	NEWTON	10.0	COLUMBIA GAS TRAN
-J D DRILLING CO				RECEIVED: 02/22/82 JA: OH					
8219749		3410521911		107-DV		CHARLES BURRI #1	LETART	10.0	COLUMBIA GAS TRAN
8219757		3410522258		107-DV		CHARLES GIBBS #1	RAVENSWOOD	10.0	COLUMBIA GAS TRAN
8219756		3410522221		107-DV		DON ROSE #1	LEBANON	10.0	COLUMBIA GAS TRAN
8219753		3410522106		107-DV		EARL & WARREN AUMILLER #1	RAVENSWOOD	9.0	COLUMBIA GAS TRAN
8219751		3410522077		107-DV		HARRY FLEMING #1	LEBANON	10.0	COLUMBIA GAS TRAN
8219758		3410522269		107-DV		JAMES SUTTLE #1	PORTLAND	8.0	COLUMBIA GAS TRAN
8219752		3410522078		107-DV		JOSEPH & EVELYN FOREMAN #1	LEBANON	7.0	COLUMBIA GAS TRAN
8219750		3410521912		107-DV		PAULINE WOLFE #1	LETART	9.0	COLUMBIA GAS TRAN
8219754		3410522219		107-DV		RAYMOND GUINTHER #1	LEBANON	10.0	COLUMBIA GAS TRAN
8219755		3410522220		107-DV		RAYMOND PROFFITT #1	LEBANON	10.0	COLUMBIA GAS TRAN
-JAMES R BERNHARDT				RECEIVED: 02/22/82 JA: OH					
8219649		3410322322		103	107-TF	SCAPELL #1	GRANGER	7.0	COLUMBIA GAS TRAN
-JANCO WELL OPERATIONS-LTD				RECEIVED: 02/22/82 JA: OH					
8219759		3408520031		103	107-TF	GREAT EASTERN INDUSTRIAL PARKWAY #1	PAINES	750.0	EAST OHIO GAS CO
-JONSU OIL CORP				RECEIVED: 02/22/82 JA: OH					
8219760		3403124558		103		REISS #1	SPRING MOUNTAIN	15.0	
8219761		3403124559		103		V RITTER #1	SPRING MOUNTAIN	20.0	
-JUNE CORP				RECEIVED: 02/22/82 JA: OH					
8219762		3411522542		103		STEIMER #1	DEERFIELD	6.0	NATIONAL GAS & OI
-K S T OIL & GAS CO INC				RECEIVED: 02/22/82 JA: OH					
8219763		3415320976		103	107-TF	ADKINS UNIT #1	NORTHAMPTON	0.0	
8219764		3415321012		103	107-TF	BALL UNIT #2	NORTHAMPTON	0.0	
8219765		3415321013		103	107-TF	BELL-RICE #1	NORTHAMPTON	0.0	
-KEN-TRAK III				RECEIVED: 02/22/82 JA: OH					
8219766		3410522233		103		CARROLL SMITH #1	2ND BEREA (LOWER MISS	0.0	
-KRAMER EXPLORATION CO				RECEIVED: 02/22/82 JA: OH					
8219767		3410522278		103		BARTON #3	POMEROY	12.0	COLUMBIA GAS TRAN
-L & B OIL CO INC				RECEIVED: 02/22/82 JA: OH					
8219768		3400922485		103		MARY CONNER #1	AMESVILLE	9.0	COLUMBIA GAS TRAN
8219769		3400922486		103		MIKE SMITH #1	AMESVILLE	18.0	COLUMBIA GAS TRAN
-L & M OPERATING INC				RECEIVED: 02/22/82 JA: OH					
8219770		3407523492		103		HERALD MOORE #4	SPRING MOUNTAIN	10.0	COLUMBIA GAS TRAN
8219771		3416724933		107-DV		PAUL LANE #4	LAWRENCE	12.8	COLUMBIA GAS TRAN
-L & M PETROLEUM INC				RECEIVED: 02/22/82 JA: OH					
8219773		3412725312		107-TF		FORAKER/KEINER/FLOWERS #1	CLAYTON	10.0	COLUMBIA GAS TRAN
8219772		3412725261		107-TF		LEWIS/PEABODY/FLOWERS #3	CLAYTON	10.0	COLUMBIA GAS TRAN
-LAKE REGION OIL INC				RECEIVED: 02/22/82 JA: OH					
8219774		3415123642		103		L & S CARLSON #1	ROBERTSVILLE	30.0	EAST OHIO GAS CO
-LIBERTY OIL & GAS CORP				RECEIVED: 02/22/82 JA: OH					
8219775		3400922175		107-DV		MILLS "2B"	CARTHAGE	18.0	COLUMBIA GAS TRAN
-LOMAK PETROLEUM INC				RECEIVED: 02/22/82 JA: OH					
8219776		3413322681		107-TF		SEMAN #3	SHALERSVILLE	24.0	PERKINS DRILLING
8219777		3413322682		107-TF		SEMAN #4	SHALERSVILLE	24.0	PERKINS DRILLING
-M B OPERATING CO INC				RECEIVED: 02/22/82 JA: OH					
8219789		3415123474		103	107-TF	RAMSEY #2	NIMISHILLEN	7.3	REPUBLIC STEEL CO
8219788		3415123467		103	107-TF	STROUBLE UNIT #1	MARLBORO	12.8	REPUBLIC STEEL CO
-MAJ				RECEIVED: 02/22/82 JA: OH					
8219785		3414520265		107-DV		AUTIE & ELIZA CONLEY #1	MADISON	30.0	
8219786		3414520266		107-DV		CLETIS DUMMITT #1	MADISON	20.0	
8219787		3414520272		107-DV		CLYDE HINZE #1	STOCKDALE	2.0	

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8219784		3414520263		107-DV		GENEVA ALLEY #1	JEFFERSON	3.0	
8219783		3413120063		107-DV		MARTIN PICKLESIMER #1	BEAVER	2.0	
8219778		3407920134		107-DV		MAURICE & NELLIE DAVIS #1	BEAVER	2.0	
8219779		3407920135		107-DV		MERRITT WEBER #1	STOCKDALE	1.0	
8219782		3413120058		107-DV		RICHARD SOUTHWORTH #2	SCIOTO	25.0	
8219781		3413120057		107-DV		WILLIAM & ETHEL NANCE #1	SCIOTO	2.0	
8219780		3413120056		107-DV		WOODROW & CARRIE BAPST #1	BEAVER	2.0	
-PAGE P BLAKEMORE				RECEIVED:	02/22/82	JA: OH			
8219651		3416725045		103		HAROLD EARLY #1	GRANDVIEW	1.7	
8219650		3416724742		107-DV		ROGER EARLY #1	GRANDVIEW	35.0	
-ROBERT D CHARLEBOIS				RECEIVED:	02/22/82	JA: OH			
8219669		3415522003		103	107-TF	CROMLEY-JURISH #1	NEWTON FALLS	27.0	COLUMBIA GAS TRAN
-RON DORCO				RECEIVED:	02/22/82	JA: OH			
8219689A		3408924305		103		SARAH LITTLE #3	PERRYTON	18.0	
8219689B		3408924305	D	107-TF		SARAH LITTLE #3	PERRYTON	18.0	
-WILLIAM V CANTLIN				RECEIVED:	02/22/82	JA: OH			
8219665		3411925441		107-TF		EARL SHOWERS #1	BRUSH CREEK	18.0	
**********									
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, ALBUQUERQUE,NM									
**********									
-AMOCO PRODUCTION CO				RECEIVED:	08/03/81	JA: NM 4			
8150997	NM0781-81	3003920190		108		JICARILLA APACHE 102 #16 (3RD)	BLANCO-MESAVERDE	17.0	GAS CO OF NEW MEX
8150996	NM0780-81	3003906598		108		JICARILLA APACHE 102 #2 (3RD)	TAPACITO-PICTURED CLI	15.0	GAS CO OF NEW MEX
8150995	NM0779-81	3003921318		108		JICARILLA APACHE 102 #20 (2ND)	TAPACITO-PICTURED CLI	18.0	GAS CO OF NEW MEX
8150998	NM0782-81	3003920210		108		JICARILLA CONTRACT 146 #18 (2ND)	SOUTH BLANCO-PICTURED	17.0	NORTHWEST PIPE LI
8150999	NM0783-81	3003905977		108		JICARILLA CONTRACT 148 #5 (3RD)	SOUTH BLANCO-PICTURED	20.0	NORTHWEST PIPE LI
8150958	NM0715-81-B	3003922487		103		JICARILLA CONTRACT 155 #25 (CHACRA)	OTERO CHACRA	37.0	EL PASO NATURAL G
8150957	NM0715-81-A	3003922487		103		JICARILLA CONTRACT 155 #25 (MV)	GONZALES MESAVERDE	100.0	EL PASO NATURAL G
8151000	NM0784-81	3003906219		108		JICARILLA CONTRACT 155 #4 (2ND)	SOUTH BLANCO-PICTURED	21.0	NORTHWEST PIPE LI
8151006	NM 0810-81	3004524666		103		MORRIS GAS COM "B" #1E	BASIN DAKOTA	30.0	EL PASO NATURAL G
8150991	NM0775-81	3004505809		108		NAVAJO TRIBAL "N" #1	TOCITO DOME	9.0	EL PASO NATURAL G
8150990	NM0774-81	3004505876		108		NAVAJO TRIBAL "N" #4	TOCITO DOME	11.0	EL PASO NATURAL G
8150992	NM0776-81	3004505883		108		NAVAJO TRIBAL "N" #8	TOCITO DOME	10.0	EL PASO NATURAL G
8150993	NM0777-81	3004511917		108		NAVAJO TRIBAL P #3	TOCITO DOME	12.0	EL PASO NATURAL G
8150960	NM0716-81-B	3004523779		103		STANOLIND GAS COM "C" #1 (GALLUP)	UNDESIGNATED GALLUP	140.0	EL PASO NATURAL G
8150959	NM0716-81-A	3004523779		103		STANOLIND GAS COM "C" #1 (MV)	BLANCO MESAVERDE	150.0	EL PASO NATURAL G
8150994	NM0778-81	3004520970		108		W D HEATH "B" #5	BLANCO-PICTURED CLIFF	21.0	EL PASO NATURAL G
-ARCO OIL AND GAS COMPANY				RECEIVED:	08/03/81	JA: NM 4			
8150948	NM0690-81	3004524425		103		SCHLOSSER WN FED #5E (DK)	BASIN DAKOTA (DK)	88.0	NORTHWEST PIPELIN
-COLEMAN OIL & GAS INC				RECEIVED:	08/03/81	JA: NM 4			
8150949	NM0694-81	3004524976		103		NAVAJO SMITH #1	SAN JUAN UNDESIGNATED	20.0	EL PASO NATURAL G
-CONOCO INC				RECEIVED:	08/03/81	JA: NM 4			
8150934	NM0606-81	3002524803		108		JACK A-20 #9	NMFU-JALMAT YATES	18.9	EL PASO NATURAL G
8150931	NM0590-81	3002500592		108		MITCHELL B NO 9	BAISH-MALJAMAR-PEARSA	1.6	TRANSWESTERN PIPE
8150942	NM0624-81	3002509458		108		STEVENS A-34 #2	NMFU-JALMAT YATES	6.4	EL PASO NATURAL G
-CURTIS J LITTLE				RECEIVED:	08/03/81	JA: NM 4			
8150978	NM0752-81	3003922700		103		GREVEY #1	BALLARD PICTURED CLIF	25.0	EL PASO NATURAL G
8150976	NM0750-81	3003922699		103		SALAZAR #1	BALLARD PICTURED CLIF	25.0	EL PASO NATURAL G
8150977	NM0751-81	3003922701		103		WARREN #1	BALLARD PICTURED CLIF	25.0	EL PASO NATURAL G
-DUGAN PRODUCTION CORP				RECEIVED:	08/03/81	JA: NM 4			
8151009	NM 0822-81	3003922490		103		SAPP #2	LYBROOK GALLUP	5.0	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY				RECEIVED:	08/03/81	JA: NM 4			
8150940	NM0618-81	3004521515		108		DAY #8	BLANCO-PICTURED CLIFF	20.0	EL PASO NATURAL G

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8150939	NM0613-81	3002511458		108		E J #13
8150954	NM0709-81	3004524674		103		GAGE #3
8150953	NM0708-81	3004523881		103		HUBBELL #3E
8151011	NM 0836-81	3004520792		108		HUBBELL #6
8151010	NM 0833-81	3004520326		108		HUERFANO UNIT #153
8151014	NM 0842-81	3003921061		108		KLEIN #25
8150966	NM0733-81	3003920226		108		KLEIN A #3
8151012	NM 0839-81	3004506280		108		LODEWICK #10
8151013	NM 0841-81	3004520893		108		MANSFIELD #12
8150936	NM0608-81	3004505694		108		MCMANUS #11
8150927	NM0012-81-ER	3001520751		108-ER		MOBIL FEDERAL #1
8150952	NM0707-81	3004524252		103		PAH #1
8150935	NM0607-81	3003906909		108		RINCON UNIT #39
8150937	NM0610-81	3003906807		108		RINCON UNIT #50
8150967	NM0734-81	3003906786		108		SAN JUAN 27-5 UNIT #35 PC & MV
8150929	NM0546-81-A	3003922107		103		SAN JUAN 27-5 UNIT #5A
8150930	NM0546-81-B	3003922107		103		SAN JUAN 27-5 UNIT #5A
8150950	NM0696-81-A	3003922232		103		SAN JUAN 28-5 UNIT #51A
8150951	NM0696-81-B	3003922232		103		SAN JUAN 28-5 UNIT #51A
8150941	NM0620-81	3003920878		108		SAN JUAN 28-5 UNIT #95
8150938	NM0617-81	3003907411		108		SAN JUAN 28-7 UNIT #30
-GETTY OIL COMPANY				RECEIVED:	08/03/81	JA: NM 4
8150947	NM0687-81	3004524925		103		CAMPBELL COM #1E
8150974	NM0743-81	3003900000		108		JICARILLA "C" #15
-GULF OIL CORPORATION				RECEIVED:	08/03/81	JA: NM 4
8150943	NM0625-81	3004524568		103		DOUTHIT "A" FEDERAL #5
8150944	NM0628-81	3004524551		103		DOUTHIT "A" FEDERAL COM #6
8150945	NM0682-81	3004524639		103		FULLERTON FEDERAL WELL NO 6E
-HNG OIL COMPANY				RECEIVED:	08/03/81	JA: NM 4
8150926	NM1730-80102	3002526248		102-2		WILSON "8" FEDERAL #2
-JACK A COLE				RECEIVED:	08/03/81	JA: NM 4
8150964	NM0731-81	3004320537		103		CHACON AMIGOS #3
8150965	NM0732-81	3004320536		103		CHACON AMIGOS #5
-KOCH INDUSTRIES INC				RECEIVED:	08/03/81	JA: NM 4
8150961	NM0728-81	3004508504		108		WRIGHT #2
-NORTHWEST PIPELINE CORPORATION				RECEIVED:	08/03/81	JA: NM 4
8150972	NM0741-81	3003922501		103		JICARILLA 92 #15
8150973	NM0742-81	3003922500		103		JICARILLA 92 #16
8150988	NM0771-81	3003907951		108		ROSA #21
8150989	NM0772-81	3003921395		108		ROSA UNIT #63
8150987	NM0769-81	3003907567		108		SAN JUAN 29-5 #16
8150969	NM0738-81	3003922571		103		SAN JUAN 30-5 UNIT 50
8150975	NM0749-81	3003922574		103		SAN JUAN 30-5 UNIT 52
8150970	NM0739-81	3003922572		103		SAN JUAN 30-5 UNIT 73 DK
8150986	NM0033-81-PB	3004521289		108-PB		SAN JUAN 32-7 #32
8150971	NM0740-81	3004524500		103		SAN JUAN 32-7 UNIT 72
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	08/03/81	JA: NM 4
8150968	NM0736-81	3000520254		108		DAVIS-N #2 (NM 0174830)
-SOUTHLAND ROYALTY CO				RECEIVED:	08/03/81	JA: NM 4
8150985	NM0766-81	3004523935		103		COZZENS "B" #1E
8151007	NM 0817-81-A	3004524479		103		HANKS #14E
8151008	NM 0817-81-B	3004524479		103		HANKS #14E
8150928	NM0017-81-PB	3004509953		108-PB		HOLDER A #1

FIELD NAME	PROD	PURCHASER
JALMAT-YATES	20.0	EL PASO NATURAL G
AZTEC PICTURED CLIFFS	35.0	EL PASO NATURAL G
BASIN DAKOTA	300.0	EL PASO NATURAL G
AZTEC-PICTURED CLIFFS	18.0	EL PASO NATURAL G
BASIN - DAKOTA	18.0	EL PASO NATURAL G
BLANCO SOUTH-PICTURED	20.0	EL PASO NATURAL G
OTERO-CHACRA	20.0	EL PASO NATURAL G
BASIN-DAKOTA	20.0	EL PASO NATURAL G
BLANCO-PICTURED CLIFF	18.0	EL PASO NATURAL G
BALLARD-PICTURED CLIF	18.0	EL PASO NATURAL G
SAN DUNES WEST MORROW	0.0	EL PASO NATURAL G
BASIN DAKOTA	70.0	EL PASO NATURAL G
SOUTH BLANCO-PICTURED	19.0	EL PASO NATURAL G
SOUTH BLANCO-PICTURED	18.0	EL PASO NATURAL G
SOUTH BLANCO PICTURED	18.0	EL PASO NATURAL G
BLANCO MESAVERDE	220.0	EL PASO NATURAL G
TAPACITO PICTURED CLI	35.0	EL PASO NATURAL G
BLANCO MESAVERDE	182.0	EL PASO NATURAL G
TAPACITO PICTURED CLI	75.0	EL PASO NATURAL G
TAPACITO-PICTURED CLI	18.0	EL PASO NATURAL G
BLANCO-MESAVERDE	20.0	EL PASO NATURAL G
BASIN DAKOTA	60.0	EL PASO NATURAL G
BLANCO P CLIFFS AND O	16.0	EL PASO NATURAL G
WEST KUTZ PICTURED CL	0.0	EL PASO NATURAL G
WEST KUTZ PICTURED CL	0.0	EL PASO NATURAL G
BASIN DAKOTA	0.0	EL PASO NATURAL G
SIOUX YATES	23.4	EL PASO NATURAL G
CHACO DAKOTA ASSOCIAT	66.0	EL PASO NATURAL G
CHACON DAKOTA ASSOCIA	33.0	EL PASO NATURAL G
AZTEC PICTURED CLIFFS	21.4	EL PASO NATURAL G
BLANCO MESAVERDE	250.0	NORTHWEST PIPELIN
BLANCO MESAVERDE	250.0	NORTHWEST PIPELIN
BLANCO MESAVERDE	21.0	NORTHWEST PIPELIN
BASIN DAKOTA	66.0	NORTHWEST PIPELIN
BLANCO MESAVERDE	22.0	EL PASO NATURAL G
BASIN DAKOTA	27.0	NORTHWEST PIPELIN
BASIN DAKOTA	100.0	NORTHWEST PIPELIN
BASIN DAKOTA	100.0	NORTHWEST PIPELIN
BLANCO MESAVERDE	0.0	EL PASO NATURAL G
SO LOS PINOS PICTURED	450.0	NORTHWEST PIPELIN
TOBAC-PENN (BOUGH C)	6.0	CITIES SERVICE CO
BASIN	107.0	SOUTHERN UNION GA
BASIN	240.0	SOUTHERN UNION GA
FULCHER KUTZ	395.0	SOUTHERN UNION GA
BASIN DAKOTA	0.0	SOUTHERN UNION GA

VOLUME 610 PAGE 008

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8150979	NM0753-81-A	3004524461		103		NYE #14E	BASIN	385.0	SOUTHERN UNION GA
8150980	NM0753-81-B	3004524461		103		NYE #14E	BLANCO	345.0	SOUTHERN UNION GA
-SUPRON ENERGY CORPORATION				RECEIVED:		08/03/81 JA: NM 4			
8150984	NM0760-81	3003906146		108		MCCRODEN B-1	TAPACITO PICTURED CLI	10.1	GAS CO OF NEW MEX
8150956	NM0714-81	3004524025		103		NEWSOM "A" 7-E	BASIN DAKOTA	392.0	EL PASO NATURAL G
8150982	NM0757-81	3004511828		108		NEWSOM B-12	BASIN DAKOTA	19.8	EL PASO NATURAL G
8151001	NM0800-81	3004505940		108		NEWSOM B-7	BASIN DAKOTA	10.9	EL PASO NATURAL G
8150981	NM0756-81	3004505997		108		NEWSOM B-8	BASIN DAKOTA	14.2	EL PASO NATURAL G
8151002	NM0801-81	3004517922		108		OXNARD #2	BLANCO MESAVERDE	16.3	SOUTHERN UNION GA
8150946	NM0684-81-A	3004524452		103		TALIAFERRO #4-E	BASIN DAKOTA	336.0	SOUTHERN UNION GA
8151005	NM0809-81	3004510354		108		TALIAFERRO #5	BASIN DAKOTA	19.6	EL PASO NATURAL G
8151003	NM0807-81	3004500000		108		ZACHRY #3	AZTEC PICTURED CLIFFS	4.3	SOUTHERN UNION GA
8151004	NM0808-81	3004500000		108		ZACHRY #6	AZTEC PICTURED CLIFFS	14.6	SOUTHERN UNION GA
8150983	NM0759-81	3004507625		108		ZACHRY #7	AZTEC PICTURED CLIFFS	19.8	SOUTHERN UNION GA
-TENNECO OIL COMPANY				RECEIVED:		08/03/81 JA: NM 4			
8151015	NM 0849-81	3004524293		103		CALLOW #8E	BASIN DAKOTA	500.0	EL PASO NATURAL G
8151024	NM 0856-81	3004524287		103		CALLOW "A" #1E	BASIN DAKOTA	500.0	EL PASO NATURAL G
8151025	NM 0858-81	3004524738		103		CASE "A" #3E	BASIN DAKOTA	500.0	EL PASO NATURAL G
8150933	NM0598-81	3004524618		103		CASE "A" #4E	BASIN DAKOTA	500.0	EL PASO NATURAL G
8150955	NM0712-81	3004523976		103		FLORANCE #119	BASIN DAKOTA	500.0	EL PASO NATURAL G
8151016	NM 0850-81	3004524688		103		FLORANCE #124E	BASIN DAKOTA	500.0	EL PASO NATURAL G
8151023	NM 0855-81	3004524719		103		MUDGE "A" #1E	BASIN DAKOTA	500.0	EL PASO NATURAL G
8150932	NM0597-81	3004524789		103		NAVAJO #2E	BASIN DAKOTA	225.0	EL PASO NATURAL G
8151022	NM 0854-81	3004524583		103		SCHWERDTFEGER "A" #3E	BASIN DAKOTA	500.0	NORTHWEST PIPELIN
8151021	NM 0853-81	3004524790		103		SCHWERDTFEGER "A" #5E	BASIN DAKOTA	500.0	NORTHWEST PIPELIN
8151017	NM 0851-81	3004524685		103		STOREY COM "C" #4E	BASIN DAKOTA	500.0	EL PASO NATURAL G
8151020	NM 0852-81	3004524498		103		SULLIVAN "A" #1E	BASIN DAKOTA	500.0	EL PASO NATURAL G
8151018	NM 0852-81	3004524498		103		SULLIVAN GU "A" #1E	BLANCO MESAVERDE	500.0	EL PASO NATURAL G
8151019	NM 0852-81 B	3004524498		103		SULLIVAN GU "A" #1E	BLOOMFIELD CHACRA	500.0	EL PASO NATURAL G
-YATES PETROLEUM CORPORATION				RECEIVED:		08/03/81 JA: NM 4			
8150963	NM0730-81	3000560889		102-2		EVERETTE "OO" FEDERAL #4	WILDCAT	0.0	TRANSWESTERN PIPE
8150962	NM0729-81	3000560847		102-2		WILLIAMSON "LC" FEDERAL #2	WILDCAT	0.0	TRANSWESTERN PIPE

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimates annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before April 5, 1982.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease

Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal seams
107–DV: Devonian shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recomplation tight formation

Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–7548 Filed 3–18–82; 8:45 am]

BILLING CODE 6717–01–M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: March 16, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION									
-KANSAS OIL CORP				RECEIVED:	02/19/82	JA: KS			
8219986	K-81-1226	1515120802		103		ABRAMS #1	GEREKE NORTH	108.0	CENTRAL STATES GA
-LEE BANKS				RECEIVED:	02/19/82	JA: KS			
8219987	K81-1249	1511920231		108		CUMMINGS ELLIOT #2	MEADE	19.0	NORTHERN NATURAL
-REACH PETROLEUM CORP				RECEIVED:	02/19/82	JA: KS			
8219985	K-81-1225	1514720873		103		SPENCER #1	TATLOCK SOUTHWEST	48.0	PANHANDLE EASTERN
OHIO DEPARTMENT OF NATURAL RESOURCES									
-BERMAN J SHAFER				RECEIVED:	02/22/82	JA: OH			
8219898		3410322774		103		COX #1	WESTFIELD	7.5	COLUMBIA GAS TRAN
-DAVID SHAFER OIL PRODUCERS INC				RECEIVED:	02/22/82	JA: OH			
8219899		3415321009		103		RAYMOND C FIRESTONE #4-F	BATH	5.0	EAST OHIO GAS CO
-DONALD C SICKAFOOSE				RECEIVED:	02/22/82	JA: OH			
8219901		3415121664	D	108		DONALD C SICKAFOOSE #1		0.0	
8219902		3415121665	D	108		DONALD C SICKAFOOSE #2		0.0	
8219903		3415121667	D	108		DONALD C SICKAFOOSE #3		0.0	
8219904		3415121668	D	108		DONALD C SICKAFOOSE #5		0.0	
-DWIGHT MARTIN				RECEIVED:	02/22/82	JA: OH			
8219790		3408322992		103		HARRY & VIRGINIA TEMPLE #2	GREER	0.0	
-JEFFREY G MORAN				RECEIVED:	02/22/82	JA: OH			
8219804		3403124468		103		PAUL MCGRADY	JEFFERSON	18.0	
-JOHN C MASON				RECEIVED:	02/22/82	JA: OH			
8219791		3403124574		103		ELVIN BRILLHART 3A	MONROE	10.0	COLUMBIA GAS TRAN
-JOHN F WILLIAMS				RECEIVED:	02/22/82	JA: OH			
8219981		3410321155	D	108		HUGH ARMSTRONG #1		2.2	COLUMBIA GAS TRAN
-MICHAEL E OSBORNE				RECEIVED:	02/22/82	JA: OH			
8219826		3408520310		103	107-TF	M E OSBORNE #1	BLAKE	30.0	
8219827		3408520315		103	107-TF	M E OSBORNE #2	BLOCK	30.0	
-MIDAS ENERGY INC				RECEIVED:	02/22/82	JA: OH			
8219794		3416725896	D	107-TF		FRANK S GREENWOOD #1	LAWRENCE	18.0	COLUMBIA GAS TRAN
8219795		3416726165	D	107-TF		FRANK S GREENWOOD #2	LAWRENCE	21.0	COLUMBIA GAS TRAN
8219797		3416726247	D	107-TF		L A ROACH #1	LAWRENCE	21.0	COLUMBIA GAS TRAN
8219796		3416726238	D	107-TF		LESTER ROACH #1	LAWRENCE	18.0	COLUMBIA GAS TRAN
8219793		3416724562	D	107-TF		LESTER ROACH #2	LAWRENCE	14.0	COLUMBIA GAS TRAN
-MILLER DAY ISELI ENERGY CO.				RECEIVED:	02/22/82	JA: OH			
8219799		3411122511		103		BLANEY #3-24	WASHINGTON TOWNSHIP	5.0	COLUMBIA GAS TRAN
8219798		3411122450		107-DV		JACKSON #4-20	CENTER	145.0	RIVER GAS CO
-MILLER OIL & GAS CO				RECEIVED:	02/22/82	JA: OH			
8219800		3407523531		107-TF		N E HERSHBERGER #1	MECHANIC	15.0	COLUMBIA GAS TRAN
-MITCHELL ENERGY CORPORATION				RECEIVED:	02/22/82	JA: OH			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8219801		3408720263		103		BOWEN #1
8219803		3408720266		103		CLAY UNIT #1
8219802		3408720264		103		DRUMMOND #1
-MORELAND OIL & GAS				RECEIVED:	02/22/82	JA: OH
8219805		3410322797		107-TF		VANDEUSEN #1
-NICOFIBERS INC				RECEIVED:	02/22/82	JA: OH
8219806		3412725340		103	107-TF	TOKIE & STORTS #2
-NOBLE OIL CORP				RECEIVED:	02/22/82	JA: OH
8219809		3413322706		107-TF		CAMPBELL #1
8219807		3413322589		107-TF		MICHAEL-CLIMES #2
8219808		3413322634		107-TF		SMITH #4
-OHIO OIL & GAS CO				RECEIVED:	02/22/82	JA: OH
8219810		3415521800		107-TF		BUCHWALTER #1
8219813		3415521946		107-TF		BUTLER #1
8219811		3415521933		107-TF		CONSUMER #4
8219812		3415521934		107-TF		CONSUMER #5
8219814		3415522012		107-TF		GRIFFIN #4
-OHIO PRODUCERS SERVICES INC				RECEIVED:	02/22/82	JA: OH
8219815		3412725341		103		RAYMOND A CROSBIE #1
-OILTECH INC				RECEIVED:	02/22/82	JA: OH
8219822		3407523392	D	107-TF		H MABLE BRUMME #5
8219819		3407523378	D	107-TF		H MABLE BRUMME #6
8219823		3407523417	D	107-TF		H MABLE BRUMME #7
8219820		3407523379	D	107-TF		H MABLE BRUMME #8
8219816		3407523011		107-TF		JAMES SHEPLER #1
8219817		3407523199		107-TF		JOHN LANE #2
8219818		3407523206		107-TF		JOHN LANE #3
8219824		3407523499		107-TF		KENNETH BRUMME #10
8219825		3407523500		107-TF		KENNETH BRUMME #11
8219821		3407523389		107-TF		SMITH UNIT #1
-OXFORD OIL CO				RECEIVED:	02/22/82	JA: OH
8219832		3411925912		103	107-TF	BISHOP-BEISSER UNIT #1
8219829		3411924535		108		CHARLES GLEICH #1
8219828		3411923723		108		MICHAEL GODFREY #1
8219830		3411925670		103	107-TF	ROWENA FRAUNFELTER #4
8219833		3412725329		103		WILFORD GREATHOUSE #1
8219831		3411925855		103	107-TF	WILLIAM TODD #1
-PAROCO DRLG FUNDS INC				RECEIVED:	02/22/82	JA: OH
8219834		3400924300		103	107-TF	MCCLAIN #1
-PETROCON INC				RECEIVED:	02/22/82	JA: OH
8219835		3415123638		103		BAIER UNIT #1
8219836		3415123640		103		BAIER UNIT #2
-PETROLEUM RESOURCES INC				RECEIVED:	02/22/82	JA: OH
8219838		3416726876		107-DV		DAWKINS ET AL #2
8219837		3411122490		107-DV		J MCCAMMON #1
-PETROLEUM SECURITIES FUND - 80				RECEIVED:	02/22/82	JA: OH
8219840		3407322444		103		EMENS MARY #6
8219839		3407322434		103		EMENS MARY F #7
-POI ENERGY INC				RECEIVED:	02/22/82	JA: OH
8219842		3400720590		103	107-RT	F & F HRABAL #1
8219841		3400725690		103	107-RT	H & M FULLER #1
-POMINEX INC				RECEIVED:	02/22/82	JA: OH
8219843		3409921372		103	107-TF	BEARD #1

FIELD NAME	PROD	PURCHASER
UNNAMED FIELD	27.0	
UNNAMED FIELD	22.0	
UNNAMED FIELD	40.0	
HINKLEY	15.0	
SALT LICK TWP	6.0	NICOFIBERS INC
PALMYRA	20.0	GENERAL ELECTRIC
PALMYRA	20.0	GENERAL ELECTRIC
PALMYRA	20.0	GENERAL ELECTRIC
JOHNSTON	20.0	COLUMBIA GAS TRAN
JOHNSTON	20.0	COLUMBIA GAS TRAN
HARTFORD	20.0	COLUMBIA GAS TRAN
HARTFORD	20.0	COLUMBIA GAS TRAN
ORANGEVILLE	20.0	COLUMBIA GAS TRAN
READING	3.0	FORAKER GAS CO IN
KILLBUCK	0.0	
KILLBUCK	0.0	
KILLBUCK	0.0	
KILLBUCK	0.0	
MECHANIC	0.0	
KILLBUCK	0.0	
KILLBUCK	0.0	
KILLBUCK	0.0	
KILLBUCK	0.0	
HARDY	0.0	
CLAY	10.0	
	18.0	NATIONAL GAS & OI
	21.0	NATIONAL GAS & OI
NEWTON	10.0	
THORN	10.0	
UNION	10.0	
DOVER	30.0	COLUMBIA GAS TRAN
ROBERTSVILLE	5.0	
ROBERTSVILLE	5.0	
RAVEN ROCK	0.0	COLUMBIA GAS TRAN
WAYNE	0.0	COLUMBIA GAS TRAN
WASHINGTON	28.0	
WASHINGTON	28.0	
ANDOVER	90.0	
WINDSOR	70.0	
BEAVER	18.0	

VOLUME 611 PAGE 003

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-PONDEROSA OIL COMPANY				RECEIVED: 02/22/82		JA: OH			
8219844		3407523247		103	107-TF	ANDREW R COBLENTZ #1	PRAIRIE	11.0	COLUMBIA GAS TRAN
-PORTER BROTHERS				RECEIVED: 02/22/82		JA: OH			
8219845		3411925922		107-TF		WEST PIKE DEVELOPERS INC #1	ZANESVILLE WEST	15.0	COLUMBIA GAS TRAN
-PREMIER ENERGY CORP				RECEIVED: 02/22/82		JA: OH			
8219860		3416922416		107-TF		ALVIN STEINER #1	MILTON	15.0	
8219855		3407522502		107-TF		BERTHA DEETZ #1	MECHANIC	10.0	COLUMBIA GAS TRAN
8219856		3407522503		107-TF		BERTHA DEETZ #2	MECHANIC	10.0	COLUMBIA GAS TRAN
8219857		3407522505		107-TF		BERTHA DEETZ #4	MECHANIC	10.0	COLUMBIA GAS TRAN
8219849		3407522413		107-TF		EDWIN BALDER #1	HARDY	20.0	COLUMBIA GAS TRAN
8219850		3407522414		107-TF		EDWIN BALDER #2	HARDY	17.0	COLUMBIA GAS TRAN
8219851		3407522415		107-TF		EDWIN BALDER #3	HARDY	20.0	COLUMBIA GAS TRAN
8219852		3407522416		107-TF		EDWIN BALDER #4	HARDY	16.0	COLUMBIA GAS TRAN
8219853		3407522417		107-TF		EDWIN BALDER #5	HARDY	17.0	COLUMBIA GAS TRAN
8219859		3407522700		107-TF		GLEN KAUFFMAN #2	HARDY	10.0	COLUMBIA GAS TRAN
8219847		3407522188		107-TF		HIPP LUMBER INC #1-A	HARDY	10.0	COLUMBIA GAS TRAN
8219846		3401322319		103		PAUL E MILLER #1		5.5	TEXAS EASTERN TRA
8219848		3407522372		107-TF		RICHARD E STEIMEL #1	HARDY	3.0	COLUMBIA GAS TRAN
8219854		3407522495		107-TF		WILLIAM MCCORMICK #1	HARDY	6.0	COLUMBIA GAS TRAN
8219858		3407522640	D	107-TF		WILLIAM SCHONAUER #1	KILLBUCK	15.0	COLUMBIA GAS TRAN
-QUADRANT EXPLORATION				RECEIVED: 02/22/82		JA: OH			
8219864		3416726801		107-DV		ELKINS #1-2	MARIETTA TOWNSHIP	18.2	EAST OHIO GAS CO
8219862		3416726750		107-DV		HELDMAN #2-1	LIBERTY TOWNSHIP	2.9	EAST OHIO GAS CO
8219861		3416725201	D	107-TF		LLOYD MILLER WELL #1	LIBERTY	50.0	
8219863		3416726777		107-DV		MATTHEWS #3-25	LAWRENCE TOWNSHIP	10.9	EAST OHIO GAS CO
-RELIABLE EXPLORATION & DRILLING CO				RECEIVED: 02/22/82		JA: OH			
8219871		3411926797		107-DV		USA-CHRISTMAN #2	GRANDVIEW TOWNSHIP	500.0	
-REPUBLIC MINERAL CORP				RECEIVED: 02/22/82		JA: OH			
8219872		3416726091		107-DV		HARVEY HANDSCHUMACHER #1	SIMMONS	44.4	COLUMBIA GAS OF O
8219873		3416726467		107-DV		JAMES LOWERS #1	SIMMONS	75.9	COLUMBIA GAS OF O
8219874		3416726608		107-DV		PAUL ARNOLD #2	SIMMONS	159.8	COLUMBIA GAS OF O
8219875		3416726629		107-DV		ROBERT NOLAN #1	SIMMONS	25.0	COLUMBIA GAS OF O
8219877		3416726812		107-DV		SHIRLEY TROYER #2	SIMMONS	19.8	COLUMBIA GAS OF O
8219876		3416726811		107-DV		TROYER #1	SIMMONS	46.6	COLUMBIA GAS OF O
-RICHARD W ULLMAN				RECEIVED: 02/22/82		JA: OH			
8219971		3400922490		103		RICHARD LEWIS #1	SHARPSBURG	18.0	COLUMBIA GAS TRAN
8219972		3411522687		103		STRIGHT #1	CHESTERHILL	18.0	COLUMBIA GAS TRAN
-RIMCO OPERATING INC				RECEIVED: 02/22/82		JA: OH			
8219879		3416922405		103	107-TF	D ICKES #1	PLAIN	12.0	COLUMBIA GAS TRAN
8219889		3416922952		103	107-TF	E STULL #2	CHESTER	12.0	COLUMBIA GAS TRAN
8219880		3416922449		103	107-TF	FLICKINGER #1	PLAIN	12.0	COLUMBIA GAS TRAN
8219878		3416921884		103	107-TF	GUENTHER #2	CHESTER	12.0	COLUMBIA GAS TRAN
8219883		3416922693		103	107-TF	LADRACH #3	CHESTER	12.0	COLUMBIA GAS TRAN
8219884		3416922696		103	107-TF	MYKRANTZ #4	PLAIN	12.0	COLUMBIA GAS TRAN
8219885		3416922697		103	107-TF	MYKRANTZ #5	PLAIN	12.0	COLUMBIA GAS TRAN
8219881		3416922523		103	107-TF	SILVER #1	PLAIN	12.0	COLUMBIA GAS TRAN
8219882		3416922570		103	107-TF	STAUFFER #2	PLAIN	12.0	COLUMBIA GAS TRAN
8219886		3416922866		103	107-TF	WARD #1	PLAIN	12.0	COLUMBIA GAS TRAN
8219887		3416922867		103	107-TF	WARD #2	PLAIN	12.0	COLUMBIA GAS TRAN
8219888		3416922868		103	107-TF	WARD #3	PLAIN	12.0	COLUMBIA GAS TRAN
-RPJ ENERGY FUND MANAGEMENT INC				RECEIVED: 02/22/82		JA: OH			
8219866		3407322574	D	107-TF		GRIFFITH #1	IDLESBORO	50.0	
8219870		3411925380		107-TF		JOHN REVENNAUGH #1	CHANDLERSVILLE	50.0	

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8219867		3407322602		103		LEAMAN #5	EWING	50.0	
8219868		3408322969	D	107-TF		WANDER #2	JEFFERSON TOWNSHIP	30.0	
8219865		3403124454	D	107-TF		WEAVER #2	SPRING MT	50.0	
8219869		3408322986	D	107-TF		WOODS #1	DANVILLE	50.0	
-S & S OIL CO				RECEIVED:	02/22/82	JA: OH			
8219890		3411522420		103	107-TF	EARL HICKS #1	YORK	12.0	
8219891		3412725343		107-DP		WILLIAM AND BEVERLY MOORE #1	HARRISON	12.0	
-SANDHILL ENERGY INC (OH)				RECEIVED:	02/22/82	JA: OH			
8219892		3416726477		103	107-DV	AILES/HALL #1	GRANDVIEW	15.0	
8219893		3416726845		103	107-DV	ELVA KNOWLTON #1	GRANDVIEW	17.5	
8219894		3416726870		107-DV		HORACE & PATSY DANNER #3	NEW MATAMORAS	15.0	
8219895		3416726874		107-DV		HORACE & PATSY DANNER #4	NEW MATAMORAS	12.5	
-SCHRIMSHER OIL & GAS EXPLORATION				RECEIVED:	02/22/82	JA: OH			
8219896		3415321043		103	107-TF	STRIBRNY #2	HUDSON	20.0	AMERICAN ENERGY S
-SHADCO INC				RECEIVED:	02/22/82	JA: OH			
8219897		3410322789		103	107-TF	SHADE #1	GRANGER	20.0	
-SOUTHERN OHIO PETROLEUM CO INC				RECEIVED:	02/22/82	JA: OH			
8219905		3411122535		107-DV		K E SINGER #1A	BETHEL	100.0	COLUMBIA GAS TRAN
-STOCKER&SITLER INC				RECEIVED:	02/22/82	JA: OH			
8219914		3416320647		107-TF		BOOTH LEASE #2	CLINTON	474.0	COLUMBIA GAS TRAN
8219906		3401921440		103		CARL SHERER UNIT #6-55	ROSE	0.5	MORGES INC
8219912		3416320642		107-TF		DIXON LEASE #1	CLINTON	27.0	COLUMBIA GAS TRAN
8219915		3416320650		107-TF		DIXON LEASE #2	CLINTON	61.0	COLUMBIA GAS TRAN
8219913		3416320643		107-TF		DIXON LEASE #3	CLINTON	54.5	COLUMBIA GAS TRAN
8219909		3416320620		107-TF		DIXON LEASE #4	CLINTON	165.7	COLUMBIA GAS TRAN
8219910		3416320630		107-TF		DIXON LEASE #5	CLINTON	505.5	COLUMBIA GAS TRAN
8219920		3416320661		107-TF		DIXON LEASE #6	CLINTON	35.0	COLUMBIA GAS TRAN
8219919		3416320659		107-TF		EBERTS LEASE #1	CLINTON	165.7	COLUMBIA GAS TRAN
8219911		3416320641		107-TF		EBERTS LEASE #2	CLINTON	474.5	COLUMBIA GAS TRAN
8219907		3416320594		107-TF		G HARPER UNIT #1	CLINTON	7.0	COLUMBIA GAS TRAN
8219916		3416320652		107-TF		OBERHOLZER LEASE #1	CLINTON	36.0	COLUMBIA GAS TRAN
8219917		3416320653		107-TF		OBERHOLZER LEASE #2	CLINTON	35.0	COLUMBIA GAS TRAN
8219918		3416320654		107-TF		TRAINERLEASE #1	CLINTON	474.5	COLUMBIA GAS TRAN
8219908		3416320619		107-TF		WILLIS LEASE #1	CLINTON	71.0	COLUMBIA GAS TRAN
-STONEWALL GAS CO INC				RECEIVED:	02/22/82	JA: OH			
8219921		3405320502		103		EPPLING #1 123-GC	GALLIPOLIS TOWNSHIP	5.0	COLUMBIA OF OHIO
8219922		3405320605		103		THOMPSON #1 122-GC	GALLIPOLIS TOWNSHIP	5.0	COLUMBIA OF OHIO
-STRATA CORP				RECEIVED:	02/22/82	JA: OH			
8219925		3412724989		103		COOPERRIDER #5	HOPEWELL	10.0	COLUMBIA GAS TRAN
8219923		3408322831		103		DODRILL #1	CLAY	10.0	COLUMBIA GAS TRAN
8219924		3408924239		103		GLOVER 1-A	EDEN	20.0	COLUMBIA GAS TRAN
-SUNSET PETROLEUM INC				RECEIVED:	02/22/82	JA: OH			
8219926		3410522034		107-DV		CARL CIRCLE #1	SUTTON	10.0	COLUMBIA GAS TRAN
-SUPERIOR PETROLEUM INC				RECEIVED:	02/22/82	JA: OH			
8219929		3401320334		107-DV		BARKER #1	SOMERSET	25.0	TEXAS EASTERN TRA
8219939		3411122004		107-DV		CHRISTMAN #1	MALAGA	25.0	TEXAS EASTERN TRA
8219940		3411122005		107-DV		CLAUSS #1	MALAGA	25.0	TEXAS EASTERN TRA
8219928		3401320333		107-DV		DAMSEL #1	SOMERSET	25.0	TEXAS EASTERN TRA
8219931		3401320370		107-DV		DAVIS #1	WAYNE	25.0	TEXAS EASTERN TRA
8219941		3411122006		107-DV		GALLAGHER #1	MALAGA	25.0	TEXAS EASTERN TRA
8219934		3401320391		107-DV		HAGAN #1	SOMERSET	25.0	TEXAS EASTERN TRA
8219927		3401320326		107-DV		HARPER #1	WAYNE	25.0	TEXAS EASTERN TRA
8219932		3401320372		107-DV		HARPER #3	WAYNE	25.0	TEXAS EASTERN TRA

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8219933		3401320380		107-DV		JEFFERIES #1	SOMERSET	25.0	TEXAS EASTERN TRA
8219948		3411122357		107-DV		K BAKER #1	MALAGA	25.0	TEXAS EASTERN TRA
8219947		3411122356		107-DV		K BAKER #2	MALAGA	25.0	TEXAS EASTERN TRA
8219942		3411122007		107-DV		MOORE #1	MALAGA	25.0	TEXAS EASTERN TRA
8219938		3401320403		107-DV		PLUMLY #1	SOMERSET	25.0	TEXAS EASTERN TRA
8219935		3401320395		107-DV		PLUMLY #3	SOMERSET	25.0	TEXAS EASTERN TRA
8219936		3401320396		107-DV		PLUMLY #4	SOMERSET	25.0	TEXAS EASTERN TRA
8219937		3401320397		107-DV		PLUMLY #5	SOMERSET	25.0	TEXAS EASTERN TRA
8219943		3411122060		107-DV		STEPHEN #1	MALAGA	25.0	TEXAS EASTERN TRA
8219930		3401320368		107-DV		STIRES #2	WAYNE	25.0	TEXAS EASTERN TRA
8219944		3411122250		107-DV		WARD #2	MALAGA	25.0	TEXAS EASTERN TRA
8219945		3411122352		107-DV		WARD #3	MALAGA	25.0	TEXAS EASTERN TRA
8219946		3411122353		107-DV		WARD #4	MALAGA	25.0	TEXAS EASTERN TRA
-TEMPLE OIL & GAS CO				RECEIVED: 02/22/82 JA: OH					
8219949		3411522479		103	107-TF	NED RAMBO #1	YORK	10.0	
-THUNDERBIRD PETROLEUM	DEVELOP CO			RECEIVED: 02/22/82 JA: OH					
8219961		3416725368	D	107-TF		ARZA PRYOR #1	LUDLOW	50.0	
8219954		3412122261	D	107-TF		BEULAH KEHL #1	ELK	50.0	
8219956		3412122276	D	107-TF		BOGER #1	ELK	50.0	
8219957		3412122296	D	107-TF		C J BAKER #1	ELK	50.0	
8219955		3412122263	D	107-TF		JAMES BAKER/MURREY #1	ELK	50.0	
8219960		3416725367	D	107-TF		JONES #1	LUDLOW	0.0	
8219962		3416725370	D	107-TF		MILDRED SWOPE #1	LUDLOW	50.0	
8219959		3416725366	D	107-TF		O G GRAHAM #1	LUDLOW	50.0	
8219958		3416725282	D	107-TF		RAYMOND & CAROLINE BOSTAPH #1	LUDLOW	50.0	
8219953		3412122257	D	107-TF		ROGERS WELL #1	ELK	50.0	
8219952		3412122246	D	107-TF		STANLEY BUTCHER #3	ELK	50.0	
8219950		3412122235	D	107-TF		STANLEY BUTCHER WELL #1	ELK	50.0	
8219951		3412122238	D	107-TF		THOMPSON #1	ELK	50.0	
-TIGER OIL INC				RECEIVED: 02/22/82 JA: OH					
8219963		3412122720		107-DV		FLIEHMAN #1	ELK	0.0	COLUMBIA GAS TRAN
-TITAN ENERGY CORP				RECEIVED: 02/22/82 JA: OH					
8219964		3411522499		103	107-TF	GEORGE STRELECKI #1	MEIGSVILLE	20.0	COLUMBIA GAS TRAN
-TOWNER PETROLEUM CO				RECEIVED: 02/22/82 JA: OH					
8219970		3405923129		107-TF		CRISLIP #3	GUERNSEY	0.0	TENNESSEE GAS PIP
8219968		3405923116		107-TF		E KEEFER #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8219966		3405923090		107-TF		L BOND #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8219965		3405923061		107-TF		R GRAY #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8219967		3405923102		107-TF		R STOCKDALE #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8219969		3405923120		107-TF		RICHTER/WARNER #1	GUERNSEY	0.0	TENNESSEE GAS PIP
-UNIVERSAL EXPLORATION				RECEIVED: 02/22/82 JA: OH					
8219973		3407523502		103	107-TF	HERSHBERGER #1	MILLERSBURG	30.0	
-VICTOR MCKENZIE				RECEIVED: 02/22/82 JA: OH					
8219792		3412725387		103		MCFARLAND #1	BREMAN	8.0	NATIONAL GAS & OI
-VICTOR PETROLEUM CORP				RECEIVED: 02/22/82 JA: OH					
8219974A		3407523108		103		COLE-KAESGEN #3	KILLBUCK	30.0	COLUMBIA GAS TRAN
8219974B		3407523108	D	107-TF		COLE-KAESGEN #3	KILLBUCK	30.0	COLUMBIA GAS TRAN
-VIKING RESOURCES CORP				RECEIVED: 02/22/82 JA: OH					
8219978		3413322603		107-TF		HAWK UNIT #1	PALMYRA	30.0	
8219977		3409921369		103	107-TF	HEISER #4	BERLIN	30.0	
8219975		3409921364		107-TF		SKYLINE LAND CO #1	BERLIN	30.0	
8219976		3409921365		107-TF		SKYLINE LAND CO #4	BERLIN	30.0	
8219979		3413322724		107-TF		ZINDELL/KOVACS UNIT #1	PALMYRA	30.0	

JO NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8219980		3413322725		107-TF		ZINDELL/KOVACS UNIT #2	PALMYRA	30.0	
-W E SHRIDER CO				RECEIVED:	02/22/82	JA: OH			
8219900		3412725263		103		CHARLES CARPENTER #3	MONDAY CREEK	3.0	PARAMOUNT TRANSMI
-WORTHINGTON OIL COMPANY INC				RECEIVED:	02/22/82	JA: OH			
8219982		3411522510		103	107-TF	MERRIL WILSON #1	BRISTOL	91.0	COLUMBIA GAS TRAN
-ZENITH EXPLORATION COMPANY				RECEIVED:	02/22/82	JA: OH			
8219984		3415123613		103		A MOUNTCASTLE COMMUNITY #1		5.0	
-ZENITH OIL & GAS INC				RECEIVED:	02/22/82	JA: OH			
8219983		3411925816		103		NORRIS #1	HOPEWELL	18.0	
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE,LA									
-ANADARKO PRODUCTION COMPANY				RECEIVED:	02/22/82	JA: LA 3			
8220005	G2-2517	1772040067		107-DP		WEST DELTA BLK 138 #A-3	WEST DELTA BLOCK	401.0	INTERNORTH INC
8220019	G2-2518	1772040081		107-DP		WEST DELTA BLK 138 #A-8	WEST DELTA BLOCK	742.0	INTERNORTH INC
-C & K PETROLEUM INC				RECEIVED:	02/22/82	JA: LA 3			
8220018	G1-2380	1771540397		107-DP		A-4 (K-4 SAND)	SOUTH TIMBALIER	0.0	TRANSCONTINENTAL
8220009	G1-2378	1771540397		107-DP		A-4A (K-2 SAND)	SOUTH TIMBALIER	0.0	TRANSCONTINENTAL
8220006	G1-2377	1771540411		107-DP		A-5 (K SAND)	SOUTH TIMBALIER	0.0	TRANSCONTINENTAL
-CHEVRON U S A INC				RECEIVED:	02/22/82	JA: LA 3			
8220008	G1-2221	1772240029		102-5		OCS-G-2940 A-3	SOUTH PASS	730.0	TENNESSEE GAS PIP
-CONOCO INC				RECEIVED:	02/22/82	JA: LA 3			
8220017	G1-2283	1770340338		102-5		EAST CAMERON 72 C-3	EAST CAMERON	2920.0	TENNESSEE GAS PIP
8220001	G1-2419	1770040436		102-1		WEST CAMERON 261 A-1	WEST CAMERON	3102.0	TEXAS EASTERN TRA
-GULF OIL CORPORATION				RECEIVED:	02/22/82	JA: LA 3			
8219997	G1-2323	1771540359	D	102-5		OCS-G 1256 #B-3	SOUTH TIMBALIER	3212.0	TEXAS EASTERN TRA
8219996	G1-2324	1771540390	D	102-5		OCS-G 1256 #B-6	SOUTH TIMBALIER	2045.0	TEXAS EASTERN TRA
-MCMORAN OFFSHORE EXPLORATION CO				RECEIVED:	02/22/82	JA: LA 3			
8219999	G1-2326	1770540449		102-5		OCS-G 3390 #17	VERMILION	1280.0	TRANSCONTINENTAL
-OCEAN PRODUCTION CO				RECEIVED:	02/22/82	JA: LA 3			
8219998	G1-2499	1771140374		102-5		OCS-067 #29B	SHIP SHOAL	73.0	TRANSCONTINENTAL
8220013	G1-2373	1771340055		102-5		OCS-072 #25 (S/T) A	SOUTH PELTO 20 FIELD	37.0	TRANSCONTINENTAL
-SHELL OIL CO				RECEIVED:	02/22/82	JA: LA 3			
8220003	G1-2327	1770840217		102-5		OCS-G 2280 A-32A	S MARSH ISLAND	90.0	TRANSCONTINENTAL
8220004	G1-2302	1770540177		102-5		OCS-G 2865 A-6A	VERMILION	1095.0	TRANSCONTINENTAL
8220007	G1-2463	1770440525		102-1		OCS-G 4101 JA-4	EAST CAMERON	0950.0	SOUTHERN NATURAL
8220002	G1-2275	1772340049		102-5		SP 61 OCS-G 1614 #C-39-A	SOUTH PASS	125.0	SOUTHERN NATURAL
8220000	G1-2274	1772340055		102-5		SP 61 OCS-G 1614 #C-42-A	SOUTH PASS	100.0	SOUTHERN NATURAL
8220010	G1-2273	1772340020		102-5		SP 61 OCS-G 1614 #C-9-A	SOUTH PASS	50.0	SOUTHERN NATURAL
-UNION OIL COMPANY OF CALIF				RECEIVED:	02/22/82	JA: LA 3			
8220012	G1-2393	1770540460		102-5		OCS 0297 #43	VERMILION	3650.0	TRUNKLINE GAS CO
-HOUSTON OIL & MINERALS CORPORATION				RECEIVED:	02/22/82	JA: TX 3			
8220011	G1-2454	4270330258		102-1		OCSG-4136 #B-2	MATAGORDA ISLAND	0.0	
-SAMEDAN OIL CORPORATION				RECEIVED:	02/22/82	JA: TX 3			
8220014	G1-2226	4270440019		102-5		BRAZOS A-28 #A-1	BRAZOS AREA	900.0	TENNESSEE GAS PIP
8220015	G1-2229	4270440044		102-5		BRAZOS A-28 #A-4	BRAZOS AREA	985.0	TENNESSEE GAS PIP
8220016	G1-2228	4270440046		102-5		BRAZOS AREA A-28 #A-3	BRAZOS AREA	500.0	TENNESSEE GAS PIP
** BUREAU OF INDIAN AFFAIRS, OSAGE AGENCY, PAWHUSKA,OK									
-BROOKS OIL CO				RECEIVED:	02/22/82	JA: OK 8			
8219995		3511325663		103		BARNARD #1-A	NE PEARSONIA	50.0	PHILLIPS PETROLEU
-D & C OIL COMPANY				RECEIVED:	02/22/82	JA: OK 8			

VOLUME 611 PAGE 007

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8219990		3511300000		103		CULVER #1-B	HERD	35.0	AJAX OIL & GAS CO
8219989		3511300000		103		CULVER WELL #1-A	HERD	35.0	AJAX OIL & GAS CO
-EXITO OIL CO INC				RECEIVED:	02/22/82	JA: OK 8			
8219991		3511300000		103		COLLINS 1E	EAST AVANT SE/4 9-23-	95.0	PHILLIPS PETROLEU
-THOR ENERGY CORP				RECEIVED:	02/22/82	JA: OK 8			
8219992		3511300000		103		BARNARD 1-7	BARNARD	12.0	PHILLIPS PETROLEU
8219993		3511300000		103		BARNARD 2-7	BARNARD	12.0	PHILLIPS PETROLEU
8219994		3511300000		103		BARNARD 3-7	BARNARD	12.0	PHILLIPS PETROLEU
-TOMAHAWK ENERGY CO INC				RECEIVED:	02/22/82	JA: OK 8			
8219988		3511300000		103		GUILFOYLE #2	GUILFOYLE	35.0	PHILLIPS PETROLEU

-5

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Captiol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before April 5, 1982.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal seams
107–DV: Devonian shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–7547 Filed 3–18–82; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[TSH–FRL–2079–3; OPTS–51405]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

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 twenty six PMNs and provides a summary of each.

DATES: Close of review period:
PMN 82–190, 82–191 & 82–192—March 29, 1982.
PMN 82–193, 82–194 & 82–195—April 13, 1982.
PMN 82–175 & 82–176—June 3, 1982.
PMN 82–177, 82–178, 82–179 & 82–180—June 6, 1982.
PMN 82–181, 82–182, 82–183, 82–184, 82–185, 82–186, 82–187 & 82–188—June 7, 1982.
PMN 82–189—June 8, 1982.
PMN 82–196, 82–197, 82–198, 82–199 & 82–200—June 9, 1982.
Written comments by:
PMN 82–175 & 82–176—May 4, 1982.
PMN 82–177, 82–178, 82–179 & 82–180—May 7, 1982.
PMN 82–181, 82–182, 82–183, 82–184, 82–185, 82–186, 82–187 & 82–188—May 8, 1982.
PMN 82–189—May 9, 1982.
PMN 82–196, 82–197, 82–198, 82–199 & 82–200—May 10, 1982.

ADDRESS: Written comments, identified by the document control number "(OPTS–51405)" 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, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: David, Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M St., SW., Washington, DC 20460, (202–382–3729).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 82–175

Manufacturer. Confidential.
Chemical. (G) Borate ester.
Use/ Production. (G) Contained use. Prod. range: Confidential.
Toxicity Data. Acute oral: 5 g/kg, Acute dermal: 2 g/kg, Skin: 1.4/8.0, Eye: 2.7/110 @ 24 hrs decreasing to 0/110 @ 72 hrs, Ames test: Negative.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 82–176

Manufacturer. Dow Corning Corporation.
Chemical. (G) Epoxy functional polysiloxane/silica resin.
Use/ Production. (G) Industrial coating. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg, Acute dermal: >2,000 mg/kg, Skin: Non-irritant, Eye: Moderate irritant, Ames test: Non-mutagenic.
Exposure. No worker exposure anticipated.
Environmental Release/Disposal. No release. Disposal by publicly owned treatment works (POTW) and incineration.

PMN 82–177

Manufacturer. Confidential.
Chemical. (G) Metal salt of sulfur analog of carboxy alkyl carbonic acid.
Use/ Production. (S) Ore processing chemical. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 82–178

Manufacturer. Confidential.
Chemical. (G) Disubstituted butanamide.
Use/ Production. (G) Chemical intermediate. Prod. range: 17,000–21,000 kg/yr.
Toxicity Data. Acute oral: >300 mg/kg, Acute dermal: >1,000 mg/kg, Skin: Slight irritant, Eye: Slight irritant.
Exposure. Manufacturer and use: Dermal and inhalation, 60 workers, 2 hrs/da, 3 da/yr.
Environmental Release/Disposal. Release to water. Disposal by biological treatment system and incineration.

PMN 82–179

Manufacturer. Confidential.
Chemical. (G) Substituted thioic acid ester.
Use/Production. (G) Site-limited chemical intermediate. Prod. range: 11,000–15,000 kg/yr.
Toxicity Data. Acute oral: 140–170 mg/kg, Acute dermal: >1,000 mg/kg, Skin: Slight irritant, Eye: Slight irritant.
Exposure. Manufacturer and use: Dermal and inhalation, 60 workers, 2 hrs/da, 10 da/yr.
Environmental Release/Disposal. Release is negligible. Disposal by incineration.

PMN 82–180

Manufacturer. Confidential.
Chemical. (G) Disubstituted benzene.
Use/Production. (G) Site-limited intermediate. Prod. range: 12,000–16,000 kg/yr.
Toxicity Data. Acute oral: >3,000 mg/kg, Acute dermal: >1,000 mg/kg, Skin: Slight irritant, Eye: Slight irritant.

Exposure. Manufacturer and use: Dermal and inhalation, 15 workers, 1 hr/da, 4 da/yr.

Environmental Release/Disposal. Release is negligible. Disposal by incineration.

PMN 82–181

Importer. American Hoechst.

Chemical. (S) Polymers of benzoic acid, dimethylethanolamine, epoxidized soybean oil, neopenyl glycol, propylene glycol, phthalic anhydride, trimellitic anhydride.

Use/Import. (S) Coating for aluminum and steel sheeting. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: Up to 50 hrs/yr.

Environmental Release/Disposal. No release.

PMN 82–182

Importer. American Hoechst.

Chemical. (S) Polymers of bisphenol, epichlorohydrin, styrene, phenol, formaldehyde.

Use/Import. (S) can coating resin. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: Up to 50 hrs/yr.

Environmental Release/Disposal. Release is negligible. Disposal by approved landfill.

PMN 82–183

Importer. American Hoechst.

Chemical. (S) Polymers of acrylic acid, hydroxyethyl methacrylate, methylmethacrylate, phthalicanhydride, trimelliticanhydride, neodecanoic acid, 2,3-epoxypropyl ester.

Use/Import. (S) Industrial paint resin. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: Up to 50 hrs/yr.

Environmental Release/Disposal. Release is negligible. Disposal by incineration and approved landfill.

PMN 82–184

Importer. American Hoechst.

Chemical. (S) Polymers of phenol, formaldehyde, propyleneoxide, polyvinyl alcohol.

Use/Import. (S) Can coating resin. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: Up to 50 hrs/yr.

Environmental Release/Disposal. Release is negligible. Disposal by approved landfill.

PMN 82–185

Manufacturer. Confidential.

Chemical. (G) Fatty acids, esters with a polyol.

Use/Production. (G) Contained use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacturer: Dermal, 6 workers, 2 hrs/da, 15 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water 24 hrs/da, 15 da/yr with 100–1,000 kg/yr to land. Disposal by incineration or landfill.

PMN 82–186

Manufacturer. Confidential.

Chemical. (G) Substituted alkyl amine.

Use/Production. (G) Open use. Prod. range: 0–500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacturer and processing: Dermal, inhalation and eye, a total of 150 workers, up to 6 hrs/da, up to 80 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 10–1,000 kg/yr to land. Disposal by incineration.

PMN 82–187

Manufacturer. Confidential.

Chemical. (G) Modified polymer of alkenoic acid, alkenoic ester and substituted alkenoic esters.

Use/Production. (G) Open use. Prod. range: 0–400,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacturer, processing and use: Dermal, inhalation and eye, a total of 157 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 10-more than 10,000 kg/yr to land. Disposal by incineration.

PMN 82–188

Manufacturer. Confidential.

Chemical. (G) Modified polymer of alkenoic acid, alkenoic ester and substituted alkenoic esters.

Use/Production. (G) Open use. Prod. range: 0–400,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacturer, processing and use: Dermal, inhalation and eye, a total of 157 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 10-more than 10,000 kg/yr to land. Disposal by incineration.

PMN 82–189

Manufacturer. American Color and Chemical Company.

Chemical. (G) Benzene 2-[(hexahydro-2,4,6-trioxopyrimidyl)azo]-5-(2-benzothiazolyl) sulfonic acid.

Use/Production. (S) Paper tissue, paper towels, and high grade bond paper. Prod. range: 1,000–5,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacturer and use: Dermal, 4 workers, up to 4 hrs/da, up to 30 da/yr.

Environmental Release/Disposal. Release to water 1 hr/da, 15 da/yr. Disposal by POTW.

PMN 82–190

Manufacturer. Confidential.

Chemical. (G) Metal containing 2-hydroxy alkyl benzoate.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential

Note.—Originally submitted with PMN 81–674 published in the Federal Register January 13, 1982 on page 1413.

PMN 82–191

Manufacturer. Confidential.

Chemical. (G) Metal containing 2-hydroxy alkyl benzoate.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Note.—Originally submitted with PMN 81–674 published in the Federal Register January 13, 1982 on page 1413.

PMN 82–192

Manufacturer. Confidential.

Chemical. (G) Metal containing 2-hydroxy alkyl benzoate.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Note.—Originally submitted with PMN 81–674 published in the Federal Register January 13, 1982 on page 1413.

PMN 82–193

Manufacturer. Confidential.

Chemical. (G) Reaction product of a substituted benzene formaldehyde and inorganic acid.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Note.—Originally submitted with PMN 82–14 published in the Federal Register January 26, 1982 on page 3593.

PMN 82–194

Manufacturer. Confidential.

Chemical. (G) Reaction product of a substituted benzene formaldehyde and inorganic acid.
Use/Production. (G) Lubricant additive. Prod. range: Confidential.
Troxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Note.—Originally submitted with PMN 82–14 published in the Federal Register January 26, 1982 on page 3593.

PMN 82–195

Manufacturer. Confidential.
Chemical. (G) Reaction product of a substituted benzene formaldehyde and inorganic acid.
Use/Production. (G) Lubricant additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Note.—Originally submitted with PMN 82–14 published in the Federal Register January 26, 1982 on page 3593.

PMN 82–196

Manufacturer. Celanese Plastics and Specialties Company.
Chemical. (G) Polyalkylene glycol alkyl glycidyl ether.
Use/Production. (S) Component of sizing agent. Prod. range: 35–90 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing, use and disposal: A total of 20 workers, up to 8 hrs/da, up to 320 da/yr.
Environmental Release/Disposal. Release to air, water and land 24 hrs/da, 350 da/yr. Disposal by industrial waste treatment plant.

PMN 82–197

Manufacturer. Celanese Plastics and Specialties Company.
Chemical. (G) Polyoxyalkylene aryl alkyl phenyl ether.
Use/Production. (S) Component of sizing agent. Prod. range: 100–600 kg/yr.
Toxicity Data. Skin: Non-irritant, Eye: Non/irritant, TLm_{48} (goldfish): <10 ppm.
Exposure. Processing, use and disposal: A total of 20 workers, up to 8 hrs/da, up to 320 da/yr.
Environmental Release/Disposal. Release to air, water and land 24 hrs/da, 350 da/yr. Disposal by industrial waste treatment plant.

PMN 82–198

Manufacturer. Confidential.
Chemical. (G) Modified polyurethane of a substituted alkene diol and a diisocyanate.
Use/Production. (G) Open use. Prod. range: 4,500–60,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacturer, processing and use: Dermal and eye, a total of 95 workers, up to 6 hrs/da, up to 250 da/yr.
Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 10–1,000 kg/yr to land. Disposal by incineration and landfill.

PMN 82–199

Importer. Confidential.
Chemical. (G) Poly-imidazoline derivative.
Use/Import. (G) Industrial dispersive use. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Dermal: More than once per week.
Environmental Release/Disposal. More than 50 kg/yr but less than 5,000 kg/yr release to water. Disposal by POTW.

PMN 82–200

Manufacturer. FMC Corporation.
Chemical. (S) Triaryl phosphate residue.
Use/Production. (G) Wood treatment additive. Prod. range: Confidential.
Toxicity Data. Acute oral: >500 gm/kg, Acute dermal:>2 mg/kg, Skin: Moderate irritant, Eye: Non-irritant, LC_{50} 96 hr. (bluegill sunfish): 7.0 mg/l, LC_{50} 48 hr. (daphnia magna): 2.7 mg/l, BOD mg/l: 10 ppm.
Exposure. Confidential.
Environmental Release/Disposal. Release is negligible. Disposal by approved landfill.

Dated: March 15, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-7398 Filed 3-18-82; 8:45 am]

BILLING CODE 6560-31-M

[TSH-FRL-2079-4; OPTS-59084]

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the Federal Register of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of five applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: April 5, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS–59084]" and the specific TME number should be sent to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E–401, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on TMEs received by the EPA:

TME 82–8

Close of Review Period. April 22, 1982.
Manufacturer. Confidential.
Chemical. (G) Prepolymer of alkoxylated triol, alkenoic acid ester and a diisocyanate.
Use/Production. (G) Curable coatings and inks. Prod. range: 2,000–3,000 kg/yr maximum.
Toxicity Data. Ames Test. Negative.
Exposure. Manufacture: 3 workers, dermal and inhalation, 2 hrs/da 8 da/yr (max); processing: 2–4 workers, dermal, 4 hrs/da, 10 da/yr (max).
Environmental Release/Disposal. Disposal: Industrial waste stream to a publicly owned treatment works (POTW).

TME 82–9

Close of Review Period. April 22, 1982.
Manufacturer. Confidential.
Chemical. (G) Disubstituted glycine complex.
Use/Production. (G) Component of a formulation. Prod. range: 4,000 kg max.
Toxicity Data. Acute oral LD_{50}—1,600–2,300 mg/kg, Acute dermal LD_{50}—>20 ml/kg, Skin—Strong irritation, Eye—Slight irritation, Sensitization potential—Low.
Exposure. Processing—dermal, 2 workers, 2 hrs/da, 16 da/yr.
Environmental Release/Disposal. No release. Disposal by biological treatment system.

TME 82-10

Close of Review Period. April 23, 1982.
Manufacturer. Uniroyal Chemical Company.
Chemical. (G) Isocyanate terminated polyurethane prepolymer.
Use/Production. (S) Molded articles. Prod. range: 4 months up to 50,000 kg.
Toxicity Data. No data submitted.
Exposure. Manufacture: 4 workers, 1 shift/da, 60da/yr, processing: 4 workers, 20 hrs/da, 60 da/yr.
Environmental Release/Disposal. No release. Disposal by landfill and recovery.

TMW 82-11

Close of Review Period.. April 14, 1982.
Importer. Celanese plastics and Specialties Company.
Chemical. (G) Polyoxyalkylene aryl alkyl phenyl ether.
Use/Import. (S) Component of a sizing agent. Import range (test marketing period): 12 kg.
Toxicity Data. Corrosive action: Non-irritating, TLM (48 hrs): Below 10 ppm in goldfish, Skin: Non-irritating.
Exposure. (Test marketing period) Processing and use: 8 workers, 8hrs/da; disposal: 4 workers, 2 hrs/da.
Environmental Release/Disposal. Air-trace, water-less than .8 kg/yr. Liquid waste disposed of in chemical sewer system supported by an aerobic waste water treatment facility; other waste landfilled to licensed hazardous waste disposal site.

TME 82-12

Close of Review Period. April 24, 1982.
Importer. Celanese Plastics and Specialties Company.
Chemical. (G) Polyalkylene glycol alkyl glycidal ether.
Use/Import. (S) Sizing component. Import range (test marketing period): 3 kg.
Toxicity Data. No data submitted.
Exposure. (Test marketing period) Processing and use: 8 workers, 8 hrs/da; disposal: 4 workers, 2 hrs/da.
Environmental Release/disposal. Air-trace, less than .2 kg/yr released to water. Liquid waste disposed of in chemcial sewer system supported by an aerobic waste water treatment facility; other waste landfilled to licensed hazardous waste disposal site.

Dated: March 12, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-7397 Filed 3-18-82; 8:45 am]

BILLING CODE 6560-31-M

[ER-FRL-2080-4]

Availability of Environmental Impact Statements Filed March 8 Through 12, 1982

RESPONSIBLE AGENCY: Office of Federal Activities, Ms. Kathi Wilson, (202) 245-3006.

Corps of Engineers:
EIS No. 820124, Draft, COE, OK, Fort Gibson Lake Hydropower Units, Grand River, Due: May 3, 1982
EIS No. 820128, Final, COE, SEV, NY, PA, OH Lake Erie Natural Gas Resource Development, Permits, Due: Apr. 19, 1982
EIS No. 820122, DSuppl, COE, FL, Dade County Beach Erosion Control and Hurricane Protection (DS-1) Due: May 3, 1982
Department of Commerce:
EIS No. 820132, Final, NOA, SEV, ATL, MXG, Spiny Lobster Fishery Management Plan Regulatory Analysis, Due: Apr. 19, 1982
Department of the Interior:
EIS No. 820125, Draft, BLM, CA, San Gorgonio Wind Resource Study, Riverside County, Due: May 3, 1982
EIS No. 820117, FSuppl, BLM, SEV, PRO Five Year Oil and Gas Lease Sale Schedule, Due: Apr. 19, 1982
EIS No. 820123 Final, IBR, WA, Grand Coulee Dam Riverbank Stabilization, Columbia River, Douglas Co., Due: Apr. 19, 1982
EIS No. 820133, Final, NPS, SD, Badlands National Park Master Plan, Pennington, Jackson and Shannon, Due: Apr. 19, 1982
Department of Transportation:
EIS No. 820129, Draft, FHW, NH, I-393 and Approach Completion, NH-106 to NH-9/US 4 and 202, Due: May 3, 1982
EIS No. 820121, Draft, FHW, OK, Mingo Valley Expressway/US 169 Construction, Tulsa County, Due: May 3, 1982
EIS No. 820137, Draft, FHW, TN, Carthage Bypass Construction, TN-53 to TN-25, Smith County, Due: May 3, 1982
EIS No. 820120, Final, FHW, SEV, AL, GA, Phenix City North Bypass Construction (F-2), Due: Apr. 19, 1982
EIS No. 820131, Final, FHW, CA, I-15/Norco Reach Construction, Magnolia Avenue to CA-60, Due: Apr. 19, 1982
EIS No. 820134, Final, FHW, NC, US 70/Smithfield Bypass Improvement, Johnston County, Due: Apr. 19, 1982
EIS No. 820126, Final, FHW, WA, Government Way/Lindeke Street Corridor Reconstruction, Spokane County, Due: Apr. 19, 1982
EIS No. 820130, Final, UMT, FL, Overtown Station Area Development, Miami, Dade County, Due: Apr. 19, 1982
Department of Housing and Urban Development:
EIS No. 820118, Final, HUD, FL, Tri-County Areawide Development Study, Mortgage Insurance, Due: Apr. 30, 1982
EIS No. 820127, Final, HUD, UT, Painted Hills Estate, Mortgage Insurance, Uintah County, Due: Apr. 19, 1982
EIS No. 820138, Final CDB, AZ, Rio Nuevo Redevelopment Project, Pima County, CDBG, Due: Apr. 19, 1982
EIS No. 820119, Final, CDB, TX, Mother Cabrini Flood Control, Laredo, Webb County, CDBG, Due: Apr. 19, 1982
Nuclear Regulatory Commission:
EIS No. 820135, Final, NRC, AZ, Palo Verde Nuclear Generating Station, Maricopa County, Licenses, Due: Apr. 19, 1982
EIS No. 820139, Report, NRC, MI, Report—Enrico Fermi Atomic Power Plant, Unit 2, Monroe County, Due:
Department of Agriculture:
EIS No. 820116, Final, AFS, CA, Chimney Rock/Gasquet-Orleans Road, Six Rivers NF, Del Norte County, Due: Apr. 19, 1982
Amended Notices:
EIS No. 800927, *Draft, FHW, WA, Mikilteo Ferry Terminal Improvement, Snohomish County, Due:
*Published withdrawal FR 2-19-82 with incorrect status
EIS No. 810306, Draft, NDA, VI, St. Thomas National Marine Sanctuary, Due:
*Published FR 5-1-81—Officially Withdrawn.
Dated: March 16, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82-7551 Filed 3-18-82; 8:45 am]

BILLING CODE 6560-37-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 82-12; CC Docket No. 82-12; File No. 20616-CD-P-78, etc.]

Little Rock Radio Telephone Co. Inc. et. al.; Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Little Rock Radio Telephone Company, Inc., CC Docket No. 82-12, File No. 20616-CD-P-78; for a construction permit to establish a new one-way station to operate on frequency 152.24 MHz in the Domestic Public Land Mobile Radio Service (DPLMRS) at Little Rock, Arkansas; Little Rock Radio Telephone Company, Inc., CC Docket No. 82-13, File No. 21320-CD-P-(3)-79; for a construction permit to establish a new two-way station to operate on frequencies 152.03 MHz, 152.18 MHz and 152.21 MHz in the Domestic Public Land Mobile Radio Service at Little Rock, Arkansas; Grant County Radio Telephone Company, Inc., CC Docket No. 82-14, File No. 22180-CD-P-76; for a construction permit to establish a new two-way station to operate on frequency 152.12 MHz in the Domestic Public Land Mobile Radio Service at Sheridan, Arkansas; Otis L. Hale d.b.a. Mobilefone Communications, CC Docket No. 82-15, File No. 23697-CD-R-79; for renewal of license of Station KLB500 authorized to operate on 152.03 MHz, 152.09 MHz, 152.18 MHz, 152.21 MHz, 454.025 MHz, 454.125 MHz, 454.200 MHz, and 454.300 MHz, in the Domestic Public Land

Mobile Radio Service at Little Rock, Arkansas; Otis L. Hale d.b.a. Mobilfone Communications, CC Docket No. 82–16, File No. 23700–CD–R–79; for renewal of license of Station KQZ752 on 152.24 MHz and 158.70 MHz in the Domestic Public Land Mobile Radio Service at Little Rock, Arkansas; and Otis L. Hale d.b.a. Mobilfone Communications, CC Docket No. 82–17, File No. 20741–CD–P–(2)–78; for construction permit to relocate 454.025 MHz and 454.300 MHz channels of Station KLB500, Little Rock, Arkansas.

Memorandum Opinion and Order

Adopted: January 13, 1982.

Released: February 24, 1982.

By the Commission:

1. The Commission has before it for consideration a complex package of applications for facilities in the Domestic Public Land Mobile Radio Service, various pleadings which have been filed with respect to these applications, and other matters described more fully below. Because of the unusual factual background of these applications and pleadings, these matters are being considered together in this consolidated proceeding. Two groups of applications are involved. One group of applications involves two renewal applications, as well as an application to relocate certain of these facilities, filed by Otis L. Hale d.b.a. Mobilfone Communications (Hale or Mobilfone), operator of various radio common carrier (RCC) facilities in Arkansas. The other group of applications is for construction permits for new RCC facilities in Arkansas filed by Little Rock Radio Telephone Co., Inc. (LRRTC) and Grant County Radio Telephone Company, Inc. (Grant County). LRRTC and Grant County are subsidiaries of Memphis Mobile Telephone, Inc. (MMT).[1] The significance of this relationship is examined below. In addition to the LRRTC and Mobilfone applications being mutually exclusive, each of these parties has raised various allegations concerning the qualifications of the other.

2. For reasons indicated below, we are designating all of these applications for hearing. We are suggesting that this proceeding be tried in two phases. The first phase will relate to the qualifications of LRRTC and Grant County in light of Docket Nos. 20871–2. *Mahaffey Message Relay, Inc.*, Docket Nos. 20871–2, FCC 76–647, released August 4, 1976. The second phase will deal with issues designated against LRRTC and Mobilfone and a comparative evaluation of the mutually exclusive applications of LRRTC and Mobilfone. However, as explained in paragraph 24, *infra*, we invite the presiding judge to structure the hearing in any manner that will be both expeditious and conducive to the rights of the parties and the public interest.

Matters Deferred Earlier Involving LRRTC and Grant County in Phase I of the Hearing

3. On August 4, 1976 the Commission released *Mahaffey Message Relay, Inc., supra*, in which it ordered a comparative hearing (Docket Nos. 20871–2) for a Domestic Public Land Mobile Radio Service station between an application filed by Mahaffey Message Relay, Inc., an existing licensee, and an application filed by MMT. In addition, at MMT's behest, the Commission included several issues relating to Mahaffey's past conduct. Subsequently, during the course of the hearing, a number of issues were added by the presiding judge with respect to the qualifications of MMT and its principals. An undisclosed principal and misrepresentation issue was added by FCC 76M–1693 (released December 23, 1976). A basic qualifications issues based on the alleged illegal and improper business activities of MMT's principals was added by FCC 77M–1806 (released October 21, 1977).[2]

4. Trial of Phase III of the Mahaffey hearing, in which the issues relating to MMT would have been heard, was set for January 23, 1979; however, on January 14, 1979, MMT filed a "Petition to Dismiss Applications Without Prejudice" in which it sought to withdraw from the hearing. On January 31, 1979, the Presiding Judge released a *Memorandum Opinion and Order*, 74 F.C.C. 2d 523, *affirmed*, 74 F.C.C. 2d 518 (1979), in which he dismissed MMT's application with prejudice. Instrumental to the Presiding Judge's decision to dismiss MMT's application with prejudice, rather than proceeding with the potentially disqualifying issues against MMT, was the fact that "the principals of MMT are involved in other proceedings where the disqualifying issues can be aired." 74 F.C.C. 2d at 529.

5. Mobilfone argues that the Grant County and LRRTC applications at issue constitute an appropriate forum for the unresolved issues from the *Mahaffey* proceeding to be adjudicated. We agree with Mobilfone in this regard.[3] We therefore propose to structure the hearing so that the basic qualifications of the new applicants will first be examined and, thereafter, the presiding judge may continue this proceeding in a comparative manner or just examine Mobilfone's renewal and construction permit applications for the UHF frequencies of Station KLB500 in Little Rock. *See* paragraphs 9–21, *infra*.

Matters Involving LRRTC in Phase II of the Hearing

6. In various filings, Mobilfone has asked that additional issues be specified with respect to LRRTC. In addition to issues relating to the conduct of MMT, Mobilfone asks that we add a "strike" issue, a "need" issue, and a financial issue with respect to LRRTC. A strike application is an application which is filed to impede, obstruct or delay the grant of a competing application. *Grenco, Inc.*, 28 F.C.C. 2d 166, 167 (1971). *See also Blue Ridge Mountain Broadcasting Co., Inc.*, 37 F.C.C. 791 (Rev. Bd. 1964), *aff'd sub nom. Gordon County Broadcasting, Co.* v. *FCC*, 6 RR 2d 2044 (D.C. Cir. 1965). The guidelines which have been developed by the Commission to determine if an

[1] LRRTC is owned 100% by El Dorado Mobile Telephone, Inc. which, in turn is owned 40% by MMT. Grant County is 50% owned by MMT. These corporations have common officers, and it appears that MMT exercises *de facto* control over these subsidiary corporations.

[2] A "state certification" issue was added by FCC 77M–2065 (released December 8, 1977); however, in *Regulatory Policies and Procedures in the Domestic Public Land Mobile Radio Service*, Docket No. 20870, *First Report and Order*, 69 F.C.C. 2d 398 (1978), *recon. denied*, 80 F.C.C. 2d 294 (1980), we amended our rules to exempt applicants for this service from submitting evidence of prior state certification. Accordingly, we do not believe that this issue warrants further inquiry. In addition, an "ex parte" issue against MMT was added by FCC 76M–1692 (released December 23, 1976). This latter issue is based on the fact that, subsequent to release of the designation order in the *Mahaffey* proceeding, MMT wrote the Secretary of the Commission to urge deletion of certain of the issues which had been specified against Mahaffey. Copies of this letter were not served upon the other parties to the hearing. Consequently, the presiding judge decided that an "ex parte" issue appeared to be warranted in view of the inference that MMT intended its communication to be referred to decision-making personnel. While it appears that MMT may have technically violated the *ex parte* rules, the circumstances of this letter, including the fact that a favorable response to it would necessarily have been public, persuade us that it was not intended to be "secret or surreptitious," and that further exploration of the matter is not warranted. *Compare Rogers Radio Communications Services, Inc.* v. *Federal Communications Commission*, 593 F. 2d 1225, 1233–1234 (D.C. Cir. 1978).

[3] On April 2, 1980, LRRTC and Grant County informed the Commission that Carlton Smith, the alleged undisclosed principal, had resigned and his duties would be reassigned. We conclude, however, that this development does not moot the unresolved qualifications issues from Docket Nos. 20871–2. The qualifications of MMT, the parent of LRRTC and Grant, remain in question because the alleged misrepresentation and improper business activities related to the activities of the corporation.

application is a strike application include:

(a) The timing of the application;

(b) The economic and competitive benefit occurring from the application;

(c) The good faith of the applicant; and

(d) Questions concerning a frequency study.

Grenco, Inc., supra; Radio Carrollton, 69 F.C.C. 2d 1139, 1150 (1978), *recon. denied*, 72 F.C.C. 2d 264 (1979). Here, Mobilfone argues in essence that LRRTC could have filed for other channels in the Little Rock area and that its decision to amend its pending applications to apply for frequencies authorized to Mobilfone is therefore improper. We reject this argument for two reasons: first, our traditional objection to "strike" applications has been applied to filings directed against new applications; when a mutually exclusive application is filed with an operating station which can continue to operate during the pendency of any subsequent hearing, the detrimental effects are not as severe as they might be if service is altogether prevented. To be sure, an abuse of process is possible where service continues, but we believe there must be greater support for the inference of improper motive than is called for when both applications are for new facilities. Second, it appears that both LRRTC and Mobilfone agree that the VHF frequencies at issue are superior to the remaining unassigned frequencies. Consequently, we are not persuaded that LRRTC's applications were filed in bad faith. *See Central Radio Telephone, Inc.*, CC Docket No. 80–548, Mimeo 36249, 45 FR 63546 (Common Carrier Bureau, released September 29, 1980). Accordingly, we will not specify a strike issue against LRRTC.

7. Mobilfone seeks a need issue with respect to LRRTC on the basis that LRRTC has not made an adequate showing of "need" for its proposed facilities, and that "need" cannot be presumed, citing *Long Island Paging*, 30 F.C.C. 2d 405, 407, *affirmed* 34 F.C.C. 2d 216 (1971). On December 6, 1978 and July 30, 1979, LRRTC amended its application for one-way facilities, File No. 20616–CD–P–78, in which it indicated that it conducted mail surveys, and that it was holding requests for service from 11 people who were informed of the nature of the service, its proposed costs, and the general coverage area. In LRRTC's application for two-way facilities, File No. 21320–CD–P–(3)–79, LRRTC referred to the survey for its one-way application and pointed out "there is an existing market for DPLMRS service on the identical frequencies listed in this application . . ." After carefully reviewing the LRRTC applications, we conclud that LRRTC has failed to demonstrate a need for its proposed one-way and two-way facilities. LRRTC's showing for its two-way facility does not meet the standards established in *New York Telephone Co.*, 47 F.C.C. 2d 488, *recon. denied*, 49 F.C.C. 2d 364 (1974), *aff'd sub. nom. Pocket Phone Broadcast Service* v. *FCC*, 538 F. 2d 448 (D.C. Cir. 1976). While LRRTC's one-way showing does meet the *New York Telephone* standard, LRRTC has not demonstrated that the proposed one-way service cannot be provided in connection with its proposed two-way facilities. *See* § 22.501(d)(2) of the Rules.[4] Accordingly, we will add appropriate need issues for LRRTC's proposed one-way and two-way facilities.

8. Finally, Mobilfone has requested the addition of a financial issue with respect to LRRTC. Since the pleadings were filed in this proceeding, we have eliminated the requirement that applicants for facilities in the Public Mobile Radio Service establish their financial qualifications. Accordingly, it is not necessary to consider a financial issue. *See Elimination of Financial Qualifications in the Public Mobile Radio Services*, CC Docket No. 80–55, 82 FCC 2d 152 (1980).

Matters Involving Mobilfone in Phase II of the Hearing

9. As a result of an Application for Review filed by Grant County,[5] a question has been raised whether Mobilfone filed a strike application against the Grant County application. After a careful review of this matter, we conclude that Grant has not demonstrated that Mobilfone filed a strike application.[6] However, our review of this matter has resulted in several questions with respect to the operational status of UHF facilities of Mobilfone's Station KLB500. These questions will be explored further in the consolidated hearing. The allegations and our reasons for reaching these conclusions are more fully explained below.

10. A brief review of the background of this matter is helpful. In 1965, Mobilfone acquired Station KLB500 through assignments from Radio Mobile Phone, Inc. and Communications Enterprises, Inc. At this time, Station KLB500 was authorized to provide two-way service on two VHF frequencies. Mobilfone added a third VHF frequency in 1970 and a fourth VHF frequency in April 1973. On August 15, 1973, Mobilfone filed an application to add four UHF frequencies for Station KLB500. The license for the four UHF frequencies was granted August 31, 1976.

11. On July 21, 1976, Mobilfone filed an application, File No. 22554–CD–P–76, which requested an additional channel, frequency 152.12 MHz, for Station KLB500. In Exhibit No. 3, Mobilfone submitted a traffic load study for Station KLB500's VHF channels and requested a waiver of the requirement of § 21.516 of the rules (now § 22.516) that a traffic load study be provided for Station KLB500's UHF channels. This request argued that UHF frequencies should not be considered in the study because of their limited service area, equipment restrictions, and the fact that Mobilfone wanted to provide wide area service. Mobilfone stated that it would provide a traffic load study for its UHF channels if the Commission requested it to do so.

12. Grant County's application, File No. 22180–CD–P–76, to establish a new two-way station to operate on frequency 152.12 MHz at Sheridan, Arkansas was filed on May 18, 1976. On August 6, 1976, Grant County's application was granted. (Public Notice Report No. 819–A, dated August 16, 1976). Subsequently, however, Grant County's application was found to be electrically mutually exclusive with the application of Mobilfone, filed July 21, 1976. Accordingly, on August 19, 1976, the grant to Grant County was rescinded by the Chief, Mobile Services Division, pursuant to § 1.113(a) of the Rules,[7] and the application was returned to pending status.

13. On September 22, 1976, Grant County filed with the Commission an Application for Review of the action of the Mobile Services Division in setting aside the grant of its application. In the Application for Review, Grant County alleged that Mobilfone's application for frequency 152.12 MHz was a "strike application, intended to delay the grant to a competitor adjacent to Little Rock." Grant County argued that Mobilfone had failed to put its four UHF Channels for Station KLB500 into service and, therefore, Mobilfone's non-compliance

[4] While Section 22.501(d)(2) of the Rules literally applies only to applications for frequencies 35.22, 35.58, 43.22, and 43.58 MHz, the Review Board has determined that the same showing required by Section 22.501(d)(2) should be made for one-way applications for the 152 MHz paging frequencies. *See* Airsignal International, Inc., 46 F.C.C. 2d 1, 9 (Rev. Bd. 1974).

[5] *See* paragraph 13, *infra*.

[6] *See* paragraph 19, *infra*.

[7] Section 1.113(a) of the Rules provides:

"Within 30 days after public notice has been given of any action taken pursuant to delegated authority, the person, panel, or board taking the action may modify or set it aside on its own motion."

with § 22.516 of the Rules indicated that the application for frequency 152.12 MHz was filed in bad faith.

14. Mobilfone responded that the Application for Review should be dismissed. Mobilfone argued that the strike application issue had not been presented to the Bureau previously; therefore, the Application for Review should be dismissed because, contrary to § 1.115(c),[8] the Bureau had not been afforded an opportunity to pass on this matter. Substantively, Mobilfone argued that its application requested a waiver of Section 22.516; that frequency 152.12 MHz was the last VHF channel available in Little Rock; that the UHF facilities of Station KLB500 are not pertinent to its VHF proposal; and that, therefore, its application was in full compliance with § 22.516. Mobilfone concluded that Grant County's strike application allegation was "devoid of any factual support and is totally without merit."

15. In a letter dated October 28, 1977, the Bureau staff denied Mobilfone's request for waiver of § 22.516 and asked that Mobilfone provide a traffic load study for its UHF channels. On January 3, 1978, Mobilfone declined to provide the requested traffic load study and asked that its application for 152.12 MHz be dismissed. Mobilfone based this request on the fact that none fo the UHF channels were in public service and, consequently, any traffic load study submitted with respect to the UHF channels would not support the VHF proposal. Mobilfone explained further that the actual coverage of the UHF channels was too limited, and stated that only employees had been using the UHF channels. The Mobilfone application was dismissed without prejudice on January 19, 1978 (Public Notice Report No. 894–A, dated January 23, 1978). Thus, except for the issues concerning the qualifications of Grant County, Grant County's application is again available for action.

16. In view of Mobilfone's response, on January 12–13, 1978, Station KLB500's facilities were inspected. When inspecting the authorized transmitter location for the UHF frequencies, the Commission's Field Operations Bureau (FOB) found that the UHF frequencies were not in regular operation,[9] in fact, the FOB discovered that only two of the four authorized UHF transmitters were physically present. Hale informed the FOB that two transmitters were removed because of intermodulation problems and inadequate signal penetration. In addition, the FOB found that the remaining two transmitters were not connected to telephone control lines. Based on these facts, an Official Notice of Violation was issued for Station KLB500's noncompliance with § 22.118(e) of the Rules—the control point rule. On March 8, 1978, Mobilfone responded that control facilities exist, but were not in service except for testing; that an application for the revamping of the UHF system is now on file with the Commission (File No. 20741–CD–P–(2)–78); and that no subscribers were being served by the system.

17. On July 21, 1978, the Staff requested more information about the construction and removal of the UHF transmitters. On August 8, 1978, Mobilfone responded that the UHF transmitters were installed and tuned and the control lines were connected to those transmitters on April 12, 1976; that the control lines were only connected to the UHF transmitters for equipment tests; that the transmitter on frequency 454.300 MHz was removed due to a burned out power supply on November 21, 1977; and that the transmitter on frequency 454.025 MHz was also removed on November 21, 1977, due to an interference problem. Based on a review of the foregoing, it appears that Mobilfone constructed the UHF facilities of Station KLB500 as represented in the Form 403, but subsequently dismantled these facilities.

18. We have carefully reviewed this matter and we conclude that Grant County's Application for Review must be dismissed. First, Grant County has not shown that the Bureau's action in rescinding the grant was in error or in conflict with statute, regulation or case precedent. *See* § 1.115(b)(2)(i) of the rules. There is no dispute that the applications of Grant County and Mobilfone were electrically mutually exclusive and were co-pending. Consequently, in accordance with *Ashbacker* v. *FCC*, 326 U.S. 333 (1945), these applications were entitled to comparative consideration. The Bureau's action, therefore, to protect Mobilfone's rights to a comparative hearing was reasonable and proper. Second, contrary to § 1.115(c) of the Rules, Grant County did not present its arguments against Mobilfone's application to the Bureau before presenting these arguments to the Commission. Thus, the Bureau has not been afforded an opportunity to pass on the issues raised in the Application for Review. Accordingly, we must dismiss Grant County's Application for Review. However, in view of the seriousness of the matters raised, we will review Grant County's strike allegations on our own motion.

19. After a review of the evidence presented, we conclude that Grant County has not demonstrated that Mobilfone filed a strike application intended to delay or block the grant of its application. The Commission's guidelines to determine whether an application is a strike application were previously discussed in paragraph 6, *supra*. They are: the timing of the application; the economic and competitive benefits; the good faith of the applicant; and questions concerning a frequency study. *See Grenco, Inc. supra*. In the present case, although Mobilfone's application and the Grant County application were electrically mutually exclusive, they would have served substantially different service areas. Thus, the stations of Grant County and Mobilfone would not be in direct competition. In addition, the frequency at issue—152.12 MHz—was the last VHF channel available in Little Rock, and it appears that both LRRTC and Mobilfone agree that this remaining VHF frequency was superior to any unassigned UHF frequency. Consequently, we are not persuased that Mobilfone's application for the last VHF frequency was filed in bad faith. *See Central Radio Telephone, Inc., supra*. The mere assumption that Mobilfone's application was motivated by invidious designs, absent some factual showing, is insufficient to demonstrates a *prima facie* case of a strike application. *See Airsignal International of Pittsburgh Pa., Inc.*, 52 F.C.C. 2d 93, 95 (1975). Accordingly, we will not designate a strike issue against Mobilfone for hearing.

20. However, our investigation of Station KLB500 has raised several questions with respect to the UHF facilities of this station. First, a question is raised whether Mobilfone has a need for the UHF frequencies for this station. As indicated above, Mobilfone never put its four UHF channels into public service. When the FOB inspected the facilities, two of the UHF transmitters were missing and control lines were not connected to the remaining two UHF transmitters. Indeed, until the inspection of these facilities, Mobilfone apparently

[8] Section 1.115(c) of the Rules provides:

"No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass."

[9] In a letter dated January 12, 1978, the same date that the FOB investigated the station, Mobilfone gave notice of the temporary discontinuance of operation of the two UHF facilities. Mobilfone stated that one of the transmitters was inoperative due to a burned up power supply and the other transmitter was disconnected in anticipation of a relocation.

took no affirmative steps to remedy any problems it might have been experiencing with these frequencies. In these circumstances, we question whether Mobilfone has any need for these UHF frequencies and, consequently, we will designate an issue in this regard in Phase II of the hearing. In addition, we are disturbed about Mobilfone's proffer in File No. 22554–CD–76 of a traffic load study for its UHF facilities of Station KLB500 when, in fact, these frequencies were not in public service. See paragraphs 15 and 16, *supra*. We conclude, therefore, that this matter needs further examination. Accordingly, we will designate a lack of candor issue for Phase II of the hearing.

21. Our designation of this lack of candor issue against Mobilfone has caused us to examine whether the policy established by the Commission in *Grayson Enterprises, Inc.*, 79 F.C.C. 2d 936 (1980), is applicable to DPLMRS Proceedings. In *Grayson* the Commission adopted a new procedure for handling assignment applications in the Broadcast service where there are allegations of misconduct at one of a licensee's stations. Under this procedure, the licensee is informed at the time of designation whether it can sell its "uninvolved" stations. In adopting this approach, we recognized that the general long-term interest in deterrence is in some instances outweighed by the more immediate interest in guaranteeing that a particular community will continue to receive good broadcast service. *See* 79 F.C.C. 2d at 938–941. The *Grayson* procedure allows greater certainty for all concerned (the licensee, the prospective buyer, the employees, the public, and the Commission itself), and avoids unnecessary expenditure of considerable resources in evaluating the proposed transaction and minimizing the risk of deteriorating service to the public in the interim period. *See* 79 F.C.C. 2d at 939. We find that the same rationale is applicable to DPLMRS proceedings. Accordingly, in the future a DPLMRS licensee will be free to sell its "uninvolved" stations (subject to normal processing standards concerning legal, technical or other matters) unless we express at the time of designation a limit on the licensee's right to sell its other stations. However, we retain the discretion to impose or remove a limitation or take appropriate action with respect to a licensee's other stations, if at a later point the circumstances warrant.[10]

[10] This procedure is spelled out in more detail in *Grayson Enterprises, Inc. supra*. 79 F.C.C. 2d at 940.

22. We now turn to the question of whether we will permit Mobilfone to sell its "uninvolved" stations. After a careful review of the facts before us, we have decided that the public interest will best be served by not limiting Mobilfone's right to sell its other stations.[11] We are taking this action because we do not believe that Mobilfone's apparent lack of candor is serious enough to cause us to limit Mobilfone's right to assign. In addition, in accordance with the procedures in *Grayson*, Mobilfone's renewal applications for its other stations are eligible for disposition by the Common Carrier Bureau without any conditions. *See* 79 FCC 2d at 940 and n.8. However, as we emphasized in *Grayson*, the Commission will still retain the discretion to impose limitations on Mobilfone's right to assign or take appropriate action against Mobilfone's other stations if the circumstances warrant, i.e. if the hearing record ultimately discloses that the misconduct was more serious than initially believed. *See* 79 FCC 2d at 940.

23. *Height-Power Waiver.* As a final matter, one of the applications of Mobilfone that we are designating for hearing requests authority to relocate UHF facilities for Station KLB500 (File No. 20741–CD–P–(2)–78). In this application, Mobilfone requests a waiver of the height and power limitations of § 22.505 of the Rules because, Mobilfone claims, there will be inadequate signal penetration due to the fact that the surrounding terrain is heavily wooded. Mobilfone did not provide engineering data to support its argument. After carefully reviewing this matter, we conclude that Mobilfone's waiver request should be denied. Section 22.505 requires that an applicant who desires to provide service in an extended area should accomplish this by means of additional transmitters and/or by changing antenna sites. *See James Edwin Walley d.b.a. Autorfone*, Mimeo 1548 (Common Carrier Bureau, released November 14, 1980). This allows for an orderly scheme for reassignment of frequencies and streamlines the application processing procedure. Absent an unusual showing, we intend to strictly enforce the rules. In the application at issue, Mobilfone has not made such a showing. Consequently, if Mobilfone's application, File No. 20741–CD–P–(2)–78, is granted by the Administrative Law Judge, it should be granted with a maximum effective radiated power of 158 watts in conformity with § 22.505 of the Rules.

[11] We note that Mobilfone has filed two applications for assignment of license for several of its stations. In view of the foregoing, these applications are eligible for disposition by the Common Carrier Bureau subject to normal processing standards.

Conclusions

24. This consolidated proceeding may be tried in two phases. The first phase would relate to the qualifications of Grant County and LRRTC in light of the earlier Docket 20871–2 proceeding, and the second phase would deal with issues designated against LRRTC and Mobilfone and a comparative evaluation of the mutually exclusive applications. At the conclusion of the presentation of evidence in Phase I, the Administrative Law Judge may request proposed findings and conclusions and may issue an initial decision at that time with respect to the qualifications of LRRTC and Grant County. Alternatively, the Judge may elect to hear evidence on the remaining issues at that time. We wish to make clear, however, that this is merely a suggested approach and we invite the Judge to structure the hearing in any manner that will be both expeditious and conducive to protecting the rights of the parties and the public interest.

25. Excepting those qualifications which will be considered in the hearing, we conclude from the record that the applicants meet the Commission's technical, legal and other qualifications.

26. Accordingly, it is ordered, That, pursuant to Sections 309(d) and (e) of the Communications Act of 1934, as amended, the above-captioned applications of Little Rock Radio Telephone Company, Inc., Grant County Radio Telephone Company, Inc., and Otis L. Hale d.b.a. Mobilfone Communications are designated for hearing upon the following issues:

(Phase I)

1. To determine the relationship between Memphis Mobile Telephone, Inc. and Mr. C. Carlton Smith, and to determine whether Memphis Mobile Telephone, Inc. has been guilty of misrepresentation or lack of candor in failing to disclose such relationship to the Commission. (Based on pleadings in Docket No. 20871).

2. To determine whether C. Carlton Smith or any identified principal of Memphis Mobile Telephone, Inc. is, or has been, engaged in fraudulent, deceptive or otherwise illegal or improper business activities relating to the establishment of radio common carrier services, and, if so, to ascertain the effect of such activities upon the basic qualifications of Memphis Mobile Telephone, Inc. (Based on pleadings in Docket No. 20871).

3. To determine in light of the evidence adduced pursuant to the foregoing issues whether LRRTC and Grant County possess the threshold qualifications to be licensees of this Commission.

Following the hearing on Issue 3, as discussed in paragraph 24, above, the presiding officer may hear all or some of the following issues:

(Phase II)

4. To determine whether a public need exists for the three frequencies proposed in LRRTC's two-way application, File No. 21320–CD–P–(3)–79.

5. To determine whether LRRTC's proposed one-way service can be provided in connection with its proposed two-way service.

6. To determine whether Mobilfone has need for the UHF frequencies of Station KLB500.

7. To determine whether Mobilfone exhibited a lack of candor in connection with the operational status of the UHF facilities of Station KLB500 in its application for an additional frequency (152.12 MHz) for Station KLB500, File No. 22554–CD–P–76.

8. To determine on a comparative basis, the nature and extent of service proposed by Mobilfone and LRRTC, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto. The comparative analysis may include past performance of the applicants.

9. To determine on a comparative basis, the areas and populations to be served by LRRTC and Mobilfone within the prospective interference-free area within 37 dBu (two-way) and 43 dBu (one-way) contours,[12] based upon the standards set forth in § 22.504(a) of the Commission's Rules and Regulaitons,[13] and to determine and compare the need for the proposed services in those areas.

10. To determine in light of the evidence adduced pursuant to the foregoing issue what actions with respect to the above-captioned applications would best serve the public interest, convenience and necessity.

27. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

28. In the event that Issue 3 is resolved adversely to Grant County's and LRRTC's qualifications prior to Phase II, Issues 6, 7 and 10 will be heard with Mobilfone and the Chief, Common Carrier Bureau, as parties in order to determine whether the construction permit application, File No. 20741–CD–P–(2)–78, and the renewal application for 454.025 MHz, 454.125 MHz, 454.200 MHz and 454.300 MHz should be granted.

29. It is further ordered, That the burden of going forward with the introduction of evidence and the burden of proof on Issues (1), (2) and (3) are placed on Grant County and LRRTC; that the burden of going forward with the introduction of evidence and the burden of proof on Issues (4) and (5) is placed on LRRTC; that the burden of going forward with the introduction of evidence and the burden of proof on Issues (6) and (7) is placed on Mobilfone; that the burden of going forward with the introduction of evidence and the burden of proof on Issues (8) and (9) is placed jointly on LRRTC and Mobilfone; and that the burden of going forward with the introduction of evidence and the burden of proof on Issue (10) is placed jointly on LRRTC, Grant County, and Mobilfone.

30. It is further ordered, That the hearing ordered herein shall be held at a place and time to be specified in a subsequent order of the Chief Administrative Law Judge.

31. It is further ordered, That the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to Section 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.

32. It is further ordered, That the request of Otis L. Hale d/b/a Mobilfone Communications for waiver of § 22.505 of the Rules in File No. 20741–CD–P–(2)–78 is hereby denied.

33. It is further ordered, That the Application for Review filed by Grant County Radio Telephone Co., Inc. is hereby dismissed.

34. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82–7493 Filed 3–18–82; 8:45 am]

BILLING CODE 6712–01–M

[12] For the purpose of this proceeding, the interference-free area is defined as that area with the 37 dBu or 43 dBu contour as calculated from Section 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R–6406, equation 8.

[13] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 37 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in two-way communications service on frequencies in the 152–162 MHz band and 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service in the 150 MHz frequency band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours (F50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

[CC Docket Nos. 82–141 and 82–142; File Nos. 22589–CD–P–2–81 and 22935–CD–P–2–81]

Waterloo Communications, Inc. and Iowa Radio Service, Inc.; Designating Applications for Consolidating Hearing on Stated Issues

Adopted March 4, 1982.

Released March 15, 1982.

By the Common Carrier Bureau.

In re applications of Waterloo Communications, Inc., CC Docket No. 82–141, File No. 22589–CD–P–2–81, for a construction permit to establish additional facilities to operate Station KRM987 on frequencies 152.18 and 152.21 MHz in the Domestic Public Land Mobile Radio Service at Waterloo, Iowa; and Iowa Radio Service, Inc., CC Docket No. 82–142, File No. 22935–CD–P–1–81, for a construction permit to establish a new two-way station to operate on frequency 152.18 MHz in the Domestic Public Land Mobile Radio Service at Waterloo, Iowa.

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, are the captioned applications of Waterloo Communications, Inc. (Waterloo), and Iowa Radio Service, Inc. (Iowa Radio). Waterloo proposes to add additional channels to operate on frequencies 152.18 and 152.21 MHz for its existing two-way mobile radio station KRM987 at Waterloo, Iowa. Iowa Radio proposes to establish a new two-way radio service at Waterloo to operate on frequency 152.18 MHz. The proposals of Waterloo and Iowa Radio to use frequency 152.18 MHz in the same geographic area are electrically mutually exclusive; therefore, a comparative hearing will be held to determine which applicant would better serve the public interest. Waterloo's proposal to use frequency 152.21 MHz is not mutually exclusive with any other pending application.

2. We find the applicants to be legally, technically, and otherwise qualified to construct and operate the proposed facilities. We further find that a grant of the request by Waterloo to operate on frequency 152.21 MHz will serve the public interest, convenience and necessity. Accordingly, it is ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the application of

Waterloo Communications, Inc., File No. 22589–CD–P–2–81, for operation of Station KRM987, is granted in part to the extent that the request for frequency 152.21 MHz is granted, and that the applications of Waterloo Communications, Inc., File No. 22589–CD–P–2–81, to operate on frequency 152.18 MHz and the application of Iowa Radio Service, Inc., File No. 22935–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 serve within the prospective interference-free area within the 37 dBu contours,[1] based upon the standards set forth in Section 22.504(a) of the Commission's Rules,[2] and 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 the Chief, Common Carrier Bureau, is made a party to the proceeding.

5. 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 Order.

[1] For the purpose of this proceeding, the interference-free area is defined as the area within the 37 dBu contour as calculated from Section 22.504, in which the ratio of desired-to undesired signal is equal to greater than R in FCC Report No. R–6404, equation 8.

[2] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 37 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in two-way communications service on frequencies in the 150 MHz band. Propagation data set forth in Section 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 with the Bureau counsel with the goal of reaching joint technical exhibits.)

6. The Secretary shall cause a copy of this Order to be published in the Federal Register.

William F. Adler,

Acting Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 82–7494 Filed 3–18–82; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Inactive Tariffs—Bureau of Tariffs; Notice of Intent To Cancel

The foreign tariff files of the Federal Maritime Commission contain sixty-one tariffs filed by four separate divisions or organizations of Seatrain Lines Inc. On February 12, 1981, Seatrain Lines, Inc., agreed to enter into bankruptcy proceedings in *Re Seatrain Lines, Inc., S.D.N.Y. 81 B 103 11.*

The Commission staff can find no information that Seatrain Lines, Inc., or its divisions currently offer common carrier service in the U.S. foreign trades.

Inactive tariff files serve no useful regulatory purpose. The Commission, therefore, proposes to cancel the following listed tariffs in the absence of a showing of good cause why they should not be cancelled:

Seatrain International, S.A., Port Seatrain, Weehawken, N.J. 07087
FMC Nos. 4, 39, 41, 43, 54, 81, 110, 111, 112, 113, 118, 123, 124, 126, 127, 128, 129, 130, 132, 133, 134, 135, 137, 139, 142, 148, 149, 153, 154, 155, 156, 158, 159, 160, 161, 163, 164, 166, 167, 168, 169

Wall Street Plaza, New York, New York
FMC Nos. 79, 83, 106, 107, 114, 115, 125, 131, 136, 138, 152

Seatrain Europa B.V., Winjbrugstraat 14, 3011 Rotterdam, Netherlands
FMC Nos. 119, 121, 122, 140, 141, 143, 162

Seatrain (U.K.) Ltd., 9th Floor, Armdale House, Armdale Center, Manchester M4 3 AP, England
FMC No. 146

Seatrain, A.D., Skanelermanalen Syd. Hamnen Box 11064, Helsingborg 25011, Sweden
FMC No. 147

Now, therefore it is ordered, that the above carriers advise the Director, Bureau of Tariffs at 1100 L Street NW., Washington, D.C. 20573, in writing on or before April 19, 1982 of any reason why the Commission should not cancel the listed inactive tariffs;

It is further ordered, that a copy of this Order be sent by registered mail to the last known address of the carriers listed herein; or in the instance of Seatrain Europa B.V., its attorney;

It is further ordered, that this notice be published in the Federal Register and a copy thereof filed with any tariff cancelled pursuant to this notice.

By the Commission pursuant to authority delegated by § 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Daniel J. Connors,

Director, Bureau of Tariffs.

[FR Doc. 82–7554 Filed 3–18–82; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Application for Certificate [Performance]

Notice is hereby given that the following persons have applied to the Federal Maritime Commission for a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Alaska Tour & Marketing Services, Inc. d.b.a Exploration Cruise Lines, c/o Exploration Holidays and Cruises, 1500 Metropolitan Park Building, Olive Way & Boren Ave., Seattle, Washington 98101.

Date: March 16, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82–7555 Filed 3–18–82; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Alaska Tour & Marketing Services, Inc. Majestic Alaska Boat Company Robert Giersdorf, Jack D. Ott, Orion C. Shockley, David Hartman and Joseph Schocken c/o Exploration Holidays and Curises, 1500 Metropolitan Park Building, Olive Way & Boren Ave., Seattle, Washington 98101.

Date: March 16, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82–7556 Filed 3–18–82; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Area Financial Corp.; Formation of Bank Holding Company

Area Financial Corp., Redwood City, California, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842 (a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Bay Area Bank, Redwood City, California. 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 San Francisco. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 11, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7411 Filed 3-16-82; 8:45 am]

BILLING CODE 6210-01-M

Canadian Imperial Holdings, Inc. and Canadian Imperial Holding Co.; Formation of Bank Holding Company

Canadian Imperial Holdings, Inc., Wilmington, Delaware, and Canadian Imperial Holding Company, Wilmington, Delaware, have 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 bank holding companies by acquiring 100 per cent of the voting shares of California Canadian Bank, San Francisco, and Canadian Imperial Bank of Commerce Trust Company, New York, New York. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Canadian Imperial Holdings, Inc., Wilmington, Delaware, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Canadian Imperial Service Company, Wilmington, Delaware and Canadian Imperial Leasing Company, Chicago, Illinois.

Applicant states that the proposed subsidiaries would engage in the activities of holding shares of non-banking subsidiaries and in leasing real and personal property. These activities would be performed from offices of Applicant's subsidiaries in Wilmington, Delaware and Chicago, Illinois, respectively and the geographic areas to be served are Illinois, New York, California, Georgia and Pennsylvania. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than April 11, 1982.

Board of Governors of the Federal Reserve System, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7403 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

Central Capital Corp.; Formation of Bank Holding Company

Central Capital Corporation, Morton, 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 per cent or more of the voting shares of Citizens Bank and Trust Company, Morton, 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 Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 11, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7410 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

Colonial Bancshares of Greenville, Inc.; Formation of Bank Holding Company

Colonial Bancshares of Greenville, Inc., Greenville, 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 Colonial Bank of Greenville, Greenville, 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 April 11, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7412 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

Commercial Bancorp; Formation of Bank Holding Company

Commercial Bancorp, Salem, Oregon, 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 Commercial Bank, Salem, Oregon. 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 San Francisco. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 11, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7409 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

Dakota Bankshares, Inc.; Acquisition of Bank

Dakota Bankshares, Inc., Fargo, North Dakota, 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 60 percent or more of the voting shares of First National Bank of Hettinger, Hettinger, 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 April 9, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7406 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

Eagle Agency, Inc.; Proposed Acquisition of Win Stephens Companies, Inc.

Eagle Agency, Inc., Eagle, Colorado, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire certain of the assets of Win Stephens Companies, Inc., Minneapolis, Minnesota, and engage indirectly in automobile leasing through a *de novo* subsidiary, Adams Leasing Corporation, Minneapolis, Minnesota.

Applicant states that the proposed subsidiary would engage in automobile leasing activities by acquiring the automobile leasing business of Win Stephens Companies, Inc. These activities would be performed from offices of Applicant's subsidiary in Minneapolis, Minnesota and the geographic areas to be served are the southern two-thirds of the State of Minnesota and the western one-third of the State of Wisconsin, including the cities of Moorhead and Duluth in Minnesota and the cities of LaCrosse and Eau Claire in Wisconsin. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received no later than April 9, 1982.

Board of Governors of the Federal Reserve System, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7413 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

Farmers National Bancorp; Formation of Bank Holding Company

Farmers National Bancorp, Annapolis, Maryland, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to Farmers National Bank, Annapolis, Maryland and The Caroline County Bank, Greensboro, Maryland. 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 Richmond. Any person wishng to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 11, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7414 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

First Ashland Corp.; Formation of Bank Holding Company

First Ashland Corporation, Ashland, Kentucky, 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 director's qualifying shares, of the successor by merger to First Bank and Trust Company, Ashland, Kentucky. 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 Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve

Bank, to be received not later than April 11, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7415 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

First Indiana Bancorp; Formation of Bank Holding Company

First Indiana Bancorp, Elkhart, 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 100 per cent of the voting shares of the successor by merger to First National Bank, Elkhart, 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 April 9, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7416 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

First Murphysboro Corp.; Formation of Bank Holding Company

First Murphysboro Corp., Murphysboro, 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 at least 80 percent of the voting shares of The First Bank and Trust Company of Murphysboro, Murphysboro, Illinois. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the 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 April 11, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7417 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

Indiana Southern Financial Corp.; Formation of Bank Holding Company

Indiana Southern Financial Corp., Sellersburg, 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 100 per cent of the voting shares of Indiana Southern Bank of Sellersburg, Sellersburg, Indiana. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 11, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7407 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

Longmont National Bankshares, Inc.; Formation of Bank Holding Company

Longmont National Bankshares, Inc., Longmont, Colorado, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Longmont National Bank, Longmont, Colorado. 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 April 11, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7406 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

Patriot Bancorporation; Acquisition of Bank Holding Company

Patriot Bancorporation, Boston, Massachusetts, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to acquire Commonwealth National Corporation, Boston, Massachusetts. 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)).

Patriot Bancorporation, Boston, Massachusetts, is engaged in no nonbank activities. 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 the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 16, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7418 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

Peoples Bancorp, Inc.; Formation of Bank Holding Company

Peoples Bancorp, Inc., Burlington, 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 100 percent of the voting shares of First National Bank of Elk City, Elk City, 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 April 11, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7405 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

Rock Creek Bancshares Inc.; Acquisition of Bank

Rock Creek Bancshares Inc., Burlington, Kansas, has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to acquire 100 percent of the preferred nonvoting shares of Peoples Bancorp, Inc., Burlington, 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 April 11, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7419 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

Santa Barbara Bancorp; Formation of Bank Holding Company

Santa Barbara Bancorp, Santa Barbara, California, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Santa Barbara Bank and Trust, Santa Barbara, California. 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 San Francisco. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 11, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7404 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

United Hamblen, Inc.; Formation of Bank Holding Company

United Hamblen, Inc., Morristown, Tennessee, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Bank of Commerce, Morristown, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 9, 1982. 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, March 12, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-7420 Filed 3-18-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82F-0046]

Air Products & Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Air Products & Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene oxide adduct of 2,4,7,9-tetramethyl-5-decyn-4,7-diol as an adjuvant in can coating formulations.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP OB-3515) has been filed by Air Products & Chemicals, Inc., Box 538, Allentown, PA 18105, proposing that § 175.300(b)(3)(xxix) (21 CFR 175.300(b)(3)(xxix)) be amended to provide for the safe use of ethylene oxide adduct of 2,4,7,9-tetramethyl-5-decyn-4,7-diol as an adjuvant in can coating formulations.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21

CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: March 8, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-7120 Filed 3-18-82; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation: Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings: Chicago District Office, Chaired by William R. Clark, District Director.

DATE: Wednesday, March 24, 1982, 7 p.m. to 9 p.m.

ADDRESS: School Cafeteria, Hawthorn School District #73, 201 Hawthorn Parkway, Vernon Hills, IL 60061.

FOR FURTHER INFORMATION CONTACT: Marie Ekvall, consumer Affairs Officer, Food and Drug Administration, 433 W. Van Buren St., Rm, 1222, Chicago, IL 60607, 312-353-7126.

San Francisco District Office, Chaired by William C. Hill, District Director.

DATE: WEDNESDAY, MARCH 24, 1982, 1 P.M.

ADDRESS: Food and Drug Administration, San Francisco District Office, 50 United Nation Plaza, Rm. 546, San Francisco, CA 94102.

FOR FURTHER INFORMATION CONTACT: Karen K. Erdman, Consumer Affairs Officer, Food and Drug Administration, 50 United Nations Plaza, San Francisco, CA 94102, 415-556-2062.

Boston District Office, Chaired by Frederick R. Carlson, District Director.

DATE: Wednesday, March 24, 1982, 9:30 a.m. to 12 m.

ADDRESS: Church Street Center of the University of Vermont, Burlington, Vermont.

FOR FUTHER INFORMATION CONTACT. Yolan L. Harsayi, Consumer Affairs Officer, Food and Drug Administration, 585 Commercial St., Boston, MA 02109, 617-223-5857.

Minneapolis District Office, Chaired by Henry P. Roberts, District Director.

DATE: Tuesday, March 30, 1982, 1 p.m.

ADDREESS: Northside Senior Citizen Center, 1711 W. Broadway, Minneapolis, MN.

FOR FURTHER INFORMATION CONTACT: Blanche L. Erkel, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-725-2121.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance understanding and exchange information between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: March 11, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-7117 Filed 3-18-82; 12:39 pm]

BILLING CODE 4160-01-M

[Docket No. 82F-0041]

E. I. du Pont de Nemours & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that E. I. du Pont de Nemours and Co., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyamide-imide resins as components of articles intended for repeated use in contact with food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3141) has been filed by E. I. du Pont de Nemours and Co., Wilmington, Delaware 19898, proposing that § 177.2450 *Polyamide-imide resins* (21 CFR 177.2450) be amended to provide for the safe use of polyamide-imide resin produced by the condensation reaction of benzoyl chloride-3,4-dicarboxylic anhydride and 4,4'-diphenyl-methane diamine as components of articles intended for repeated use in contact with food.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 8, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-7118 Filed 3-18-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82F-0026]

Toyo Seikan Kaisha, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Toyo Seikan Kaisha, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a certain aliphatic polyurethane laminating adhesive for fabricating retortable pouches and related high-temperature laminates.

FOR FURTHER INFORMATION CONTACT: Terry C. Troxell, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3615) has been filed by Toyo Seikan Kaisha, Ltd., 3-1 Uchisaiwaicho 1-Chome, Chiyoda-ku, Tokyo 100, Japan, proposing that the food additive regulations be amended to provide for the safe use of a 2-component aliphatic polyurethane laminating adhesive based on 3-isocyanatomethyl-3,5,5-trimethylcyclohexyl isocyanate, and certain polybasic acids and polyhydric alcohols listed in § 175.300(b)(3)(vii) (21 CFR 175.300(b)(3)(vii)) for fabricating retortable pouches and other high-temperature laminates identified in § 177.1390(c) (21 CFR 177.1390(c)).

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: March 8, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-7119 Filed 3-18-82; 8:45 am]

BILLING CODE 4160-01-M

Gastrointestinal Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Gastrointestinal Drugs Advisory Committee by the Secretary, Department of Health and Human Services.

DATE: Authority for this committee will expire on March 3, 1984, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: March 12, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-7269 Filed 3-18-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82F-0044]

Centre Pharmaceutique European; Withdrawal of Petition for Food Additive

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of a petition proposing the safe use of 2-phenylindole as an antioxidant and/or stabilizer in the manufacture of vinyl chloride copolymers intended for food contact applications.

FOR FURTHER INFORMATION CONTACT: Garnett R. Higginbotham, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued.

In accordance with § 171.7 *Withdrawal of petition without prejudice* (21 CFR 171.7), Division Sapchim, Centre Pharmaceutique European (formerly Sapchim-Fournier-Cimag), Paris, France, has withdrawn its petition (FAP 5B3031), notice of which was published in the **Federal Register** of October 24, 1974 (39 FR 37795) proposing that § 121.2566 (now § 178.2010, 21 CFR 178.2010) of the food additive regulations be amended to provide for the safe use of 2-phenylindole as an antioxidant and/or stabilizer in the manufacture of vinyl chloride copolymers intended for food-contact applications.

Dated: March 12, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-7422 Filed 3-18-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82F-0048]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of triphenyl phosphorothionate as an antiwear/extreme pressure additive in lubricants with incidental food contact.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3621) has been filed by Ciba-Geigy Corp., Plastics and Additives Division, Hawthorne, NY 10532, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of triphenyl phosphorothionate as an antiwear/extreme pressure additive in lubricants with incidential food contact.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: March 12, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-7424 Filed 3-18-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82D-0053]

Guidelines for Evaluating Electromagnetic Exposure Risk for Trials of Clinical NMR Systems; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of guidelines entitled, "Guidelines for Evaluating Electromagnetic Exposure Risk for Trials of Clinical NMR Systems," developed by the Bureau of Radiological Health. The guidelines provide guidance to sponsors and to Institutional Review Boards (IRB's) for determining whether a clinical study involving a nuclear magnetic resonance (NMR) device represents a "significant risk" under the investigational device exemption (IDE) regulations.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. A single copy of the guidelines may be obtained from the Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. In addition, a copy of the guidelines is on file for public display at the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT: Robert A. Phillips, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: Under 21 CFR Part 812 (the IDE regulations), the sponsor of a medical device and ultimately an IRB have the initial responsibility to determine whether any clinical investigation of the device presents a "significant risk;" that is, whether it represents a "potential for serious risk to the health, safety, or welfare of a subject." A finding of "significant risk" does not mean that a device is too hazardous for clinical studies but that an IDE application must be submitted to FDA for approval of the investigation. Through the FDA review process, the safety aspects of the study will be independently evaluated. Generally, if any reviewing IRB finds

that a proposed study does not present a "significant risk" to patients, submission of an IDE application to FDA is not necessary.

Because of the limited information available on the bioeffects of clinical use of NMR devices, the Bureau of Radiological Health has developed guidelines to assist sponsors and IRB's in determining when a study involving an NMR device might present a significant risk to test subjects with respect to exposure to static, changing, or radiofrequency (RF) magnetic fields. The guidelines are intended to obviate the need to submit IDE applications to the agency when they are not necessary to assure the safety of clinical subjects.

As more information on the bioeffects of NMR becomes available, the Bureau will amend these guidelines as necessary. Notice of availability of any such amendment will be published in the Federal Register.

This notice is issued under §10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to outline procedures or standards of general applicability that are acceptable to FDA for a subject matter that falls within the laws administered by FDA. Although these guidelines are not legal requirements, a person may be assured that, in following the guidelines, he or she will be acting in a manner acceptable to FDA. A person may also choose to use alternative procedures or standards for which there is scientific rationale even though they are not provided for in the guidelines, and anyone choosing to do so may discuss the matter further with the agency to assure compliance with the law and to prevent an expenditure of money and effort on work that FDA may later determine to be unacceptable.

Single copies of these guidelines may be obtained from the Bureau of Radiological Health (address above). In addition, a copy of the guidelines is on file for public display at the Dockets Management Branch (address above).

The agency invites and encourages comments on the guidelines. These comments will be considered in determining whether further amendments to or revisions of these guidelines are warranted. Interested persons may submit written comments on the guidelines to the Dockets Management Branch (HFA–305) (address above). Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this docket. The guidelines and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 15, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-7423 Filed 3-18-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0395; DESI 5914 and 6514]

Drugs for Human Use; Drug Efficacy Study Implementation; Revocation of Exemption for Four Prescription Products Offered for Relief of Symptoms of Cough, Cold, or Allergy ("Paragraph XIV/Category 15"); Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) revokes the temporary exemption for four oral prescription drug products offered for relief of symptoms of cough, cold, or allergy. The exemption has permitted the products to remain on the market beyond the time limit scheduled for implementation of the Drug Efficacy Study. FDA reclassifies the products to lacking substantial evidence of effectiveness, proposes to withdraw approval of the new drug applications, and others an opportunity for a hearing on the proposal. The products contain certain expectorants that have not been shown to be effective.

DATE: Revocation of exemption effective March 19, 1982. Hearing requests due on or before April 19, 1982.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 81N–0395, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs.

Requests for hearing, supporting data, and other comments: Dockets Management Branch (HFA–305), Rm. 4–62.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFI–35), Rm. 12A–12.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD–501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: David T. Read, Bureau of Drugs (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650..

SUPPLEMENTARY INFORMATION: In notices published in the Federal Register of February 9, 1973 (38 FR 4008; DESI 5914 (then, Docket No. FDC–D–539) and 38 FR 4006; DESI 6514 (then, Docket No. FDC–D–537), FDA classified the drug products described below as lacking substantial evidence of effectiveness for their labeled indications. The notices also offered an opportunity for a hearing on the proposal to withdraw approval of the new drug application (NDA) for each product.

Subsequently, in a notice published in the Federal Register of December 14, 1973 (38 FR 34481), FDA granted a temporary exemption from the time limits established for completing certain phases of the drug efficacy study (DESI) program, for certain oral prescription drugs offered for relief of cough, cold, allergy, and related symptoms. That exemption covered the drugs that are the subject of this notice and superseded the February 1973 notice. The exemption was granted because of the close relationship between drugs sold over the counter (OTC)—and thus subject to the ongoing OTC drug review (21 CFR Part 330)—and prescription drugs offered for relief of cough, cold, allergies, and related symptoms. Postponement of final evaluations on the DESI prescription products enabled the agency to consider the recommendations of the OTC review panel in addition to any evidence submitted by NDA holders in response to various DESI notices covering relevant products. Those recommendations and a proposed monograph for over-the-counter cold, cough, allergy, bronchodilator, and antiasthmatic (CCABA) drugs were published in the Federal Register of September 9, 1976 (41 FR 38312).

The OTC review panel for CCABA drugs reached the following conclusions which are relevant to the products listed below:

1. There are no well-controlled studies documenting the effectiveness of ammonium chloride as an expectorant. (41 FR 38359.)

2. There are no well-controlled studies documenting the effectiveness of potassium guaiacolsulfonate as an expectorant. (41 FR 38367.)

3. There are no well-controlled studies documenting the effectiveness of sodium citrate as an expectorant. (41 FR 38367.)

4. There is no evidence to support the effectiveness of ipecac fluid extract as an expectorant. (41 FR 38358.)

5. Combinations containing an antihistamine and an expectorant are irrational because an expectorant promotes the production of secretions whereas the anticholinergic activity of an antihistamine produces an opposite effect. (41 FR 38326 at paragraph II.C.9.e.(3).) (All the products listed below except Coditrate Syrup contain an antihistamine and an expectorant.)

6. The combination of pharmacologic groups represented by the four products listed below were not found to be safe and effective (41 FR 38326 at paragraph II.C.8.).

In addition to these findings of the OTC review panel, FDA regulation provides that any product containing chloroform as an ingredient is considered to be misbranded. 21 CFR 310.513(b). The holder of the new drug application for Thephorin Expectorant has not submitted a supplemental application providing for a revised formulation removing chloroform as an ingredient. 21 CFR 310.513(c).

No person has submitted additional data on the four drugs listed below. The Director of the Bureau of Drugs concludes that the holders of the new drug applications have not shown, for each of the products listed below, that each component makes a contribution to the claimed effects and that the dosage of each component is such that the combination is safe and effective for a significant patient population. 21 CFR 300.50. Therefore each of the products is reclassified to lacking substantial evidence of effectiveness.

This notice revokes the temporary exemption announced in the Federal Register of December 14, 1973. It also proposes to withdraw approval of the new drug applications listed below (or pertinent parts thereof), and offers an opportunity for hearing on the proposal. Persons who wish to request a hearing may do so on or before April 19, 1982.

1. NDA 5-914: as it pertains to PBZ Expectorant with Ephedrine (formerly "Pyribenzamine Expectorant with Ephedrine"), containing tripelennamine citrate, ephedrine sulfate, and ammonium chloride; Ciba Pharmaceutical Co., 556 Morris Ave., Summit, NJ 07901. (DESI 5914).

2. NDA 6-303: as it pertains to Thephorin Expectorant containing phenindamine tartrate, codeine phosphate, papaverine hydrochloride, ammonium chloride, and chloroform; Roche Laboratories, Division Hoffmann-La Roche, Inc., Roche Park, 340 Kingsland St., Nutley, NJ 07110. (DESI 6514).

3. NDA 6-529: Coditrate Syrup containing hydrocodone bitartrate and potassium guaiacolsulfonate; The Central Pharmaceutical Co., 116-128 E. Third St., Seymour, IN 47274. (DESI 6514). Other components listed in the February 9, 1973 notice are no longer contained as active ingredients. Chloroform has been removed from the formulation.

4. NDA 9-248: Clistin Expectorant containing carbinoxamine maleate, ammonium chloride, sodium citrate, potassium guaiacolsulfonate, and benzyl alcohol; McNeil Laboratories, Inc., 500 Office Center Dr., Ft. Washington, PA 19034. (DESI 6514). Chloroform has been removed from the formulation.

In addition to the holders of the new drug applications specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts who are qualified by scientific training and experience, that meets the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), 21 CFR 314.111(a)(5), and 21 CFR 300.50 and demonstrates the effectiveness of the drug products referred to in this notice.

Notice is given to the holders of the new drug applications, and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug applications and all amendments and supplements thereto providing for the drug products referred to in this notice on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, shows there is a lack of substantial evidence that the drug products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

This notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 310, 314), the applicants and all other persons who manufacture or distribute a drug product that is identical, related, or similar to a drug product named above (21 CFR 310.6) and not the subject of a new drug application, are hereby given an opportunity for a hearing to show why approval of the new drug applications should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products not the subject of a new drug application.

An applicant or other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing shall file (1) on or before April 19, 1982, a written notice of appearance and request for hearing, and (2) on or before May 18, 1982, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of the applicants or any other person subject to this notice under 21 CFR 310.6 to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of the relevant drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug

product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearings, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C., 1905, the submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70 and 5.82).

Dated: February 9, 1982.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 82-7471 Filed 3-18-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Baker and Vale Districts; Meeting

The public meeting previously set for Tuesday, March 30, 1982 (47 FR 10912; March 12, 1982), 5–J School District Office Building, 2090 4th Street, Baker, Oregon 97814 will now be held on Monday, March 29, 1982 at the same time and at the same address. Purpose of the meeting will be to review for comment the study of combining the Baker and Vale Districts of the Bureau of Land Management which would replace the current Baker District Office with a Detached Resource Area Office of the Vale District.

Gordon R. Staker,

District Manager.

March 11, 1982.

[FR Doc. 82-7436 Filed 3-18-82; 8:45 am]

BILLING CODE 4310-84-M

New Mexico and Colorado San Juan River Regional Coal Team Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of regional Coal Team Meeting and request for public comment on the scope of San Juan River Regional Coal Environmental Impact Statement (EIS).

SUMMARY: In accordance with the responsibilities outlined in the Federal coal management regulations (43 CFR Part 3400), the Regional Coal Team for the San Juan River Federal Coal Production Region will hold a meeting to (1) Review the site-specific analysis reports for the identified potential lease tracts, (2) Review comments on the scope of the EIS, (3) Rank the potential lease tracts, (4) Identify alternatives to be addressed in the EIS, (5) Select preliminary coal lease tracts, and (6) Other related matters, if any.

In accordance with the National Environmental Policy Act and the Council on Environmental Quality Regulation 40 CFR 1501.7, the Bureau of Land Management requests information and comments which would help to define the scope or range of issues, concerns, and alternatives to be addressed in the EIS. A Notice of Intent to prepare this EIS was published in the **Federal Register** on November 13, 1980 (45 FR 74998). The present notice supplements that Notice of Intent.

DATE: The regional coal team meeting will be held on April 20–21, 1982, at 9:00 a.m.

ADDRESS: The Regional Coal Team will meet at the Farmington, Civic Center, 212 W. Arrington, Farmington, New Mexico.

COMMENTS ON SCOPE OF EIS: Comments on the scope of the EIS should be addressed to Richard T. Watts, Regional Coal EIS Team Leader, Farmington Resource Area, P.O. Box 568, 900 La Plata Highway, Farmington, NM 87401. Comments must be received by the Farmington Resource Area by April 15, 1982, in order that the comments can be made ready for use by the Regional Coal Team.

FOR FURTHER INFORMATION: Concerning the Regional Coal Team meeting contact: Gene Day, San Juan River Project Manager, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501, Telephone (505) 988–6226, FTS 476–6226.

Concerning the scope of the EIS contact: Richard T. Watts, Regional Coal EIS Team Leader, Farmington Resource Area, P.O. Box 568, 900 La Plata Highway, Farmington, NM 87401, Telephone (505) 325–3581, FTS 572–6220.

SUPPLEMENTARY INFORMATION: During its last meeting on March 10, 1982, the Regional Coal Team decided (1) Which subfactors it will use for tract ranking and selection, (2) Which method it will use to do the tract ranking and selection. Prior to the next Regional Coal Team meeting, the Secretary will establish the final leasing target which will be used by the Regional Coal Team when it makes a final selection of possible lease tracts to be evaluated in the San Juan River Regional Coal EIS.

Fifty potential lease tracts have been identified in the San Juan Basin Coal Production Region.

The potential delineated lease tracts identified in Table 1 will be analyzed on a site-specific basis, and will be ranked and considered for possible leasing. All tonnages are preliminary and are subject to change. The legal description only identifies the general location of the potential lease tracts; a complete legal description is available in the Tract Delineation Reports. Copies of the reports are available for public review at the following locations: Bureau of Land Management (BLM) State Office, Joseph M. Montoya Federal/Post Office Building, So. Federal Place, Santa Fe, New Mexico; Bureau of Land Management, Albuquerque District Office, 3500 Pan American Freeway, NE, Albuquerque, NM; Bureau of Land Management, Farmington Resource Area Headquarters, 900 La Plata Highway, Farmington, NM; Minerals Management Service, 411 N. Auburn, Farmington, NM; Minerals Management Service, 505 Marquette Ave., NW, Albuquerque, NM. The site-specific analysis reports will also be available for public inspection at the above three BLM offices after April 12, 1982.

In addition, copies of the Tract Delineation reports can be ordered from the Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87501. The Tract Delineation reports are grouped into fourteen (14) different packages. The cost is two dollars ($2.00) per package or twenty-five dollars ($25.00) for all fourteen packages.

The Regional Coal Team will rank the tracts on the basis of high, medium, and low desirability for leasing using three categories. These categories are coal economics, impacts on the natural environment, and socioeconomic impacts that could result if the tracts are leased and mined.

The boundaries of the tracts may be modified by the Regional Coal Team based on the analyses contained in the tract delineation and site-specific

analyses reports. The team may also defer the ranking of any potential lease tract if it is determined that insufficient tract information is available.

In ranking the tracts, the Regional Coal Team will use the tract delineation reports, and the site-specific analysis reports. The Regional Coal Team will in accordance with 43 CFR 3420.4–4(b) (3) and (4) also solicit recommendations from Federal agencies, State agencies and Indian tribes during the April 20–21, 1982 meeting. The public will also be invited to comment on the ranking of tracts and the selection of tracts for the leasing target and the alternative tract combination during the meeting.

Upon completion of the ranking process, the Regional Coal Team will select preliminary tracts for possible Federal lease sale in September 1983. Tracts will be selected to meet the Federal coal leasing target and the alternative tract combinations which will be developed during the meeting.

The selected tracts and any alternate tract combinations will then be analyzed as the proposed action and alternatives in the San Juan River Regional Coal EIS. The EIS will also analyze a no action alternative (to not offer Federal coal lease tracts for competive sale). The Draft EIS is scheduled for release to the public by November 30, 1982.

Potential major issues as a result of further coal development in the San Juan Basin include air quality, American Indian concerns, cultural resources, socioeconomic values, water resources, and post-mining reclamation.

Charles W. Luscher,

State Director.

BILLING CODE 4310-84-M

Table I

SAN JUAN BASIN
TRACT SUMMARY OF RESERVES, RESOURCES, AND ACRES

	Tract Name	Reserve Base	Resources	Approximate Location	Approximate Acreage Federal Surface	Approximate Acreage Federal Coal
		(In Millions of Tons)				
1.	La Plata #1 Bypass	8.8	---	T. 32 N, R. 13 W., 15 mi. north of Farmington, NM	200	200
2.	La Plata #2	12.3	---	T. 32 N, R. 13 W., 15 mi. north of Farmington, NM	200	200
3.	La Plata #3 (LC)	---	2.3	T. 32 N, R. 13 W., 20 mi. north of Farmington, NM	160	200
4.	La Plata #4 (LC)	---	20.2	T. 32 N, R. 13 W., 20 mi. north of Farmington, NM	240	600
5.	Johnson Trading Post(SB)	16.5	---	T. 19 N., R. 3 & 4 W., 15 mi. southwest of Cuba, NM	2,480	2,720
6.	Star Lake East #1	60.8	---	T. 19 & 20 N., R. 5 & 6 W., 22 mi. southwest of Cuba, NM	1,364	1,840
7.	Star Lake East (LC)	---	63.6	T. 19 & 20 N., R. 5 & 6 W., 85 mi. south of Farmington, NM	1,600	1,760
8.	Star Lake West #1	41.2	---	T. 20 & 21 N., R. 7 W., 30 mi. west of Cuba, NM	1,040	1,120
9.	Star Lake West #2 Bypass	27.7	---	T. 20 N., R 6 & 7 W., 30 mi. west of Cuba, NM	440	760
10.	Star Lake West (LC)	---	308.3	T. 20 & 21 N., R. 6 & 7 W., 80 mi. southwest of Farmington, NM	6,947	8,547
11.	Kimbeto #1	145.1	---	T. 22 N., R. 10 & 11 W., 45 mi. southeast of Farmington, NM	2,240	3,360
12.	Kimeto #2 Bypass	20.3	---	T. 22 N., R. 10 W., 46 mi. southeast of Farmington, NM	640	640
13.	Nageezi (PB)	491.0	---	T. 23 & 24 N., R. 10 & 11 W., 34 mi. southeast of Farmington,NM	10,400	10,560
14.	Gallo Wash #1 Bypass	10.6	---	T. 21 N., R. 8 W., 38 mi. west of Cuba, NM	120	320
15.	Gallo Wash #2	34.8	---	T. 21 & 22 N., R 7 & 8 W., 40 mi. west of Cuba, NM	600	760
16.	Gallo Wash #3 (LC)	---	612.4	T. 21 & 22 N., R. 7 & 8 W., 70 mi. south of Farmington, NM	13,200	18,600
17.	Bisti #1 (Exchange area)	149.7	---	T. 23 N., R. 12 W., 35 mi. southeast of Farmington, NM	2,840	3,560
18.	Bisti #2	64.2	---	T. 24 N., R. 13 W., 30 mi. south of Farmington, NM	390	1,130
19.	Bisti #3	2.6	---	T. 23 N., R. 13 W., 30 mi. south of Farmington, NM	560	1,240
20.	Bisti #4 Bypass (a))	21.8	14.0	T. 23 N., R. 12 W., 52 mi. southeast of Farmington, NM	520	840
	Bisti #4 Bypass (b))			T. 23 N., R. 12 W., 52 mi. southeast of Farmington, NM	520	1,760
21.	Bisti #5 (LC)	---	18.0	T. 22 N., R. 13 W., 40 mi. south of Farmington, NM	200	5,080
22.	Bisti #6 Bypass	0.6	---	T. 23 N., R. 13 W., 35 mi. south of Farmington, NM	-0-	360
23.	Bisti #8 Bypass	0.4	---	T. 23 N., R. 13 W., 31 mi. south of Farmington, NM	123	123
24.	Bisti #9 Bypass	14.0	---	T. 23 N., R. 13 W., 33 mi. south of Farmington, NM	455	655
25.	Lee Ranch East	16.0	---	T. 15 & 16 N., R., 6, 7 & 8 W., 30 mi., northeast of Grants, NM	-0-	1,883
26.	Lee Ranch Middle	86.0	---	T. 15 & 16 N., R., 6, 7 & 8 W., 30 mi., northeast of Grants, NM	-0-	4,736
27.	Lee Ranch West	101.0	---	T. 15 & 16 N., R., 6, 7 & 8 W., 30 mi., northeast of Grants, NM	160	6,800

Table 1 (Cont'd)

	Tract Name	Base	Resources	Approximate Location	Surface	Coal
28.	Divide	16.0	---	T. 15 & 16 N., R. 9 & 10 W., 30 mi. north of Grants, NM	400	3,120
29.	Crownpoint West (SB)	2.3	---	T. 18 N., R.13W.,near town of Crownpoint, NM	-0-	320
30.	Crownpoint NE (LC)	---	150.0	T. 18 N., R. 12 & 13 W. near town of Crownpoint, NM	560	8,280
31.	Crownpoint East (LC)	10.0	138.5	T. 17 N., R. 11 W., 9 mi. northeast of Crownpoint, NM)	160	10,280
32.	Crownpoint East (HC)	---	---	T. 17 N., R 11 W., 9 mi. northeast of Crownpoint, NM)		
33.	Hospah #1 Bypass	16.0	6.0	T. 16 & 17 N., R. 9 & 10 W., 30 mi. north of Grants, NM)	-0-	2,240
34.	Hospah #2	10.0	---	T. 16 & 17 N., R. 9 & 10 W., 30 mi. north of Grants, NM)		
35.	Chico Wash South (LC)	---	74.0	T. 16 & 17 N., R. 4, 5 & 6 W., 35 mi. northeast of Grants, NM	10,070	11,670
36.	Chico Wash North (LC)	---	0	T. 16 & 17 N., R. 4, 5 & 6 W., 35 mi. northeast of Grants, NM	2,080	5,920
37.	Catalpa Canyon	0.4	---	T. 14 & 15 N., R. 18 W., 3 mi. southeast of Gallup, NM	-0-	120
38.	Sundance (SB)	3.7	---	T. 14 N., R. 17 W., 5 mi. southeast of Gallup, NM	-0-	720
39.	Tah Ha Bah (LC)	---	23.0	T. 14 N., R. 18 W., 6 mi. south of Gallup, NM	-0-	3,080
40.	Hogback (LC)	---	5.1	T. 15 N., R. 17 & 18 W., 4 mi. southeast of Gallup, NM	360	1,760
41.	Twin Buttes (LC)	---	68.0	T. 14 & 15 N., R. 19 W., 6 mi. southwest of Gallup, NM	320	8,640
42.	Pinehaven (LC)	---	7.0	T. 12 & 13 N., R. 17 W. & 18 W., 18 mi. south of Gallup, NM	-0-	9,680
43.	Bread Springs #1 (LC)	---	11.0	T. 14 N., R 17 W., 7 mi. southeast of Gallup, NM)	-0-	1,676
44.	Bread Springs #2 (LC)	---	---	T. 14 N., R. 17 W., 7 mi. southeast of Gallup, NM)		
45.	Gamerco Bypass	3.3	---	T. 15 & 16 N., R. 19W., 9 mi. northwest of Gallup, NM)	40	2,120
46.	Gamerco (LC)	---	2.3	T. 15 & 16 N., R. 19 W., 9 mi. northwest of Gallup, NM)		
47.	Gamerco (UG) (LC)	16.6	---	T. 15 & 16 N., R. 19 W., 9 mi. northwest of Gallup, NM)		
48.	Samson Lake #1 (LC)	26.1	---	T. 15 & 16 N., R. 19 & 20 W., 9 mi. northwest of Gallup, NM	680	4,080
49.	Samson Lake #2 (LC)	---	8.5	T. 15 & 16 N., R. 19 & 20 W., 9 mi. northwest of Gallup, NM		
	TOTALS	1,389.3	1,574.9		62,309	154,110

(LC) Low Confidence
(PB) Recommended for Public Bodies
(SB) Recommended for Small Business
(UG) Underground

[FR Doc. 82-7438 Filed 3-18-82; 8:45 am]
BILLING CODE 4310-84-C

Realty Action-Exchange; Public Land in Grand County, Utah

This Notice of Realty Action involves an exchange of public land in Utah managed by the Bureau of Land Management (U–45314).

The following described lands have been determined to be suitable for exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Selected Lands

Salt Lake Base and Meridian, Grand County, Utah

T. 20 S., R. 16 E.,
Sec. 3, E½SE¼;
T. 21 S., R. 16 E.,
Sec. 1, Lot 7, Lot 10, Lot 14, Lot 15;
T. 21 S., R. 17 E.,
Sec. 6, Lot 12, Lot 13, Lot 14, Lot 17, Lot 18, E½SW¼.

Comprising 495.79 acres.

In exchange for the above lands the Federal Government would acquire the following private lands in Grand County, Utah from Donald K. Bazemore, Cupertino, California 95014.

Offered Lands

Salt Lake Base and Meridian, Grand County, Utah

T. 20 S., R., 16 E.,
Sec. 3, Lot 8, Lot 9 and Lot 10.

Comprising 60.29 acres.

The mineral estate (all minerals) on the offered land would be exchanged for 60 acres of the selected land described as Salt Lake Base and Meridian, T. 20 S., R. 16 E., Section 3, SE¼SE¼, S½NE¼SE¼. An appraisal indicated that mineral values are equal on an acre for acre basis. The surface estates of the selected and offered lands have been determined to be equal in value.

The selected lands are segregated from appropriation under the public land laws including the mining laws but not the mineral leasing laws. The segregative effect of this notice of realty action on the public lands shall terminate upon issuance of patent to such lands, upon publication in, the **Federal Register** of a termination of the segregation or 2 years from the date of this notice, whichever comes first.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to obtain river front property for use as a takeout point for river trips and development of a recreation area. Presently use of the property is being allowed for takeout purposes, however, development of facilities cannot occur until the United States acquires an interest in the land.

Grazing permittees operating on the selected land will have a reduction of their grazing preference if the exchange is consummated. Mr. Lawrence Aubert, Grand Junction, Colorado, operating within the Rattlesnake Allotment would be reduced 8 animal unit months (AUM's) and the Homer Nelson Estate, c/o Mrs. Earline Nelson, Green River, Utah, operating within the Elgin Allotment would be reduced 12 AUM's.

The selected land would be subject to the following conditions:

1. A reservation for a right-of-way thereon for ditches and canals constructed by the authority of the United States (43 U.S.C. 945).
2. A reservation of all minerals except for 60 acres described as Salt Lake Base and Meridian, T. 20 S., R., 16 E., Section 3: S½NE¼SE¼, SE¼SE¼, together with the right to prospect for, mine and remove the same.

This exchange is consistent with the Bureau's planning and county officials have been consulted.

Detailed information concerning the proposed exchange, including the environmental assessment is available for review at the Moab District Office, 125 West 2nd South Main, Moab, Utah 84532.

For a period of 45 days interested parties may submit comments to the Moab District Manager, P.O. Box 970, Moab, Utah 84532. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department.

Gene Nodine,
District Manager.
March 11, 1982.

[FR Doc. 82–7428 Filed 3–18–82; 8:45 am]
BILLING CODE 4310–84–M

[INT DES 82–8]

San Gorgonio Wind Resource Study; Availability of Draft Environmental Impact Statement and Report

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and the California Environmental Quality Act, the BLM and Riverside County have prepared a draft EIS/EIR on the proposed development of wind energy resources in the San Gorgonio Pass near Palm Springs, California.

DATE: Comments will be accepted until May 2, 1982.

ADDRESS: Comments should be sent to: State Director (930), Bureau of Land Management, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: William D. Payne,California State Office, Bureau of Land Management, Division of Resources (C–930.16), 2800 Cottage Way, Sacramento, California 95825, (916) 484–4541.

SUPPLEMENTAL INFORMATION: The BLM and Riverside County have prepared a draft EIS/EIR on the proposed development of wind energy resources on over a 175 square mile area in the San Gorgonio Pass near Palm Springs, California. As a result of development, up to 4,000 megawatts of electrical power could be produced from public and private lands in the area.

The draft EIS/EIR analyzes the cummulative impacts that could result from the development of large-scale wind energy conversion systems. The EIS/EIR examines a total of four development scenarios, including the no action alternative.

A limited number of the draft EIS/EIRs are available upon request at the following offices:

Riverside County Planning Department, County Administrative Center, 4080 Lemon Street, 9th Floor, Riverside, California 92501

Bureau of Land Management, California State Office (930), 2800 Cottage Way, Sacramento, California 95825

Bureau of Land Management, Desert District Office, 1695 Spruce Street, Riverside, California 92507

Public reading copies are also available in Coachella Valley public libraries in the cities of Desert Hot Springs, Palm Springs, Indio, Cathedral City, Palm Desert, and Coachella.

One public meeting will be announced through the **Federal Register** and local media, and will be held in Palm Springs.

Dated: March 9, 1982.

Ron Hoffman,
Bureau of Land Management, California State Director.

[FR DOC. 82–6905 Filed 3–18–82; 8:45 am]
BILLING CODE 4310–84–M

Fish and Wildlife Service

Migratory Bird Hunting; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice announces that representatives of the U.S. Fish and Wildlife Service will be in attendance at

meetings of the Atlantic, Mississippi, Central, Pacific, and National Flyway Councils at the following times and locations.

DATES: March 28, 1982
—Atlantic Flyway Council, 9 a.m.
—Mississippi Flyway Council, 9 a.m.
—Central Flyway Council, 8:30 a.m.
—Pacific Flyway Council, 8:30 a.m.
—National Waterfowl Council, 3 p.m.

ADDRESS: Council meetings will be held at the Portland Hilton Hotel, 920 Southwest Sixth Avenue, Portland, Oregon, as follows: Atlantic Flyway Council, Forum Suite, 3rd floor; Mississippi Flyway Council, Parlor D, Ballroom Level; Central Flyway Council, Ballroom B; Pacific Flyway Council, Galleria II, Ballroom Level; National Waterfowl Council, Ballroom B.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, telephone AC 202–254–3207.

SUPPLEMENTARY INFORMATION: Flyway Councils are organizations of State conservation agencies which cooperate with the U.S. Fish and Wildlife Service and the Canadian Wildlife Service in migratory bird management and research programs. Their meetings are scheduled in conjunction with the 47th North American Wildlife and Natural Resources Conference to be held March 26–31, 1982, at the Portland Hilton Hotel, Portland, Oregon. Although the U.S. Fish and Wildlife Service is not a member of these councils, it will be represented at the above meetings to facilitate discussions of various migratory bird management and research programs, many of which are conducted jointly with the Service. Service personnel will attend only those portions of the above meetings which are open to the public.

Dated: March 15, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-7520 Filed 3-18-82; 8:45 am]
BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 12, 1982. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 5, 1982.

DELAWARE

Sussex County

Milford, *South Milford Historic District (Milford Multiple Resource Area)* Roughly bounded by Mispillion River, Maple Ave., Church and Washington Sts.

Carol D. Shull,

Acting Keeper of the National Register.

[FR Doc. 82-7589 Filed 3-18-82; 8:45 am]
BILLING CODE 4310-70-M

Office of the Secretary

Tentative Proposed Final 5-Year OCS Oil and Gas Leasing Program

AGENCY: Office of Outer Continental Shelf Program Coordination.

ACTION: Publication of tentative proposed final 5-year OCS oil and gas leasing program.

SUMMARY: Section 18 of the OCS Lands Act ("the Act") requires the Secretary of the Interior to prepare, periodically revise and maintain an oil and gas leasing program for the U.S. Outer Continental Shelf (OCS). On July 31, 1981, the Department published a proposed 5-Year OCS Oil and Gas Leasing Program in the **Federal Register** and invited comments to be submitted on it by October 22, 1981. The proposed program was also submitted to the Congress, the Attorney General, and Governors of affected States.

On October 6, 1981, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision involving litigation concerning the June 1980 leasing program which also affects the reapproval process of which the July 1981 proposed program is part. The court remanded the June 1980 program and its administrative record "for revision in accordance with the Act." The court directed the Secretary to correct several specific failings it found in the June 1980 program and to provide an "opportunity for public comment" once this was done. On January 19, 1982, the court issued an order clarifying specific aspects of the October 6, 1981, decision. Among other things, the court ordered the Department to announce, in mid-March 1982, a tentative proposed final 5-Year OCS Oil and Gas Leasing Program based upon sections 18 (a)(2) and (a)(3) of the Act and on the EIS, as supplemented.

Under the January order, the Secretary is to make available the record for his decision on a tentative proposed final program and the program is to be transmitted to the Congress, the Attorney General and Governors of affected States, and to be published in the **Federal Register**. This notice constitutes the court-ordered **Federal Register** publication, announcement of the availability of the record for the Secretary's decision, and invitation of comments and recommendations for a period of 30 days. In May, following consideration of any comments and recommendations received, the Secretary will announce a proposed final leasing program which will be submitted to the President and the Congress at least 60 days before his final approval. Final approval of the program may occur in July.

Under section 18 of the Act, the leasing program is to consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing and location of leasing which the Secretary of the Interior determines will best meet national energy needs for the 5 years following its approval or reapproval. A tentative proposed final 5-year leasing program has been developed covering the period July 1982 through June 1987. This tentative proposed final program would replace the program issued in June 1980 which covered the period June 1980 through May 1985. The tentative proposed final program is being submitted to Congress and the Attorney General, by letters dated March 13, 1982, and to the Governors of coastal States the week of March 15, 1982. These submissions include information on size, timing and location of proposed sales of offshore oil and gas leases, including a schedule and maps; information on assurance of fair market value; estimates of appropriations and staff needed for the tentative proposed final program; a summary of consideration of Section 18 factors in selection of the tentative proposed final program; and information on the potential size of offerings.

The March 13, 1982, letter to the Congress, the 5-year schedule and maps showing the boundaries of planning areas included in the tentative proposed final program appear in the **Federal Register** today. Single copies of the materials submitted to Congress or the record for the Secretary's decision may be acquired by written or telephone request. Interested parties may submit written comments and recommendations on the tentative proposed final program until April 19, 1982.

ADDRESS: Send comments and recommendations on the tentative

proposed final program and requests for the material sent to Congress or the record for the Secretary's decision to: Director, Office of OCS Program Coordination, Department of the Interior, Room 5150, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:
Carolita Kallaur or Jan Thorman, Office of OCS Program Coordination, Department of the Interior, Room 5150, 18th and C Streets, NW., Washington, D.C. 20240, telephone 202/343-9314 or 343-9311.

SUPPLEMENTARY INFORMATION:
Comments and recommendations received by close of business April 19, 1982, on the tentative proposed final leasing program will be considered by the Department of the Interior prior to the transmittal of the proposed final leasing program to Congress and the President. This transmittal will be in accordance with section 18(d)(2) of the Act.

Dated: March 15, 1982.

Alan D. Powers,

Director, Office of OCS Program Coordination.

U.S. Department of the Interior,
Office of the Secretary
Washington, D.C. 20240

March 13, 1982.

Honorable George Bush,
President of the Senate,
Washington, D.C. 20510.

Dear Mr. President: We are pleased to send to you our tentative proposed final 5-year Outer Continental Shelf oil and gas leasing program. It has been developed under the process established by the U.S. Court of Appeals for the District of Columbia Circuit and meets the requirements of Section 18 of the Outer Continental Shelf (OCS) Lands Act.

Our program will strengthen America's economic and national security in an environmentally safe manner. It will create jobs at home instead of exporting them as we do every time we import a barrel of oil and it will help keep American dollars at home where they belong. The market-oriented modifications we propose to the program prepared by the previous Administration will allow offshore oil and gas production to make important contributions to our energy security for years to come.

In the last decade there has been only one commercial discovery of oil on the OCS in a frontier area. That was off southern California and, as a matter of fact, was in a general area which was already known to be oil-producing. Our history of exploration drilling in frontier areas has not been good—only 120 wells outside the Santa Barbara Channel and the proven portions of the Gulf of Mexico. We must change that situation. It is vitally important that we reverse the downward trend of oil production from the OCS that started in 1971 when OCS production was 50% more than now.

A key factor in our decision to go forward with an ambitious offshore program is its excellent record of environmental safety. All currently available energy sources involve some level of environmental risk. However, given the level of environmental studies ($261 million spent over the last eight years) and the rigorous safeguards exercised, we believe the offshore oil and gas program is carefully developed and properly operated.

An important feature of our program is that it will continue all the statutory requirements for coordination with States and others. That is an aspect of the program which we do not propose to change.

Subsection 18(c)(3) of the OCS Lands Act requires that we submit a proposed leasing program to the Congress, the Attorney General, and the Governors of the affected States, and published it in the **Federal Register**. That was accomplished last July. Court challenge to the June 1980 program resulted in a decision by the Court of Appeals on October 6, 1981. In the decision, the court noted specific failings in the June 1980 program prepared by the previous Administration and directed us to correct these failings in our new program and to provide an "opportunity for public comment" once this was done. On January 19, 1982, the court issued an order clarifying specific aspects of the October 6, 1981 decision. Among other things, the court ordered the Department to announce, in mid-March, 1982, a tentative proposed final 5-year OCS oil and gas leasing program based upon sections 18 (a)(2) and (a)(3) of the Act and on the EIS, as supplemented. We were ordered to make available the record for our decision on the tentative proposed final program and to submit it to the Congress, the Attorney General and Governors of the affected States, and to publish it in the **Federal Register**. This letter, with its enclosures, constitutes the required Congressional submission.

As provided by statute, our 5-year program indicates, as precisely as possible, the size, timing and location of leasing activity which we have determined will best meet national energy needs for the next five years and includes estimates of appropriations and staff required for the program. The schedule covers the 5-year period July 1982 through June 1987, and the estimates of appropriations and staff cover the six fiscal years 1982 through 1987.

Enclosures to this letter are:

- Enclosure 1. Tentative Proposed Final OCS Oil and Gas Leasing Schedule
- Enclosure 2. Maps of the OCS Planning Areas
- Enclosure 3. Assurance of Fair Market Value
- Enclosure 4. Estimated Appropriations and Staff Requirements for the Program
- Enclosure 5. Summary of Consideration of Section 18 Factors in Selection of Tentative Proposed Final Leasing Program
- Enclosure 6. Information on Potential Size of Sales

The program we are proposing is reponsive to America's energy, economic, and national security needs. It calls for 40 sales over the 5-year period. On a regional basis, the schedule calls for 7 sales in the Atlantic, 12 in the Gulf of Mexico, 4 off California, 16 off Alaska, and one reoffering sale. See Enclosures 1 and 2.

This schedule differs in some respects from the proposal we sent to you on July 24, 1981. First, in response to a recommendation from Governor Jay Hammond of Alaska, we have deleted sale 75—North Aleutian Basin from the 5-year program. The only sale in the North Aleutian Basin in this program is sale 92, scheduled for April 1985. This timing should enable us to consider in pre-sale planning the Cooperative Management Plan mandated by Section 1203 of the Alaska National Interest Lands Conservation Act. The Plan is scheduled for completion in December 1983. We will also seek the views of the Alaska Land Use Council when we are determining the terms and conditions for sale 70—St. George Basin, scheduled in February 1983.

Second, we have decided to schedule sales in the Eastern Gulf of Mexico on a biennial rather than an annual basis. As a result, there are two Eastern Gulf of Mexico sales on the schedule—sale 79 in November 1983 and sale 94 in November 1985.

Third, sale 86—Hope Basin, has been delayed two years from July 1985 to June 1987.

Fourth, the tentative proposed final program covers the period July 1982 through June 1987; the July proposal covered January 1982 through December 1986. This change results in the addition of four sales in 1987. The 1987 sales are consistent with the pattern of leasing in previous years.

Fifth, the locations of sales 90 and 96 are identified as South Atlantic and North Atlantic, respectively, in response to that portion of the October 6, 1981, D.C. Circuit Court of Appeals decision on the requirement to indicate the location of proposed sales as precisely as possible.

Sixth, two types of technical changes have been made to the proposed program:

1. The maps in Enclosure 2 show slightly modified boundaries for several of the planning areas:

—The boundary between the North and South Atlantic planning areas has been moved from Cape Charles, Virginia, to Cape Hatteras, North Carolina. This change, which was recommended by New York State, reflects the geologically most appropriate division of the planning areas.

—The seaward boundary of the California planning areas has been revised to approximate the 3,000-meter isobath.

—Minor changes have been made to the boundary between the Barrow Arch and Hope Basin planning areas to better delineate areas of oil and gas potential. The boundary between Kodiak and Gulf of Alaska has been modified to avoid unnecessary splitting of protraction diagrams. The southern boundary of Gulf of Alaska conforms with the Canadian border line.

2. There are three timing changes:

—RS-2 has been delayed a month, from June to July 1982,

—Sale 73—Central and Northern California has been delayed eight months, from January to September 1983 which slows the pace of leasing there, and

—Sale 91, Central and Northern California, has been delayed six months, from March to September 1985.

Finally, refinements have been made in the streamlining proposals included in the July proposal. An important component of the proposed program was studying the possible offering for lease all tracts within a planning area. We have refined this concept by deciding to focus the environmental impact analysis on those portions of planning area which the U.S. Geological Survey (GS), the Minerals Management Service (MMS), energy firms and others believe have potential for production of oil and gas. Under this refinement, the planning process will work as follows:

- The 5-year program will set out entire planning areas for consideration.
- The sale process will begin with issuance of the Call for Information. The entire planning area will be open for consideration at this point, and the Call will request information about the entire area. The Call will identify the portions of the planning area which GS and MMS believe have potential for discovery of commercial deposits of oil and gas.
- In response to the Call for Information, industry, States and other parties may suggest further areas of potential interest within or beyond those identified by GS and MMS. At the time of the Call, States, and others will also have an opportunity to comment on areas or topics of concern which should be considered in the planning for the lease sale. In regard to this last point, States and others will continue to have the same opportunity to comment on environmental, ocean use, or other areas of interest or concern as they have had in the past.
- Using the responses to the Call and other available data, the Under Secretary will approve the areas of hydrocarbon potential to be proposed for leasing and analyzed in the sale-specific EIS as the proposed Federal action. This approval will represent the Area Identification step listed on the Leasing Schedule.
- The analysis in the EIS will focus on the potential environemental effects of oil and gas activities in the area proposed for leasing. The EIS will, as in the past, analyze alternatives to the proposed action. The EIS will also include an environmental description of the entire planning area in order to provide the best available information for decision-making.
- The proposed Notice of Sale will include the area defined at the Area Identification step and studied in the EIS subject to appropriate consultation and consideration with the States as called for by the National Environmental Policy Act and the OCS Lands Act.

This refinement is intended to facilitate the important role played by the States in planning for OCS leasing, while keeping entire planning areas open for consideration and permitting the market to determine lease offerings. We would like to emphasize that the tentative proposed final program includes the same opportunities for consultation and comment as have been in place for a number of years.

The tentative proposed final program also includes changes in the way we will assure receipt of fair market value for OCS leases. The major change from the current system will be deferring completion of the Departments's fair market value determination until after the sale to avoid the inefficiency of evaluating tracts which do not receive bids. The new system will place more reliance on competition in the lease market and include a three-phase screening process as is discussed in Enclosure 3.

We want to point out that the budget and personnel figures shown in Enclosure 4 are estimates. While they represent a very careful effort to project the resources needed to carry out the tentative proposed final program, they have not been evaluated through either internal or Office of Management and Budget processes and are subject to refinement, especially during the annual budget preparation and appropriation process. The estimates for pre-sale planning decrease over time because they do not include pre-sale planning costs for sales beyond June 1987, not because they reflect a policy judgment that the intensity or number of pre-sale activities will be modified in the latter years of the program.

The program we are proposing is consistent with the *National Energy Policy Plan* submitted to the Congress by the Department of Energy in July 1981. In reference to Federal Lands, the plan states, "The Federal role in National energy production is to bring these resources into the market place, while simultaneously protecting the environment." The tentative proposed final 5-year OCS oil and gas leasing program is an essential component of this Federal role. The fundamental purpose of the OCS program, as viewed in the context of national energy policy, is to discover, identify, and inventory those oil and gas resources that lie beneath the ocean within Federal jurisdiction, and to allow for their timely and efficient development.

We have carefully reviewed the comments received on the July proposal from Governors and others, the analyses conducted under Section 18 and NEPA, and the extensive background material prepared by Interior staff. On the basis of that review, we have concluded that the program we are proposing, which provides for consideration of leasing in all OCS planning areas with hydrocarbon potential, best achieves the balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone, as required by the statute. The manner in which our decision reflects the requirements of subsections 18(a) (2) and (3) is discussed in Enclosure 5.

The 5-Year program is not yet final. The court-ordered 30-day comment period will end on April 19, 1982. In early May, after consideration of comments and recommendations received during this period, we will send to the President and the Congress a proposed final program, together with the comments received on the proposed program and this tentative proposed final program. Under subsection 18(d)(2) of the Act, we cannot approve the program until at least 60 days after we send the proposed final program to the Congress. We expect to approve the final program in July.

We are confident that the program we are transmitting to you today will increase the contribution of the OCS in meeting our national energy needs without sacrificing environmental or other values.

Sincerely,

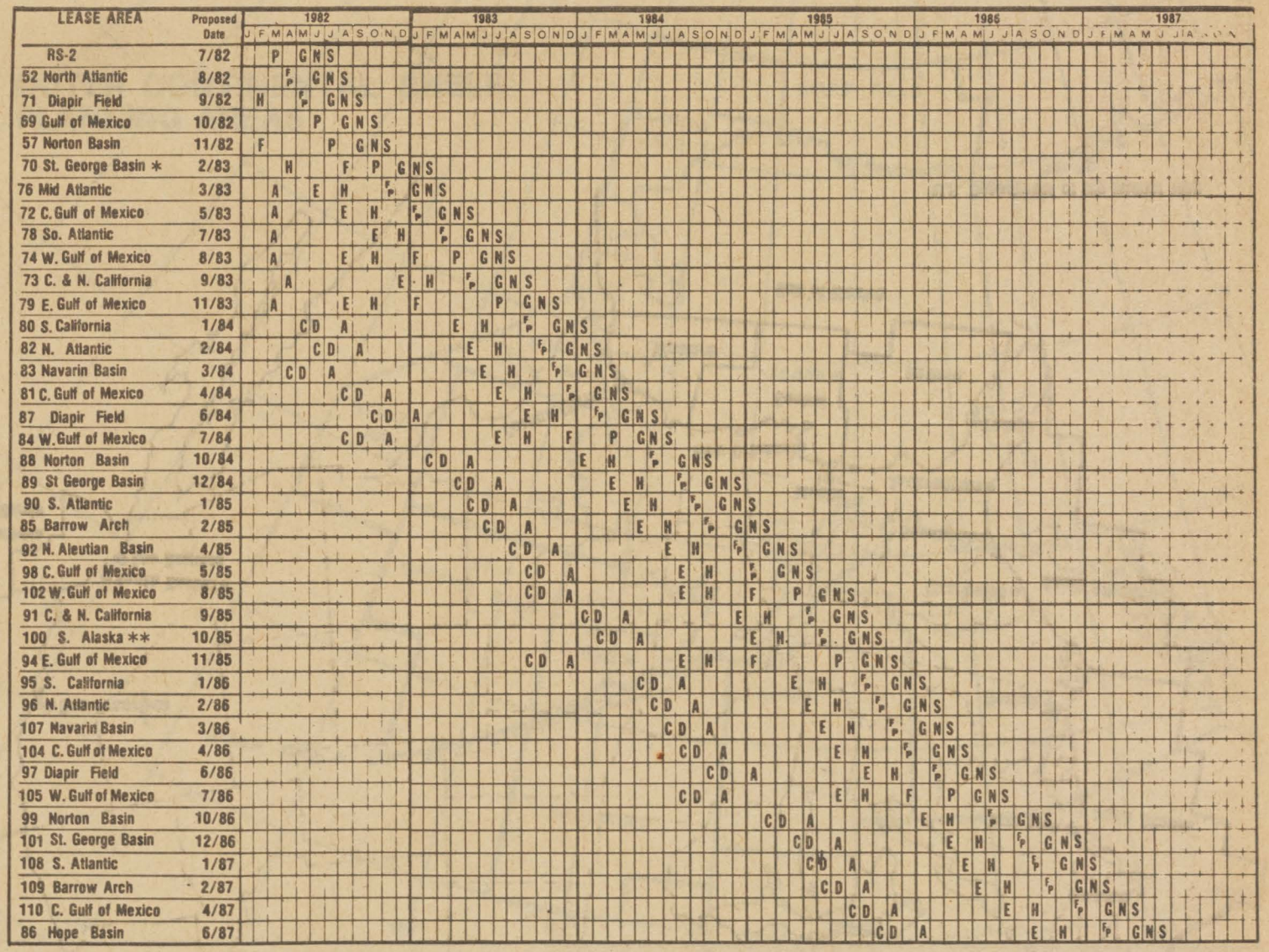
Donald Paul Hodel,

Acting Secretary.

Enclosures: Identical letter sent to Thomas P. O'Neill, Jr., Speaker of the House.

BILLING CODE 4310-10-M

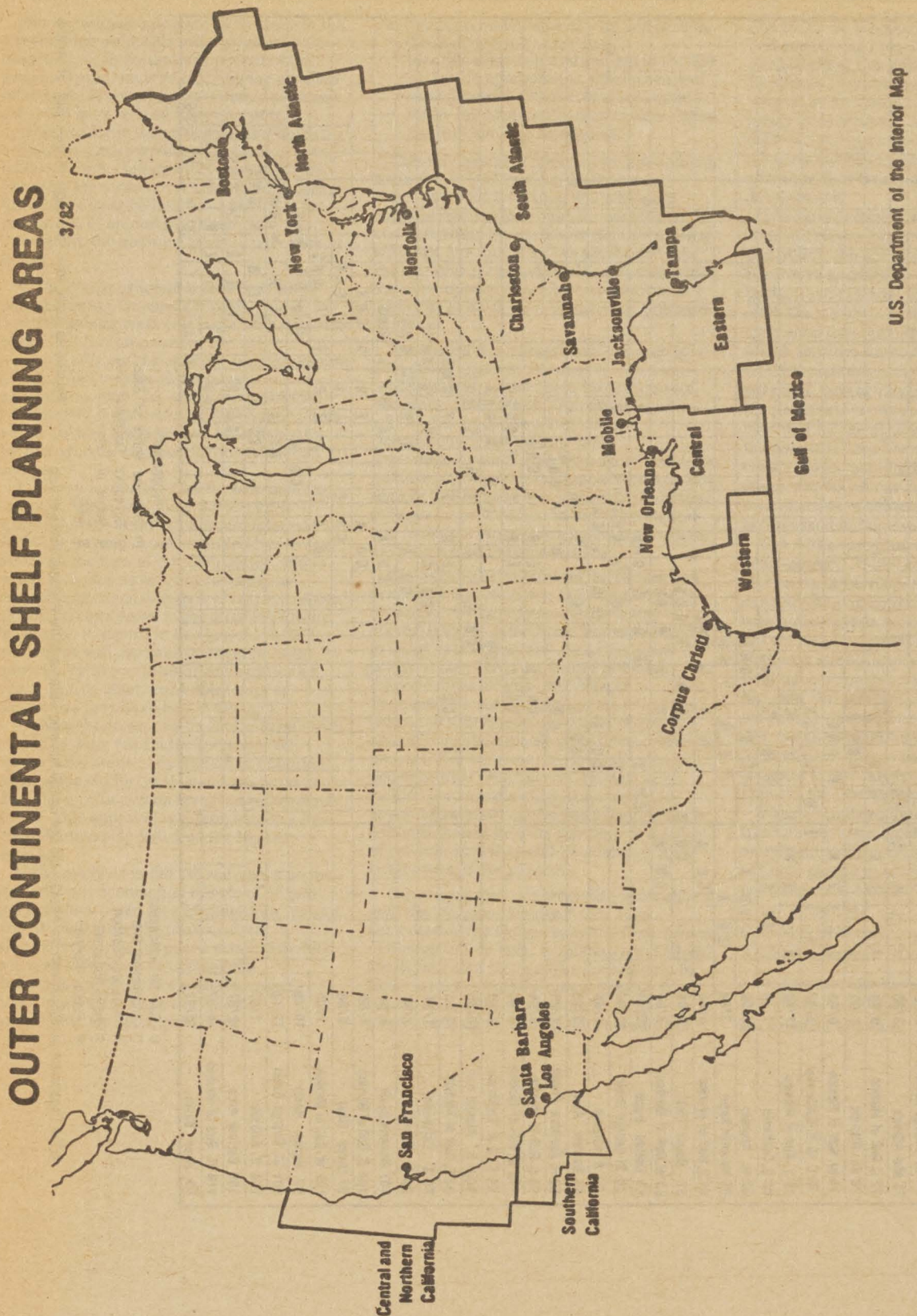
TENTATIVE PROPOSED FINAL 5-YEAR OCS OIL & GAS LEASING SCHEDULE

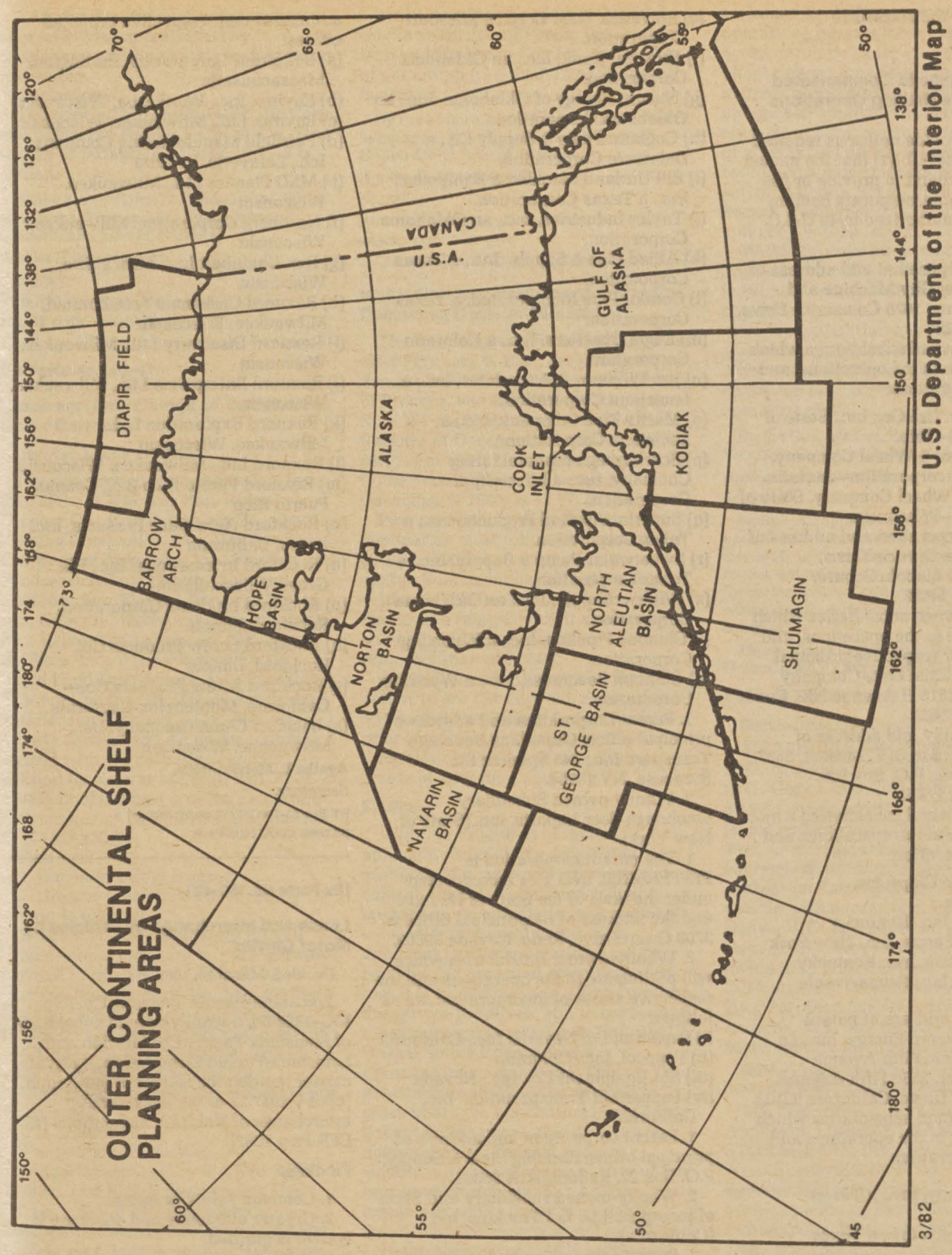


C - Call for Information
D - Information Due
A - Area Identification
E - NEPA Document
H - Public Hearing
F - NEPA Document
P - Proposed Notice of Sale
G - Governors' Comments Due
N - Notice of Sale
S - Sale

*The Department will consult with the Alaska Land Use Council following issuance of the Proposed Notice of Sale

**includes Cook Inlet, Shumagin, Kodiak, Gulf of Alaska


OUTER CONTINENTAL SHELF PLANNING AREAS
3/82
U.S. Department of the Interior Map
Boston
New York
Norfolk
Charleston
Savannah
Jacksonville
Tampa
Mobile
New Orleans
Corpus Christi
North Atlantic
South Atlantic
Eastern
Central
Western
Gulf of Mexico
Santa Barbara
Los Angeles
San Francisco
Central and Northern California
Southern California



[FR Doc. 82-7457 Filed 3-18-82; 8:45 am]
BILLING CODE 4310-10-C

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: City Machine and Wheel Company, 1676 Commerce Drive, Stow, Ohio 44224

2. Wholly-owned subsidiaries which will participate in the operations, and state of incorporation:

(i) Mobiliner Tire Co., Inc., State of Incorporation—Ohio.
(ii) Tredit Tire & Wheel Company, Inc., State of Incorporation—Indiana.
(iii) Nielson Wheel Company, State of Incorporation—Wisconsin.

1. Parent Corporation and address of principal office: Curtice-Burns, Incorporated, 1 Lincoln Square, Rochester, NY 14602.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices: (a) National Oats Company, Incorporated, 1515 H Avenue NE., Cedar Rapids, Iowa 52402.

(1) Parent entity and address of principal office: Mr. S. T. Musser, 3337 Marietta Avenue, P.O. Box 556, Mountville, PA 17554.

(2) Wholly-owned subsidiaries which will participate in the operations, and State of incorporation:

Musser's Potato Chips, Inc., Pennsylvania
Charles Chips, Inc., Kentucky
Charles Chips Farms, Inc., New York
Musser Marketing, Inc., Kentucky
Chip Trucking, Inc., Pennsylvania

1. Name and address of parent corporation: Nucorp Energy, Inc., an Ohio Corporation, Fifth Avenue Financial Center, 2550 Fifth Avenue, Suite 1100, San Diego, California 92103.

2. Wholly-owned subsidiaries which will participate in the operations and State of incorporation:

(a) Nucorp Energy, Inc., a Texas Corporation.
(b) Nucorp Supply, Inc., a Texas Corporation.
(c) Nucorp Compressor, Inc., a Texas Corporation. (A wholly owned subsidiary of Nucorp Supply, Inc.)
(d) Nucorp Energy Company, an Ohio Corporation.
(e) Maverick Tube Corp., a Missouri Corporation.
(f) Crowder Tank, Inc., an Oklahoma Corporation.
(g) Nucorp Energy of Oklahoma, Inc., an Oklahoma Corporation.
(h) Cogburn Pump & Supply Co., a Delaware Corporation.
(i) Bill Dorland Machine & Equipment, Inc., a Texas Corporation.
(j) Taylor Industries, Inc., an Oklahoma Corporation.
(k) Allied Pipe & Supply, Inc., a Texas Corporation.
(l) Condor Pipe Incorporated, a Texas Corporation.
(m) Eagle Upsetters, Inc., a Colorado Corporation.
(n) Jim Williams & Associates, Inc., a Louisiana Corporation.
(o) Martin Pipe Company, Inc., a Louisiana Corporation.
(p) Scarborough Manufacturing Company, Inc., a Mississippi Corporation.
(q) Superior Applied Products, Inc., a Texas Corporation.
(r) Sweetwater Pump & Supply, Inc., a Texas Corporation.
(s) Wildcat Supply, Inc., an Oklahoma Corporation.
(t) Chinook Pipeline, Inc., a Wyoming Corporation.
(u) Chinook Resources, Inc., a Wyoming Corporation.

1. Parent Corporation and address of principal office: Onondaga Beverage Transport, Inc., 345 Spencer St., Syracuse, NY 13204.

2. Wholly-owned Subsidiary: Onondaga Beer Imports, Inc. (State of New York).

1. The parent corporation is PEPPERMILL, INC. It is incorporated under the laws of the State of Nevada and the address of its principal office is 3700 Grant Drive, Reno, Nevada 89509.

2. Wholly-owned subsidiaries which will participate in the operations and the respective states of incorporation are as follows:

(i) Peppermill of Nevada, Inc., California
(ii) Peppcol, Inc., Colorado
(iii) SM Equipment Co., Inc., Nevada
(iv) Peppermill Transportation, Inc., California

1. Parent corporation and address of principal office: Redding Steel & Supply, P.O. Box 22, Redding, CA 96001.

2. Wholly-owned subsidiary and State of incorporation: Let Trucking, Inc. (California).

1. Parent corporation and address of principal office: Rexnord Inc., 4701 West Greenfield Avenue, Milwaukee, Wisconsin 53214.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Bellofram Corporation, Burlington, Massachusetts
(b) Envirex Inc., Waukesha, Wisconsin
(c) Envirex Ltd., Milwaukee, Wisconsin
(d) Fairfield Manufacturing Company, Inc., Lafayette, Indiana
(e) MSD Plastics Ltd., Milwaukee, Wisconsin
(f) Nordberg Corporation, Milwaukee, Wisconsin
(g) Rex Chainbelt Inc., Milwaukee, Wisconsin
(h) Rexnord Christmas Tree Limited, Milwaukee, Wisconsin
(i) Rexnord Discovery Ltd., Milwaukee, Wisconsin
(j) Rexnord Enterprises Ltd., Milwaukee, Wisconsin
(k) Rexnord Exploration Ltd., Milwaukee, Wisconsin
(l) Rexnord Ltd., Milwaukee, Wisconsin
(m) Rexnord Pureto Rico Inc., Coamo, Puerto Rico
(n) Rockford Aerospace Products, Inc., Irvine, California
(o) Rockford International Inc., Elk Grove Village, Illinois
(p) Rockford Products Corporation, Rockford, Illinois
(q) Rockford Screw Products Co., Rockford, Illinois
(r) Rockford Screw Products Co.—California, Montebello, California
(s) Betzdorf Chain Company, Inc., Milwaukee, Wisconsin

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-7441 Filed 3-18-82; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. MC-43]

Lease and Interchange of Vehicles by Motor Carrier

Decided: March 11, 1982.

Louisiana-Pacific Trucking Co. (No. MC-142447), a wholly-owned subsidiary of Louisiana-Pacific Corporation and Louisiana-Pacific Corporation, a private carrier petition for waiver of paragraph (c) of § 1057.12 of the Lease and Interchange of Vehicles Regulations (49 CFR Part 1057).

Findings

1. Common safety program.

2. Greater efficiency and economy if waiver is granted.

3. There is currently before the full Commission a proposal to allow private carriers to trip lease to authorized carriers. See Ex Parte No. MC-43 (Sub-No. 12), *Leasing Rules Modifications,* Decided February 17, 1981 (not printed).

4. Under the circumstances, and in view of evidence presented by petitioners, granting of this waiver is not warranted.

It is ordered:

The petition of Louisiana-Pacific Corp. and Louisiana-Pacific Trucking Co., for waiver of paragraph (c) of § 1057.12 is denied.

By the Motor Carrier Leasing Board, Board Members J. Warren Mcfarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-7445 Filed 3-18-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-43]

Lease and Interchange of Vehicles by Motor Carriers

Decided: March 11, 1982.

Fleming Transportation Service, Inc. (No. MC-157336), and Blue Ridge Grocery Co., Inc.; E. J. Keefe Co., Inc.; Fleming Companies, Inc.; The Fleming Company of Nebraska, Inc.; Fleming Foodservice, Inc.; Fleming Foods of Missouri, Inc.; Fleming Foods of Texas, Inc.; General Merchandise Distrubutors, Inc.; Kahan and Lessin, Inc.; Kockos Brothers, Inc., d.b.a. Fleming Foods; Royal Food Distributors, Inc.; Southland Grocery Co., Inc.; Thriftway Foods, Inc.; and Benson Wholesale Co., Inc., all private carriers and all under common control with the authorized carrier petition for waiver of paragraph (c) of § 1057.12 of Subpart B of the *Lease and Interchange of Vehicles* Regulations (49 CFR 1057.12(c)).

Findings:

1. Common safety program.

2. Greater efficiency and economy waiver is granted.

3. There is currently before the full commission a proposal to allow private carriers to trip lease to authorized carriers. (See Ex Parte No. MC-43) (Sub-No. 12), *Leasing Rules Modifications,* Decided February 17, 1981 (not printed).

4. Under the circumstances, and in view of evidence presented by petitioners, granting of this waiver is not warranted.

It is ordered:

The petition of Fleming Transportation Service, Inc. (No. MC-157336), and Blue Ridge Grocery Co., Inc.; E. J. Keefe Co., Inc.; Fleming Companies, Inc.; The Fleming Company of Nebraska, Inc.; Fleming Foodservice, Inc.; Fleming Foods of Missouri, Inc.; Fleming Foods of Texas, Inc.; General Merchandise Distributors, Inc.; Kahan and Lessin, Inc.; Kockos Brothers, Inc., d.b.a. Fleming Foods; Royal Food Distributors, Inc.; Southland Grocery Co., Inc.; Thriftway Foods, Inc., and Benson Wholesale Co., Inc.; for waiver of paragraph (c) § 1057.12 of Subpart B is denied.

By the Motor Carrier Leasing Board, Board Members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-7446 Filed 3-18-82; 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 to 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.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP3-043

Decided: March 11, 1982.

MC 1515 (Sub-306), filed March 3, 1982. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix AZ 85077. Representative: L. J. Celmins (same address as applicant), (602) 248-2942. Over regular routes, transporting *passengers and their baggage and express and newspapers,* in the same vehicle with passengers, Between Denver, CO, and Laramie, WY: from Denver, CO, over Interstate Hwy 25 to its junction with CO Hwy 14, then over CO Hwy 14 to its junction with U.S. Hwy 287, then over U.S. Hwy 287 to Laramie, WY, and return over the same route, serving all intermediate points.

Note.—Applicant intends to tack this authority with its existing authority.

MC 3535 (Sub-1), filed March 2, 1982. Applicant: LIBERTY TRANSFER & STORAGE CO., INC., 910 East Maxwell Ave., Evansville, IN 47711. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204-3491, (317) 638-1301. Transporting (1) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Vanderburgh, Warrick, and Spencer Counties, IN, and Daviess and

Henderson Counties, KY, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX, (2) *machinery*, between Indianapolis, IN, on the one hand, and, on the other, points in KY, and (3) *metal products*, between Chicago, IL, on the one hand, and, on the other, points in IN and KY.

MC 47624 (Sub-3), filed March 1, 1982. Applicant: SCHAAP BROTHERS, INC., 1218 Central Ave., Albany, NY 12205. Representative: Neil D. Breslin, 11 N. Pearl St., Albany, NY 12207, (518) 434–1136. Transporting *household goods*, between points in NY, on the one hand, and, on the other, points in CT, DE, FL, GA, IL, IN, MD, MA, ME, MI, NH, NJ, NY, NC, OH, PA, RI, SC, VT, VA, and DC.

MC 99455 (Sub-13), filed March 2, 1982. Applicant: M. H. HILLERY, INC., 90 Western Ave., Allston, MA 02134. Representative: Robert L. Cope, Suite 501, 1730 M Street NW., Washington, D.C. 20036, (202) 296–2900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in ME, VT, NH, MA, CT, and RI.

MC 106074 (Sub-191), filed March 2, 1982. Applicant: B AND P MOTOR LINES, INC., Shiloh Rd. and U.S. Hwy 221, S., Forest City, NC 28043. Representative: John J. Capo, P.O. Box 720434, Atlanta, GA 30328, (404) 256–4320. Transporting *such commodities* as are dealt in or used by automotive supply, household appliance and chain stores, between points in the U.S. (except AK and HI).

MC 108435 (Sub-26), filed March 3, 1982. Applicant: G & R TRANSPORT, INC., 4703 Mayflower Ave., Wausau, WI 54401. Representative: Nancy J. Johnson, 103 East Washington St., P.O. Box 218, Crandon, WI 54520, (715) 478–3341. Transporting *granite*, between points in Marathon County, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 128544 (Sub-9), filed March 4, 1982. Applicant: IOWA STEEL EXPRESS, INC., 2519 16th Avenue SW., P.O. Box 1304, Cedar Rapids, IA 52406. Representative: Beverly J. Carfrae, 2960 Lafayette Drive, Boulder, CO 80303, (303) 494–4879 Transporting *metal products, machinery, hides*, and *forest products*, between points in ND, SD, WI, IN, MI, OH, MO, KS, CO, NE, IA, IL, MN, and WY.

MC 140484 (Sub-107), filed March 3, 1982. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Meyers, FL 33902. Representative: Frank T. Day (same address as applicant) (813) 334–4517. Transporting *chemicals and related products* (except classes A and B explosives), between seaports at points in the U.S. (except AK and HI), on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141914 (Sub-107), filed March 2, 1982. Applicant: FRANKS AND SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. Representative: Kathrena J. Franks (same as applicant) (918) 783–5180. Transporting *transportation equipment*, between points in Los Angeles County, CA, Mercer County, OH, and Kay County, OK, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 144865 (Sub-4), filed March 1, 1982. Applicant: JASCO TRUCKING, INC., 202 94th Street SW., Albuquerque, NM 87100. Representative: David C. Olson, P.O. Drawer 965, Albuquerque, NM 87103, (505) 243–2826. Transporting *coal*, between points in the U.S. (except AK and HI), under continuing contract(s) with Consolidation Coal Company, of Englewood, CO.

MC 145154 (Sub-6), filed March 1, 1982. Applicant: YOUNG'S TRANSPORTATION CO., a corporation, 3401 Norman Berry Drive, Suite 246, East Point, GA 30344. Representative: Eric Meierhoefer, 1029 Vermont Avenue, NW., Suite 1000, Washington, DC 20005, (202) 347–9332. Transporting (1) *aluminum and aluminum products*, between points in IN and KY, on the one hand, and, on the other, those points in U.S. in and east of MN, IA, MO, AR, and LA, (2) *chemicals and related products* (except classes A and B explosives and commodities in bulk), *paper products, plastic and plastic products*, and *food and related products*, between points in U.S. (except AK and HI), (3) *textile mill products*, between points in NC and SC, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (4) *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147015 (Sub-3), filed March 2, 1982. Applicant: JAMES P. TAYLOR d.b.a. JAMES TAYLOR TRUCKING, 3718 Gass Lake Rd., Manitowoc, WI 54420. 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 cement and cement products, between points in the U.S. (except AK and HI), under continuing contract(s) with Medusa Cement Company, of Cleveland, OH.

MC 147035 (Sub-7), filed March 3, 1982. Applicant: JOSEPH C. GRINGERI d.b.a. JAYCO, 154 Rangeway Rd., Billerica, MA 01821. Representative: David E. McCabe, P.O. Box 402, Kittery, ME 03904 (207) 439–1847. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, MA, ME, NH, NJ, NY, PA, RI, and VT.

MC 153565 (Sub-2), filed February 26, 1982. Applicant: M.L. TRANSPORT, DIVISION OF M.L. ENTERPRISES, INC., Rt. #1, Box 282GA, Pell City, AL 35125. Representative: George M. Boles, 727 Frank Nelson Bldg., Birmingham, AL 35203 (205) 251–5223. Transporting *metal products, machinery, pipe, pipe fittings and accessories and foundry supplies*, between points in the U.S. (except AK and HI).

MC 155004 (Sub-4), filed March 2, 1982. Applicant: JOSEPH LAND AND CO., INC., W. Central Ave., P.O. Drawer 3310, Lake Wales, FL 33853. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101 (703) 893–3050. Transporting *pulp, paper and related products, rubber and plastic products, furniture and fixtures*, and *machinery*, between the facilities of Scott Paper Company, at points in the U.S., on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 155004 (Sub-5), filed March 3, 1982. Applicant: JOSEPH LAND AND CO., INC., West Central Ave., P.O. Drawer 3310, Lake Wales, FL 33853. Representative: J. G. Dail, Jr., P.O. Box LL McLean, VA 22101 (703) 893–3050. Transporting *foodstuffs*, between points in FL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 157384 (Sub-1), filed March 3, 1982. Applicant: BENNY WHITEHEAD, P.O. Box 46, Eufaula, AL 36027. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740, (301) 797–6060. Transporting (1) *wrapping, packaging and baling materials and products*, (2) *vegetable fibers* and (3) *textile and textile products*, between Jacksonville, FL, Atlanta and Nashville, GA, Birmingham, AL and New Orleans, LA and points in SC, on the one hand, and, on the other, points in GA, TX, NC, SC, TN, AL, MS, AR, NM, VA, NY, IA, OH, OR, CA, AZ, MO, OK, NV, CO, KS, NJ, MD, WV and PA.

MC 157384 (Sub-2), filed March 4, 1982. Applicant: BENNY WHITEHEAD, P.O. Box 46, Eufaula, AL 36027. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417,

Hagerstown, MD 21740, (301) 797–6060. Transporting *veneer,* between points in the U.S. (except AK and HI), under continuing contract(s) with Chattahoochee Veneer, Inc. of Eufaula, AL.

MC 158464, filed March 3, 1982. Applicant: RED STAR TRUC–KING COMPANY, 7904 Mevina, Burbank IL 60459. Representative: Brady J. Langford, One N. LaSalle St., Suite 2265, Chicago, IL 60602, (312) 641–2260. Transporting *furniture and parts thereof,* between points in the U.S. (except AK and HI), under continuing contract(s) with S.K. Products Corporation, of Atlanta, GA.

MC 158914 (Sub-1), filed March 2, 1982. Applicant: J.T.D. ENTERPRISES, INC., 2223 81st St., Kenosha, WI 53140. Representative: Clyde W. Harger (same address as applicant), (414) 697–0262. Transporting *food and related products,* between Minneapolis, MN and points in Martin, Nobles, Watonwan, Wright and Faribault Counties, MN, on the one hand, and, on the other, points in IL, MN, WI, IN, KY, TN, NC, SC, GA, FL, CO, NM, AZ and CA.

MC 159474 (Sub-2), filed March 1, 1982. Applicant: U.S. EXPRESS, INC., P.O. Box 9652, Little Rock, AR 72219. Representative: Stephen F. Grinnell, 1600 TCF Tower, Minneapolis, MN 55402, (612) 333–1341. Transporting *food and related products,* between points in CA, ID, OR, and WA, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX.

MC 159975 (Sub-1), filed March 3, 1982. Applicant: GEORGE KYER & SON, INC., 341 Maple Avenue, Oradell, NJ 07649. Representative: Robert G. Parks, 20 Walnut St., Suite 101, Wellesley Hills, MA 02181, (617) 235–5571. Transporting *bananas,* between Albany, NY and Newark, NJ, on the one hand, and, on the other, points in ME, NH, VT, MA, RI, CT, NJ, NY, MD, DE, PA, VA, WV, NC, KY, OH, IN, MI, IL, WI, MO, IA, MN and NE.

MC 160635 (Sub-1), filed March 2, 1982. Applicant: WILLIAM E. LORENCE, INC., d.b.a. BILL'S TRUCKING, INC., 4520 Everett St., Los Angeles, CA 90058. Representative: Milton W. Flack, 8383 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90211, (213) 655–3573. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AZ, CA and NV.

MC 160794, filed March 1, 1982. Applicant: WEST/FAIR LIMOUSINE SERVICE, INC., 57 Forest St., New Canaan, CT 06840. Representative: John F. Cooke (same address as applicant), (203) 966–7111. Transporting *passengers and their baggage,* in the same vehicle with passengers, limited to the transportation of not more than 15 passengers (excluding the driver) in one vehicle at one time, between New York, NY, and its Commercial Zone and points in Fairfield County, CT and Westchester County, NY.

MC 160795, filed March 1, 1982. Applicant: MAX D. GUTIERREZ, d.b.a. G & G TRUCKING COMPANY, 902 Chacon St., Laredo, TX 78040. Representative: Austin L. Hatchell, P.O. Box 2023, Austin, TX 78768, (512) 472–2083. Transporting *general commodities* (except classes A and B explosives, household goods, commodities in bulk, and those requiring special equipment because of size or weight), between points in the Laredo, TX commercial zone, on the one hand, and, on the other, ports of entry on the International Boundary line between the United States and Mexico.

MC 160825, filed March 2, 1982. Applicant: BOB MARSHALL ENTERPRISES, INC., d.b.a. EASTLAND SHELL, 2191 So. Hamilton Rd., Columbus, OH 43227. Representative: James W. Muldoon, 50 W. Broad St., Columbus, OH 43215, (614) 464–4103. Transporting *transportation equipment,* between points in OH, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR and LA.

MC 160834, filed March 3, 1982. Applicant: FLAGG TRUCKING & REPAIR, INC., Route 5, Springfield, IL 62702. Representative: Irwin D. Rozner, 134 North La Salle St., Chicago, IL 60602 (312) 782–6937. Transporting *general commodities* (except classes A and B explosives and household goods), between points in IL, on the one hand, and, on the other, points in MO, IN, and WI.

MC 160844, filed March 3, 1982. Applicant: DAVID F. CROWELL AND SONS, INC., 51 Mill St., Tewksbury, MA 01876. Representative: David F. Crowell (same address as applicant) (617) 658–9128. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, thence northward along the western boundaries of Itasca and Koochiching Counties, MN, to the International boundary line between the U.S. and Canada.

Volume No. OP4–79

Decided: March 1, 1982.

MC 124997 (Sub-10), filed February 22, 1982. Applicant: R. F. TRUESDELL CO., 6515 Anno Ave., Orlando, FL 32809. Representative: Kim G. Meyer, 235 Peachtree St., N.E., Ste. 1200, Atlanta, GA 30303 (404) 522–2322. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of paper and paper products, between points in the U.S. (except AK and HI), under continuing contract(s) with Scott Paper Company, of Philadelphia, PA.

MC 146857 (Sub-6), filed February 22, 1982. Applicant: W. K. THOMAS, INC., 95 Laconia St., Springfield, MA 01129. Representative: Patrick A. Doyle, 40 Sky Ridge Lane, Springfield, MA 01128 (413) 783–0442. Transporting *beer and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Lion Distributors, Inc., of Worcester, MA.

MC 160737, filed February 24, 1982. Applicant: PATTERSON TRAVEL SERVICE, INC., 309 North Hills Plaza, P.O. Box 18528, Raleigh, NC 27619. Representative: William L. Wofford (same address as applicant) (919) 782–1475. To operate as a *broker,* at Raleigh, NC, in arranging for the transportation of *passengers and their baggage,* between points in NC, SC, and VA, on the one hand, and, on the other, points in the U.S., (except HI), and ports of entry on the International Boundary line between the U.S. and Canada and those ports of entry on the International Boundary line between the U.S. and the Republic of Mexico.

Volume No. OP4–81

Decided: March 4, 1982.

MC 51146 (Sub-863), filed February 24, 1982. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Thomas E. Vandenberg, 2777 S. Ridge Rd., Green Bay, WI 54304 (414) 498–7689. Transporting *forest products, lumber and wood products, and pulp, paper and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Weyerhaeuser Company, of Tacoma, WA.

MC 71536 (Sub-17), filed February 24, 1982. Applicant: ARROW CARRIER CORPORATION, 2600 Penhorn Ave. and State Hwy 3, North Bergen, NJ 07047. Representative: A. David Millner, Seven Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068 (201) 992–2200. Transporting *general commodities* (except classes A and B explosives household goods and commodities in bulk), between points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VT, and DC.

MC 143776 (Sub-45), filed February 24, 1982. 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 *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Dak Foods, Incorporated, of E. Brunswick, NJ.

MC 147636 (Sub-24), filed February 26, 1982. Applicant: LARRY E. HICKOX, d.b.a. LARRY E. HICKOX TRUCKING, Box 95, Casey, IL 62420. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701 (217) 544–5468. Transporting *general commodities* (except classes A and B explosives household goods and commodities in bulk), between points in Miami County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 149576 (Sub-7), filed February 25, 1982. Applicant: TRANS-AMERICAN TRUCKING SERVICE, INC., Box 1247 Nixon Station, Edison, NJ 08818. Representative: R. M. McGraw (same address as applicant) (201) 985–2182. Transporting *machinery, elevators, escalators and parts,* between points in the U.S. (except AK and HI), under continuing contract(s) with Westinghouse Elevator Co., of Randolph, NJ.

MC 160766, filed February 26, 1982. Applicant: ROBERT E. MACINTYRE, d.b.a. MACINTYRE TRANSPORT, Route 12, Walpole, NH 03608. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960 (617) 535–5430. Transporting *metal products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Brennan Weldment Co., Inc., of Bellows Falls, VT.

Volume No. OP4–83

Decided: March 3, 1982.

MC 98267 (Sub-4), filed February 25, 1982. Applicant: COLUMBIA MOTOR EXPRESS, INC., Rt. 8, Nashville Hwy, Columbia, TN 38401. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004, (202) 347–8862. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (1) between Columbia, TN, and junction U.S. Hwy 31 and U.S. Hwy 64 over U.S. Hwy 31, and (2) between Memphis and Chattanooga, TN: from Memphis over U.S. Hwy 64 to junction Interstate Hwy 24, then over Interstate Hwy 24 to Chattanooga, serving all points in Williamson, Giles, Lawrence and Maury Counties, TN, as intermediate and off-route points.

MC 146587 (Sub-6), filed February 23, 1982. Applicant: GREAT EASTERN EXPRESS, INC., Rear 639 Frederick St., Hanover, PA 17331. Representative: John Wills Beach, 34 West Middle St., Gettysburg, PA 17325, (717) 334–9121. Transporting *ice cream products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Klondike Company, Inc., of Hanover, PA.

MC 151707 (Sub-15), filed February 25, 1982. Applicant: PIONEER TRUCKING, INC., 1105 N. Market St., 15th Fl., Wilmington, DE 19801. Representative: Dennis Kupchik (same address as applicant) (215) 985–6853. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Phelps Dodge Industries, Inc., and Phelps Dodge Refining Corp., both of New York, NY.

MC 159467 (Sub-1), filed February 25, 1982. Applicant: JOOR TRUCKING, INC., 52 2nd St., New Rochelle, NY 10801. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, (201) 836–1144. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Gries/Dynacast Company, Greenwich Metal Fabrications, Inc., Ernst Stair Fabrications, Inc., and Arett Sales Corporation, all of New Rochelle, NY, and Medi-Ray, Inc., of Tuckahoe, NY.

MC 160567, filed February 23, 1982. Applicant: BARNES TRUCKING, INC., 13609 Colony Lane, Burton, OH 44021. Representative: Lewis S. Witherspoon, 2455 N. Star Rd., Columbus, OH 43221, (614) 486–0448. Transporting *commodities in bulk,* between points in the U.S. (except AK and HI), under continuing contract(s) with By-Products Management of Ohio, Inc., of Cleveland, OH.

Volume No. OP4–84

Decided: March 4, 1982.

MC 127047 (Sub-51), filed February 26, 1982. Applicant: ED RACETTE & SON, INC., 6021 North Broadway, Wichita, KS 67219. Representative: Lester C. Arvin, 814 Century Plaza Bldg., Wichita, KS 67202, (316) 265–2634. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Weyerhaeuser Company, of Tacoma, Wa.

MC 128837 (Sub-46), filed February 26, 1982. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *iron and steel articles,* and *wire and wire products,* between points in Harris and Dallas County, TX, Jefferson County, LA, Washington County, MS, Shelby County, TN, Dade County, FL, King County, WA, Alameda County, CA, and Los Angeles, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI.)

MC 146447 (Sub-25), filed February 26, 1982. Applicant: TANBAC, INC., 2941 S.W. 1st Terr., Ft. Lauderdale, FL 33315. Representative: Richard B. Austin, 320 Rochester Bldg., 8390 N.W. 53rd St., Miami, FL 33166, (305) 592–0036. Transporting *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Quality Bakery Products of Miami, Inc., of Miami, FL.

MC 155677 (Sub-1), filed February 25, 1982. Applicant: AMERICAN TRANSPORTATION ASSOCIATES, INC., 5612 Tall Oaks Dr., Louisville, KY 40214. Representative: Robert L. Hawkins (same address as applicant), Transporting *such commodities* as are dealt in by grocery, food, and drug business houses, between the facilities of Colgate-Palmolive Company , Inc., and its subsidaries, at points in the U.S., on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to team 4, Room 2410.

Volume No. OP4–85

Decided: March 3, 1982.

MC 12566 (Sub-1), filed January 11, 1982, previously noticed in the Federal Register issue of January 28, 1982, and republished this issue. Applicant: MILLER TOURS, INC., Suite 245, Glendale Bldg., 6100 North Keystone Ave., Indianapolis, IN 46220. Representative: Harry J. Harman, 700 Harrison Bldg., 143 West Market St., Indianapolis, IN 46204, (317) 634–4242. To engage in operations, in interstate or

foreign commerce, as a *broker*, at Indianapolis, IN, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in special and charter operations, between points in IL, OH, KY, and IL, on the one hand, and, on the other, points in the U.S. including AK, but excluding HI.

Note.— The purpose of this republication is to correct the territorial description.

MC 58966 (Sub-2), filed February 26, 1982. Applicant: EAGLE TRANSFER COMPANY, 6015 River Chase Circle NW., Atlanta, GA 30328. Representative: James W. Patterson, 1200 Western Savings Bank Bldg., Philadelphia, PA 19107, (215) 735–3090. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 142826 (Sub-3), filed March 1, 1982. Applicant: LOUIS H. CHAUVIN, INC., 6081 Mudmill Rd., Brewerton, NY 13029. Representative: Louis H. Chauvin (same address as applicant), (315) 699–2525. Transporting (1) *potash, phosphates, urea fertilizer, and fertilizer materials*, between points in the U.S. (except AK and HI), under continuing contract(s) with Agway, Inc., of Syracuse, NY, (2) *fertilizer and fertilizer materials*, between points in the U.S. (except AK and HI), under continuing contract(s) with Agrico Chemical Corp., of Tulsa, OK, and (3) *liquid calcium chloride*, between points in the U.S. (except AK and HI), under continuing contract(s) with E. & F. King & Co., Inc., of Norwood, MA.

MC 143776 (Sub-46), filed March 1, 1982. 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 *chemicals and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Economics Laboratory, Incorporated, of Avenel, NJ.

MC 149576 (Sub-8), filed March 1, 1982. Applicant: TRANS AMERICAN TRUCKING SERVICE, INC., P.O. Box 1247, Nixon Station, Edison, NJ 08818. Representative: R. M. McGraw (same address as applicant), (201) 985–2182. Transporting *machinery*, between points in the U.S. (except AK and HI), under continuing contract(s) with M.M.T.S. Inc., a subsidiary of Mitsui & Co., Inc., of Melville, NY.

MC 149576 (Sub-9), filed March 1, 1982. Applicant: TRANS AMERICAN TRUCKING SERVICE, INC., P.O. Box 1247, Nixon Station, Edison, NJ 08818. Representative: R. M. McGraw (same address as applicant), (201) 985–2185. Transporting *machinery*, between points in the U.S. (except AK and HI), under continuing contract(s) with Sigma Machinery, Inc., of Carlstadt, NJ.

Volume No. OP4–86

Decided: March 9, 1982.

MC 99506 (Sub-3), filed March 2, 1982. Applicant: HAROLD M. SANDHAUS, 1295 West 71st Terrace, Kansas City, MO 64114. Representative: John T. Pruitt, 9832 Connell, Overland Park, KS 66212, (913) 888–3386. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CO, IL, IA, KS, MO, NE, OK, and TN.

MC 108046 (Sub-12), filed March 1, 1982. Applicant: CURATOLA BROS. TRUCKING, INC., 85 Bloomingdale Rd., Hicksville, NY 11801. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528, (914) 835–4411. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with C.B. Warehousing, Inc., of Hicksville, NY.

MC 160406, filed March 2, 1982. Applicant: ALAMO TOURS, INC., P.O. Box 1451, San Antonio, TX 78295. Representative: Thomas F. Sedberry, 2600 Austin National Bank Bldg., P.O. Box 2023, Austin, TX 78768, (512) 472–8355. Transporting *passengers and their baggage*, in the same vehicle with passengers, in round trip special or charter operations, beginning and ending at points in Bexar County, TX, and extending the points in the U.S. (except AK and HI).

MC 160806, filed March 2, 1982. Applicant: W. T. HARRIS & SONS, INC., 41 E. Providence Rd., Yeadon, PA 19050. Representative: C. Jack Pearce, Suite 1200, 1000 Connecticut Ave. NW., Washington, DC 20036, (202) 785–0048. Transporting (1) *automotive equipment and accessories*, between points in the U.S. (except AK and HI), under continuing contract(s) with Keystone Cable Corporation, and (2) *electronics equipment and appliances*, between points in the U.S. (except AK and HI) under continuing contract(s) with Kelgo International, Ltd.

Volume No. OP4–87

Decided: March 5, 1982.

MC 146807 (Sub-35), filed March 1, 1982. Applicant: S-n-W ENTERPRISES, INC., P.O. Box 1131, Wilkes Barre, PA 18702. Representative: Edward F.V. Pietrowski, 430 Scranton Life Bldg., Scranton, PA 18503, (717) 346–5761. Transporting *printed matter, paper, and related products*, between points in Luzerne County, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 160767, filed February 26, 1982. Applicant: LADD TRANSPORTATION, INC., One Plaza Center, P.O. Box HP–3, High Point, NC 27261. Representative: James M. Iseman, Jr., 1001 W. Fourth St., Winston Salem, NC 27101, (919) 725–2351. Transporting *such commodities* as are dealt in or used by retail department stores and trading stamp redemption stores, between points in the U.S. (except AK and HI), under continuing contract(s) with The Sperry & Hutchinson Company, Inc., of New York, NY.

MC 160777, filed February 26, 1982. Applicant: JAMES COLLINS d.b.a. COLLINS TRAVEL SERVICE, 12 W. 13th St., P.O. Box 730, Anderson, IN 46015. Representative: Jerome O. Pitt, P.O. Box 390, Anderson, IN 46015, (317) 644–2891. To operate as *broker*, at Anderson, IN, in arranging for the transportation of *passengers and their baggage*, between Anderson, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP4–92

Decided: March 15, 1982.

MC 102546 (Sub–5), filed March 5, 1982. Applicant: BLUE FLASH EXPRESS INCORPORATED, Route 1, Box 233, Zachary, LA 70791. Representative: L. F. Aguillard (same address as applicant), (504) 778–1440. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Amerade Hess Corporation, of Woodbridge, NJ.

MC 111656 (Sub–18), filed March 5, 1982. 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 *automotive parts and accessories*, between points in the U.S. (except AK and HI), under continuing contract(s) with Nissan Motor Corporation in U.S.A., of Carson, CA.

MC 124056 (Sub–2), filed March 8, 1982. Applicant: JAMES BRUNSEN d.b.a. JIM'S FREIGHT LINE, P.O. Box 334, Britt, IA 50423. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, (515) 282–3525. Transporting *machinery and chemicals*, between points in the U.S. (except AK and HI), under continuing contract(s) with Britt Tech Corporation, of Britt, IA.

MC 13336 (Sub-6), filed March 5, 1982. Applicant: CAROLINA TRANSIT LINES OF CHARLOTTE, INC., 224 Iverson Way, Charlotte, NC 28203. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Ave. NW., Washington, D.C. 20005, (202) 347-9332. Transporting *passengers and their baggage*, in charter and special operations, beginning and ending at points in Anson, Gaston, Iredell, Cabarrus, Rowan, Stanly, Cleveland, Burke, Rutherford, Catawaba, and Union Counties, NC, York, Lancaster, and Chester Counties, SC, and extending to points in the U.S. (except AK and HI).

MC 15546 (Sub-6), filed March 5, 1982. Applicant: KIRCHWEHM BROS. CARTAGE CO., INC., 1700 West Carroll Ave., Chicago, IL 60612. Representative: Ronald C. Kirchwehm (same address as applicant), (312) 226-4433. Transporting *such commodities as are dealt in or used by groceries, drug, department or chain stores, and food business houses*, between points in the U.S. (except AK and HI), under continuing contract(s) with Helene Curtis Industries, Inc., of Chicago, IL.

MC 160866, filed March 5, 1982. Applicant: BERTHODS, INC., P.O. Box 929, 628 Front St., Leadville, CO 80461. Representative: James J. Berthod (same address as applicant), (303) 468-0090. Transporting *ores, ore concentrates and minerals*, between points in the U.S. (except AK and HI), under continuing contract(s) with Hecla-Day Mining Corp., American Smelting and Refining Co., both of Leadville, CO, and Norsigo Processing & Refining, Ltd., of Lowden, IA.

MC 160836, filed March 3, 1982. Applicant: AUSTIN TRANSPORT, INC., P.O. Box 581, Austin, MN 55912. Representative: James M. Christenson, 4444 IDS Center, 80 S. Eighth St., Minneapolis, MN 55402, (612) 339-4546. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter and special operations, beginning and ending at points in Dodge, Fairbault, Fillmore, Freeborn, Mower, Olmsted, Steele and Waseca Counties, MN, and Cerro Gordo, Chickaway, Floyd, Franklin, Hancock, Howard, Mitchell, Winnebago and Worth Counties, IA, and extending to points in the U.S. (except AK and HI).

[FR Doc. 82-7449 Filed 3-18-82; 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 question) 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 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 unoppposed 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. OP1-41

Decided: March 5, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 111941 Sub 42, filed February 26, 1982. Applicant: PIERCETON TRUCKING COMPANY, INC., PO Box 233, Laketon, IN 46943. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204-3491, (317) 638-1301. 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. (except AK and HI).

MC 115840 (Sub-131), filed February 26, 1982. Applicant: COLONIAL FAST FREIGHT LINES, INC., P.O. Box 22168, McBride Lane, Knoxville, TN 37922. Representative: Chester G. Groebel (same address as applicant), (615) 966-9711. 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. (except AK and HI).

Volume No. OP 2-48

Decided: March 4, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 160602 (Sub-1), filed February 19, 1982. Applicant: SILVER STATE EXPRESS, INC., P.O. Box 11361, Reno, NV 89510. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL 60603, 312-263-2306. 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 vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 160633, filed February 19, 1982. Applicant: VINCENT BARNARD, Rte. 1, Wakita, OK 73771. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154, (405) 424–3301. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 160653, filed February 22, 1982. Applicant: EXHIBIT–TECH TRANSPORTATION, INC., 76 Lake Ave., Midland Park, NJ 07432. Representative: Harold L. Reckson, 33 28 Halsey Rd., Fair Lawn, NJ 07410, (201) 791–2279. As a *broker of general commodities* (except household goods), between points in the U.S. (including AK and HI).

MC 160672, filed February 22, 1982. Applicant: EDWARD M. SMITH, 2167 Charitan Drive, Boise, ID 83704. Representative: Edward M. Smith (same address as applicant), (208) 377–1104. As a broker of *general commodities* (except household goods), between points in the U.S. (including AK, but excluding HI).

MC 160713, filed February 23, 1982. Applicant: GERALD R. JARED, Route One, Box 658, Lexley, AL 36551. Representative: Gerald R. Jared (same address as above), (205) 964–6173. Transportation of *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. (except AK and HI), under continuing contract(s) with Joseph F. Murphy Enterprises, Inc., of Norcross, GA.

Volume No. OP3–042

Decided: March 9, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 24784 (Sub-44), filed March 2, 1982. Applicant: BARRY, INC., 463 So. Water, Olathe, KS 66061. Representative: Arthur J. Cerra, 2100 CharterBank Center, P.O. Box 19251, Kansas City, MO 64141, (816) 842–8600. 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. (except AK and HI).

MC 138104 (Sub-110), filed March 1, 1982. Applicant: MOORE TRANSPORTATION CO., INC., 3509 N. Grove St., Fort Worth, TX 76106. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116, (817) 731–8431. 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. (except AK and HI).

MC 160754, filed February 25, 1982. Applicant: SYLVIA B. SENDALL d.b.a. SATELLITE EXPRESS, P.O. Box 26232, Phoenix, AZ 85013. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014, (602) 264–4891. 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. (except AK and HI).

MC 160824, filed March 2, 1982. Applicant: P. & R. WHITMAN, d.b.a. WHITMAN ASSOCIATES, 8571 Emerywood, Buena Park, CA 90621. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, (213) 945–2745. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 97394 (Sub-38), filed February 4, 1982, previously noticed in the **Federal Register** on February 23, 1982. Applicant: BOWLING GREEN EXPRESS, INC., 4449 Orange Ave., Louisville, KY 40213. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004, (202) 347–8862. Transporting *general commodities,* between Lexington, Luray, Beech Bluff, Ralston, Terrell, Malesus, Medon, Toone, Conger, Bolivar, Hickory Valley, Grand Junction, Kenwood, Hickory Point, Doddsville, Fox Bluff, Chapmansboro, Parkburg, Deanburg, Silerton, Hornsby, Serles, and Lacy, TN, Michigan City, Lamar, Hudsonville, Holly Springs, Waterford, Spraggins, Abbeville, McClary, College Hill, Oxford, Taylor, and Water Valley, MS, Deanefield, Whitesville, Philpot, Oak Ridge, Masonville, Thompsonville, and Edgoten, KY, on the one hand, and, on the other, points in the U.S. (except AK and HI). This republication adds the applicants intent to tack and join this authority with its existing MC–97394 Sub 37 regular route authority.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

Volume No. OP4–82

Decided: March 9, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 155936 (Sub-3), filed February 25, 1982. Applicant: GREAT WESTERN TRANSPORTATION CO., INC., 8058 E. Carol Way, Scottsdale, AZ 85260. Representative: Phil B. Hammond, 3003 N. Central, Suite 2201, Phoenix, AZ 85012, (602) 266–2224. 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. (except AK and HI).

Volume No. OP4–88

Decided: March 5, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 160837, filed March 3, 1982. Applicant: GALEN R. EBERLY, R.D. #1, Box 452, Manheim, PA 17545. Representative: Galen R. Eberly (same address as applicant), (717) 898–8943. Transporting *food and other edible products and by products 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. (except AK and HI).

Volume No. OP4–91

Decided: March 15, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 160776, filed February 26, 1982. Applicant: MATTHEW M. VAUGHN d.b.a. VAUGHN MOTOR COMPANY, 86 Kamm Ave., South River, NJ 08882. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, (201) 572–5551. 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. (except AK and HI).

MC 160886, filed March 3, 1982. Applicant: PAUL YATES, 6601 W. Orangewood, P.O. Box 1059, Glendale, AZ 85311. Representative: E. Stephen Heisley, 805 McLachlen Band Bldg., 666 11th St. NW., Washington, DC 20001, (202) 628–9243. As a *broker of general commodities* (except household goods), between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–7448 Filed 3–18–82; 8:45 am]

BILLING CODE 7035–01–M

[Permanent Authority Volume No. OP2-47]

Motor Carriers; Republications of Grants of Operating Rights Authority Prior to Certification

The following grant of operating right authority is republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of an appropriate petition for leave to intervene, setting forth in detail the precise manner in which petitioner has been prejudiced, must be filed with the Commission within 30 days after the date of this **Federal Register.**

Agatha L. Mergenovich,

Secretary.

MC 139923 (Sub-86) (republication), filed October 22, 1981, published in the **Federal Register** of November 9, 1981, and republished this issue: Applicant: MILLER TRUCKING CO., INC., 150 8th Street, Drawer D, Stroud, OK 74079. Representative: Daniel O. Hands, 205 W. Touhy Avenue, Suite 200A, Park Ridge, IL 60068. A decision of the Commission, *Review Board 1,* decided February 24, 1982, and served March 9, 1982, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce, over irregular routes, as a *common carrier,* by motor vehicle, transporting (1) *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in Indiana Kentucky, and Ohio, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii); (2) *chemicals and related products* (except classes A and B explosives and radioactive materials), *food and related products* (including animal and pet feeds), and *commodities dealt in or used by restaurants and home party centers,* between points in the United States (except Alaska and Hawaii); (3) *home furnishings and hardware,* between points in Orange County, CA, Winnebago County, IL, Jackson and Clinton Counties, IA, Allen County, KY, St. Joseph County, MI, Northumberland County, PA, Orangeburg County, SC, McLennan County, TX, and Yakima County, WA, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii); (4) *household appliances,* between Pittsburgh, PA, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii); and (5) *building materials,* between points in Champaign County, IL, on the one hand, and, on the other, points in the United States; that applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. The purpose of this republication is to broaden the scope of authority in parts (1)–(4).

[FR Doc. 82-7447 Filed 3-18-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-107)]

Rail Carriers; Burlington Northern Railroad Co.—Abandonment—in King and Pierce Counties, WA; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that the Commission, Review Board Number 3, has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its rail line between milepost 7.0 near Veazey and milepost 17.02 at the end of the line near Cascade Junction, a distance of 10.02 miles in King and Pierce Counties, WA, subject to certain conditions. Since no investigation was instituted, the requirement of § 1121.38(b) of the Regulations that publication of notice of abandonment decisions in the **Federal Register** be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Louis Gitomer, Acting Deputy Director, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. The offer, as filed, shall contain information required pursuant to § 121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-7442 Filed 3-18-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-57(Sub-11)]

Rail Carrier; Soo Line Railroad Co.—Abandonment—Between St. Paul and Oakdale, in Ramsey and Washington Counties, MN; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that the Commission has issued a certificate authorizing Soo Line Railroad Company to abandon its line of railroad between milepost 446.19 at St. Paul and milepost 438.33 at Oakdale, a distance of 7.86 miles in Ramsey and Washington Counties, MN, subject certain conditions. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that:

(1) A financially responsible person (or government entity) has offered financial assistance (through subsidy or purchase) to enable the rail service to the continued; and

(2) It is likely that:

(a) If a subsidy, the assistance would cover the difference between the revenues attributable to the line and the avoidable cost of providing rail freight service on the line, together with a reasonable return on the value of the line, or

(b) If a purchase, the assistance would cover the acquisition cost of all or any portion of the line.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Mr. Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice.

If the Commission makes the findings described above, the effectiveness of the abandonment certificate will be postponed. An offeror may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made for the Commission to set conditions or amount of compensation, the abandonment certificate will become effective. Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96–448) and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-7444 Filed 3-18-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-57 (Sub-10)]

Rail Carriers; Soo Line Railroad Co.—Abandonment—Between Marshfield and Greenwood in Clark and Wood Counties, WI; Findings

The Commission has found that the public convenience and necessity permit the Soo Line Railroad Company to abandon a 22.66 mile line of railroad between milepost 0.0 at Marshfield, WI, and milepost 22.5 at Greenwood, WI. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be resubmitted within this 10 day period.

Information and procedures regarding financial assistance for continued rail services are contained in 49 U.S.C. 10905 and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-7443 Filed 3-18-82; 8:45 am]

BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Privacy Act of 1974; Systems of Records; Annual Publication

The purpose of this document is to give notice that the systems of records identified in notices published in the **Federal Register** at 42 FR 48178 (September 22, 1977) continue in effect without change. This notice is published in compliance with the requirements of 5 U.S.C. 552a(e)(4).

Paulette Tino,

Chairman, Joint Board for the Enrollment of Actuaries.

March 16, 1982.

[FR Doc. 82-7474 Filed 3-18-82; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation Of Controlled Substances; Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 29, 1982, Stepan Chemical Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of coca leaf (9040), a basic class of controlled substance in Schedule II.

As to the basic class of controlled substance listed above for which application for registration has been made, any other applicant therefor, and any existing bulk manufacturer registered therefor, may file written comments on or objections to the issuance of registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or request for a hearing may be addressed to the Acting Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than April 19, 1982.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Acting Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: March 11, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-7456 Filed 3-18-82; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Withdrawal

On December 31, 1981, the Drug Enforcement Administration published a Notice of Application in the **Federal Register** (Vol. 46, No. 251, pg. 63409) stating that Eli Lilly and Company, Tippecanoe Laboratories, Box 685 Lilly Road, Lafayette, Indiana 47902, had submitted an application for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Methadone (9250)	II
Methadone-Intermediate (9254)	II

On February 3, 1982, the Drug Enforcement Administration was advised that Eli Lilly and Company, Tippecanoe Laboratories, Box 685 Lilly Road, Lafayette, Indiana 47902, wishes to withdraw its application for registration as a bulk manufacturer of methadone (9250) and methadone-intermediate (9254).

The application having been withdrawn, any proceedings relating to the application have been terminated and the publication withdrawn.

Dated: March 12, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-7454 Filed 3-18-82; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Registration

By Notice November 12, 1981, and published in the **Federal Register** on November 19, 1981 (46 FR 56955), U.S. Pharmacopeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, Maryland 20852, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug:	Schedule
Tetrahydrocannabinol (7370)	I
2,5-Dimethoxy-4-Methylamphetamine (7395)	I

	Schedule
3,4-Methylenedioxy Amphetamine (7400)	I
Psilocybin (7437)	I
Psilocin (7438)	I

Another importer, Sigma Chemical Company, commented that it is willing to supply tetrahydrocannabinol (7370) as drug standards to U.S. Pharmacopeial Convention, Inc. However, there is no requirement for U.S. Pharmacopeial Convention, Inc., to purchase controlled substances from another importer.

No other comments or objections have been received. Therefore pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: March 12, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-7455 Filed 3-18-82; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-11,010]

Cal Feather Products, Sand City, Calif.; Affirmative Determination Regarding Application for Reconsideration

On October 20, 1981, the petitioners requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of Cal Feather Products, Sand City, California. The determination was published in the **Federal Register** on October 9, 1981 (46 FR 50173).

The application for reconsideration claimed that Cal Feather's sole customer of covers for amplifiers and speakers contracted with a firm in Mexico for their production and stopped purchasing these items from Cal Feather.

Conclusion

After review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 25th day of November 1981.

Robert S. Kenyon,

Deputy Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 82-7478 Filed 3-18-82; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Periods in the States of Arkansas and Illinois

This notice announces the beginning of new Extended Benefit Periods in the States of Arkansas and Illinois, effective on March 7, 1982.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(d) of the Act, each State unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured employment under the State unemployment compensation law equalled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determinations of "on" Indicator

The heads of the employment security agencies of the States named above have determined that the rate of insured unemployment in each State, for the period consisting of the week ending on February 20, 1982, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rates, so that for the week there was an "on" indicator in each State.

Therefore, new Extended Benefit Periods commenced in these States with the week beginning on March 7, 1982.

Information for Claimants

The duration of extended benefits payable in a new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the States named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on March 16, 1982.

Albert Angrisani,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 82-7479 Filed 3-18-82; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Additions to Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The additions to the annual list are effective on March 1, 1982.

SUMMARY: The purpose of this notice is to announce additions to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: James W. Higgins, Assistant Chief, Division of Labor Market Information, 601 D Street, NW., Attn: TPPL,

Washington, D.C. 20213. Telephone: 202–376–7192.

SUPPLEMENTARY INFORMATION:

Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981 (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor's regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on June 9, 1981 (46 FR 30594).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(c) and are added to the annual list of labor surplus areas, effective March 1, 1982. The following additions to the annual list of labor surplus areas are published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, D.C. on March 11, 1982.

Albert Angrisani,

Assistant Secretary of Labor.

Additions to the Annual List of Labor Surplus Areas

March 1, 1982

Labor Surplus Area and Civil Jurisdiction Included

Connecticut:
Norwich City—Norwich City.
Iowa:
Wapello County—Wapello County.
Massachusetts:
Douglas Town—Douglas Town in Worcester County.
Fitchburg City—Fitchburg City in Worcester County.
Gardner Town—Gardner Town in Worcester County.
Milford Town—Milford Town in Worcester County.

[FR Doc. 82-7477 Filed 3-18-82; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-82-8-M]

Inspiration Consolidated Copper Co.; Petition for Modification of Application of Mandatory Safety Standard

Inspiration Consolicated Copper Company, P.O. Box 4444, Claypool, Arizona 85532, has filed a petition to modify the application of 30 CFR 57.19–22 (wire ropes; requirements) to its Christmas Underground Mine (I. D. No. 02–01319) located in Gila County, Arizona. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the end of the rope at the drum make at least one full turn on the drum shaft, or a spoke of the drum in the case of a free drum, and be fastened securely by means of rope clips or clamps.

2. Petitioner states that application of the standard will result in a diminution of safety for the miners affected because the wire rope used for hoisting is 1 and ½ inches in diameter. The rope is wrapped around the outside of a drum which is 10 feet in diameter and 7 feet wide. To require that one full turn be complete inside the drum would needlessly expose the miners who would have to perform this work to injury. The wire rope is stiff and difficult to handle and under tremendous pressure, particularly the end which would be subject to the one full turn.

3. As an alternative method, petitioner proposes to use the existing man cage compartment with a double drum hoist as presently constructed:

a. The wire ropes for the cage and counterweight make about a one-quarter turn aroung the inside of each drum and are secured by clamps;

b. A minumum of three full turns of wire rope is maintained around the outside of each drum and fastened by clamps;

c. All clamps are secured by bolts.

4. Petitioner believes that the method outlined above guarantees the same measure of protection as that afforded by the standard. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 19, 1982. Copies of the petition are avaiable for inspection at that address.

Dated: March 10, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-7480 Filed 3-18-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-66-M]

San Pedro Mining Corp.; Petition for Modification of Application of Mandatory Safety Standard

The San Pedro Mining Corporation, 65 East NASA Boulevard, Suite 101, P.O. Box 1899, Melbourne, Florida 32901, has filed a petition to modify the application of 30 CFR 57.19–7 (hoists; requirements) to its San Pedro Mine located in Santa Fe County, New Mexico. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that hoists be equipped with overspeed devices.

2. The subject hoist is not equipped with an overspeed device. However, petitioner states that the conditions outlined below provide the same degree of safety for the miners affected as that afforded by the standard. Specifically:

a. The shaft is 148 feet deep and the maximum hoisting speed is only 250 feet

per minute, a fraction of the allowable speed permitted;

b. The hoist is equipped with top and bottom limits which automatically apply a thrustor brake in the event of operator error or overtravel;

c. There is adequate stopping distance at the top and bottom of the staft beyond man-hoisting limits;

d. The hoist is equipped with a direct-drive double-reduction gear reducer and a pinion and bull-gear arrangement which provide a low hoisting speed with a high mechanical safety factor for the loads being hoisted;

e. The hoist is not equipped with a clutch and there is no way to free-wheel or deliberately overspeed the conveyance. The only way overspeeding could occur would be mechanical failure resulting from a broken hoist rope, collapsed hoist drum, or some similar disaster in which case an overspeed device would be of no protection;

f. There is no way to move the hoisting conveyance without electrical power, and with power, a.c. motor windings curtail any tendency to overspeed.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 19, 1982. Copies of the petition are available for inspection at that address.

Dated: March 10, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-7481 Filed 3-18-82; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Washington State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of Federal standards as State standards after public hearing. Sections 1952.120–1952.124 of Subpart F set forth the State's schedule for the adoption of Federal standards. By letter dated September 10, 1981 from James P. Sullivan, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR 1910.20, Access to Employee Exposure and Medical Records, 29 CFR 1910.440, Recordkeeping Requirements Commercial Diving Operations, and amendments to 29 CFR Part 1910, Subpart Z regarding access to employee exposure and medical records, specifically 29 CFR 1910.1001—Asbestos, .1017—Vinyl Chloride, .1018—Inorganic Arsenic, .1025—Inorganic Lead, .1029—Coke Oven Emissions, .1044—Dibromo Chloropropane, .1045—Acrylonitrile, .1046—Exposure to Cotton Dust in Cotton Gins.

The Federal standards were published in the **Federal Register** (45 FR 35212) on May 23, 1980.

The State standards are contained in Chapter 296–62–052 through 296–62–05223 WAC. The amendments to the standards are contained in Chapters 296–37–575, 296–62–07329, 296–62–07341, 296–62–07345, 296–62–07347, 296–62–07349, 296–62–07517, 296–62–14531, 296–62–20023, WAC. The State standards were promulgated pursuant to 34.04 RCW and of the Open Public Meetings Act of 1971, Chapter 42.30, adopted on August 27, 1981, and became effective September 25, 1981.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard, it has been determined that the State standard is identical to the comparable Federal standard and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Room N–3613, Department of Labor Building, 200 Constitution Avenue NW, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective March 19, 1982.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Wash., this 8th day of February 1982.

James W. Lake,

Regional Administrator.

[FR Doc. 82-7482 Filed 3-18-82; 8:45 am]

BILLING CODE 4510-26-M

Washington State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of Federal standards as State standards after public hearing. Sections 1952.120–1952.124 of Subpart F set forth

the State's schedule for the adoption of Federal standards. By letter dated August 12, 1980 from James P. Sullivan, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR 1910.1025—Occupational Exposure to Inorganic Lead. The Federal standards were published in the **Federal Register** (43 FR 53007) on November 11, 1978. The Washington Lead standard, Chapter 296–62–07349 WAC, was promulgated pursuant to 34.04 RCW and of the Open Public Meetings Act of 1971, Chapter 42.30 on April 29, 1980 and adopted on August 8, 1980. It became effective September 9, 1980. This standard suspersedes the Washington Emergency Temporary Rule, Occupational Exposure to Inorganic Lead, which appeared in the **Federal Register** (45 FR 47549) on July 15, 1980 as Chapter 296–62–07349 WAC—Lead.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard, it has been determined that the State standard is identical to the comparable Federal standard and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 97174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Room N–3613, 200 Constitution Avenue NW, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted jn accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective March 19, 1982.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington this 28th day of January 1982.

James W. Lake,

Regional Administrator.

[FR Doc. 82–7483 Filed 3–18–82; 8:45 am]

BILLING CODE 4510–26–M

Washington State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of Federal standards as State standards after public hearing. Sections 1952.120–1952.124 of Subpart F set forth the State's schedule for the adoption of Federal standards. By letter dated November 19, 1980 from James P. Sullivan, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR 1910.1043, Cotton Dust. The standard was incomplete. By letter dated September 10, 1981 from James P. Sullivan, Assistant Director, to James W. Lake, Regional Administrator, the State submitted State standards comparable to Appendices A, B, C, and D, 29 CFR 1910.1043, Cotton Dust.

The Federal standards were published in the **Federal Register** (43 FR 27394) on June 23, 1978. The Washington Cotton Dust standards, which are contained in Chapters 296–62–14533 WAC and 296–62–146 through 296–62–14607 WAC, were promulgated pursuant to 34.04 RCW and of the Open Public Meetings Act of 1971, Chapter 42.30 on July 22, 1981. They became effective on December 12, 1980 and September 25, 1981.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the comparable Federal standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 97174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Room N–3613, 200 Constitution Avenue NW, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective March 19, 1982.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington this second day of February 1982.

James W. Lake,

Regional Administrator.

[FR Doc. 82–7484 Filed 3–18–82; 8:45 am]

BILLING CODE 4510–26–M

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to section 112 of the 1976 amendments to the Federal Election Campaign Act (Pub. L. 94–283, 2 U.S.C. 411a), the Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the **Federal Register** of the fact that the United States City Average All

Items Consumer Price Index for All Urban Consumers (1967–100) increased 84.4 percent from its 1974 annual average of 147.7 to its 1981 annual average of 272.4. Using 1974 as a base (1974=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 84.4 percent from its 1974 annual average of 100 to its 1981 annual average of 184.4.

Signed at Washington, D.C., on the 10th day of March 1982.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 82–7485 Filed 3–18–82; 8:45 am]

BILLING CODE 4510–24–M

Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: April 6, 1982, 9:30 a.m., N3437 A and B, Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Joseph S. Papovich, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565

Signed at Washington, D.C. this 8th day of February 1982.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

February 8, 1982.

[FR Doc. 82–7486 Filed 3–18–82; 8:45 am]

BILLING CODE 4510–28–M

Advisory Council on Employee Welfare and Pension Benefit Plans; Announcement of Vacancy; Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are particpants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one represenative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his functions under ERISA, and to submit to the Secretary recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

Due to the resignation of one of the members of the Council, a vacancy will occur on March 31, 1982 for the remainder of a term expiring on November 14, 1983. The group represented is employers.

Accordingly, notice is hereby given that any person or organization desiring to recommend an individual for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent employers, may submit such recommendation to the Secretary of Labor, Frances Perkins, Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210. Recommendations must be delivered by March 31, 1982. Recommendations may be in the form of a letter, resolution, or petition, signed by the person making the recommendation, or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation shall identify the candidate by name, occupation or position, address, and telephone number. It shall include a brief description of the candidate's qualifications, political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, D.C. this 12th day of March 1982.

Jeffrey N. Clayton,

Administrator of Pension and Welfare Benefit Programs.

[FR Doc. 82–7175 Filed 3–18–82; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (82–16)]

American Macromolecular Materials, Ltd.; Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Asian American Macromolecular Materials, Ltd., Westlake, Ohio, a limited, exclusive, royalty-bearing, revocable license to practice the inventions described in U.S. Patent No. 4,061,856 for "Trimerization of Aromatic Nitriles," issued December 6, 1977, and U.S. Patent No. 4,159,262 for "Catalytic Trimerization of Aromatic Nitriles and Triaryl-s-Triazine Ring Cross-Linked High Temperature Resistant Polymers and Copolymers Made Thereby," issued June 26, 1979, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by May 18, 1982.

ADDRESS: National Aeronautics and Space Administration, Code GP–4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 755–3954.

Dated: March 10, 1982.

S. Neil Hosenball,

General Counsel.

[FR Doc. 82-7432 Filed 3-18-82; 8:45 am]

BILLING CODE 7510-01-M

[Notice (82-15)]

Herbert S. Kobayashi; Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Herbert S. Kobayashi, Webster, Texas, a limited, exclusive, royalty-bearing, revocable license to practice the inventions described in U.S. Patent No. 3,800,227 for "Pulse Code Modulated Signal Synchronizer," issued March 26, 1974, and U.S. Patent No. 3,806,816 for "Pulse Code Modulated Signal Synchronizer," issued April 23, 1974, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by May 18, 1982.

ADDRESS: National Aeronautics and Space Administration, Code GP-4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 755-3954.

Dated: March 10, 1082.

S. Neil Hosenball,

General Counsel.

[FR Doc. 82-7431 Filed 3-18-82; 8:45 am]

BILLING CODE 7510-01-M

[Notice (82-17)]

Inductron Corp.; Intent To Grant an Option Agreement on an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an option agreement on an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant an option agreement to Inductron Corporation, Grafton, Virginia, on a limited, exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent Application No. 333,536 for "Induction Heating Gun," filed December 22, 1981, by the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed option agreement will be for a limited period of time and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the option agreement unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the option agreement.

DATE: Comments to this notice must be received by May 18, 1982.

ADDRESS: National Aeronautics and Space Administration, Code GP-4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 755-3954.

Dated: March 10, 1982.

S. Neil Hosenball,

General Counsel.

[FR Doc. 82-7433 Filed 3-18-82; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341]

Availability of Addendum to the Final Environmental Statement for the Enrico Fermi Atomic Power Plant, Unit No. 2

Notice is hereby given that an Addendum to the Final Environmental Statement (NUREG-0769 Addendum) for the proposed operation of the Enrico Fermi Atomic Power Plant, Unit No. 2 has been prepared by the Commission's Office of Nuclear Reactor Regulation. The plant is owned by the Detroit Edison Company and is located on Lake Erie in Monroe County, Michigan.

The Addendum to the Final Environmental Statement (NUREG-0769 Addendum) is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 and in the Monroe County Library System, Reference Department, 3700 South Custer Road, Monroe, Michigan 48161. It is also being made available at the Office of Intergovernmental Relations, Department of Management and Budget, Lewis Cass Building, P.O. Box 30026, Lansing, Michigan 48909, and at the Southeast Michigan Council of Governments, 8th Floor, Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226.

The notice of availability of the Draft Environmental Statement (DES) for the Enrico Fermi Atomic Power Plant, Unit No. 2, and requests for comments was published in the **Federal Register** on May 16, 1981 (46 FR 26958). The comments received from Federal, State and local agencies, and interested members of the public were included as appendices to the Final Environmental Statement and availability of the FES was published in the **Federal Register** on September 11, 1981 (46 FR 45454). The Addendum includes the NRC staff response to comments by the Department of the Interior that were not included in the FES.

Copies of the Addendum to the Final Environmental Statement (NUREG-0769 Addendum) may be purchased, at current rate from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and from the Sales Office, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555.

Dated at Bethesda, Maryland, this 11th day of March 1982.

For The Nuclear Regulatory Commission.

B. J. Youngblood,

Chief Licensing Branch No. 1 Division of Licensing.

[FR Doc. 82-7557 Filed 3-18-82; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 18566; File No. SR-SCCP- 82-2]

Filing and Immediate Effectiveness of Proposed Rule Change by the Stock Clearing Corporation of Philadelphia

March 15, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 4, 1982, The Stock Clearing Corporation of

Philadelphia ("SCCP") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Prior to the proposed rule change, SCCP's computer system could process bonds with a face value between zero and $100,000, *i.e.*, it could handle bond values of up to six digits. Bonds with face values of $1,000,000 and up (*i.e.*, 7 or more digits) were processed manually. SCCP found, however, that it processed very few bonds valued at under $1,000 (called "baby" bonds), to which SCCP's computer had allocated three digits. Rather, SCCP found that the majority of its bond processing was in bonds of larger denominations and that processing would be improved if bonds with face values over $1,000,000 (*i.e.*, consisting of seven digits) could be handled automatically by SCCP's computer system. To effect this change, instead of reprogramming its entire system to accommodate seven to nine digits, SCCP chose to record a $1,000 bond as "1", a $7,000,000 bond as "7,000" and so on, enabling the computer to handle bonds with face values up to nine digits, without changing the computer's ability to record only six digits. This change, however, causes SCCP no longer to handle baby bonds, for which little volume occurred.

SCCP has advised the Commission that, to facilitate broker-to-broker clearance of baby bonds, it will assist the small number of Philadelphia Stock Exchange members that trade baby bonds in making physical deliveries. SCCP believes that the proposed rule change is based on, and is consistent with, Section 17A(b)(3)(F) of the Act, in that it promotes the prompt and accurate clearance and settlement of securities for which SCCP is responsible and promotes SCCP's ability to interface efficiently with other clearing corporations.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise i nfurtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission on or before April 9, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR–SCCP–82–2.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–7459 Filed 3–18–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–18565; File No. SR–PSE–82–4]

Self-Regulatory Organizations; Proposed Rule Change; the Pacific Stock Exchange Inc.

In the matter relating to Stock Group Options. Comments requested on or before April 19, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 10, 1982, the Pacific Stock Exchange filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE") proposes an addition to its rules to permit the listing and trading of options on stock groups. The text of the rule addition is the following:

Rule XXI.—Options on Stock Groups

Introduction

In general, the Rules of the PSE's Board of Governors applicable to the trading of stock options, in particular Rule VI, shall be applicable to the trading of stock group options as that term is defined below. Rule XXI supplements or replaces those rules relating to stock options where required by the nature of stock group options. In cases where Rule XXI is silent on an issue, the applicable section of the rules relating to stock options shall be read so as to apply to stock group options.

Definitions

Section 1. (a) The term "stock group" means those securities which have been designated by the Exchange as collectively underlying an options contract.

(b) The term "class" means an option contract of the same type on the same group of underlying securities.

(c) The term "exercise price" in respect of a stock group option contract means the sum of the stated prices per share at which each of the component underlying securities individually may be purchased (in the case of a call) or sold (in the case of a put) upon the exercise of such stock group option contract.

(d) The term "aggregate exercise price" in respect of a stock group option contract means the exercise price of such option contract multiplied by 100 or by such other number as may be required by an adjustment in a component underlying security pursuant to Rule XXI, Section 4.

(e) The term "stock group market price" means the sum of the current market value of each security in the stock group.

(f) The term "underlying securities" in respect of an option on a stock group means those securities which the Options Clearing Corporation shall be obligated to sell (in the case of a call option contract) or purchase (in the case of a put option contract) upon the valid exercise of the option contract, and the term "underlying security" means any of the underlying securities in the stock group.

(g) The term "covered" has the meaning set forth in Rule VI, Section 1(a)(23); the writer of a call option on a stock group may be covered with respect to a short position in the stock group if he is covered within the meaning of Rule VI, Section 1(a)(23), on a share-for-share basis with respect to each underlying security in the group.

Designation of Stock Groups

Section 2. (a) The Board may constitute and list for options trading stock groups consisting generally of five or more underlying securities eligible for options trading under the criteria established in Rule VI, Section 12, excepting those underlying securities already approved for options trading on the Exchange. Stock groups shall be comprised of stocks of issuers primarily in the same industry.

(b) If, under the criteria established in Rule VI, Section 13, the Exchange determines that an underlying security which is a component of a stock group no longer qualifies for options trading, no option contract with a new expiration month shall be opened for trading on that group.

Terms of Options on Stock Groups

Section 3. Terms of options contracts on stock groups shall be established as provided in Rule VI, Section 4, except that the exercise price of each series of options shall be fixed at a price which is reasonably close to the stock group market price.

Adjustments

Section 4. Options on a stock group shall be subject to adjustment in accordance with the Rules of the Options Clearing Corporation as applied to each underlying security comprising the group.

Meaning of Premium Bids and Offers

Section 5. Bids and offers shall be expressed in terms of hundreds of dollars. (e.g., a bid of "7" represents a bid of $700 for a stock group option contract having a unit of trading covering 500 shares of stock, 100 shares each for five component underlying securities.)

Trading Rotations

Section 6. Options on a stock group shall not be opened for trading until an opening transaction in each of its component underlying securities has been reported on the principal exchange of such security.

Position and Exercise Limits

Section 7. In determining compliance with position and exercise limits under Rule VI, Sections 5 and 6, option contracts on a stock group shall not be aggregated with option contracts on an underlying security included in the group.

Reports Related to Position Limits

Section 8. In computing reportable option positions under Rule VI, Section 7, option contracts on a stock group shall not be aggregated with option contracts on an underlying security included in the group.

Other Restrictions on Options Transactions

Section 9. Restrictions on transactions in stock group options may be made pursuant to the same criteria as noted in Rule VI, Section 10.

Reporting Duties

Section 10. The seller of an option on a stock group shall be required to report as required by Rule VI, Section 55, except that he shall report the transaction by stock group rather than by underlying security or securities.

Delivery and Payment

Section 11. The term "underlying security" in Rule VI, Section 32, shall be taken to mean all underlying securities in the stock group.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.*

This proposed rule change is designed to permit trading on the PSE of options on groups of stocks consisting of underlying securities eligible for options trading but not currently traded on the PSE. PSE intends to list options on groups of five or more stocks of issuers engaged primarily in the same industry (hereinafter, "industry groups"). Upon approval by the Commission of the proposed rule changes, the PSE would begin trading in five groups, and add others as experience warrants. It should be noted that while the rule proposal reserves the right to include in any stock group an underlying security qualified under the listing criteria of Rule VI, Section 12, our initial stock groups are comprised of underlying securities already the subject of options trading on other exchanges. These underlying securities have been chosen to avoid any disputes over whehter they are currently qualified for options trading.

The PSE believes that the listing of stock group options will provide benefits to investors not presently available through the trading of stock options. Generally, stock options allow investors to protect against the risk of short term price fluctuations in underlying securities. The stock group options the PSE proposes will provide investors with the flexibility to separate the risk associated with investments in individual securities into two components, industry risk and firm-specific risk. These stock group options will allow investors to protect against either or both of these risks through the purchase and/or sale of options. For example, an investor may believe that a particular company's stock will outperform the stock of other companies in the same industry group but is also concerned that the price of that stock could decline as a result of factors affecting the industry group as a whole. The investor could hedge against the industry group risk by buying a put option on that industry group.

The purposes of the specific rules proposed to permit the listing and trading of options on industry groups are set forth below.

Section 1. This section sets forth the definitions which are essential to the establishment, pricing, trading and settlement of options on stock groups.

"Class" is defined in Section 1(b) as options of the same type on the same group of underlying securities. Therefore, deletion or addition of a single underlying security from a stock group will result in a new group and a new class of option contracts.

The "stock group market price" defined in Section 1(e) for each stock group designated for trading would be computed and disseminated on a current basis. This price will be essential for determining the exercise prices defined in Section 1(d) for each option contract on a stock group as well as for the pricing and trading of the option contracts.

In determining whether the writer of an option is covered within the meaning of Rule VI, Section 1(a)(23), and Rule XXI, Section 1(g), the definition of "class" in relation to options on stock groups is critical. Only a long position in all of the underlying securities or a long position in an option on the stock group, can provide cover for a short position in an option on that group.

Section 2. The Exchange believes that at least five underlying securities must be included within each industry group to reduce firm-specific risk significantly within each industry group. Only securities qualifying as underlying securities under the listing and maintenance standards set forth in Rule VI, Sections 12 and 13, would be eligible for inclusion in a stock group.

Section 3. It is anticipated that exercise prices for options on industry groups would be established in relation to the stock group market price in the same manner and according to the same intervals as are currently established by the Exercise Price Amendments. The PSE, however, specifically reserves the

right to vary these intervals as applied to stock group options, as provided in Rule VI, Section 4. It is anticipated that any such change would be preceded by notice in the form of an amendment to the Exercise Price Amendments unless otherwise required in the public interest and for the protection of investors.

Section 4. As stock-splits, dividends, rights offerings, etc. result in adjustments of options contracts on any of the underlying securities in a stock group, a parallel adjustment will be made in the number of shares of that underlying security which are subject to options on a stock group in accordance with the Rules of the Options Clearing Corporation. The adjustments made would continue trading of the pre-adjustment contracts at the same strike prices, with exercise involving the delivery of the group with its component underlying securities as adjusted. Also, at the ex-date and thereafter, new contracts would be added with exercise prices corresponding to the new value of the component underlying securities.

Section 5. This rule provides that the bid and ask premiums will reflect the value of the stock group option contract in manner similar to the reflection of the value of a stock option contract.

Section 6. Since the stock group market price will be based on current market prices for all stocks in the group, trading in options on a group cannot proceed until an opening price is available for each underlying security in the group.

Sections 7 and 8. These rules preclude aggregation of positions or exercises involving options on a stock group with those involving options on component securities or on any other group. Because stock groups will be comprised of a minimum of five underlying securities, positions or exercises involving options on a stock group would not appear capable of controlling activity in the component underlying security since the impact of any activity in the underlying security or overlying option would be diluted by the number of stocks in the group. Further, premiums for the stock group options and transactions costs in the underlying security would be proportionately higher. Therefore, it is much less likely that the establishing of positions in or the exercise of stock group options will exert undue pressure or cause disruption in the market for the underlying stocks. The same rational has been applied in determining not to aggregate such options positions for purposes of determing reportable positions.

Sections 9 through 11. These sections clarify the application of Rule VI, Section 10 and Section 32, respectively, to options on stock groups in light of their multiple underlying securities. Rule XXI, Section 10, provides a similar technical clarification in relation to transaction reporting.

The PSE proposal does not provide any margin provisions for a contract involving multiple underlying securities. Such issues as the minimum margin applicable to an uncovered short position or margin credit on partially covered short positions in options on stock groups, i.e., positions where the writer of a call on a stock group is long one or more but not all of the underlying securities or the writer or a call or a put on a stock group is long a call or put, respectively, on one or more of the component underlying securities, are not covered in this rule filing. A supplemental rule filing will be necessary to address these issues. At present, a subcommittee of the New Products Committee, with outside assistance when necessary, is undertaking a comprehensive review of the margin rules for this supplemental rule filing, which the PSE expects will be completed within the near future. The PSE understands that the Commission is evaluating other proposals to trade stock group options and expects that these exchanges, the Commission, and other interested parties will discuss the question of uniformity among the exchanges for all or some of these margin rules.

As noted above, the PSE proposal envisions that component underlying securities forming stock groups may already, although not necessarily, have options trading on them, but would preclude the inclusion of underlying securities already approved for options trading on the PSE. This is specifically precluded because, in the judgment of the Exchange, trading an option contract (or more than one option contract) whose underlying stock (or stocks) included in the stock group is traded on the same exchange raises the same regulatory concerns that have been expressed in the past on the question of trading options "side-by-side" in the primary market for the stock. These concerns would be particularly focused around the expiration dates of stock option series, when options volume tends to increase and prices of expiring in-the-money series trade at parity with the price of the stock. The PSE proposal eliminates this risk by limiting the component underlying securities to stocks which do not have options listed on the PSE. The PSE believes this point should be an important element in the Commission's consideration of options on stock groups.

The second issue in need of discussion is whether using as components of a stock group option underlying securities already the object of listed options trading involves "dual trading." The expansion of dual trading of options thus far has not been allowed because of a number of regulatory concerns, which include the difficulties associated with maintaining viable dual markets given the volatility of options and the derivative nature of their prices, the desirability of maintaining multiple exchanges, and the problems of order routing and insuring best execution. These regulatory concerns (and the other regulatory concerns that have been cited with respect to dual trading) are not applicable to the PSE proposal because the PSE proposal does not constitute dual trading, and, in fact, is fundamentally different from dual trading. An option on a single stock is not fungible with an option on a stock group, nor are five options, each on a component underlying security, fungible with a single option on a stock group. In addition, stock options and stock group options are different types of contracts which not be aggregated or netted by the Options Clearing Corporation. Thus, an order entered for a stock group option listed on the PSE could only be executed on the PSE. Since the PSE would facilitate trading of a unique instrument, different from stock options, the spectre of dual trading is not appropriate.

The basis under the Act for the proposed rules change is Section 6(b)(5) in that the proposed changes are designed to facilitate transactions in options on stock groups and to bring such transactions within the regulatory framework of the Act and of the PSE's own rules, in furtherance of the general goal of protecting investors and the public interest.

(B) *Self-Regulatory Organization's Statement on Burden on Competition.*

The proposed rule changes impose no burden on competition.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.*

The proposed rule changes were considered and approved by the New Products Committee, comprised of members of the PSE.

Written comments on the proposed rule changes were neither solicited not received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before April 23, 1982 or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, NW, Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should be submitted on or before April 19, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 15, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-7458 Filed 3-18-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 09/09-0308]

City Ventures, Inc.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1981)), under the name of City Ventures, Inc., 404 North Roxbury Drive, Beverly Hills, California 90210, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 *et seq.*), and the rules and regulations promulgated thereunder.

The proposed officers, directors and sole shareholder of the Applicant are as follows:

Bram Goldsmith, 522 North Doheny Road, Beverly Hills, CA 90210, Director, Chairman of the Board, Chief Executive Officer

James P. Del Guercio, 4622 Azalia Drive, Tarzana, CA 91354, Director

Warner Heinman, 457 Saint Pierre Road, Los Angeles, CA 90077, Director, President

Alexander Kyman,, 4705 Louise Avenue, Encino, CA 91316, Director

William L. Olsen, 18608 Palomino Street, Tarzana, CA 91354, Director

Jerome F. Schulte, 451 Euclip Street, Santa Monica, CA 90402, Director

James F. O'Rieley, 447 Madeline Drive, Pasadena, CA 91105 Treasurer/Chief Financial Officer

James J. Mitchell, 5320 Forbes Avenue, Encino, CA 92677, Secretary

City National Bank, 404 North Roxbury Drive, Beverly Hills, CA 90210, Shareholder—100%

The applicant, a California Corporation, with its principal place of business at 404 North Roxbury Drive, Beverly Hills, California 90210 will begin operations with $2,000,000 of paid-in capital and paid-in surplus.

The applicant will conduct its activities principally in the State of California.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA rules and regulations.

Notice is hereby given that any person may, not later than April 5, 1982, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Acting Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in Beverly Hills, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 11, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-7401 Filed 3-18-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0300]

Hamco Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company

On October 1, 1981, a notice was published in the **Federal Register** (46 FR 48375), stating that Hamco Capital Corporation, located at 235 Montgomery Street, #530, San Francisco, California 94104, has filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1981), for a license to operate as a small business investment company under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on October 16, 1981, and no significant comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 09/09-0300 to Hamco Capital Corporation.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 11, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-7400 Filed 3-18-82; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 09/09-0303]

O.H.P. Capital Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1981)), under the name of O.H.P. Capital Corporation, 8148 Sunset Boulevard, Los Angeles, California 90046, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the rules and regulations promulgated thereunder.

The proposed officers, directors and sole shareholder of the Applicant are as follows:

Ozzi Silna, 821 S. 6th Street, Alhambra, CA 91801, President
Stephen B. Mendelow, 1318 Aaron Road, N. Brunswick, NJ 08902, Executive Vice President
Daniel Silna, 15 Emery Lane, Woodcliff Lake, NJ 07675, Executive Vice President
Alan G. Savage, 2045 Fourth Street, Santa Monica, CA 90405, Senior Vice President; Chief Financial Officer; Treasurer
Bernard Litten, 812 Monteleon Drive, Beverly Hills, CA 90210, Secretary
Billie S. Harmon, 917 S. Longwood Avenue, Los Angeles, CA 90019, Senior Vice President
I. Diane Frome, 912 N. Roxbury Drive, Beverly Hills, CA 90210, Director
One Hour Photo, Inc., 8148 Sunset Boulevard, Los Angeles, CA 90046, Sole Shareholder

The Applicant will be required to have a minimum of three directors at all times.

The holders of 10 percent or more of the issued and outstanding stock of One Hour Photo, Inc. are as follows:

Judith Litten; Bernard Litten—16.67%
Ozzie Silna; Daniel Silna—33.33%
I. Diane Frome; Bruce H. Frome—42.50%

Furthermore, One Hour Photo, Inc. certifies that the total number of direct, indirect, or beneficial holders of its equity securities, by attribution or otherwise, is not more than twelve. There will be one class of stock authorized: 10,000 shares of no par value voting common stock. Initially only 750 shares will be issued with a resultant private capital of $750,000. Applicant proposes to conduct its operations principally in the State of California.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than April 5, 1982, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Acting Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in Seattle, Washington.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 11, 1982.

Robert G. Lineberry,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-7402 Filed 3-18-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circular 570, 1981 Rev., Supplement No. 17]

Cotton Belt Insurance Company, Inc.; Surety Companies Acceptable On Federal Bonds; Termination of Authority

Notice is hereby given that the Certificate of Authority issued by the Treasury to the Cotton Belt Insurance Company, Inc., Memphis, Tennessee under Sections 6 to 13 of Title 6 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated efective this date. The company was last listed as an acceptable surety on Federal bonds at 46 FR 33965, June 30, 1981.

With respect to any bonds currently in force with the Cotton Belt Insurance Company, Inc., bond-approving officers of the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this termination notice may be directed to the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226. Telephone (202) 634-5010.

Dated: March 15, 1982.

W. E. Douglas,

Commissioner.

[FR Doc. 82-7461 Filed 3-18-82; 8:45 am]

BILLING CODE 4810-35-M

Treasury Current Value of Funds Rate

AGENCY: Bureau of Government Financial Operations.

ACTION: Notice of rate for use in Federal cash management operations.

SUMMARY: This notice provides the percentage rate based on the current value of funds to the Treasury. This rate is required by the Treasury Fiscal Requirements Manual (I TFRM 6-8000) to be used in Federal billing, collection, and disbursement operations and is provided here as public notice to assist agencies in their negotiations with affected contractors, organizations, and individuals. The applicable rate is 13.22%.

DATES: The rate will be in effect for the period beginning on April 1, 1982 and ending on June 30, 1982.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Cash Management Regulations and Compliance Staff, Bureau of Government Financial Operations, Department of the Treasury, Treasury Annex No. 1, Washington, D.C. 20226 (Telephone: 202/566-8251).

SUPPLEMENTARY INFORMATION: Revisions to I TFRM 6-8000 in June 1980, provided that the current value of funds rate would be used in assessing charges for late payments to the Government (except where prohibited by law or where a different rule is prescribed by statute), and in determining whether it is cost-effective for the Government to avail itself of prompt payment discounts. This rate reflects the short-term value of funds to the Treasury and is based on rates set for purposes of Pub. L. 95-147, 91 Stat. 1227. It should be noted that the Federal Claims Collection Standards (4 CFR 102.11) also require that interest be charged on delinquent debts and debts being paid in installments in accordance with I TFRM 6-8000.

Dated: March 12, 1982.

W. E. Douglas,

Commissioner.

[FR Doc. 82-7462 Filed 3-18-82; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: A closed meeting of the Art Advisory Panel will be held in Washington, D.C.

DATE: The meeting will be held May 19-20, 1982.

FOR FURTHER INFORMATION CONTACT: Wiley Grant, T:C:E:V, 1111 Constitution Avenue, NW., Room 5545, Washington D.C., 20224, Telephone No. (202) 566-4196 (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1976), that a closed meeting of the Art Advisory Panel will be held on May 19-20, 1982 beginning at 9:30 a.m. in Room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

The agenda will consist of the review and evaluation of the acceptability of

fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the disussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that these meetings are concerned with matters listed in section 552b(c) (3), (4), (6) and (7) of Title 5 of the United States Code, and that the meetings will not be open to the public.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978. (43 FR 52122.)

Roscoe Egger,

Commissioner of Internal Revenue.

[FR Doc. 82-7463 Filed 3-18-82; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

U.S. and Sweden To Conduct Income Tax Treaty Negotiations

The Treasury Department announced that representatives of the United States and Sweden will meet in Washington during the week of March 22, 1982 to renegotiate the income tax treaty between the two countries which has been in effect since 1939.

Since the treaty has been in effect for so many years, the negotiations will encompass a complete review of all of its provisions. The discussions will take into account changes in the tax laws of both countries and developments in the model income tax treaties published by the Organization for Economic Cooperation and Development (OECD) and by the United States.

Anyone wishing to provide information or comments on tax matters related to the forthcoming negotiations is invited to do so by writing to A. W. Granwell, International Tax Counsel, U.S. Treasury Department, Room 3064, Washington, D.C. 20220.

Dated: March 16, 1982.

John E. Chapoton,

Assistant Secretary, (Tax Policy)

[FR Doc. 82-7501 Filed 3-18-82; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Scientific Review and Evaluation Board for Rehabilitative Engineering Research And Development; Meeting

In accordance with Pub. L. 92-463 the Veterans Administration gives notice of a meeting of the Scientific Review and Evaluation Board for Rehabilitative Engineering Research and Development. This meeting will convene at the Annapolis Hilton Inn, Compromise at St. Marys Street, Annapolis, Maryland on March 30 and 31, 1982, beginning at 9 a.m. on Tuesday, and 9 a.m. on Wednesday. The purpose of the meeting is to review rehabilitative engineering research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitative Engineering Research and Development (RER&D) Service regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) at the start of the March 30th session for approximately one hour to cover administrative matters and to discuss the general status of the program. During the closed session, the Board will be reviewing research and development applications relating to the delivery and organization of rehabilitative engineering. This review involves oral review and discussions of site visits, staff and consultant critiques of research protocols, and similar documents that necessitate the consideration of personnel qualifications and the performance and competence of individual investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Proprietary data from contractors and private firms will also be presented and this information should not be disclosed in a public session. Premature disclosure of Board recommendations would be likely to significantly frustrate implementation of final proposed actions. Thus, the closing is in accordance with section 552b, subsections (c)(4), (c)(6), and (c)(9)(b), Title 5, United States Code and the determination of the Administrator of Veterans Affairs pursuant to section 10(d) of the Federal Advisory Committee Act, Title 5, U.S.C., Appendix I.

Due to the limited seating capacity of the room those who plan to attend the open session should contact Mr. Robert Fleming, Administrative Officer, Rehabilitative Engineering Research and Development Service, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420 (Phone: (202) 389-5177) at least 5 days before the meeting.

The appearance of this notice in the Federal Register at least 15 days prior to the meeting date has been delayed in administrative processing.

Dated: March 15, 1982.

Robert P. Nimmo,

Administrator.

[FR Doc. 82-7464 Filed 3-18-82; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Wage Committee; Meetings

Under the provisions of section 10 of Pub. L. 92-463, notice is hereby given that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, April 1, 1982
Thursday, April 15, 1982
Thursday, April 29, 1982
Thursday, May 13, 1982
Thursday, May 27, 1982
Thursday, June 10, 1982
Thursday, June 24, 1982

The meetings will convene at 2:30 p.m. and will be held in Room 815A, Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420.

The Committee's primary responsibility is to consider and make recommendations to the Chief Medical Director, Department of Medicine and Surgery, on all matters involved in the development and authorization of wage rate schedules for Federal Wage System (blue-collar) employees.

At these scheduled meetings, the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, the Federal Advisory Committee Act, as amended by Pub. L. 94-409, meetings may be closed to the public when they are concerned with matters listed under section 552b, Title 5, United States Code. Two of the matters so listed are those related solely to the internal personnel rules and practices of an agency (5 U.S.C. 552b(c)(2)), and those involving trade secrets and commercial or financial information obtained from a person and privileged or confidential (5 U.S.C. 552b(c)(4)).

Accordingly, I hereby determine that all portions of the meetings cited above will be closed to the public because the matters considered are related to the internal rules and practices of the

Veterans Administration (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who wish to do so are invited to submit material in writing to the Chairman regarding matters believed to be deserving of the Committee's attention.

Additional information concerning these meetings may be obtained by contacting the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: March 15, 1982.

Robert P. Nimmo,

Administrator.

[FR Doc. 82-7465 Filed 3-18-82; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 54
Friday, March 19, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Home Loan Bank Board	1
Federal Maritime Commission	2
Federal Reserve System	3-5
Securities and Exchange Commission	6
Synthetic Fuels Corporation	7

1

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10 a.m., Wednesday, March 24, 1982.

PLACE: Board room, 6th floor, 1700 G Street, NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall, (202-377-6679).

MATTERS TO BE CONSIDERED:

Merger; Maintenance of Branch Office; Cancellation of Membership and Insurance; and Transfer of Stock—First Federal Savings and Loan Association of Cairo, Cairo, Georgia *into* Fulton Federal Savings and Loan Association, Atlanta, Georgia
Merger and Retention of Facility—The Federal Savings and Loan Association of Dillon, Dillon, South Carolina *into* Security Federal Savings and Loan Association, Columbia, South Carolina
Merger; Increase of Accounts of an Insurable Type—Mission Federal Savings and Loan Association, Santa Barbara, California *into* Home Federal Savings and Loan Association of San Diego, San Diego, California
Branch Office Application—Sooner Federal Savings and Loan Association, Tulsa, Oklahoma
Application for Bank Membership—Geneva Savings Bank, Geneva, New York
Merger; Increase of Accounts of an Insurable Type—Marina Federal Savings and Loan Association, Torrance, California *into* Home Federal Savings and Loan Association of San Diego, San Diego, California
Merger; Maintenance of Branch Offices; Cancellation of Membership and Insurance and Transfer of Stock—Vincennes Savings and Loan Association, Vincennes, Indiana *into* Home Federal Savings and Loan Association, Vincennes, Indiana
Revision of Application Requirements
Amendments relating to Savings Accounts
Amendments to Secondary Reserve No. 18, March 17, 1982.

[S-414-82 Filed 3-17-82; 10:32 am]
BILLING CODE 6720-01-M

2

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., March 24, 1982.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Report on Notation Items disposed of during February 1982.
2. Report of the Secretary on times shortened for submitting comments on section 15 agreements pursuant to delegated authority during February 1982.
3. Report of the Secretary on Applications for Admission to Practice approved during February 1982, pursuant to delegated authority.
4. Agreement No. 9973-8: Modification of the Johnson Scanstar Combined Service Agreement to authorize Carriage of Cargoes Between U.S. Ports and Ports and Points in Mexico.
5. Revised Discovery Rules in Formal Proceedings.

Portion closed to the public.

1. Treatment of Freight Forwarder Violations.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

[S-411-82 Filed 3-17-82; 9:29 am]
BILLING CODE 6730-01-M

3

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10 a.m., Wednesday, March 24, 1982.

PLACE: Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: *Summary Agenda:* Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed revision to the Federal Reserve policy on borrowing by System examiners.

Discussion Agenda:

2. Publication for comment of a proposed general revision of Regulation T (Credit by Brokers and Dealers). (Proposed earlier for public comment; Docket No. R-0362)
3. Requests from the CFTC for Board comment on several exchange applications (1) to trade options contracts calling for delivery of futures contracts; (2) to establish a futures contract market based on 3-month Treasury bills and one on commercial bank prime rates; and (3) to change terms of a bond futures market.
4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: March 16, 1982.

James McAfee,
Assistant Secretary of the Board.

[S-409-82 Filed 3-16-82; 5:04 pm]
BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM

Board of Governors

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 10938, Friday, March 12, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:30 a.m., Wednesday, March 17, 1982.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposals to improve the Federal Reserve Systems's wire transfer services.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: March 15, 1982.

James McAfee,
Assistant Secretary of the Board.

[S-410-82 Filed 3-16-82; 5:04 am]
BILLING CODE 6210-01-M

5

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: Approximately 11:30 a.m., Wednesday, March 24, 1982, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 16, 1982.

James McAfee,

Assistant Secretary of the Board.

[S–412–82 Filed 3–17–82; 9:32 am]

BILLING CODE 6210–01–M

6

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 10341, March 10, 1982.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, March 5, 1982.

CHANGES IN THE MEETING: Additional item.

The following additional item will be considered at a closed meeting scheduled for Thursday, March 18, 1982, following the 9:00 a.m. open meeting:

Personnel matter.

Chairman Shad and Commissioners Loomis, Evans, and Longstreth determined by vote that Commission business required consideration of this matter and that no earlier notice thereof was possible.

At times changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Mendelsohn at (202) 272–2091.

March 16, 1982.

[S–415–82 Filed 3–17–82; 1:19 pm]

BILLING CODE 8010–01–M

7

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

ACTION: Notice of meeting.

SUMMARY: Interested members of the public are invited to attend and observe a meeting of the Board of Directors of the United States Synthetic Fuels Corporation to be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of Section 116(f)(1) of the Energy Security Act (9 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1)) and Section 4 of the Corporation's Statement of Policy on Public Access to Board Meetings. During the meeting, the Board of Directors may consider a resolution to close a portion of the meeting pursuant to Article II Section 4 of the Corporation's By-laws, Section 116(f) of the said Act and Sections 4 and 5 of the said policy.

MEETING OPEN TO THE PUBLIC: 8:30 a.m.

1. Approval of Minutes of Prior Meeting.
2. Management Report.
3. Office in Denver.
4. Phase II Guidance to Sponsors (Timeline, Credit Elsewhere, etc.).
5. Interim Task Force Report (Status Report on Programmatic Strategies and Alternative Solicitation Strategies and Forms of Assistance).

In addition, the Board of Directors will consider such other matters as may be properly brought before the meeting.

TIME AND DATE: 8:30 a.m., March 26, 1982.

PLACE: Key Bridge Marriott Hotel, Rosslyn, Virginia.

PERSON TO CONTACT FOR MORE INFORMATION:

If you have any questions regarding this meeting, please contact Mr. Owen J. Malone, Office of General Counsel, (202) 653–4230.

United States Synthetic Fuels Corporation.

March 16, 1982.

Edward E. Noble,

Chairman of the Board.

[S–413–82 Filed 3–17–82; 10:05 am]

BILLING CODE 6450–01–M

federal register

Friday
March 19, 1982

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following the Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of the Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following the Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of the Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Iowa:	
IA81-4088	Nov. 13, 1981.
IA81-4090	Dec. 11, 1981.
IA81-4092	Nov. 27, 1981.
IA81-4093	Nov. 27, 1981.
IA81-4094	Nov. 27, 1981.
IA81-4095	Nov. 27, 1981.
IA81-4096	Nov. 27, 1981.
IA81-4097	Nov. 27, 1981.
IA81-4101	Dec. 11, 1981.
Massachusetts: MA81-3071	Oct. 16, 1981.
Nevada:	
NV81-5102	Feb. 6, 1981.
NV81-5104	Feb. 20, 1981.
NV81-5152	Sept. 18, 1981.
NV81-5161	Nov. 6, 1981.
New Jersey: NJ81-3053	Oct. 9, 1981.
Rhode Island: RI81-3042	Aug. 21, 1981.
Pennsylvania: PA81-3058	Aug. 28, 1981.
South Dakota:	
SD81-5150	Sept. 4, 1981.
SD81-5151	Sept. 4, 1981.
SD81-5155	Oct. 2, 1981.
Tennessee: TN81-1202	May 1, 1981.
Washington: WA81-5163	Dec. 4, 1981.
California: CA81-5132	July 10, 1981.
Florida: FL82-1018	Mar. 5, 1982.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

New Jersey: NJ79-3041 (NJ82-3013)	Oct. 12, 1979.
Oklahoma: OK80-4021 (OK82-4008)	Mar. 21, 1980.
Wisconsin:	
WI80-2037 (WI82-2011)	May 23, 1980.
WI80-2077 (WI82-2017)	Sept. 5, 1980.
WI80-2078 (WI82-2018)	Sept. 12, 1980.
WI80-2030 (WI82-2021)	Apr. 25, 1980.

Signed at Washington, D.C.
this 12th day of March 1982.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27M

Modification Page 1

DECISION NO. IA81-4088 - MOD. #4
(46 FR 56121 - November 13, 1981)
Black Hawk County, Iowa

CHANGE:
Building, water treatment plants & sewage disposal plants const.:
Line construction - SEE ATTACHED RATES

DECISION NO. IA81-4090 - MOD. #3
(46 FR 60752 - December 11, 1981)
Des Moines County, Iowa

CHANGE:
Building, water treatment plants & sewage disposal plants const.:
Line construction - SEE ATTACHED RATES

DECISION NO. IA81-4092 - MOD. #4
(46 FR 58025 - November 27, 1981)
Johnson County, Iowa

CHANGE:
Building, water treatment plants & sewage disposal plants const.:
Line construction - SEE ATTACHED RATES

DECISION NO. IA81-4093 - MOD. #4
(46 FR 58018 - November 27, 1981)
Linn County, Iowa

CHANGE:
Building, water treatment plants & sewage disposal plants const.:
Line construction - SEE ATTACHED RATES

DECISION NO. IA 81-4094 - MOD. #5
(46 FR 58019 - November 27, 1981)
Polk County, Iowa

CHANGE:
Building, water treatment plants & sewage disposal plants const.:
Line construction - SEE ATTACHED RATES

DECISION NO. IA81-4095 - MOD. #3
(46 FR 58022 - November 27, 1981)
Webster County, Iowa

CHANGE:
Building, water treatment plants & sewage disposal plants const.:
Line construction - SEE ATTACHED RATES

DECISION NO. IA81-4096 - MOD. #3
(46 FR 58023 - November 27, 1981)
Woodbury County, Iowa

CHANGE:
Line construction - SEE ATTACHED RATES

Modification Page 2

DECISION NO. IA81-4097 - MOD. #3
(46 FR 58016 - November 27, 1981)
Cerro Gordo County, Iowa

CHANGE:
Building, water treatment plants & sewage disposal plants const.:
Line construction - SEE ATTACHED RATES

DECISION NO. IA81-4101 - MOD. #2
(46 FR 60754 - December 11, 1981)
Pottawattamie County, Iowa

CHANGE:
Line construction - SEE ATTACHED RATES

APPLIES TO IA81-4088, 4090, 4092, 4093, 4094, 4095, 4096, 4097 & 4101	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Line construction:					
Group 1	$14.65	.45	7%		1/2%
Group 2	11.72	.45	7%		1/2%
Group 3	9.52	.45	7%		1/2%
Group 4	9.67	.45	7%		1/2%
Group 5	9.38	.45	7%		1/2%
Group 6	11.28	.45	7%		1/2%
DECISION NO. MA81-3071 - MOD. #2 (46 FR 51163 - October 16, 1981) BERKSHIRE, FRANKLIN, HAMPDEN AND HAMPSHIRE COUNTIES, MASSACHUSETTS					
CHANGE: PLUMBERS AND STEAMFITTERS: Berkshire County (Otis, Becket, New Boston, Sandisfield, Franklin County (Remainder of County) Hampden County; Hampshire County	14.42	1.01	1.75		.10
ADD: TRUCK DRIVERS Class V	11.32	1.10	1.20	a+b	

Modification Page 3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. NV81-5102 - Mod. #8					
(46 FR 11482-February 6, 1981)					
Clark County (does not include the Nevada Test Site), Nevada					
Change:					
Ironworkers:					
Fence Erectors	$17.40	$1.44	$3.77		.12
Ornamental; Reinforcing Structural	18.29	1.44	3.77		.12
DECISION NO. NV81-5104 - Mod #9					
(46 FR 13482-February 20, 1981)					
Washoe County, Nevada					
Change:					
Glaziers	$15.88	$1.44	$2.50	$2.38	
Ironworkers:					
Fence Erectors	17.40	1.44	3.77		.12
Ornamental; Reinforcing; Structural	18.29	1.44	2.77		.12
Soft Floor Layers	15.94	1.14	.20	.33	.07
DECISION NO. NV81-5152-Mod. #3					
(46 FR 46505-September 18, 1981)					
Statewide (does not include the Nevada Test Site and Tonopah Test Range, and Highway Construction in Douglas County), Nevada					
Change:					
Asbestos Workers:					
Area 3	$22.36	$1.25	$1.45		.11
Elevator Constructors:					
Area 2:					
Elevator Constructors	24.22	1.345	1.085	a	.035
Helpers	16.95	1.345	1.085		.035
Probationary Helpers	12.11				
Glaziers:					
Area 2	15.88	1.44	2.50	2.38	

Modification Page 4

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. NV81-5152 (Cont'd)					
Ironworkers:					
Area 1:					
Fence Erectors; Machinery Movers; Ornamental; Reinforcing; Riggers; Structural	$14.25	$1.05	$1.60		.10
Area 2:					
Fence Erector	17.40	1.44	3.77		.12
Ornamental; Reinforcing; Structural	18.29	1.44	2.77		.12
Power Equipment Operators:					
Clark, Esmeralda, Lincoln, and Nye Cos.:					
Group 1	15.00	1.35	2.95	1.17	.14
Group 2	15.28	1.35	2.95	1.17	.14
Group 3	15.57	1.35	2.95	1.17	.14
Group 4	15.71	1.35	2.95	1.17	.14
Group 5	15.93	1.35	2.95	1.17	.14
Group 6	16.04	1.35	2.95	1.17	.14
Group 7	16.16	1.35	2.95	1.17	.14
Group 8	16.33	1.35	2.95	1.17	.14
Group 9	16.46	1.35	2.95	1.17	.14
Roofers:					
Area 1	20.40	1.00			
Soft Floor Layers:					
Area 1	17.12	1.65			.25
Area 2	15.94	1.14	.20	.33	.07
DECISION NO. NV81-5161 - Mod. #2					
(46 FR 55210-November 6, 1981)					
Nevada Test Site including Tonopah Test Range in Clark, Lincoln, and Nye Counties, Nevada					
Change:					
Ironworkers:					
Ornamental; Reinforcing; Structural	$18.29	$1.44	$3.77		.12
Sheet Metal Workers	18.35	1.20	1.92		.10

DECISION NO. NJ81-3053 - MOD. #8 (46 FR 50243 - October 9, 1981) BERGEN, ESSEX, HUDSON, HUNTERDON, MIDDLESEX, MORRIS, PASSAIC, SOMERSET, SUSSEX, UNION AND WARREN COUNTIES, NEW JERSEY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
LABORERS, BUILDING CONSTRUCTION:					
ZONE 16	9.90	.85	1.00		.10
LINE CONSTRUCTION:					
ZONE 12					
Linemen	14.28	7%	3%+5.7%		3/4%
Linemen Equipment Operator	13.64	7%	3%+5.7%		3/4%
Dynamite Man	11.95	7%	3%+5.7%		3/4%
Groundman, Winch & Truck Operators	11.00	7%	3%+5.7%		3/4%
Groundman	9.31	7%	3%+5.7%		3/4%
IRONWORKERS:					
Warren County	15.20	1.49	1.46		
LABORERS, HEAVY & HIGHWAY CONSTRUCTION:					
GROUP 1	12.20	1.25	1.15	d	.10
GROUP 2	12.15	1.25	1.15	d	.10
GROUP 3	11.90	1.25	1.15	d	.10
GROUP 4	12.15	1.25	1.15	d	.10
GROUP 5	11.90	1.25	1.15	d	.10
GROUP 6	11.70	1.25	1.15	d	.10
GROUP 7	11.40	1.25	1.15	d	.10
GROUP 8	11.20	1.25	1.15	d	.10
GROUP 9	11.20	1.25	1.15	d	.10
LABORERS - FREE AIR TUNNEL JOBS:					
GROUP 1	12.65	1.00	1.15		.10
GROUP 2	12.25	1.00	1.15		.10
GROUP 3	12.10	1.00	1.15		.10
GROUP 4	11.60	1.00	1.15		.10

DECISION NO. RI81-3042 - MOD. #5 (46 FR 42615 - August 21, 1981) STATEWIDE, RHODE ISLAND	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
HEAVY & HIGHWAY CONSTRUCTION					
LABORERS					
Laborers, Carpenter, Cement Finisher Tenders & Wrecking Laborers Adzemen, Asphalt Rakers, Barco-type Jumping Tampers, Chain Saw Ops., concrete & Power Buggy Ops., Concrete Saw Ops., Demolition Burners, Fence & Guard Rail Erectors, Highway Stone Spreaders, Mason Tenders, Mechanical Grinder Ops., Mortar Mixers, Pipelayers, Pipe Trench Bracers, Pneumatic Tool Ops., Riprap & Dry Stonewall Builders, Scaffold Erectors, Setters of Metal Forms for Roadways, Wagon Drill Ops., Wood Chipper Ops.	11.05	.85	1.20		.15
Air track drill ops. Brick Pavers, Block Pavers, Rammers, Curb Setters	11.30	.85	1.20		.15
BUILDING CONSTRUCTION	11.80	.85	1.20		.15
LABORERS					
Laborers; Carpenter Tenders; Cement Finisher Tenders; Mason Tenders; Scaffold Erectors & Wrecking Laborers Asphalt Rakers; Adzemen; Pipe-Trench Bracers; Demolition Burners; Chain Saw Ops.; Fence & Guard Rail Erectors; Setters of Metal Forms for Roadways; Pipelayers; Riprap & Dry	11.05	.85	1.20		.15

Modification Page 7

DECISION NO. RI81-3042 - CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Stonewall Builders; Highway Stone Spreaders Pneumatic Tool Ops.; Wagon Drill Ops.; Tree Trimmers; Barco Type Jumping Tampers; Mechanical Grinder Ops.; Plasterers' Tenders; Scaffold Builders; & Mortar Mixers	11.30	.85	1.20		.15
Pre-cast Floor and Roof Plank Erectors	11.35	.85	1.20		.15
Pumping Machine Operator	11.65	.85	1.20		.15
Air Track Ops.; Block Pavers; Rammers; & Curb Setters	11.80	.85	1.20		.15
Blasters; Powdermen	12.05	.85	1.20		.15
DECISION NO. PA81-3058 MOD. NO. 7 (46 FR 43596 - August 28, 1981) Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming & York Counties, Pennsylvania					
CHANGE:					
LINE CONSTRUCTION:					
Berks & Lehigh Counties					
Linemen	$14.28	.60	3%		3/8%
Winch Truck Operator	10.00	.60	3%		3/8%
Truck Driver	9.28	.60	3%		3/8%
Groundman	8.57	.60	3%		3/8%
Northampton County					
Linemen	15.44	.60	3%		3/8%
Winch Truck Operator	10.81	.60	3%		3/8%
Truck Driver	10.04	.60	3%		3/8%
Groundman	9.26	.60	3%		3/8%

Modification Page 8

DECISION NO. SD81-5150 - Mod. #2 (46 FR 44656-September 4, 1981) Minnehaha County, South Dakota	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$14.97	$1.375	$1.15		.05
Sheet Metal Workers	12.44	3%	.51	1.25	.09
DECISION NO. SD81-5151-Mod. #2 (46 FR 44657-September 4, 1981) Meade and Pennington Counties, South Dakota					
Change:					
Bricklayers; Stonemasons	$13.90		.50		
Boilermakers	14.97	1.375	1.15		.05
Sheet Metal Workers	12.57	3%	.40	.75	.07
DECISION NO. SD81-5155-Mod. #1 (46 FR 48855-October 2, 1981) Statewide, South Dakota					
Change:					
Line Construction:					
Group 1	$14.60	.45	3%		1/2%
Group 2	14.55	.45	3%		1/2%
Group 3	11.68	.45	3%		1/2%
Group 4	9.72	.45	3%		1/2%
Group 5	8.93	.45	3%		1/2%
DECISION #TN81-1202 MODIFICATION #4 (46 FR24886 May 1, 1981) Shelby County, Tennessee					
CHANGE:					
ELECTRICIANS: WIREMEN & ELECTRONIC TECHNICIANS	$15.48	.95	3%+.50		.55 of 1%
CABLE SPLICERS	15.58	.95	3%+.50		.55 of 1%

DECISION NO. WA81-5163 - Mod #7 (46 FR 59457 - Dec. 4, 1981) Statewide Washington	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ASBESTOS WORKERS:					
Area 2	$20.48	.88	1.49		.14
GLAZIERS:					
Area 7	16.24	.81	1.00		.03
PAINTERS:					
Area 3:					
General Painters	15.87	1.29	.80		.04
Drywall Tapers	16.27	1.29	.80		.04
Industrial Painters	16.27	1.29	.80		.04
Area 4:					
Striper	16.65	1.29	.25		
LINE CONSTRUCTION:					
Fringe Benefits Payments:					
Group 1 to 3		.45	3% + 2.00	.10	1/2%
Group 4 to 7		.45	3% + 1.30	.10	1/2%

DECISION NO. CA81-5132 - Mod. #7 (46 FR 35860 - July 10, 1981) Alameda, Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Cruz, Santa Clara, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba Counties, California	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
ELECTRICIANS:					
Area 1:					
Electricians	$22.56	1.30	3%+2.90		.098
Cable Splicers	25.38	1.30	3%+2.90		.098

DECISION NO. FL82-1018 - Mod. #1 (47 FR 9655 - March 5, 1982) Cape Canaveral Air Force Station, Patrick Air Force Base, Kennedy Space Flight Center, and Melabar Radar Sites in Brevard and Volusia Counties, Florida	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS:					
Wiremen	$13.70	.50	3%+1.00		.05
Cable Splicers	13.95	.50	3%+1.00		.05

SUPERSEDEAS DECISION

STATE: NEW JERSEY COUNTY: OCEAN
DECISION NO.: NJ82-3013 DATE: DATE OF PUBLICATION
Supersedeas Number NJ79-3041 dated October 12, 1979 in 44 FR 59061
DESCRIPTION OF WORK: Residential Construction Projects Consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS	7.45				
CEMENT MASONS	10.17				
DRYWALL-SHEETROCK MECHANICS	8.60				
ELECTRICIANS	8.69				
ELEVATOR MECHANICS	14.62	1.34	1.085	4%+a+b	.035
ELEVATOR MECHANICS HELPER	10.30	1.345	1.085	4%+a+b	.035
ELEVATOR MECHANICS HELPER PROBATIONARY	7.36				
LABORERS	6.03				
PAINTERS, BRUSH	8.25				
PLUMBERS & PIPEFITTERS	9.37				
ROOFERS	6.00				
SHEET METAL WORKERS	6.71				
SOFT FLOOR LAYERS	7.50				
POWER EQUIPMENT OPERATORS:					
Bulldozer	8.18				
Loaders	7.99				
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental					

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Paid Holidays: A through F.

b. Employer contributes 4% of the basic hourly rate for 5 years or more of service, or 2% of the basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Oklahoma COUNTY: Statewide (except heavy construction within the city of Muskogee)
DECISION NO. OK82-4008 DATE: Date of Publication
SUPERSEDEAS DECISION #OK80-4021 dated March 21, 1980 in 45FR18654
DESCRIPTION OF WORK: Construction, alteration, and/or repair of streets, highways, runways, erosion control structures, well drilling, and water and sewer utilities (but does not include building structures on highway rest areas).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$ 7.00				
Carpenters helper	5.96				
Concrete finishers	7.27				
Concrete finishers helper	5.73				
Concrete rubber	6.05				
Electricians	11.90				
Electricians helper	9.56				
Form builder	6.60				
Form builder helper	5.70				
IRONWORKERS:					
Reinforcing steel setter paving and structures	6.19				
Reinforcing steel setter paving & structure helper	6.00				
Structural steel workers	6.50				
LABORERS:					
Air tool man	6.05				
Asphalt heaterman	5.75				
Asphalt raker	6.14				
Asphalt shoveler	5.13				
Form setter	6.58				
Form setter helper	6.35				
Laborers, common	4.94				
Pipelayers	6.60				
Powderman	6.20				
Powderman helper	5.35				
Vibrator (hand type)	5.00				
Manhole builder	7.06				
Mechanic	7.59				
Mechanic helper	6.50				
Painter	6.30				
Painter helper	5.25				
Piledriverman	5.90				
Traffic signal installer	6.70				
Weighman (truck Scales)	4.75				
POWER EQUIPMENT OPERATORS:					
Asphalt distributor	6.45				
Asphalt paving machine	6.60				
Bulldozer	7.00				
Cement unloading and machine operator	5.25				
Concrete paving machine	7.25				
Concrete finishing machine	6.60				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (contd.)					
Concrete saw operator	$ 6.41				
Concrete batching plant	7.00				
Crane, clamshell, backhoe, derrick, dragline and shovel	7.38				
Crusher and screening plant operator	6.60				
Fireman	5.90				
FRONT END LOADERS:					
1 CY and less	6.95				
Over 1 CY	7.00				
Hoist	6.30				
Mixer (over 16 C.F.)	6.45				
Mixer (16 C.F. and less)	6.00				
Mixer (concrete paving)	6.60				
Motor grader operator	7.07				
Oiler	6.90				
Pavement profiler	7.25				
Power broom	5.85				
Pug mill operator	6.55				
Pumpcrete	5.90				
Roller (pneumatic)	6.06				
Scrapers	7.00				
Spreader boxman	5.25				
TRACTORS:					
Crawler, 80 HP & less	6.20				
Crawler, over 80 HP	7.70				
Pneumatic, 80 HP & less	5.25				
Pneumatic, over 80 HP	5.50				
Traveling plant	6.35				
Trenching machine	6.50				
Wagon drill	6.10				
TRUCK DRIVERS:					
Over 2 tons	5.51				
2 tons and under	5.10				
Tandem axel & semitrailer	6.14				
Lowboy	6.05				
Transit mix	5.00				
Winch	5.90				

WELDERS--receive rate prescribed for craft performing operation which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii).

SUPERSEDEAS DECISION

STATE: Wisconsin COUNTIES: Columbia, Dane Iowa and Sauk

DECISION NUMBER: WI82-2011 DATE: Date of Publication

Supersedes Decision No. WI80-2037 dated May 23, 1980 in 45 FR 35150

DESCRIPTION OF WORK: Building Construction (excluding Single Family homes and apartments up to and including 4 stories); Dane County only (includes single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$14.38	1.20	1.35	1.50	.10
BOILERMAKERS	14.97	1.375	1.15		.05
BRICKLAYERS	12.49	.90	1.00	.50	.01
BRICKLAYERS: (COLUMBIA & Sauk Counties)	12.99	.90	1.00		.01
CARPENTERS	12.27	.60	1.00		.05
Residential	7.67	.60	.50		.05
CEMENT MASONS (Columbia & Sauk Counties)	13.20	.90	.60		
CEMENT MASONS (Dane & Iowa Cos.)	12.50	.90	1.20		
ELECTRICIANS	14.37	.84	3%	8%	3/4%
Residential	8.40	.84	3%	8%	3/4%
ELEVATOR CONSTRUCTORS:					
Constructors	13.76	1.345	1.085	a+b	.035
Helpers	9.63	1.345	1.085	a+b	.035
Helpers (Prob.)	6.88				
GLAZIERS	14.50	.73			.03
IRONWORKERS: Structural, Ornamental & Reinforcing	13.11	1.25	1.00		.07
LINE CONSTRUCTION:					
Linemen	14.40	.45	9%		1½%
Heavy Equipment Operator	12.96	.45	9%		1½%
Light Equipment Operator	11.52	.45	9%		1½%
Heavy Groundman - Truck Drivers	10.08	.45	9%		1½%
Light Groundman - Truck Drivers	9.36	.45	9%		1½%
Groundman	7.92	.45	9%		1½%
MILLWRIGHTS & PILEDRIVERMEN	12.67	.60	1.00		.05
PAINTERS:					
Brush	12.10	1.05	.60		.08
Spray	13.10	1.05	.60		.08
Structural Steel (Brush)	12.10	1.05	.60		.08
Swing Stage	12.35	1.05	.60		.08
Sandblaster	13.10	1.05	.60		.08
PLASTERERS (Columbia & Sauk Cos.)	13.20	.90	.60		
PLASTERERS	12.35	.90	1.20		
PLUMBERS	15.19	.95	1.60		1%
ROOFERS	12.24	.81	.40	.29	

DECISION NO. WI82-2011

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SOFT FLOOR LAYERS	12.27	.60	1.00		.05
SPRINKLER FITTERS	15.31	.95	1.40		.08
SHEET METAL WORKERS	13.86	1.35	1.08		.15
TERRAZZO WORKERS	12.25	.90	.60	.50	
TILE SETTERS	12.00	.90	.60	.50	
TRUCK DRIVERS - Single or Tandem Axle	9.75	d	e		

Welders receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Holidays: A through F

B. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular Hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years.

c. Holidays, A thru F plus Washington's Birthday, Good Friday and Christmas Eve, providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regularly scheduled work days immediately preceding and following the holidays.

d. $108.75 per month H&W fund.

e. $30.00 per week Pension fund.

DECISION NO. WI82-2011

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BUILDING, SEWER, WATER, EXCAVATING AND INCIDENTAL PAVING					
Laborers, Building;					
Pneumatic Tool Op., Air Hammer, Jackhammer, Concrete Buster, Sheeting Driver, Air Spade	11.52	.65	.55		.03
Vibrator, Air Tamper & Mortar Mixer	11.42	.65	.55		.03
General Laborer, Concrete Work, Form Strippers, Mason Tender, Building Wreckers	11.27	.65	.55		.03

DECISION NO. WI82-2011

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	14.12	1.35	1.00		.05
GROUP II	13.85	1.35	1.00		.05
GROUP III	13.52	1.35	1.00		.05
GROUP IV	13.41	1.35	1.00		.05
GROUP V	12.90	1.35	1.00		.05
GROUP VI	12.47	1.35	1.00		.05

GROUP I - Cranes, Shovels, Draglines, Backhoes, Clamshells, Derricks, Caisson Rigs, Pile Driver, Skid Rigs, Dredge Operator and Traveling Cranes (Bridge Type), Concrete Paver (over 27E), Concrete Spreader and Distributor

GROUP II - Material Hoists, Tractor or Truck Mounted Hydraulic Backhoe, Tractor or Truck Mounted Hydraulic Crane (5 tons or Under), Manhoist, Tractor (over 40 H.P.), Bulldozer H.P.), Endloader (over 40 H.P.), Forklift (25' and over), Motor Patrol, Scraper Operator, Sideboom, Straddle Carrier, Mechanic and Welder, Bituminous Plant and Paver Operator, Roller (over 5 tons), Rotary Drill Operator and Blaster, Trencher (wheel type or chain type having over 8-inch bucket), Elevator

GROUP III - Concrete and Grout Pumps, Backfiller, Concrete Auto Breaker (large), Concrete finishing (Road Type), Roller (Rubber Tire), Concrete Batch Hopper, Concrete Conveyor Systems, Concrete Mixers (14S or over), Screw Type Pumps, and Gypsum Pumps, Tractor, Bulldozer, Endloader (under 40 H.P.), Pumps (well points), Trencher (chain type having bucket 8-inch and under), Industrial Locomotives, Roller (under 5 tons) and Firemen (pile drivers and derricks)

GROUP IV - Hoists (automatic), Forklift (12' to 25'); Tampers-Compactors riding type), Assistant Engineer, "A" Frame and Winch Trucks, Concrete-Auto Breaker, Hydro-Hammer (small), Booms and Sweeper, Hoists (tuggers) Stump chipper (large), Boats, Safety, Work, Barges and launch)

GROUP V - Shouldering Machine Operator, Screed Operator, Farm or Industrial Tractor Mounted Equipment, Post Hole Diggers, Stone Crushers and Screening Plants, Firemen (asphalt Plants), Air Compressor (300 CFM or over)

GROUP VI - Generators over 150 KW, Pumps over 3", Augers (vertical and horizontal), Combination Small Equipment Operator; Air, Electric Hydraulic Jacks (Slip Form), Compressors (under 300 CFM); Generators (under 150 KWO, Pumps (3" and under); winches (small electric), Oiler and Greaser, Boiler Operators (Temporary heat), Rotary Drill Helpers, Conveyors, Forklift (12' and under)

SUPERSEDEAS DECISION

STATE: Wisconsin COUNTIES: Green Lake, Marquette, Waupaca, Waushara, & Winnebago

DECISION NO.: WI82-2017 DATE: Date of Publication

Supersedes Decision No.: WI80-2077 dated September 5, 1980 in 45 FR 59110

DESCRIPTION OF WORK: Building Construction(excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$15.06	1.20	.50	1.00	.10
BOILERMAKERS	14.97	1.375	1.15		.05
BRICKLAYERS & STONEMASONS	12.10	.90	.85		.05
CARPENTERS	12.27	.60	1.00		.05
CEMENT MASONS	11.60	.90	.85		.05
ELECTRICIANS	14.88	.85	5½%		1 1/8%
ELEVATOR CONSTRUCTORS:					
Constructors	13,76	1.345	1.085	a+b	.035
Helpers	9.63	1.345	1.08	a+b	.035
Helpers (Prob.)	50%JR				
IRONWORKERS:					
Extreme east part of Co. Inc. Lake Winnebago, Menasha, & Neenah	13.81	1.30	1.50	1.21	.15
Remainder of County	13.11	1.25	1.00		.07
LATHERS	12.27	.60	1.00		.05
MILLWRIGHTS	12.67	.60	1.00		.05
PAINTERS:					
Brush & Structural Steel	12.25	1.05	.35		.05
Spray & Sandblasting	12.75	1.05	.35		.05
PILEDRIVERMEN	12.67	.60	1.00		.05
PLASTERERS	12.10	.90	.85		.05
PLUMBERS & STEAMFITTERS:					
Waupaca and Townships of Menasha & Neenah	15.25	1.19	1.11		.20
Remainder of Counties	13.35	.80	1.54	1.25	.03
ROOFERS	10.65	.95	.70	.55	
SHEET METAL WORKERS	13.24	.95	.72	2.25	.09
SOFT FLOOR LAYERS	12.27	.60	1.00		.05
TERRAZZO WORKERS	12.10	.90	.85		.05
TILE SETTERS	12.10	.90	.85		.05

PAID HOLIDAY:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES

a. Holidays: A through F

b. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years, and 6% of regular rate for employee who has worked less than 5 years.

DECISION NO. WI82-2017

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
CLASS I	10.48	.65	.55		.03
CLASS II	10.58	.65	.55		.03
CLASS III	10.73	.65	.55		.03

CLASS I - Construction Laborers, Form Stripper, Form Oiler, Form Cleaner, Dumpmen, Pit Men, Building Wrecker, Plumbers Laborer, Motorized Buggy Operator, Concrete Laborer, Air Spade and Chipping Hammer, Drag Tender and Signal Man, Concrete Pump and Nozzle Man, bituminous Worker

CLASS II - Plasterer Tender, Hod Carrier, Dry Cement Handler, Kettlemen, Vibrator Operator, Slacking Line, tile Setter-Helper, Core Drill Operator

CLASS III - JackHammer Operator, Drill, Gunnite, Burner on Wrecking, Air Operated Concrete Breaker, Sheeting Driver, Power Tamper, Fork Lift Operator, Jumping Jack, Terrazzo Worker, Mortar and Plaster Mixer, Creosote Worker, Bob Cat Operator, Sand Blaster, Welder, Mud Jack Operator, Precast Erector, Bituminous Raker and Luteman

DECISION NO. WI82-2017

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	14.12	1.35	1.00		.05
GROUP II	13.85	1.35	1.00		.05
GROUP III	13.52	1.35	1.00		.05
GROUP IV	13.41	1.35	1.00		.05
GROUP V	12.90	1.35	1.00		.05
GROUP VI	12.47	1.35	1.00		.05

GROUP I - Cranes, Shovels, Draglines, Backhoes, Clamshells, Derricks, Caisson Rigs, Pile Driver, Skid Rigs, Dredge Operator and Traveling Cranes (Bridge Type), Concrete Paver (over 27E), Concrete Spreader and Distributor

GROUP II - Material Hoists, Tractor or Truck Mounted Hydraulic Backhoe, Tractor or Truck Mounted Hydraulic Crane (5 tons or Under), Manhoist, Tractor (over 40 H.P.), Bulldozer H.P.), Endloader (over 40 H.P.), Forklift (25' and over), Motor Patrol, Scraper Operator, Sideboom, Straddle Carrier, Mechanic and Welder, Bituminous Plant and Paver Operator, Roller (over 5 tons), Rotary Drill Operator and Blaster, Trencher (wheel type or chain type having over 8-inch bucket), Elevator

GROUP III - Concrete and Grout Pumps, Backfiller, Concrete Auto Breaker (large), Concrete finishing (Road Type), Roller (Rubber Tire), Concrete Batch Hopper, Concrete Conveyor Systems, Concrete Mixers (14S or over), Screw Type Pumps, and Gypsum Pumps, Tractor, Bulldozer, Endloader (under 40 H.P.), Pumps (well points), Trencher (chain type having bucket 8-inch and under), Industrial Locomotives, Roller (under 5 tons) and Firemen (pile drivers and derricks)

GROUP IV - Hoists (automatic), Forklift (12' to 25'); Tampers-Compactors riding type), Assistant Engineer, "A" Frame and Winch Trucks, Concrete-Auto Breaker, Hydro-Hammer (small), Booms and Sweeper, Hoists (tuggers) Stump chipper (large), Boats, Safety, Work, Barges and launch)

GROUP V - Shouldering Machine Operator, Screed Operator, Farm or Industrial Tractor Mounted Equipment, Post Hole Diggers, Stone Crushers and Screening Plants, Firemen (asphalt Plants), Air Compressor (300 CFM or over)

GROUP VI - Generators over 150 KW, Pumps over 3", Augers (vertical and horizontal), Combination Small Equipment Operator; Air, Electric Hydraulic Jacks (Slip Form), Compressors (under 300 CFM); Generators (under 150 KWO, Pumps (3" and under); winches (small electric), Oiler and Greaser, Boiler Operators (Temporary heat), Rotary Drill Helpers, Conveyors, Forklift (12' and under)

SUPERSEDEAS DECISION

STATE: Wisconsin County: Juneau
DECISION NUMBER: WI82-2018 Date: Date of Publication
Supersedes Decision No. WI80-2078, dated September 12, 1980 in 45 FR 60751
DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$14.38	1.20	1.35	1.50	.18
BOILERMAKERS	14.97	1.375	1.15		.05
BRICKLAYERS & STONEMASONS	12.65	.90	.70		
CARPENTERS:					
So. of Hwy. #21 & E. of County Trunk #80:					
Carpenters	12.27	.60	1.00		.05
Millwrights	12.67	.60	1.00		.05
Piledrivermen	12.67	.60	1.00		.05
Soft Floor Layers	12.27	.60	1.00		.05
Camp Douglas, Huster, Elroy & Vic:					
Carpenters	12.27	.60	1.00		.05
Millwrights	12.67	.60	1.00		.05
Piledrivermen	12.67	.60	1.00		.05
Soft Floor Layers	12.27	.60	1.00		.05
N. E. Section of County above Camp Douglas:					
Carpenters	12.27	.60	1.00		.05
Millwrights & Piledrivermen	12.67	.60	1.00		.05
CEMENT MASONS	11.98	.90	.60		
ELECTRICIANS	13.94	.75	3%	8%	1¼%
ELEVATOR CONSTRUCTORS	13.76	1.345	1.085	a+b	.035
ELEVATOR CONSTRUCTORS' HELPERS	9.63	1.345	1.085	a+b	.035
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS	14.50	.73			.03
IRONWORKERS, Structural, Ornamental & Reinforcing	13.11	1.25	1.00		.07
LABORERS:					
General	10.67	.65	.55		.03
Mason Tender, Plasterer Laborer, Mortar Mixer, Air Hammer & Jack Hammer Operators, Air Spade Operators	10.82	.65	.55		.03
LATHERS	12.27	.60	1.00		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Brush	$11.48		.90		
Structural Steel	11.75		.90		
Swing Stage, Bos'n Chair	11.80		.90		
Spray	12.17		.90		
PLASTERERS	12.08	.90			
PLUMBERS & STEAMFITTERS	15.70	.90	.75		.15
ROOFERS	12.00				
SHEET METAL WORKERS	13.31	.75	.60		.06
TILE SETTERS	11.35	.90	.70		
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental:					
POWER EQUIPMENT OPERATORS:					
GROUP I	14.12	1.35	1.00		.05
GROUP II	13.85	1.35	1.00		.05
GROUP III	13.52	1.35	1.00		.05
GROUP IV	13.41	1.35	1.00		.05
GROUP V	12.90	1.35	1.00		.05
GROUP VI	12.47	1.35	1.00		.05

GROUP I - Cranes, Shovels, Draglines, Backhoes, Clamshells, Derricks, Caisson Rigs, Pike Driver, Skid Rigs, Dredge, Operator & Traveling Crane (Bridge Type), Concrete Paver (over 27E), Concrete Spreader and Distributor
GROUP II - Material Hoist, Tractor or Truck Mounted Hydraulic Backhoe, Tractor or Truck Mounted Hydraulic Crane (5 Tons or Under), Manhoist, Tractor (over 40 h.p.), Bulldozer, Endloader, (over 40 h.p.), Forklift (25' & over), Motor Patrol, Scraper Operator, Sideboom, Straddle Carrier, Mechanic & Welder, Bituminous Plant & Paver Operator, Roller (over 5 tons), Rotary Drill Operator & Blaster, Trencher (Wheel Type or Chain Type having over 8-Inch Bucket)
GROUP III - Concrete and Grout Pumps, Backfiller, Concrete Auto Breaker (large), Concrete Finishing Machine (Road Type), Roller (Rubber Tire), Concrete Batch Hopper, Concrete Conveyor Systems, Concrete Mixers (14S or over), Screw Type Pumps, and Gypsum Pumps, Tractor, Bulldozer, Endloader (under 40 h.p.), Pumps (Well Points), Trencher (Chain Type having Bucket 8-Inch and Under), Industrial Locomotives, Roller (Under 5 Tons) and Firemen (Pile Drivers and Derricks)

POWER EQUIPMENT OPERATOR CLASSIFICATIONS (Cont'd):

GROUP IV - Hoists (Automatic), Forklift (12' to 25') Tampers-Compactors Auto Breaker, Hydro-Hammer (Small), Booms and Sweeper, Hoists (Tugger) Stump Chipper (Large), Boats, Safety Work, Barges Launch

BROUP V - Shouldering Machine Operator, Screed Operator, Farm or Industrial Tractor mounted Equipment, Post Hole Diggers, Stone Crushers and Screen Plants, Firemen (Asphalt Plants), Air Compressor (300 CFM or over)

GROUP VI - Generator over 15 KW, Pumps over 3", Augers (vertical and Horizontal), Combination Small Equipment Operator; Air, Electric Hydraulic Jacks (Slip Form), Compressor (Under 300 CFM) Welding Machine Heaters (Mechanical), Prestress Machines, Bobcats, Generators (Under 150 KW), Pumps (3" and under); Winches (Small Electric); Oiler and Greaser, Boiler Operators (Temporary Heat), Rotary Drill Helper, Conveyor, Forklift (12' and Under)

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Employer contributes 8% of regular hourly rate to Vaction Pay Credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular rate to Vacation Pay Credit for employee who has worked in business less than 2 years.

b. Holidays: A through F

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Wisconsin

COUNTIES: La Crosse, Monroe, & Vernon

DECISION NUMBER WI82-2021

DATE: Date of Publication

Supersedes Decision No. WI80-2030 dated April 25, 1980 in 45 FR 28077

DESCRIPTION OF WORK: Building Construction and Residential Construction in La Crosse County Only

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$14.38	1.20	1.35	1.50	.18
BOILERMAKERS	14.97	1.375	1.15		.05
BRICKLAYERS & STONEMASONS	12.65	.90	.70		
CARPENTERS: Carpenters	12.27	.60	1.00		.05
Millwrights & Piledrivermen	12.67	.60	1.00		.05
Carpenters (Residential)	7.67	.60	.50		.05
ELECTRICIANS	15.14	.70	3%		
ELEVATOR CONSTRUCTORS:					
Constructors	13.76	1.345	1.08	a&b	.035
Helpers	9.63	1.345	1.08	a&b	.035
Helpers (Prob.)	6.88				
GLAZIERS	14.50	.73			
IRONWORKERS (all but N.W. Corner of County):					
Structural, Ornamental & Reinforcing	13.11	1.25	1.00		.07
LABORERS:					
General Laborers, Mason Tenders Plaster Laborer	10.67	.65	.55		.03
Mortar Mixer Air Hammer Operator, Air Spade Operator and Jack Hammer Operator	10.82	.65	.55		.03
LATHERS	11.85	.60	.50		.05
PAINTERS:					
Brush	11.48		.90		
Structural Steel	11.75		.90		
Spray and Sandblasting	12.17		.90		
PLASTERERS	12.08	.90			
PLUMBERS:					
Plumbers & Steamfitters	15.70	.95	.75		.15
ROOFERS:					
Roofers	13.32			3%	
SHEET METAL WORKERS	13.31	.75	.60		.06
SOFT FLOOR LAYERS	11.80	.30			
TERRAZZO WORKERS & TILE SETTERS	11.35	.90	.70		

DECISION NO. WI82-2021

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS: Building Dump Truck Drivers or Excavators	9.77	c			
Welders - Receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Holidays; A through F

b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years, and 6% of rate for employee who has worked less than 5 years.

c. $128.51 a month welfare.

[FR Doc. 82-7194 Filed 3-18-82; 8:45 am]
BILLING CODE 4510-27-C

DECISION NO. WI82-2021

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	14.12	1.35	1.00		.05
GROUP II	13.85	1.35	1.00		.05
GROUP III	13.52	1.35	1.00		.05
GROUP IV	13.41	1.35	1.00		.05
GROUP V	12.90	1.35	1.00		.05
GROUP VI	12.47	1.35	1.00		.05

GROUP I - Cranes, Shovels, Draglines, Backhoes, Clamshells, Derricks, Caisson Rigs, Pile Driver, Skid Rigs, Dredge Operator and Traveling Cranes (Bridge Type), Concrete Paver (over 27E), Concrete Spreader and Distributor

GROUP II - Material Hoists, Tractor or Truck Mounted Hydraulic Backhoe, Tractor or Truck Mounted Hydraulic Crane (5 tons or Under), Manhoist, Tractor (over 40 H.P.), Bulldozer H.P.), Endloader (over 40 H.P.), Forklift (25' and over), Motor Patrol, Scraper Operator, Sideboom, Straddle Carrier, Mechanic and Welder, Bituminous Plant and Paver Operator, Roller (over 5 tons), Rotary Drill Operator and Blaster, Trencher (wheel type or chain type having over 8-inch bucket), Elevator

GROUP III - Concrete and Grout Pumps, Backfiller, Concrete Auto Breaker (large), Concrete finishing (Road Type), Roller (Rubber Tire), Concrete Batch Hopper, Concrete Conveyor Systems, Concrete Mixers (14S or over), Screw Type Pumps, and Gypsum Pumps, Tractor, Bulldozer, Endloader (under 40 H.P.), Pumps (well points), Trencher (chain type having bucket 8-inch and under), Industrial Locomotives, Roller (under 5 tons) and Firemen (pile drivers and derricks)

GROUP IV - Hoists (automatic), Forklift (12' to 25'); Tampers-Compactors riding type), Assistant Engineer, "A" Frame and Winch Trucks, Concrete-Auto Breaker, Hydro-Hammer (small), Booms and Sweeper, Hoists (tuggers) Stump chipper (large), Boats, Safety, Work, Barges and launch)

GROUP V - Shouldering Machine Operator, Screed Operator, Farm or Industrial Tractor Mounted Equipment, Post Hole Diggers, Stone Crushers and Screening Plants, Firemen (asphalt Plants), Air Compressor (300 CFM or over)

GROUP VI - Generators over 150 KW, Pumps over 3", Augers (vertical and horizontal), Combination Small Equipment Operator; Air, Electric Hydraulic Jacks (Slip Form), Compressors (under 300 CFM); Generators (under 150 KWO, Pumps (3" and under); winches (small electric), Oiler and Greaser, Boiler Operators (Temporary heat), Rotary Drill Helpers, Conveyors, Forklift (12' and under)

federal register

Friday
March 19, 1982

Part III

Department of Energy

Financial Assistance Rules; Grants and Cooperative Agreements: Proposed General, Policy, and Procedural Requirements

DEPARTMENT OF ENERGY

10 CFR Part 600

Financial Assistance Rules; Proposed Policy and Procedural Requirements for Grants and Cooperative Agreements

AGENCY: Energy Department.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today proposes a comprehensive revision of Subparts A and B of the DOE Assistance Regulations, 10 CFR Part 600, and several technical and conforming amendments to the rules for cooperative agreements contained in Subpart C of 10 CFR Part 600. The proposed amendments update and clarify the requirements for grants and cooperative agreements. As revised, Subpart A would contain general requirements for grants and cooperative agreements. Proposed Subpart B sets forth policy and procedural requirements that apply to grants. Subpart C, as proposed to be amended, sets forth policy and procedural requirements that apply to cooperative agreements. On the basis of experiences in the financial assistance area, DOE has recognized the need to refine, clarify, and, in some cases, develop policies to govern actions of DOE staff, applicants/recipients of financial assistance, and other parties. In addition, changes resulting from statutes enacted since March, 1979, and amendments to the Office of Management and Budget (OMB) Circulars need to be reflected in the DOE assistance rules.

DATE: Written comments on the proposed rule must be received by April 19, 1982.

ADDRESS: All written comments should be addressed to Department of Energy, Procurement and Assistance Management, Office of Policy (MA–931.2), 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Ellen Feinsilber, Financial Assistance Policy Branch (MA–931.2), Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–8191

Carol A. Cowgill, Office of the Assistant General Counsel for Procurement and Financial Incentives (GC–44), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6902

John H. Raubitschek, Office of the Assistant General Counsel for Patents (GC–42), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2806

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Proposed Rule
A. Introduction
B. Proposed General Requirements—Subpart A
C. Proposed Requirements for Grants—Subpart B
D. Proposed Technical and Conforming Amendments to Requirements for Cooperative Agreements—Subpart C
III. Review Under Executive Order 12291
IV. Review Under the Regulatory Flexibility Act
V. Review Under the Paperwork Reduction Act
VI. Review Under the National Environmental Policy Act
VII. Comment Procedures

I. Background

On March 8, 1979, the Department of Energy (DOE) published a final rule establishing the general procedures and requirements of the DOE assistance process and the specific procedures and requirements for DOE grants (44 FR 12921). These rules were codified at 10 CFR Part 600, Subparts A and B. Subpart C of this Part, which prescribes procedures and requirements for cooperative agreements, was published as a final rule on July 8, 1980 (45 FR 46047).

This revision is one of several initiatives DOE has undertaken in the last two years to make the administration of financial assistance within DOE consistent with the administration of financial assistance governmentwide. DOE works continuously to improve its implementation of the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224) and has considered both Pub. L. 95–224 and the Office of Management and Budget (OMB) implementing guidance (41 FR 36860, August 18, 1978) in this revision. DOE has also participated actively in the study of Federal assistance mandated by that Act. DOE chartered a Financial Assistance Appeals Board (45 FR 29764 (May 5, 1980)), and developed a Financial Assistance Procedures Manual (Draft Order DOE 4600.) which contains detailed internal guidance on the administration of grants and cooperative agreements under the current DOE Assistance Regulations (DOE–AR).

While today's proposed rule would cover all phases of the financial assistance process from solicitation through closeout, DOE does not intend to initiate a significant amount of new financial assistance activity. Rather, DOE is proceeding with this proposed rule at this time as much to facilitate an orderly closeout of DOE financial assistance awards as to have a uniform basis for making and administering awards.

This proposed rule is a generic rule which would provide a uniform baseline for DOE financial assistance administration. The proposed rule was developed based on the types of discretionary and formula financial assistance programs DOE presently administers and would specify how the various OMB Circulars and other governmentwide guidance which deal with financial assistance are to be implemented or applied by DOE. The applicable OMB Circulars are proposed to be incorporated by reference in the rule. Further, while the several Circulars issued by OMB on uniform Federal administration of grants and cooperative agreements (OMB Circular A–102, Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments and OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) do not apply on their own terms to grants provided to individuals, for-profit organizations, or foreign organizations, DOE proposes to make most of the OMB requirements apply to all grantees, regardless of type.

The proposed rule provides for use of nonstandard provisions, when necessary, through several controlled processes. For example, programs may specify the requirements that apply to individual programs by issuing program rules. Such rules may include refinements of or deviations from these proposed generic rules, which because of the established deviation process, would be controlling in the event of a conflict between a program rule and the proposed rule.

Subpart C of the current DOE–AR is proposed to be amended to bring it into conformance with Subpart A of this proposed rule. A substantive revision of Subpart C is now underway and will, at a future date, be published as a Notice of Proposed Rulemaking.

II. Proposed Rule

A. Introduction

Subpart A of the proposed rule contains the preaward and award requirements common to grants and cooperative agreements. The topics addressed in this general subpart include eligibility considerations, requirements for submitting and

evaluating applications and for making awards, and procedures for disputes, appeals and debarment.

Proposed Subpart B contains procedures and requirements for DOE grants administration and closely follows the organization and subject matter of OMB Circulars A–102 and A–110.

The proposed rule includes technical and conforming amendments to Subpart C which would make cooperative agreement administration consistent with the requirements of proposed Subpart A and which would make some additional nonsubstantive changes.

B. Proposed General Requirements—Subpart A

Proposed Subpart A would establish policies and procedures for the financial assistance process, the requirements applicable to DOE, and the requirements applicable to applicants, recipients, and subrecipients. Those provisions of the current Subpart A which DOE proposes to retain without substantial revisions are noted in the following discussion.

Proposed § 600.1 establishes the purpose and scope of 10 CFR Part 600 as well as the scope of Subpart A. Proposed § 600.2 establishes applicability and specifies that, to the extent consistent with Federal statute and existing program rules, the requirements of this part, as revised, would be phased in on an instrument-by-instrument basis and would apply to individual awards and subawards thereunder beginning on or after the effective date of the revised rules. In addition, the procedures provided in this proposed rule for disputes and appeals, debarment, suspension and termination and closeout may take effect for existing awards as specified in this proposed section and in § 600.100. DOE does not intend to unilaterally change the terms and conditions of existing awards in those instances where the provisions of the proposed rule may differ from or are not in the current DOE–AR but rather intends to provide due process and uniform treatment for recipients. In order to accommodate changing financial assistance requirements which are not originated by DOE, proposed § 600.2 would require that recipients comply with amendments to statutes, regulations, and OMB and other guidance, to the extent applicable, if an award is made after the effective date of such amendments. Proposed § 600.2(d) discusses the applicability of the OMB Circulars cited in this part. DOE has requested formal approval from the Office of the Federal Register (OFR) to incorporate by reference the OMB Circulars cited in § 600.2(d). OFR has given DOE a preliminary indication that the request will not be approved because each of the listed OMB Circulars has been published in the **Federal Register.**

Proposed § 600.3 defines a number of terms that are used throughout Subpart A and, in some cases, in Subparts B and C. Some of these definitions are derived from statute or OMB Circulars, while other of the definitions are used within financial assistance administration generally. This section includes several definitions included in or derived from Pub. L. 95–224. "Assistance" is defined in its broadest sense in order to differentiate that set of relationships from those of acquisition or procurement. For purposes of this rule, "financial assistance" would be defined as a subset of assistance limited to the transfer of money or property. However, under Pub. L. 95–224, grants and cooperative agreements are the appropriate legal instruments for both "financial" and "non-financial" assistance under the conditions specified in the Act. Although, DOE occasionally provides nonfinancial assistance, e.g. technical assistance, the nature and circumstances of such assistance vary considerably, and the terms and conditions of such assistance are more appropriately determined by negotiation. For this reason and since most of the requirements of the proposed rule concern financial matters, (e.g. financial management systems, income, budgets, costs), DOE proposes to limit the scope of this rule to financial assistance only, and, accordingly, to change the title of the rule from DOE Assistance Regulations to DOE Financial Assistance Rules.

Section 600.4 of the proposed rule would govern deviations. The proposed clearance process would ensure that the intent of these regulations, i.e. to establish a uniform administrative system, is carried out by both DOE and the recipients of DOE funds and property, and would also ensure adherence to the OMB requirements implemented by this rule. However, DOE also recognizes that variations among programs, projects, recipients, and other performers may necessitate some deviation from these rules. Under proposed § 600.4, a request for a deviation could be initiated by an applicant, a recipient, or a subrecipient as well as by DOE staff. Deviations would be authorized by DOE only (1) when considered necessary to achieve program objectives, (2) to conserve public funds, (3) when it is otherwise essential to the public interest, or (4) when necessary to provide equity to a recipient or subrecipient.

Proposed § 600.5 sets forth the general policy considerations for selecting the appropriate award instrument. Pub. L. 95–224 requires that the selection of the appropriate award instrument, i.e. procurement contract, grant, or cooperative agreement, be made on the basis of the intended relationship, and, if the relationship is intended to be assistance, on the basis of the degree of anticipated DOE involvement during the performance of the contemplated activity. In addition to continuing the present DOE policy of observing the requirements of Pub. L. 95–224 and the OMB implementing guidance (41 FR 36860, August 18, 1978), this section indicates that the criteria in that statute are the only ones DOE may use in determining whether a grant, a cooperative agreement, or a procurement contract is the most appropriate legal instrument.

Proposed § 600.6 states the DOE commitment to a competitive financial assistance process, a commitment which is reflected in the requirements and procedures in subsequent sections of the proposed rule. This DOE policy is consistent with Sec. 2(b)(3) of Pub. L. 95–224 which encourages competition, where deemed appropriate, in the award of grants and cooperative agreements.

Proposed § 600.7 indicates that eligibility to receive DOE financial assistance is based on Federal statute and program rules, and specifies the requirements that would be applicable to any restriction of that eligibility. This section proposes to limit to exceptional circumstances the financial assistance eligibility of current DOE employees or businesses or organizations substantially owned or controlled by one or more current DOE employees. Former DOE employees or organizations owned or controlled by one or more former employees would be ineligible for financial assistance if DOE finds any such individual out of compliance with the governing standards of conduct (10 CFR Part 1010, Subpart C).

In proposed § 600.8 DOE expresses its continued commitment to providing an adequate opportunity for small and disadvantaged businesses to compete for DOE financial assistance awards. Consistent with recent court decisions, e.g. "Fullilove v. Klutznick", 448 U.S. 448 (1980), DOE is proposing that small and disadvantaged business preferences or set-asides may be used in financial assistance only if they are statutorily authorized. Proposed § 600.8 would require that the basis for any small or disadvantaged business preference or set-aside be made explicit in the solicitation.

Proposed § 600.9 sets forth the minimum requirements for solicitations. Every solicitation would be required to provide sufficient information to allow potential applicants to understand what they may apply for, when and how to submit an application, how an application will be evaluated, the basis for selection, and the terms and conditions under which resulting awards will be administered. Although the form and specific content of financial assistance solicitations may vary based on the type of financial assistance instrument to be used, the state of the art in the relevant scientific or technical area, and the degree of specificity with which program goals can be stated, the elements in this proposed section would be common to all financial assistance solicitations. DOE recognizes, however, that there may be instances when a solicitation is appropriate but the potential relationship or range of relationships between DOE and an applicant/proposer is not definable or should not be limited to financial assistance only. In such cases a "mixed solicitation" which indicates the applicable requirements for procurement as well as financial assistance applications/awards may be used. Specific examples of such solicitations are Program Opportunity Notices (PONs) and Program Research and Development Announcements (PRDAs) which are explained in detail in the DOE Procurement Regulations (41 CFR 9–4.57 and 9–4.58).

Proposed § 600.10 is a new section which, in paragraphs (a), (b), and (c), sets forth requirements for financial assistance applications, including their form and content. Paragraph (d) of this section provides that DOE will consider only those applications that are complete and that meet the established deadline for submission. An incomplete application may be returned to the applicant without any action taken on it if the nature of the omission precludes evaluation. This section would also allow DOE to request necessary additional information during review and evaluation of an otherwise complete application.

Proposed § 600.11 would implement the requirements of OMB Circular A–95, "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects," Attachment A, Parts I and III, "Project Notification and Review System" and "State Plans," respectively. In order for OMB to fulfill its responsibilities under the Federal Program Information Act, (Pub. L. 95–220), OMB requires that any published announcement of the availability of funds for financial assistance awards, including program rules and solicitations, contain a statement as to whether the Project Notification and Review System procedures of OMB Circular A–95, Attachment A, Part I, revised 41 FR 2052 (January 13, 1976), amended 44 FR 45502, (August 2, 1979) are applicable. To implement this requirement, DOE program offices would determine the applicability of OMB Circular A–95 to their programs based on the requirements of the Circular and internal DOE implementing instructions. Potential applicants would be notified of any requirements for A–95 compliance in program rules, in solicitations, and by other appropriate means.

Part I of A–95, Attachment A requires applicants to notify the designated A–95 clearinghouse(s) sufficiently in advance of submission of the application to the Federal government or to the recipient, in the case of an application for a subaward, to allow for clearinghouse review. Proposed § 600.11 would require that an application subject to Part I which does not evidence compliance when submitted to the awarding party be returned to the applicant without further action. Although such action may jeopardize an applicant's chances for submitting a timely competing application, DOE feels that this approach not only would induce A–95 compliance but also would result in equitable administration of the A–95 requirement. This section would also clarify which types of applications under a covered program are required to undergo A–95 review. Unless otherwise requested by the clearinghouse, only applications or preapplications for initial or renewal funding and applications including new substantive activities or substantial changes in activities from those previously reviewed by the clearinghouse would be required to be submitted to the clearinghouse.

Proposed § 600.12 addresses the complex subject of generally applicable socioeconomic and public policy requirements that may apply to financial assistance. These requirements derive from Federal statutes, Executive Orders, and other governmentwide guidance. The Executive Branch has taken some initial steps to improve the administration of these requirements. OMB has proposed a circular which would designate certain Federal departments or agencies as guidance agencies for the implementation of these various requirements (45 FR 74416 (November 7, 1980)). OMB also has proposed updating the assurances contained in its standard application forms and extending these assurances, as appropriate, to recipients covered by OMB Circular A–110 (46 FR 13958 (February 24, 1981)).

The applicability of any single generally applicable requirement depends on factors such as the nature of the recipient, the type of financial assistance instrument, the type of assisted activity, the amount of the award, and the geographical area where the activity will be carried out. In Appendix A to this Part, DOE has listed those generally applicable requirements (as specified in the proposed OMB Circular cited above) not otherwise specified in proposed Subparts A and B. The Appendix is merely a guide and is not intended to be considered as applicable to all awards nor to be relied upon as the exclusive source of generally applicable requirements to which a recipient may be subject. While DOE intends to provide applicants and recipients with the maximum amount of available information, if an applicable Federal requirement is not cited in the terms and conditions of an award, the recipient's responsibility for complying with the requirement would not be diminished. Paragraph (b) of this proposed section provides that DOE may require a preaward assurance of compliance with a generally applicable requirement only if such action is authorized by Part 600, Federal statute or rule, or OMB directive.

Proposed § 600.13 is a new section concerning deadlines for submission of applications. An application which reaches DOE after the established deadline date would be considered timely if it were postmarked on or before the deadline date and if it reaches DOE in time to be evaluated with other timely applications. DOE believes that relying on the postmark date to determine when to accept or reject "late" applications would provide the greatest measure of fairness to all applicants, regardless of nature, size or geographical location, without compromising competition or the efficiency of the DOE financial assistance process.

Proposed § 600.14 deals with unsolicited applications in essentially the same manner as the current DOE–AR. DOE's unsolicited proposal/application process is substantially the same for requests for DOE contract funds or for financial assistance. Although DOE considers it necessary to have standardized procedures for reviewing and evaluating unsolicited applications, this section would authorize DOE to support only those

unsolicited applications that propose projects which are unique or innovative in idea, method or approach. Proposed paragraphs (b) and (c) of this section provide information on the preapplication and application process for unsolicited applications. Paragraphs (d) and (e) specify types of evaluation criteria DOE may use to determine the merit of an unsolicited application, and the selection criteria which must be met. An unsolicited application may be selected only on the basis of technical merit *and* uniqueness or innovativeness of idea, method, or approach; however, selection does not represent a guarantee of award. These selection criteria are more stringent than those of the current DOE–AR. DOE has made this decision based on the need to balance encouragement and support of such unsolicited projects with DOE's commitment to competition. Proposed paragraph (f) of this section provides that an award based on an unsolicited application may be made only if sufficient appropriated funds are available. This proposed section also clarifies the way in which DOE would treat any additional or further applications for support of a project which was originally unsolicited. Continuation, renewal, or supplemental applications would not be treated as "unsolicited applications" for purposes of selection. Internal DOE procedures for receipt and evaluation of unsolicited applications are contained in DOE Order 4210.4.

Proposed § 600.15 describes the Notice of Program Interest (NPI) which DOE may use to stimulate the submission of applications for grants or cooperative agreements. The NPI is not a solicitation. Responses to an NPI would be treated as unsolicited applications because they would represent disparate ideas and approaches that cannot undergo a comparative evaluation. A similar section appears in the current DOE–AR.

Proposed § 600.16 (a) indicates the types of reviewers DOE may use in the application review process, which may include Federal and/or non-Federal persons. Proposed § 600.16 (b) would require that any solicitation specify whether non-DOE reviewers will or may be used, if such information is available at the time of solicitation. Proposed § 600.16(c) would require an outside evaluator to sign a written statement indicating his or her agreement to honor any confidentiality requirements of an application, to use an application for evaluation purposes only, to return all copies of an application after evaluation, and, unless authorized by DOE, not to contact the applicant concerning an application. This requirement is contained in the current DOE–AR.

Proposed § 600.17 would require that the financial assistance process be free from any apparent or actual conflict of interest. Proposed § 600.17 cross-refers to 10 CFR Part 1010 which contains the Department's rules on the conduct of current and former employees. Proposed § 600.17 states that such employees who participate in any aspect of the financial assistance process shall comply with all applicable requirements of the DOE employee standards of conduct. Any person, who is not a past or present DOE employee, who participates in the review of applications for financial assistance would be required to comply with §§ 1010.101(a) and 1010.302(a)(1) of 10 CFR Part 1010.

One effect of proposed § 600.17 would be to make outside evaluators, including contractors, subject to the same stringent conflict-of-interest proscriptions that apply to DOE employees performing the same financial assistance functions. DOE believes that making these standards of conduct applicable to outside evaluators is necessary to maintain public confidence in the integrity of the Department's evaluation of financial assistance applications. Questions concerning the application of the Department's rules on the conduct of employees should be referred to the Assistant General Counsel for Standards of Conduct (GC–45).

Proposed § 600.18 is a new section which consolidates the DOE requirements with respect to disclosure of information associated with the financial assistance process. DOE proposes to disclose to the public information provided by applicants and recipients and information maintained by DOE to the extent required by law. DOE's rules on the Freedom of Information Act are codified at 10 CFR Part 1004. Proposed § 600.18(c) would allow applicants to request that information designated by them as privileged or confidential be disclosed only for evaluation purposes and specifies how DOE would treat any such information.

Proposed § 600.19 is a new section which indicates the factors that are considered in the selection of an application for award and how the selection official will be determined. Although only a summary statement, it is intended to indicate the steps which must be completed in order to arrive at a selection decision and to make explicit that selection is not equivalent to a guarantee of funding. This section also contains a discussion of program policy factors. These factors, as described, are discretionary in the sense that they need not be used in a competition or, if included in a solicitation, need not be applied by the selection official. However, in any situation where DOE would intend to select applications on a basis other than technical merit alone, the factors that may be applied must be included in the solicitation or other public announcement of the availability of funds.

Proposed § 600.20 is a new section which sets forth the legal requirement that a DOE award is valid only if it is in writing, is signed by a DOE Contracting Office, and is made pursuant to an approved application or State plan. The system of warranting Contracting Officers, thereby authorizing them to commit DOE to the expenditure of funds, is governed by internal DOE directives.

Proposed § 600.21 is a new section which outlines in general terms the type of Information that would be included in an award.

Proposed § 600.22 is a new section which would require that an applicant provide written acknowledgment when it intends to accept an award. The applicant's signature would be required on the Notice of Financial Assistance Award after that document is signed by the DOE Contracting Officer. The applicant's acknowledgment is required to assure that both parties to the award have the same understanding of their respective rights and responsibilities. After the applicant acknowledges acceptance of the award, DOE and the recipient are limited in the actions they may take unilaterally to change the award. If an applicant declines an award, fails to acknowledge acceptance of an award, or does not perform once an award is acknowledged, DOE would verify the applicant's intent prior to taking further action.

Proposed § 600.23 would require DOE to provide prompt written notification to unsuccessful applicants, i.e. those applicants whose applications have not been selected for an award or whose applications cannot be funded because of the unavailability of appropriated funds. If an application was not selected for award, the applicant could request a more detailed explanation that is provided in the initial notification.

Proposed § 600.24 is a new section which provides that DOE is not required to contribute any additional funds or resources beyond those specified in the award as the DOE share of the approved budget or project costs for the funding

period covered by the award. This proposed provision is consistent with current DOE financial assistance policy and with the practices of other Federal agencies.

Proposed § 600.25 would consolidate the access to records requirements applicable to recipients, Subrecipients and contractors under financial assistance awards. The proposed section specifies who shall have access to relevant records, which differs based on whether the records are those of the recipients or whether they are maintained by a subrecipient, contractor, or subcontractor. The right of access would exist for as long as the records are maintained. The required periods for record retention under grants and cooperative agreements are specified in Subparts B and C of this part.

Proposed § 600.26 sets forth the procedure DOE would follow when disputes occur, and the procedures for appealing such decisions to the DOE Financial Assistance Appeals Board (the Board). As proposed in § 600.26(a), these procedures would be available to applicants, recipients and "any person who establishes that he or she is or represents a real party in interest (including a class of similarly situated individuals or organizations)."

If a dispute cannot be resolved informally, the dispute resolution procedure would end with a written decision signed by the Contracting officer which summarizes the issues in dispute and explains the factual, legal, and policy reasons for the final decision. The decison could be appealed to the Board within 60 days in accordance with the procedures set forth in 10 CFR Part 1024 if it is a matter within the jurisdiction of the Board established under paragraph (d) of this proposed section.

Paragraph (c) of this proposed section provides that the filing of a notice of appeal or an appeal shall not stay the DOE determination or action which is the subject of the appeal. Pending a decision by the Board, DOE could take such authorized actions as may be necessary to preserve the statue quo, or to preserve its ability to provide relief in the event the Board decides in favor of the complaining party.

Paragraph (d)(1) of this proposed section lists the types of disputes which the Board would have no jurisdiction to review. In general, these disputes involve actions which would be committed, by rule, to DOE's discretion. DOE denials of budget revision requests, for example, could not be reviewed by the Board. In addition to the designated discretionary actions, the Board could not review any DOE action taken under the Department's rules on Nondiscrimination in Federally Assisted Programs, 10 CFR Part 1040 (45 FR 40514 (June 13, 1980) as proposed to be amended by 46 FR 49546 (October 6, 1981)). The latter rules provide that, when a hearing is required, disputes over such actions shall be reviewed by the Federal Energy Regulatory Commission, DOE. The Board also could not review the conversion of a recipient from an advance payment method to a reimbursement payment method (§§ 600.112(d) and 600.271); withholding of payment (§§ 600.112(f) and 600.271); or suspension of an award (§§ 600.122(b) and 600.271). Finally, the Board could not review a DOE decision not to fund a continuation award if such decision were based on the insufficiency of available appropriations.

Paragraph (d)(2) of proposed § 600.26 lists the disputes the Board would have jurisdiction to review. These include termination of an award by DOE and cost disallowances. In addition to the listed disputes, the Board would be authorized to exercise any right of review established by program rule.

Proposed § 600.26 provides at paragraph (d)(3) that the Board shall be bound by all applicable laws and regulations, including the requirements of 10 CFR Part 600, and by the terms and conditions of the award. The concluding paragraph of this proposed section states that the Board's decision shall be the final decision of the Department.

The public is invited to suggest modifications which would make the proposed DOE dispute and appeal procedures more cost effective and equitable.

Proposed § 600.27 is a new section which would allow DOE to debar organizations or individuals from eligibility to participate in or receive DOE financial assistance awards. Organizations and individuals being considered for debarment would receive written notification from the Director, Procurement and Assistance Management (Director) providing the opportunity for a hearing prior to debarment unless immediate debarment is warranted. Debarment hearings would be conducted by the DOE Financial Assistance Appeals Board on behalf of the Secretary, DOE. Debarment procedures are available for Federal procurement activities, and have been adopted by the Department of Health and Human Services (HHS) for its financial assistance programs (45 FR 67202 (October 9, 1980)). DOE considers the debarment procedures of this proposed rule necessary to protect the Federal interest. Violations of the nondiscrimiantion provisions of 10 CFR Part 1040 and E.O. 11246 that may result in debarment are not within the scope of § 600.27.

Proposed § 600.27(b) specifies the grounds for debarment which include not only conviction for a criminal offense but also grossly inadequate performance or willful failure to perform under a financial assistance award. The listed grounds, including debarment by DOE or another Federal department or agency from contracting, subcontracting or assistance, would be indicators of a situation warranting debarment of an organization and/or individual.

Proposed § 600.27 (c) and (d) would establish the scope and period of debarment. Debarment may be as narrow or as broad as is appropriate in a given situation. The proposed rule provides that debarment may be limited to the organizational components involved in the conduct leading to the debarment or may include affiliates of an organization. Individuals may also be debarred, if appropriate. Paragraph (d) provides guidelines for determining the length of a period of debarment.

Proposed § 600.27 (e) and (f) would require that DOE provide written notice to the affected party(ies), whenever debarment or extension of a debarment is being considered, which gives the respondent the opportunity to request a hearing prior to a final decision concerning debarment. Alternative requirements for immediate debarment situations are included. Paragraph (f) specifies the responsibilities of the DOE Financial Assistance Appeals Board (Board) for debarment hearings and the potential for review of the Board's decision by the Secretary.

Proposed § 600.27(g) would allow the Director, upon appropriate written notice, to immediately debar an organization, individual or affiliate in advance of a hearing when considered necessary to protect the interests of the United States. The Director may take such an action based either on reasonable evidence of the need for such action or on the return of an indictment for a criminal offense which would be grounds for debarment. Immediate debarment is an extraordinary action and is not intended to allow DOE to debar without due process. Consequently, paragraph (g) would limit the duration of an immediate debarment. The scope and effect of an immediate debarment would be the same as for any other debarment under this section.

Proposed § 600.27(h) specifies how debarment affects the eligibility of an organization, individual or affiliate to

receive DOE financial assistance. As proposed, this paragraph would, in general, prohibit a debarred organization, individual or affiliate from being considered for discretionary financial assistance from DOE or for any subaward, contract or remuneration resulting from any DOE financial assistance award or subaward whether discretionary or nondiscretionary. This would preclude debarred individuals from salaried service or other compensated participation in such activities.

Paragraph (i) of this section, as proposed, would require DOE to publish a notice in the **Federal Register** whenever an organization, individual or affiliate is debarred, whenever a debarment is reduced or extended, and, in the case of an immediate debarment, a notice when the debarment is ended. A consolidated listing of debarred organizations and individuals would be established and maintained by DOE pursuant to § 600.27(j) and would be available in the public reading rooms maintained by DOE in accordance with its Freedom of Information regulations.

C. Proposed Requirements for Grants—Subpart B

Proposed Subpart B sets forth the application, funding, administrative, and other requirements for grants.

DOE may solicit grant applications and award grants to carry out a specific program or mission of the Department if the related statutory authorities authorize DOE to accomplish a public purpose of support or stimulation in carrying out that program or mission, whether or not grants are specified as the award instrument. The decision to use the grant instrument will be based on DOE's implementation of Pub. L. 95–224.

Although DOE is not bound by OMB Circulars A–102 and A–110 in establishing administrative requirements for grants to individuals, for-profit organizations and foreign organizations, DOE intends by means of this subpart to establish , to the maximum extent feasible, uniform requirements for grants and subgrants regardless of type of recipient. The use of nonstandard requirements would be limited to those required by statute, those approved as formal deviations, or those resulting from DOE exercise of any of the options, provided in this proposed subpart.

This subpart, as proposed, delineates grantee rights and responsibilities with respect to subgrantees and contractors under the grant. Although the concept is not repeated in each instance, it is important to understand that DOE's legal and administrative relationship is with the grantee only. The grantee is responsible for such actions as monitoring subgrants, assuring that appopriate cost principles are used and prior approvals obtained, following up on audit reports, etc., in order to protect itself from possible cost disallowances or other adverse actions by DOE.

For ease of reference, definitions of terms used in Subpart B are included at the beginning of the proposed subpart at § 600.101. Among the terms proposed to be defined are those which are used in the Regulatory Flexibility Act of 1980 (Pub. L 96–354), i.e. "small business," "small governmental jurisdiction," "small organization," and "small entity." since, in various sections of the rule, DOE proposes to lessen the requirements placed on the small entities described in that statute. DOE intends to include "small" educational institutions in the category of "small entities" and invites comments on the criteria that should be used in distinguishing a "small" educational institution. The other definitions included in this section either derive from the OMB Circulars which govern financial assistance administration or reflect standard usage and practice. For example, the definition of "grantee" states a general principle of grants administration, i.e. the grantee is the entire organization even if a component entity is awarded a grant. Thus, although a State Energy Office may be primarily responsible for the project or activities being supported by DOE and is identified as the grantee on the Notice of Financial Assistance Award, the State is considered to grantee. This definition has practical implications for property accountability, program income, and procurement under grants as reflected in those sections of this subpart which deal with those subjects.

This subpart contains no treatment of types of solicitations or solicitation requirements. DOE believes that it is unnecessary to assign a particular name or designation to a solicitation that may be used for the solicitation of grant applications only and to provide a distinct treatment of its contents. Accordingly, the solicitation provisions of proposed Subpart A would apply to solicitation of grant applications.

Proposed § 600.102 describes the general information DOE may request from applicants. Consistent with the guidance in OMB Circulars A–102 and A–110, the Department would require only limited budgetary information in the initial submission of the application and would require more detailed or additional information only as necessary to complete the review of the application. DOE also seeks to discourage applicants from providing extraneous information. To further DOE implementation of these provisions as well as to standardize reporting requirements which are discussed later in this preamble, DOE has developed the "Uniform Reporting System for Federal Assistance (Grants and Cooperative Agreements)" (DOE/MA–0001) available from U.S. Department of Energy, Technical Information Center, Secondary Distribution, P.O. Box 62, Oak Ridge, TN 37830. Reference is made to this system and options for its used are explained in several sections of this subpart.

Proposed § 600.103(a) through § 600.103(f) elaborate on how to apply and follow the cost principles, and specify several general policies with respect to allowable costs. A new set of cost principles, OMB Circular A–122, "Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Organizations," was issued after promulgation of the current DOE–AR, and Federal Management Circular 74–4, "Cost Principles Applicable to Grants, Contracts, and Other Agreements with State and Local Governments," has been redesignated as OMB Circular A–87. DOE is proposing that unincorporated individuals use the nonprofit cost principles and that hospitals use the cost principles established for hospitals by the Department of Health and Human Services rather than the commercial cost principles (41 CFR Subpart 1–15.2 as modified by DOE at 41 CFR 9–15.2). Section 600.103(c) would require that a subgrantee or a contractor under a grant or subgrant be subject to the cost principles applicable to the subgrantee or contractor entity type. For example, a State government grantee subject to OMB Circular A–87 would require a commercial concern administering a cost-reimbursement contract under the grant to use the commercial cost principles to determine allowable costs.

Proposed § 600.103(e) clarifies the way which any requirement for approval pursuant to the cost principles shall be considered satisfied.

Proposed § 600.103(f) would establish the documentation requirements and other policy and procedural requirements associated with DOE's payment of indirect costs.

Proposed § 600.103(g) states the requirement for Contracting Officer prior approval of the incurrence of costs prior to the beginning date of the initial budget period of a new or renewed project period (these terms are

explained in proposed § 600.106). The Contracting Officer, as the official authorized to obligate DOE to the expenditure of funds, is the only official with the authority to provide such approval. Even if approval is sought and granted, DOE is not obligated to reimburse the grantee for any such costs if an award is not made.

Proposed § 600.103(h) states that no fee or profit may be paid to DOE grantees or subgrantees. As a participant in an OMB task force considering this issue and in formulating this proposed rule, DOE has considered whether to allow such payments to all types of grantees and subgrantees or to for-profit organizations only. DOE has concluded that the payment of a fee or profit to any grantee or subgrantee is inappropriate because of the nature of financial assistance.

Proposed § 600.104(a) provides that the applicant's signature on the application represents its assurance of compliance or intent to comply with those generally applicable requirements (other than the nondiscrimination provisions of 10 CFR Part 1040) which require preaward assurances as well as its assurance of compliance or intent to comply with the management standards of the proposed rule and the terms and conditions under which the grant is proposed to be awarded. This single signature requirement obviates the need for any separate or additional signed certifications of compliance other than that requireed by 10 CFR Part 1040. This section also proposes that, in the event the awarding party determines that an applicant is not complying or cannot or will not comply with generally applicable requirements, that its management systems are deficient, or that the applicant is otherwise incapable of carrying out its propsoed project, a documented finding that the applicant is not responsible may serve as the basis for disapproval of an application or the use of special restrictive award conditions.

Proposed § 600.105 implements the provisions of Paragraph 10 of OMB Circular A–102 and Paragraph 9 of OMB Circular A–110 which permit the use of special conditions, which would otherwise be considered deviations from the Circulars, under certain circumstances. With a documented finding that an applicant/grantee/subgrantee is financially unstable, has a history of poor performance, or does not meet the management standards of this rule, the awarding party would be able to effectively deviate from this rule without observing its formal deviation requirements. This section would also extend this OMB provision to grantees and subgrantees not covered by those Circulars, i.e., individuals, for-profit organizations, and foreign organizations. Proposed § 600.105 would apply only to determinations made in anticipation of making an award. If the awarding party makes a postaward determination that a grantee or subgrantee is not in compliance with the terms and conditions of its award, this proposed rule describes other possible courses of action (see discussion under § 600.121).

Proposed § 600.106 is a new section which provides detailed procedures for the funding of DOE grants. Because of the variety of DOE grant programs and the variety of activities that may be supported under a grant, this section is designed to provide maximum flexibility with respect to funding arrangements. As proposed, the preferred method of funding multiyear grants would be on an annual basis within an approved project period. This section indicates that the funding of each budget period within a project period is based on an evaluation which may result in a decision not to provide additional funds. This section also proposes provisions to clarify funding of subgrants and contracts under a grant or subgrant in relation to the funding of the basic grant.

The remainder of this subpart closely follows the organization of OMB Circulars A–102 and A–110.

Proposed § 600.107 is a new section which contains DOE policy with respect to cost sharing in grants. When cost sharing is not mandated by statute, DOE would have the discretion to require cost sharing and to set a minimum amount to be cost shared in order to assure that the resources available from all sources are reasonable and sufficient to achieve grant objectives. DOE proposes that the standards governing the allowability of costs/contributions for cost sharing contained in OMB Circulars A–102 and A–110 apply to all DOE grantees and subgrantees.

Proposed § 600.108 is a new section which specifies the composition of the total approved budget and the significance of the authorized level of DOE funding. In order to minimize the amount of funds obligated by DOE that become excess to the needs of the grantee, § 600.108(b) proposes to adopt the provision of OMB Circulars A–102 and A–110 which requires a grantee to notify DOE when the amount of DOE funding is expected to exceed the grantee's needs by more than $5,000 or five percent of the DOE award, whichever is greater, for all DOE grantees and all DOE grants, including those which provide for annual continuation funding. The treatment of unobligated funds especially as part of the total approved budget, has proven confusing and problematic to DOE and its grantees and it is DOE's intention in proposed § 600.108(c) to clarify the way in which such funds may be used.

Proposed § 600.109 contains the detailed requirements for grantee and subgrantee financial management systems as set forth in OMB Circulars A–102 and A110. DOE proposes to apply these requirements to all grantees and subgrantees. However, based on DOE experience with awards to individuals, most individuals will not have such a "system" nor is it necessary for them to develop such a "system" in order for them to account for their use of grant or subgrant funds. Therefore, § 600.109(c) proposes an alternative requirement for individuals. DOE intends to rely on information provided by applicants and grantees to the extent possible when judging the adequacy of financial management systems and proposes in § 600.109(d) to reduce the review burden on small entities (in the spirit of the Regulatory Flexibility Act of 1980, Pub. L. 96–354) that have a limited relationship with DOE in terms of dollars and duration of financial assistance by relying on available information such as reports of previously conducted audits.

Proposed § 600.110 includes requirements with respect to cash depositories, and proposed § 600.111 includes requirements with respect to bonding and insurance. These requirements, which are the same as those contained in OMB Circulars A–102 and A–110, would apply to all DOE grantees and subgrantees.

Proposed § 600.112 specifies the payment alternatives and requirements under grants and subgrants. This section is consistent with the provisions of Treasury Circular (TC) 1075 and OMB Circulars A–102 and A–110. The proposed policy on converting a grantee from an advance payment method to reimbursement in § 600.112(d) is derived from TC 1075. DOE proposes to add some procedural requirements to assure due process before DOE makes any final decision with regard to a grantee's continued eligibility for advance payment. Section 600.112(f) contains a provision concerning withholding of payment which is derived from Attachment J of OMB Circular A–102 and Attachment I of OMB Circular A–110. Withholding of payments in accordance with this section is differentiated from suspension or termination by the effect on the grantee's authority to continue to incur

obligations. If payment were withheld under this proposed section without suspending or terminating the grant, the grantee's authority to incur new obligations would not be curtailed, as would be the case if the grant were suspended or terminated. DOE will comply with the Department of Treasury Policy for Financial Transactions with Foreign Nations and International Organizations (November 7, 1979) in determining how foreign grants will be paid. Proposed § 600.112(g) contains a new DOE policy which would allow grantees to assign payments, under the conditions specified, as a means of securing adequate working capital. As indicated in that paragraph, assignment may only be available as a means of obtaining working capital when a grantee is *reimbursed* by Treasury check. DOE believes that the provisions of this section are appropriate for all DOE grantees and is, therefore, proposing them as uniform requirements.

Proposed § 600.113 specifies how DOE proposed to treat the different types of income that are considered "program income." One type of income, which is not considered to be earned by grantees, is interest or other investment income resulting from advances of DOE funds. As indicated in the proposed § 600.13(b), States, instrumentalities of States, and their subgrantees are not accountable to DOE for such income. The exemption for States and their instrumentalities is based directly on the Intergovernmental Cooperation Act of 1968. The exemption for their subgrantees is based on several Comptroller General decisions interpreting that statute. The exemption for subgrantees of States holds even if the subgrantee is not a State or instrumentality of a State. All other grantees and subgrantees would be accountable to DOE for income resulting from advances of DOE funds.

When program income is not attributable to advanced funds, to the sale of property acquired for use under the award, or to patents or copyrights, proposed § 600.113(e) would require that such income always be used as a deduction from total allowable project costs unless the terms and conditions of the award specify an alternative use(s) consistent with the provisions of this section, e.g. use for cost sharing or to fund costs in addition to those included in the total approved budget.

Proposed § 600.114 sets forth procedures for making postaward changes to approved budgets and project plans. Paragraph (b) of this section, which deals with budget changes, complements the discussion of prior approval in § 600.103, and would implement the budget revision requirements of OMB Circulars A–102 and A–110 and make them applicable to all DOE grantees and subgrantees. Paragraph (c) of this section deals with project changes. The Office of Management and Budget has recently rescinded Federal Management Circular 73–7, "Administration of College and University Research Grants," which was the source of several prior approval requirements for project changes, including a change in principal investigator and transfer of responsibility for the principal activities of a grant to a third party. However, DOE proposes to retain the requirement for prior approval of a change in program director or principal investigator under a research grant as a necessary element of research administration. DOE proposes to retain and apply to all grantees and subgrantees the requirement for prior approval of a postaward change which would result in the transfer to a third party of responsibility for performance of activities central to the purposes of the grant or subgrant.

Proposed § 600.115 sets forth the requirements and procedures for performance reports. In order to standardize peformance reporting formats, DOE has developed and received OMB approval for several reporting forms/formats which appear in the DOE publication "Uniform Reporting System for Federal Assistance (Grants and Cooperative Agreements)" (DOE/MA–0001) (URSFA). This proposed rule would adopt the URSFA forms and the performance reporting requirements of OMB Circulars A–102 and A–110 for all DOE grantees. DOE would be required to specify applicable forms in solicitations and the forms would be used as provided in this proposed regulation and DOE instructions on the URSFA.

Proposed § 600.116 contains requirements for financial reports. Consistent with our intent to make these proposed rules and DOE grant administration as uniform as feasible, DOE proposes that all DOE grantees use the OMB Circular A–102/A–110-prescribed forms for financial reports. In those instances where proposed §§ 600.115 and 600.116 allow DOE to waive a requirement for a form or report or to specify an alternative requirement, DOE may exercise the option provided on a grant-by-grant basis or for a class of grants. The proposed rule would allow DOE to specify that Financial Status Reports be prepared on an accrual basis only when required by statute or program rule but would not require the grantee to convert to an accrual accounting system to satisfy any such requirement.

Proposed § 600.117 contains property management standards. Proposed § 600.117(a) contains definitions of terms used in this section. DOE has also adopted the definition of equipment, currently in OMB Circulars A–21 and A–122, for all types of grantees and subgrantees. The $500 acquisition cost and useful life of two or more years represents a threshold for accounting purposes, i.e. the level at which capitalization is required. The distinction, in some cases, between equipment and supplies may be only the difference between acquisiton costs and need not be a qualitative difference. This section differentiates among federally-owned, exempt, and nonexempt equipment for the purpose of determining the applicable requirements of this section. The definition of exempt property indicates that the exemption from accountability must be based on a Federal statute. The Fedeal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224) authorizes such an exemption for equipment and supplies purchased under Federal grants, cooperative agreements, or procurement contracts for the conduct of basic or applied scientific research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research. DOE may employ that exemption only when the grantee is a nonprofit institution of higher education or a nonprofit organization whose primary purpose is the conduct of scientific research. For-profit organizations or other grantees who utilize the facilities of one of the exempted organizations under any type of arrangement are not eligible for the exemption.

The property ownership and accountability requirements of paragraph § 600.117(c), (d) and (e) would be more uniform than they are under the existing DOE–AR, which established different requirement for different types of grantees. The requirements for property management in this section are those of OMB Circulars A–102 and A–110, which DOE proposes to adopt for all grantees. Although creating several exceptions to these general rules, this section would lessen several of the property accountability requirements for grants and subgrants of $10,000 or less, awards which in many cases would be made to small entities. DOE has determined that the paperwork burden placed on recipients after the end of the

grant if there were to be a continuing obligation is not justified by any potential benefit to DOE. The costs of grantee, subgrantee, and DOE administration of such requirements also argue against their use.

Proposed § 600.117(e) makes explicit the accountability requirements for supplies. The grantee or subgrantee must account to DOE only for an aggregation of supplies whose current total fair market value is in excess of $1,000, if the supplies have not been used in the DOE project.

Proposed § 600.118 prescribes the patents, data, and copyright provisions for grants. This section implements for grants the requirements of Pub. L. 96–517, The Patent and Trademark Amendments of 1980, and of OMB Circular A–124 (46 FR 7556, February 19, 1982). Pub. L. 96–517 requires that small business firms and nonprofit organizations shall, at their option, retain title to inventions that were conceived or first actually reduced to practice under any Federal funding agreement, including any grant, cooperative agreement, or contract, for research and development, demonstration or experimental work. Since OMB Circular A–124 was issued just prior to the publication of these proposed rules, full implementation of the Circular will be included in the final version of this rule. This may include changes to § 600.26 on disputes and appeals as well as changes to the patent requirements of this section. The remaining provisions of proposed § 600.118 contain existing DOE policy with respect to patents and inventions under grants to other than small businesses and nonprofit organizations as well as generic policy with respect to patents, data, and copyrights.

Proposed § 600.119 contains requirements for procurement under grants and subgrants, and would apply the procurement standards of Attachment 0 of OMB Circular A–110 to all DOE grantees and subgrantees other than those covered by OMB Circular A–102. This proposed section makes clear, in accordance with advice from OMB, that the requirements of the Circulars do not apply to a government or agency or instrumentality of a government obtaining goods or services from the same or another government, agency, or instrumentality of a government. In such instances, the provider of the goods or services is not considered a third party. This proposed section also specifies prior approval requirements for procurement under grants or subgrants. The procurement standards require that grantees take affirmative steps (A–102) or make positive efforts (A–110) with regard to using small and minority business firms, and women's business enterprises and labor surplus area firms (A–102). The Office of Small and Disadvantaged Business Utilization Procurement and Assistance Management, DOE will provide advice and assistance to grantees and subgrantees concerning contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

Proposed § 600.120 contains the audit requirements for DOE grantees and subgrantees. These requirements are the same as those contained in OMB Circulars A–102 and A–110 except that DOE rather than the grantee would be responsible for initiating audits of grants to for-profit organizations and individuals, and to small entities that will receive DOE financial assistance only in the amount of $10,000 or less for a period of 18 months or less. DOE reserves the right, however, to conduct an audit of any grant whenever it is considered to be necessary.

Proposed § 600.121 specifies the actions DOE may take in the event of grantee noncompliance with the terms and conditions of an award. The proposed procedures are intended to allow for notifictation and the opportunity for correction of noncompliance prior to DOE action. The range of actions includes withholding of payments, conversion of the payment method, suspension, termination for cause, and debarment, all of which are discussed in some detail in other sections of this proposed rule. These actions do not necessarily represent sequential actions but may be used in sequence, if appropriate. While this proposed section would provide certain due process requirements, it would also allow DOE to take immediate action when the situation warrants, e.g. when there is evidence of fraud or deliberate misuse of grant funds.

Proposed § 600.122 contains DOE policy and procedures for suspension and termination of grants and subgrants. In its general outline, the DOE policy is that specified in OMB Circulars A–102 and A–110 and would be the same for all types of grantees and subgrantees.

Proposed § 600.123 indicates the general requirements of grant and subgrant closeout, which may include final reports, fund adjustments, property disposition, and audit.

Proposed § 600.124 prescribes how the starting and ending dates for required record retention by grantees and subgrantees for the various types of grant or subgrant-related records shall be determined.

D. *Proposed Technical Amendments to Requirements for Cooperative Agreements—Subpart C*

The technical and conforming amendments proposed for Subpart C—Cooperative Agreements are those which would conform Subpart C to the proposed Subpart A. The sections or portions of sections which DOE is proposing to remove from Subpart C or to revise are treated in proposed Subpart A as common to grants and cooperative agreements, and deal with scope and applicability, definitions, the Federal Grant and Cooperative Agreement Act (see proposed § 600.5), eligibility (see proposed § 600.7), solicitation requirements (see proposed § 600.9), OMB Circular A–95 (see proposed § 600.11), generally applicable requirements (see proposed § 600.12), unsolicited proposals (see proposed § 600.14), treatment of proposal information (see proposed § 600.18), the selection official (see proposed § 600.19), contents of award (see proposed § 600.21), and disputes (see proposed § 600.26).

DOE also is proposing to amend several paragraphs of § 600.283, Schedule. The amendments proposed would have the effect of making Subpart C, in these particular instances, conform to proposed Subpart B in areas where, in DOE's judgment, there is no underlying reason for having a different policy with respect to grants and cooperative agreements. These provisions deal with applicable Federal cost principles, payment, and property management and disposition.

III. Review Under Executive Order 12291

Today's proposal was reviewed under Executive Order 12291 (February 17, 1981). DOE has concluded that the rule is not a "major rule" because its promulgation will not 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 in domestic or export markets.

In accordance with requirements of the Executive Order, this rulemaking has been reviewed by OMB.

IV. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. For the reasons cited below, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no initial regulatory flexibility analysis has been prepared.

This proposed rule would only have an impact on small entities as they apply for and administer grants or cooperative agreement. If this rule is promulgated, any compliance costs associated with receipt of DOE financial assistance would be diminished for small entities, since the rules relax or waive several requirements for small entities. The proposed exceptions for small entities are described in Section II of this preamble. This rule, as proposed, should have little or no economic impact on small entities receiving Federal asistance from other departments or agencies.

V. Review under the Paperwork Reduction Act

DOE has determined that this proposed rulemaking imposes information collection and reporting requirements on organizations and individuals external to DOE that may be subject to this regulation. The forms specified for use in this proposed rule include both standard Federal forms and DOE forms, whose use has already been approved by OMB. This proposed rule must be submitted to OMB under the Paperwork Reduction Act for approval before DOE may require by means of this rule use of those standard forms listed below which are shown without OMB control numbers. The forms referenced in the proposed rule that would be completed by applicants and grantees as specified are:

Preapplication for Federal Assistance
Application for Federal Assistance—Nonconstruction;
Application for Federal Assistance—Construction;
Application for Federal Assistance—Short Form;
Standard Form 424;
Federal Assistance Budget Information Forms—Nonconstruction or
Construction (Forms EIA 459 C and D) (OMB No. 1900–0127);
Federal Assistance Management Summary Report (Form EIA 459 E) (OMB No. 1900–0127);
Notice of Energy R & D Project (Form DOE 538) (OMB No. 38R–0190);
Federal Assistance Program/Project Status Report (Form EIA 459 F) (OMB No. 1900–0127);
Financial Status Report (SF–269) (OMB No. 80–R0180);
Report of Federal Cash Transactions (SF–272);
Request for Payment on Letter of Credit and Status of Funds Report (SF–183);
Request for Advance or Reimbursement (SF–270); and
Outlay Report and Request for Reimbursement for Construction Programs (SF–271).

VI. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these wholly procedural rules clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the DOE guidelines (10 CFR Part 1021) and therefore, does not require an environmental impact statement pursuant to NEPA.

VII. Comment Procedures

Pub. L. 95–91, the DOE Organization Act, provides that if the Secretary determines that a substantial issue of fact or law exists or that a proposed rule is likely to have a substantial impact on the Nation's economy or on large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided. For the reasons discussed in this preamble, DOE has concluded that these proposed rules do not involve a substantial issue of fact or law and that they should not have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Therefore, DOE does not plan to hold a public hearing on these proposed rules. Interested persons are invited to participate in this rulemaking by submitting in writing data, views, or arguments with respect to the proposals set forth in this notice. Three copies of written comments should be submitted by April 19, 1982, to the address indicated in the "Address" section above and should be identified on the outside envelope and on the document with the designation "DOE Financial Assistance Rules." If any information is considered proprietary or confidential, it should be marked accordingly, and only one copy of that information should be submitted. DOE shall make a determination of any such claim in accordance with 10 CFR 1004.11 (44 FR 1908, (January 8, 1979)).

A 30-day comment period is being provided in order that these rules might become final as soon as is practicable and be used in making, administering, and closing out DOE awards. However, DOE may consider extending the comment period if commenters suggest the need for an extension.

(Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599, (42 U.S.C. 7254 and 7256); Pub. L. 95–224, 92 Stat. 3 (41 U.S.C. 501)).

Issued in Washington, D.C., March 12, 1982.

Hilary J. Rauch,

Director, Procurement and Assistance Management.

PART 600—FINANCIAL ASSISTANCE RULES

10 CFR Part 600 is amended as follows:

1. Subparts A and B are revised to read as follows:

Subpart A—General

Sec.
600.1 Purpose and scope.
600.2 Applicability.
600.3 Definitions.
600.4 Deviations.
600.5 Selection of award instrument.
600.6 Competition for discretionary awards.
600.7 Eligibility.
600.8 Small and disadvantaged business participation.
600.9 Solicitation.
600.10 Form and content of applications.
600.11 Requirements of OMB Circular A–95.
600.12 Generally applicable requirements.
600.13 Application deadlines.
600.14 Unsolicited applications.
600.15 Notice of Program Interest.
600.16 Reviewer affiliations.
600.17 Conflict of interest.
600.18 Authorized uses of information.
600.19 Application selection.
600.20 Legal authority and effect of an award.
600.21 Contents of award.
600.22 Recipient acknowledgment of award.
600.23 Notification to unsuccessful applicants.
600.24 Maximum DOE obligation.
600.25 Access to records.
600.26 Disputes and appeals.
600.27 Debarment.
600.28–600.99 [Reserved]

Subpart B—Grants

600.100 Scope and applicability.
600.101 Definitions.
600.102 Grant applications.
600.103 Cost determinations.
600.104 Responsible applicant.
600.105 Special restrictive conditions of award.
600.106 Funding.
600.107 Cost sharing.
600.108 Calculations of award.
600.109 Financial management systems.
600.110 Cash depositories.
600.111 Bonding and insurance.
600.112 Payment.

Sec.
600.113 Program income.
600.114 Budget and project revisions.
600.115 Performance reports.
600.116 Financial reports.
600.117 Property management.
600.118 Patents, data, and copyrights.
600.119 Procurement under grants and subgrants.
600.120 Audit requirements.
600.121 Noncompliance.
600.122 Suspension and termination.
600.123 Closeout.
600.124 Record retention requirements.
600.125–600.199 [Reserved]

* * * * *

Subpart A—General

§ 600.1 Purpose and scope.

The purposes of this part are to implement the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224 (41 U.S.C. 501 *et seq.*) and to establish uniform policies and procedures for the award and administration of DOE grants and cooperative agreements. This Subpart A sets forth the policies and procedures applicable to both grants and cooperative agreements.

§ 600.2 Applicability.

(a) Except as otherwise provided by Federal statute or program rule, this part applies to any unsolicited application received and any solicitation issued on or after the effective date of this part, and to any new, continuation, or renewal award (and any subsequent subaward) with a beginning date on or after the effective date of this part.

(b) Any new, continuation, or renewal award (and any subsequent subaward) shall comply with an applicable requirement of a Federal statute or a Federal rule if the award is made on or after the effective date of the applicable statutory or regulatory requirement. Unless otherwise specified by DOE, any new, continuation, or renewal award (and any subsequent subaward) shall comply with any applicable OMB Circular or governmentwide guidance in effect as of the date of such award.

(c) The disputes and appeals and debarment procedures set forth in §§ 600.26 and 600.27, respectively, shall apply to any active grant or cooperative agreement or to any expired or terminated grant or cooperative agreement which has not been closed put prior to the effective date of this Part, provided, however, that any dispute, appeal, or debarment action involving such a grant or cooperative agreement is initiated on or after the effective date of this part. With the concurrence of the affected party or parties, DOE may follow the procedures set forth in § 600.26 and § 600.27 in any dispute or appeal or debarment initiated before the effective date of this part.

(d) *OMB Circulars.* (1) The following OMB Circulars apply as provided in paragraphs (a) and (b) of this section and the sections of this part where specific reference to any of the material is made:

(i) OMB Circular A–102, Grants-in-Aid to State and Local Governments (42 FR 45828, September 12, 1977, as amended by 44 FR 47874, August 15, 1979; 44 FR 60958, October 22, 1979; 45 FR 59668, September 10, 1980).

(ii) OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (41 FR 32016, July 30, 1976).

(iii) OMB Circular A–95, Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects (41 FR 2052, Janaury 13, 1976).

(iv) OMB Circular A–124, Patents—Small Business Firms and Nonprofit Organizations (47 FR 7556, February 19, 1982).

(v) OMB Circular A–21, Cost Principles Applicable to Grants, Contracts and Other Agreements with Institutions of Higher Education (44 FR 12368, March 6, 1979).

(vi) OMB Circular A–87, Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments (46 FR 9548, January 28, 1981).

(vii) OMB Circular A–122, Cost Principles Applicable to Grants, Contracts, and other Agreements with Nonprofit Organizations (45 FR 46022, July 8, 1980).

(2) Copies of the OMB publications listed in paragraph (d)(1) may be obtained from the Office of Management and Budget, Office of Administration, Publications Unit, Washington, D.C. 20503 or from the Department of Energy, Financial Assistance Policy Branch (MA–931.2), 1000 Independence Avenue SW., Washington, D.C. 20585.

§ 600.3 Definitions.

The following definitions are provided for purposes of this part—

"Applicant" means any individual, organization, agency, or entity which files a written application or preapplication with DOE or a recipient for financial assistance.

"Application" means a written request for financial assistance.

"Approved budget" means a budget or any revision thereto which has been approved in writing by DOE for carrying out the purpose of a project.

"Assistance" means the transfer of money, property, services of anything of value to a recipient to accomplish a public purpose of support or stimulation authorized by Federal statute.

"Award" means the written document executed by a DOE Contracting Officer, after an application is approved, which contains the terms and conditions for providing financial assistance to the recipient.

"Awarding party" means DOE or a recipient who makes a subaward.

"Budget" means the applicant's financial expenditure plan for carrying out the applicant's proposed project or activities. The budget shall include any cost sharing which is required by statute, rule, or other term or condition of an award.

"Budget period" means the interval of time, specified in the DOE financial assistance award document, into which a project is divided for budgeting and funding purposes.

"Continuation award" means an award for a second or subsequent budget period within a previously approved project period.

"Contract" means a written procurement contract with a third party for the acquisition of property or services under a financial assistance award.

"Contracting Officer" means the DOE official authorized to execute financial assistance awards on behalf of DOE and who is responsible for the business management aspects of the financial assistance process.

"Cooperative agreement" means an assistance instrument used by DOE to transfer money or property when the principal purpose of the transaction is accomplishment of a public purpose of support or stimulation authorized by Federal statute and substantial involvement is anticipated between DOE and the recipient during performance of the contemplated activity. For purposes of this Part, the term "cooperative agreement" does not include nonfinancial assistance.

"Cost sharing" refers to the share of project costs required to be contributed by the financial assistance recipient. Depending on the source and nature of the requirement, terms such as "matching" and "cost participation" may also be used to denote cost sharing.

"Department" or "DOE" means the United States Department of Energy.

"Discretionary financial assistance" means financial assistance provided under a Federal statute which authorizes DOE to select the recipient and the project to be supported and to determine the amount of financial assistance to be awarded.

"Federally recognized Indian tribal government" means the governing body

or a governmental agency of any Indian tribe, band, nation or other organized group or community (including any Native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688).

"Financial assistance" means the transfer of money or property to a recipient or subrecipient to accomplish a public purposes of support or stimulation authorized by Federal statute. For purposes of this Part, financial assistance instruments are grants and cooperative agreements, and subawards.

"Grant" means an assistance instrument used by DOE to transfer money or property when the principal purpose of the transaction is accomplishment of a public purpose of support or stimulation authorized by Federal statute and no substantial involvement between DOE and the grantee during the performance of the contemplated activity is anticipated. For purposes of this Part, the term "grant" does not include nonfinancial assistance.

"Head of a Procuring Activity (HPA)" means a DOE official with senior management authority for the award and business administration of financial assistance instruments within a DOE organizational element.

"Local government" means a local unit of government including specifically a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), sponsor group representative organization (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975), any other regional or interstate government entity, or any agency or instrumentality of a local government exclusive of local institutions of higher education and hospitals.

"Nonprofit organization" means any corporation, trust, foundation, or institution which is entitled to exemption under Section 501(c)(3) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual (except that the definition of "nonprofit organization" in the patent clause of § 600.118(b)(1) shall apply for purposes of the applicability of that clause).

"OMB" means the Office of Management and Budget.

"Project" means the set of activities described in an application, State plan, or other document that is approved by DOE for financial assistance (whether such financial assistance represents all or only a portion of the support necessary to carry out those activities).

"Project period" means the total period of time indicated in an award during which DOE expects to provide financial assistance. A project period may consist of one or more budget periods and may be extended by DOE.

"Recipient" means the organization, individual, or other entity that receives a financial assistance award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the financially assisted project, and is legally responsible for carrying out the terms and conditions of the award.

"Renewal award" means an award which extends a project period and funds one or more additional budget periods of a project for which funding would otherwise expire.

"Secretary" means the Secretary of the United States Department of Energy and any officer or employee of DOE to whom the authorities of the Secretary have been delegated.

"Small business" means a business concern, including its affiliates, which is independently owned and operated, is not dominant in its field of operation, and can qualify under the criteria concerning number of employees, average annual receipts, and other criteria as prescribed by the Small Business Administration (except that the definition of "small business" in the patent clause of § 600.118(b)(1) shall apply for purposes of the applicability of that clause).

"Socially and economically disadvantaged individuals" means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities and/or those whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. Such individuals include Black Americans, Hispanic Americans, Native Americans, and other specified minorities, or any other individual found to be disadvantaged by the Small Business Administration under section 8(a) of the Small Business Act.

"Socially and economically disadvantaged small business concern" means any small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals, and whose management and daily business operations are controlled by one or more such individuals.

"Solicitation" means a document which requests the submission of applications for financial assistance and which describes program objectives, recipient and project eligibility requirements, evaluation criteria, award terms and conditions, and other information about the financial assistance opportunity.

"State" or "State government" means any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory, possession or trust territory of the United States, or any agency or instrumentality of a State. The term does not include local governments, State hospitals, or State institutions of higher education.

"State plan" means a document required by statute to be submitted by a State in order to demonstrate compliance with the legal prerequisites for an award of nondiscretionary financial assistance.

"Subaward" means an award of financial assistance by a recipient to an eligible subrecipient when specifically authorized by statute or program rule. The term does not include a contract for goods or services under a financial assistance award.

"Subrecipient" means the organizations, individual, or other entity that receives a subaward.

"Terms and conditions" means the rights and obligations of the awarding party and the recipient or subrecipient set forth in a statute, this part, other rules, or otherwise set forth or incorporated by reference in the award or subaward document.

§ 600.4 Deviations.

(a) *Definitions.* (1) "Deviation" means the use of any policy, procedure, form, standard, term, or condition which varies from a requirement of this part, or the waiver of any such requirement, unless such use or waiver is required by Federal statute. The use of optional or discretionary provisions of this part, including special restrictive conditions used in accordance with § 600.105, are not deviations. The waiver provisions of the patent requirements of § 600.118 are not subject to the requirements of this section and shall be administered in accordance with 41 CFR Part 9-9.

(a) "Single-case deviation" means a deviation which applies to one financial assistance transaction and one

applicant, recipient, or subrecipient only.

(3) "Class deviation" means a deviation which applies to more than one financial assistance transaction, applicant, recipient, or subrecipient.

(b) *General.* The DOE officials specified in paragraph (c) of this section may authorize a deviation only upon a written determination that the deviation is—

(1) Necessary to achieve program objectives;

(2) Necessary to conserve public funds;

(3) Otherwise essential to the public interest; or

(4) Necessary to achieve an equitable situation for one or more recipients.

(c) *Approval procedures.* (1) A deviation may be requested by DOE staff, an applicant for an award or subaward, a recipient, or a subrecipient. Such request must be in writing and must be submitted to the responsible DOE Contracting Officer. An applicant for a subaward or a subrecipient shall submit any such request through the recipient.

(2) Except as provided in paragraph (c)(3) of this section—

(i) A single-case deviation may be authorized by the responsible Head of a Procuring Activity (HPA). Any proposed single-case deviation from the requirements of § 600.118 or § 600.290 shall be referred to the Assistant General Counsel for Patents for review and concurrence prior to submission to the HPA.

(ii) A class deviation may be authorized by the Director, Procurement and Assistance Management or his or her designee.

(3) Whenever the concurrence of OMB, other Federal agency, or other DOE office is required to authorize a deviation, only the Director, Procurement and Assistance Managment or his or her designee may authorize a single-case deviation. Any proposed class deviation from the requirements of § 600.118 or § 600.290 shall be forwarded through the Assistant General Counsel for Patents.

(d) *Notice.* Whenever a request for a class deviation is approved, DOE shall publish a notice in the **Federal Register** at least 15 days before the class deviation becomes effective. Whenever a class deviation is contained in a program rule, the preamble to the rule shall indicate the deviation.

(e) *Subawards.* A recipient may use a deviation in a subaward only with the prior written approval of a DOE Contracting Officer. If prior approval is not obtained, the use of deviation in a subaward shall be a violation of the terms and conditions of the DOE award.

§ 600.5 Selection of award instrument.

If DOE has administrative discretion in the selection of the appropriate award instrument, the DOE determination as to whether a program is principally one of procurement or assistance pursuant to Pub. L. 95–224 shall be based on the purpose of the program and the authorizing statute. This determination shall be either made by or reviewed at a policy level within DOE. DOE shall review individual transactions that differ from this determination for consistency with Pub. L. 95–224. A grant or cooperative agreement shall be the appropriate instrument, in accordance with this part, when the principal purpose of the relationship is the transfer of money or property to accomplish a public purpose of support or stimulation authorized by Federal statute. DOE shall determine whether a grant or a cooperative agreement is the appropriate instrument in accordance with Pub. L. 95–224 and this part. DOE shall limit involvement between itself and the recipient in the performance of a project to the minimum necessary to achieve DOE program objectives.

§ 600.6 Competition for discretionary awards.

DOE shall solicit applications for discretionary financial assistance awards in a manner which provides for the maximum amount of competition feasible.

§ 600.7 Eligibility.

(a) *General.* The eligibility of recipients and subrecipients and of projects for DOE financial assistance shall be determined in accordance with the applicable Federal statute or program rule.

(b) *Restricted eligibility.* If DOE restricts eligibility in a solicitation to less than all otherwise eligible applicants, an explanation of why the restriction of eligibility is considered necessary shall be included in the solicitation.

(c) *DOE employees.* (1) An individual applicant who is a former DOE employee or an applicant organization that is substantially owned or controlled by one or more former DOE employees may be declared ineligible for DOE financial assistance if such applicant does not comply with the requirements of 10 CFR Part 1010, Subpart C.

(2) Except as provided in paragraph (c)(3) of this section, a current DOE employee and a business concern or organization substantially owned or controlled by one or more current DOE employees are not eligible for DOE financial assistance.

(3) The Director, Procurement and Assistance Management, with the concurrence of the Assistant General Counsel for Standards of Conduct, may exempt an applicant from the restriction of paragraph (c)(2) of this section if the applicant is determined to have unique expertise or technical resources and if it is determined that providing financial assistance to the applicant would be in the public interest. DOE shall publish in the **Federal Register** a notice of any exemption under this paragraph at least 30 days prior to making an award to the exempted applicant. No exemption may be granted to a DOE employee who is or was involved in initiating, developing, reviewing or administering the financial assistance program under which assistance is being sought, or to a DOE employee who is considered "supervisory" under the Department of Energy Organization Act (42 U.S.C. 7211(a)).

§ 600.8 Small and disadvantaged business participation.

(a) DOE shall provide adequate opportunities for small business firms, including small business concerns owned and controlled by socially and economically disadvantaged individuals, to compete for DOE financial assistance awards consistent with the program statute or other Federal law, implementing rules, and program needs.

(b) DOE may use small business preferences or set-asides in DOE financial assistance programs only when authorized or required by Federal statute. DOE shall include a citation to such statutory authority in any solicitation that provides for small business preference or a set-aside.

(c) DOE may require recipients and subrecipients to take affirmative action with regard to small and disadvantaged businesses in contracts under financial assistance awards and subawards in accordance with Federal statute, program rules, and this part.

§ 600.9 Solicitation.

(a) *General.* A solicitation for financial assistance applications shall be in the form of a program rule or other publicly available document which invites the submission of applications by a common due date or within a prescribed period of time.

(1) A solicitation (other than a program rule which serves to solicit applications) may be issued only by a DOE Contracting Officer.

(2) DOE shall publish either a copy or a notice of the availability of a financial assistance solicitation in the Federal Register. If the potential applicants are limited to State governments, DOE may, in advance of Federal Register publication, mail a copy of the solicitation simultaneously to each potential applicant. DOE shall publish solicitations or notices in the "Commerce Business Daily" when potential applicants include for-profit organizations or when there is the potential for significant contracting opportunities under the resulting financial assistance awards. In order to reach the widest possible audience of potentially interested applicants, DOE may also publish notices or copies of solicitations in trade and professional journals, news media, and use other means of communication, as appropriate.

(b) *Subawards.* In accordance with the provisions of the applicable statute and program rules, if a DOE financial assistance program involves the award of financial assistance by a recipient to a subrecipient, the recipient shall provide sufficient advance notice so that potential subrecipients may prepare timely applications and secure prerequisite reviews and approvals.

(c) *Contents of solicitation.* Each solicitation shall include the following types of information and such other information as may be necessary to allow potential applicants to decide whether to submit an application, to understand how applications will be evaluated, and to know what the obligations of a recipient would be;

(1) A control number assigned by the issuing DOE office;

(2) The amount of money available for award and, if appropriate, the expected size of individual awards broken down by areas of priority or emphasis, and the expected number of awards;

(3) The type of award instrument or instruments to be used;

(4) Catalog of Federal Domestic Assistance number for the program;

(5) Who is eligible to apply (see § 600.7);

(6) The expected duration of DOE support or the period of performance;

(7) Application form or format to be used, location for application submission, and number of copies required;

(8) The name of a responsible program official, the name of the responsible DOE Contracting Officer, and, as appropriate, an address where application forms may be obtained;

(9) A deadline for submission of applications and a statement describing the consequences of late submission;

(10) The types of projects or activities eligible for support;

(11) Evaluation criteria (and the weight or relative importance of each), including, as appropriate:

(i) Qualifications of the applicant's personnel who will be working on the project;

(ii) Adequacy of the applicant's facilities and resources;

(iii) Cost-effectiveness of the project;

(iv) Adequacy of the project plan or methodology;

(v) Management capability of the applicant;

(vi) Sources of financing (other than DOE financial assistance) available to the project;

(vii) Relationship of the proposed project to the objectives of the solicitation;

(12) A listing of program policy factors, if any, indicating the relative importance of each, if appropriate (see § 600.19(a));

(13) References to or copies of:

(i) Statutory authority for the program;

(ii) Applicable rules, including the appropriate subparts of this part;

(iii) Other terms and conditions applicable to awards to be made under the solicitation, including allowable and unallowable costs and reporting requirements;

(iv) Policies and procedures for patents, technical data, and copyrights;

(14) The deadline for submission of required or optional preapplications;

(15) Date, time, and location of any briefing for applicants;

(16) Required presubmission reviews and clearances, including a statement as to whether review under OMB Circular A–95 ("Review, Evaluation, and Coordination of Federal and Federally Assisted Projects and Programs"), Attachment A, Part I, is required and, if required, the consequences of noncompliance (see § 600.11);

(17) Required assurances;

(18) Dates by which selections and awards are expected to be made;

(19) A statement that DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. If an award is made, such costs may be allowable as provided in the applicable cost principles (see §§ 600.103 and 600.283);

(20) A statement that DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to the solicitation; and

(21) Any other relevant information, including explanatory information or justifications required by this Part.

(d) *Mixed solicitation.* If a solicitation may result in the award of either procurement contracts or financial assistance instruments, the DOE Contracting Officer shall comply with the requirements of paragraph (c) of this section as well as assure that the solicitation complies with any additional applicable requirements of the Federal and DOE Procurement Regulations, specifically 41 CFR 9–4.57 and 9–4.58 which establish the requirements for Program Opportunity Notices (PONs) and Program Research and Development Announcements (PRDAs).

§ 600.10 Form and content of applications.

(a) *Forms.* Applications or preapplications shall be on the form or in the format and in the number of copies specified by DOE either in this part, in a program rule, or in the applicable solicitation, and must include all required information. For State governments, local governments, or Indian tribal governments, applications shall be made on the forms prescribed by OMB Circular A–102, Attachment M. Such applicants shall not be required to submit more than the original and two copies of the application or preapplication.

(b) *Signature.* The application and any preapplication must be signed by the individual who is applying or by an individual who is authorized to act for the applicant organization and to commit the applicant to comply with the terms and conditions of the financial assistance instrument, if awarded.

(c) *Contents.* In general, a financial assistance application shall include:

(1) A facesheet containing basic identifying information. The facesheet shall be the Standard Form (SF) 424;

(12) A narrative description of the proposed project, including the objectives of the project and the applicant's plan for carrying it out;

(3) A budget with supporting justification;

(4) Any required assurances, including a general assurance that the applicant possesses the legal authority to apply and will comply with the terms and conditions of the financial assistance instrument, if awarded.

(d) *Incomplete applications.* DOE may return an application which does not include all information and documentation required by statute, program rule, and the solicitation, if, in the judgment of the DOE Contracting Officer, the nature of the omission precludes review of the application.

(e) *Supplemental information.* During the review of a complete application,

DOE may require the submission of additional information that is both reasonable and necessary to evaluate the application.

§ 600.11 Requirements of OMB Circular A-95.

(a) *General.*

(1) In the solicitation, DOE shall specify whether review under OMB Circular A-95 is required for applications for financial assistance awards and subawards, if any. In the case of unsolicited applications, DOE shall, if possible, advise potential applicants of the need for OMB Circular A-95 review during preapplication contact (see § 600.14(b)). If such determination cannot be made during preapplication contact, an applicant who intends to submit an unsolicited application should contact the appropriate State and areawide clearinghouse(s) to determine their interest in reviewing the proposed project.

(2) Unless otherwise requested by the clearinghouse, only an application or preapplication for an initial or renewal award and any other application that includes new substantive activities or substantial changes in activities originally proposed shall be required to comply with OMB Circular A-95.

(b) *Notification of intent.* In the absence of any contrary instructions from clearinghouses, applicants for support under DOE programs subject to Attachment A, Part I of the Circular shall use Standard Form (SF) 424 as the Notification of Intent to Apply for Federal Assistance to be submitted to the clearinghouse(s). The applicant should notify the clearinghouse as soon as useful information is available concerning the proposed project and the program under which support will be sought, including the date a completed application is scheduled to be filed with DOE or the recipient.

(c) *Complete applications.* Any application subject to review under OMB Circular A-95, Attachment A, Part I must, when submitted to DOE or the recipient, be accompanied by:

(1) All comments and recommendations made by or through the clearinghouse(s) and a statement that the applicant has considered such comments; or

(2) The clearinghouse(s)' statement of no comment, or physical evidence, such as a dated transmittal letter accompanied by mailing receipts, that the required procedures of A-95 have been followed and that no comments or recommendations have been received. If Part I review is required, applications that do not include the information required by this paragraph (c) shall be returned to the applicant without any further action. An application returned to an applicant for this reason may be resubmitted after meeting the requirements of OMB Circular A-95, Attachment A, Part I. If the application was submitted in response to a DOE solicitation, the resubmitted application must be timely in accordance with § 600.13.

(d) *OMB Circular A-95, Attachment A, Part III.* Applicants for DOE financial assistance under programs which require a State plan as a precondition to the award of that assistance shall comply with OMB Circular A-95, Attachment A, Part III.

§ 600.12 Generally applicable requirements.

(a) "Generally applicable requirement" means Federal policies or administrative requirements that apply to (1) more than one DOE financial assistance award, or (2) a DOE financial assistance program and one or more other Federal assistance programs. Generally applicable requirements include, but are not limited to, the reqiurements of this part, Federal statutes, the OMB Circulars, and other governmentwide guidance implemented by this Part, and the requirements identified in Appendix A of this part.

(b) Except as expressly authorized by Federal statute or program rule, recipients and subrecipients of DOE financial assistance shall comply with all generally applicable reqiurements to which, by the terms of such requirements, they are subject. DOE may require the submission of preaward assurances of compliance with one or more generally applicable requirements and may conduct preaward and postaward compliance reviews only to the extent such actions are authorized by this Part, Federal statute or rule, or OMB directive.

§ 600.13 Application deadlines.

(a) Each solicitation shall include a deadline date for submission of applications. The established deadline shall also apply to any amendment to an application initiated by an applicant. An application or amendment shall be timely if it is:

(1) Received at the location specified in the solicitation on or before the established deadline date; or

(2) Received after the deadline date, and the application or amendment was sent by first class mail, was postmarked on or before the deadline date, and is received by DOE before technical evaluation of all acceptable applications submitted in response to the solicitation begins. Applicants should obtain a legibly dated mailing receipt from the U.S. Postal Service or use certified or registered mail to enable them to substantiate the date of mailing. Private metered postmarks shall not be acceptable proof of the date of mailing; and

(3) Complete (see §§ 600.10(d) and 600.11(c)).

(b) If necessary, DOE may extend an established application deadline by publishing a timely notice of the extension in the same manner as the solicitation was publicized. The extension of time shall apply to all applicants.

§ 600.14 Unsolicited applications.

(a) *General.* An unsolicited application is an application for DOE financial assistance which is not submitted in response to a solicitation or which is submitted in response to a Notice of Program Interest (see § 600.15). DOE may award financial assistance to an applicant who submits an unsolicited application for support of a project that involves an innovative idea, method or approach. DOE shall determine whether the application would result in a procurement contract or a financial assistance award. An unsolicited application may be considered for a DOE financial assistance award only if the application is relevant to a public purpose of support or stimulation authorized by Federal statute.

(b) *Preapplication contact.* Anyone who is contemplating submitting an unsolicited application is encouraged, before expending extensive effort in preparing a detailed application or submitting any proprietary information to DOE, to make preliminary inquiries of DOE program staff as to DOE interest in the type of project contemplated. The potential applicant should not construe any such discussion as either encouragement to submit an unsolicited application or a promise of an award.

(c) *Preparation and submission of application.* A guide for preparing unsolicited applications/proposals is available from the Unsolicited Proposals Management Section, Reports and Analysis Branch (MA-952), Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

(1) Unsolicited applications shall be in the format set forth in "The Guide for Submission of Unsolicited Proposals," except that a State government, local government, or Indian tribal government shall use the Federal Assistance Application for Nonconstruction

Programs or the Application for Federal Assistance—Short Form, prescribed by OMB Circular A–102, Attachment M, as appropriate.

(2) An unsolicited application must be submitted to the Unsolicited Proposals Management Section at the address specified in paragraph (c) of this section. If there have been prior discussions with a particular DOE program office, and the applicant wants the application to be considered by that office, the applicant should indicate "For consideration by (*Name of appropriate program*)" on the face of the application.

(d) *General evaluation.* DOE shall make a general evaluation of an unsolicited application based on the following types of factors:

(1) The overall merit of the proposed project or activity.

(2) The anticipated objectives to be achieved and the probability of achieving the stated objectives.

(3) The facilities or techniques which the applicant proposes to make available to achieve the proposed project's objectives.

(4) The qualifications of the proposed project director or key personnel who are considered to be critical to the achievement of the proposed project's objectives.

(e) *Criteria for selection of an unsolicited application.* (1) DOE may select an unsolicited application only if:

(i) The application is meritorious based on the general evaluation as in paragraph (d) of this section; and

(ii) The proposed project represents a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, pending, or planned solicitation.

(2) Any request for continuation, renewal, or supplemental funding of a project which was originally funded as the result of an unsolicited application shall be evaluated in the same manner as any other request for such funding and shall not be subject to the selection criteria of paragraph (e)(1)(ii) of this section. (See § 600.106 for requirements concerning funding of grants.)

(f) *Funding.* An award may be made only if sufficient appropriated funds are available.

(g) *Unsuccessful applications.* DOE shall return any unsolicited application which does not satisfy the requirements of this section with a letter of explanation.

§ 600.15 Notice of program interest.

(a) *General.* (1) Any program office may publish a periodic Notice of Program Interest in the **Federal Register** and other media, as appropriate, which describes broad, general, technical problems and areas of investigation for which DOE may award grants or cooperative agreements.

(2) DOE shall evaluate any application submitted under a Notice of Program Interest as an unsolicited application (see § 600.14).

(b) *Contents.* In addition to the information required under § 600.9(c), the notice shall include the following:

(1) A brief description of the areas of interest for which DOE may provide financial assistance.

(2) A statement about how resulting applications will be evaluated and the criteria for selection and funding as specified in § 600.14.

(3) An expiration date with an explanation that such a date does not represent a common deadline for applications but rather that applications may be submitted at any time before the notice expires.

(4) A requirement that applications submitted under the notice be mailed to the Unsolicited Proposals Management Section, Reports and Analysis Branch, Procurement and Assistance Management, Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

§ 600.16 Reviewer affiliations.

(a) *General.* New and renewal applications for discretionary financial assistance, whether solicited or unsolicited, shall be evaluated by reviewers appointed by the responsible DOE program official. The DOE program official may supplement DOE review resources with personnel from other Federal agencies or employees of Government-owned contractor-operated facilities, and, when necessary, may use external review, such as peer review, instead of or in addition to internal evaluation, with the objective of having the technical/scientific evaluation conducted by the most qualified individuals available.

(b) *Solicitation information.* For solicited applications, if the types of reviewers are known at the time of solicitation, or if there is a potential for the use of non-DOE evaluators, this information shall be included in the solicitation.

(c) *Outside evaluators.* An outside evaluator shall be required to sign a written statement agreeing to use the application information only for evaluation and to treat it in confidence except to the extent that the information may be obtained by a member of the general public without restriction as to its use from any source, including the applicant. Further, the evaluator shall be required to agree to comply with any notice or restriction placed on the application; upon completion of the evaluation, the evaluator shall return all copies of the application (or abstracts, if any) to DOE; and unless authorized by DOE, the evaluator shall not contact the applicant concerning any aspect of the application.

§ 600.17 Conflict of interest.

Any person who participates in the review of applications for DOE financial assistance or in the administration of DOE financial assistance shall comply with §§ 1010.101(a) and 1010.302(a)(1) of the DOE rules on the conduct of employees at 10 CFR Part 1010. Current and former DOE employees who participate in any aspect of the financial assistance process shall comply with all applicable requirements of 10 CFR Part 1010.

§ 600.18 Authorized uses of information.

(a) *General.* Information provided to DOE by applicants in financial assistance applications and information maintained by DOE with respect to the evaluation, award and administration of financial assistance instruments, including recipient progress and expenditure reports, evaluations of recipients' performance, and audit reports, may be disclosed to the public by DOE as indicated in the following paragraphs of this section.

(b) *Freedom of Information requirements.* Any information associated with the financial assistance process that is provided to DOE by applicants or recipients or maintained by DOE is subject to mandatory public disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the DOE implementing rules (10 CFR Part 1004) unless DOE determines the information falls within one of the FOIA exemptions, is prohibited from public release by 18 U.S.C. 1905, or is otherwise exempt by law from such disclosure.

(c) *Request for limited disclosure.* (1) In the event that an application, whether solicited or unsolicited, contains information or data which the applicant does not want disclosed prior to award for purposes other than the evaluation of the application, the applicant should mark each page containing such information or data with the words "Privileged Information—Limited Use" at the top of the page. In addition, the applicant should mark the cover page of the application with the following Notice:

Notice

The information contained in pages ——— of this application has been submitted in confidence and contains trade

secrets and/or privileged or confidential commercial, financial or other information, and such information shall be used or disclosed only for evaluation purposes, provided that, if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose all the information in this application to the extent provided in the award or in 10 CFR 600.18.

(2) The application must include or be accompanied by an explanation of why the applicant considers or believes the information to be privileged or confidential, whether such information is customarily treated as confidential by other similar organizations and entities, and what harm would result to the applicant if the information were disclosed.

(3) If DOE determines that such information is exempt from mandatory public disclosure, DOE shall ensure that each copy of the application carries the Notice and that information in the application is not disclosed to any member of the public except as required for the purpose of scientific, technical and/or business evaluation. DOE is not authorized to withhold information requested by the Congress or any committee of Congress, or the General Accounting Office.

(4) DOE shall not limit the disclosure of any data or commercial or financial information contained in an application if such information is already generally available to the public, is already the property of the Government, or is or becomes available to DOE from any source, including the applicant, without limitation.

§ 600.19 Application selection.

(a) In deciding which new applications (other than unsolicited applications) or renewal applications to select for award, DOE shall consider the results of the application evaluation, any clearinghouse comments under OMB Circular A–95 (see § 600.11), and other available advice or information as well as published program policy factors, if any. The selection of applications under any given solicitation shall be made by a DOE official at an organizational level which shall be determined based on the aggregate amount available for award under the solicitation.

(b) Program policy factors are factors which the selection official may use to select a range of projects that would best serve program objectives. If program policy factors may be used in making selections, DOE shall describe in the solicitation each program policy factor, the justification for its use, and, if appropriate, the relative priority of each such factor. Examples of program policy factors are:

(1) Geographic distribution;

(2) Diverse types and sizes of applicant entities;

(3) A diversity of methods, approaches, or kinds of work; and

(4) Projects which are complementary to other DOE programs or projects.

(c) After the selection of an application, DOE may, if necessary, enter into negotiations with an applicant. Such negotiations are not a commitment that DOE will maake an award.

(d) See § 600.106 for the selection process for continuation applications for grants and § 600.14 for the selection process for unsolicited applications.

§ 600.20 Legal authority and effect of an award.

(a) A DOE financial assistance award is valid only if it is in writing and is signed by a DOE Contracting Officer.

(b) An award may be made only if DOE approves an application and/or State plan, and if there are sufficient appropriated funds.

(c) DOE funds awarded under a grant or cooperative agreement shall be obligated as of the date the DOE Contracting Officer signs the award; however, the recipient is not authorized to incur costs under an award prior to the beginning date of the budget period shown in the award. The duration of the DOE financial obligation shall not extend beyond the expiration date of the budget period shown in the award unless authorized by a DOE Contracting Officer by means of a continuation or renewal award or other extension of the budget period.

§ 600.21 Contents of award.

(a) Each financial assistance award shall be made on a Notice of Financial Assistance Award which includes the following, as applicable:

(1) Identification information for the project being supported, including a unique instrument number.

(2) The dates of the budget period covered by the award, and if additional funding is contemplated after such period, the expected duration of the project period.

(3) The class of recipient (e.g. state government, educational institution, individual).

(4) The source and amount of DOE funds authorized for obligation by the recipient during the budget period specified; the amount and/or the percentage of any required cost sharing; and estimates of total project costs for the duration of DOE support.

(5) General terms and conditions of the award, including or incorporating by reference the applicable program statute and rules, the applicable subparts of this part, and, as appropriate, generally applicable requirements.

(6) Special terms or conditions of award, including those necessary to protect DOE interests or to achieve program objectives, and those which may be required to be included on an instrument-by-instrument basis, e.g. reporting requirements and payment method.

(7) The approved budget for the budget period, including any modifications resulting from negotiation.

(8) A reference to or inclusion of the approved application and/or State plan, or other statement of the purpose and objectives of the award.

(9) The names, addresses and telephone numbers of recipient and DOE staff with responsbilities for the project.

(10) Any other provisions necessary to establish the respective rights, duties, obligations, and responsbilities of DOE and the recipient, consistent with the requirements of this Part.

§ 600.22 Recipient acknowledgment of award.

(a) After signature by the DOE Contracting Officer, the award shall be sent to the applicant. The applicant shall be required to return a signed copy of the award acknowledging acceptance.

(b) The award, when mailed to the applicant, shall be acompanied by a transmittal letter or other written notice indicating the date by which the award must be acknowledged and returned. The date established by DOE shall be not less than two weeks from the date of the notice. No DOE funds shall be disbursed until the award document is signed by the recipient.

(1) In the event an applicant declines an award or fails to acknowledge acceptance of an award, DOE shall deobligate the funds obligated by the award after providing the applicant with at least two weeks written notice of DOE's intention to deobligate.

(2) In the event a recipient acknowledges acceptance of an award but does not commence performance under the award within a reasonable period of time, DOE may terminate the award in accordance with the applicable provisions of this part.

(c) After the recipient acknowledges the award, the terms and conditions of the award may be amended only upon the written request or with the written concurrence of the recipient unless the amendment is one which DOE may

make unilaterally in accordance with a program rule or this part.

§ 600.23 Notification to unsuccessful applicants.

(a) DOE shall promptly notify in writing each applicant whose application has not been selected for award or whose application cannot be funded because of the unavailability of appropriated funds. If the application was not selected, the written notice shall briefly explain why the application was not selected and shall offer the unsuccessful applicant the opportunity for a more detailed explanation upon request. (See also § 600.14(g).)

(b) In the case of a State plan disapproval, DOE shall follow the notification procedures contained in the applicable statute or program rule.

§ 600.24 Maximum DOE obligation.

The maximum DOE financial obligation to the recipient is the amount shown in the award as the amount of DOE funds obligated or the value of designated property transferred for the specified budget period. Except as otherwise provided in the terms or conditions of award, DOE shall not be obligated to make any additional, supplemental, continuation, renewal, or other award for the same or any other purpose.

§ 600.25 Access to records.

(a) *Recipient records.* DOE and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of a recipient that are pertinent to the DOE financial assistance award, in order to make audit, examination, excerpts and transcripts.

(b) *Subrecipient records.* DOE, the Comptroller General of the United States, and the recipient, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of a subrecipient which are pertinent to the financial assistance subaward, in order to make audit, examination, excerpts, and transcripts.

(c) *Contractor and subcontractor records.* With respect to any negotiated contract or subcontract in excess of $10,000 under a grant or cooperative agreement, DOE, the Comptroller General of the United States, the recipient and (if the contract was awarded under a financial assistance subaward) the subrecipient, or any of their authorized representatives shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are directly pertinent to that contract or subcontract, in order to make audit, examination, excerpts and transcripts.

(d) *Duration of access right.* The right of access may be exercised for as long as the applicable records are retained by the recipient, subrecipient, contractor, or subcontractor. (See § 600.124 for grants and § 600.271 for cooperative agreements for record retention requirements.)

§ 600.26 Disputes and appeals.

(a) *Final decision.* Whenever practicable, DOE shall attempt to resolve informally any dispute over the award or administration of financial assistance. At the initiative of DOE or upon the written request of an applicant, recipient, or any person who establishes that he or she is or represents a real party in interest (including a class of similarly situated individuals or organizations), DOE shall mail (by certified mail) a brief written decision, signed by a Contracting Officer, setting forth DOE's final disposition of any dispute which is not resolved informally. Such decision shall contain the following information:

(1) A summary of the dispute, including a statement of the issues and of the positions taken by the Department and the party or parties to the dispute; and

(2) The factual, legal and policy reasons for DOE's final decision.

(b) *Notice of appeal.* Except as provided in paragraph (d)(1) of this section, the final decision under paragraph (a) of this section may be appealed to the Financial Assistance Appeals Board (the Board) in accordance with the procedures set forth in 10 CFR Part 1024. The notice included in each written decision issued under paragraph (a) of this section shall advise the recipient that such decision shall be the final decision of the Department of Energy unless, within 60 days, a written notice of appeal is filed with the Board.

(c) *Effect of appeal.* The filing of a notice of appeal or an appeal with the Board shall not stay any determination or action taken by DOE which is the subject of the appeal. Consistent with its obligation to protect the interests of the Federal government, DOE may take such authorized actions as may be necessary to preserve the status quo pending decision by the Board, or to preserve its ability to provide relief in the event the Board decides in favor of the complaining party.

(d) *Review on appeal.* (1) The Board shall have no jurisdiction to review—

(i) Any DOE action taken under 10 CFR Part 1040;

(ii) Any preaward dispute (except as provided in paragraphs (d)(2)(ii) and (d)(2)(v) of this section), including use of any special restrictive condition pursuant to § 600.106;

(iii) DOE denial of a request for a deviation under § 600.4;

(iv) DOE denial of a request for a budget revision or other change in the approved project under §§ 600.103, 600.114 or 600.271 or under another term or condition of the award;

(v) Any DOE action authorized under §§ 600.121(b) (1), (2), (3) or (5) or 600.271 with respect to recipient noncompliance, or such actions authorized by program rule;

(vi) Any DOE decision about an action requiring prior DOE approval, under §§ 600.112(g), 600.119, or 600.271 or under another term or condition of the award; or

(vii) A DOE decision not to make a continuation award, which decision is based on the insufficiency of available appropriations.

(2) In addition to any right of appeal established by program rule, the Board shall have jurisdiction to review—

(i) A DOE determination that the recipient has failed to comply with the applicable requirements of this part, the program statute or rules, or other terms and conditions of the award;

(ii) A DOE decision not to make a continuation award based on any of the determinations described in paragraph (d)(2)(i) of this section;

(iii) Termination of an award for cause, in whole or in part, by DOE;

(iv) A DOE determination that an award is invalid;

(v) The application by DOE of an indirect cost rate negotiated by a cognizant agency; and

(vi) DOE disallowance of costs incurred by the recipient.

(3) In reviewing disputes authorized under paragraph (d)(2) of this section, the Board shall be bound by all applicable laws and rules including the requirements of this part, and by the terms and conditions of the award.

(4) The decision of the Board shall be the final decision of the Department.

§ 600.27 Debarment.

(a) *Definitions.* (1) "Affiliate" means an organization which controls, is controlled by, or is under common control with another organization or individual.

(2) "Debar" or "debarment" means to determine or the determination that an otherwise eligible individual, organization, agency, or entity or, as

appropriate, a component or affiliate thereof shall be ineligible for a specified period of time to receive any financial assistance, or contracts or subcontracts under financial assistance awards, or to receive any remuneration from funds provided under a financial assistance award or subaward. Unless otherwise specified, this term includes an immediate debarment as described in paragraph (g) of this section.

(3) "Individual" means a natural person.

(4) "Organization" means any public or private agency, corporation, partnership, institution, or other organizational entity.

(5) "Respondent" means an individual, organization, or affiliate that is the subject of a debarment action under this section.

(b) *Grounds for debarment.* Unless prohibited by law, the Director, Procurement and Assistance Management (Director), with the concurrence of the Office of General Counsel, may immediately debar and/or initiate a debarment action, including the issuance of an immediate debarment, on any of the following grounds:

(1) Conviction or a civil or nolo contendere judgment—

(i) For any criminal offense committed incidental to obtaining or attempting to obtain a public or private contract or any form of assistance (or contract, subcontract, or subaward thereunder), or incidental to the performance under any such instrument;

(ii) Under the Organized Crime Control Act of 1970, or for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity;

(iii) Under the Federal antitrust statutes arising out of the submission of bids, applications, or proposals;

(2) Substantial evidence of criminal, fraudulent, or seriously improper conduct which directly affects the present responsibility of the respondent to administer and account for Federal funds;

(3) Grossly inadequate performance or willful failure to perform the project supported by a previous DOE assistance award except to the extent that unsatisfactory performance or failure to perform was excusable or was caused by acts beyond the control of the respondent;

(4) Debarment or suspension (immediate debarment) from Government contracting, subcontracting, or assistance by a Federal department or agency;

(5) Failure to pay any debt (including disallowed costs) to DOE for which a good faith defense is not asserted or which has been finally adjudicated; and

(6) An other serious misconduct which indicates a lack of business integrity or competence.

(c) *Scope of debarment.* (1) Debarment may be limited to those components of an organization which were involved in the conduct leading to the debarment, may be organizationwide, or may include any affiliate.

(2) An organization or component of an organization may be debarred on the basis of the conduct of one or more individuals who acted within the scope of their authority or employment and under circumstances in which responsible officials knew or should have known of the improper conduct.

(3) An individual may be debarred if he or she authorized, permitted, or knowingly participated in conduct for which an organization may be debarred.

(d) *Period of debarment.* (1) Except in the case of an immediate debarment, the period of debarment shall begin not less than 30 days after the written notice required under paragraph (e)(2)(iii) of this section is issued. The period of debarment shall be no longer than is necessary to protect the public interest, and shall be commensurate with the seriousness of the offense, violation, failure, or inadequacy of performance which gave rise to the department.

(i) The Director may extend a period of debarment only after providing the respondent with notice and an opportunity for a hearing in accordance with paragraphs (e)(2)(i), (ii), (iii) and (g) of this section.

(2) If a DOE debarment is based on a debarment or suspension (immediate debarment) by another Federal agency, the period of DOE debarment shall end when the other debarment or suspension ends.

(3) The period of an immediate debarment shall be determined in accordance with paragraphs (d)(2) and (g) of this section.

(4) The Director may reduce a period of debarment at any time.

(e) *Notice.* (1) Any written notice, request, determination, or decision required under this paragraph (e) and paragraphs (f) and (g) of this section shall be delivered by personal service or sent registered or certified mail, return receipt requested.

(2) The Director may initiate a debarment action, extend a debarment, or issue an immediate debarment by providing the respondent with a written notice which includes, as appropriate:

(i) The reasons for the proposed debarment or debarment extension, or for issuing the immediate debarment;

(ii) The scope and duration of the proposed debarment or debarment extension, or of the immediate debarment in accordance with paragraphs (c) and (d) or (g) of this section; and

(iii) A statement that the proposed debarment or debarment extension shall become effective on the date indicated in the notice unless, not later than 30 days from the issuance date of the notice, the respondent requests, in accordance with the procedures of 10 CFR 1024.4, Rule 1, a hearing before the DOE Financial Assistance Appeals Board (Board); or

(iv) A statement that the immediate debarment is effective on the issuance date of the notice, and, as provided in paragraph (g)(3) of this section, the respondent may submit a written request for reconsideration at any time during the period of immediate debarment.

(3) If a hearing is not requested under paragraph (e)(2)(iii), the Secretary shall make a final determination and the Director shall notify the respondent in writing.

(f) *Hearing.* (1) Within 15 days after receiving a request for a hearing, the Board shall notify the respondent in writing of the time and place of the hearing. Such notice shall include a statement indicating the nature of the proceedings and their purpose.

(2) The hearing shall be conducted in accordance with 10 CFR Part 1024.

(3) A transcribed record shall be made of the hearing. The respondent may obtain a copy of the hearing transcript at cost.

(4) After completion of the hearing, the Board shall make a written determination based on the evidence of record. Whenever appropriate, the Board shall indicate the extent to which the determination applies to components of an organization or to affiliates, or the extent to which an individual's conduct should be imputed to an organization. The Board's determination shall be transmitted simultaneously to the Director and the Secretary, and to all respondents.

(5) The Board's determination shall be the final decision of the Secretary unless within 60 days after the date of transmittal, the respondent requests a review by the Secretary or the Secretary, on his or her own initiative, decides to review the Board's determination.

(i) Any review by the Secretary shall be based solely on the hearing record

and the Secretary's decision shall be final.

(ii) Written notice of the Secretary's intention to review the Board's determination and the Secretary's final written decision shall be provided to all respondents.

(g) *Immediate debarment.* (1) Except as provided in paragraph (g)(2) of this section, and immediate debarment shall last no longer than six months unless within that the time the Director initiates a debarment action in accordance with paragraph (e)(2)(iii) of this section. If a timely debarment action is initiated, the immediate debarment shall remain in effect until the debarment proceedings are concluded or for 12 months, whichever occurs earlier.

(2) An immediate debarment based on a criminal indictment may remain in effect for 18 months or until the indictment is dismissed or the defendant is acquitted, whichever occurs earlier.

(3) A respondent may request, at any time, that the Director reconsider an immediate debarment. The reconsideration request shall be in writing and shall include any affidavits and documentary evidence the respondent believes would establish that continuation of the immediate debarment is unjustified. If requested by the respondent, the Director may transmit the reconsideration request to the Board for a hearing on the record and a proposed determination in accordance with the procedures set forth in paragraph (f) of this section.

(4) The Director may not renew or extend an immediate debarment on the same grounds.

(h) *Effect of debarment.* (1) An application, bid, or proposal from a debarred individual, organization, or affiliate shall not be considered and shall be returned unless the Director determines in writing that accepting the application, bid, or proposal for consideration would be in the best interest of the public.

(2) An awarding party shall not consider an application which proposes that a debarred individual serve as principal investigator, project director, or in a position of responsibility for the administration of Federal funds. The awarding party shall return any such application to the applicant with a written statement explaining why the application cannot be considered.

(3) A debarment, including an immediate debarment, under this section may be the basis for a suspension or termination for cause by the awarding party. (See §§ 600.121 and 600.122 for grants and §§ 600.271 and 600.290 for cooperative agreements.)

(i) *Public notice of debarment.* (1) When an individual, organization, or affiliate is debarred by DOE under this section, DOE shall publish a notice in the **Federal Register** containing at least the following information:

(i) The name and address of the debarred individual, organization, or affiliate;

(ii) The legal authority under which the action was taken and a brief statement of the reasons for the action; and

(iii) The duration of debarment, including the beginning and ending dates, or, if an immediate debarment, a statement that the immediate debarment is for a temporary period as provided in paragraph (g) of this section.

(2) DOE shall also publish a notice in the **Federal Register** when an immediate debarment ends, and whenever a debarment is reduced or extended.

(j) *List of debarred organizations and individuals.* DOE shall establish and maintain a current, consolidated list of debarred individuals and organizations which shall be on file at DOE public reading facilities maintained in accordance with 10 CFR 1004.3.

§§ 600.28–600.99 [Reserved]

Subpart B—Grants

§ 600.100 Scope and applicability.

(a) This subpart establishes requirements for the award and administration of grants and subgrants. For purposes of DOE grants, subgrants, and contracts under grants and subgrants, this subpart implements OMB Circulars A–102, A–110, and the Federal cost principles.

(b) The requirements of this subpart shall apply as indicated in § 600.2. In addition, the suspension and termination procedures of §§ 600.121 and 600.122 and the closeout procedures of § 600.123 shall apply to any active grant and, in the case of the closeout procedures, to any terminated or expired grant which has not been closed out prior to the effective date of this part, provided, however, that any suspension or termination involving an active grant is initiated on or after the effective date of this part. With the concurrence of the affected party or parties, DOE may follow the procedures set forth in §§ 600.121 and 600.122 in any suspension or termination action initiated before the effective date of this part.

§ 600.101 Definitions.

For purposes of this subpart—

"Closeout" of a grant means the process by which DOE determines that all applicable administrative actions and all required work under the grant have been completed by the grantee and by DOE.

"Cognizant agency" means the Federal department or agency responsible for negotiating indirect cost rates and resolving audits for a particular grantee or class of grantees.

"Cost-reimbursement contract" means a contract, or subcontract under a cost-reimbursement contract, under which payment is made on the basis of allowable costs incurred during performance up to a maximum amount set forth in the contract or subcontract.

"Direct cost" means any cost that can be specifically identified with a particular project or activity, including salaries, travel, equipment and supplies directly benefiting the project or activity.

"Formula grant" means a grant DOE is required to make to any one or more eligible applicants who meet statutory prerequisites for award. The amount of a formula grant award is determined in accordance with a formula specified either in the authorizing statute or in implementing program rules.

"Grantee" means the government, nonprofit corporation, individual, or other entity to whom DOE awards a grant and who is financially accountable to DOE for the use of the funds awerded and legally responsible for the performance of the project or activity(ies). An organizational grantee shall be the entire organization even if the activity or project is performed by a component part of the organization.

"Indirect cost" means a cost incurred by an organization for common or joint objectives and which cannot be identified specifically with a particular project or activity.

"Indirect cost rate" means the ratio, expressed as a percentage, of an organization's total indirect costs to its direct cost base (commonly salaries and wages).

"In-kind contribution" means property, services, or other noncash contribution, made by the grantee, subgrantee, or non-Federal third party, which directly benefits and can be specifically identified with a project or activity, and to which a value is assigned for purposes of cost sharing.

"Small entity" means a "small business" (as defined in § 600.3), "small governmental jurisdiction," or "small organization."

"Small governmental jurisdiction" means a government of a city, county, town, township, village, school district, or special district with a population of less than fifty thousand.

"Small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

"Subgrant" means an award of funds or other type of financial assistance authorized by statute by a grantee to an eligible subrecipient.

§ 600.102 Grant applications.

(a) *General.* An application for a grant shall be on the form or in the format specified in a program rule, in the solicitation, or in this part (see § 600.10). DOE may also require applicants to complete—

(1) The Management Summary Report (EIA–459E) or the Milestone Plan (EIA–459B) as a baseline plan in accordance with the Uniform Reporting System for Federal Assistance (Grants and Cooperative Agreements) (DOE/MA–0001) if required by program rule or if justified in the solicitation; or

(2) The Notice of Energy RD&D Project (DOE Form 538) if the application is for a research, development, or demonstration project.

(b) *Budgetary information.* DOE may request and the applicant shall submit the minimum budgetary information necessary to evaluate the costs of the proposed project or activity.

(1) All applicants shall use the budget formats contained in OMB Circular A–102, as duplicated in the DOE Uniform Reporting System for Federal Assistance.

(2) DOE may, subsequent to receipt of an application, request additional information from an applicant when necessary for clarification or to make informed preaward determinations under § 600.103.

(c) *Continuation applications.* DOE may require that an application for a continuation award (see § 600.106(b)) be made in the format or on the forms authorized by paragraphs (a) and (b) of this section except that grantees that are State governments, local governments, or Indian tribal governments are required to submit only those pages of the application form that contain information different from that provided in the original application.

§ 600.103 Cost determinations.

(a) *General.* Except as otherwise specified by the governing program statute, program rule, or other terms and conditions of an award, costs allowable under DOE grant awards shall be determined in accordance with the applicable cost principles cited in paragraph (b) of this section. As part of an acceptable financial management system under § 600.109(b), grantees and subgrantees must have or establish procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the applicable Federal cost principles and the terms and conditions of the award.

(b) *Cost principles.* The following cost principles shall apply to grants as specified.

(1) OMB Circular A–21–Cost Principles Applicable to Grants, Contracts and Other Agreements with Institutions of Higher Education.

(2) OMB Circular A–87–Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments. These cost principles shall also apply to grants with Indian tribal governments and with foreign governments to the extent appropriate.

(3) OMB Circular A–122–Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Organizations. Nonprofit organization in this context refers to a private, nonprofit organization other than a nonprofit institution of higher education or hospital. However, a few nonprofit organizations, as specifically listed in Attachment C to OMB Circular A–122, are subject to the commercial cost principles as specified in paragraph (b)(5) of this section. OMB Circular A–122 shall also apply to grants with unincorporated individuals.

(4) 45 CFR Part 74, Appendix E, Cost Principles for Hospitals.

(5) 41 CFR Subpart 1–15.2 (Federal Procurement Regulations) as modified by 41 CFR 9–15.2 (DOE Procurement Regulations) for grants with for-profit organizations (other than for-profit hospitals).

(c) *Subgrantees and contractors.* For subgrants, the grantee shall use the cost principles cited in this section that apply to the subgrantee. The grantee or subgrantee shall specify in any cost-reimbursement contract the applicable cost principles, which shall be the cost principles cited in this section that apply to the contractor.

(d) *Deviations.* Unless required by program statute, the awarding party may deviate from the requirements of the cost principles only after obtaining DOE approval in accordance with § 600.4.

(e) *Approval requirements.* Costs that, by the terms of the cost principles or other terms or conditions of the award, subaward, or contract, require the approval of the awarding party shall be considered to have met the requirement for approval if they are included in the approved direct cost budget or in an approved indirect cost amount, proposal, or cost allocation plan. If the costs are to be charged as direct costs and they are not in the approved budget, specific prior written approval must be obtained from the designated DOE Contracting Officer, the grantee, or the subgrantee, as appropriate, before such costs are incurred by the grantee, subgrantee, or cost-type contractor (see § 600.114). No approval may be given which is inconsistent with the purpose of the grant or which deviates without authorization from the terms and conditions of the DOE award (see § 600.4). See § 600.114 for procedures for requesting prior approval under this paragraph. See paragraph (f) of this section with respect to indirect costs.

(f) *Indirect costs.* Unless restricted by Federal statute or program rule, DOE shall provide for the reimbursement of appropriate indirect costs.

(1) DOE shall include an amount for indirect costs in an award only if the applicant requests reimbursement of such costs and—

(i) Submits evidence that the applicant has been assigned to a cognizant Federal agency responsible for establishment of indirect cost rates and indicates or provides evidence that—

(A) A current agreement containing an applicable approved indirect cost rate(s) covering all or part of the budget period for which DOE may provide funding has been established; or

(B) An indirect cost proposal has been submitted to the cognizant agency in order to establish an applicable approved indirect cost rate(s) covering all or part of the budget period for which DOE may provide funding; or

(C) An indirect cost proposal covering all or part of the budget period and applicable to the activities for which DOE may provide funding will be submitted to the cognizant agency for approval no later than three months after the beginning date of the initial budget period of the DOE award or, for subsequent budget periods, in accordance with any schedule established by the cognizant agency; or

(ii) If not assigned to a cognizant agency, the applicant includes, in the application, data that is current, complete, accurate, and sufficient to allow the DOE Contracting Officer to determine a rate(s) for indirect costs. If the total approved budget will not exceed $100,000 or if the amount requested for indirect costs does not exceed $5,000, DOE may waive the requirement for negotiation of a rate and, in lieu thereof, provide a reasonable allowance for such costs.

(2) Indirect cost proposals shall be prepared and submitted in accordance with the applicable Federal cost

principles and instructions from the cognizant agency or from DOE, as appropriate.

(3) If a subgrant or contract under a grant or subgrant provides for the payment of indirect costs, the grantee or subgrantee shall be responsible for negotiating appropriate indirect costs, using the cost principles applicable to the subgrantee or contractor, unless the subgrantee or contractor has negotiated an applicable rate directly with DOE or other Federal department or agency. DOE may review and audit the procedures a grantee or subgrantee uses in conducting indirect cost negotiations.

(g) *Preaward costs.* Costs incurred prior to the beginning date of a new or renewal award are allowable only if approved in writing, prior to incurrence, by a DOE Contracting Officer.

(h) *Fee or profit.* No increment above cost may be paid to a grantee or subgrantee under a DOE grant or subgrant. A fee or profit may be paid to a contractor providing goods or services under a grant or subgrant.

§ 600.104 Responsible applicant.

(a) The signature of the applicant or an authorized official of the applicant organization shall represent the applicant's preaward assurance that it is in compliance with or shall comply with—

(1) The standards for management of funds, property, and other assets, and the procurement of goods and services, as specified in this subpart and in the solicitation, if any;

(2) Generally applicable requirements which require such an assurance except that a separate signed assurance is required by 10 CFR 1040.4; and

(3) The terms and conditions of the award as described in the program rule, the solicitation, and this part.

(b) DOE reserves the right to make a preaward review of the applicant's ability to manage and account for a DOE grant, if awarded, or to determine compliance with generally applicable requirements. (See § 600.120 for postaward audit requirements.) If the applicant is not in compliance or cannot or will not comply with the standards and requirements, DOE may determine that the applicant is not responsible and may use special restrictive conditions (see § 600.105) or disapprove the application.

(c) The grantee shall assure that applicants for subgrants comply with applicable management standards and generally applicable requirements as provided in paragraphs (a) and (b) of this section.

§ 600.105 Special restrictive conditions of award.

(a) *General.* DOE may, in accordance with the following paragraphs of this section and without following the deviation procedures of § 600.4, use award conditions which are more restrictive than the requirements of this subpart with respect to reporting, financial management systems, audits, prior approval, or other administrative procedures.

(b) *DOE procedures.* Before or at the time of award, DOE shall advise the applicant/grantee whenever DOE has determined that the applicant/grantee is not responsible on the basis of one or more of the following:

(1) Financial instability;

(2) A history of poor performance; or

(3) A management system which does not meet the requirements of this subpart.

DOE shall provide the applicant/grantee with a written explanation of why any special restrictive condition is necessary and shall indicate what corrective action must be taken. If the applicant/grantee is one covered by OMB Circular A–102 or A–110 and if the condition is more restrictive than is allowed by those Circulars, the Director, Procurement and Assistance Management or his or her designee shall notify OMB or other interested parties.

(c) *Subgrantees.* A grantee may place a special restrictive condition, as specified in paragraphs (a) and (b) of this section, in a subgrant award. In any such case, the grantee must notify DOE in writing within 15 days of the subgrant award. DOE shall decide whether to notify OMB and other interested parties.

§ 600.106 Funding.

(a) *General.* The project period during which DOE expects to provide grant support for an approved project shall be specified on the Notice of Financial Assistance Award (DOE Form 4600.1). For formula grant programs, the project period is the period of time covered by an approved State plan. As provided in paragraphs (b) and (e) of this section, a project period may consist of one or more budget periods.

(b) *Budget period and continuation awards.* If the project period is 12 months or less, the budget period and the project period shall be coextensive. Except as provided in paragraph (e) of this section, multiyear grants, including formula grants, shall be funded annually within the approved project period. Funding for each budget period within the project period shall be contingent on DOE approval of a continuation application submitted in accordance with a schedule specified by DOE. A continuation application shall include—

(1) A statement of technical progress or status of the project to date (see § 600.115(d)(1));

(2) A detailed description of the grantee's plans for the conduct of the project during the coming year; and

(3) A detailed budget for the upcoming budget period, including an estimate of unobligated funds (see § 600.108(c)).

DOE shall review a continuation application for the adequacy of the grantee's progress and planned conduct of the project in the subsequent budget period. DOE shall not require a continuation application to compete against any other application. The amount and award of continuation funding is subject to the availability of appropriations.

(c) *Renewal awards.* Whenever DOE determines that a project will not be completed within the originally approved project period and should be continued for an extended period or a grantee so requests, DOE shall issue a solicitation before renewing funding for the project. If DOE proposes to restrict eligibility to apply to the current grantee, the restriction of eligibility shall be justified as in § 600.7(b). A renewal application must be submitted no later than five months prior to the scheduled expiration of the project period unless it is being submitted in response to a competitive solicitation which establishes a different application deadline date. A revised State plan must be submitted in accordance with program rules and other instructions from DOE. If a renewal application or State plan is approved and funded, the project period may be extended by one or more budget periods.

(d) *Extensions.* In order to allow a grantee to complete a project, DOE may extend the project period and final budget period by revising the scheduled expiration date without the need for competition or a detailed application if:

(1) The additional time necessary to complete the project is less than 12 months;

(2) No additional funds or a minimal amount of additional funds are necessary; and

(3) The grantee submits a written request for such an extension, including a budget for the use of any remaining or additional funds.

(e) *Exceptions.* A single budget period exceeding 12 months may be coextensive with the project period only if:

(1) Required by statute;

(2) The project is exclusively for construction, alteration and renovation,

or acquisition of real property, or other type of activity that requires an extended funding commitment by DOE and for which an annual continuation review is inappropriate; or

(3) At the time of award, the total period of DOE support is expected to be less than 18 months.

(f) *Subgrant funding.* The funding period for a subgrant may extend beyond the expiration date of the current budget period for the grant provided the grantee obligates the entire subgrant amount during the current budget period; however, the end date of a subgrant shall not extend beyond the expiration date of the project period for the grant.

(g) *Contract funding.* The performance period for a contract under a grant may extend beyond the expiration date of the current budget period for the grant; however, use of DOE funds for the contract after the end of the current budget period of the grant is dependent on a DOE award under which the costs of the contract are allowable and allocable.

§ 600.107 Cost sharing.

(a) *General.* DOE shall specify, in the solicitation, in the program rule, and in the Notice of Financial Assistance Award, the minimum amount or percentage of any required cost sharing.

(b) *Nonstatutory cost sharing.* If DOE requires that a grantee provide cost sharing which is not required by statute or which exceeds a statutory minimum, such cost sharing requirement shall be specified in program rule or in the solicitation. DOE shall descirbe the basis for requiring such cost sharing, recommended or required levels of cost sharing, and the circumstances under which the requirement for cost sharing may be waived or adjusted during any negotiation.

(c) *Negotiation.* Whenever DOE negotiates the amount of cost sharing, DOE may take into account such factors as the use of program income (see § 600.113), patent rights, and rights in data. Foregone fee or profit shall not be considered in establishing the extent of cost sharing.

(d) *Composition and source of cost sharing.* (1) Cost sharing may be derived from any of the following—

(i) Costs incurred by the grantee (or subgrantee) whether or not they require a cash outlay;

(ii) Cash contributed to the grantee or subgrantee(s) by non-Federal public or private organizations and individuals; or

(iii) The value of goods, including the use of property, or services donated to the grantee or subgrantee(s) by non-Federal public or private organizations and individuals (third-party in-kind contributions).

(2) To be allowable as cost sharing, a cash or in-kind contribution must:

(i) Be verifiable from the records of the grantee, subgrantees, or third parties, as applicable. Such records must show how the value placed on an in-kind contribution was determined (see paragraph (e) of this section);

(ii) Not be included as a cost or contribution for satisfying a cost sharing or matching requirement of another project or program receiving Federal funding, whether as financial assistance, under a procurement contract, or otherwise;

(iii) Be allowable under the terms and conditions of the award and meet the applicable cost principle tests of allowability (see § 600.103(b)); and

(iv) The source of the contribution may not be costs supported by another Federal assistance award unless such use is permitted by Federal statute. This restriction does not apply to:

(A) General program income, as defined in § 600.113, earned by a grantee or subgrantee under a contract under another Federal assistance award; and

(B) General revenue sharing funds under 31 U.S.C. 122 *et seq.* or countercyclical revenue sharing funds under 42 U.S.C. 6721 *et seq.*

(3) General program income may be used to meet a cost sharing requirement of the grant which gave rise to the income only if such use is authorized by the award (see § 600.113(e)).

(e) *Valuation of in-kind contributions.* A grantee or subgrantee that is a State government, local government, or Indian tribal government shall determine the value of services or property donated by non-Federal third parties in accordance with OMB Circular A–102, Attachment F, Paragraph 5. Any other grantee or subgrantee shall make such determinations in accordance with OMB Circular A–110, Attachment E, Paragraph 5.

§ 600.108 Calculation of award.

(a) *Total approved budget.* "Total approved budget" means the amount of costs authorized to be incurred during the budget period, as shown on the Notice of Financial Assistance Award, by a grantee and any subgrantee or contractor as well as the estimated value of in-kind contributions, to carry out an approved project. The total approved budget consists of DOE funds for both direct and indirect costs and any required cost sharing. The total approved budget shall indicate the maximum amount of funds DOE shall provide and the minimum amount or percentage of any cost sharing the grantee is required to provide.

(b) *Excess funds.* A grantee must notify DOE whenever it becomes apparent to the grantee that the amount of DOE funding authorized is expected to exceed its needs by more than $5,000 or five percent of the DOE award, whichever is greater. DOE may reduce the DOE award by an amount which does not exceed the total amount of excess funds.

(c) *Unobligated funds.* DOE may authorize all or a portion of any unobligated DOE funds remaining at the end of a budget period (see § 600.116) for expenditure by a grantee in any subsequent budget period. Unobligated funds may be used after the end of a budget period only if authorized by DOE in the total approved budget shown in an amended Notice of Financial Assistance Award.

(1) Carryover funds may be used either to reduce or to increase the DOE share of the total approved budget for the subsequent budget period. In either case, any maximum DOE share established by statute or program rule shall not be exceeded. If the amount authorized for carryover is based on an estimate provided by the grantee, DOE may make an appropriate downward adjustment if the funding available to the grantee exceeds the DOE share of the total approved budget for the budget period in question. An upward adjustment may be made only if the grantee needs additional DOE funds and sufficient appropriated funds are available.

(2) Funds paid to the grantee which remain unobligated at the end of the project period or when the grant is terminated shall be returned to DOE or be accounted for in accordance with DOE instructions.

(d) *Adjustments.* Whenever DOE adjusts the amount of an award under this subpart, it shall also make an appropriate upward or downward adjustment to the amount of required cost sharing in order that the adjusted award maintain any required percentage of DOE and non-Federal participation in the costs of the project.

§ 600.109 Financial management systems.

(a) *General.* Except as provided in paragraph (c) of this section, grantees and subgrantees shall have financial management systems which meet the minimum standards set forth in paragraph (b) of this section.

(b) *Minimum standards.* At a minimum, grantee and subgrantee financial management systems must provide for:

(1) Accurate, current, and complete disclosure of the financial results of each project (see § 600.116 for financial reporting requirements for grantees).

(2) Records that identify adequately the source and application of funds for the financially assisted project, including information pertaining to Federal awards, subgrant awards, authorizations, obligations, unobligated balances, assets, outlays, income, and liabilities.

(3) Effective control over and accountability for all funds, property, and other assets. Grantees and subgrants shall adequately safeguard all such funds, property, and assets and shall assure that they are used solely for authorized purposes. The requirements of this paragraph (b)(3) with respect to control and safeguarding of property shall apply to all property, including exempt property, which is required to be managed in accordance with § 600.117.

(4) Comparison of actual expenditures with approved budget amounts for each grant or subgrant, and, if required by the terms and conditions of the award, the relation of financial information to performance and unit cost data.

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and their disbursement for grant or subgrant purposes (see § 600.112).

(6) Procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the provisions of the applicable Federal cost principles and other terms and conditions of the award or subaward.

(7) Accounting records that are supported by source documentation, such as cancelled checks, paid bills, payrolls, contract documents, etc.

(8) A systematic method to assure timely and appropriate resolution of audit findings and recommendations (see § 600.120 for postaward audit requirements).

(c) *Individuals.* Individuals whose financial management systems do not meet the minimum standards of paragraph (b) of this section shall maintain a separate bank account for deposit of grant or subgrant funds. Disbursements by the grantee or subgrantee from this account shall be supported by source documentation such as cancelled checks, paid bills, receipts, payrolls, etc.

(d) *System reviews.* (1) The awarding party may review the adequacy of an applicant's financial management system as part of a preaward review or at any time subsequent to award (see §§ 600.104 and 600.120).

(2) For small entities who are expected to receive, during the project period, financial assistance totaling $25,000 or less, the awarding party shall rely on readily available sources of information, such as previous audit reports, to make any preaward assessment of the adequacy of the applicant's financial management system. The awarding party shall seek additional information from the applicant or perform an on-site preaward review only if necessary to assure prudent management of DOE funds. (See § 600.120 for the postaward audit requirements applicable to small entities.)

§ 600.110 Cash depositories.

Grantees and subgrantees shall comply with the standards governing cash depositories for advance payments (see § 600.112(b)) contained in Attachments A of OMB Circulars A–102 and A–110.

§ 600.111 Bonding and insurance.

(a) The grantee or subgrantee shall use its regular bonding and insurance requirements unless the awarding party specifies either or both of the following requirements in the award:

(1) If the cost of a contract or subcontract for construction or facility improvement, including alteration and renovation of real property, exceeds $100,000, a bid guarantee, performance bond, and payment bond, as defined in Attachments B of OMB Circulars A–102 and A–110, shall be required.

(2) A nongovernmental grantee or subgrantee may be required to obtain or acquire additional fidelity bond coverage if the risk without such coverage would be unacceptable.

(b) Any bonds required under paragraphs (a)(1) or (a)(2) of this section shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223).

§ 600.112 Payment.

(a) *General.* The awarding party shall select the payment method under a grant or subgrant with the objective of minimizing the time elapsing between the transfer of funds from the U.S. Treasury and their disbursement by the grantee or subgrantee for grant or subgrant purposes. Payments may be made by DOE to a grantee under any one of the payment methods described in paragraph (b) of this section except that payments to foreign organizations shall be made in accordance with Department of Treasury policy applicable to such transactions.

(b) *Advance payment methods.* Advance payments may be made either through a letter of credit or by Treasury check.

(1) *Letter of Credit.* A letter or credit is an instrument certified by an authorized Federal official that authorizes a grantee to draw funds needed for immediate disbursement in accordance with the provisions of Treasury Circular 1075. The grantee must comply with Treasury Circular 1075 guidelines (31 CFR Part 205) and instructions from DOE in making withdrawals under the letter of credit and in reporting on cash disbursements and balances. Except as provided in paragraph (c) of this section, a letter of credit shall be used by DOE when:

(i) There is or will be a continuing relationship between a grantee and DOE for at least a 12-month period and the total amount of funds to be advanced by DOE to the grantee (under one or more DOE financial assistance awards) within that period is $120,000 or more;

(ii) The grantee's financial management system meets the standards for fund control and accountability specified in § 600.109(b), including procedures or planned procedures that will minimize the time elapsing between the transfer of funds from the U.S. Treasury and their disbursement by the grantee.

(2) *Advance by Treasury check.* Advance by Treasury check is a payment made upon request before the grantee makes cash outlays. DOE shall use this method when the grantee meets the requirements of paragraph (b)(1)(ii) of this section but not those of paragraph (b)(1)(i) of this section.

(i) The timing and amount of cash advances to the grantee shall be as close as is administratively feasible to the actual disbursement of funds by the grantee.

(ii) If a grantee meets the requirements for advance payment, the duration of the project is 12 months or less, and the amount of the DOE award is less than $10,000, DOE may advance the entire award amount in a single Treasury payment.

(c) *Reimbursement by Treasury check.* DOE may use the reimbursement by a Treasury check method of payment if the grantee does not meet the requirements of paragraph (b)(1)(ii) of this section. DOE may also use the reimbursement method if the major portion of the project or activity will be financed by private financing or Federal loans, with the DOE grant representing 25 percent or less of the total cost.

(1) For construction grants, DOE may use the reimbursement method unless DOE has an agreement with the grantee to use a letter of credit for all DOE grants, including construction grants.

(2) Grantees and subgrantees that are State governments, local governments, or Indian tribal governments shall not be reimbursed for amounts that are to be withheld from contractors to assure satisfactory completion of contractual work under a grant or subgrant. Such amounts shall be paid only after the grantee or subgrantee makes the final payment to the contractor, including the amount withheld.

(3) DOE shall make payment within 30 days of a request for reimbursement, unless the request is improper or questionable.

(d) *Conversion from advance payment method.* DOE may convert a grantee from advance payment to reimbursement whenever the grantee no longer meets the criteria for advance payment specified in paragraph (b)(1)(ii) of this section. Any such conversion may be accomplished only after DOE has advised the grantee in writing of the reasons for the proposed action and has provided a period of at least 30 days within which the grantee may take corrective action or provide satisfactory assurances of its intention to take such action.

(e) *Requests for payment.* Grantees shall request payment on the forms specified in § 600.116.

(f) *Withholding of payment.* Unless otherwise required by statute, DOE shall not withhold payment for proper charges unless:

(1) DOE has made a determination of noncompliance in accordance with § 600.121. If DOE withholds payment without suspension or termination of the grant, DOE shall release withheld payments to the grantee after compliance is achieved. If the grant has been suspended or terminated, payment adjustments shall be governed by § 600.122; or

(2) The grantee owes money to the United States and collection of the debt by withholding grant payments would not impair the accomplishment of program objectives. Payment of the debt may also be accomplished by accounting adjustments to cash balances in the possession of the grantee for which the grantee is accountable to the Federal government.

(3) Before withholding any payment, DOE shall notify the grantee that payments shall not be made for obligations incurred after a specified date, which shall ordinarily be no sooner than 30 days from the date of the notice, until the grantee corrects the noncompliance or pays the indebtedness to the Federal government. (See also § 600.121 for notification of noncompliance.)

(g) *Assignment of payments.* (1) With prior DOE approval and in accordance with written DOE instructions, a grantee may assign to a bank, trust company or other financing institution, including any Federal lending agency, reimbursement by Treasury check due from DOE under the following conditions:

(i) The grant provides for reimbursement totaling $1,000 or more;

(ii) The assignment covers all amounts payable under the grant that have not already been paid;

(iii) Reassignment is prohibited; and

(iv) The assignee files a written notice of grant payment assignment and a true copy of the instrument of assignment with DOE.

(2) Any interest costs resulting from a loan obtained on the basis of an assignment are unallowable charges to DOE grant funds or any required cost sharing.

(h) *Payments to subgrantees.* Grantees shall observe the requirements of this section in making or withholding payments in subgrantees except that:

(1) Any advance payment shall be made by check rather than a letter of credit;

(2) The forms used by grantees are not required to be used by subgrantees when requesting advances or reimbursement.

§ 600.113 Program income.

(a) *General.* Grantees and subgrantees shall be required to account for income earned or resulting from DOE grant support as indicated in paragraphs (b) through (f) of this section.

(b) *Income resulting from advances of DOE funds.* With the exception of States and instrumentalities of a State, as defined in the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), and their subgrantees, a grantee shall remit to DOE any interest or other investment income earned on advances of DOE funds.

(c) *Proceeds from the sale of real or tangible personal property.* The grantee or subgrantee shall account for proceeds from the sale of real property, equipment, and supplies in accordance with § 600.117.

(d) *Royalties.* The awarding party shall have no right to any royalties received by a grantee or subgrantee as a result of a copyright or a patent obtained on copyrightable material or an invention produced under the grant or subgrant unless required by the terms and conditions of the grant or subgrant award.

(e) *General program income.* The grantee or subgrantee shall retain all other program income (exclusive of the types of program income covered by paragraphs (b), (c) and (d) of this section), which shall be treated as general program income. Such income includes, but is not limited to, income in the form of fees for services performed during the period of the grant or subgrant, proceeds from the sale of energy or real or tangible personal property, and usage or rental fees. General program income does not include revenue such as taxes raised by a government under its governing power, tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee performing under a grant or subgrant, or internal reimbursements or transfers of funds between components of the same legal entity, e.g. between agencies of a State government. The grantee shall report general program income on the Financial Status Report (SF–269) or equivalent for the period earned or received (depending on the accounting basis used) and for the period used (see § 600.116). The grantee shall account for general program income as prescribed in the terms and conditions of the award, which may specify the use of one or more of the options listed in paragraphs (e)(1), (e)(2), or (e)(3) of this section, and which may distinguish between sources, kinds, and amounts of income in determining the option(s) to be applied. If the award does not authorize a grantee to use general program income as indicated in paragraphs (e)(2) and/or (e)(3), such program income shall be used as provided in paragraph (e)(1).

(1) General program income may be deducted from the total approved budget to determine the net costs upon which the DOE share of costs shall be calculated. If the project period consists of more than one budget period, DOE may specify that the deduction be made in a subsequent or later budget period rather than in the budget period during which the general program income was earned or received.

(2) General program income may be used to pay all or part of the grantee's share of allowable project costs. The income shall be applied to the grantee's share during the current budget period unless DOE authorizes, in writing, deferral to a later budget period.

(3) The income may be used for otherwise unallowable costs or allowable costs not included in the total approved budget, if DOE determines such costs are directly related to the objectives of the Federal statute under which the grant was awarded. Unless required by the terms and conditions of the award, DOE shall have no right to any portion of general program income

earned or accrued after the project period ends or the grant is terminated. A subgrantee shall account to the grantee for general program income in accordance with the terms and conditions of the subgrant award. Such terms and conditions shall be consistent with the provisions of this paragraph.

(f) *Records.* A grantee or subgrantee shall maintain records of the source, amount, and disposition of any income for which it is accountable to the awarding party. The access and retention requirements of § 600.25 and § 600.124 apply to program income records.

§ 600.114 Budget and project revisions.

(a) *General.* Subsequent to award, grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, certain types of postaward changes in budgets and projects shall require the prior written approval of the awarding party.

(b) *Budget changes.*— (1) *Nonconstruction projects.* The grantee or subgrantee shall obtain the prior written approval of the awarding party whenever any of the following changes is anticipated under a nonconstruction award:

(i) The rebudgeting of funds either within or between budget categories for a type of cost for which approval is required under the applicable cost principles (see § 600.103).

(ii) Any revision which would result in the need for additional DOE funding.

(iii) The transfer of funds allotted for training allowances, i.e. direct payments to trainees, to other expense categories.

(iv) Transfers among direct cost categories, or, if applicable, among separately budgeted programs, functions, or activities which cumulatively exceed or are expected to exceed five percent of the current total approved budget, whenever the grant or subgrant award exeeds $100,000.

(2) *Construction projects.* The grantee shall obtain DOE prior written approval for any budget revision which would result in the need for additional DOE funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides DOE funding for both construction and nonconstruction activities, the grantee or subgrantee shall obtain prior written approval form the awarding party before making any fund or budget transfer from one activity classification to another.

(4) *Budget changes not requiring prior approval.* The grantee or subgrantee may make the following budget changes without requesting prior approval from the awarding party:

(i) Any contribution by the grantee or subgrantee which is in addition to the minimum amount of cost sharing required under the award.

(ii) The transfer of amounts budgeted for direct costs to pay authorized increases in indirect costs or vice versa.

(c) *Project changes.* The grantee or subgrantee shall obtain the prior written approval of the awarding party whenever any of the following actions is anticipated:

(1) Any revision of the scope or objective of the project (regardless of whether there is an associated budget revision requiring prior approval under paragraphs (b)(1), (b)(2) or (b)(3) of this section).

(2) Designation of a new or a significant change in responsibilities of the designated project director or principal investigator under a grant award for a research project.

(3) Under nonconstruction projects, contracting or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award if such activities are treated as direct costs. This approval requirement is in addition to the approval requirements of § 600.119(d), but does not apply to the procurement of equipment, supplies, and general support services.

(d) *Additional prior approval requirements.* (1) Except as may be authorized under § 600.4 or § 600.105, the awarding party may not require prior approval for any budget revision which is not described in paragraph (b) of this section.

(2) The awarding party may require prior written approval for project revisions other than those described in paragraph (c) of this section.

(e) *Requesting prior approval.* (1) Except as provided in paragraph (e)(2) of this section, a request for prior DOE approval of any budget revision shall be on the same budget format the grantee used in its application to DOE and must be accompanied by a narrative justification for the proposed revision.

(2) A request for a budget revision which, under the applicable Federal cost principles (see § 600.103), requires DOE prior approval may be made by letter.

(3) DOE approval or disapproval of a request for a budget or project revision shall be in writing and signed by a DOE Contracting Officer.

(4) A request by a subgrantee for prior approval shall be addressed in writing to the grantee. The grantee shall promptly review such request and shall approve or disapprove the request in writing. A grantee shall not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the DOE grant award. If the revision requested by the subgrantees would result in a change to the grantee's approved budget or approved project which requires DOE prior approval, the grantee shall obtain DOE approval before approving such revision.

(5) Within 30 days after receiving a request for prior approval, the awarding party shall send the requesting party a written notice stating whether the proposed revision has been approved or disapproved, or the date when a decision is expected to be made.

§ 600.115 Performance reports.

(a) *General.* A grantee shall periodically assess and report to DOE progress in meeting the project objectives of the grant award. The requirements for such performance reports shall be described in any solicitation and shall be set forth in the terms and conditions of the award. The award shall specify the objectives the grantee is to achieve in performing the project, the report form or format to be used, and the frequency of required performance reports, and shall indicate whether performance shall be reported on a project, function, or activity basis.

(b) *Contents of performance reports.* Performance reports shall include:

(1) A comparison of the grantee's accomplishments with the objectives established for the reporting period, including quantification related to cost or other data if required by the terms and conditions of the award, as well as the findings of the investigator, if applicable;

(2) Reasons why established objectives were not met; and

(3) Other pertinent information, including, when appropriate, analysis and explanation of cost overruns or high unit costs.

DOE may specify in the award that the grantee provide the information required under this paragraph (b)(1) on the Program/Project Status Report (Form EIA–459F), the technical reporting formats, or the Management Summary Report (see paragraph (f) of this section) contained in the DOE Uniform Reporting System for Federal Assistance (Grants and Cooperative Agreements) (DOE/MA–0001).

(c) *Frequency.* Performance reports shall be submitted at least annually (i.e. once for every 12-month period elapsed) and may be required to be submitted no

more frequently than quarterly. A final report shall be required after the project period ends or the grant is terminated. The deadlines for performance reports shall be as follows:

(1) Quarterly and semiannual reports shall be submitted within 30 days after the end of the quarter or six-month period covered by the report.

(2) Annual performance reports shall be submitted within 90 days after the end of the 12-month period (generally the budget period) covered by the report except that if the annual report is the fourth quarter report or the second semiannual report in which case the schedule in paragraph (c)(1) of this section shall apply.

(3) Final performance reports shall be submitted within 90 days after the project period ends or the grant is terminated.

(4) DOE may extend the deadline date for any report if the grantee submits a written request before the deadline which adequately justifies an extension.

(d) *Relationship to Financial Status Report (FSR) and other financial reports.* (1) If the FSR is used (see § 600.116), the grantee shall submit its performance reports and FSRs simultaneously for coextensive periods unless:

(i) DOE requires the grantee to submit a performance report with its continuation or renewal application; or

(ii) DOE determines that on-site technical inspections by or on behalf of DOE and certified completion data submitted by the grantee would be sufficient to evaluate construction projects; or

(iii) In order to prepare a required annual report for the Congress, DOE must receive performance reports on a date that is different from an otherwise applicable deadline.

(2) If the grantee will be using the Request for Advance or Reimbursement (SF–270) instead of the FSR (see § 600.116(b)), DOE shall specify in the award deadlines for performance reports.

(e) *Interim reports.* The grantee shall report the following events to DOE as soon after they occur as possible:

(1) Problems, delays, or adverse conditions which will materially affect the ability to attain project objectives, or prevent the meeting of time schedules and goals. The report must describe the remedial action the grantee has taken or plans to take and any action DOE should take to alleviate the problem. (See § 600.114(e) for the procedures to be followed if additional DOE funding is required.)

(2) Favorable developments or events which enable meeting the schedules and goals sooner or at least cost than anticipated or producing more beneficial results than originally projected. (See § 600.108(b) and (c) in the event that an excess authorization of funds occurs.)

(f) *Management Summary Report.* DOE may require that the Management Summary Reprt (EIA–459E) be used as a performance report in accordance with the Uniform Reporting System for Federal Assistance (Grants and Cooperative Agreements) (DOE/MA–0001) only when such use is authorized by program rule or is justified in the soliciation. The requirements of this section concerning reporting frequency and deadlines shall apply to the Management Summary Report. (See also § 600.102(a) with regard to use of this form as part of the grant application.)

(g) *Required copies.* The grantee shall submit an original and two copies of each required performance report unless the award specifies that the grantee may submit fewer copies.

(h) *DOE review of grantee performance.* DOE or its authorized representatives may make site visits, at any reasonable time, to review the project and to provide such technical assistance as may be necessary.

(i) *Subgrantee performance reporting.* Grantees may place performance reporting requirements on subgrant awards consistent with the provisions of this section and shall require interim reports in accordance with paragraph (e) of this section.

§ 600.116 Financial reports.

(a) *General.* A grantee shall report financial information to DOE on one or more of the forms indicated in paragraphs (b) through (f) of this section, as specified by DOE in the terms and conditions of the award. The grantee shall submit an original and two copies of each required form unless the award specifies that the grantee may submit fewer copies. The particular form(s) specified for use shall be appropriate for the payment method used (see § 600.112) and for DOE information requirements. The grantee may provide the required information in machine usable format or computer printout instead of on the prescribed report forms. A grantee is not required to use these forms to obtain financial information from a subgrantee.

(b) *Financial Status Report (SF–269).* (1) A grantee shall use the Financial Status Report to report the status of funds for all nonconstruction projects unless DOE specifies in the award that the Request for Advance or Reimbursement (SF–270) or the Report of Federal Cash Transactions (SF–272) shall be used for this purpose. Whenever the Request for Advance or Reimbursement form is used only for advances, even if no interim FSRs are required as provided in this paragraph, the grantee shall submit a final FSR after the project period ends or the grant is terminated.

(2) A grantee shall complete the FSR on a cash or accrual basis, whichever is used in its accounting system. DOE may require accrual reporting only if such reporting is required by program statute or rule. In any such case, the grantee shall base its financial reports to DOE on an analysis of available financial records but shall not be required to convert to an accrual accounting system.

(3) DOE may require FSRs only in the frequency specified in § 600.115(c). Unless otherwise specified in the award, the grantee shall submit an FSR annually or, if the project period is one year or less, the grantee shall submit only a final FSR.

(4) If a grantee has unliquidated obligations when the final FSR is due, the grantee shall ask the DOE Contracting Officer whether a provisional final FSR should be submitted to be followed by a complete final FSR at a later date.

(c) *Report of Federal Cash Transactions (SF–272).* When funds are advanced to a grantee through a letter of credit or directly by Treasury check, the grantee shall submit to DOE a Report of Federal Cash Transactions and, when necessary, its continuation sheet (SF–272a) in accordance with instructions from DOE. The Federal Cash Transaction Report shall be submitted within 15 working days following the end of each quarter. DOE may require that grantees receiving advances totaling $1 million or more per year submit monthly SF–272 reports. DOE may waive the SF–272 requirement whenever total monthly advances to a grantee do not exceed $10,000 and DOE determines that the grantee's accounting controls are adequate to minimize excessive advances. Grantees who receive a single payment of less than $10,000 in accordance with § 600.112(b)(2)(ii) shall not be required to submit an SF–272.

(d) *Request for Payment on Letter of Credit and Status of Funds Report (SF–183).* A grantee shall use the Request for Payment on Letter of Credit and Status of Funds Report to request advance payments under a letter of credit.

(e) *Request for Advance or Reimbursement (SF–270).* A grantee who does not have a letter of credit shall use the Request for Advance or Reimbursement (SF–270) for any nonconstruction project.

(1) Requests for advances by Treasury check may be submitted as necessary; however, such requests shall not be made in excess of reasonable estimates of cash outlays for a 30-day period.

(2) Requests for reimbursement shall be submitted monthly unless more frequent submission is authorized by the award.

(f) *Outlay Report and Request for Reimbursement for Construction Programs (SF–271).* Unless DOE specifies in the award that the grantee shall use the SF–270, the grantee shall use the Outlay Report and Request for Reimbursement for Construction Programs to request reimbursement for a construction project in the frequency specified in paragraph (e)(2) of this section.

(g) *Standard forms.* Standard forms, instructions for their completion, and applicable definitions, are contained in OMB Circular A–102, Attachment H and OMB Circular A–110, Attachment G. All DOE grantees shall use these forms and instructions, except as provided in paragraph (a) of this section. Use of any other forms or instructions shall be considered a deviation subject to the deviation procedures of § 600.4.

§ 600.117 Property management.

(a) *Definitions.* (1) "Acquired with DOE grant funds" means that all or a portion of the acquisition cost of an item of property is a direct charge to DOE grant funds (whether the cost is incurred under the grant, a subgrant, or a cost-reimbursement contract) or all or a portion of the acquisition cost is a direct cost being used to meet a cost sharing requirement.

(2) "Acquisition cost" of an item of purchased equipment means the net invoice unit price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

(3) "Acquisition of property" means the purchase, construction, or fabrication of property but does not include rental of property or minor alteration or renovation of real property.

(4) "Equipment means an article of tangible personal property that has a useful life of more than two years and an acquisition cost of $500 or more. A grantee or subgrantee may use its own definition of equipment provided the definition would include all articles of equipment as defined in this paragraph.

(5) "Exempt property" means equipment and supplies acquired with DOE grant funds for which the grantee or subgrantee is not required to account to DOE except as provided in paragraph (d)(4) of this section. The exempt status must be authorized by a Federal statute.

(6) "Federally owned property" means any real or tangible personal property (equipment or supplies) owned by DOE which is furnished by DOE to a grantee for use during the project period, and any such property acquired under a grant which DOE is required to own.

(7) "Nonexempt property" means equipment and supplies acquired with DOE grant funds which are subject to the conditions for use, management, and disposition under paragraphs (d) and (e) of this section. For this purpose, nonexempt property includes excess personal property which has been made available to a grantee under authority of the Federal Property and Administrative Services Act, as amended by 40 U.S.C. 483, and the implementing Federal Property Management Regulations (41 CFR 101–43.320).

(8) "Real property" means land, land improvements, structures and anything attached to these so as to become a part of them. This term does not include movable machinery and other types of equipment.

(9) "Supply" means any tangible personal property other than equipment.

(b) *Applicability.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, this section applies to real property, equipment, and supplies acquired with DOE grant funds, and to real property, equipment, and supplies furnished by DOE under a grant.

(2) The requirements of this section apply to grantees and subgrantees. The requirements of this section apply to equipment and supplies acquired by a contractor under a grant or subgrant only when the contract requires ownership of the property to remain with the grantee, subgrantee, or DOE.

(3) The requirements of this section do not apply to:

(i) Property for which only use or depreciation allowances are charged;

(ii) Property donated by a third party (whether or not counted as a third-party in-kind contribution); and

(iii) Property acquired for sale or rental rather than for use in the grant project.

(4) If they comply with the requirements of this section, grantees and subgrantees may use their own property management standards and procedures.

(c) *Real property.* (1) Federally-owned real property shall be managed and disposed of in accordance with the terms and conditions of the award.

(2) Real property may be acquired with DOE grant support only when specifically authorized by Federal statute or program rule. Except as otherwise required by Federal statute or program rule, the following shall apply whenever real property is acquired with DOE grant support.

(i) Subject to the conditions in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section, the grantee shall have title to such real property during and after the period of DOE grant support. A subgrantee may have title to such real property only if authorized by Federal statute or program rule.

(ii) Except as provided in paragraph (c)(2)(iv) of this section, the grantee shall notify DOE if the real property become unnecessary for the purpose authorized under the grant or subgrant under which it was acquired. The grantee must obtain written DOE approval to use the property for any other purpose. Such use shall be limited to federally assisted projects, or to programs, projects, or activities that have purposes consistent with those authorized in the statute under which the grant was awarded.

(iii) Except as provided in paragraph (c)(2)(iv) of this section, whenever real property is no longer needed or used as provided in paragraph (c)(2)(ii) of this section, the grantee must request disposition instructions from DOE. DOE shall instruct that the real property be disposed of in one of the following ways, any one of which shall result in satisfaction of the grantee's accountability:

(A) The grantee or subgrantee may be permitted to retain the real property after compensating DOE in an amount computed by applying the percentage of DOE participation in the cost of the original project or activity to the current fair market value of the property.

(B) The grantee or subgrantee may be directed to sell the real property and pay DOE an amount computed by applying the percentage of DOE participation in the cost of the original project or activity to the proceeds from sale (after deducting actual, reasonable selling expenses from the sales proceeds).

(C) The grantee or subgrantee may be directed to transfer title to the Federal government or to a non-Federal third party specified by DOE (although the grantee or subgrantee may suggest a potential third party transferee). The grantee or subgrantee shall be

compensated in an amount computed by applying the grantee's or subgrantee's percentage of participation in the cost of the project or activity to the current fair market value of the real property.

(D) If the real property was not wholly acquired with DOE grant funds, the proportionate shares shall be adjusted by multiplying the percentage of the acquisition cost of the property (or if donated, the market value at the time of donation) which was attributable to DOE grant funds by the percentage of DOE, grantee, or subgrantee participation in the cost of the project or activity. This requirement also applies to reimbursement due under paragraphs (d) or (e) of this section.

(iv) If real property is acquired under a grant or subgrant of $10,000 or less, the grantee shall not be required to—

(A) Obtain DOE approval for any alternative use or disposition of the property after the end of the project period;

(B) Compensate DOE for its share of the acquisition cost of the real property.

(d) *Equipment.*—(1) *Federally owned equipment.* If federally owned equipment has been provided or has been acquired under a grant, the grantee must submit an annual inventory to DOE which lists such equipment in the custody of the grantee, any subgrantee, or contractor under the grant.

(i) The grantee shall notify DOE as soon as practicable whenever such equipment is no longer needed during the period of DOE support. For expired or terminated grants, the grantee shall report any such equipment upon request by DOE as part of closeout (see § 600.123). Thereafter, DOE shall issue disposition instructions to the grantee in accordance with applicable law and regulations.

(2) *Transfer of equipment.* DOE may transfer ownership of any item of exempt or nonexempt equipment having a unit acquisition cost of $1,000 or more to the Federal government or to an eligible third party named by DOE, subject to the following:

(i) DOE must notify the grantee in writing of its intent to transfer ownership within 120 days following the end of the project period or the termination of the DOE grant under which the equipment was acquired, and must specifically identify the equipment to be transferred. DOE shall arrange for transfer as soon as possible after the notice.

(ii) DOE may transfer ownership only when the grantee no longer needs the equipment for the original project, or the grantee agrees to relinquish the equipment.

(iii) The grantee shall be paid any reasonable storage or shipping costs incurred plus an amount computed by multiplying the current fair market value of the equipment by the grantee share (percentage of participation), if any, in the allowable costs of the project.

A grantee may, in terms of a subgrant, reserve the right to transfer equipment acquired under the subgrant as provided in this paragraph. Without DOE approval, this right may be exercised only if the project for which the equipment was acquired is transferred to another subgrantee and the equipment is to be transferred for continued use in the project. Any other exercise of this right by the grantee requires the prior written approval of DOE.

(3) State governments, local governments, and Indian tribal governments shall comply with the provisions of OMB Circular A–102, Attachment N, Paragraphs 6.b, c, and d for the use, disposition and management of nonexempt equipment. All other types of grantees and subgrantees shall comply with OMB Circular A–110, Attachment N, Paragraphs 6.b, c, and d for use, disposition and management of such equipment.

(4) At the end of the project period or at the termination of DOE support for the project, the grantee shall provide an inventory of nonexempt equipment with a unit acquisition cost of $1,000 or more acquired by the grantee or subgrantee along with a statement of the grantee's or subgrantee's plans for continued use or recommendations for disposing of such equipment. If nonexempt equipment is acquired under a grant of $10,000 or less, and DOE does not transfer ownership under paragraph (d)(2) of this section, the grantee shall have no further obligation to DOE with respect to the use, management, or disposition of such property.

(e) *Supplies.* If at the end of the project period or upon termination of the grant or subgrant for which supplies were acquired, unused supplies exceeding $1,000 in total aggregate current fair market value remain, they may be used for any other federally funded activity of the grantee or subgrantee without compensation to DOE. Unless otherwise exempted by Federal statute, if they are not needed for any federally funded activity, the grantee or subgrantee must compensate DOE. If the supplies are retained for use on non-Federal activities, the amount due DOE shall be computed by multiplying the percentage of DOE participation in the allowable costs of the project for which the supplies were acquired by the current fair market value of the supplies. If sold, the percentage of DOE participation shall be multiplied by the sales proceeds or the current fair market value, whichever is greater, to determine the amount due DOE. The grantee or subgrantee may retain $100 or ten percent of the proceeds, whichever is greater, for selling and handling expenses.

§ 600.118 Patents, data, and copyrights.

(a) *General.* DOE grants shall be awarded and administered in compliance with the patent, data, and copyright provisions of 41 CFR Part 9–9 and, for grants to small business firms and nonprofit organizations, with OMB Circular A–124, which contains the definitions of "small business firm" and "nonprofit organization" applicable to this section. The grantee shall be required to comply with any of these provisions only as specified in the award.

(b) *Required clauses.* DOE shall determine which of the clauses listed in this paragraph or in 41 CFR Part 9–9 applies, based on DOE review of the application, other information submitted by the applicant, and any negotiations, and shall specify the applicable clauses in the award. The complete text of any applicable clause shall be included or incorporated by reference in the award unless waived or modified by DOE Patent Counsel, in accordance with the procedures of 41 CFR Part 9–9, for a particular grant or for a class of grants such as those for the "Appropriate Technology" program and the program for development of inventions referred to DOE by the National Bureau of Standards under Sec. 14 of the Federal Non-Nuclear Energy Research and Development Act of 1974.

(1) *Patent Rights (Small Business Firm or Nonprofit Organization).* This clause shall be included in grants to small business firms and nonprofit organizations where such grants have as a purpose the conduct of experimental, developmental, demonstration, or research work. The procedures and policies of 41 CFR Part 9–9 require the small business firm or nonprofit organization to state in writing that it qualifies as a small business firm or nonprofit organization. In exceptional circumstances, DOE may, as determined by Patent Counsel, use a patent rights clause other than the clause specified in this paragraph (b)(1).

Patent Rights (Small Business Firm or Nonprofit Organization)

(a) *Definitions.*

(1) "Invention" means any invention or discovery which is or may be patentable or

otherwise protectable under Title 35 of the United States Code (USC).

(2) "Subject invention" means any invention of the grantee conceived or first actually reduced to practice in the performance of work under this grant.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at Section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement, contained in 13 CFR 121.3–8, and in subcontracting, contained in 13 CFR 121.3–12, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) "Patent Counsel" means the Department of Energy (DOE) patent counsel assisting the DOE contracting activity.

(b) *Allocation of Principal Rights.* The grantee may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the grantee retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention Disclosure, Election of Title and Filing of Patent Applications by Grantee.* (1) The grantee will disclose each subject invention to the Patent Counsel (with notification by the Patent Counsel to the Contracting Officer) within two months after the inventor discloses it in writing to grantee personnel responsible for the administration of patent matters. The disclosure to the Patent Counsel shall be in the form of a written report and shall identify the grant under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Patent Counsel, the grantee will promptly notify the Patent Counsel of the acceptance of any manuscript describing the invention or of any on sale or public use planned by the grantee.

(2) The grantee will elect in writing whether or not to retain title to any invention by notifying the Patent Counsel within twelve months of disclosure to the grantee; provided that in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title terminates sixty days prior to the end of the statutory period.

(3) The grantee will file its initial patent application on an elected invention within two years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The grantee will file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Patent Counsel, election, and filing, may, at the discretion of the Patent Counsel be granted.

(d) *Conditions When the Government May Obtain Title.* (1) The grantee will convey to DOE, upon written request, title to any subject invention:

(i) If the grantee fails to disclose or elect the subject invention within the times specified in (c) above, or elects not to retain title.

(ii) In those countries in which the grantee fails to file patent applications within the times specified in (c) above; provided, however, that if the grantee has filed a patent application in a country after the times specified in (c) above but prior to its receipt of the written request of the Patent Counsel, the grantee shall continue to retain title in that country; or

(iii) In any country in which the grantee decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum Rights to Grantee.* (1) The grantee will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the grantee fails to disclose the subject invention within the times specified in (c) above. The grantee's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the grantee is a part and includes the right to grant sublicenses of the same scope to the extent the grantee was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the grantee's business to which the invention pertains.

(2) The grantee's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 10 CFR Part 781. This license will not be revoked in that field of use or the geographical areas in which the grantee has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the granteed, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the grantee a written notice of its intention to revoke or modify the license, and the grantee will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the grantee) after the notice to show cause why the license should not be revoked or modified. The grantee has the right to appeal, in accordance with 10 CFR Part 781, any decision concerning the revocation or modification of its license.

(f) *Grantee Action to Protect Government's Interest.* (1) The grantee agrees to execute or to have executed and promptly deliver to the Patent Counsel all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions for which the grantee retains title, and

(ii) Convey title to DOE when requested under (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The grantee agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the grantee each subject invention made under this grant in order that the grantee can comply with disclosure provisions of (c) above and to execute all papers necessary to file patent applications on subject inventions. The disclosure format should require, as a minimum, the information requested by (c)(1) above. The grantee shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The grantee will notify the Patent Counsel of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The grantee agrees to include, within the specification of any United States patent

application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the grant) awarded by the Department of Energy. The Government has certain rights to this invention."

(5) The grantee agrees to:

(i) Provide a report prior to the close-out of the grant listing all subject inventions;

(ii) Provide notification of all contracts under the grant for experimental, developmental, demonstration, or research work, the identity of the patent rights clause therein, and copy of each such contract upon request;

(iii) Provide promptly a copy of the patent application, filing date, and serial number, and patent number and issue date for any subject invention in any country in which the grantee has applied for a patent.

(g) *Contracts Under the Grant.* (1) The grantee will include this clause, suitably modified to identify the parties, in all contracts under the grant, regardless of tier, for experimental, developmental or research work to be performed in the United States by a small business firm or a domestic nonprofit organization. The contractor will retain all rights provided for the grantee in this clause, and the grantee will not, as part of the consideration for awarding the contract, obtain rights in the contractor's subject inventions.

(2) The grantee will include in all other contracts under the grant, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause of 41 CFR 9–9.107–5(a) or 41 CFR 9–9.107–6, as appropriate, modified to identify the parties.

(3) In the case of a contract under the grant at any tier, DOE, the contractor, and the grantee agree that the mutual obligations of the parties created by the clause constitute a contract between the contractor and DOE with respect to those matters covered by this clause.

(h) *Reporting on Utilization of Subject Inventions.* The grantee agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the grantee, and such other data and information as DOE may reasonably specify. The grantee also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. To the extent data or information supplied under this section is considered by the grantee, its licensee or assignee to be privileged and confidential and is so marked, DOE agrees that, to the extent permitted by 35 U.S.C. 202(c)(5), it will not disclose such information to persons outside the Government.

(i) *Preference for United States Industry.* Notwithstanding any other provision of this clause, the grantee agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the grantee or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in Rights.* The grantee agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in OMB Circular A–124 to require the grantee, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the grantee, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the grantee or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the grantee, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by federal regulations and such requirements are not reasonably satisfied by the grantee, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special Provisions for Grants to Nonprofit Organizations.* If the grantee is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the grantee);

(2) The grantee may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of:

(i) Five years from first commercial sale or use of the invention; or

(ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, DOE approves a longer exclusive license.

If exclusive field of licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention;

(3) The grantee will share any royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the grantee with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education.

(l) The DOE central point of contact for communications or matters relating to this clause is the Patent Counsel.

(2) *Patent Rights (Short Form).* This clause shall be included in grants awarded to grantees other than small business firms or nonprofit organizations, where such grants have as a purpose the conduct of experimental, developmental, demonstration, or research work. Prior to award or within 30 days after an award is signed by the DOE Contracting Officer, or such longer period as may be authorized by the Patent Counsel for good cause shown in writing by the applicant or grantee, the applicant or grantee may petition DOE for an advance waiver of the Government's rights to inventions conceived or first actually reduced to practice under the grant in accordance with 41 CFR Part 9–9. DOE shall consider and dispose of any such request in accordance with the waiver provisions of 41 CFR Part 9–9. If a waiver is granted, the appropriate waiver clause shall be substituted for the Patent Rights (Short Form) clause. DOE also may authorize an advance waiver for a class of awards when appropriate and shall specify the applicable patent rights clause in every award covered by such a waiver.

Patent Rights (Short Form)

(a) *Definitions.*

(1) "Subject invention" means any invention or discovery of the grantee conceived or first actually reduced to practice in the course of or under this grant and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented, under the patent laws of the United States of America or any foreign country.

(2) "Patent Counsel" means DOE Patent Counsel assisting the procuring activity.

(b) *Invention disclosures and reports.*

(1) The grantee shall furnish the Patent Counsel (with notification by Patent Counsel to Contracting to Contracting Officer): 1.

(i) A written report containing full and complete technical information concerning each subject invention within 6 months after conception or first actual reduction to practice but in any event prior to any on sale, public use, or public disclosure of such invention known to the grantee. The report shall identify the grant and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation and, to the extent known, the physical, chemical, biological or electrical characteristics of the invention;

(ii) Upon request, but not more than annually, interim reports on a DOE-approved form listing subject inventions for that period and certifying that all subject inventions have been disclosed or that there were no such inventions; and

(iii) A final report on a DOE-approved form within 3 months after completion of the grant work listing all subject inventions and certifying that all subject inventions have been disclosed or that there were no such inventions.

(2) The grantee agrees that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to the grant.

(c) *Allocation of principal rights.*—(1) *Assignment to the Government.* The grantee agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the grantee under paragraphs (c)(2) and (d) of this clause.

(2) *Greater rights determination.* The grantee, or the employee-inventor with authorization of the grantee, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the procedure and criteria of 41 CFR 9.109–6. A request for a determination of whether the grantee or the employee-inventor is entitled to retain such greater rights must be submitted to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) at the time of the first disclosure of the invention pursuant to paragraph (b)(1) of this clause or not later than 9 months after conception or first actual reduction to practice, whichever occurs first, or such longer period as may be authorized by the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) for good cause shown in writing by the grantee. The information to be submitted for a greater rights determination is specified in 41 CFR 9–9.109–6(e).

(d) *Minimum rights to the grantee.* The grantee reserves a revocable, nonexclusive, paid-up license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Revocation shall be in accordance with the procedures of paragraphs (c)(2) and (3) of the clause in 41 CFR 9–9.107–5(a). The grantee also has the right to request foreign rights in accordance with the procedures of paragraph (c)(4) of the clause in 41 CFR 9–9.107–5(a).

(e) *Employee and contrator agreements.* Unless otherwise authorized in writing by the Contracting Officer, the grantee shall:

(1) Obtain patent agreements to effectuate the provisions of the Patent clause from all persons who perform any part of the work under this grant except nontechnical personnel, such as clerical employees and manual laborers.

(2) The grantee shall include this clause or the Patent Rights clause of 41 CFR 9–9.107–5(a) or the clause of § 600.118(b)(1), as appropriate, modified to identify the parties in any contract hereunder having as a purpose the conduct of experimental, research, development, or demonstration work; and

(3) Promptly notify the Contracting Officer in writing upon the award of any contract containing a Patent Rights clause by identifying the contractor, the work to be performed under the contract, and dates of award and estimated completion. Upon the request of the Contracting Officer, the grantee shall furnish a copy of the contract to such requestor.

(f) *Atomic energy.* (1) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the grantee or its employees with respect to any inventions or discovery made or conceived in the course of or under this grant.

(2) Except as otherwise authorized in writing by the Contracting Officer, the grantee will obtain patent agreements to effectuate the provisions of paragraph (f)(1) of the clause from all persons who perform any part of the work under this grant except nontechnical personnel, such as clerical employees and manual laborers.

(g) *Publication.* In order that information concerning scientific or technical developments conceived or first actually reduced to practice in the course of or under the grant is not prematurely published so as to adversely affect patent interest of DOE, the grantee agrees to submit to the Patent Counsel for patent review a copy of each paper 60 days prior to its intended publication date. The grantee may publish such information after expiration of a 60-day period following such submission or prior thereto if specifically approved by the Patent Counsel, unless the grantee is informed (in writing within the 60-day period) that in order to protect patentable subject matter, publication must further be delayed. In this event, publication shall be delayed up to 100 days beyond the 60-day period or such longer period as mutually agreed to.

(3) *Rights in Technical Data (Short Form).* This clause shall be included in all grants other than those having as a purpose the conduct of a conference, symposium, or training.

Rights in Technical Data (Short Form)

(a) *Definitions.* The definitions of terms set forth in 41 CFR 9–9.201 apply to the extent these terms are used herein.

(b) *Allocation of rights.* (1) The Government shall have:

(i) Unlimited rights in technical data first produced or specifically used in the performance of this grant;

(ii) The right of the Contracting Officer or his representatives to inspect at all reasonable times up to three years after final payment under this grant all technical data first produced or specifically used in the grant (for which inspection the grantee or its contractor shall afford proper facilities to DOE); and

(iii) The right to have any technical data first produced or specifically used in the performance of this grant delivered to the Government as the Contracting Officer may from time to time direct during the progress of the work, or in any event as the Contracting Officer shall direct upon completion or termination of this grant.

(2) The grantee shall have:

The right to use for its private purposes, subject to patent, security or other provisions of this grant, technical data it first produces in the performance of this grant provided the data requirements of this grant have been met as of the date of the private use of such data. The grantee agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the grantee shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the Contracting Officer.

(c) *Copyrighted material.* (1) The grantee agrees to and does hereby grant to the Government and to others acting on its behalf:

(i) A royalty-free, nonexclusive, irrevocable, world-wide license for Governmental purposes to reproduce, distribute, display, and perform all copyrightable material first produced or composed in the performance of this grant by the grantee, its employees or any individual or concern specifically employed or assigned to originate and prepare such material and to prepare derivative works based thereon;

(ii) A license as aforesaid under any and all copyrighted or copyrightable work not first produced or composed by the grantee in the performance of this grant but which is incorporated in the material furnished under the grant, provided that such license shall be only to the extent the grantee now has, or prior to completion or final settlement of the grant may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(2) The grantee agrees that it will not knowingly include any material copyrighted by others in any written or copyrightable material furnished or delivered under this grant without a license as provided for in subparagraph (1)(ii) hereof, or without the consent of the copyright owner, unless it obtains specific written approval of the Contracting Officer for the inclusion of such copyrighted material.

(4) *Rights in Technical Data (Modified Short Form).* This clause shall be included in any grant having as a purpose the conduct of a conference, a symposium, or training.

Rights in Technical Data—Modified Short Form

(1) The grantee grants to the Government a worldwide, royalty-free, nonexclusive, irrevocable license to publish, duplicate, translate, perform, exhibit and dispose of and to have others to do so, technical information or data including copyrightable material first produced by the grantee, under the grant.

(2) DOE has the right to require delivery of all technical information or data first produced by the grantee under this grant and all conference papers of a scientific or technical nature. The grantee agrees not to include in the technical information or data, or scientific or technical conference papers delivered under the grant, any material copyrighted by the grantee or any material including scientific or technical conference papers copyrighted by others without first obtaining without cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (1) above. If, nevertheless, there must be included in the technical information or data, or scientific or technical conference papers to be delivered, copyrighted material for which a license of the above scope cannot be obtained, the grantee shall obtain the written authorization of DOE to include such material prior to physical delivery to DOE.

(5) *Authorization and consent.* This clause shall be included in any grant under which experimental, developmental, demonstration, or research work is to be performed within the United States, its possessions, or Puerto Rico.

Authorization and Consent

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this grant or any part hereof or any amendment hereto or any contract hereunder (including all lower-tier subcontracts).

(6) *Notice and Assistance.* This clause shall be included in any grant in excess of $10,000 for construction, experimental, developmental, demonstration, or research work which is to be performed within the United States, its possessions, or Puerto Rico.

Notice and Assistance Regarding Patent and Copyright Infringement

The provisions of this clause shall be applicable only if the amount of this grant exceeds $10,000.

(a) The grantee shall report to the Contracting Officer, promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this grant of which the grantee has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the grantee shall furnished to the Government when requested by the Contracting Officer, all evidence and information in possession of the grantee pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the grantee has agreed to indemnify the Government.

(c) This clause shall be included in all contracts and subcontracts under the grant.

(7) *Rights to Proposal Data.* This clause, which applies only to technical data and not to other data such as privileged or confidential commerical or financial information, shall be included in every grant award.

Rights to Data in Grant Application

Expect for technical data contained on pages —— of the grantee's application dated —— which are asserted by the grantee as being proprietary data, it is agreed that as a condition of the award of this grant, and not withstanding the provisions of any notice appearing on the application, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever the technical date not identified in the above blanks contained in the application upon which this grant is based.

(c) *Reporting of Royalties.* In order that DOE may be informed regarding royalty payments to made by a grantee in connection with any grant where the amount of the royalty payments is included in the approved budget or is to be reimbursed by the Government, the applicant shall provide:

(1) Infromation concerning the royalty payments expected to be made under the grant, if awarded, together with the names of the licensors, and either the patent numbers involved or such other information as will permit identification of the patents and patent applications as well as the basis on which the royalties are to be paid; or

(2) A certification that the proposed budget includes no amount representing any royalty that would be paid by the grantee directly to others in connection with the performance of the award.

If the information or certification specified in paragraphs (c)(1) and (c)(2) of this section is not available at the time of award, DOE shall include the Reporting of Royalties clause in any applicable grant award.

Reporting of Royalties

If this grant is in an amount which exceeds $10,000 and if any royalty payments are directly involved in the grant or are reflected in the amount of the grant award, the grantee agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) during the performance of this grant and prior to its completion or final settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this grant together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity, or scope of, or title to, any patent under which a royalty or payments are made.

(d) *Subgrants and contracts under grants of subgrants.* To the extent specified in the grant award, the grantee shall include the clauses set forth in paragraphs (b) and (c) of this section in any subgrant or contract.

§ 600.119 Procurement under grants and subgrants.

(a) *Applicability.* This section applies to the procurement, whether by purchase, rental, or otherwise, of supplies, equipment, construction, or services by grantees and subgrantees from third parties when some or all of the cost of the procurement is a direct charge to DOE grant funds or is a direct cost being used to meet all or part of a cost sharing requirement of the DOE award.

(1) This section does not apply to such procurement by one government from another government, or by one agency or instrumentality of a government from another agency or instrumentality of the same or another government. Except as provided in paragraphs (b) and (c) of this section, a public institution of higher education or a public hospital shall be considered an "instrumentality a government" whenever such organization procures goods or services from a government, or whenever a government procures goods or services from such an organization.

(2) This section does not apply to procurement of land, existing land improvements or structures, or any other existing real property.

(b) *State, local, and Indian tribal governments.* State governments, local governments, and Indian tribal governments shall comply with the grantee and subgrantee responsibility requirements of OMB Circular A–102, Attachment O, Paragraphs 2 and 7 through 15. DOE may review the procurement system of a grantee covered by OMB Circular A–102, in accordance with Attachment O, Paragraph 4 of that Circular, if DOE anticipates a continuing relationship

with the grantee, or if a substantial amount of the DOE support is to be used for procurement and DOE intends to review individual contracts. DOE may make any such review at DOE initiative or at the request of a grantee. If a grantee's procurement system is found acceptable, DOE shall issue a certification to that effect. If a grantee's procurement system has been certified by DOE or other Federal agency, a grantee need not comply with the prior approval requirements of paragraph (e) of this section. Doe may rely on the findings of a review or certification by DOE or other Federal agency for a period of 24 months.

(c) *Other grantees and subgrantees.* All other grantees and subgrantees shall comply with the grantee and subgrantee responsibility requirements of OMB Circular A–110, Attachment O, paragraphs 2, 3, and 4.

(d) *Prior approval requirements.* (1) A grantee or subgrantee must receive prior written approval from the awarding party before entering into any sole source contract or a contract where only one bid or proposal is received when:

(i) The value of the contract is expected to exceed $5,000 in the aggregate and the grantee or subgrantee is not a State government, local government, or Indian tribal government.

(ii) The value of the contract is expected to exceed $10,000 in the aggregate, and the grantee or subgrantee is a State government, local government, or Indian tribal government.

(2) In addition to the prior approval requirements of paragraph (d)(1) of this section, DOE may require review and approval of proposed procurements in the following instances:

(i) If DOE or the grantee determines, on the basis of a review under paragraph (b) of this section or in accordance with §600.104 or §600.105, that the grantee's or subgrantee's procurement procedures or operations do not comply with one or more of the applicable procurement system standards; or

(ii) Whenever authorized under OMB Circulars A–102 or A–110.

(3) A request for prior approval under this paragraph shall include a copy of the proposed contract and any related procurement documents, such as requests for proposals and invitations for bids, and justification for noncompetitive procurement.

(e) *Contract provisions.* In addition to the contract clauses required under OMB Circulars A–102 and A–110, contracts under grants and subgrants shall include the following as appropriate:

(1) In negotiated contracts whose value is more than $10,000, a clause requiring the contractor to retain records for three years after final payment is made under the contract. The provision must also require that if an audit, litigation, or other action involving the records is started before the end of the three-year period, the records must be retained until all issues arising out of the action are resolved, or until the end of the three-year period, whichever is later.

(i) If the contract is under a subgrant, the clause must require that the grantee, the subgrantee, and the Federal government shall have access to applicable records (see §600.25).

(2) A clause requiring the contractor to comply with applicable DOE requirements concerning patents, inventions and copyrights (see §600.118).

(3) A clause specifying the Federal cost principles applicable to a contractor under a cost-reimbursement contract.

(4) A clause requiring the contractor to include the clauses required by paragraph (e) of this section in any subcontract which would be required if the subcontract were a contract under a grant or subgrant except that a contractor administering a fixed-price contract shall not be required to specify Federal cost principles in a cost-reimbursement subcontract.

§600.120 Audit requirements.

(a) This paragraph establishes requirements for the conduct, oversight, scope, and frequency of financial and compliance audits. Any audit made by or on behalf of DOE shall rely, to the extent possible, on independent audits performed in accordance with this section.

(b) State governments, local governments, or Indian tribal governments: A grantee that is a State government, a local government, or an Indian tribal government and its governmental subgrantees shall arrange for independent audits that comply with the following requirements:

(1) Audits shall be made in accordance with the General Accounting Office (GAO) "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions; the GAO Guidelines for Financial and Compliance Audits of Federally Assisted Programs"; OMB-approved audit compliance supplements; and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(2) Audits shall be made on an organizationwide basis using a representative sample of Federal awards;

(3) Audits shall usually be made annually but not less frequently than every two years;

(4) An audit shall be conducted and the results reported in accordance with OMB Circular A–102, Attachment P, Paragraphs 6, 7, 9, and 10, and the audit work papers and reports shall be retained as provided in Paragraph 11 of that Attachment;

(5) If a contract is to be awarded for the conduct of any audit services required under this paragraph (b), the grantee or subgrantee shall comply with Paragraph 16 of OMB Circular A–102, Attachment P; and shall include a reference to OMB Circular A–102, Attachment P.

(6) The grantee shall ensure that the cognizant audit agency(ies) for that grantee and its subgrantees receives reports of audits conducted on its operations and on the operations of its subgrantees.

(c) Nonprofit organizations: Except as provided in paragraph (e) of this section, all grantees and subgrantees that are nonprofit organizations covered by OMB Circular A–110 shall conduct or provide for audits to be conducted in accordance with paragraphs (b)(1), (2), (3), and (6) of this section.

(d) Individuals and for-profit organizations: The awarding party may audit, or cause to be audited, grants to individuals or for-profit organizations whenever and in the degree of detail deemed necessary by the awarding party. The awarding party shall rely on available audit reports in determining the need for the scope of such audits.

(e) Small entities: Any grantee or subgrantee that is a small entity and that receives DOE financial assistance only in the amount of $10,000 or less for a period of 18 months or less shall not be required to comply with the requirements of paragraphs (b) or (c) of this section but may be audited in accordance with paragraph (d) of this section.

§600.121 Noncompliance.

(a) Except for noncompliance determinations under 10 CFR Part 1040, whenever DOE determines that a grantee has not complied with the applicable requirements of this Part, with the requirements of any applicable program statute or rule, or with any other term or condition of the award, a DOE Contracting Officer shall provide to the grantee (by certified mail) a written notice setting forth—

(1) The factual and legal bases for the determination of noncompliance;

(2) The corrective actions and the data (not less than 30 days after the date of the notice) by which they must be taken;

(3) Which of the actions authorized under paragraph (b) of this section DOE may take if the grantee does not achieve compliance within the time specified in the notice, or does not provide satisfactory assurances that actions have been initiated which will achieve compliance in a timely manner.

(b) After providing the grantee 30 days written notice as provided in paragraph (a) of this section, DOE may take any or all of the following actions:

(1) Convert the grantee from an advance payment method to a reimbursement payment method as provided in § 600.112(d);

(2) Withhold payment as provided in § 600.112(f);

(3) Suspend the grant;

(4) Terminate the grant for cause;

(5) Disapprove continuation or renewal applications or other requests for extension of or additional funding for the same project;

(6) Invalidate an award that was obtained fraudulently;

(7) Recover funds and tangible property up to the amount of the award;

(8) Initiate debarment proceedings as provided in § 600.27; and

(9) Initiate such other legal action as may be appropriate.

(c) DOE may take any of the actions set forth in paragraph (b) of this section concurrent with the written notice required under paragraph (a) of this section or with less than 30 days written notice to the grantee whenever:

(1) There is evidence the award was obtained by fraud;

(2) The grantee ceases to exist or becomes legally incapable of performing its responsibilities under the grant agreement;

(3) There is serious mismanagement or misuse of grant funds necessitating immediate action; or

(4) An immediate debarment in accordance with § 600.27(g) is warranted.

§ 600.122 Suspension and termination.

(a) *Notification requirements.* Except as provided in § 600.121(c), before suspending or terminating a grant for cause, DOE shall mail to the grantee (by certified mail) a written notice at least ten days prior to the effective date of the suspension or termination. Such notice shall include, as appropriate—

(1) The factual and legal bases for the suspension or termination;

(2) The effective date or dates of the DOE action;

(3) If the action does not apply to the entire grant, a description of the activities affected by the action;

(4) Instructions concerning which costs shall be allowable during the period of suspension, or instructions concerning allowable terminations costs, including in either case, instructions concerning any subgrants or contracts;

(5) Instructions concerning required final reports and other closeout actions for terminated grants (see § 600.123);

A statement of the grantee's right to appeal a termination for cause pursuant to § 600.26; and

(7) The dated signature of a DOE Contracting Officer.

(b) *Suspension.* (1) Unless DOE and the grantee agree otherwise, no period of suspension shall exceed 90 days.

(2) DOE may cancel the suspension at any time, up to and including the date of expiration of the period of suspension, if the grantee takes satisfactory corrective action before the expiration date of the suspension or gives DOE satisfactory evidence that such corrective action will be taken.

(3) If the suspension has not been cancelled, after expiration of the period of suspension, the grantee shall resume the suspended activities or project unless, prior to the expiration date, DOE notifies the grantee in writing that the period of suspension shall be extended or that the grant shall be terminated.

(4) As of the effective date of the suspension, DOE shall withhold further payments and shall allow new obligations incurred by the grantee during the period of suspension only if such costs were authorized in the notice of suspension or in a subsequent letter.

(5) If the suspension is cancelled or expires and the grant is not terminated, DOE shall reimburse the grantee for any authorized allowable costs incurred during the suspension and, if necessary, may amend the grant agreement to extend the period of performance.

(c) *Termination by the grantee or by mutual agreement.* In addition to situations where a termination for cause pursuant to § 600.121 is appropriate, a grant (or portion thereof) may be terminated by mutual agreement of DOE and the grantee, or upon written notification by the grantee or an authorized official of the grantee organization. Such notice must include the grantee's reasons for the termination, the proposed effective date of the termination, and, in the case of partial terminations, a description of the activities or projects to be terminated, and an appropriate budget revision. If DOE determines that the remaining activities or projects under the partially terminated grant would not accomplish the purpose for which the grant was originally awarded, DOE may terminate the entire grant.

(d) *Effect of termination.* The grantee shall incur no new obligations after the effective date of the termination of a grant (or portion thereof), and shall cancel as many outstanding obligations as possible. DOE shall allow full credit to the grantee for the DOE share of noncancellable obligations properly incurred by the grantee prior to the effective date of the terminations.

(e) *Subgrants.* Grantees shall follow the policies and procedures in this section and in § 600.121 for suspending and terminating subgrants.

§ 600.123 Closeout.

(a) DOE shall close out a grant within a reasonable period of time after the completion date of the grant. The completion date may be either the last day of the project period or the date of termination of a grant. "Closeout" means the process by which DOE determines that all required work has been performed by the grantee and that all applicable administrative actions, except as provided in paragraphs (b) and (c) of this section, have been completed by DOE and the grantee.

(1) *Final reports.* Within 90 days after the completion date of a grant, the grantee shall submit any final financial, performance, and other reports required by the terms and conditions of the award.

(2) *Final payments and adjustments.* If required or authorized by the terms and conditions of the award, DOE may make any necessary upward or downward adjustment to the DOE share of the approved budget based on the information contained in the grantee's final reports or in any audit under § 600.120. At the request of a grantee who is being reimbursed by Treasury check, DOE shall promptly pay the grantee for any unreimbursed allowable costs under the grant being closed out. The grantee shall immediately refund to DOE any unobligated funds advanced to the grantee which are not authorized to be retained by the grantee for use on other DOE awards. In the case of grants terminated for cause, payments to grantees or refunds to DOE shall be made in accordance with § 600.122.

(3) *Property.* The grantee shall provide a listing of property furnished by DOE or acquired with DOE grant funds for which such a listing is required under § 600.117.

(b) If DOE closes out a grant before a final audit is completed, the grantee shall be required to refund to DOE the

amount of any subsequently disallowed costs.

(c) The closeout of a grant does not affect the grantee's responsibilities for property for which a grantee is accountable and which has not been transferred by DOE or disposed of in accordance with § 600.117(d)(3) or for program income for which the grantee is accountable under § 600.113(e).

(d) Grantee shall, to the extent appropriate, follow the procedures of this section in closing out subgrants.

§ 600.124 Record retention requirements.

(a) Grantees and subgrantees shall retain records as specified in § 600.25 for a three-year period which shall be calculated as follows:

(1) If DOE grant support is continued or renewed at annual or other intervals, the retention period for the records of each budget period shall commence on the date the annual Financial Status Report (or equivalent) is submitted to DOE. In all other cases, the retention period starts on the date the grantee submits its final Financial Status Report (or equivalent) to DOE or, if the requirement for such an expenditure report has been waived, the retention period shall start 90 days after the completion date of the grant.

(2) *Equipment records.* The record retention period for the equipment records required by § 600.117 starts from the date of disposition or transfer of the property by or at the direction of the awarding party.

(3) *Program income records.* If, by the terms and conditions of the award, the grantee or subgrantee—

(i) Is accountable for program income earned or received after the end of the project period or after the termination of a grant or subgrant, or

(ii) If program income earned during the project period is required to be applied to costs incurred after the end of the project period or after termination of a grant or subgrant,

the record retention period shall start on the last day of the grantee's or subgrantee's fiscal year in which such income was earned or received or such costs were incurred.

(4) *Indirect cost computation records.* The retention period for supporting records for indirect cost rate computations or proposals submitted to the awarding party or other Federal agency for negotiation starts from the date of submission of the proposal or computation.

(i) If a local government is required to submit its indirect cost plan to the Federal government for negotiation in accordance with OMB Circular A–87, the retention period for the plan and supporting records starts from the end of the fiscal year (or other accounting period) covered by the plan.

(5) If any litigation, claim, negotiation, audit or other disputed action involving the records has been started before the expiration of the three-year period, the records shall be retained until such action and all related issues are resolved, or until the end of the regular three-year retention period, whichever is later.

(6) The awarding party may request that records be transferred to its custody. After the records are transferred to the awarding party, the three-year retention requirement does not apply to the transferred records.

(7) Microfilm copies may be substituted for original records.

(8) The retention requirements applicable to contractor and subcontractor records are specified in § 600.119(e).

§§ 600.125–600.199 [Reserved]

2. Subpart C is amended as follows:

Subpart C—Cooperative Agreements

a. Section 600.200 is revised to read as follows:

§ 600.200 Scope of Subpart C.

This subpart establishes requirements for the award and administration of cooperative agreements.

§ 600.201 [Removed]

b. Section 600.201 is removed.

c. Section 600.211 is amended to change the reference to FMC 74–4 by revising paragraph (c)(6) to read as follows:

§ 600.211 Selection of the Cooperative Agreement as award instrument.

* * * * *

(c) * * *

(6) General administrative requirements, such as those included in OMB Circulars A–21, A–95, A–102, A–110, and A–87.

* * * * *

d. Section 600.213 is amended by revising paragraph (a) to read as follows:

§ 600.213 DOE criteria for cost participation.

(a) *Scope of section.* This section sets forth the DOE policy on cost participation by the Government under DOE Cooperative Agreements except where cost participation is established by statute, in which case this section will not apply.

* * * * *

§ 600.214 [Removed]

e. Section 600.214 is removed.

§ 600.230 [Removed]

f. Section 600.230 is removed.

g. Section 600.231 is amended by removing paragraph (d) and by revising paragraphs (a) and (c) as follows:

§ 600.231 Treatment of proposal information.

(a) DOE shall treat information provided by a proposer in either a solicited or an unsolicited proposal as provided in § 600.18.

* * * * *

(c) The following clause shall be included in all Cooperative Agreements based on a proposal which contains the restrictive legend of § 600.18(c). This clause applies only to technical data and not to other data such as privileged, confidential, commercial, or financial information.

Rights to Proposal Data

Except for technical data contained on pages —— of the participant's proposal dated —— which are asserted by the participant as being proprietary data, it is agreed that as a condition of the award of this Cooperative Agreement, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever the technical data contained in the proposal upon which this Cooperative Agreement is based.

(d) [Removed]

h. Section 600.232 is amended by revising paragraph (c)(3) to read as follows:

§ 600.232 Solicitation for Cooperative Agreement Proposals (SCAP).

* * * * *

(c) * * *

(3) The selection official will be the individual authorized in accordance with § 600.19(a).

i. Section 600.233 is amended by revising paragraphs (h)(4) (xi) and (h)(5) to read as follows:

§ 600.233 Program Opportunity Notices (PON).

* * * * *

(h) * * *

(4) * * *

(xi) Each proposal containing technical data and other data, including trade secrets, and/or privileged or confidential commercial or financial information, which the proposer intends to be used by DOE for evaluation purposes only, should be marked as prescribed in § 600.18(c).

* * * * *

(5) *Selection Official.* The selection official will be the official authorized in accordance with § 600.19(a).

* * * * *

j. Section 600.234 is amended by revising paragraphs (b)(1) and (d)(4) to read as follows:

§ 600.234 Program Research and Development Announcement (PRDA).

* * * * *

(b)(1) This section governs the submission, evaluation and selection for award, or support of proposals offered in response to a specific PRDA issued by DOE, to conduct, support, participate, and/or otherwise cooperate in projects for research, development, and related activities in the energy field.

* * * * *

(d) * * *

(4) The selection official for PRDAs will be the individual authorized in accordance with § 600.19(a).

* * * * *

§ 600.250–600.252 [Removed]

k. Section 600.250 is removed.

l. Section 600.251 is removed.

m. Section 600.252 is removed.

n. Section 600.271 is amended by revising paragraph (a)(1) to read as follows:

§ 600.271 Administration requirements for Cooperative Agreements.

(a) * * *

(1) For participants covered by OMB Circular A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments, or OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations, the administrative requirements specified in these circulars will apply.

* * * * *

o. Section 600.281 is revised to read as follows:

§ 600.281 Contents of a Cooperative Agreement.

A Cooperative Agreement should at a minimum include the following: A Face Page, which shall be the DOE Notice of Financial Assistance Award, a Schedule, General Provisions, and Special Provisions.

§ 600.282 [Removed]

p. Section 600.282 is removed.

q. Section 600.283 is amended by revising paragraphs (b)(3)(iv), (b)(4) and (b)(7) to read as follows:

§ 600.283 Schedule.

* * * * *

(b) * * *

(3) * * *

(iv) A reference to the applicable Federal cost principles shall be included in the award document. The cost principles set forth at § 600.103(b) shall be used to determine the allowability of project costs.

(4) *Payment Article*—The method of payment and payment procedures specified in this Article shall be consistent with § 600.112.

* * * * *

(7) *Property Management and Disposition Article*—The provisions of this Article concerning the management and disposition of property shall be consistent with § 600.117.

r. Section 600.290(c) is amended by revising the introductory text of paragraph (c) and paragraphs (c)(4), (11), (12), (13), (17), (20), (21), and (24), (d), and (e)(2), (8), (14), and (25) to read as follows and by removing paragraphs (f) and (g).

§ 600.290 General and special provisions.

(c) *Mandatory general provisions.* These provisions are mandatory as to text in all Cooperative Agreements with participants other than those covered under OMB Circulars A–102 and A–110. Deviations from this requirement may not be made unless approved in accordance with § 600.4 except for nonsubstantive changes reflecting that a Cooperative Agreement rather than a grant or procurement contract is being entered into.

* * * * *

(4) Examination of Records by Comptroller General, § 600.25.

* * * * *

(11) Clean Air and Water, § 600.12.

(12) Preference for U.S. Flag Air Carriers, § 600.12.

(13) Preference for U.S. Flag Commercial Vessels, § 600.12.

* * * * *

(17) Nondiscrimination in Federally Assisted Programs, § 600.12.

* * * * *

(20) Patent Rights, 9–9.107–5(a), or, for small business firms and nonprofit organizations as defined in Pub. L. 96–517, the Patent Rights clause of § 600.118(b)(1).

(21) Flood Insurance, § 600.12.

(24) Disputes, § 600.26.

(d) *Mandatory special provisions and deviation requirements.* The special provisions listed below are to be included in all Cooperative Agreements with participants other than those covered by OMB Circulars A–102 and A–110. The specific required clauses, may, upon written justification by the Contracting Officer, be modified or waived without seeking a deviation under § 600.4. The written justification shall specify why the provision is not appropriate for a particular Cooperative Agreement and why the provision was either waived or modified.

* * * * *

(e) *Optional Special Provisions.* * * *

(2) Disabled Veterans and Veterans of the Vietnam Era, FPR Temporary Regulation 39, 44 FR 33265 (July 28, 1976).

* * * * *

(8) Advance Payments, § 600.283(b)(4).

* * * * *

(14) Care of Laboratory Animals, § 600.12.

* * * * *

(25) Federal Reports Act, § 600.12.

(f) [Removed]

(g) [Removed]

§§ 600.291 through 600.299 [Reserved]

s. Sections 600.291 through 600.299 are reserved.

3. Subparts D and E are removed.

Subpart D—[Removed]

Subpart E—[Removed]

4. Appendix A to Part 600 is revised to read as follows:

Appendix A to Part 600—Generally Applicable Requirements

Socioeconomic Policy Requirements

Nondiscrimination in Federally Assisted Programs, 10 CFR Part 1040 (45 FR 40514 (June 13, 1980)), as proposed to be amended by 46 FR 49546 (October 6, 1981).

Nondiscrimination Provisions in Federally Assisted Construction Contracts, Part III of Executive Order 11246 (September 24, 1965), 3 CFR 1964–65 Comp., p. 345.

Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended (42 U.S.C. 4581).

Drub Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1174).

Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*).

National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). 40 CFR Part 1500, as implemented by 10 CFR Part 1021.

Sec. 306, Clean Air Act, as amended (42 U.S.C. 7606c).

Sec. 508, Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 *et seq.*); Executive Order 11738, September 12, 1973.

Title XIV, Public Health Service Act, as amended (42 U.S.C. 300f—*et seq.*)

Sec. 102 (a), Flood Disaster Protection Act of 1973 (Pub. L. 93–234, 87 Stat. 975).

10 CFR Part 1022, "Protection of Wetlands and Floodplains."

Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*).

Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*) (15 CFR Part 930).

Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*).

Sec. 106, National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f); Executive Order 11593, "Protection and Enhancement of the Cultural Environment," May 13, 1971, 3 CFR 1971 Comp., p. 154; Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469 *et seq.*); Protection of Historic and Cultural Properties, 36 CFR Part 800.

Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271 *et seq.*).

Protection of Human Subjects, 10 CFR Part 745.

Federal Laboratory Animal Welfare Act (7 U.S.C. 2131 *et seq.*) (9 CFR Parts 1, 2, and 3).

Lead-Based Paint Prohibition (42 U.S.C. 4831(b)).

Sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) (46 CFR 381.7).

International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517).

Executive Order 12138, "Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating, and Implementing a National Program for Women's Business Enterprise," (May 18, 1979) 3 CFR 1979 Comp., p. 393.

Sec. 403(b), Power Plant and Industrial Fuel Use Act of 1978, (42 U.S.C. 8373(b)); Executive Order 12185 (December 17, 1979, 3 CFR 1979 Comp., p. 474).

Administrative and Fiscal Policy Requirements

The Hatch Act (5 U.S.C. 1501–1508).

Federal Reports Act, as amended by the Paperwork Reduction Act of 1980, Pub. L. 96–511 (44 U.S.C. 3501 *et seq.*).

OMB Circular A–111, Jointly Funded Assistance to State and Local Governments and Nonprofit Organizations—Policies and Procedures.

Treasury Circular 1082, Notification to States of Grant-in-Aid Information.

Federal Claims Collection Act of 1966, Pub. L. 89–508, 89 Stat. 309 (31 U.S.C. 951 *et seq.*).

OMB Circular A–88, Coordinating Indirect Cost Rates and Audit at Educational Institutions.

OMB Circular A–73, Audit of Federal Operations and Programs.

(Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599, (42 U.S.C. 7254 and 7256); Pub. L. 95–224, 92 Stat. 3 (41 U.S.C. 501)

[FR Doc. 82–7369 Filed 3–18–82; 8:45 am]

BILLING CODE 6450–01–M

federal register

Friday
March 19, 1982

Part IV

Department of the Interior

Bureau of Land Management

Sales of Forestry Products; Amendment to Procedures

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5440, 5450 and 5460

Sales of Forestry Products; Amendment to Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would eliminate, to the extent possible speculative bidding for forest products that occurred during the 1979–1980 period. While it is impossible to eliminate over bidding, it is possible to create conditions which will make bidding more responsive to the market. The changes made by this proposed rulemaking are designed to that end.

DATE: Comments by April 19, 1982.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public comment in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles Frost, (202) 653–8864.

SUPPLEMENTARY INFORMATION: The critical nationwide decline in the market for forest products has manifested itself since early 1980. The problem is especially acute in western Oregon where timber purchasers bid timber prices to record high levels during the 1979–81 period. These high timber prices have been attributed to "speculation" as purchasers assumed a continuation of the strong markets of the 1970s. The results of this bidding are prices paid for timber which cannot be logged and manufactured profitably at today's product prices.

While it is not possible to eliminate speculation from the bidding table, it is possible to create conditions which will make bidding more responsive to the market. The following changes made by this proposed rulemaking to the timber sale regulations would move in the direction of accomplishing this end.

Section 5441.1 would be amended to prohibit a purchaser who defaults on a timber purchase contract for failure to complete payment by the sale expiration date from bidding on any future Bureau of Land Management timber sales until satisfactory arrangements for payment of damages due the United States have been made.

Section 5451.1 would be amended to require a minimum performance bond of not less than 20 percent of the total contract, not to exceed a total bond of $500,000. This change would place an upper limit on the amount of minimum performance bonds, a limit that is not now present in the regulations.

Section 5461.2(a)(1) would be revised to establish a new schedule of values for installment payments. The current regulations require installment payments to be 10 percent of total purchase price for sales of $100,000 or less. The revision made by the proposed rulemaking would require installments of 10 percent of the total contract purchase price, with a maximum installment of $50,000. The first payment would be one-half of the first installment.

Section 5461.2(a)(2) would be revised to eliminate the provision which permits the purchaser to delay payment of the first contract installment payment and require in lieu thereof cash payment of the first installment as a condition of award of the contract. The cash payment would be one-half of the first installment, 5 percent of most contracts. This change would also require a change in the timber sale contract form.

The revisions of § 5461.2 would require that timber contract purchasers put up "front-end" money for the purchase of timber and would reduce the speculation now present because of the absence of "front-end" money.

Section 5461.2 would be amended to require payment of 40 percent of the total contract purchase price by the end of the second year of a three-year contract regardless of timber cut. This requirement is designed to encourage timely performance of the contract.

The principal author of this proposed rulemaking is Charles Frost, Division of Forestry, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal Action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 103(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Under the authority of Act of August 28, 1937 (43 U.S.C. 1181(a)) and the Act of July 31, 1947 (30 U.S.C. 601 et seq.), it is proposed to amend Parts 5440, 5450 and 5460, Group 5400, Subchapter E, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 5440—CONDUCT OF SALES

1. Section 5441.1 is amended by:

(a) Amending paragraph (b) by inserting after the figure "(a)" the words "and (c)"; and

(b) Adding a new paragraph (c) to read:

§ 5441.1 Qualification of bidders.

* * * * *

(c) No bidder who has defaulted on a timber purchase contract because of failure to make payment by the expiration date of the contract may bid on any subsequent timber purchase contracts until he/she has made satisfactory arrangemens with the authorized officer for payment of damages due the United States.'

PART 5450—AWARD OF CONTRACT

§ 5451.1 [Amended]

2. Section 5451.1(a) is amended by revising the first sentence to read "A minimum performance bond of not less than 20 percent of the total contract price shall be required for all contracts of $2,500 or more, but the amount of the bond shall not be in excess of $500,000."

3. Section 5451.2 is revised to read:

§ 5451.2 Performance bonds in excess of minimum.

The purchaser, in order to obtain permission to cut timber before payment of the second half of the first installment, the second installment or subsequent installments shall increase the minimum bond required by § 5451.1(a) by an amount equal to 1 or more installment payments, as determined by the authorized officer. The purchaser shall secure the approval of the adjusted bond by the authorized officer in writing prior to cutting any timber under the adjusted bond.

PART 5460—SALES ADMINISTRATION

§ 5461.4 [Amended]

4. Section 5461.4 is amended by removing from the first sentence the figure "§ 5451.2(b)" and replacing it with the figure "§ 5451.2" and by removing from the fourth sentence the figure "§ 5451.2" and by removing from the fourth sentence the figure "§ 5461.2(c)".

5. Section 5461.2 is revised to read:

§ 5461.2 Installment payment requirements.

Contract installment payments shall be determined by the authorized officer as follows:

(a) For sales of less than $500,000, installment payments shall be not less than 10 percent of the total purchase price. For sales of $500,000 or more, the first installment payment shall be $50,000. One-half of the first installment shall be paid prior to, or at the time, the authorized officer signs the contract. The second installment and any balance on the first installment shall be paid prior to the cutting or removal of the material sold. Each subsequent installment shall be due and payable without notice when the value of the material cut or removed equals the sum of all the payments minus one-half the first installment; except, in the case of all contracts with a term of 3 years, no less than 40 percent of the total purchase price shall have been paid by the second anniversary date of the contract.

(b) Delayed payment of the second half of the first installment or the second or a subsequent installment shall be allowed if the purchaser furnishes a bond as provided in § 5451.2 of this title. One-half of the first installment shall be paid in the same manner as prescribed in paragraph (a) of this section. If cutting is permitted before payment, as provided in § 5451.2 of this title, payment by installment shall be made before any timber may be skidded or yarded to a loading point or removed from the contract area. Each subsequent installment shall be due and payable without notice when the sale value of the timber skidded or yarded to a loading point or removed equals the sum of all payments minus one-half the first installment. The unenhanced value of timber allowed to be cut in advance of payment in excess of one-half the first installment shall be limited to the amount of the increase over and above the required minimum performance bond. Upon payment, the amount of the bond maybe applied to other timber sold under the contract to permit its cutting in advance of payment.

(c) Where cutting or removal is permitted under payment bond under § 5451.4 of this title, one-half of the first installment shall be paid in the same manner as provided in paragraph (a) of this section. If cutting and/or removal is permitted before payment, as provided in § 5451.4 of this title, the purchaser shall be billed monthly for timber skidded or yarded to a loading point or removed from the contract area and for any related road maintenance fees unless a lesser period is agreed to by the authorized officer and the purchaser. Payment shall be made within 15 days of the billing date shown on the billing form. The unenhanced value of timber allowed to be cut and/or removed in advance of payment is limited to the amount of the payment bond. Upon payment, the amount of the bond may be applied to other timber.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

February 18, 1982.

[FR Doc. 82-7467 Filed 3-18-82; 8:45 am]

BILLING CODE 4310-84-M

federal register

Friday
March 19, 1982

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program: Experimental Practices

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 785

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program: Experimental Practices

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining (OSM) is proposing to amend 30 CFR 785.13, Experimental practices mining. These proposed amendments would delete sections to avoid duplication, revise language to improve clarity and change the periodic review of experimental practices from once every three years to annually.

DATES:

Written comments: Accepted until 5 p.m. (eastern time) on April 19, 1982.

Public hearings: Held on request only, on April 12, 1982, at 9:00 a.m.

Public meetings: Scheduled on request only.

ADDRESSES:

Written comments: Hand-deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TRS–14.23), Room 5315, 1100 L Street, NW., Washington, D.C.; or *mail* to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR–14.23), Room 5315L, 1951 Constitution Avenue NW., Washington, D.C. 20240.

Public hearings: Washington, D.C.—Department of the Interior Auditorium, 18th and C Streets, NW.; and Denver, Colo.—Brooks Tower, 2d Floor Conference Room, 1020 15th Street, Pittsburgh, Pa.—William S. Moorehead Federal Bldg., 1000 Liberty Ave., Room 2212.

Public meetings: OSM offices in Washington, D.C.; Charleston, W. Va.; Knoxville, Tenn.; Indianapolis, Ind.; and Denver, Colo.

FOR FURTHER INFORMATION CONTACT:

Raymond Aufmuth, Division of Engineering Analysis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, D.C. 20240; 202–343–5244.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures.
II. Background.
III. Discussion of Proposed Rules.
IV. Procedural Matters.

Public Commenting Procedures.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Commenters are requested to submit five copies of their comments (see "Addresses"). Comments received after the time indicated under "Dates" or at locations other than Washington, D.C., will not necessarily be considered or be included in the Administrative Record for the final rulemaking.

Public Hearings

Persons wishing to comment at the public hearings should contact the person listed under "For Further Information Contact" by the close of business *three working days* before the date of the hearing. If not one requests to comment at a public hearing at a particular location by that date, the hearing will not be held. If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber, but submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

Public hearings will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment, and persons present in the audience who which to comment, have been heard.

Public Meetings

Persons wishing to meet with OSM representatives to discuss these proposed rules may request a meeting at any of the locations listed in "Addresses" by contacting Jose del Rio (202–343–4022).

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record room (1100 L St. office). A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

30 CFR 785.13 contains regulations for implementing the experimental practice provisions of section 711 of the Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 *et seq.* (the Act). This section provides authorization for departure in individual cases on an experimental basis from the environmental protection performance standards promulgated under sections 515 and 516 of the Act. The objective of such departures, as authorized by the regulatory authority with the approval of the Secretary, is to encourage advances in mining and reclamation practices or to allow alternative postmining land uses.

In September 1981, OSM circulated a draft of regulations to interested parties. Many of those who reviewed that draft have commented, and those comments are reflected herein.

OSM encourages industry and State regulatory authority participation in experimental practices. Some of the advantages of experimental practices include:

(1) Industry-OSM Cooperation: OSM is willing to work with industry and State regulatory authorities to develop innovative and beneficial experimental practice proposals.

(2) Regulatory Change: Each experimental practice that is approved carries with it the potential to improve the Federal and State regulations and statutes by keeping them in pace with the technological advancements in coal mining and reclamation.

(3) Economics: Experimental practices are a means of demonstrating innovative methods for obtaining economic advantages. The advantages may be:

—Savings in dollars per ton of coal produced
—Savings in dollars per cubic yard of spoil handled
—Less dollars per acre for reclaimed land
—Increased dollar value of postmining land

(4) Community Development/ Involvement: The end results of experimental practices can benefit the entire community, such as the development of recreational areas.

(5) Improved Environmental Protection: Experimental practices may provide a means of demonstrating improved techniques for environmental protection and advance the state-of-the-art in mined land reclamation.

Examples of areas which may lend themselves to experimental practice permits include: highwall retention; wetland restoration for wildlife habitat; spoil disposal (handling techniques); top soil handling; approximate original contour (AOC) topographic

enhancement; and remining of previously mined areas.

The above examples are only a small portion of potential areas for experimental practice applications. OSM solicits comments concerning both additional advantages resulting from experimental practices as well as other areas of application.

III. Discussion of Proposed Rules

OSM is proposing the following changes to 30 CFR 785.13 of the permanent program regulations as published in the Federal Register on March 13, 1979 (44 FR 14902).

Existing paragraph (a) of § 785.13, which defines the applicability of the experimental practices section would be combined with existing paragraph (d) and designated as paragraph (a). The change would not be substantive.

The statement of purpose in existing paragraph (b) would be deleted. Such a statement in a regulatory provision is unnecessary. Paragraph (c), which defines an experimental practice, also would be deleted since new paragraph (a) would provide an adequate description of experimental practices.

Paragraph (d) of § 785.13 would be rephrased, combined with existing paragraph (a), and redesignated as paragraph (a). It would provide that experimental practices may be undertaken if they are approved by the regulatory authority and the Director of OSM. A permit for the experimental practice would be required before such practices could be employed.

Existing paragraph (e) would be redesignated as paragraph (b). This paragraph sets forth the permit application requirements for experimental practices. The first sentence of the paragraph would be modified to make it clear that these application requirements are in addition to the general permit requirements of Subchapter G. New paragraph (b)(1) includes existing paragraph (e)(1) and would be expanded to explicitly require that the applicant describe the requested variances from performance standards, the duration of the experimental practice, and any special monitoring which will be conducted to determine its effects.

Existing paragraph (e)(2) would be redesignated as (b)(2) and would be rephrased slightly with no substantive change. Existing paragraph (e)(3), which requires an operator to demonstrate in the experimental practice application that a proposed variance is not larger than necessary, is proposed for deletion. In many instances, this is obvious from the substance of the application. Additionally, it is a determination that is more appropriately made by the regulatory authority and the Director based upon the proposed experimental practice and similar experimental practices that may have been approved or contemplated. It is an unnecessary burden on operators to require description, maps and plans to make this showing. Proposed paragraph (d)(3) imposes this requirement on the regulatory authority.

Existing paragraph (e)(4) would be redesignated (b)(3) and remain unchanged. Existing paragraph (e)(5) would be rephased to improve clarity and redesignated as paragraph (b)(4). This paragraph would require the applicant to monitor the effects of the experimental practice. Paragraph (b)(4)(i) would no longer require comparisions with other coal mining operations using similar experimental practices, but would still require collection of data to "evaluate the effectiveness" of the experimental practice. This would allow an experimental practice to stand on its own merit regardless of the existence of similar experimental practices.

Paragraph (b)(4)(ii) would continue to require that the permit application include procedures to identify, at the earliest possible time, potential risks to the environment and the public health and safety which may be caused by the experimental practice. It also would include a requirement similar to that of existing paragraph (f), which requires that the permit application must list procedures for early identification of problems and methods to be implemented to meet the environmental protection performance standards of Subchapter K in the event the experimental practice fails to achieve the stated objective. Since in many instances it may be impossible to revert to the standards of Subchapter K, new paragraph (b)(4)(ii) would require that the application identify the mitigative measures that would be implemented if the experimental practice failed to achieve its objectives.

Existing paragraph (g) would be redesignated as paragraph (c). This paragraph, which requires publication of notice of the experimental practice in accordance with 30 CFR 786.11, essentially would be unchanged.

The requirements of existing paragraph (h) would be revised and set out in proposed paragraph (d). This paragraph sets out the criteria for approval of the experimental practice. In addition to the minimum standards of section 711 of the Act, the existing regulation in paragraph (b)(4) prohibits the issuance of an experimental practice unless the permit contains conditions that limit the experimental practice to that granted by the regulatory authority and the Director, impose enforceable alternative environmental protection requirements, and require periodic monitoring, recording, and reporting. The first two of these requirements have been deleted as not adding substantively to the standards established by section 711 of the Act. Proposed paragraph (d) would stipulate that the experimental practice not be approved unless it meets the specified requirements of section 711 of the Act. Pursuant to this section, before an experimental practice may be permitted it must be approved by both the Director of OSM and the regulatory authority.

Proposed paragraph (e) is new, and would require consultation with the U.S. Department of Agriculture prior to approval of an experimental practice on prime farmlands. This requirement is in accordance with section 510(d) of the Act, which requires that all permits on prime farmlands be issued only after consultation of the Secretary of the Department of Agriculture.

Proposed paragraph (f) imposes monitoring requirements previoulsly included in existing paragraph (h)(4)(iii).

Existing paragraph (i) requires review of permits authorizing experimental practices every three years. In proposed paragraph (g)(1) OSM is proposing to change the review to an annual requirement. This more frequent review is provided to enhance the opportunity for information sharing relating to the results of the experiment. It will also provide the regulatory authority with more frequent review to ensure that the objectives of the experimental practice are being met. This modification was requested by some States to provide for closer regulatory authority monitoring of experimental practices. In newly proposed paragraph (g)(2) if, as a result of its review the regulatory authority may require revisions to an operator's experimental practice permit, minor revisions could be implemented simply by providing written notice to the regulatory authority. If a major revision is requested, the operator would be required to submit an amendment to the permit. This amendment would be subject to the same review and approval requirements as the original permit application.

OSM specifically would like commenters to consider the question of whether major revisions require stricter approval requirements. OSM is considering imposing just the written notice request for major revisions as well as minor revisions when required by the regulatory authority.

The requirement for scheduled hearings in existing Paragraph (i) would be removed to avoid duplication of hearings provisions already included in normal permit processing procedures.

IV. Procedural Matters

Determinations Under Executive Order 12291, the Federal Paperwork Reduction Act, the Regulatory Flexibility Act and the National Environmental Policy Act.

The Department of the Interior (DOI) has examined these proposed rules according to the criteria of Executive Order 12291 (February 17, 1981). These proposed changes are in keeping with the regulatory reform provisions of Executive Order 12291 and implement the requirements of section 711 of the Act. OSM has determined that these are not major rules and do not require a regulatory impact analysis because they will impose only minor costs on the coal industry and coal consumers.

The information collection requirements in existing 30 CFR Part 785 were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance number 1029–0040. The proposed revisions to these requirements will be submitted to the Office of Management and Budget for approval prior to publication of the final rule.

The information required by 30 CFR Part 785.13 will be used by the regulatory authority in determining whether the applicant meets the applicable performance standards for experimental practices mining activities. The information required by 30 CFR Part 785 is mandatory.

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that these rules will not have a significant economic impact on a substantial number of small entities. The proposed regulations will allow small coal operators increased flexibility in meeting performance standards and should especially ease the regulatory burden on small coal operators in Appalachia.

OSM has prepared a draft environmental assessment (EA) on this proposed rule and has made an interim finding that it would not significantly affect the quality of the human environment. The draft EA is on file in the OSM Administrative Record at the address listed in the "Addresses" section of this preamble. A final EA will be completed and a final conclusion reached on the significance of any resulting impacts before issuance of the final rule. OSM also is preparing an EA of the cumulative impacts on the human environment of this rulemaking and related rulemakings under the Act. This cumulative EA also will be completed before this rule is made final.

Accordingly, it is proposed to amend 30 CFR Part 785 as set forth herein.

Dated: February 24, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

1. Section 785.13 is revised to read as follows:

§ 785.13 Experimental practices mining.

(a) Experimental practices provide a variance from the environmental performance standards of the Act, of Subchapter K of this chapter and the regulatory program for experimental or research purposes, and may be undertaken if they are approved by the regulatory authority and the Director and a permit for the experimental practice is issued by the regulatory authority.

(b) In addition to the general permit requirements of Subchapter G, an application for an experimental practice shall contain descriptions, maps, plans and data which show:

(1) The nature of the experimental practice, including a description of the variances from performance standards that are requested, the duration of the experimental practice, and any special monitoring which will be conducted;

(2) How use of the experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential or public use (including recreational facilities) on an experimental basis;

(3) That the experimental practice—

(i) Is potentially more or at least as environmentally protective, during and after the proposed mining and reclamation operations, as those required under Subchapter K of this chapter and the regulatory program; and

(ii) Will not reduce the protection afforded public health and safety below that provided by the requirements of Subchapter K of this chapter and the regulatory program;

(4) That the applicant will conduct monitoring of the effects of the experimental practice during and after the operation involved. The monitoring program shall:

(i) Insure the collection, analysis and reporting of reliable data that is sufficient to enable the regulatory authority and the Director to evaluate the effectiveness of the experimental practice;

(ii) Include procedures to identify, at the earliest possible time, potential risk to the environment and public health and safety which may be caused by the experimental practice, and the mitigative measures which will be implemented in the event the experimental practice fails to achieve its objectives.

(c) Applications for experimental practices are to be specifically identified in the newspaper advertisements placed by the applicant and by the written notification issued by the regulatory authority required under 30 CFR 786.11.

(d) No permit or permit revision application incorporating an experimental practice under this section shall be approved by the regulatory authority unless the experimental practice has been approved in writing by the Director and the regulatory authority finds in writing that:

(1) The experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential or public use (including recreational) facilities on an experimental basis;

(2) The experimental practice is potentially more or at least as environmentally protective, during and after mining operations, as those required by promulgated standards;

(3) The mining operations approved for a particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice; and

(4) The experimental practice does not reduce the protection afforded public health and safety below that provided by promulgated standards.

(e) Experimental practices granting variances from the special environmental performance standards applicable to prime farmlands shall be granted only after consultation with the U.S. Department of Agriculture.

(f) Each person undertaking an experimental practice shall conduct the periodic monitoring, recording and reporting program set forth in the application, with such additional requirements as the regulatory authority or the Director may require.

(g)(1) Each experimental practice is to be reviewed in its entirety at least annually by the regulatory authority. After review, the regulatory authority may require modifications of the experimental practice which are necessary to ensure that the operations fully protect the environment and the public health and safety.

(2) Minor revisions to an experimental practice may be implemented by an operator upon written notice to the regulatory authority. Major revisions to an experimental practice may be implemented only after approval of a permit amendment subject to all the requirements of this section.

[FR Doc. 82-7503 Filed 3-18-82; 8:45 am]
BILLING CODE 4310-05-M

federal register

Friday
March 19, 1982

Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Auger Mining

DEPARTMENT OF THE INTERIOR

30 CFR Parts 816 and 819

[1523A (TSR-14-24)]

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Auger Mining

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining (OSM) is proposing to revise the rules relating to auger mining by deleting all of Part 819 on auger mining and by addressing auger mining in Part 816. The rules would also be reorganized and revised. The intended effect of the proposed rules is to reduce regulatory involvement in the development and design of auger mining operations. The proposed rules would also provide greater clarity and ease of understanding.

DATES:

Written comments: Accepted until 5 p.m. (eastern time) on April 19, 1982.

Public hearings: Held on request only, on April 12, 1982, at 9 a.m.

Public meetings: Scheduled on request only, between 9 a.m. and noon and between 1 p.m. and 4 p.m. (local time), Monday through Friday, excluding holidays, until 5 p.m. (eastern time) on April 19, 1982.

ADDRESSES:

Written comments: Hand-deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR no. 14.24), Room 5315, 1100 L Street, NW., Washington, D.C.; or *mail* to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (TSR no. 14.24), Room 5315L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: Washington, D.C.—Department of the Interior Auditorium, 18th and C Streets, NW.; and Denver, Colo.—Brooks Tower, 2d Floor Conference Room, 1020 15th Street. Pittsburgh, Pa.—William S. Moorehead Federal Bldg., 1000 Liberty Ave., Room 2212.

Public meetings: OSM offices in Washington, D.C.; Charleston, W. Va.; Knoxville, Tenn.; Indianapolis, Ind.; and Denver, Colo.

FOR FURTHER INFORMATION CONTACT: Raymond E. Aufmuth, Division of Engineering Analysis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; 202-343-5244.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures.
II. Background.
III. Discussion of Proposed Rules.
IV. Procedural Matters.

I. Public Commenting Procedures

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Commenters are requested to submit five copies of their comments (see "Addresses"). Comments received after the time indicated under "Dates" or at locations other than Washington, D.C. will not necessarily be considered or be included in the Administrative Record for the final rulemaking.

Public Hearings

Persons wishing to comment at the public hearings should contact the person listed under "For Further Information Contact" by the close of business *three working days* before the date of the hearing. If no one requests to comment at a public hearing at a particular location by that date, the hearing will not be held. If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and would greatly assist the transcriber, but submission of written statements in advance of the hearing would allow OSM officials to prepare appropriate questions.

Public hearings will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment, and persons present in the audience who wish to comment, have been heard.

Public Meetings

Persons wishing to meet with OSM representatives to discuss these proposed rules may request a meeting at any of the locations listed in "Addresses" by contacting Jose del Rio (202-343-4022).

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record room (1100 L St. office). A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

Section 515(b)(9) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1265(b)(9), expresses Congress' particular concerns relating to auger mining. These concerns are maximum recoverability of solid fuel resources remaining after auger mining and prevention of adverse effects from mine drainage. In addition, under Section 515(b)(12) of the Act, operators must refrain from surface mining within 500 feet of underground mines, in order to prevent breakthroughs and to protect the health and safety of miners, except under certain circumstances when the regulatory authority determines that it would be acceptable to surface mine closer to an underground mine. These proposed rules are designed to implement these requirements.

Part 819 contains the existing rules pertaining to auger mining. Under these rules, in addition to meeting the general performance standards for all surface mines, operators must meet certain design criteria to maximize recoverability of the coal remaining after augering. The rules also limit augering close to underground mines, as in the Act, and they require plugging of auger holes within specific time limits. Finally, they require the regulatory authority to prohibit auger mining under certain circumstances where reclamation as required by the Act cannot be achieved.

II. Discussion of Proposed Rules

These proposed rules would delete existing Part 819 and would include all requirements for auger mining in the general performance standards in a new § 816.108. This is proposed because auger mining is usually performed in conjunction with other types of surface mining, such as contour or area mining. In addition, these proposed rules would remove several design criteria, leaving it up to the operator and the regulatory authority to determine on a site-specific basis how the performance standards would best be achieved. Editorial changes are also being proposed. A more detailed discussion of the proposed changes follows.

Existing § 819.1 would be deleted, and the scope of the auger mining rules would be covered by existing § 816.1, which governs the scope of the performance standards activities for all surface mining.

Existing § 819.2 (a) and (b) provide that it is the objective of the auger mining rules to prevent environmental harm and unnecessary loss of coal reserves due to auger mining. This

section would be deleted, and these objectives would be set forth in § 816.108 (a) and (b). These proposed provisions would set forth the general statutory requirements of maximizing recoverability of remaining coal, protecting water resources, and meeting all the general statutory requirements relevant to all surface mining activities. This proposed section would also contain the performance standards set forth in existing § 819.11(c) (prevention of water pollution and fire hazards), § 819.11(e)(2) (fill stability), and § 819.11(e)(4) (subsidence prevention).

Existing § 819.11(a), which sets forth specific design criteria intended to maximize recoverability of mineral reserves remaining after mining, would be deleted. Proposed § 816.108(b) would contain the performance standard requiring such maximization. Under this section, the regulatory authority would approve the operator's plan for leaving areas of undisturbed coal in order to maximize recoverability. This approval would be based upon technical evidence presented by the operator.

Existing § 819.11(b), which implements the requirement in Section 515(b)(12) of the Act that surface mining not take place dangerously close to underground mines, would be moved to § 816.108(e) with no substantive change.

Existing § 819.11(c), which requires plugging of auger holes within specified times after completion, would be deleted. Proposed § 816.108(c) would require that auger holes be sealed as contemporaneously as practicable, as approved by the regulatory authority on a site-specific basis. The rule would also be worded somewhat differently, for editorial reasons. The requirement now contained in § 819.11(c) that augering operations meet the hydrologic-balance requirements would appear in §816.108(a).

Existing § 819.11(d)(1) states that an auger hole need not be plugged where the regulatory authority finds that the resulting impoundment may create a hazard and that drainage from the unplugged hole will not violate the hydrologic balance requirements. This section is proposed to be deleted and replaced by § 816.108(d), which would impose the same requirements with only minor editorial changes.

Existing § 819.11(e) requires the regulatory authority to prohibit auger mining where degradation of water quality could not be prevented, fill stability could not be achieved, the utilization, recoverability, or conservation of coal remaining after mining could not be maximized, or subsidence might cause certain kinds of damage. This section is proposed to be replaced by § 816.108(f). The proposed rule would require the regulatory authority to prohibit auger mining where necessary to prevent degradation of water quality or where necessary for maximizing recoverability of remaining coal, as in the existing rule, or where reclamation could not be performed as required by the Act and the Federal rules. The proposed rules would not separately state that auger mining must be prohibited where subsidence might cause damage. This is not a substantive change, however, as § 816.108(a) would require subsidence protection, and § 816.108(f) would require that augering be prohibited where reclamation (which includes such subsidence protection) could not be performed. Thus, auger mining in fact would be prohibited where subsidence could not be prevented and would cause damage.

Public Comments on Draft of Proposed Rules

As a result of public meetings held on August 18, 1981 on a draft of proposed changes in the rules, OSM received several comments concerning the draft proposed changes. The responses to these comments are keyed to the sections in the proposed rules. Comments with which OSM agrees have been incorporated into the proposed rules which follow. Some editorial changes suggested by commenters have been incorporated without comment.

One commenter pointer out that fill stability had not been incorporated into the draft proposed § 816.108(a). The phrase "to ensure fill stability" was added to the proposed rules.

One commenter suggested that auger mining should not be treated as always being associated with other surface mining activities; that auger mining can be the entire operation, and so the proposed regulations should cover all auger mining operations and not just those associated with surface mining activities. OSM agrees, and the term "auger mining associated with surface mining activities" is not used in proposed § 816.108(a).

One commenter requested the deletion of design criteria regarding the amount of undisturbed coal left for subsequent underground mining operations. Another commenter opposed deleting design criteria, arguing that some operators conducting auger mining probably are not interested in preserving coal for future use. OSM agreed with both comments, and the draft proposed rules were changed to require regulatory authority approval of the areas of undisturbed coal to be left by the operation. This would allow greater flexibility than in the present rules, yet allow regulatory authorities to ensure that operations are conducted in such a way as to maximize recoverability of remaining coal.

Another commenter was concerned that the draft proposed requirement to seal the holes contemporaneously with the augering operation was vague, since no time limit would be placed on the sealing operation. Without a specific limit, the commenter argued that it would be difficult to issue a notice of violation on the lack of progress in sealing the auger holes. The commenter suggested that the holes be sealed contemporaneously with the augering operation *as specified by the regulatory authority*, and OSM proposes this wording.

One commenter suggested that if the adverse impacts listed in draft proposed § 816.108(f) would occur from a proposed auger mining operation, there should be no choice available to the regulatory authority except to prohibit auger mining. Therefore, the commenter recommended that the word "shall" be retained, as in existing § 819.11(e). Proposed § 816.108(f) incorporates this suggestion.

References

The following technical literature was used in preparing this proposed section:

1. Grim, E. C., and Hill, R. D., 1974 Environmental Protection in surface mining of coal: U.S. Environmental Protection Agency. Rept. EPA–670/2–74–093, pp. 80–83.

2. U.S. Bureau of Mines, 1957, The use of augers in surface mining of bituminous coal: Report of Investigations 5325, 22 pp.

3. U.S. Bureau of Mines, 1975, Operating practice changes and control modifications to improve the safety of coal auger operations: Contract Report H0230010, 74 pp.

4. U.S. Bureau of Mines, 1975, Technology of auger mining. Contract Report S0241050, 106 pp.

5. U.S. Environmental Protection Agency, 1973, Processes, procedures, and methods to control pollution from mining activities: U.S. Environmental Protection Agency Rept. EPA 430/9–73–011, pp. 49–50, 129–130.

IV. Procedural Matters

Determination Under Executive Order 12291, the Regulatory Flexibility Act, and the National Environmental Policy Act

The Department of the Interior (DOI) has examined these proposed rules according to the criteria of Executive Order 12291 (February 17, 1981). OSM

has determined that these are not major rules and do not require a regulatory impact analysis because they would impose only minor costs on the coal industry and coal consumers. In addition, the proposed regulations emphasize the use of performance standards instead of design criteria, which would allow operators to utilize the most cost-effective means of achieving the performance standards.

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that these rules would not have a significant economic impact on a substantial number of small entities. The proposed regulations would allow small coal operators increased flexibility in meeting performance standards and should especially ease the regulatory burden on small coal operators in Appalachia.

OSM has prepared a draft environmental assessment (EA) on this proposed rule and has made an interim finding that it would not significantly affect the quality of the human environment. The draft EA is on file in the OSM Administrative Record at the address listed in the "Addresses" section of the preamble. A final EA will be completed and a final conclusion reached on the significance of any resulting impacts before issuance of the final rule. OSM also is preparing an EA of the cumulative impacts on the human environment of this rulemaking and related rulemakings under the Act. This cumulative EA also will be completed before this rule is made final.

Accordingly, it is proposed to amend 30 CFR Parts 816 and 819 as set forth below.

Dated: February 24, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

1. Part 816 is amended by adding a new § 816.108 to read as follows:

§ 816.108 Backfilling and grading: Auger mining.

(a) All auger mining operations shall be planned and conducted to—

(1) Minimize disturbances of the prevailing hydrologic balance and of the quality and quantity of water in surface- and ground-water systems both during the operation and after reclamation, as required in §§ 816.41 and 816.42;

(2) Prevent unnecessary loss of coal reserves;

(3) Ensure fill stability;

(4) Prevent disturbance of or damage to structures or facilities from subsidence both during and after mining is completed; and

(5) Be consistent with reclamation being performed in accordance with all other requirements of this chapter.

(b) Each person who conducts auger mining operations shall leave areas of undisturbed coal, as approved by the regulatory authority, to provide access for future underground mining activities to coal reserves remaining after augering is completed, unless it is established that the coal reserves have been depleted or are so limited in thickness or extent that it will not be practicable to recover the remaining coal. This determination shall be made by the regulatory authority upon presentation of appropriate technical evidence by the operator.

(c) Auger holes, except as provided in paragraph (d) of this section shall be—

(1) Sealed with an impervious and noncombustible material to prevent drainage from the auger holes and access of air to the coal, and

(2) Sealed as contemporaneously as practicable with the augering operation, as approved by the regulatory authority.

(d) Auger holes need not be sealed with an impervious material so as to prevent drainage if the regulatory authority determines that—

(1) The resulting impoundment of water may create a hazard to the environment or public health or safety, and

(2) The drainage from the auger holes—

(i) Will not pose a threat of pollution to surface water, and

(ii) Will comply with the requirements of §§ 816.41 and 816.42.

(e) Auger holes shall not extend closer than 500 feet (measured horizontally) to any abandoned or active underground mine workings, except as approved in accordance with § 816.79.

(f) The regulatory authority shall prohibit auger mining, if it determines that—

(1) Adverse water quality impacts cannot be prevented or corrected;

(2) Prohibition is necessary to maximize the utilization, recoverability, or conservation of the solid fuel resource; or

(3) Effects from augering operations would prevent reclamation from being performed in accordance with all other requirements of the Act and all other provisions of this chapter.

PART 819—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—AUGER MINING [REMOVED]

2. In 30 CFR Chapter VII, Part 819 is removed.

[FR Doc. 82-7504 Filed 3-18-82; 8:45 am]

BILLING CODE 4310-05-M

federal register

Friday
March 19, 1982

Part VII

Department of Labor

Occupational Safety and Health Administration

Hazard Communication; Proposed Rule and Public Hearing Announcement

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-022]

Hazard Communication; Notice of Proposed Rulemaking and Public Hearings

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The proposed standard requires chemical manufacturers to assess the hazards of chemicals which they produce, and all employers having facilities in the manufacturing division, SIC Codes 20–39, to provide information to their employees about these hazards by means of hazard communication programs including labels, placards, material safety data sheets, information and training, and access to written records. OSHA has determined that this standard is necessary because many employers and employees are not aware of the presence of hazardous chemicals in their workplaces. The proposed standard provides for hazard determinations to be conducted to identify these hazards, and for subsequent communication to employees of the hazards thus identified. These activities should serve to alleviate the lack of awareness concerning hazardous chemicals, and should provide an impetus for employees and employers to devise better means of protection from these hazards. Public hearings are being scheduled to provide interested parties the opportunity to orally present information and data related to the issues raised by this proposed rule.

DATES: Comments and notices of intention to appear at the public hearings must be received on or before May 18, 1982. Statements and any documentary evidence to be presented at the hearings must be submitted by June 1, 1982.

The hearings will begin on June 15, 1982 in Washington, D.C. and at subsequent times and locations as provided in a separate notice to be published shortly.

ADDRESSES: Comments should be submitted in quadruplicate to the Docket Office, Docket H–022, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room S6212, Washington, D.C. 20210; (202) 523–7894.

Notices of intention to appear at the hearings, statements and documentary evidence should be submitted to Mr. Tom Hall, Division of Consumer Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3635 Washington, D.C. 20210; (202) 523–8024.

The location of the June 15, 1982, hearing will be announced at a later date.

Written comments received and notices of intention to appear will be available for inspection and copying in the Docket Office, Room S6212 at the above address.

FOR FURTHER INFORMATION CONTACT:

Proposal: Ms. Jennifer Silk, Office of Special Standards, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3663, Washington, D.C. 20210; (202) 523–7166.

Hearings: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., N3635, Washington, D.C. 20210; (202) 523–8024.

SUPPLEMENTARY INFORMATION:

I. Background

A. History of OSHA's Proposed Hazard Communication Standard

OSHA's involvement in the identification and communication of hazards in the workplace began some years ago. In 1974, the Standards Advisory Committee on Hazardous Materials Labeling was established under section 7(b) of the OSH Act to develop guidelines for the implementation of section 6(b)(7) of the Act with respect to hazardous materials (1). On June 6, 1975, the Committee submitted its final report which identified issues and recommended guidelines for categorizing and ranking chemical hazards (2). Labels, material safety data sheets, and training programs were also prescribed.

The National Institute for Occupational Safety and Health (NIOSH) published a criteria document in 1974 which recommended a standard to OSHA (3). The document, entitled "A Recommended Standard * * * An Identification System for Occupationally Hazardous Materials," included provisions for labels and material safety data sheets.

In 1976, Congressman Andrew Maguire (New Jersey) and the Health Research Group petitioned OSHA to issue a standard to require the labeling of all workplace chemicals. The House of Representatives' Committee on Government Operations in 1976 and 1977 recommended that OSHA should enforce the health provisions of the OSH Act by requiring manufacturers to disclose any toxic ingredients in their products, and by requiring employers to disclose this information to workers (4, 5 and 6).

On January 28, 1977, OSHA published an advance notice of proposed rulemaking on chemical labeling in the Federal Register (42 FR 5372). The notice requested comments from the public regarding the need for a standard that would require employers to label hazardous materials. Information was also requested regarding the provisions to be included in such a standard to assure that employees are apprised of the hazards to which they are exposed.

A total of eighty-one comments were received from a variety of federal, state, and local government agencies, trade associations, businesses, and labor organizations. In general, there was support for the concept of a hazard communication standard. A number of commenters said that such a standard should be comprehensive in scope, but not too complex in design. Many expressed the opinion that OSHA's standard should be compatible with the standards of other regulatory agencies with labeling authority, such as the Department of Transportation (DOT), and with existing voluntary labeling standards, such as that of the American National Standards Institute (ANSI). A few commenters expressed concerns about protection of trade secret information and about labeling chemical intermediates.

Various suggestions were put forth for determining which materials should be considered hazardous and thus covered by such a standard. Some commenters thought that chemicals that meet specified definitions or other classifications should be regulated. Others preferred that a list of substances to be regulated be provided, for example, those substances in 29 CFR 1910.1000 (OSHA's list of air contaminants), in the NIOSH Registry of Toxic Effects of Chemical Substances (RTECS), or in the DOT hazardous materials list.

Virtually all commenters recognized the need for labels in the workplace, and for inclusion of warnings and descriptive information. However, opinions varied as to what form these labels and information should take, or whether an existing system should be adopted. Similarly, there was general recognition of the need to inform employees of the hazards to which they are exposed by means of data sheets and training programs, although suggestions as to content and format varied.

On January 16, 1981, OSHA published a notice of proposed rulemaking (NPRM) entitled "Hazards Identification" (46 FR 4412). The NPRM would have required employers to assess the hazards in their workplaces using specified determination procedures. Labels including extensive information about these hazards would have been required on all containers within the workplace (including pipes), as well as on containers leaving the workplace.

OSHA withdrew the NPRM on February 12, 1981 for further consideration of regulatory alternatives (46 FR 12214). An Agency task force was formed in April to review the withdrawn proposal, and to develop alternatives as necessary. This task force has since met with a number of interested parties to solicit their views on issues related to hazard communication, reviewed the proposal and other information obtained by the Agency, and developed the standard proposed herein.

B. Need for a Hazard Communication Standard

1. *Introduction.* The need to ensure that employees are adequately apprised of the hazards in their workplaces has been evident throughout OSHA's development of this standard. Workers are often unaware of the presence of hazardous chemicals in their work areas, and of the harm resulting from exposure to these chemicals if proper precautions are not taken to protect them.

This lack of employee awareness is often due to the fact that their employers are similarly unaware of the hazards of chemicals received and used in their workplaces. A downstream employer who receives little or no hazard information from the chemical manufacturer cannot design or implement an effective hazard communication program. In the absence of such a program and employee awareness, there is a significant risk that employees will be exposed to hazardous chemicals without adequate protection.

2. *The National Occupational Survey.* Although the lack of adequate hazard information is recognized by both industry and labor representatives, as well as by health professionals, objective data substantiating the magnitude of the problem is not generally available. The National Occupational Hazards Survey (NOHS) conducted by NIOSH in 1972 is the only known comprehensive source of data related to hazard communication in the workplace (7). Although the NOHS conclusions or extrapolations have been criticized by some parties, no alternative sources of data are available. Therefore, in the absence of any other source of such information, the NOHS data still useful to indicate the broad scope of the problems addressed by this proposal.

According to the NOHS data, approximately 25 million American workers, or one in four, are potentially exposed to one or more of the nearly 8000 hazards identified by NIOSH (see references 4, 5, 6, and 7). As many as 40 to 50 million Americans (23 percent of the entire U.S. population) may have been exposed at some point during their lifetime to one or more of the hazardous chemicals presently regulated by OSHA.

The NIOSH surveyors visited over 5,200 industrial plants that had been selected by the Bureau of Labor Statistics as a representative cross-section of industry types and sizes. General information was collected about each plant, such as its major product or service, the number of employees, and the availability and kind of medical care. The surveyors then conducted walk-through inspections of each facility to record worker exposures to specific health hazards. The NIOSH teams observed each process in the plants, recorded the number of workers in each job category, and listed the specific chemical and physical agents to which these workers were potentially exposed.

If an employee was exposed to a trade-name product, the surveyor recorded the name of the product, its manufacturer, and the ingredients listed on the product container. If labels on the containers did not list the ingredients, the surveyors tried to ascertain the composition from material safety data sheets or other sources at the plant. All these sources supplied the needed information for only 10 percent of the trade-name products.

The following is a summary of the NIOSH findings with regard to the adequacy of chemical substance identification in the workplace (4, 5, 6):

TABLE 1.—NOHS FINDINGS

1. 85,000 individual trade-name products were identified.
2. These 85,000 products accounted for 70 percent of all recorded exposures. The remaining 30 percent of these exposures were either properly identified chemicals or physical agents.
3. The total number of 'hazardous' exposures represented by these trade-name products is not known, since NIOSH was unable to identify the chemical composition of all of these products.
4. In 90 percent of the trade-name product cases, neither the employer nor the employee knew the identity of the chemicals in the trade-name products.

NIOSH attempted to further identify the trade-name products by contacting the product manufacturers. This effort was complicated by the problem of "nested" trade names—that is, when the manufacturer supplied NIOSH with information on the chemical substances contained in trade-name chemical products, approximately one-third contained secondary trade-name chemicals. If the secondary trade-name chemical comprised more than 10 percent of the mixture, NIOSH also pursued their identification by contacting the manufacturer.

NIOSH contacted over 10,000 manufacturers to obtain additional information on the chemical identification of the trade-name products. At the time they reported their findings to Congress in 1976, NIOSH had obtained product ingredient information on over 40,000 trade-name products. The following is a summary of NIOSH findings on trade-name products (TRN) (4, 5):

TABLE 2.—POTENTIAL EXPOSURE TO TRN PRODUCTS CONTAINING HAZARDS

Total number of trade name products=45,404.
Total number of employees exposed to TRN products=278,324.
Total number of exposures for employees named above=1,420,717.
Of the total number of employees exposed to TRN products, the number exposed to OSHA-regulated chemicals=126,028.
Total number of exposures for the above employees=308,667.
Percentage of employees exposed to OSHA-regulated chemicals=45 percent.
Of employees exposed to TRN products which contain OSHA-regulated chemicals, the number of employees exposed to products whose composition is deemed to be a trade secret=66,727.
Total number of exposures for the above employees=113,665.

TABLE 3.—POTENTIAL EXPOSURE TO TRN PRODUCTS CONTAINING CARCINOGENS

Number of TRN products that contain at least one of the 15 OSHA *regulated** carcinogens=427.
Total number of employees exposed to TRN products containing carcinogens=5,638.
Total number of carcinogen exposures for employees named above=7,132.
Percentage of employees exposed to carcinogens at the time of the NOHS survey=2 percent.
Total number of employees exposed to TRN products containing carcinogens which the manufacturers call trade secret=2,830.
Total number of exposures for employees named above=3,274.

*Number of regulated carcinogens at the time of the NOHS survey=16.

The NOHS survey prompted the Commitee on Government Operations, in its report on chemical dangers in the workplace, to state that they thought the NOHS "* * * disclosed alarming conditions." They further indicated that:

(T)he problem of worker and employer ignorance of hazardous substances used in industry is far greater than previously supposed. The chief cause is the practice of

identifying chemical compounds by trade names without the disclosure of ingredients, which thwarts even the most conscientious attempt to alert workers to exposures beyond specified limits.

They concluded:

It is clear that the major objectives of the Act override narrow self-interest on the part of manufacturers. No trade secret can justify exposing great numbers of American workers to cancer-causing agents or other toxic chemicals. Any trade-name product containing a substance known to be hazardous or a carcinogen must be clearly labeled so that precautions may be taken.

The NOHS survey thus provided strong evidence that hazard communication was not sufficiently widespread to protect employees adequately, and that an OSHA standard in this area is necessary to provide such protection.

3. *Occupational Injuries and Illnesses Compiled by the Bureau of Labor Statistics.* The number of occupational illnesses resulting from occupational exposure to hazardous chemicals is also difficult to quantify. The most comprehensive figures are compiled by the Bureau of Labor Statistics (BLS) in an annual survey of approximately 200,000 industrial facilities entitled, *"Occupational Injuries and Illnesses in the United States by Industry"* (8). BLS reported approximately 162,000 new cases of occupational illness in 1977, and 143,500 in 1978. These figures do not include the number of workers totally disabled from occupational illness due to chemical exposures who have left the workforce.

An analysis of the survey reveals that 57.9 percent of occupational illnesses in 1977, and 60.5 percent of occupational illnesses in 1978 fell into the categories of illnesses (not counting malignant and benign tumors) most likely to be related to chemical exposures. This amounts to a total of more than 174,000 illnesses in those two years, some of which are attributable to exposures that might have been avoided by proper hazard communication.

The BLS report also indicates that a large number of the total occupational illnesses recorded occur in manufacturing industries (SIC Major Groups 20–39). In 1978, employees in manufacturing industries reported 60 percent of all occupational illnesses, but accounted for less than 30 percent of total employment. Manufacturing experienced the highest illness incidence rate of lost workdays (25.7 days)—a measure of severity (8).

Although these figures are substantial, they probably underestimate the magnitude and severity of occupational illness and injury. The BLS reports that:

The recording and reporting of illness continue to present some measuring problems, since employers (and even doctors) are often unable to recognize some illnesses as being work related. The annual survey includes data on only current and visible illnesses of workers; it does not include data on illnesses which might surface later.

Occupational diseases caused by chemical exposures are often not recognized as such, and thus under-reporting of chemically-caused occupational disease is a major problem. Signs and symptoms resulting from chemical exposures are the same as those experienced by people who are not occupationally exposed, so it is often difficult to postively recognize occupationally induced illnesses. For example, headache, nausea and vomiting may result from exposure to a variety of common industrial solvents, but may also be symptomatic of a virus.

Cause-effect relationships are usually only established when an alert clinician is aware of the potential effects of exposure to toxic chemicals, and relates a patient's illness to occupational exposure. For example, an article in the *Journal of the American Medical Association* (March 13, 1978) recounted an investigation in a chlordimeform packaging plant (9). Chlordimeform hydrochloride is one of a group of new pesticides called formamidines, and is used to control mites and insects on cotton, fruit and vegetables. The pesticide is not manufactured in the U.S., but is packaged for sale in this country.

Shortly after the packaging company moved the chlordimeform packaging operation to a shed separate from other packaging stations, a local physician discovered three of the workers employed in the shed had blood in their urine and symptoms of severe bladder irritation. An investigation was undertaken by the Tennessee Department of Public Health, and it was thus determined that 9 of 22 workers in the operation suffered similar effects. If the physician had not recognized that three patients suffering similar problems worked in the same plant, the prevalence of the health effect may never have been discovered.

4. *Further Recognition of the Need for Hazard Communication.* Workers and their representatives have consistently emphasized in previous OSHA rulemakings the need for OSHA to promulgate a standard for hazard communication. The following testimony presented during the OSHA rulemaking hearings on "Access to Employee Exposure and Medical Records," OSHA Docket H–112, is evidence of workers' concerns about a labeling regulation (10).

Approximately 150 new chemicals come into that plant every day, many of them with just trade names, many with just a code number. As I have been investigating, every company uses a different code number * * *

Many times our people are exposed for a month, six weeks or two months before we find out (the chemical identity) * * * then, after we have it evaluated, (the company) will remove it; but the damage is already done.

(Mr. John Mroczkowski, United Steelworkers, Tr. 1189–1190, OSHA Docket H–112)

* * * * *

(N)ow our employees are rather well-schooled craftsmen. They can recognize hazards if they know what the hazard is. Our basic problem is on a daily exposure we have to work with coolants, lubricants, and the vapors that result from the use therein * * *

The thing we are asking for is a labeling, a chemical labeling of what really is contained in that lubricant or that coolant. And I think we can take it from there. We are not asking for a hell of a lot. But if the men don't know what they are being exposed to on a daily basis, there is nothing they can do about it until years later. And then it is too darn late.

(Mr. Victor Horvath, International Ass'n of Machinists, Tr. 1378, OSHA Docket H–112)

* * * * *

(W)e must reiterate the importance of labeling data * * * without some kind of very efficient labeling data we are absolutely in the dark about many chemicals that are used in our shop.

(Mr. Michael Gaffney, United Autoworkers, Tr. 1325, OSHA Docket H–112)

Without adequate hazard communication, millions of workers with routine exposures to hazardous chemical substances are unaware of the hazards posed by these substances, and are thus incapable of protecting themselves or ensuring that their employers provide adequate protection. The need for self-protection is a crucial matter. Workers are exposed to hazardous chemicals both in the workplace and in the general environment, making them the greatest involuntary consumers of hazardous chemicals in the nation. And in many cases, exposure in the workplace is far greater than that occurring in the general environment. Consequently, to leave workers ignorant of the hazards they face, without the ability to protect themselves, would be incompatible with OSHA's duty under the Act to assure every working man and woman in the nation, so far as possible, safe and healthful working conditions (1).

This lack of an adequate system for identifying and labeling hazardous substances in the workplace has been, and continues to be, a contributing factor in the occurrence of occupational

disease. As the Committee on Government Operations, U.S. House of Representatives, concluded in its report, *Chemical Dangers in the Workplace*, (5):

> Identifying and controlling toxic substances in the workplace is becoming progressively more difficult as more chemicals, chemical processes, and chemical products are used in industry. Tens of thousands of trade-name products, whose chemical contents are not disclosed, are used daily. Lack of knowledge about exposure hampers the identification of occupationally caused diseases, illnesses, and deaths and is a major impediment to preventing them.

Dr. Thomas Mancuso, an occupational medicine practitioner for thirty years, addressed the problem of inadequate chemical substance identification at Congressional hearings held in 1976 on control of toxic substances in the workplace (4). Dr. Mancuso stated:

> * * * the doctor in practice, if he is to make a medical diagnosis, needs information about the work environment and the specific work exposures, the specific chemicals to which his worker patient was exposed prior to the illness. Basically, this lack of information constitutes the fundamental obstacle to the recognition of causality of an occupational illness and appropriate steps and approaches must be evolved to overcome this fundamental problem.

Dr. Mancuso also indicated that there is a nation-wide lack of recognition of occupationally-related illness, disease, and death by the worker and his family, by the doctor, by the industry and by the government. He further stated:

> This stems in general from the fact that for decades the workers, the doctors and society have been predominantly oriented and trained on the infectious causes of disease, due to bacteria and viruses, and there has been a corresponding lack of realization of the impact of the many thousands of chemicals—the microchemicals in the work environment—in the causation of illness, disability, and death.

Similarly, Dr. Daniel Teitelbaum, a practicing occupational toxicologist familiar with the problems of inadequate substance identification in occupational medicine, offered the following testimony at the OSHA hearings on access to records (10):

> (W)hen such (chemical identification) information is not provided to a consultant, diagnostic difficulties often occur. Patients usually do not know what materials were used in the course of their employment. Even if they are familiar with the material, they do not know the health effects, the level of their exposure, or the chemistry of the material itself. They are usually unable to provide to me enough information for development of a definitive diagnostic and treatment program.

OSHA realizes that some employers have already made efforts to institute hazard communication practices in their establishments as part of their occupational safety and health programs. Some of these programs are comprehensive, and protect employees to a great extent. However, others may conform to some industry consensus standard, such as that of the ANSI, but generally are not uniformly designed or self-enforced. Even when a system is in place, it may be unique only to that establishment, and may not be as comprehensive as is necessary to be truly effective. These inadequacies were clearly demonstrated by the findings of the NOHS. As a result, the Committee on Government Operations concluded in its 1976 report that voluntrary hazard communication standards were not adequately protecting employees. The report stated (5):

> Attempts at self-regulation by the chemical industry have not generated adequate information for buyers and users about toxic chemicals in industrial products. Voluntary labeling guidelines developed by the chemical manufacturing industry are directed primarily to the avoidance of injury from single, accidental exposures and do not address the health hazards caused by chronic low-level exposure to toxic chemical substances.

As a result of their investigations in this regard, the Committee concluded:

> We believe that industry self-regulation is preferable to governmental intervention if it can produce the necessary level of safety. To this point, however, self-regulation, although laudable, has not been equal to the task.

5. *Conflicting State and Local Standards.* At the present time, nine states and the city of Philadelphia have enacted unique worker right-to-know laws. Other state and municipal governments, including New Jersey; Ohio, and such cities as Louisville, Kentucky and Santa Monica, California, are in various stages of considering the enactment of similar laws.

The potential for conflicting or cumulatively burdensome state and local laws has been acknowledged by a number of industry representatives, particularly those involved in chemical manufacturing. Since most manufacturers transport their products across state lines, the proliferation of state and local standards may create a burden on interstate commerce. Furthermore, the differences among these standards result in varying levels of protection for employees exposed to the same hazards.

A single, comprehensive Federal Standard for hazard communication would eliminate this conflict, decrease the cumulative burden of compliance, and ensure basic protection for all employees.

C. Previous Recognition of the Need for Workplace Hazard Communication

For nearly sixty years, various government, industry and professional organizations have recognized the need to label hazardous substances, and have sought to identify relevant issues, as well as to develop comprehensive and consistent systems. Several of the more recent documents of significance will be discussed.

1. *Occupational Safety and Health Administration (OSHA) Standards.* The Occupational Safety and Health Act was passed to assure safe and healthful working conditions for working men and women (1). Section 6(b)(7) is one of the sections which delegates to OSHA the authority to promulgate labeling requirements, and it states:

> Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure.

Several of OSHA's safety and health standards for General Industry in 29 CFR Part 1910 (11) were subsequently promulgated with such labeling requirements for a relatively small number of specific substances. (These standards are listed in Table 4 of section (D) below).

2. *National Institute for Occupational Safety and Health (NIOSH) Criteria Document.* OSHA and NIOSH have long recognized the desirability of a uniform and complete system to identify hazardous materials found in the workplace. Under section 22(c)(1) of the OSH Act, which authorizes NIOSH to develop recommended occupational safety and health standards, a criteria document was published in 1974 entitled, "A Recommended Standard * * * An Identification System for Occupationally Hazardous Materials" (3). The recommended standard was designed to inform employees of potentially hazardous materials which are encountered in the workplace by a three-component warning system, including the use of placards, labels, and material safety data sheets.

A "hazardous material" was defined by NIOSH as "a substance or mixture of substances having intrinsic properties capable of producing adverse effects on the health or safety of the worker". NIOSH recognized that all materials "can cause unwanted changes under some circumstances, but a careful assessment of properties and

circumstances will classify common substances such as water and sodium chloride as practically nonhazardous materials from the viewpoint of the need for informing the worker". NIOSH refined their definition of hazardous by stating that a material would be considered hazardous if it met the criteria they cited for toxicity, flammability or reactivity.

NIOSH further recommended that all materials that are toxic, flammable, or reactive be rated as to their relative hazard. For example, a toxic substance could be rated in any one of five toxicity categories, ranging from "no significant health hazard" (rating of zero) to "extreme health hazard" (rating of four). Specific criteria for determining in which category a substance should be included were also recommended by NIOSH. Information to be used by the employer to determine the appropriate hazard rating was to be assembled from "reference sources, expert opinion, and direct experience and familiarity with the material or specific combination of materials".

3. *Report of the OSHA Standards Advisory Committee.* In 1974, the OSHA Standards Advisory Committee on Hazardous Materials Labeling was formed in accordance with section 7(b) of the OSH Act (2). The purpose of this committee, which was comprised of experts representing employers, employees, the Federal government, state governments, and the public, was to develop generic guidelines for the implementation of section 6(b)(7) of the OSH Act. The recommendations of the Committee involved a "total systems" approach to the problem of labeling. This approach included classification of hazards and the use of warning devices, such as labels and placards, coupled with the use of physical/chemical data and employee training programs. The Committee "identified and confined its discussion to four categories of hazards, namely, flammability hazards, health hazards, reactivity hazards, and materials hazardous by reason of being under pressure in their containers". For each of these categories, a number of sub-categories were developed, and the Committee recommended the criteria a substance would have to meet to be included in these sub-categories. Wherever possible, the Committee defined these criteria similarly to currently used and accepted definitions. For example, the definition of "unstable (reactive) material" was that which OSHA already used in 29 CFR 1910.106(a)(20). The Committee recommended adoption of such a labeling standard to serve both employer and employee by providing a safer and more healthful working environment. The final report of the Committee was submitted to the Assistant Secretary of Labor on June 6, 1975.

4. *American National Standards Institute (ANSI) Standard.* Industry also recognized the need for an official standard for the precautionary labeling of hazardous chemicals used in the workplace. In 1944, the Manufacturing Chemists Association, since renamed the Chemical Manufacturers Association (CMA), a trade association composed of members of the chemical industry, established their Labels and Precautionary Information (LAPI) Committee. This committee produced the first published guide to precautionary labeling for hazardous chemicals (Manual L–1) in 1946. In 1970, the LAPI voiced their strong support for precautionary labeling being part of worker safety programs in the following statement:

> Precautionary information should, as far as is practicable, reach every person using, handling, or storing hazardous substances. The most practical means of disseminating this information has been found to be by precautionary labels, affixed to containers of hazardous substances, bearing appropriate precautionary statements expressed as simply and briefly as possible. (Manufacturing Chemists Association, *Guide to Precautionary Labeling of Hazardous Chemicals*, Manual L–1, 7th ed., 1970, p. 9).

A subcommittee of the LAPI Committee also assisted in the development of the American National Standards Institute (ANSI) standard entitled "American National Standard for the Precautionary Labeling of Hazardous Industrial Chemicals" (12). This standard, published in 1976, is considered to be the official guideline for voluntary use by industry for the precautionary labeling of hazardous chemicals used in industrial operations.

Some industry representatives have maintained that an OSHA labeling standard is not necessary because industry already voluntarily complies with the ANSI standard. However, findings of the National Occupational Hazards Survey (NOHS) demonstrated that this is not the case in many situations. The ANSI standard is nearly identical to the manual produced by the CMA for its member companies. As stated above, this manual was first available in 1946. However, the NOHS found that CMA member companies did not fare well in terms of identifying dangerous products to purchasers. As reported in 1976 by NIOSH to the House of Representatives' Committee on Government Operations (5), CMA members manufactured almost 9,000 of the trade-name products found in the NOHS, and designated over 3,000 of these as trade secrets. In addition, over 3,000 of the 9,000 trade-name products contained OSHA-regulated chemicals, and 1,440 of these products were among those that CMA members had designated as trade secrets.

Furthermore, the ANSI standard does not specify the precise mode of identification required, simply stating that it should be "adequate to permit selection of proper action in case of exposure". ANSI also does not specify what percentage of a mixture a hazardous component must comprise to trigger the identification requirements, but indicates that "those compounds which contribute substantially to the hazard(s) shall be identified".

The House of Representatives' Committee on Government Operations concluded on the basis of their evaluation of testimony presented at their hearings that the ANSI standard does not adequately cover chemical substance identification (5). There were two major reasons for their conclusions. First of all, the ANSI standard is a guide for industry, and there is no requirement for industry to comply with such a guide. Secondly, the Committee recognized that the ANSI standard does not address chronic effects. Their report stated:

> A second problem with the ANSI standard is that, like the MCA guide, it is deficient in recognizing potential harm from continuous low-level exposures. It does not include labeling guidelines for chemicals that can cause cancer or genetic defects. Without such labeling, all known hazards are not addressed.

5. *Report to Congress on Occupational Diseases.* Most recently, the issue of labeling in the workplace was addressed in "An Interim Report to the Congress on Occupational Diseases," submitted by U.S. Department of Labor in June 1980 (13). In this report, OSHA indicates the importance of including in its health standards requirements for the use of hazard warning signs or labels. In health standards which regulate workplace exposures to hazardous substances, such labeling provisions are considered to be necessary to the primary prevention of occupational disease by informing workers of the dangers due to exposure and of methods of prevention. Other primary means of preventing occupational disease, to be used in conjunction with labeling, include employee exposure monitoring, medical surveillance, and training, as well as compliance with permissible

exposure limits to regulate employee exposures to hazardous substances.

D. Selected Labeling Regulations Which Are Currently in Effect

1. *Occupational Safety and Health Administration (OSHA).* OSHA's safety and health standards for General Industry, 29 CFR Part 1910, were either adopted from voluntary consensus standards, in accordance with section (6)(a) of the OSH Act, or were promulgated by OSHA through the rulemaking process prescribed by section (6)(b) of the Act (1, 11). Several standards from both sources currently contain provisions for labeling hazardous materials present in the workplace.

A number of the standards OSHA adopted under section (6)(a) of the Act require employers to placard, label or mark various types of work sites or containers.

For example, under 29 CFR 1910.252 (welding, cutting and brazing), containers of welding materials with significant amounts of cadmium in them must be marked as follows:

WARNING.—CONTAINS CADMIUM—POISONOUS FUMES MAY BE FORMED ON HEATING

Do not breathe fumes. use only with adequate ventilation such as fume collectors, exhaust ventilators, or air-supplied respirators. See ANSI Z49–1.—1967.

If chest pain, cough, or fever develop after use, call physician immediately.

Other safety standards which have labeling requirements are: Section 1910.96, Ionizing Radiation; § 1910.103, Hydrogen; § 1910.104, Oxygen; § 1910.111, Anhydrous Ammonia; § 1910.144, Color Coding; and § 1910.145, Accident Prevention Signs and Tags.

The only OSHA health standard adopted under section (6)(a) of the Act, 29 CFR 1910.1000, Air Contaminants, does not include labeling provisions. However, each of the other health standards, which were promulgated for individual substances under section (6)(b) of the Act, does include provisions for signs and labels.

The warnings required under each standard are specific to the substance being regulated. Each sign or label must include the precise chemical identification of the substance, as well as whatever hazard warnings or precautionary measures are indicated in the standard. Table 4 is a compilation of these standards, including he section number of each, the substance covered, and the hazard or other information to be noted on the label.

TABLE 4.—SUBPART Z STANDARDS WHICH CONTAIN LABELING REQUIREMENTS

Section No.	Substance	Information on label
1910.1001	Asbestos	Breathing dust may cause serious bodily harm.
1910.1003	4-nitrobiphenyl	Cancer-suspect agent.
1910.1004	Alpha-napthylamine	Do.
1910.1006	Methyl chloromethyl ether.	Do.
1910.1007	3,3'-dichlorobenzidine (and its salts).	Do.
1910.1008	Bis-chloromethyl ether	Do.
1910.1009	Beta-napthylamine	Do.
1910.1010	Benzidine	Do.
1910.1011	4-aminodiphenyl	Do.
1910.1012	Ethyleneimine	Do.
1910.1013	Beta-propriolactone	Do.
1910.1014	2-acetylaminofluorene	Do.
1910.1015	4-dimethylamino-azobenzene.	Do.
1910.1016	N-nitroso-dimethylamine.	Do.
1910.1017	Vinyl chloride	Cancer-suspect, extremely flammable gas under pressure.
1910.1018	Inorganic arsenic	Cancer-suspect, harmful if inhaled or swallowed.
1910.1025	Lead	Caution: Clothing Contaminated with lead.
1910.1029	Coke oven emissions	Cancer hazard.
1910.1043	Cotton dust	May cause acute or delayed lung injury.
1910.1044	1,2-dibromo-3-chloropropane.	Cancer hazard.
1910.1045	Acrylonitrile	Do.

2. *Environmental Protection Agency (EPA).* In 1976, the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) was passed (14). This Act gives EPA broad authority to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment. Under TSCA, unreasonable risk to human health or the environment may be regulated wherever it occurs. TSCA also emphasizes delayed or chronic effects of chemical exposure, particularly cancer, gene mutations and birth defects.

Under section 6(a)(3) of this Act, EPA may require that a substance, mixture or article be marked or accompanied by warnings and instructions with respect to its use, distribution and disposal. To date, no labeling rules have been promulgated under TSCA.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*) authorizes EPA to regulate pesticides (15). To carry out its statutory mandate to protect against "unreasonable adverse effects", EPA requires that pesticides be tested prior to registration, which licenses distribution and marketing, to determine their health and environmental effects. Further, a pesticide product must be labeled according to Agency-established requirements. Labeling is a significant adjunct to the registration process because under FIFRA, the label is the legal standard by which pesticide misuse is judged. Under section 12 of FIFRA, it is a violation of the Act to "use a registered pesticide in a manner inconsistent with its labeling", and penalties may be levied under section 14 of FIFRA for this violation.

EPA specifies that the pesticide label must include the following information (40 CFR 162.10):

1. Product name;
2. Company name and address;
3. Net contents;
4. EPA (Product) Registration number;
5. EPA (Producing) Establishment number;
6. a. Ingredients statement, including the name and percentage of each active ingredient (accepted common name, if there is one, followed by the chemical name);

b. A signal word, based on the acute effects of the pesticide (Danger, Warning, or Caution);

c. A child hazard warning, "Keep Out of Reach of Children";

7. A series or precautionary statements addressing human health, environmental effects on fish and wildlife, and physical/chemical hazards the product may pose;
8. A statement of practical treatment in the event of exposure;
9. If restricted use, a statement to that effect; and
10. Directions for use, storage, disposal, and if applicable, reentry into areas where the pesticide has been used.

Beyond these specified contents, labels are developed by the individual companies seeking registration and thus may vary in terms of additional contents and appearance for the same product from different producers.

3. *Food and Drug Administration (FDA) and Federal Trade Commission (FTC).* Congress passed the Fair Packaging and Labeling Act (16) in 1966 to require information to be provided to consumers about the commodities they purchase. Congress stated: "Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparison." The Act applies to anyone engaged in packaging or labeling consumer commodities for retail sale. The Food and Drug Administration (FDA) is responsible for enforcing the Act in regard to food, drugs, devices or cosmetics which they regulate, while other consumer commodities are regulated by the FTC.

Basically, the Act requires consumer commodities distributed in commerce to be labeled with:

(1) The identity of the commodity, and the name and place of business of the manufacturer, packer, or distributor; and

(2) The net quantity of contents, in whatever measure is appropriate for the

package and its contents (weight, linear measure, area).

FDA and FTC have specific regulations describing their implementation and enforcement of the Fair Packaging and Labeling Act. Since the Act is directed towards consumers, compliance with its requirements does not provide information for employees in the workplace.

The Food, Drug, and Cosmetic Act, administered by the FDA, provides for the labeling of substances which are ingested or come into close contact with humans (17). The following products must be labeled:

—foods
—cosmetics
—prescription drugs
—over-the-counter drugs
—animal drugs
—biologics
—radiological products
—medical devices

The labels required by FDA are applied to the final products prior to consumer distribution, and do not provide any information or protection for employees in the workplace who may be exposed to hazardous substances during the production process.

Food is defined as articles used for food or drink for man or other animals, components of such articles, and chewing gum. Section 403 of the Act requires that foods be labeled with the following information:

1. Name and address of the manufacturer, packer, or distributor;
2. Net amount of food in the package;
3. Common name of all nonstandardized foods or the complete name of a food listed in the Standard of Identity;
4. Presence of any artificial flavoring, artificial coloring, or chemical preservative, indicated by the chemical name of the substance;
5. Ingredients by weight (except for certain standardized foods);
6. Food for dietary uses must include information on vitamins, minerals, and other dietary properties; and
7. Imitations must be labeled as imitations.

FDA maintains a list of substances that are directly or indirectly added to food and which are "generally recognized as safe (GRAS)" (21 CFR Part 182). To be included on the GRAS list, a substance's safety must be determined by scientists who are experts in food safety. FDA defines the "safety" of food additives as follows:

"Safe" or "safety" means that there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use * * * (21 CFR 170.3(i))

Although FDA may determine that a substance is "safe" for purposes of their regulations, this does not mean that the same substances are necessarily "safe" for employees exposed in the occupational setting. Therefore, it seems reasonable that a number of the GRAS substances, as well as other food additives, will be evaluated as hazards under this proposed regulation.

Drugs are defined as articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the U.S., or official National Formulary; or articles used to prevent, diagnose, or treat disease; or articles used to affect function or structure in man or animals (21 U.S.C. 321). Medical devices are regulated separately. Section 502 of the Food, Drug, and Cosmetic Act sets forth the following general labeling requirements for drugs:

1. Name and address of the manufacturer, packer, or distributor;
2. Net amount of drug in the package;
3. List of active ingredients, using established names (the established name is the official name designated; if there is no such designation, the name used in an official compendium; or if a name is not otherwise available, the common name may be used);
4. "May be habit forming" if the drug contains certain substances such as opium;
5. Quantity of certain specified substances such as alcohol;
6. If a prescription drug:
a. "Caution: Federal law prohibits dispensing without prescription"
b. Quantity or proportion of each active ingredient
c. Names and quantities of all ingredients if for injection
d. Recommended dosage
e. Full information on effects and purposes
f. Established name in type at least half as high as trade name
7. If an over-the-counter drug:
a. Identity statement followed by general pharmacological category or principal intended action
b. Quantity of contents
8. Adequate directions for use including frequency, duration, and route of administration, preparation for use, and other dosage information; and
9. Adequate warnings (indications that the drug has narcotic or habit forming properties; warnings against use by persons having certain medical conditions or by children where use may be dangerous to health, precaution concerning safe dosage and manner of use).

FDA has promulgated extensive specific drug labeling provisions under these general requirements of the Act. These provisions are addressed to either the general categories of prescription or over-the-counter drugs, or to individual, specific drugs.

There may be several stages of labeling during the development and packaging of a drug product. The first involves bulk drug shipments from a pharmaceutical manufacturer to another establishment where the drug will be processed, labeled, or repacked in substantial quantity. This establishment then ships the drug product to a retail firm or other dispensing facility (e.g. a pharmacy). Then the drug is dispensed to a customer.

Bulk shipments are generally exempt from the specific drug labeling requirements of the Act but must bear the statement "Caution: For manufacturing, processing, or repacking." Bulk packages of dosage units (such as tablets or capsules) are not covered by this exemption. Certain bulk shipments of drugs must also bear the statement "Caution: Federal law prohibits dispensing without prescription" (21 CFR 201.122). If the bulk shipment is to be used in the manufacture, processing or repacking of a new drug, the shipper may be required to add to the warning as follows: "Caution: For manufacturing, processing, or repackaging in the preparation of a new drug or new animal drug limited by Federal law to investigational use" (21 CFR 201.122(b)).

Labeling requirements for products being shipped from the packager to the dispenser of the drug are different for prescription and over-the-counter drugs.

Generally, prescription drug labeling must meet the following requirements (21 CFR 201.56):

(a) The labeling shall contain a summary of the essential scientific information needed for the safe and effective use of the drug.

(b) The labeling shall be informative and accurate and neither promotional in tone nor false or misleading in any particular.

(c) The labeling shall be based whenever possible on data derived from human experience. No implied claims or suggestions of drug use may be made if there is inadequate evidence of safety or a lack of substantial evidence of effectiveness. Conclusions based on animal data but necessary for safe and effective use of the drug in humans shall be identified as such and included with human data in the appropriate section of the labeling * * *

The information required is to be presented under the following subject headings, and in this order:

Description.
Clinical Pharmacology.
Indications and Usage.
Contraindications.
Warnings.
Precautions.
Adverse Reactions.
Drug Abuse and Dependence.
Overdosage.
Dosage and Administration.
How Supplied.

If necessary, the following headings may also be used:

Animal Pharmacology and/or Animal Toxicology.
Clinical Studies.
References.

FDA provides specific guidance indicating what information must be provided under each heading (21 CFR 201.57). In addition, for some individual drugs FDA has promulgated specific provisions requiring certain information to appear on the particular drug's label.

If the packager cannot fit all of this information about the drug on the container label, a package insert may be used to supplement the label.

The information FDA requires is intended for the use of the physician or pharmacist. Labels on dispensed drugs are regulated by the individual State Boards of Pharmacy, and thus vary from state to state.

FDA also has regulations specifying labeling requirements for over-the-counter drugs. Basically, the label must include a statement of identity and a declaration of the net quantity of the contents.

FDA has promulgated a number of regulations for specific drug labeling of both prescription and over-the-counter drugs. For example, lozenges, mouth washes, gargles and other articles sold over-the-counter for relief of minor irritations of the mouth or throat can only be labeled "for the temporary relief of minor sore throats", if the following statement is also included: "Warning—Severe or persistent sore throat or sore throat accompanied by high fever, headache, nausea, and vomiting may be serious. Consult physician promptly. Do not use more than 2 days or administer to children under 3 years of age unless directed by physician."

Cosmetics are articles applied to the human body for cleanliness or to alter appearance. Soap is not classified as a cosmetic. Generally, under the Act a cosmetic label requires the name of the manufacturer, packer, or distributor and statement of weight, but does not require the listing of specific ingredients. An exception is coal-tar hair dyes which must be labeled to warn that they may cause skin irritations, and should not be used for eyebrows or lashes because they may cause blindness. However, FDA has promulgated in its regulations under the Act an additional provision which requires that each cosmetic package "bear a declaration of each ingredient in descending order of predominance, except that fragrance or flavor may be listed as fragrance or flavor" (21 CFR 701.3). The names of the ingredients are to be either the FDA adopted name, or in the absence of one, the common or usual name. If there is no adopted or common name, the chemical or technical name is to be used.

5. *Department of Transportation (DOT).* Section 105(a) of the Hazardous Materials Transportation Act, which was passed in 1975, gave DOT the authority to regulate the labeling of hazardous materials in transportation which may pose an unreasonable risk to health, safety, or property (18). The Secretary of Transportation is given the authority to designate which substances are hazardous. In addition, the Secretary has the authority to regulate substances which meet the definition of hazardous, but are not specifically designated as such by the Secretary. The shipper is thus required to determine if an individual substance that is not on the list is hazardous, and thus must be labeled. Hazardous substances may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons (dangerous to life, known to be a human health hazard, or presumed to be a hazard on the basis of animal testing results), oxidizing or corrosive materials, and compressed gases.

Under DOT regulations, 49 CFR Part 172, all dangerous goods or their packages must have the designated labels. The label must include the name, DOT identification number, and a statement of the hazard. In addition, the regulations require the placarding of each motor vehicle, rail car, or freight container containing any quantity of a hazardous material.

DOT regulations cover interstate shipment by truck, rail, water, and air but vary depending on the mode of transportation. The responsibility for labeling is placed on the manufacturers and shippers, and on the reconditioners and testers of containers in which the hazardous materials are transported. Both the carrier and the manufacturer are forbidden to transport an improperly labeled package.

6. *The Consumer Product Safety Commission (CPSC).* The CPSC regulates the labeling of toxic substances in household products used by consumers as part of its broad mandate to protect the public against unreasonable risk of injury (20). The CPSC administers the Federal Hazardous Substances Act (FHSA), which requires the labeling of hazardous substances. A "hazardous substance" is defined in the FHSA regulations as "any substance or mixture of substances which is toxic, corrosive, an irritant, a strong sensitizer, flammable or combustible, or generates pressure through decomposition, heat or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children." A "toxic" substance is one which "has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface." A "highly toxic" substance is defined by lethal dose testing results. (These definitions may be found in 16 CFR 1500.3).

The person or firm who releases a product into interstate commerce (usually the manufacturer) has the primary responsibility for determining if the FHSA applies to their product and thus warrants labeling (section (4) of the FHSA). The Act requires labeling for products that are hazardous household substances. However, if CPSC finds that there may be uncertainty as to the application of the Act in certain instances, or if the hazard is such that the general labeling requirements will not protect consumers, individual specific regulations may be required for hazardous substances. This authority has only been used in a few cases, such as charcoal briquettes (16 CFR 1500.12 and 1500.14) and methyl alcohol (16 CFR 1500.14). CPSC may also ban hazardous substances if the degree of hazard warrants discontinuing consumer use. For example, carbon tetrachloride is a banned hazardous substance (16 CFR 1500.17).

The FHSA requires the following information on a label or tag attached to a hazardous substance:

1. Name and place of business of the manufacturer, packer, or distributor;
2. Common or chemical name of the hazardous substance or of each component which contributes substantially to its hazard;
3. The signal word *"danger"* on substances which are extremely flammable, corrosive, or highly toxic;
4. The signal word *"warning"* or *"caution"* on all other hazardous substances;
5. Affirmative statement of the principal hazard or hazards;
6. Precautionary measures describing the action to be followed or avoided;
7. Instruction, when necessary or appropriate, for first-aid treatment;
8. The word "poison" for any hazardous substance defined as highly toxic;
9. Instructions for handling and storage of packages if special care is required;
10. Statement "Keep out of the reach of children" or if intended for use by children, adequate directions for the protection of children.

As stated above, if this information is not adequate to protect consumer health and safety, additional requirements may be applicable. In addition, the FHSA provides for the banning of household hazardous substances where precautionary labeling is not adequate, because of the degree and nature of the hazard involved. For example, special labeling is required at certain concentrations for benzene, toluene, xylene, and petroleum distillates (16 CFR 1500.14). The Act also bans toys or other articles intended for use by children that are hazardous substances.

7. *State and Local Regulations.* Nine states (and the city of Philadelphia, Pennsylvania) have enacted worker right-to-know laws (see references 20–29).

Table 5 lists all of the provisions contained in the state regulations. Also listed, by individual state, are the specific provisions applicable to each. This table was prepared by OSHA to give a general overview of existing state laws based on a review of the written regulations supplied by these states. It should not be considered to be a legal interpretation of these state requirements. Most of the states do not have any provisions pertaining to the protection of trade secret information, nor do they provide employers with any specific guidance for determining which substances in their workplaces are covered by the regulations.

TABLE 5.—SUMMARY OF STATE LABELING PROVISIONS

Provisions which may be included in state regulations:
1. Substance Identification:
   (a) Requires substance identification by chemical name or common name(s).
   (b) Requires substance identification by chemical name and common name(s).
2. Identification Criteria:
   (a) Includes a list of regulated substances.
   (b) The employer determines which substances are regulated on the basis of definitions.
   (c) Sources of information the employer can use are provided.
   (d) A combination of lists and definitions is used.
3. Requires the Use of Material Safety Data Sheets.
4. Information Required to be Provided on Labels or Equivalent
   (a) Requires hazards warning information.
   (b) Requires precautionary measures information.
5. Requires Employee Training.
6. Recordkeeping Requirements:
   (a) Provides for employee access to records maintained by employer.
   (b) Requires retention of records by employer.

Provisions included in regulations of specific states:
California: 1(a), 2(d), 4(a) and (b), 6(a)
Connecticut: 1(a), 2(a), 4(b), 5, 6(a)
Maine: 1(a), 2(d), 5, 6(a) and (b)
Massachusetts: 1(a), 2(a), 4(a) and (b)
Michigan: 1(b), 2(b), 3, 4(a) and (b), 6(a)
New York: 1(b), 2(c) and (d), 3, 4(a) and (b), 5, 6(a) and (b)
Oregon: 1(a), 2(b), 4(a) and (b)
Washington: 1(a), 2(b), 4(a) and (b)
West Virginia: 1(a), 2(a), 4(a), 6(a)

In addition, other state and municipal governments, including New Jersey; Ohio; Wisconsin; Santa Monica, California; and Louisville, Kentucky, are in various stages of enactment of worker right-to know legislation.

As would be expected by nine different state statutes requiring hazard communication, there are an equal number of ways in which the codes are enforced. Most states have provisions whereby inspectors make scheduled inspections of workplaces and labeling standards are covered. One state only permits an inspection for enforcement of its labeling standard after receiving an employee complaint, while another simply requires firms to register any of twenty carcinogens with the state health department.

The majority of the states have provisions for sanctions against violators but a few do not. There are other provisions unique to individual states. Two agencies in one state have jurisdiction over the same standards. In another state only products manufactured within the state require labeling, while those entering the state do not. These provisions and practices often create irregular enforcement and impose problems for multistate employers.

8. *European Economic Community (EEC).* Since hazardous substances are frequently traded between the U.S. and other countries, the labeling requirements of those nations may have an impact on American labeling practices. The standards established by the EEC, an organization composed of nine member nations, are the most widely known of available standards in foreign countries.

The EEC standards were initiated in 1967 by the Council of the European Communities. Since that time, the Council has issued four Directives concerning the classification, packaging and labeling of "dangerous" chemical products (30). These Directives require each member nation of the EEC to develop harmonious laws, regulations, and administrative provisions regarding trade in these products within a determined period of time.

Each Directive focuses on a distinct category of dangerous materials or products as follows:

1. *"Substance Directive":* Concerns the classification, packaging, and labeling of dangerous substances (Directive 67/548/EEC, August 16, 1967; as amended by Directive 79/831/EEC, September 18, 1979).

2. *"Solvents Directive":* Concerns dangerous preparations (i.e. mixtures) and certain substances that are intended for use as solvents (Directive 73/173/EEC, June 4, 1973).

3. *"Paints Directive":* Covers paints, varnishes, printing inks, adhesives, and similar products (Directive 77/728/EEC, November 7, 1977).

4. *"Pesticides Directive":* Covers pesticide products (Directive 78/631/EEC, June 26, 1978).

The Substance Directive specifies fourteen categories of dangerous products and the criteria by which they are defined. The EEC categories encompass products that may present health, physical, and environmental hazards during use, handling, or disposal. Eight categories identify products that pose health hazards or degrees of hazard: very toxic, toxic, harmful, corrosive, irritant, carcinogenic, teratogenic, and mutagenic. There are five categories of materials that pose physical hazards: explosive, oxidizing, extremely flammable, highly flammable, and flammable. A final category includes products whose use threatens the environment: Dangerous for the environment. A dangerous product is one which can be classified in one or more of these categories.

Containers of dangerous substances that are distributed within the EEC must be labeled with the following information: (1) The name of the substance, (2) the name and address of the manufacturer, importer, or distributor of the substance, (3) hazard symbol(s), if applicable, and key hazard terms, (4) appropriate Risk Statements, and (5) appropriate standard Safety Advice Statements. Terms such as "non-toxic" or "non-harmful" must not appear on any package containing a dangerous substance.

The EEC labeling standards use symbols as the primary hazard warning method. Associated with nine categories are six pictograms: Explosive—an exploding bomb; oxidizing—a flame over a circle; extremely flammable and highly flammable—a flame; very toxic and toxic—a skull and crossbones; harmful and irritant—the St. Andrew's cross (a bold-face "X"); corrosive—a symbol showing the destructive effects of an acid dripping from test tubes onto a hand and a bar. Containers of a product which satisfy the criteria for any of these categories must bear the corresponding pictogram(s) and key hazard term(s) on their labels. The pictograms must be printed in black and appear on a rectangular orange-yellow background. Together the pictogram and the hazard term constitute the EEC hazard warning symbol.

For products that satisfy the criteria for more than one of the danger

categories, the EEC prescribes procedures for determining which pictograms take precedence over others on the label. These requirements determine which of the hazards are to be highlighted on the label by symbols and, therefore, which are left to be dealt with by means of appropriate risk statements. A label may contain no more than two symbols.

The EEC has established specific labeling requirements for nearly 1,000 dangerous substances, which appear in an appendix to the Substance Directive. These requirements specify precisely what information must appear on the product's label, including the nomenclature for identifying each substance, hazard symbols, and standard risk and safety statements. However, substances which meet the criteria for being dangerous but do not appear in this appendix, must still be labeled.

II. Summary and Explanation of the Proposed Standard

In developing the proposed standard, OSHA reviewed and analyzed all of the regulations, documents, and comments described above, as well as other information the Agency has obtained during the developmental process. All parties involved or interested in hazard communication agree that a program is necessary, but opinions as to the components of such a program vary significantly. Labels, material safety data sheets and training are the basics included in most programs, but the relative importance of each of these components varies from plan to plan. This proposal assumes that an adequate hazard communication program will have to include all of the basic components of existing programs—that is, labels, material safety data sheets, and training.

Our goal in developing this standard has been to provide employees with the information they need to help protect themselves in the workplace (hazard identification and warning) through a simple performance-oriented standard. OSHA has written the provisions in such a manner that where employers have already implemented an effective program, they should not have to substantially modify such programs to comply.

OSHA recognizes that there may be many ways to reach the goal of adequate hazard communication other than the particular combination of elements in this proposed standard. The Agency is thus hereby soliciting information on alternative means to address the problems of inadequate or inaccurate hazard information. The final standard adopted will incorporate whatever means are best supported by the public record. The proposed standard initiates the public rulemaking process by presenting the Agency's assessment of the best way to acomplish hazard communication given our current state of knowledge. It should not be considered OSHA's "final" position on the issue.

The following summary and explanation is designed to clarify the intent of the proposed provisions, as well as to identify issues OSHA is aware of and would like to receive comments on. Comments are also invited on other relevant issues which are not specifically raised in the following discussion.

(a) *Scope of application.* The proposed standard applies to employers who have facilities classified in the manufacturing SIC Codes 20 through 39, Division D, in the most recent edition of the Standard Industrial Classification Manual; Executive Office of the President—Office of Management and Budget. Employers within these codes who produce chemicals are required to assess their hazards, and transmit the information to their own employees and to purchasers of their products. All covered employers, both manufacturers and users of chemicals alike, must establish hazard communication programs for their employees.

Chemicals which are "known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency" must be evaluated by the manufacturer of the chemical to determine if they are hazardous. Only chemicals which are hazardous are covered by the communication requirements.

If the mixture is comprised of at least one percent of a hazardous chemical, the mixture is considered to have the same hazard(s) for purposes of this standard. The only exception is when the mixture itself has been tested, and the resulting data indicates it is not hazardous. The Assistant Secretary may lower the one percent exemption by a rulemaking notice in the **Federal Register** if necessary in particular circumstances.

Chemicals which are being developed and used in research laboratories would be exempt under the proposal. Other laboratory chemicals in facilities falling within the SIC Codes 20–39, such as in quality control laboratories, would be covered. An additional exemption is included for foods, drugs, cosmetics or tobacco products brought into the workplace for the personal consumption or use of employees.

The scope of the standard could have been limited only to chemical manufacturers (SIC 28), or could have been broadened to include all employers in all workplaces. OSHA chose to cover all manufacturing employees for several reasons. It appears that employees in manufacturing facilities are at the greatest risk of harmful exposure to chemicals. An argument can be made that among manufacturers, employees of chemical manufacturers are at the greatest risk, and that the standard should be limited to them. However, OSHA has found that many other manufacturers are significant users of chemicals in their processes, and in light of the relatively high incidence of chemical source injury and illness in these industries, that their employees should be covered as well. For example, leather tanning manufacturers use quantities of potentially hazardous chemicals in their facilities although their final products may not be hazardous. The Bureau of Labor Statistics figures on occupational illnesses and injuries also support establishing the scope as the manufacturing SIC Codes, since a significant number of chemical source illnesses and injuries occur in these facilities (8).

One question which arises under this scheme involves the importation of hazardous chemicals. The proposal does not specifically include importers within its scope. Unlike the "manufacturer", the "importer" may not have adequate information on the chemical and may not be in a good position to develop the necessary information or to send such information to downstream users. OSHA invites comment on whether importers should be specifically included in the final standard, and would like information on the extent of the potential problems involving imported chemicals, and where the responsibility should lie for developing and transmitting hazard information concerning imported chemicals.

Although non-manufacturing employers are not covered by the proposal, it is expected that their employees will also benefit from it to a great extent since employees in the manufacturing sectors will be required to send the hazard-related information downstream to their customers. Once finalized and implemented, its effectiveness in triggering downstream transmittal could be assessed, and determinations made as to the type of hazard communication standard that may be effective and beneficial for other industries, such as construction or agriculture. If necessary, the proposal

could be extended or modified for these other industries at a later date.

Comment is hereby invited on the appropriateness of the industry scope selected, and whether other industries should be included in the final standard if the record warrants it.

The question of when a mixture is deemed hazardous by virtue of its composition is a difficult one. We have selected one percent as the cut-off point for communicating the hazards of the mixture's ingredients, recognizing that there is no scientifically correct delineation, but that the one percent cut-off is apparently considered reasonable by a number of parties. The hazards associated with a mixture's ingredients need not be communicated if testing has been done to determine the hazard of the mixture itself. If the mixture is found to be not hazardous, the proposed standard would not apply to it. If the mixture is found by testing to be hazardous, only those ingredients known to contribute to the hazards found need to be listed as required on the material safety data sheets. If the employer does not know which ingredients contribute to the hazards, all of those over one percent will have to be listed as stated above. This would allow employers to use whatever hazard information they have acquired on mixtures, while still protecting employees in the absence of such information. It should be emphasized that the standard does not require any testing. However, for a mixture to be exempted from the ingredient listing requirements specified, the employer will have to rely on available specific test data, not subjective assessments. In the absence of such data, ingredient listing for components of one percent or greater will apply.

In the case of particularly hazardous chemicals, the Assistant Secretary is reserving the right to lower or eliminate the one percent exemption for mixtures. For example, it may be that a particular carcinogen will be found to be present in many mixtures in small, but potent, quantities. In that situation, OSHA could publish a rulemaking notice in the **Federal Register** proposing that the one percent exemption be changed for that particular chemical to require hazard communication activities even for mixtures containing less than one percent.

Comment is invited on the appropriateness of one percent as a cut-off for mixtures, as well as any documentation on alternative delineations.

An exemption for chemicals being newly developed in research laboratories is included because these chemicals have generally not undergone any hazard testing, and are often only present in the laboratories for brief periods of time, and in small quantities. Some parties have suggested that laboratories be exempted completely, but information to substantiate such an exemption has not been presented. Thus OSHA does not think that complete exemption is warranted at this time, but is seeking comment on the impact on laboratories that would be covered by this standard (in SIC Codes 20 through 39). It appears that many of the laboratories in these SIC Codes are quality control facilities. The lab employees are exposed to the same hazards as other employees in the facility, and therefore should be equally protected.

(b) *Definitions.* The proposed standard includes a number of definitions which are unique to this regulation, and these should be consulted to properly understand the standard.

A number of the definitions are included for purposes of specifically delineating the scope of the standard. For example, usually the term "employer" is used very broadly in OSHA standards to cover many different types of industries and facilities. In this proposed standard, however, "employer" is defined as an "establishment in SIC Codes 20–39 that manufactures or uses hazardous chemicals". "Use" is defined as "manufacture, handle, react, process, package or repackage, or transport". Some of the duties in the standard are further limited to a "chemical manufacturer" which is defined as an "establishment where chemicals are produced for use or distribution".

For the initial evaluation step of the proposed standard, the chemical manufacturer or employer must consider all chemicals in his/her plant to determine if they are hazardous. A "chemical" for this purpose means "any element, chemical compound or mixture of elements and/or compounds". The actual hazard communication requirements of the standard apply only to a "hazardous chemical" which is "any substance or mixture covered by this section which is combustible, a compressed gas, explosive, flammable, a health hazard, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive". Each of these hazards is also defined, using existing OSHA definitions where available. The other physical hazard definitions are ones which are currently in widespread use by various organizations.

The definition for "health hazard" is very broad, and is supplemented by an explanatory appendix (Appendix A). The question of health hazard coverage has been a subject of considerable interest to those concerned with the development of this proposal. Suggested definitions ranged from very limited (the ANSI standard coverage of lethality, irritation, corrosivity, and sensitization) to very broad (any adverse health effect). In this proposal we have chosen the broad coverage approach and defined "health hazard" as "a chemical which, upon exposure, may result in the occurrence of acute or chronic health effects in employees". As stated previously, this definition is further elaborated in Appendix A of the standard, which indicates the kinds of hazards an employer must disclose.

A broad approach to defining "health hazard" appears to be essential to attain the goal of apprising employees of all of the hazards in the workplace. Many individual types of health hazards will never be defined in precise, objective terms, but are nevertheless well-recognized at this time as posing significant risks to workers. Furthermore, since the hazard determination procedures are performance-oriented, requiring disclosure only if they are "scientifically well-established", employers must exercise their professional judgment to determine whether a chemical is hazardous under this standard. If challenged, however, it will be incumbent upon them to demonstrate that they have adequately ascertained these scientifically well-established hazards. OSHA invites comment on all of the hazard definitions, and particularly on the issues related to health hazard coverage.

Another definition which is unique to this standard is that of "identity". "Identity" means "any chemical or common name which is indicated on the material safety data sheet (MSDS) for the chemical. The identity used shall permit cross-references to be made among the required list of hazardous chemicals, the label and the MSDS." This definition is critical to the performance-orientation of the labeling requirements, since it allows any type of identification to be used as long as there is a means to link the MSDS to the label.

Another definition which is related to the coverage of the standard is that for "container" which means "any bag, barrel, bottle, box, can, cylinder, drum, storage tank, reaction vessel, or the like that contains a hazardous chemical. For purposes of this section, pipes or piping systems are not considered to be containers". The January proposal included pipe labeling. In many

facilities, however, there are literally miles of pipes that are isolated from employee work areas, and thus do not appear to need labeling. As an alternative to such a requirement, the proposal requires employers to inform employees involved in non-routine tasks, such as repairing unlabeled pipes, of the hazards of the task.

OSHA invites comment on all of the definitions used (not just those described here) and also invites commenters to submit alternative definitions for consideration.

(c) *Hazard determination and communication program.* In order to comply with the proposal, chemical manufacturers are required to evaluate which chemicals they produce are hazardous. Downstream employers may rely on the hazard evaluations performed by the original manufacturer rather than doing one themselves. All covered employers must communicate the chemical hazards found to their employees.

The hazard determination process is performance-oriented. The chemical manufacturers may use whatever procedures they choose as long as they can demonstrate that they have adequately ascertained the scientifically well-established hazards of the chemicals. Appendix B of the standard includes a list of available references which the employer may decide to use to do the hazard determination. There is no requirement that employers use any particular number of these references—they are only provided as possible sources of information.

As with any performance-oriented requirement, the question arises as to when an employer has searched enough sources to adequately determine the hazards. For the physical hazards, such as flammability, one source may be adequate. For the health hazards, a more thorough search may be required. However, the key to determining adequacy is that the proposal only requires a determination of scientifically well-established hazards. Therefore, the employer need not perform exhaustive searches to discover every piece of literature published on the subject to complete the evaluation. Furthermore, the employer may choose to rely on a hazard evaluation performed by someone else, rather than performing a new one. OSHA invites comment on this and alternative hazard determination procedures, particularly those already in use by companies who have hazard communication programs.

Each employer is required under the proposal to develop and implement a hazard communication program, which must include the procedures the employer will use to determine which chemicals are hazardous; a list of those chemicals identified as hazardous; and the methods the employer will use to comply with the requirements of the proposal with regard to labels, material safety data sheets, information and training, and preparing employees to safely perform non-routine tasks (e.g. emergency pipe repairs).

Employers may use existing programs to comply as long as they meet the basic criteria. Access to the list of hazardous chemicals in the workplace is to be provided to employees or their designated representatives, the Assistant Secretary and the Director. No retention periods have been specified for the list of hazardous chemicals. OSHA's intention is that the list be maintained in a current fashion, but that outdated lists need not be kept. Comment is invited as to whether the lists should be subject to the recordkeeping requirements of § 1910.20 (Access to Employee Exposure and Medical Records), and maintained for thirty years.

One alternative to the proposed standard's provisions would be to require that the hazard communication program be written. A written plan would provide a structure upon which to evaluate programs. Employers would be able to establish in the plans the criteria they used in developing their programs, as well as the means used to meet those criteria. The written program would also serve as a useful reference for employees. The written program would make it easier to determine if the intent of the proposed standard is being fulfilled.

A written hazard communication program would also be useful in planning and implementing other aspects of an occupational health program. For example, an occupational physician would find the information a useful supplement in developing a medical program for employees exposed to hazardous chemicals.

OSHA is hereby soliciting comments on the hazard communication programs, written plans, and alternative means of establishing compliance with the standard.

(d) *Labels and placards.* The employer is required to label every container in the workplace with the "identity" of the hazardous chemicals contained therein and hazard warnings. The term "container" does not include pipes or piping systems. Containers leaving the workplace also have to be labeled with the identity and hazard warnings, as well as the name, address and telephone number of the manufacturer.

When stationary containers in a work area have similar contents and hazards, the employer may choose to post signs or placards with the appropriate information, rather than individually labeling each container. Employers need not affix new labels to comply with this regulation if those they use already have the required information.

Containers holding ten gallons or less need not be labeled if an employee is using them immediately and has transferred the material from a labeled container to the container being used.

The labeling requirements are very much performance-oriented in that most existing labeling systems could be used to satisfy the requirements. Any identity can be used, as long as the same identity is listed on the corresponding material safety data sheet so cross-references can be made. The hazard warnings may also take whatever effective form the employer wishes, from numerical ratings to pictographs. Since employers will be required to train employees in whatever system is used, a performance-oriented labeling requirement is considered appropriate.

One issue of concern in this area is the extent of information required to be included on the label. In the proposal, OSHA's intent has been to limit the information to what is needed for immediate protection. More extensive information will be required on material safety data sheets, which will be available to employees. Many employee groups think that detailed information concerning chemical identities of hazardous ingredients, etc. should be on the label. By contrast, some employer groups would prefer that labeling be optional within the workplace and that labeling on containers leaving the workplace not be required at all. OSHA is inviting comment on all such alternatives.

It should be noted that the use of the term "label" does not imply that the information has to be printed on paper and affixed to containers. It can be spray painted on the side, put on a tag, or presented in any other effective manner.

Permitting the use of signs or placards for stationary containers should limit the amount of intra-plant identification required, particularly for continuous processes where the same chemicals are always present. The employer will have to exercise judgement to determine how many placards are necessary to adequately convey the required information to employees in lieu of individual labels.

As described above, the only exemptions for intra-plant container

labeling are for pipes and containers less than ten gallons to be used immediately by an employee. These exceptions greatly limit the amount of labeling required within a manufacturing facility. There are still some concern about the feasibility of labeling other workplace containers, particularly those in batch process operations where ingredients change frequently. However, a visual warning system is considered to be a necessary component of a viable hazard communication program. Therefore, OSHA invites comment on the extent of actual container labeling within a plant that would result from the proposal, problems which may arise due to these requirements, and suggested alternatives for providing some type of visual warning for employees within the plant without requiring actual container labeling. For example, one method may be to post a process sheet near a reaction vessel which indicates the identity of the container's ingredients at any given time and the appropriate hazard warnings. This procedure is already followed in many plants and may be an acceptable alternative to actually labeling the process vessel.

No exceptions for downstream labeling are included in the proposed standard. OSHA is aware that due to the broad scope of the proposal, there may be categories of products that some parties will think should be excluded. Blanket exemptions of this type may decrease the protection afforded by the standard to some employees, and OSHA has therefore chosen not to provide such exemptions in the proposal but to invite comment on the subject, accompanied by documentation.

It should be emphasized that OSHA's proposed requirements are intended to protect workers from potential workplace hazards, not to provide protection for non-worker consumers. As described earlier in this document, other Federal agencies have responsibility for regulating finished consumer products, and their label requirements will suffice to comply with the proposal. The possibility of potentially ridiculous situations arising from the proposed labeling requirements is further reduced by the performance orientation of the hazard determination procedures—the employer decides what is hazardous for purposes of the standard.

To illustrate the concerns expressed by some regarding the broad scope of the standard, one suggestion was to exempt food products from coverage. The example of a potentially ridiculous situation that was raised concerned labeling cake mixes as flour dust inhalation hazards as packaged for consumer use. OSHA does not believe that the proposed standard in fact requires such labeling—a common sense approach to the labeling requirements by the employer would preclude such warnings being on a cake mix box. But exempting food altogether would eliminate coverage of baked goods production where employees may be exposed to large quantities of flour dust and should indeed be warned of the potential inhalation hazard.

Another suggestion was to exempt consumer products. As in the cake mix situation described above, OSHA does not intend to impose any new labeling requirements on products manufactured strictly for consumer use, and believes that this proposed standard does not do so. The only additional requirement would be that a material safety data sheet would have to be sent with the first shipment of a hazardous chemical. This will ensure that any downstream employers handling these "consumer" products receive the information necessary to protect their employees.

It appears that a common sense approach to the hazard determination procedures, combined with extensive requirements for finished product labeling by other Federal agencies, will preclude any potentially ridiculous stiuations from occurring. The limited information required on the labels also help to ensure that most current consumer product labeling would already be in compliance with the standard. OSHA invites comment on this situation, whether there is a need for clarification of intent within the standard, and, if so, suggestions for such clarification.

(e) *Material safety data sheets.* Each employer is required to obtain or develop a material safety data sheet (MSDS) for each hazardous chemical produced or used. Although the sheet may be presented in any format the employer decides to use, the proposal includes a list of specific items to be addressed in the MSDS. The list of specific criteria is thought to be necessary to ensure the adequacy of each MSDS used to comply with this requirement. If no information is found for any category, the employer must indicate that on the MSDS. Blank spaces on existing material safety data sheets will be considered to indicate that information was sought but not found. It is the chemical manufacturer's responsibility to ensure that this interpretation is accurate. As the MSDSs are updated, the blanks shall be marked as required. Although a number of companies already distribute MSDSs voluntarily, the information is sometimes inadequate for safety and health purposes. Employers are also responsible for ensuring that the information used reflects that found in the sources consulted.

Employees and their designated representatives, as well as OSHA and NIOSH, are to have access to the MSDSs for the hazardous chemicals they are exposed to in the workplace. The MSDS will provide employees with extensive information on the hazardous chemical addressed, and thus will be a tool employees can use to protect themselves. The MSDS need only be maintained as long as the substance is in the workplace, or until replaced by a more recent record.

Employers are required to ensure that whenever both new and significant health hazard information comes to their attention, it is added to the MSDS within a reasonable period of time. An MSDS is to be provided to each purchaser of a hazardous chemical with their initial shipment of the product, and whenever the MSDS is updated.

OSHA has chosen to require that MSSs be the primary vehicle for tramsmittal or extensive hazard information, rather than labels. The MSDS appears to be a more appropriate means, since the information can be provided and explained in more detail. Employees cannot generally examine lable information in detail or at their leisure unless they remove or copy the label from the container. In the case of an MSDS, however, they will have access to examine or copy the information for their own use. This will be supplemented by a training program which will explain what the information means to help ensure that they understand the hazards.

Although the standard requires chemical manufacturers to provide an MSDS with initial shipments, OSHA is aware that on many occasions there is a "middleman" in these transactions. These are distributors who do not produce chemicals, but merely supply them to customers, and would therefore fall outside the scope of this standard. An additional problem may occur in the case of repackagers who change labels with the result that the original manufacturer is no longer readily identified with the product. OSHA would like information on whether such distributors need to be explicitly included within the scope of the standard or whether marketplace pressure is likely to result in the suppliers transmitting MSDSs to purchasers in any event. We would also

like comments on whether the repackager problem needs to be explicitly addressed.

(f) *Employee information and training.* Employers will be required to have a training program for all employees who are potentially exposed to hazardous chemicals. The training is to be provided when an employee is intitially assigned to work with hazardous chemicals, and whenever a new chemical is introduced into the work area. OSHA expects that the intial training will be comprehensive, whereas that given when a new chemical is introduced may be limited to hazard information regarding that particular chemical.

The proposal establishes basic criteria for the information required to be included in the program, such as training emloyees in the contents of the hazard communication program and informing them of the availability and location of the MSDSs. Employers may provide the training in whatever manner they choose, as long as this basic information is conveyed.

Training is the link which joins together the hazard communication program components. It reinforces the information presented to employees in other formats, and provides a forum where it is easier to discern whether the information is understood. Training also allows diverse labeling systems, which may be equally effective, to remain in use.

OSHA is hereby soliciting comment on employee training programs, including the required content, and alternative means of accomplishing the purposes stated here.

(g) *Trade secrets.* In developing this proposal OSHA's aim has been to resolve the potential conflict which exists between hazard communication and trade secret protection. To this end, the proposal includes a provision which permits the employer to withhold precise chemical identity information of all hazardous chemicals which constitute a trade secret unless the chemical is a carcinogen, mutagen, teratogen, or is a cause of significant irreversible damage to human organs or body systems for which there is a need to know the precise chemical name. The "need-to-know" qualification is meant to limit access to employees or their representatives with a legitimate health purpose. A distinction is thus drawn between "high chronic hazard" chemicals, where identities must be disclosed, and all other hazardous chemicals, whose identities may be withheld (except from a treating physician) if they constitute a trade secret. With respect to these latter chemicals, the employer is nevertheless required to:

(1) Be capable of substantiating that it is a trade secret;

(2) Identify the chemical by a generic chemical classification;

(3) Provide all other information on the properties and effects of the chemical required by the standard on the material safety data sheet;

(4) Indicate on the material safety data sheet that information is being withheld on trade secret grounds; and

(5) In any event, release on a confidential basis the chemical identity to a treating physician who has stated in writing (except in an emergency) that a patient's health problems may be result of occupational exposure.

With respect to the "high chronic hazards" whose identities must be disclosed, the standard permits the employer to condition access to such information by employees, their designated representatives, or downstream employers upon the signing of a confidentiality agreement. OSHA believes that this provision, with its combination of requirements and authorizations, reflects the current practice of responsible employers and will serve to maximize the amount of necessary hazard-related information available to employees, protect the commercial value of trade secrets, and minimize the potential problem of employers overclassifying chemicals as trade secrets in order to avoid the need to disclose non-secret chemical identities to their employees or industrial customers.

This accommodation of trade secret interests has been arrived at after careful consideration of this issue. The purpose of a hazard communication standard is to require employers to disclose to employees information on the chemical hazards to which they are potentially exposed. Because chemical products are distributed in commerce from manufacturer to processor to fabricator, etc., it is essential that the hazard information accompany the products in some manner through the same chain of distribution. Downstream employees would thereby be apprised of hazards and protected to the same extent as the chemical manufacturer's own employees. Any barrier to disclosure between a manufacturer and its employees, or a manufacturer and downstream employers and their employees, can only serve to limit the effectiveness of a comprehensive hazard communication standard.

Unqualified trade secret protection can act as such a barrier. A trade secret is essentially anything which a business in fact keeps secret from its competitors and the public, provided it is minimally novel and commercially valuable. *Restatement of Torts,* f757 comment (b) (1939); Cavitch, *Business Organizations* s232.01 (1975). Absolute secrecy is not essential; the trade secret may be divulged to employees or licensees with a "need to know" provided the holder of the secret has taken the steps to restrict unnecessary access to, and the use of, this privileged knowledge. Cavitch, *Supra,* s232.01(1). Trade secret protection entitles the holder of a trade secret to its commercial exploitation and to certain judicial remedies for a breach of confidence or dispossession of the trade secret through improper or unethical means (industrial theft, bribery, spying, etc.). The Supreme Court has identified the maintenance of standards of commercial ethics and the encouragement of invention as the broadly stated policies behind trade secret law. *Kawanee Oil Co.* v. *Bicron,* 416 U.S. 470 (1974). Unlike patents or copyrights, however, there is no comprehensive Federal law of trade secrets, as it is basically a State-created right.

The conflict between hazard communication and trade secret interests arises whenever an employer is asked to reveal information such as the identity of a chemical which he or she considers to be a trade secret. While most trade secrets relate to process information or formula or percentage mixture information, none of which is required to be disclosed by the standard, the identity of a chemical or mixture ingredient may itself be considered a trade secret if its existence is unknown to a competitor (e.g., certain intermediates, catalysts) or cannot practically be "reverse engineered" by analytical techniques.

The same identity information, however, may be an essential element in a hazard communication system. Since exact chemical identify is the passkey to the scientific literature, this information must be available to an industrial hygienist or other health professional who is evaluating the hazards associated with a chemical, attempting to double-check a hazard identification made by somebody else, or updating an earlier evaluation with the latest scientific knowledge. Likewise, it must be available to an epidemiologist who is attempting to link patterns of disease with exposure to a particular chemical; to a downstream employer who may be contemplating using a chemical in conjunction with other chemicals or in a manner not foreseen by the manufacturer; and to a treating physician who suspects that a patient's

health problems may be the result of chemical exposure. While not every employee needs the chemical identity, as distinct from hazardous effects and precautionary information, at all times, a primary goal of a hazard communication standard is to promote the education and training of employees in hazard recognition and to encourage them to seek out advice and information about the chemicals in their workplaces. Employees, both individually and collectively, have increasing access to professional experts for whom identity information is essential. Therefore, the value of a hazard communication standard would be greatly diminished if it made no provision for the disclosure of chemical identities. This is particularly so with respect to chronic health hazards because the effect may take place long after the exposure and there is likely to be a greater need, not only to trace back the source of exposure, but once the identity is known, to search the scientific literature on the nature of its toxicity.

In attempting to accommodate these two important competing interests, OSHA also took into account the existence of several factors which contribute to the regulatory dilemma. First, as previously stated, there is the need for information to flow downstream to employers, who may be potential competitors. Second, a chemical may be a trade secret in some contexts but not others, and it may be equally hazardous in either event. Third, whether or not a chemical's identify is a trade secret is basically a matter of an employer's self-definition; therefore, permitting non-disclosure of trade secret identity without any offsetting obligation would likely result in considerable overclassification of chemicals as trade secrets. Fourth, the value of a trade secret, once lost, cannot be fully recaptured, although private remedies for unauthorized disclosures can result in the assessment of monetary damages and injunctive relief. And fifth, OSHA presently possesses neither the capacity nor expertise to act as a screen of all information which an employer is to disclose to employees or to adjudicate all trade secret claims.

OSHA believes that this proposed hazard communication standard provides an optimum solution to this difficult problem and is consistent with its mandate to protect the health of workers to the extent feasible. At the same time, OSHA is fully aware that opinions vary widely on this matter and that a number of other alternatives, ranging from total disclosure of chemical identity regardless of the trade secret interest to total protection of trade secrets regardless of the health consequences, are theoretically possible. OSHA invites comment on all such alternatives and the trade secret issue in general.

(h) *Effective dates.* The effective dates of the proposed standard are staggered based on the facility size, on whether the hazard is a pure chemical or a mixture, and on whether the employer is a chemical manufacturer or user.

Chemical manufacturers with 250 employees or more must be in compliance with the standard within one year for pure chemicals and within two years for mixtures. Those chemical manufacturers having fewer than 250 employees, but more than 24, must be in compliance within 1½ years on pure chemicals, and within 2½ years for mixtures. Chemical manufacturers with fewer than 25 employees must be in compliance within 2 years for pure substances and within 3 years for mixtures. All other employers must be in compliance within 3½ years.

The purpose of the staggered dates is to allow downstream employers to take advantage of the flow of information from manufacturers to comply with the standard. Comment is invited on the time frames proposed and on suggestions for alternative time frames.

III. Legal Authority

This notice of proposed rulemaking is being published in conformity with the requirements of section 6(b)(2) of the Occupational Safety and Health Act, 29 U.S.C. 655(b)(2), and 29 CFR Part 1911, for publishing a proposed rule promulgating an occupational safety and health standard in the **Federal Register**, and section 4(b) of the Administrative Procedural Act, 5 U.S.C. 533(b), regarding the publication of notices of proposed rulemaking in the **Federal Register**.

Authority for issuance of this standard is found primarily in sections 6(b) and 8(g)(2) of the OSH Act, 29 U.S.C. 655(b) and 657(g)(2). Section 6(b) governs the issuance of an occupational safety and health standard, which is, defined in section 3(8) of the Act, 29 U.S.C. 652(8), as:

> (A) standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

The proposal contemplates the issuance of a generic standard for the determination and communication of workplace hazards. This will require the adoption and use of one or more practices (i.e., labeling, material safety data sheets, information and training, and access to records) which the Secretary has reason to believe are reasonably necessary and appropriate to provide employees with safe and healthful employment and places of employment. The issuance of a generic standard is a necessary and effective means to carry out the purposes of the Act and to set priorities under the Act whenever the Secretary identifies common occupational health or safety problems which warrant common solutions (see the Cancer Policy standard, 45 FR 5002 et seq., and the Access to Employee Exposure and Medical Records standard, 45 FR 35212 et seq.).

In particular, the proposed standard is a generic implementation of sections 6(b)(7), 6(b)(5) and 21(c) of the Act, 29 U.S.C. 655(b)(7), 655(b)(5), and 670(c). Section 6(b)(7) pertinently states that:

> Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure * * *.

Section 6(b)(5) authorizes the Secretary, in promulgating standards dealing with toxic materials or harmful physical agents:

> * * * to set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life * * *.

Section 21(c) authorizes the Secretary to:

> (1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this Act * * *.

The proposed standard would require employers to establish information and training programs for their employees.

The philosophy of this proposal is to require the identification and communication to employees of hazard information that is known to the employer on the basis of such methods as scientific literature searches or review of proprietary testing data, even though the evidence or OSHA's priorities may not yet warrant comprehensive regulation of the hazardous chemical. This is consistent with the Supreme Court's statement in

Industrial Union Dep't (IUD) v. *American Petroleum Institute (API)*, 100 S.Ct. 2844, at 2872, fn. 66 that Congress had an "information-gathering function" in mind when it enacted section 6(b)(7), and that requirements of this nature may be imposed at lower exposure levels than those that would support the regulation of a specific toxic substance on the basis of a finding of significant risk. This is so because it is necessary to "keep a constant check on the validity of the assumption made in developing the permissible exposure limit, giving it a sound evidentiary basis for decreasing the limit if it was initially set too high," id. at 2872, or, *a fortiori*, if no permissible exposure limit was set at all. The language of section 21 of the Act provides further support for the conclusion that the Secretary's authority to require the identification and communication of hazard information is not limited to already regulated substances, but extends to all "unsafe or unhealthful working conditions in employments covered by this Act." In other words, failure to provide information concerning such conditions may itself constitute, as OSHA has found in the situation addressed by this proposal, a significant risk to employees which can be remedied by means of a hazard communication standard.

The Secretary's authority to issue this proposed standard is further supported by the general rulemaking authority granted in section 8(g)(2) of the Act. This section empowers the Secretary "to prescribe such rules and regulations as he may deem necessary to carry out (his) responsibilities under the Act." The authority thus granted to the Secretary is sufficient to carry out the purposes of the Act, which include:

—Encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions (29 U.S.C. 651(b)(1))

—Building upon advances already made through employee and employer initiative for providing safe and healthful working conditions (29 U.S.C. 651(b)(4))

—Exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions * * * (29 U.S.C. 651(b)(6))

—Encouraging joint labor-management efforts to reduce injuries and diseases arising out of employment (29 U.S.C. 651(b)(13))

—Developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems (29 U.S.C. 651(b)(5))

—Providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health (29 U.S.C. 651(b)(8))

OSHA believes that this proposal, when issued in final form, will significantly advance these statutory goals.

In addition, section 8(c)(1) of the Act, 29 U.S.C. 657(c)(1), authorizes the Secretary to issue regulations requiring employers to "make, keep and preserve, and make available to the Secretary * * * such records regarding his activities relating to this Act as the Secretary * * * (deems) necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses."

This proposal directs its major obligations toward those employers who are in the best position to develop information concerning chemical hazards or who are the primary users of chemicals in industry. To this end, the standard applies directly only to employers in Division D (Manufacturing), SIC Major Groups 20–39. In issuing standards, the Secretary may, under section 6(g), 29 U.S.C. 655(g), priority-setting discretion, apply the standard only to certain segments of business, thus "(giving) due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments." OSHA anticipates, however, that even if the final standard is so limited to the manufacturing sector, employers and employees in sectors outside the direct scope of the standard will benefit by the increased availability of hazard information, which will inevitably flow to them as well.

The system of hazard communication established by this proposal is also designed to impose the duty of hazard evaluation primarily on the manufacturers who produce and distribute hazardous chemicals in commerce. It would require the disclosure of hazard-related information not only to their own employees involved in the manufacture of chemicals but also to the employers to whom the chemicals are shipped, so that this infomation will then benefit the employees of such employers. This approach is similar to the one OSHA used in the labeling provisions of its benzene standard and which was approved in relevant part by the Court of Appeals in *American Petroleum Institute* v. *OSHA*, 581 F. 2d 493 (5th Cir. 1978) (standard vacated on other grounds), aff'd other grounds *sub nom. Industrial Union Dep't, AFL–CIO* v. *American Petroleum Institute*, 100 S. ct. 2844 (1980). The Court of Appeals stated (*Id.* at 510):

> Placing the responsibility to warn downstream employees of concealed hazards on those upstream employers who create the hazards and know of the hazard is consistent with the remedial purpose of the Act and is within OSHA's broad authority to prescribe warning labels.

The Court was also influenced by the fact that the upstream employer's own employees were exposed to the same hazards and had to be warned via labels in any event. The responsibility to warn downstream employees that is placed on manufacturers by this proposal is not conceptually different than in the benzene standard. As in benzene, the manufacturers' own employees are also exposed to the hazardous chemicals which they produce and thus the manufacturers must evalute them to determine their hazards and provide warning for their employees accordingly.

This proposal also provides for the degree of trade secret protection which the Aency considers to be consistent with its mandate to promote the health and safety of employees. As a matter of legal authority, OSHA has previously taken the position that its mandate requires it to balance and accommodate the interests in occupational safety and health with the protection of trade secrets, but that any unavoidable conflict should be decided in favor of the health interest. (See 45 FR 35248–51, Records Access Preamble.) This position has been based on (1) federal preemption doctrine, which says that state law (i.e., trade secret protection) may be preempted if it burdens or conflicts with federal law; (2) the OSHA statute, whose limited trade secret section (Section 15; 29 U.S.C. 664) itself takes a balanced approach and does not directly restrict OSHA's otherwise broad rulemaking authority in the area of providing access to toxic substance information; and (3) analagous judicial contexts, where the courts have adopted a balancing approach favorable to the health and safety interest. By contrast, industry has argued, based on the Supreme Court decision in *Chrysler* v. *Brown*, 441 U.S. 281 (1979), that OSHA lacks the authority to require the disclosure of any trade secret because the Act does not affirmatively and explicitly give it that authority, but rather is protective of trade secrets as evidenced by Section 15. The argument has also been made that a requirement to disclose trade secrets may result in an unconstitutional "taking" of private property without just compensation within the meaning of the Fifth

Amendment. However, in light of the recent cotton dust decision, *American Textile Manufacturers Institute* v. *Donovan*, 101 S. Ct. 2744 (1981), in which the Supreme Court declared that Congress in passing the OSH Act had struck the balance in favor of protecting employees, OSHA believes that an approach to trade secrets which weighs heavily in favor of the health interest in disclosure must be given serious consideration.

Finally, in issuing this proposal, OSHA is mindful of the concern that has been raised regarding the growing number of state and local labeling and "right to know" laws and regulations (see discussion *supra*). In enacting the OSH Act, Congress recognized the historical powers of the states to regulate safety and health matters when it provided in s18(a), 29 U.S.C. 667(a), that:

> Nothing in this Act shall prevent any state agency or court from asserting jurisdiction under state law over any occupational safety or health issue with respect to which no standard is in effect under Section 6.

Accordingly, the existence of OSHA, while itself an expression of Congress' power to regulate interstate commerce, Sec. 2(6) of the Act, 29 U.S.C. 651(b), does not itself constitute total Federal occupation of the field. In the absence of an OSHA standard, a presumption of validity must therefore attach to any state law or regulation which represents the state's concern for the safety and health of its citizens and which does not on its face discriminate between intrastate and out-of-state employers. The proliferation of such laws and regulations, however, creates the potential for contradictory and cumulatively burdensome requirements which may constitute an impermissible burden on interstate commerce. *Cf.*, Tribe, *American Constitutional Law*, Ch. 6. At the very least, they point to the need for a Federal standard governing the issue of hazard communication.

This proposal constitutes a comprehensive approach by OSHA to require all employers in the manufacturing sector to communicate all known physical and health hazards to employees through a combination of labels, material safety data sheets, and education and training. Together with the OSHA records access standard, 29 CFR 1910.20, it will, when issued as a final standard, carry out OSHA's intention to fully address the worker "right to know" issue. The final standard, therefore, should preempt: (1) Any state standard submitted under an OSHA state plan which OSHA determines not to be "at least as effective" as the OSHA standard in providing safe and healthful employment and places of employment, section 18(c)(2), 29 U.S.C. 667(c)(2); and (2) any state or local law or regulation which, in any event, inescapably burdens or conflicts with the OSHA standard. *Jones* v. *Rath Packing Co.*, 430 U.S. 519 (1977); *De Canas* v. *Bica*, 424 U.S. 351 (1976); *Sears, Roebuck & Co.* v. *Stiffel*, 376 U.S. 225 (1964); *Florida Lime and Avocado Growers* v. *Paul*, 373 U.S. 132 (1963); *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U.S. 173 (1942); *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Savage* v. *Jones*, 225 U.S. 501 (1911). OSHA invites comment on this and other legal authority issues.

IV. Summary of the Regulatory Impact Analysis and Regulatory Flexibility Analysis

Statement of the Problem

During the 1970's, increased attention focused on chemicals found in the workplace as an important source of hazardous exposures which cause or contribute to chronic diseases such as heart ailments, kidney damage, sterility, and cancer. Many chronic diseases are characterized by long latency periods of 20–30 years or longer. Often the exact relationship between the intensity of exposure and the risk of disease is not well understood. The problem is exacerbated by the likelihood of multiple exposures. The worker might be exposed to numerous chemicals at a point in time or over a long period of employment and the exact synergistic effects of these chemicals on health is likewise highly uncertain.

Other chemicals can cause acute damage such as burns, rashes, or even toxicity after an immediate high level dose. Still other chemicals contribute to serious accidents on the job such as fires and explosions.

Data indicate that there may be as many as 575,000 chemical products, with hundreds of new chemicals introduced annually. This growth in the number of industrial chemical products can result in a wide variety of effects on health and safety in the workplace.

A large number of workers may be exposed to such risks on their job. The National Occupational Hazard Survey (NOHS) indicated that about 8.5 million workers were exposed to chemical hazards in manufacturing during 1972–74. Because the manufacturing labor force grew at a 0.7 percent annual rate during the interim years 1973–79, the number of exposed workers in manufacturing may now total about 8.9 million workers. The NOHS data also indicate that over 280 million exposures to chemical hazards occurred in the manufacturing sector during 1972–74. Using the same labor force growth rate and assuming a 3 percent annual growth in the average number of hazards to which each worker was exposed, chemical exposures in manufacturing may total 361 million in 1980.

While clearly not all chemicals are hazardous, many are associated with known or suspected risks. However, many of these potential hazards have not been communicated to workers or, in many cases, employers because of a failure in the market for information on chemical hazards in the workplace. In part, this results from the "public goods" nature of information which implies that once information is provided to some people it is generally available to others. Consequently because they may obtain information free of charge from the first to receive it, employees may not reveal their true demand for hazard information. Employers will not have an incentive to supply adequate information because the market failure will not permit them to capture the full costs of providing the information.

Furthermore, the current remedies may magnify the information problem. The tort liability system provides incentives for employers to "hide" accurate information on the relative hazards of chemical substances. Likewise, the Worker Compensation system with its dual tests of workplace connection and employer responsibility provides disincentives to the provision of accurate information. Available evidence from a Department of Labor (DOL) study indicates that many occupational diseases are not compensated through the Worker Compensation system and hence are "externalized" to society. Finally, the competitive structure of the chemical industry is characterized by careful control of information through trade secrets and other means. This is especially true regarding chemical ingredients, their characteristics, and related product attributes. As a result, many employers and employees may be unaware of the potential hazards associated with a particular substance or mixture. This evidence on market failure and current remedies is documented in further detail in Chapters II and III of the Regulatory Impact Analysis.

One solution to the problem is continued case-by-case regulation of industrial chemicals. However, it is administratively impossible to regulate individually every potentially hazardous chemical produced or used in workplaces. Moreover, a market-based

approach may in certain circumstances have significant advantages over traditional "command and control" regulation.

The market failure problem, together with the large variety of potential hazards, suggests the value of a different approach—one which would increase information to both workers and employers on the potential hazards of chemicals in their work environment. In turn, this improved hazard recognition would encourage market-oriented responses such as increased precautions when handling hazardous chemical substances and product substitution, translating into reduced injury and illness incidences from exposures to industrial chemicals. Such an approach would mark a significant departure from the usual pattern of setting health and safety standards for industrial chemicals on a substance-by-substance basis.

January Proposal

In January, the Occupational Safety and Health Administration (OSHA) proposed such a standard in the **Federal Register** (46 FR 4412–4436, January 16, 1981). This proposal was subsequently withdrawn to allow for careful review of its regulatory provisions in accordance with Executive Order 12291 on improving regulatory management. The January proposal included the following key features: (1) Coverage of all manufacturing industries and importers and repackagers of chemical products and virtually all containers including pipes and support systems such as pumps and valves; (2) highly specific search and evaluation procedures required for hazard evaluation by all manufacturers; (3) detailed labeling of chemical products with no adjustments for trade secrets; (4) Material Safety Data Sheets (MSDSs) for hazardous chemicals to be filed in a central location if available, or otherwise an information sheet with contents identical to the label; (5) certification that a particular chemical product does not pose a hazard where applicable; (6) extensive recordkeeping on hazard search and evaluation procedures to be kept for 3 years; and (7) a phased-in compliance period of approximately 2 years.

Serious concerns have been raised regarding the excessive costs and paperwork burdens imposed by the January proposal. The initial (startup) cost of the January proposal was estimated to be between $2.6 and $3 billion depending on the amount of testing conducted to meet the certification requirement. The total annual cost of the January proposal (e.g., labels for new chemicals) was expected to approach about $1.254 billion. The billion. The total present value cost at a 10-percent discount rate amounted to about $22.864 billion or more over a 40-year period. Even these cost figures were somewhat understated because they did not include the costs of labeling pipes outside the chemical and petroleum manufacturing industries.

In particular, the required labeling of pipes and support systems would have proven very costly with an initial cost estimated at $1.727 billion or between 58 and 66 percent (depending on the testing assumption for certifications) of the total initial cost of the January proposal. It was also unduly burdensome because labels would have been placed at reasonable intervals of at least every 100 feet along such pipes.

A related issue involved the "specification" orientation of the January proposal with its highly detailed set of required compliance activities. Particular concern centered on the specific search and evaluation procedures established to determine the chemical hazards, including search and evaluation of all relevant scientific literature for certain chemicals and documentation in cases where the chemicals posed no hazard. The detailed hazard evaluation procedures also did not allow employers sufficient flexibility in determining the hazards of a chemical. Study results based on a sample of one would have been sufficient to warrant coverage and to require compliance with all of the activities specified by the proposal.

In addition, the labeling requirements were extensive, calling for chemical names, common names, Chemical Abstract Service (CAS) numbers for all ingredients present in concentrations of 1 percent or greater and for suspected carcinogens present in concentrations of 0.1 percent or greater, and hazard warnings. These detailed requirements did not recognize the flexibility necessary to accommodate the diversity among substances, different manufacturing industries, workplaces, process types, and other characteristics relevant to controlling workplace risks. Such detailed labels were clearly not cost-effective because they did not recognize proven industry labeling practices, thereby requiring extensive redesign and modification of most existing labels. (Specification requirements may be appropriate in certain well-defined circumstances where they are necessary to ensure effective worker protection).

Another issue involved the absence of an exemption for trade secrets. The January proposal required the provision of all ingredient information, thus making no allowance for trade secrets and unduly disrupting industry commerce.

In addition, many provisions appeared to be redundant. For example, the information sheet to be provided where the MSDS was not available contained information identical to the label. Other provisions appeared to generate excessive paperwork—for example, the documentation required for search and evaluation procedures.

There were also doubts as to whether the 2-year compliance period was sufficient to allow for the extensive hazard evaluation required for all chemicals and to make the necessary changes in production and shipment practices. The compliance schedule called for 1 year on substances and 2 years on mixtures for large chemical manufacturers (250 employees or more); 15 months on substances and 27 months on mixtures for small manufacturers (under 250 employees); and 30 months for other manufacturers.

Finally, and perhaps most importantly, serious questions were raised regarding the overall effectiveness of the January proposal in light of its focus on *identification* of chemicals rather than on *communicating* hazards to employees and employers. For instance, the extensive labeling requirement with all the ingredient information would not only have been costly, but also could have actually inhibited effective use of the hazard information as a result of "information overload". Furthermore, serious doubts arise as to whether employers and employees could actually assimilate all of the complex chemical names and CAS numbers appearing on the label. Furthermore, no education and training requirements were provided to instruct employers and employees on the hazards of chemicals and on appropriate precautionary measures. Another example involves the required certification of "no hazard," which could have easily directed scarce testing resources away from substances with the greatest hazard potential because of employer concern over the financial liability ramifications.

Current OSHA Proposal

OSHA has carefully reviewed the January 16, 1981, proposal and alternatives in light of these concerns. A detailed evaluation of the alternative standards considered by OSHA is provided in Chapter IV of the Regulatory Impact Analysis. OSHA has concluded that the current proposal would

substantially improve the cost-effectiveness of an informational approach to the control of chemical hazards in the workplace and would not be inconsistent with the objective of the OSH Act of 1970.

The current proposal is oriented towards providing hazard information to workers and employers, is largely performance-oriented, substantially reduces the paperwork burden of employers, and eliminates unnecessary regulatory requirements. As a result, the costs of the current proposed hazard communication standard are substantially reduced over those estimated for the January proposal.

Table 6 compares the total costs of the January proposal with the current OSHA proposal. The total initial cost of the January proposal was estimated at about $2.6 billion, or $185 per employee. Assuming more rigorous testing in response to the certifications of no hazard could raise this cost as high as $3 billion, or $215 per employee. The current proposal would thus reduce the initial cost by 78–81 percent, down to approximately $582 million, or $41 per employee. The annual cost of the current proposal is also substantially lower—$227.92 million, or only $16 per employee. By contrast, the estimate of the January proposal was about $1.254 billion or more, or $89 per employee. Finally, the estimated total present value of the cost of the current proposal over a 40-year period using a 10-percent discount rate comes to $2.648 billion compared to $22.864 billion or more projected for the January proposal.

TABLE 6.—A COST COMPARISON OF THE JANUARY PROPOSAL AND THE CURRENT PROPOSAL: TOTAL INITIAL, ANNUAL, AND PRESENT VALUE COSTS

January proposal [1]	Current proposal
1. Total Initial Cost (Startup cost).	1. Total Initial Cost (Startup Cost).
$2.6 billion	*$581.75 million.*
$185.00 per employee	*$41.00 per employee.*
2. Total annual Cost (Ongoing Cost).	2. Total Annual Cost (Ongoing Cost).
$1.254 billion	*$227.92 million.*
$89 per employee	*$16.00 per employee.*
3. Total Present Value Cost (40-year period; 10-percent discount rate).	3. Total Present Value Cost (40-year period; 10-percent discount rate).
$22.864 billion	*$2.648 billion.*

[1] Cost estimates for the January Proposal assume minimal procedures for hazard evaluation. Costs may exceed these estimates. For example, extensive testing may result from the certification requirement. The total initial cost could then rise as high as $3 billion or $215 per employee. The total annual cost and present value cost would increase accordingly.

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

The reasons for the significantly lower costs and improved effectiveness of the current proposal over the January proposal are shown in Table 7, which provides breakdowns for each of their basic components. (The methodology used to develop these costs estimates is described in detail in Chapter IV of the Regulatory Impact Analysis.) Specifically, the current OSHA proposal makes changes in key areas which substantially improve its cost-effectiveness.

First, the current proposal does not require labels on pipes and support systems. This change alone eliminates almost $1.73 billion in initial compliance costs or about 58–67 percent of the initial compliance cost contemplated in the January proposal. The exemption of pipes and support systems from labeling requirements will lower annual costs by an even larger percentage, saving $889.44 million in annual compliance costs or 70 percent of those estimated in the January proposal. In part, these high costs stemmed from the expected need to relabel one-half of the pipes and support systems annually.

Secondly, the current proposal is oriented towards chemical hazard communication rather than the identification of chemicals. Specific components are designed to support an effective communication system. Container labels are limited to a hazard warning (e.g., flammable) and a chemical identifier. Their primary purpose is to alert users to potential hazards. The identifier on the label would provide the link to the corresponding MSDS which would serve as the sole source of more detailed information on the specific characteristics of the chemical (instead of each container as provided in the January proposal). For example, the employee could refer to these sheets to determine the appropriate precautions to take while handling a particular chemical. The proposed change from an extensive labeling requirement to a limited one is expected to lower the initial cost of the labeling provisions by about 69 percent—from $573.70 million to $177.76 million. The annual cost of this provision would be similarly reduced, from an estimated $350.87 million to about $69.8 million, or by 80 percent.

TABLE 7.—COST COMPARISON OF BASIC COMPONENTS OF THE JANUARY AND CURRENT OSHA PROPOSALS

January proposal	Current proposal
1. Cost of extensive hazard evaluation would include broad literature search and potentially some animal testing. The latter may occur in response to the requirement to certify that the chemical poses no hazard.	1. Cost of hazard evaluation would include literature search of a limited set of documents and files. No requirement for certification that the chemical poses no hazard.
Estimated cost may vary from *$248 million to $1,00 million* depending on the testing conducted. (initial, annual, and present value costs would increase accordingly.).	Estimated cost *$230 million.* Any testing costs would be voluntarily incurred by the chemical manufacturer.
2. Cost of extensive labeling would be incurred by most manufacturers since the existing systems would be required to change to comply. Labels with information this specific and extensive are not general industry practice.[1].	2. Cost of limited labeling would not be incurred by all manufacturers since many products already are appropriately labeled. For many establishments this is a general practice. Existing systems would not be disrupted.
A. Cost of labeling of containers of chemical products shipped and used in-plant.	a. Cost of labeling of containers of chemical products shipped and used-in-plant.
Total Initial Cost *$331.05 million.*	Total Initial Cost *$66.21.*
b. Cost of modifying and reviewing label plates.	b. Cost of modifying and reviewing label plates.
Total Initial Cost *$242.65 million.*.	Total Initial Cost *$111.55 million.*
Total Initial Cost of Labeling *$573.70 million.*.	Total Initial Cost of Labeling *$177.76 million.*
Total Annual Cost of Labeling *$350.87 million.*.	Total Annual Cost of Labeling *$69.80 million.*
3. Labeling of piping and piping systems would be required. The estimates provide the expected cost for the chemical and petroleum manufacturers only.	3. Labeling of piping and piping systems not required.
Total Initial Cost *$1,727.06*...	Total Initial Cost *$0.*
Total Annual Cost *$889.44 million.*	Total Annual Cost *$0.*
4. Cost of providing Material Safety Data Sheets or Information Sheets.	4. Cost of developing and providing Material Safety Data Sheets.
Total Initial Cost *$16.05 million.*	Total Initial Cost *$34.24 million.*
Total Annual Cost *$1.81 million.*	Total Annual Cost *$3.66 million.*
5. No education and training required.	5. Cost of education and training as basically time and materials.
Total Initial Cost *$0*.....	Total Initial Cost *$124.87 million.*
Total Annual Cost *$0*.....	Total Annual Cost *$133.61 million.*
6. Recordkeeping would include hazard evaluation documents, access.	6. Recordkeeping would include hazard evaluation documents and access, and compliance plan.
Total Initial Cost *$31.35 million.*	Total Initial Cost *$14.70 million.*
Total Annual Cost *$4.69 million.*	Total Annual Cost *$2.07 million.*

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.
[1] Piping and piping systems are not included in the estimate.

As part of this approach to effective hazard communication, the proposed standard would also include education and training provisions (but leave the specific content and format up to the employer) to inform employees about hazards, provide them with protective clothing and equipment, and instruct them in the precautionary measures to take when handling hazardous substances and appropriate responses

should exposures occur. This provision would result in some increase in costs over the January proposal but would substantially enhance the effectiveness of the program. The total initial cost for the education and training provisions is estimated at about $124.87 million, with an annual cost of approximately $133.61 million.

Third, in contrast to the January proposal, the current proposal is largely "performance-oriented." As noted above, both the labeling and education and training requirements are performance-oriented to allow employer to take advantage of a wide variety of compliance approaches tailored to their particular industries and work environments. Similarly, the hazard evaluation procedures have been made substantially more flexible. The evaluation is to be based on scientifically acceptable studies and thus limited to known hazards of a chemical. Also, a list of references and data sources is now provided merely as a guide rather than as a required procedure for this evaluation. If a chemical is determined to pose no hazard, no certification or other compliance activities would be required for the chemical.

The latter may have particularly important cost implications. The initial cost estimates associated with hazard evaluation in the January proposal varied widely, ranging from $248 million upwards to $1 billion depending on the amount of testing initiated in connection with the certifications of "non-hazardous" products. The initial hazard determination cost associated with the current OSHA proposal is estimated at $230 million with an expected annual cost of around $18 million.

It should be noted that the current OSHA proposal does add some specific information requirements for the data sheets filed in a central location for hazardous chemicals. The MSDS information would include chemical names, common names, and CAS numbers for ingredients present in specified concentrations; physical hazards and/or known acute and chronic health effects; routes of entry; precautions for safe handling and use; effective work practices and personal protective devices; emergency and first-aid procedures; and date of preparation. This information was viewed as the minimum necessary to ensure an effective hazard communication standard. The chemical identifier on the label would provide a link between a simple hazard warning on the label and appropriate precautionary measures provided on the MSDS. Under the current OSHA proposal, the MSDS would be the only source of detailed information on the known health and safety effects associated with specific chemicals and appropriate precautions and emergency procedures. For this reason the MSDS must be developed by chemical producers if not currently available for hazardous chemicals and included in first shipments. These changes in the MSDS provision would somewhat increase the cost of providing the information sheets from $16.05 million estimated in the initial cost for the January proposal to $34.24 million. The annual cost would increase from about $1.81 million to $3.66 million.

However, viewed from another perspective, these small cost increases are relatively more cost-effective in supplying hazard information when compared to the substantially higher costs of providing the detailed information on each and every container as well as on the MSDS. The extra $18.19 million initial cost of the current MSDS provision compares quite favorably (and provides more information) to the additional $395.94 million cost for the extensive labor provided in the January proposal. Likewise, extensive labels would have added $281.07 million to the annual cost of the limited label requirement in the current proposal, while the current MSDS provision results in only a $1.85 million increase.

Fourth, the current proposal does provide for a trade secret exemption either through use of generic names to mask ingredients or through confidentiality agreements with industrial customers. While there are no cost estimates on the effect of the proposed change, the impact is expected to be substantial.

Fifth, the current proposal substantially reduces the documentation necessary on hazard evaluation procedures as well as other recordkeeping requirements. As a result, the initial recordkeeping cost is lowered from $31.35 million projected for the January proposal to $14.7 million under the current proposal. The annual cost of recordkeeping likewise falls from $4.69 million to $2.07 million. This provision—together with more limited labeling and the elimination of "no hazard" certifications, information sheets, and labeling requirements on pipes and support systems—significantly reduces the paperwork burden imposed by the January proposal and meets the intent of the Paperwork Reduction Act of 1980.

Sixth, the compliance period would be extended under the current proposal from roughly 2 years to 3 years in order to allow additional time for the chemical hazard evaluations and to further extend compliance periods for smaller entities in accordance with the intent of the Regulatory Flexibility Act of 1980. Under the proposed schedule, compliance periods would be 1 year on substances and 2 years on mixtures for larger chemical manufacturers (250 or more employees); 18 months on substances and 30 months on mixtures for medium-sized chemical manufacturers (between 25 and 250 employees); 2 years on substances and 3 years on mixtures for small chemical manufacturers (fewer than 25 employees); and 42 months for other manufacturers. This longer phase-in period means that the actual startup costs of the current proposal would be much lower—amounting to roughly $200 million for the first 3 years. Chapter V of the Regulatory Impact Analysis provides detailed estimates of the cost impact of the proposed changes on small entities.

Finally, while the current proposal has retained much of the coverage contemplated in the January proposal, its scope has changed in several important respects. The current proposal would no longer cover importers and repackagers. Also, while the standard retains its basic coverage of manufacturing industries, the hazard evaluation and MSDS requirement for first shipments of chemical products would now be concentrated among chemical producers rather than chemical users. This will lower the total cost of providing hazard information through "spillover effects" between chemical producers and users, thus eliminating unnecessary duplication and will focus compliance efforts on those industries where the information can be produced most efficiently.

OSHA did consider whether to expand the scope of coverage to construction and other non-manufacturing industries. Application of a hazard communication standard to construction is still under review in view of the unique features of that industry. Other nonmanufacturing industries would appear to have fewer chemical hazards and would receive substantial downstream information benefits from the required labels on containers and MSDSs on first shipments.

OSHA also considered whether to limit hazard coverage to a specific list of chemicals. However, it would be difficult to develop a comprehensive list that included all safety and health and acute and chronic hazards and to provide timely updates. Furthermore, a performance-oriented standard that

allowed employers to determine whether a chemical product poses a significant hazard to employees, with subsequent compliance activities contingent on the determination, was viewed as preferable. However, OSHA requests comments on this approach to hazard determination as well as other alternatives.

In sum, the current proposal is designed to support an effective hazard communication system while minimizing its cost impact on employers. The labels are limited to the hazard warning and an identifier to provide a link to the MSDS, thus improving the effectiveness of the label and lowering the costs of providing the lables. The MSDS complements the label by providing more detailed ingredient and hazard information; all of this would be available in a central file as opposed to on every container. The education and training requirement encourages the employer and employee to use the information provided by the MSDS, thereby increasing the hazard awareness of employees and supervisory personnel. The standard provisions are largely performance-oriented and unnecessary paperwork has been eliminated.

Overview of the Benefits of the Current Proposed Standard

General Scope

The purpose of the proposed hazard communication standard differs substantially from other OSHA regulations. Rather than directly control exposure levels in the workplace, it is designed to enhance employer and employee awareness of the safety and health hazards associated with chemical substances. In turn, this hazard recognition produces market-oriented responses by employers and employees that translate into lower incidences of chemically related injury and illness on the job. This section highlights the expected avenues of health and safety improvement described in greater detail in Chapter III of the Regulatory Impact Analysis.

Most importantly, the proposed standard will increase employee awareness and education of the potential health and safety risks associated with industrial chemicals. This should result in increased worker use of personal protective devices, improved work practices, and other precautionary measures when handling hazardous substances. Improved hazard communication should also result in early job transfers and treatment of chronic disease, lowering future health care costs.

Similarly, the proposed standard provides employers with improved information on the health and safety hazards of various chemical products as part of their investment and production process decisions. This knowledge should result in more safety-enhancing investments—in new control technology, process redesign, and perhaps most importantly, in product substitution. The latter is often preferable because it substantially eliminates the hazard without extensive control devices. Improved information among supervisory personnel of the necessary precautions should result in proper day-to-day handling of hazardous substances.

In addition to the health effects implications, there are other expected efficiency improvements as well. Improved information should lead to better matches between the risk preferences of workers and true job risks (and to some extent relative firm risks), thus improving labor market allocation. Employers would also benefit from lower production costs as a result of gains in worker and equipment productivity, reduced worker absenteeism and turnover, and over the long run, lower Worker Compensation costs.

Finally, society should benefit from a reduction in occupational injury and illness costs currently externalized by firms. There include transfer payments to disabled individuals and their families, such as social security disability benefits and public assistance; health care costs not paid by the individual or company such as Medicare and Medicaid; and higher administrative costs of related government programs.

Benefit Evaluation

The ideal measure of the benefits of the proposed standard would be the dollar amount that society would be "willing to pay" for the hazard information. In the absence of the data necessary to contruct such a measure, benefits in this analysis are measured as the discounted present value of (1) reductions in lost earnings and medical expenses for various categories of chemical source illnesses and injuries as well as (2) lowered turnover costs and (3) property losses from chemicals fires. The injury and illness categories include non-lost workday and first-aid cases; lost workday cases, permanent disease disabilities; and cancers related to industrial chemical sources.

Under The methodology used in this study, the current number of cases associated with each category were estimated together with the projected reduction in these cases as a result of the proposed standard over a 40-year period (the period necessary for complete turnover of the current workforce). The time patterns of expected reductions differ by injury and illness category. For example, the rate of chemical source lost workday injuries is expected to decrease by 1 percent per year for 20 years, while cancer cases decline only 2 percent by the 10th year to take into account the long latency periods associated with carcinogenesis. The expected reductions in each year were then multiplied by an appropriate average economic cost measure (e.g. average number of workdays lost per lost workday injury converted into monetary terms through average manafacturing wages or average medical expenses per lost workday injury). Finally, all benefits were discounted to the present using a 10-percent discount rate to facilitate the necessary benefit comparisons.

It is not possible with available data to precisely measure even the earnings and medical losses resulting from workplace exposure to chemical substances. In fact, some cost components cannot be measured at all—i.e., like medical expenses arising from permanently disabling diseases. Others can be measured only imperfectly. For example, while the current number of lost workday injuries due to chemical sources can be reliably estimated from Bureau of Labor Statistics (BLS) data taken from Worker Compensation initial reports and extrapolated to national incidence rates, this data source seriously underreports occupational illness cases, particularly the chronic variety.

Studies suggest that occupational illnesses may be underreported by as much as a factor of 50 because of variables such as long latency periods which obscure the connection between occupational exposures and the onset of chronic disability. (See Chapter III of the Regulatory Impact Analysis for a more detailed discussion of these studies and the factors affecting this underreporting bias.) Since the monetized benefits are heavily affected by this variable, it was necessary to adjust the chemical source illness data to account for this underreporting. Likewise, there is considerable scientific controversy over the specific fraction of cancer burdens currently associated with occupational cancers. Estimates of occupational cancers range from 1 to 5 percent of total U.S. cancer all the way up to 40 percent. Unfortunately, all these studies suffer from various methodological limitations. Also, some workplace carcinogens like asbestos are already

controlled by OSHA and therefore probably should not be counted in the benefits. In view of these problems and because of the multiple causal agents which impact on carcinogenicity, the low end of the 20–40 percent range from Health and Human Services (HHS) study was selected as a reasonable estimate.

A second source of difficulty involves assessing the likely risk reduction benefits attendant with improved flows of information as distinct from measuring the benefits of lowered exposures. With current information, it is simply not possible to estimate precisely the impacts on risk. As a result, patterns of likely risk reduction are constructed based on best available evidence of the likely effects.

All of the assumptions and possible sources of data error have been carefully analyzed interms of their influence on the benefit estimates. Chapter III describes the benefit estimation procedures used in this study and data limitations in greater detail. With these limitations in mind, Table 8 presents a summary of the monetizable benefits for which sufficient data were available. Table 8 shows the present discounted value of the total benefits over the 40-year period to be $5,230.1 million for the proposed standard, using a 10-percent discount rate.

As shown in Table 8, the largest category of benefits comes from the reduction in chronic disabling injuries and their associated production losses. Undiscounted production benefits from a reduction in permanently disabling illnesses from chemical sources are estimated at $13.4 million in the 1st year and $1,798.3 million in the 40th year with a present discounted value of $2.739 million over a 40-year period. Since no estimate of the medical costs was possible, this estimate significantly understates the benefits from a reduction in chronic disabling illnesses.

The second largest category of benefits is associated with a reduction in the incidence of cancer caused by exposures to toxic chemicals in the work environment. Table 8 places the present discounted value of the total benefits expected from increased production and medical cost savings resulting from a lower cancer incidence at $2,312.4 million. This includes $1,673.6 million in increased production and an additional $638.8 million in medical cost savings (expressed in present discounted value terms). These estimates are based on an assumed 10-year latency period (thus yielding no benefits in year 0). It is assumed that there would be a 2-percent reduction in cancer cases in 10 years, and an added 2 percentage points thereafter, until a 20-percent reduction is achieved.

BILLING CODE 4510-26-M

TABLE 8

SUMMARY OF SOME OF THE MONETIZABLE BENEFITS - DISCOUNTED AND UNDISCOUNTED (1980)

Type of Benefit	Undiscounted Benefits			Present Discounted Value*	
	1st Year (Millions)	20th Year (Millions)	40th Year (Millions)	20 Year Stream (Millions)	40 Year Stream (Millions)
Non-Lost Workday Cases					
Lost Production	$0.03	$1.36	$3.60	$2.92	$5.48
First-aid Costs	0.02	1.00	2.80	2.20	4.20
Lost Workday Cases					
Lost Production	0.61	30.69	81.42	66.01	124.02
Medical Costs	0.11	5.42	14.39	11.66	21.91
Disabling Illness					
Lost Production	13.40	667.80	1,798.30	1,357.80	2,739.00
Cancer Illness					
Lost Production	-	487.70	1,293.90	751.70	1,673.60
Medical Costs	-	186.20	493.90	286.90	638.80
Turnover Costs	0.04	2.32	6.16	5.00	9.39
Chemical Fire Costs	1.00	1.80	3.30	10.80	13.70
Total	15.21	1,384.29	3,697.77	2,494.99	5,230.10

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

*A discount rate of 10 percent is used.

BILLING CODE 4510-26-C

Similarly, for chemically induced injuries or illnesses involving the loss of one or more workdays, Table 8 shows the undiscounted production benefits from a reducton in lost workdays to be $0.61 million in the 1st year and $81.42 million in the 40th year, with a present discounted value of $124.02 million after 40 years. The corresponding benefits from expected reduction in medical payments amount to $0.11 million in the 1st year and $14.39 million in the 40th year, with a present discounted value of $21.91 million.

The other estimated benefit categories include reductions in non-lost workday injury and illness cases, turnover costs, and property costs due to the chemical fires. The present discounted values of these benefits over the 40-year period are estimated at $9.68 million, $9.39 million, and $13.7 million, respectively.

While these various estimates are clearly not exact, they do provide a reasonable order of magnitude of the likely beneficial impact of the proposed hazard communication standard. Moreover, they do not incorporate intangible costs important to the individual and associated with premature death, pain, suffering, and family bereavement. Nor do the estimates include firm-based cost savings such as reduced Worker Compensation premiums, health care costs, and productivity gains. Indeed, as noted above, there is not even a complete accounting of the medical and wage loss costs. Finally, changing some of the key assumptions regarding the extent of health and safety improvements and occupational cancer incidence will not alter the basic conclusion that the proposed standard constitutes an impressive reduction in societal costs.

Effects of the Current Proposed Standard on Small Entities

The expected initial costs for the current proposed OSHA standard have been calculated for four entity size categories: Those with fewer than 20 employees, those with fewer than 100 employees but greater than or equal to 20 employees, those with fewer than 250 but greater than or equal to 100 employees, and those with greater than or equal to 250 employees. The staggering of compliance dates for small entities relative to large, for chemical manufacturers relative to chemical users, and for substances relative to mixtures would assign much of the evaluation of the chemical hazards and the development of appropriate MSDSs to relatively large chemical manufacturers. This hazard information will then be available to smaller chemical manufacturers and to chemical users via container labels and MSDSs before these employers are required to be in compliance with the standard.

As presented in Table 9, the initial cost of compliance with the current proposed standard for small entities (those with fewer than 20 employees) represents approximately 14 percent of the total initial cost of the proposed standard. By contrast, the cost of compliance for relatively large entities (those with 250 employees or more) is approximately 45 percent of the total compliance cost. The average initial cost per entity is approximately $403 for small entities and $19,058 for large entities. For small entities, the average initial cost of compliance per employee is $80.55; whereas, the average initial cost per employee is $34.07 for large entities.

Industry Effects

As presented in Table 10, the industries associated with a relatively high compliance cost for the current proposed standard include Printing and Publishing (SIC 27), Chemicals and Allied Products (SIC 28), Fabricated Metal Products (SIC 34), Machinery Except Electrical (SIC 35), Electrical Equipment and Supplies (SIC 36), and Transportation Equipment (SIC 37). Cost as a percent of payroll and value-added is the highest for SIC 28 at 3.36 percent and 0.81 percent, respectively. Some of these costs attributed to SIC 28 may be incurred by industries in SIC 29. However, because the relative shares of some of the labeling and hazard evaluation costs for these two SIC categories could not be determined, the costs for SIC 28 are overestimated and the costs for SIC 29 are underestimated. This is a distribution problem only; the total cost of compliance would not be affected.

BILLING CODE 4510-26-M

TABLE 9

DISTRIBUTION OF EXPECTED TOTAL INITIAL AND AVERAGE INITIAL COSTS OF CURRENT PROPOSED STANDARD BY ENTITY SIZE CATEGORY (1980)

Cost Component	Entity Size by Number of Employees (Number of Entities)			
	1-19 (207,103)	20-99 (76,933)	100-249 (20,807)	250 or Greater (13,592)
Provision (millions)				
MSDS	$ 11.836	$ 8.501	$ 5.328	$ 8.573
Labeling	37.646	37.059	36.966	66.153
Hazard Evaluation	23.000	36.000	59.800	110.400
Education and Training	9.216	24.971	23.117	67.665
Recordkeeping	1.713	3.262	3.363	6.251
Total	83.411	109.793	128.484	259.042
(Percent of Total)	(14)	(19)	(22)	(45)
Average Cost per Entity	403.00	1,427.00	6,175.00	19,058.00
Average Cost per Employee	80.55	39.13	49.66	34.07

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

TABLE 10

EXPECTED TOTAL INITIAL COST, INITIAL COST AS A PERCENT OF PAYROLL, AND INITIAL COST AS A PERCENT OF VALUE-ADDED BY INDUSTRY - FOR CURRENT PROPOSED STANDARD (1980)

(SIC)	Expected Total Cost (Millions)	Cost as Percent of Payroll*	Cost as Percent of Value-Added**	Average Cost per Employee
(20) Food and Kindred Products	$ 13.700	0.07	0.03	$ 11.90
(21) Tobacco Manufacturers	0.675	0.10	0.02	13.63
(22) Textile Mill Products	7.428	0.10	0.05	11.07
(23) Apparel and Other Textile Products	12.206	0.14	0.07	11.02
(24) Lumber and Wood Products	7.707	0.12	0.06	14.93
(25) Furniture and Fixtures	4.584	0.13	0.06	12.80
(26) Paper and Allied Products	5.832	0.07	0.03	12.16
(27) Printing and Publishing	15.045	0.12	0.05	17.37
(28) Chemicals and Allied Products	415.014	3.36	0.81	651.35
(29) Petroleum and Coal Products	1.253	0.05	0.01	12.54
(30) Rubber and Plastic Products	6.902	0.10	0.04	12.47
(31) Leather and Leather Products	2.327	0.13	0.07	12.49
(32) Stone, Clay and Glass Products	5.900	0.08	0.03	13.36
(33) Primary Metal Industries	9.506	0.06	0.03	10.59
(34) Fabricated Metal Products	14.757	0.08	0.04	12.62
(35) Machinery, Except Electrical	19.077	0.07	0.03	13.01
(36) Electrical Equipment and Supplies	14.914	0.07	0.04	11.10
(37) Transportation Equipment	14.145	0.05	0.02	10.67
(38) Instruments and Related Products	4.977	0.07	0.03	12.98
(39) Misc. Manufacturing Products	4.955	0.12	0.06	15.15

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

*The payroll (1976) for each SIC category is taken from U.S. Department of Commerce, Bureau of Census,

**The value-added (1976) for each SIC category is taken from U.S. Department of Commerce, Bureau of Census, Statistical Abstract of the U.S., 1979.

BILLING CODE 4510-26-C

V. Environmental Assessment

In accordance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), as interpreted by the Council on Environmental Quality (CEQ) guidelines (40 CFR Part 1500 et seq.), and with the Department of Labor (DOL) NEPA Compliance Regulations (29 CFR Part 11; 45 FR 51187 et seq., August 1, 1980), this preamble serves as the environmental assessment for the proposed standard for Hazard Communication.

As outlined in earlier sections of this preamble, the proposed action would allow employees easier access to information on hazardous chemical substances present in the workplace through the use of labels and hazard warnings, material safety data sheets, information and training, and access to written records. The worker population, in effect, is expected to experience a significant benefit in health and safety from the improved workplace environment that is expected to result from implementation of the standard.

A review of the summary and explanation of this proposal indicates that the proposed action is unlikely to result in the occurrence of significant health or environment effects outside of the workplace. The labeling of chemical containers to identify their contents would not have a direct or significant impact on air or water quality, land or energy use, or waste disposal outside of the workplace, because the nature of a substance would not be changed through its identification. For example, the labeling of a container would not eliminate the possibility of the chemical contents leaking into the external environment. However, it is possile that there would be some potential, indirect benefit to the external environment as a result of the proposed regulation. The labeling of toxic substances generally would create a greater awareness of their nature and effects, which in turn could lead to a more careful handling of them. To the extent that these substances are handled more carefully, there would be a beneficial impact on air and water quality and on solid waste disposal. In cases where reclamation or recycling of materials from solid waste occurs, or where clean up of abandoned or contaminated landfills takes place, the identification of hazardous substances may prove useful and cost-effective. Such benefits of course depend on the continued presence of the hazard information itself, and labels can deteriorate or be removed over time. Moreover, because hazard warning information on the label is intended to alert employees to hazardous materials in the workplace, this information will not identify or encompass all of the potential hazards that may occur outside of the workplace.

In addition, to the extent that the alternatives considered by OSHA would expand the number of industries covered and would increase the number of chemical substances regulated by labeling, it is reasonable to assume that the positive environmental impacts would also increase. Other provisions, such as expanded requirements of material safety data sheets, substance-employee identification lists, education and training, compliance periods, and recordkeeping, would have no significant environmental impacts outside of the workplace.

In sum, there is no evidence to show that the proposed regulation would have any significant adverse impacts on the external environment, would result in any irreversible or irretrevable commitment of resources, or would adversely affect the short-term uses of the human environment and the maintenance or enhancement of long-term productivity.

On the basis of the discussion presented earlier in this notice, OSHA has determined that the proposed regulation does not significantly affect the quality of the human environment and that preparation of an EIS is not required. However, OSHA reserves the right to reconsider its decision and to prepare an EIS if any data received during the public comment period indicate a potential for significant and quantifiable environmental impacts.

VI. References

1. The Occupational Safety and Health Act. Pub. L. 91–596, 91st Congress, S. 2193, December 29, 1970.

2. Report of the Standards Advisory Committee on Hazardous Materials Labeling to the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, submitted June 6, 1975.

3. A Recommended Standard * * * An Identification System for Occupationally Hazardous Materials. DHEW (NIOSH) Publication No. 75–126, 1974.

4. Committee on Government Operations, House of Representatives, Transcript of Hearings Before a Subcommittee on Control of Toxic Substances in the Workplace, May 11, 12, and 18, 1976.

5. Committee on Government Operations, House of Representatives, Thirty-Fourth Report, Chemical Dangers in the Workplace, 1976.

6. Committee on Government Operations, House of Representatives, Tenth Report, Failure to Meet Commitments Made in the Occupational Safety and Health Act, 1977.

7. National Occupational Hazards Survey, DHEW (NIOSH) Publication No. 78–114, December, 1977.

8. Bureau of Labor Statistics. Occupational Injuries and Illnesses in the United States by Industry, 1978.

9. Folland, David S. et al., "Acute Hemorrhagic Cystitis, Industrial Exposure to the Pesticide Chlordimeform", Journal of the American Medical Association, Vol. 239, No. 11, pp. 1052–1055.

10. Transcripts of OSHA Hearings on "Access to Employee Exposure and Medical Records", Docket No. H–112.

11. OSHA Safety and Health Standards for General Industry, 29 CFR Part 1910.

12. American National Standard for the Precautionary Labeling of Hazardous Industrial Chemicals, American National Standards Institute, ANSI Z129.1–1976.

13. An Interim Report to the Congress on Occupational Diseases, submitted by the U.S. Department of Labor, December, 1979.

14. Toxic Substances Control Act, Pub. L. 94–469, October 11, 1976.

15. Environmental Protection Agency, Pesticide Programs, 40 CFR Part 162.

16. Fair Packaging and Labeling Act, Pub. L. 84–755. s2, Nov. 3, 1966, 80 Stat. 1296.

17. Food and Drug Administration, Food for Human Consumption, 21 CFR Part 100; Drugs, 21 CFR Part 200; Cosmetics, 21 CFR Part 700.

18. Department of Transportation, Hazardous Materials Transportation, 49 CFR Part 172.

19. Consumer Product Safety Commission, Federal Hazardous Substance Act Regulations, 16 CFR Part 1500.

20. Title 8, Article 112, State of California.

21. Public Act No. 80–257 and 80–130, State of Connecticut.

22. H.P. 750—Legislative Document 958. State of Maine.

23. Chapter 149, Commonwealth of Massachusetts.

24. Act 51, Public Acts of 1980, State of Michigan.

25. 7103–D, State of New York.

26. General Occupational Health Regulations 22–015, State of Oregon.

27. Chapter 296–64 WAC, State of Washington.

28. H.B. 1323, West Virginia.

29. Bill No. 475, Philadelphia, Pennsylvania.

30. European Economic Community Labeling Requirements, Directive 67/548/EEC, August 16, 1967, as amended by Directive 79/831/EEC, September 18, 1979; Directive 73/173/EEC, June 4, 1973; Directive 77/728/EEC, November 7, 1977; and Directive 78/631/EEC, June 26, 1978.

31. U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings, Washington, D.C.: Government Printing Office, October, 1979.

32. U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances, Office of Regulatory Analysis, 1981.

33. U.S. Department of Commerce, Bureau of the Census. County Business Patterns 1977. Washington, D.C.: Government Printing Office, 1979.

34. Total container shipments for SIC 28 are taken from U.S. Department of Commerce, Bureau of Census, Current Industrial Reports M34K: Steel Drums and Pails; Current Industrial Reports M30E: Plastic Bottles; Current Industrial Reports M32G: Glass

Containers. Washington, D.C.: Government Printing Office, 1979 and previous years.

35. Discher, David P., Kleinmann, G.G., and Foster, F.J., National Occupational Hazards Survey—Pilot Study for Development of an Occupational Disease Surveillance Method, Report No. NIOSH–75–162/Sponsored by the National Institute for Occupational Safety and Health, Department of Environmental Health. Seattle: University of Washington, May 1975.

36. U.S. Department of Labor, Bureau of Labor Statistics. Occupational Injuries and Illnesses, 1977, Report 561: Washington, D.C.: Government Printing Office, 1979.

37. U.S. Department of Labor, Supplementary Data System. Subfile on Chemical Injuries and Illnesses, 1976–77. (Computerized Information Retrieval).

38. U.S. Department of Labor, Assistant Secretary for Policy, Evaluation, and Research, An Interim Report to Congress on Occupational Diseases, 1980.

39. Analysis prepared by U.S. Department of Labor, Assistant Secretary for Policy, Evaluation, and Research. 1972 Survey of Disabled and Nondisabled Adults Ages 20–64. SSA/HEW, 1979.

40. Dorothy Rice, et al. "Social and Economic Implications of Cancer in the United States." Paper presented to Expert Committee on Cancer Statistics of the World Health Organization, June 20–26, 1978.

41. Council on Environmental Quality, Toxic Substances Strategy Committee. Toxic Chemicals and Public Protection: Washington, D.C.: U.S. Government Printing Office, 1980.

42. The relationship is extrapolated to entire turnover rates and is based on evidence in W. Kip Viscusi, Employment Hazards: An Investigation of Market Performance. Cambridge: Harvard University Press, 1979.

43. Provided by the Federal and Industrial Applications Division, National Fire Data System.

VII. Public Participation

Interested persons are invited to submit written data, views, and arguments on this proposed standard. These comments must be received on or before May 18, 1982, and submitted in quadruplicate to the Docket Officer, Docket H–022, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room S–6212, Washington, D.C. 20210; (202) 523–7894. Written submissions must clearly identify the provisions of the proposal which are addressed, and the position taken on each issue.

Under section 6(b)(3) of the Act, OSHA is scheduling public hearings in several locations to permit interested persons an opportunity to submit oral testimony concerning the issues raised by the proposed standard, including the economic and environmental impacts. The hearings will begin on June 15, 1982, in Washington, D.C. A future notice will provide hearing dates in other cities.

Notices of Intention To Appear

All persons wishing to participate in the public hearings must file a notice of intention to appear, in quadruplicate, on or before May 18, 1982 addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H–022, Room N–3635, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210; (202) 523–8024.

The notices of intention to appear must contain the following information:

(1) The name, address and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A detailed statement of the position that will be taken on each issue addressed; and

(6) Whether the party intends to submit documentary evidence and if so, a brief summary of that evidence.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 15 minutes for a presentation at the hearing, or submitting documentary evidence, must provide in advance the complete text of the testimony or documentary evidence to be presented. These texts shall be submitted in quadruplicate to the OSHA Division of Consumer Affairs, at the above address, and must be submitted by June 1, 1982.

These submissions will be available for inspection and copying at the OSHA Docket Office, Room S6212, at the above address.

Each submission received will be reviewed to ascertain if the amount of time requested in the notice of intention to appear is appropriate. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate time allocation will be made and the participant will be notified of the change. Any party who has not substantially complied with this requirement may be limited to a 15 minute presentation, and may be requested to return for questioning at a later time.

Conduct of Hearings

The hearings will begin at 9:30 a.m. with resolution of any procedural matters relating to the proceeding. The hearings will be conducted in accordance with 29 CFR Part 1911, allowing full development of the record and permitting all parties to exercise their rights of participation.

The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary or appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911. Following the close of the hearing or of any post hearing comment period, the presiding Administrative Law Judge will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health.

All written and oral submissions, as well as other information gathered by the Agency, will be considered in any action taken. The record of this rulemaking, including written comments and materials submitted in response to this notice and notices of intention to appear at the public hearings, will be available for inspection and copying in the Docket Office, Room S–6212, at the above address, between the hours of 8:15 a.m. and 4:45 p.m.

VIII. Authority and Signature

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Pursuant to sections 6(b) and 8(q) of the Act, it is hereby proposed to amend 29 CFR by adding a new § 1910.1200 as set forth below.

(Sec. 6(b), 8(c) and 8(q). Pub. L. 91–596, 84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657; 29 CFR Part 1911; Secretary of Labor's Order No. 8–76 (41 FR 25059))

Signed at Washington, D.C. this 17th day of March 1982.

Thorne G. Auchter,

Assistant Secretary for Occupational Safety and Health.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

It is proposed to amend 29 CFR by adding a new § 1910, 1200 to read as follows:

§ 1910.1200 Hazard communication.

(a) *Scope and application.* (1) This section requires chemical manufacturers to assess the hazards of chemicals which they produce, and all employers in SIC Codes 20 through 39 (Division D, Standard Industrial Classification Manual) to provide information to their employees about the hazardous chemicals which they use by means of a hazard communication program, labels, placards, material safety data sheets, and information and training.

(2) This section applies to any chemical which is known to be present in the workplace in such a manner that

employees may be exposed under normal conditions of use or in a foreseeable emergency.

(3) Any mixture which is comprised of at least one (1) percent (by weight or volume) of any chemical determined to be hazardous shall also be considered hazardous for purposes of this section, unless the mixture has been evaluated as a whole and the data indicates it is not hazardous.

(4) If employee protection necessitates disclosure of hazardous chemicals comprising less than one (1) percent (by weight or volume) of a mixture, the Assistant Secretary may lower or eliminate this concentration exemption by a rulemaking notice in the **Federal Register.**

(5) This section does not apply to chemicals being developed and used only in research laboratories.

(6) This section does not apply to chemicals which are foods, drugs, cosmetics or tobacco products intended for personal consumption by employees while in the workplace.

(b) *Definitions.* "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"CAS number" means the unique identification number assigned by the Chemical Abstracts Service to chemicals.

"Chemical" means any element, chemical compound or mixture of elements and/or compounds.

"Chemical manufacturer" is an establishment where chemicals are produced for use or distribution.

"Chemical name" is the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature.

"Combustible" means any liquid haing a flashpoint at or above 100° F (37.8° C). Combustible liquids shall be divided into two classes as follows:

(i) Class II liquids shall include those with flashpoints at or above 100° F (37.8° C) and below 140° F (60° C) except any mixture having components with flashpoints of 200° F (93.3° C) or higher, the volume of which make up 99 percent or more of the total volume of the mixture;

(ii) Class III liquids shall include those with flashpoints at or above 140° F (60° C). Class III liquids are subdivided into two subclasses:

(A) Class IIIA liquids shall include those with flashpoints at or above 140° F (60° C) and below 200° F (93.3° C), except any mixture having components with flashpoints of 200° F (93.3° C), or higher, the total volume of which makeup 99 percent or more of the total volume of the mixture;

(B) Class IIIB liquids shall include those with flashpoints at or above 200° F (93.3° C). This section does not cover Class IIIB liquids. Where the term "Class III liquids" is used in this section, it shall mean only Class IIIA liquids;

(iii) When a combustible liquid is heated for use to within 30° F (16.7° C) of its flashpoint, it shall be handled in accordance with the requirements for the next lower class of liquids.

"Common name" means any designation or identification such as code name, code number, trade name, brand name or generic name used to identify a chemical other than by its chemical name.

"Compressed gas" means:

(i) A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70° F (21.1° C); or

(ii) A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130° F (54.4° C) regardless of the pressure at 70° F (21.1° C); or

(iii) A liquid having a vapor pressure exceeding 40 psi at 100° F (37.8° C) as determined by ASTM D–323–72.

"Container" means any bag, barrel, bottle, box, can, cylinder, drum, storage tank, reaction vessel, or the like that contains a hazardous chemical. For purposes of this section, pipes or piping systems are not considered to be containers.

"Designated representative" means any individual or organization to whom an employee or former employee gives written authorization to exercise such employee's rights under this section.

"Director" means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

"Emergency" means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which may or does result in an uncontrolled release of a hazardous chemical into the workplace.

"Employee" means a worker who may be exposed under normal operating conditions or foreseeable emergencies to hazardous chemicals in a covered workplace, including, but not limited to production workers, line supervisors, and repair or maintenance personnel. Office workers, grounds maintenance personnel, security personnel or non-resident management are generally not included, unless their job performance routinely involves potential exposure to hazardous chemicals.

"Employer" means an establishment in SIC Codes 20–39 that manufactures or uses hazardous chemicals.

"Explosive" means a chemical that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

"Flammable" means a chemical that falls into one of the following categories:

(1) "Aerosol, flammable" means an aerosol that, when tested by the method described in 16 CFR 1500.45, yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening;

(ii) "Gas, flammable" means:

(A) A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of thirteen (13) percent by volume or less; or

(B) A gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than twelve (12) percent by volume, regardless of the lower limit; and

(C) Gaseous ammonia;

(iii) "Liquid, flammable" means any liquid having a flashpoint below 100° F (37.8° C), except any mixture having components with flashpoints of 100° F (37.8° C) or higher, the total of which make up 99 percent or more of the total volume of the mixture. Flammable liquids shall be known as Class I liquids. Class I liquids are divided into three classes as follows:

(A) Class IA shall include liquids having flashpoints below 73° F (22.8° C) and having a boiling point below 100° F (37.8° C);

(B) Class IB shall include liquids having flashpoints below 73° F (22.8° C) and having a boiling point at or above 100° F (37.8° C); and

(C) Class IC shall include liquids having flashpoints at or above 73° F (22.8° C) and below 100° F (37.8° C);

(iv) "Solid, flammable" means a solid, other than a blasting agent or explosive as defined in § 1910.109(a), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

"Flashpoint" means the minimum temperature at which a liquid gives off a

vapor in sufficient concentration to ignite when tested as follows:

(i) Tagliabue Closed Tester (see American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24–1979 (ASTM D 56–79))-for liquids with a viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100° F (37.8° C), that do not contain suspended solids and do not have a tendency to form a surface film under test; or

(ii) Pensky-Martens Closed Tester (see American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7–1979 (ASTM D 93–79))-for liquids with a viscosity equal to or greater than 45 SUS at 100° F(37.8° C), or that contain suspended solids, or that have a tendency to form a surface film under test; or

(iii) Setaflash Closed Tester (see American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTM D 3278–78)).

Note.— For mixtures, if the result of any test method described in paragraphs (i)–(iii) is above 100° F (37.8° C), evaporate a fresh sample to ninety (90) percent of the original volume and retest. The lower of the two values shall be taken as the flash point.

Organic peroxides, which undergo autoaccelerating thermal decomposition, are excluded from any of the flashpoint determination methods specified above.

"Hazardous chemical" means any chemical which is combustible, a compressed gas, explosive, flammable, a health hazard, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

"Hazard warning" means any words, pictures, symbols, or combination thereof which convey the hazards of the chemical(s) in the container.

"Health hazard" means a chemical which, upon exposure, may result in the occurrence of acute or chronic health effects in employees. For further explanation, see Appendix A, Health Hazards, of this section.

"Identity" means any chemical or common name which is indicated on the material safety data sheet (MSDS) for the chemical. The identity used shall permit cross-references to be made among the required list of hazardous chemicals, the label and the MSDS.

"Organic peroxide" means an organic compound that contains the bivalent -o-o structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

"Oxidizer" means a chemical other than a blasting agent or explosive as defined in § 1910.109(a), that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

"Pyrophoric" means a chemical that will ignite spontaneously in air at a temperature of 130° F (54.4° C) or below.

"Unstable (reactive)" means a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure or temperature.

"Use" means handle, react, process, package or repackage, or transport.

"Water-reactive" means a chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

"Work area" means a room or defined space in an establishment where hazardous chemicals are produced or used, and where employees are present.

"Workplace" means an establishment at one geographical location containing one or more work areas.

(c) *Hazard determination and communication program.* (1) Each chemical manufacturer shall evaluate the chemicals produced in his/her workplace to determine if they are hazardous. See Appendix B for guidelines.

(2) Each employer shall develop and implement a hazard communication program for his/her workplace which at least meets the criteria specified in paragraphs (d), (e), and (f) of this section for labels and placards, material safety data sheets, and employee information and training, and which includes the following:

(i) The procedures the employer will use to determine the hazards of the chemicals which he/she produces;

(ii) A list of the hazardous chemicals known to be present in the workplace (using an identity that is referenced on the appropriate material safety data sheet); and

(iii) The methods the employer will use to inform employees of the hazards of non-routine tasks, for example, repair and maintenance of unlabeled pipes or the cleaning of reactor vessels.

(3) The employer may rely on an existing hazard communication program to comply with this section provided that it meets the criteria established in this paragraph.

(4) The required list of hazardous chemicals shall be made available to employees or their designated representatives, the Assistant Secretary and the Director.

(d) *Labels and placards.* (1) The employer shall ensure that each container of hazardous chemicals in the workplace is labeled, tagged or marked with the following information:

(i) Identity of the hazardous chemical(s) contained therein; and

(ii) Hazard warnings.

(2) When stationary containers in a work area have similar contents and hazards, the employer may post signs or placards to convey the required information rather than affixing labels to each individual container.

(3) The employer shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged or marked with the following information:

(i) Identity of the hazardous chemical(s);

(ii) Hazard warnings; and

(iii) Name, address and telephone number of the manufacturer.

(4) The employer need not affix new labels to comply with this standard if existing labels already convey the necessary information.

(5) The employer is not required to label containers of ten gallons (37.8 liters) or less in volume, into which hazardous chemicals are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer.

(e) *Material safety data sheets.* (1) Each employer shall obtain or develop a material safety data sheet for each hazardous chemical which he/she produces or uses.

(2) Each material safety data sheet shall reflect the information contained in the sources consulted by the chemical manufacturer in his/her hazard determination under paragraphs (c)(1) and (c)(2) of this section, and shall contain at least the following information:

(i) The chemical and common name(s), CAS Number(s) and the identity used on the label for all hazardous ingredients which comprise greater than one (1) percent of the chemical (except as provided by paragraph (g) of this section on trade secrets);

(ii) Physical and chemical characteristics of the hazardous chemical (such as vapor pressure, flash point);

(iii) The physical hazards of the hazardous chemical, including the potential for fire, explosion, and reactivity;

(iv) Known acute and chronic health effects of exposure to the hazardous chemical, including signs and symptoms of exposure, and medical conditions which may be aggravated by exposure to the chemical;

(v) The primary route(s) of entry and permissible exposure limit (for those hazardous chemicals for which OSHA has promulgated a permissible exposure limit);

(vi) Precautions for safe handling and use, including appropriate hygienic practices, procedures for decontaminating equipment prior to performing repairs and maintenance, and procedures for clean-up of leaks or spills;

(vii) Engineering controls recommended;

(viii) Work practices recommended;

(ix) Personal protective equipment recommended;

(x) Emergency and first aid procedures;

(xi) The date of preparation of the material safety data sheet or the last change to it; and

(xii) The name, address and telephone number of the manufacturer preparing the sheet.

(3) If no information is found for any given category on the material safety data sheet, the employer shall mark it to indicate no information was found. Blank spaces on existing material safety data sheets will be considered to indicate that information was sought but not found. It is the chemical manufacturer's responsibility to ensure that this interpretation is accurate. As the MSDSs are updated, the blanks shall be marked as required.

(4) If the employer becomes aware of any information which is both new and significant regarding the health hazard of a chemical, this shall be added to the material safety data sheet within a reasonable period of time.

(5) Chemical manufacturers shall ensure that manufacturing purchasers of hazardous chemicals are provided an appropriate material safety data sheet with their initial shipment, and with the first shipment after a material safety data sheet is updated. If the material safety data sheet is not provided with the shipment, the purchasing manufacturing employer shall obtain one from the chemical manufacturer as soon as possible.

(6) The employer shall maintain copies of the required material safety data sheets for each hazardous chemical in the workplace, and shall ensure that they are readily accessible.

(7) Material safety data sheets for the hazardous chemicals they are exposed to shall be made available to employees and their designated representative, and upon request, to the Assistant Secretary and the Director.

(f) *Employee information and training.* The employer shall provide employees with information and training on hazardous chemicals in the workplace at the time of their initial assignment, and whenever a new hazardous chemical is introduced into their work area.

(1) *Information.* Employees shall be informed of:

(i) The requirements of this regulation;

(ii) Any operations in the work area where hazardous chemicals are present; and

(iii) The location and availability of the list of hazardous chemicals and material safety data sheets required by this section.

(2) *Training.* Employee training shall include at least:

(i) Methods and observations the employee may use to detect the presence or release of a hazardous chemical in the workplace;

(ii) The hazards of the chemicals in the workplace;

(iii) The measures employees can take to protect themselves from the hazards; and

(iv) The details of the hazard communication program developed by the employer and how employees can obtain and use the appropriate hazard information.

(g) *Trade secrets.* (1) An employer may withhold the precise chemical name of a chemical if:

(i) The employer can substantiate that it is a trade secret;

(ii) The chemical is not a carcinogen, mutagen, teratogen, or a cause of significant irreversible damage to human organs or body systems for which there is a need to know the precise chemical name;

(iii) The chemical is identified by a generic chemical classification which would provide useful information to a health professional;

(iv) All other information on the properties and effects of the chemical required by this section is contained in the material safety data sheet;

(v) The material safety data sheet indicates which category of information is being withheld on trade secret grounds; and

(vi) In any event, the withheld information is provided on a confidential basis to a treating physician who states in writing (except in an emergency situation) that a patient's health problems may be the result of occupational exposure. A statement to this effect with the name of the manufacturer and an emergency telephone number shall be included in the material safety data sheet.

(2) To the extent that names of trade secret chemicals are disclosed, the employer may condition employee, designated representative, and downstream employer access to such information upon acceptance of a reasonable confidentiality agreement. The agreement may restrict use of the information to health purposes, prohibit disclosure of the information to anyone other than a treating physician without the consent of the originating employer, and provide for compensation or other legally appropriate relief for any competitive harm which results from a breach of the agreement.

(h) *Effective dates.* Employers shall be in compliance with this section within the following time periods:

Employer number of employees	Pure substances	Mixtures
Chemical manufacturers:		
More than 250	1 year	2 years.
25 to 250	1½ years	2½ years.
Fewer than 25	2 years	3 years.
Other employers	3½ years	3½ years.

Appendix A—Health Hazards

Although safety hazards related to the physical characteristics of a chemical can be objectively defined in terms of testing requirements (e.g. flammability), health hazard definitions are less precise and more subjective. Health hazards may cause measurable changes in the body—such as decreased pulmonary function. These changes are generally indicated by the occurrence of signs and symptoms in the exposed employees—such as shortness of breath, a non-measurable, subjective feeling. Employees exposed to such hazards should be apprised of both the change in body function and the signs and symptoms that may occur to signal that change.

The determination of occupational health hazards is complicated by the fact that many of the effects or signs and symptoms occur commonly in non-occupationally exposed populations, so that effects of exposure are difficult to separate from normally occurring illnesses. Occasionally, a substance causes an effect that is rarely seen in the population at large, such as angiosarcomas caused by vinyl chloride exposure, thus making it easier to ascertain that the occupational exposure was the primary causative factor. More often, however, the effects are common, such as lung cancer. The situation is further complicated by the fact that most chemicals have not been adequately tested to determine their health hazard potential, and data does not exist to substantiate these effects.

There have been many attempts to categorize effects and to define them in various ways. Generally, the terms "acute" and "chronic" are used to delinate between effects on the basis of severity or duration. "Acute" effects usually occur rapidly as a result of short-term exposures, are of short duration, and generally reversible. "Chronic" effects occur as a result of long-term exposure, are of long duration, and may be irreversible. Neither of these terms gives

sufficient guidance to those attempting to define a health hazard.

The acute effects referred to most frequently are those defined by the American National Standards Institute (ANSI) standard for Precautionary Labeling of Hazardous Industrial Chemicals (Z129.1–1976)—irritation, corrosivity, sensitization and lethal dose. Although these are important health effects, they do not adequately cover the considerable range of acute effects which may occur as a result of occupational exposure, such as, for example, narcosis.

Similarly, the term chronic effect is often used to cover only carcinogenicity, teratogenicity, and mutagenicity. These effects are obviously a concern in the workplace, but again, do not adequately cover the area of chronic effects, excluding, for example blood dyscrasias (anemia).

Although the goal of defining precisely, in measurable terms, every possible health effect that may occur in the workplace as a result of chemical exposures cannot realistically be accomplished, this does not negate the need for employees to be protected from such effects when they are known, and to be informed of all types of health hazards. Consequently, in assessing the health hazard potential of a chemical for purposes of compliance with this standard, the employer shall consider the scientifically well-established evidence of any type of health effect which may occur in any body system of his/her employees. Some sources of information which the employer may wish to consult in conducting the hazard evaluation are listed in Appendix B.

The following is a target organ categorization of effects which may occur, including examples of signs and symptoms and chemicals which have been found to cause such effects. These examples are presented to illustrate the range and diversity of effects and hazards found in the workplace, and the broad scope employers must consider in this area, but are not intended to be all-inclusive.

1. Hepatotoxic agents: Chemicals which produce liver damage. Signs & Symptoms: Jaundice; hepatitis. Chemicals: Carbon tetachloride; nitrosamines.

2. Nephrotoxic agents: Chemicals which produce kidney damage. Signs & Symptons: Decreased elimination of wastes. Chemicals: Halogenated hydrocarbons; uranium.

3. Neurotoxic agents: Chemicals which produce their primary toxic effects on the nervous system. Signs & Symptons: Narcosis; behavioral changes; decrease in motor functions. Chemicals: Mercury; carbon disulfide.

4. Agents which act on the blood or hematopoietic system: Lower blood pressure; deprive the body tissues of oxygen. Signs & Symptons: Leukemia; anemia. Chemicals: Carbon monoxide; cyanides.

5. Agents which damage the lung: Chemicals which irritate or damage the pulmonary tissue. Signs & Symptons: Cough; tightness in chest; fibrosis. Chemicals: Silica; asbestos.

6. Reproductive toxins: Chemicals which affect the reproductive capabilities including chromosomal damage (mutations) and effects on fetuses (teratogenesis). Signs & Symptons: Birth defects; sterility. Chemicals: Lead; DBCP.

7. Cutaneous hazards: Chemicals which affect the dermal layer of the body. Signs & Symptons: Defatting of the skin; rashes; irritation. Chemicals: Ketones; chlorinated compounds.

8. Eye hazards: Chemicals which affect the eye or visual capacity. Signs & Symptons: Conjunctivitis; corneal damage. Chemicals: Organic solvents; acids.

Appendix B—Hazard Determination Guidelines

The quality of a hazard communication program is largely dependent upon the adequacy and accuracy of the hazard determination. The hazard determination requirement is performance-oriented. Chemical manufactures are not required to follow any specific methods for determining hazards, but it is incumbent upon them to demonstrate that they have adequately ascertained the scientifically well-established hazards of the chemicals produced. This Appendix is intended to provide employers, who may desire to use it, with a list of some basic sources of reference for the hazards of chemicals.

Sources

Any information employers have in their own company files such as toxicity testing results or illness experience of company employees.

Any information obtained from the supplier of the chemical, such as material safety data sheets or product safety bulletins.

Any information obtained from the following source list (latest editions should be used):

Condensed Chemical Dictionary, by A. and E. Rose
Reinhold Publishing Corporation, 450 West 33rd Street, New York, NY 10001

The Merck Index: An Encyclopedia of Chemicals and Drugs
Merck and Company, Inc., 126 E. Lincoln Avenue, Rahway, NJ 07065

IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Man
Geneva: World Health Organization, International Agency for Research on Cancer, 1972–1977 (Multivolume work)

American Industrial Hygiene Association Hygienic Guides
American Industrial Hygiene Association, 66 South Miller Road, Akron, OH 44313

Industrial Hygiene and Toxicology, by F.A. Patty
John Wiley & Sons, Inc., New York, NY (Five volumes)

Toxicology: The Basic Science of Poisons, by Louis J. Casarett and John Doull
Macmillan Publishing Co., Inc., New York NY

Industrial Toxicology, by Alice Hamilton and Harriet L. Hardy
Publishing Sciences Group, Inc., Acton, MA

Toxicology of the Eye, by W. Morton Grant
Charles C. Thomas, Springfield, MO

Handbook of Chemistry and Physics
Chemical Rubber Company, 18901 Cranwood Parkway, Cleveland, OH 44128

Threshold Limit Values for Chemical Substances and Physical Agents in the Workroom Environment with Intended Changes
American Conference of Governmental Industrial Hygienists, 1014 Broadway, Cincinnati, OH 45202

Dangerous Properties of Industrial Materials, by N. Irving Sax
Reinhold Publishing Corporation, 450 West 33rd Street, New York, NY 10001

Note.—The following documents are on sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Occupational Health Guidelines
NIOSH/OSHA (Available Fall 1981).

NIOSH/OSHA Pocket Guide to Chemical Hazards
NIOSH Pub. No. 78–210

Registry of Toxic Effects of Chemical Substances
U.S. Department of Health and Human Services, Pubic Health Service, Center for Disease Control, National Institute for Occupational Safety and Health

The Industrial Environment—Its Evaluation and Control
U.S. Department of Health and Human Services, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health

Miscellaneous Documents—National Institute for Occupational Safety and Health

1. Criteria for a recommended standard * * * Occupational Exposure to "_____"
2. Special Hazard Reviews
3. Occupational Hazard Assessment
4. Current Intelligence Bulletins

BIBLIOGRAPHIC DATA BASES

Service provider	File name
Bibliographic Retrieval Services (BRS), Corporation Park, Bldg. 702, Scotia, New York 12302.	AGRICOLA. BIOSIS PREVIEWS. CA CONDENSATES. CA SEARCH. DRUGINFO. MEDLARS. MEDOC. NTIS. POLLUTION ABSTRACTS. SCIENCE CITATION INDEX. SSIE.
Lockheed—DIALOG, Lockheed Missiles & Space Company, Inc., P.O. Box 44481, San Francisco, CA 94144.	AGRICOLA. BIOSIS PREV. 1972-PRESENT. BIOSIS PREV. 1969–71. CA CONDENSATES 1970–71. CA SEARCH 1972–76. CA SEARCH 1977–PRESENT. CHEMNAME. CONFERENCE PAPERS INDEX. FOOD SCIENCE & TECH. ABSTR. FOODS ADLIBRA. INTL. PHARMACEUTICAL ABSTR. NTIS. POLLUTION ABSTRACTS. SCISEARCH 1978–PRESENT. SCISEARCH 1974–77. SSIE CURRENT RESEARCH.

BIBLIOGRAPHIC DATA BASES—Continued

Service provider	File name
SDC—ORBIT, SDC Search Service, Department No. 2230, Pasadena, CA 91051.	AGRICOLA. BIOCODES. BIOSIS/BIO6973. CAS6771/CAS7276. CAS77. CHEMDEX. CONFERENCE. ENVIROLINE. LABORDOC. NTIS. POLLUTION. SSIE.
Chemical Information System (CIS), Chemical Information Systems, Inc., 7215 York Road, Baltimore, MD 21212.	Structure and Nomenclature Search System. Acute Toxicity (RTECS). Consumer Products Chemicals. Oil and Hazardous Materials.
National Library of Medicine, Department of Health and Human Services, Public Health Service, National Institutes of Health, Bethesda, MD 20209.	Toxicology Data Bank (TDB). MEDLINE. TOXLINE. CANCERLIT. RTECS.

[FR Doc. 82-7568 Filed 3-17-82; 12:20 pm]
BILLING CODE 4510-26-M

Reader Aids

Federal Register

Vol. 47, No. 54

Friday, March 19, 1982

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-5237
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

United States Government Manual 523-5230

SERVICES

Agency services	523-4534
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8547-8748.....1
8749-8976.....2
8977-9184.....3
9185-9386.....4
9387-9804.....5
9805-9980.....8
9981-10198.....9
10199-10502.....10
10503-10762.....11
10763-11000.....12
11001-11242.....15
11243-11494.....16
11495-11640.....17
11641-11814.....18
11815-12124.....19

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
Ch. III.....11024

3 CFR

Administrative Orders:
Presidential determination:
No. 82-7 of February 10, 1982.....9805
Proclamations:
3279 (Amended by Proc. 4907).....10507
4707 (Amended by Proc. 4904).....8753
4768 (Amended by Proc. 4904).....8753
4801 (See Proc. 4904).....8753
4884 (See Proc. 4904).....8753
4887 (See Proc. 4904).....8753
4902.....8549
4903.....8751
4904.....8753
4905.....8977
4906.....9807
4907.....10507
4908.....10763
4909.....10765
Executive Orders:
September 22, 1866 (Revoked by PLO 6171).....9838
March 14, 1878 (Revoked in part by PLO 6205).....11665
March 12, 1884 (See PLO 6214).....11668
June 13, 1902 (Revoked by PLO 6184).....10213
July 2, 1910 (Revoked in part by PLO's 6177, 6215, 6228).....9840, 11669, 11871
December 1, 1910 (Revoked in part by PLO 6222).....11674
April 29, 1912 (Revoked in part by PLO 6216).....11669
April 12, 1913 (See PLO 6213).....11668
April 13, 1914 (Revoked in part by PLO 6207).....11666
June 30, 1916 (Revoked in part by PLO 6208).....11666
April 28, 1917 (Revoked by PLO 6204).....11664
September 7, 1917 (Revoked in part by PLO 6201).....11662
August 15, 1919 (Revoked in part by PLO 6224).....11675
March 29, 1922 (Revoked by PLO 6175).....9839
November 9, 1923 (Revoked in part by PLO 6206).....11665
October 30, 1924 (Revoked in part by PLO 6201).....11662
April 17, 1926 (Revoked in part by PLO's 6173, 6210).....9838, 11667
November 6, 1926 (Revoked in part by PLO 6201).....11662
September 20, 1927 (Revoked in part by PLO 6206).....11665
February 13, 1929 (Revoked in part by PLO 6206).....11665
808 (Revoked by PLO 6214).....11668
923 (See PLO 6214).....11668
3655 (Revoked by PLO 6175).....9839
3893 (See PLO 6171).....9838
4060 (Revoked by PLO 6214).....11668
4170 (Revoked by PLO 6226).....11675
5327 (See PLO 6202).....11663
5650 (Revoked in part by PLO 6206).....11665
5683 (Revoked by PLO 6193).....10214
7799 (Revoked in part by PLO 6227).....11676
7993 (See PLO 6214).....11668
8009 (Revoked in part by PLO 6206).....11665
11888 (Amended by EO 12349).....8749
11954 (Revoked by EO 12348).....8547
12074 (Revoked by EO 12350).....10503
12193 (See EO 12531).....10505

12295 (See EO 12351)....10505
12348....8547
12349....8749
12350....10503
12351....10505

Proclamations:
2416 (See PLO 6214)....11668

5 CFR
Ch. XIV....9185
737....9694
2430....11243

Proposed Rules:
410....10855
831....9470

7 CFR
Ch. IV....11642
0....10509
29....8979
51....9185
54....11641
285....10767
273....11815
301....8982
425....11645
719....9981
724....10770
725....10772
726....10773
907....9188, 10509, 11650
910....9188, 9387, 10724, 11816
928....10775
959....8551
981....9809
982....10775
1093....11495
1094....10510
1421....9188
1435....9194
1446....8553
1475....9981
1701....9387
1823....11509

Proposed Rules:
210....11877
272....11878
273....11878
729....9972, 10045
985....8784
1004....10230
1006....10203
1007....10053, 10203
1011....10203, 11679
1012....10203
1030....11283
1046....10203
1094....10203
1096....10203
1098....10203
1425....11284
1701....8785, 10057, 11285
1861....11521
1944....10566
1951....11521
2900....8786

8 CFR
238....8759, 9982
316a....10776
328....10776
332....10776
332a....10776
334....10776
335....10776
335b....10776
336....10776
339....10776
344....10776

9 CFR
72....11001
82....11243
92....11509
112....8759
318....10779
319....10779
381....10779

Proposed Rules:
92....9854
309....10856
317....9471
381....9471, 10856

10 CFR
1....9983, 11816
2....9983, 9987
14....8983
25....9194
50....11651
73....11511
95....9194
440....9014
790....8555
1004....9995

Proposed Rules:
Ch. I....8788
463....11178
508....10589
600....12038
794....9017

12 CFR
204....8987
207....8988
211....11817
217....8987
220....8988
221....8988
224....8988
303....9810
308....9811
545....10785
546....10788
555....10785
561....10785
576....10788
584....10785
701....10199
1204....11246

Proposed Rules:
Ch. II....9017
207....8788
220....8788
221....8788
545....9472, 9855
561....10858
563....9472, 10511
564....10858
615....11536
701....10232, 10234

13 CFR
120....8990

14 CFR
39....8555-8561, 9196, 9812-9815, 10511, 11002-11008, 11652
71....8562, 9816, 9817, 10512, 10513, 11009, 11653
73....8563, 11010, 11653, 11654
75....9200, 9817
91....10514
97....9818
121....10515
202....10516
208....9819
213....10517
241....9744
314....9744, 11819
385....9200, 10200, 10517
389....10518

Proposed Rules:
Ch. I....11026
21....9360, 9859
23....9360
36....9360
39....10591, 11034-11037
71....8595, 9222, 9224, 9860, 10592-10594, 11038
73....11700
75....8596, 9222
91....9360
121....9360, 10748
135....9360, 10748
139....9360

15 CFR
370....11247
371....11247
373....11247
376....9201, 11247
379....9201, 11247
385....9201, 11247
386....11247
399....9201, 11247
904....9820, 10200
970....11512
2301....11228

Proposed Rules:
904....9861

16 CFR
13....9388, 9821
1700....10201

Proposed Rules:
13....11285
1700....10235

17 CFR
155....11250
200....11380, 11819
201....11380, 11819
211....10789, 11475
229....11380, 11819
230....11251, 11380, 11819
231....11476
239....11251, 11380
240....9388, 11476, 11819
241....10792, 11380
249....11380, 11819
250....11380, 11819
260....11380, 11819
271....10518
274....10518, 11380, 11819

Proposed Rules:
12....9225
180....9225
190....8789
230....11482, 11701, 11704
239....11288, 11482
240....11482, 11704

18 CFR
35....8991
260....10202
271....8564, 8565, 10203
410....9206

Proposed Rules:
141....10237
271....8596, 10237-10242
273....8596
274....8596

19 CFR
212....9389

Proposed Rules:
10....9225, 11706
18....9225
19....9225
24....9225
113....9225
125....9225
132....9225
142....9225
143....11706
144....9225
177....10058

20 CFR

Proposed Rules:
404....8789

21 CFR
5....8761, 11269
14....8763
20....10804
73....10804
74....11819
81....10804
101....11820
102....11820
103....11820
114....11820
122....11820
131....11270, 11820
133....11820
135....11820
136....11820
137....11820
139....11820
145....9997, 11820
146....11820
150....11820
155....11820
160....11820
161....11820
163....11820
164....11820
166....11820
168....11820
169....11820
170....11835
172....8763, 11835
173....11835
175....9395, 11835
176....9998, 11835
177....11835
178....9999, 11835
179....11835
180....11835
181....11835
184....11835
186....11835

189.....11835
211.....9395
331.....9395
436.....9395, 11856
442.....11856
450.....9395
520.....9395, 10805
522.....9398, 10805, 10806
524.....10807
556.....9395
558.....8764, 8765, 9394, 9398, 10807, 10808
573.....9395
610.....9395
630.....9395
701.....9395
801.....9395
1308.....11513

Proposed Rules:
862.....11879
866.....11879, 11880
868.....11880
874.....11879
878.....11879
880.....11880
892.....11879

22 CFR
22.....9999
201.....8766
606.....11858

23 CFR
12.....10522
660.....10525
668.....10529
712.....10529

Proposed Rules:
628.....9247

24 CFR
111.....8991
200.....9206
201.....10204
203.....10205
213.....10205
234.....10205
420.....11655
570.....9822
885.....9206

25 CFR
700.....11858

26 CFR
1.....11515
31.....11275
35.....11275
26.....8995
150.....8995

Proposed Rules:
1.....11296, 11882
51.....9018

27 CFR

Proposed Rules:
4.....11884
5.....11884
7.....11884

28 CFR
0.....9822, 10809
13.....11516
570.....9755, 10206
571.....9755

29 CFR
511.....11865
1401.....10530
1402.....10530
1404.....9823
1410.....10530
1420.....10530
1425.....10530
2704.....10000

Proposed Rules:
1910.....12092

30 CFR
19.....11368
23.....11369
36.....11371
910.....10372

Proposed Rules:
Ch. VII.....10058
55.....10190
57.....10190
415.....9862
785.....12082
816.....10501, 10742, 12088
817.....10501, 10742
819.....12088
948.....11885

31 CFR
209.....9823

32 CFR
1 through 39.....9399
41.....10162

Proposed Rules:
199.....11707
230.....11708
231.....11717
299.....8791
632.....8790

33 CFR
84.....10531
85.....10531
86.....10531
117.....8566, 9825, 10532, 11010
140.....9366
141.....9366
142.....9366
143.....9366, 11011
144.....9366, 10533
146.....9366
147.....9366
149.....10533
175.....10533

Proposed Rules:
100.....9863
117.....8597-8599, 9864, 10595
147.....11719
157.....11724
159.....9248
165.....11719
401.....11039

34 CFR
645.....9158
646.....9150
648.....11866
776.....9786

35 CFR
10.....9207

36 CFR
7.....11011
907.....8767

Proposed Rules:
1.....11598
2.....11598
3.....11598
4.....11598
5.....11598
6.....11598
7.....11598
12.....11598
50.....11725

38 CFR
1.....11279
3.....11012, 11655
6.....11656
8.....11656
17.....10809
36.....9826

Proposed Rules:
21.....11041

39 CFR
111.....10206

Proposed Rules:
775.....10859

40 CFR
6.....9827, 9831
52.....8566, 8772, 9462, 9463, 9832-9836, 10206, 10208, 10534, 10535, 10813, 11013, 11280, 11661, 11866
61.....11662
62.....10004, 10535
81.....10208, 11014, 11870
122.....10006
141.....8997, 10998
180.....8998-9001, 10210-10212, 10536
256.....9002-9005
260.....9007
264.....10006
265.....9802, 10006

Proposed Rules:
Ch. I.....9477, 9864
33.....8960
52.....9019, 9478-9481, 10058, 10860, 11042, 11045
80.....11536
81.....8791, 9019, 10243
85.....8606
86.....8606, 11538
122.....8792, 10861, 11538
123.....8792, 9336, 9865, 10861, 10862, 11538
124.....8792, 10861, 11538
141.....9350
142.....9796
146.....8792, 10861
180.....9025, 10244, 10596
260.....9336, 9865
262.....9336, 9865
265.....8606, 10059
300.....10972
799.....10597
1510.....10862

41 CFR
1-4.....8774
8-1.....8777
5-53.....11017
5-63.....11019
5A-53.....11017, 11019
5B-15.....11019
5B-63.....11019
29-1.....11374
101-11.....11281
101-26.....8779
101-37.....8777
101-41.....11281

Proposed Rules:
101-41.....11296

42 CFR
447.....8567

43 CFR
3420.....9008

Public Land Orders:
30 (Revoked by PLO 6214).....11668
548 (Revoked in part by PLO 6201).....11662
648 (Revoked in part by PLO 6185).....10825
1314 (Revoked by PLO 6179).....9840
1368 (Revoked in part by PLO 6220).....11671
1421 (Revoked in part by PLO 6220).....11671
1529 (Revoked in part by PLO 6220).....11671
1609 (Revoked by PLO 6221).....11673
1642 (Revoked by PLO 6186).....10213
1653 (Revoked by PLO 6220).....11671
2278 (Revoked in part by PLO 6220).....11671
2565 (Revoked in part by PLO 6220).....11671
2845 (Revoked in part by PLO 6220).....11671
2978 (Revoked in part by PLO 6220).....11671
3250 (Revoked in part by PLO 6220).....11671
3282 (Revoked in part by PLO 6220).....11671
3310 (Revoked in part by PLO 6220).....11671
3500 (Revoked in part by PLO 6194).....10215
3633 (Revoked by PLO 6191).....10214
3777 (Revoked in part by PLO 6220).....11671
3841 (Revoked in part by PLO 6220).....11671
3964 (Revoked by PLO 6178).....9840
4265 (Revoked in part by PLO 6220).....11671
4788 (Revoked in part by PLO 6220).....11671
4839 (Revoked by PLO 6195).....10215
4448 (Revoked in part by PLO 6198).....11282
5140 (Revoked in part by PLO 6220).....11671
5490 (See PLO 6178).....9840

5844 (See PLO's 6020 and 6196)..... 10826
5992 (Corrected by PLO 6197)..... 11022
6020 (Corrected by PLO 6196)..... 10826
6098 (Corrected by PLO 6199)..... 11517
6127..... 11022
6149..... 8779
6143..... 10537
6171..... 9838
6172..... 9838
6173..... 9838
6174..... 9839
6175..... 9839
6176..... 9839
6177..... 9840
6178..... 9840
6179..... 9840
6180..... 9841
6181..... 9841
6182..... 9842
6183..... 9842
6184..... 10213
6185..... 10825
6186..... 10213
6187..... 10213
6188..... 10825
6189..... 10826
6190..... 10214
6191..... 10214
6192..... 10826
6193..... 10214
6194..... 10215
6195..... 10215
6196..... 10826
6197..... 11022
6198..... 11282
6199..... 11517
6200..... 11282
6201..... 11662
6202..... 11662
6203..... 11664
6204..... 11664
6205..... 11665
6206..... 11665
6207..... 11666
6208..... 11666
6209..... 11667
6210..... 11667
6211..... 11667
6212..... 11668
6213..... 11668
6214..... 11668
6215..... 11669
6216..... 11669
6217..... 11669
6218..... 11670
6219..... 11670
6220..... 11671
6221..... 11673
6222..... 11674
6223..... 11674
6224..... 11675
6225..... 11675
6226..... 11675
6227..... 11676
6228..... 11871

Proposed Rules:
3140..... 8734, 9026
5440..... 12078
5450..... 12078
5460..... 12078

44 CFR

64..... 10827, 10829
65..... 10006, 10215, 10538, 10830
67..... 10006, 10540
70..... 10007–10018
205..... 10553
312..... 11297
351..... 10758

Proposed Rules:
67..... 9865, 10059–10063, 10245
312..... 11297

45 CFR

13..... 10834
46..... 9208
301..... 8568
400..... 10841
401..... 10841
500..... 10850
531..... 11850
605..... 8570

Proposed Rules:
1050..... 10598
1067..... 10598
1068..... 10598

46 CFR

25..... 10558
33..... 10558
67..... 8581
75..... 10558
94..... 10558
108..... 10558
160..... 10558
162..... 10558
164..... 10558
180..... 10558
192..... 10558
524..... 10217
530..... 10851

Proposed Rules:
Ch. IV..... 10600
10..... 11046
536..... 10862

47 CFR

1..... 9208, 10852
2..... 9464, 11022
21..... 10852
22..... 10018
23..... 10852
25..... 10852
42..... 10559
43..... 10852
67..... 9170
68..... 10219
73..... 8583, 8779–8782, 9208–9214, 10219, 10560, 10852, 11023, 11872–11874
74..... 9214
76..... 8783
78..... 10852
83..... 10220
87..... 10852
90..... 10852, 11022
94..... 10852
99..... 11022

Proposed Rules:
Ch. I..... 10863
1..... 10871, 11886
2..... 9249
15..... 9249
43..... 10871
73..... 8792–8797, 9249, 9482, 10259–10261, 10601, 10603, 11046, 11727–11733, 11901–11909
74..... 9251
81..... 9249
83..... 9249
90..... 10064, 11731
97..... 8798

48 CFR

Proposed Rules:
32..... 10878

49 CFR

1..... 11676
192..... 9842
670..... 11677
1011..... 9466
1033..... 9010, 11518
1100..... 9011
1111..... 9844, 11875
1201..... 9466
1206..... 9466
1207..... 9466
1241..... 10041
1249..... 9468

Proposed Rules:
171..... 9346, 9865
172..... 9346, 9865
387–399..... 10066, 10610
391..... 9256
571..... 9865
1137..... 8801
1201..... 11539, 11910
1244..... 11541
1263..... 11910
1310..... 8801

50 CFR

611..... 10227
671..... 10043, 10044, 10228, 10853, 11677

Proposed Rules:
17..... 9483, 9867
18..... 9869
228..... 9027
611..... 11299
640..... 10878
651..... 10605

List of Public Laws

Last Listing March 12, 1982

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. 5021 / Pub. L. 97–152 To extend the date for the submission to the Congress of the report of the Commission on Wartime Relocation and Interment of Civilians. (Mar. 16, 1982; 96 Stat. 11) Price $1.50.

S.J. Res. 91 / Pub. L. 97–153 To designate July 1982 as "National Peach Month". (Mar. 16, 1982; 96 Stat. 12) Price: $1.50

S.J. Res. 105 / Pub. L. 97–154 To designate October 1982 as "National P.T.A. Membership Month". (Mar. 16, 1982; 96 Stat. 13) Price: $1.50