AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

4-2-82
Vol. 47 No. 64
Pages 14131-14474

federal register

Friday
April 2, 1982

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

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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 Parts 210, 215, and 220

[Amdt. Nos. 50, 24 and 42 respectively]

Matching Requirements, Limitations on Direct USDA Administration and USDA Claims Adjustment Authority

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency final rule.

SUMMARY: The Food and Nutrition Service (FNS) is amending the regulations for the National School Lunch Program (NSLP) to delete the three-to-one matching requirement, fix State revenue matching (SRM) requirements at thirty percent of Section 4 NSLP funds received during School Year 1980–81, and to exempt from SRM requirements those Section 4 NSLP funds provided to private schools if the State agency (SA) is prohibited by law from disbursing SRM funds to such schools. Finally, the NSLP, School Breakfast Program (SBP) and Special Milk Program for Children (SMP) regulations are being amended to limit direct FNS administration of the NSLP and SBP to schools and the SMP to schools and child care institutions only if the SA is prohibited by law from disbursing Federal funds to such schools and institutions or if FNS has continuously administered such programs since October 1, 1980, and to give the Secretary of Agriculture authority to adjust any claims arising under these Programs. These changes are required under Pub.L. 97–35, the Omnibus Reconciliation Act of 1981. Deletion of the three-to-one matching requirement in the NSLP will simplify matching requirements for that Program and result in less reporting, recordkeeping and paperwork. By fixing the SRM requirement level, States will either not need to or will find it easier to estimate the amount of SRM funds needed each year. Exempting Section 4 NSLP funds paid to private schools from SRM requirements in certain States will encourage more States to administer the NSLP in private schools. The limitation on direct FNS administration of the NSLP, SBP and SMP will mean that FNS will not assume the administration of these programs in any additional private schools and child care institutions unless State laws are enacted prohibiting the disbursement of Federal funds to such schools and institutions. Finally, the claims adjustment provisions will give the Secretary needed flexibility in resolving claims arising under these programs.

EFFECTIVE DATE: Matching requirements—July 1, 1981, claims adjustment provisions—August 13, 1981, and all other provisions—October 1, 1981.

In accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3507), the reporting requirements contained in this regulation have been approved by OMB (OMB Clearance No. 40–R3005). The recordkeeping requirements in § 210.6(f) are subject to review by OMB and are not effective until approved by OMB.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions. This action will not 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 export markets.

This rule has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that this emergency final rule does not have a significant adverse economic impact on a substantial number of small entities although it will affect virtually all SFAs participating in the School Nutrition Programs.

The Administrator has also determined pursuant to 5 U.S.C. 8553(b) and (d) that good cause exists for making this rule effective earlier than 30 days after publication because under Pub. L. 97–35, the provisions of this rule were effective on July 1, August 13, or October 1, 1981. Solicitation of public comments is unnecessary and contrary to the public interest since the provisions of this rule are nondiscretionary.

Background

State matching requirements have been a component of the NSLP since its inception in 1946. Under the original National School Lunch Act, States were required to match, beginning in Fiscal Year 1947, each dollar of Federal cash assistance received under Section 4 of the National School Lunch Act with one dollar from State sources (including children's payments). If a State's per capita income was below the national average per capita income, this amount was reduced proportionately. This amount was progressively increased until, by Fiscal Year 1956, States were required to provide three dollars for every dollar of Federal assistance received. To meet this matching requirement, States could apply the reasonable value of donated services, supplies, facilities and equipment as well as cash expended at the local level in support of the Program. In fact, children's payments for lunches were also allowable. With the passage of Pub. L. 91–248 in 1970, the matching requirement was broadened to require that, for the fiscal year beginning July 1, 1971, at least four percent of a State's matching requirement be made up of State revenue appropriated or used specifically for program purposes (the SRM requirement). This amount was increased progressively to ten percent for the school year beginning in 1977. In 1975, under Pub. L. 94–105, the three-to-one matching requirement was reduced

by making it apply only to Section 4 NSLP funds used to reimburse paid meals. However, the SRM requirement remained applicable to all Section 4 funds used in the NSLP. Consequently, the three-to-one matching requirement became more of a reporting and monitoring exercise than a meaningful program requirement since in virtually every State the average charge for a paid lunch exceeded the Section 4 reimbursement by three times, thus satisfying the matching requirement from this source alone.

Section 804 of Pub. L. 97–35 amends Section 7 of the National School Lunch Act to delete the three to one matching requirement. Instead, the amount of State revenue appropriated or used specifically for program purposes must be equal to at least thirty percent of the funds made available to States under Section 4 of the NSLP during School Year 1980–81. However, as in the past, a pro rata downward adjustment in the thirty percent matching requirement will be made annually for States with per capita incomes below the national average. These adjustments will be made will in advance of the school year in order to provide States with ample lead time. As a result, States will be better able to plan for and provide the revenue necessary to meet the matching requirement since it is tied to a stable base, i.e. Section 4 funds received in the 1980–81 School Year. However, since the payment of Section 4 funds is contingent upon the fulfillment of this matching requirement, if a State fails to provide adequate matching funds during a school year, that State would not receive its entire Section 4 grant.

Section 804 of Pub. L. 97–35 also exempts from SRM requirements those Section 4 NSLP funds which are disbursed to private schools by SAs that are prohibited by law from disbursing State appropriated funds to such schools. In the past, if there were such prohibitions, the State agency was required to obtain sufficient State revenues to match all Section 4 funds expended by the State but could not distribute any of those revenues to the private schools. As a result, the public schools in such States received proportionately more SRM funds than did public schools in other States while the private schools received no SRM funds. This provision will make the SRM requirement consistent among States. It may also encourage some States to assume administration of the NSLP in non-public schools from FNS since these States may not be required to provide SRM funds for such schools.

Finally, Section 804 of Pub. L. 97–35 also provides for disbursement of SRM funds to the extent the State deems practicable, to schools participating in the NSLP. The intent of this provision is to give the States discretionary authority to target SRM funds to schools in greater need. This is much less restrictive than the previous provison of the National School Lunch Act which required States, to the extent deemed practicable, to disburse SRM funds to schools in the same proportion that each school received NSLP, SBP and Food Service Equipment Assistance funds.

Section 817 of Pub. L. 97–35 limits direct USDA administration of the NSLP, SBP and SMP to eligible nonpublic schools of any State in which the SA is prohibited by law from disbursing *Federal* funds to such schools and to any other nonpublic schools that have been under continuous USDA administration since October 1, 1980. Unless directly administered since October 1, 1980, the Department can no longer administer the NSLP to private schools in *States* where the State agency is not permitted by law to match Section 4 funds for such schools. Thus, these provisions which are effective October 1, 1981, prohibit the Department from assuming the administration of the NSLP, SBP and SMP in States which are currently administering these programs unless State laws are enacted prohibiting the disbursement of Federal funds to private schools. This emergency final rule implements these limitations for all three of these Programs.

Finally, this emergency final rule implements for the NSLP, SBP and SMP, Section 816 of Pub. L. 97–35 which gives the Secretary authority to resolve any and all claims arising under these programs. The authority granted to the Department under this provision should simplify and expedite claims actions within these programs.

Accordingly, Part 210—National School Lunch Program, Part 215—Special Milk Program for Children and Part 220—School Breakfast Program are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAMS

[Amdt. 50]

1. In § 210.3, paragraphs (b) and (b–1) are revised to read as follows:

§ 210.3 Administration.

* * * * *

(b) Within the States, responsibility for the administration of the Program in schools, as defined in § 210.2(o) (1) and (o) (3), shall be in the State educational agency, except that FNSRO shall administer the Program with respect to nonprofit private schools, as defined in § 210.2(o)(1), of any State wherein the State educational agency is not permitted by law to disburse Federal funds paid to it under the Program to such schools; Provided, however, that FNSRO shall also administer the Program in all other nonprofit private schools which have been under continuous FNS administration since October 1, 1980 unless the administration of the Program to such private schools is assumed by a State agency.

(b–1) Within the States, responsibility for the administration of the Program in schools, as defined in § 210.2(o)(2), shall be in the State educational agency or if the State educational agency cannot administer the Program in such schools, such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in such schools; *Provided, however,* That FNSRO shall administer the Program in such schools if the State agency is not permitted by law to disburse Federal funds paid to it under the Program to such schools; and *Provided, further,* That FNSRO shall also administer the Program in all other such schools which have been under continuous FNS administration since October 1, 1980 unless the administration of the Program to such schools is assumed by a State agency.

* * * * *

2. Section 210.6 is amended by revising paragraphs (a) through (h) to read as follows:

§ 210.6 Matching of Funds.

(a) *State revenue matching*—For each school year beginning July 1, 1981, the amount of State revenues (excluding State revenues derived from the operation of the Program) appropriated or used specifically for Program purposes by each State (other than any State revenues expended for salaries and administrative expenses of the Program at the State level) shall not be less than 30 percent of the funds received by such State under Section 4 of the National School Lunch Act during the school year beginning July 1, 1980. *Provided, however,* That if the per capita income of any State is less than the per capita income of the United States, the matching requirements so computed shall be decreased by the percentage by which the State per capita income is below the per capita income of the United States.

(b) *Private school exemption*—No State in which the State agency is prohibited by law from disbursing State appropriated funds to non-public schools shall be required to match general cash-for-food assistance funds expended for meals served in such schools, or to disburse to such schools any of the State revenues required to meet the requirements of paragraph (a) of this section. Furthermore, the requirements of this section do not apply to schools in which the Program is administered by a FNSRO.

(c) *Territorial waiver*—Beginning July 1, 1980, American Samoa and the Northern Mariana Islands shall be exempt from the matching requirements of paragraph (a) of this section if their respective matching requirements are under $100,000.

(d) *Applicable revenues*—The following State revenues, appropriated or used specifically for program purposes which are expended for any school year shall be eligible for meeting the applicable percentage of the matching requirements prescribed in paragraph (a) of this section for that school year: (1) State revenues disbursed by the State agency to School Food Authorities for Program purposes, including revenue disbursed in nonprofit private schools where the State administers the Program in such schools; (2) State revenues made available to School Food Authorities and transferred by the School Food Authorities to the nonprofit school food service accounts or otherwise expended by the School Food Authorities in connection with the nonprofit school food service programs; and (3) State revenues used to finance the costs (other than State salaries or other State administrative costs) of: (i) Local Program supervision; (ii) operating the Program in participating schools; and (iii) the intrastate distribution of foods donated under Part 250 of this chapter to schools participating in the Program.

(e) *Distribution of matching revenues*—All State revenues made available under paragraph (a) of this section shall be disbursed to School Food Authorities participating in the Program, except as provided for under paragraph (b) of this section. Determinations of the practicability of distribution may be made with respect to a class of School Food Authorities as well as with respect to individual School Food Authorities.

(f) *Accounting system*—The State agency shall establish or cause to be established a system whereby all expended State revenues counted in meeting the matching requirements prescribed in paragraph (a) of this section are properly documented and accounted for.

(g) *Reports*—S/A's shall demonstrate that the required amount of State revenues have been expended in connection with the Program during any school year, based upon reports to be submitted by the State agency at the close of such school year.

(h) *Failure to match*—If, in any school year, a State fails to meet the State revenue matching requirement, as prescribed in paragraph (a) of this section, the general cash-for-food assistance funds utilized by the State during that school year shall be subject to recall by and repayment to FNS.

* * * * *

3. In § 210.16, a new paragraph (i) is added as follows:

§ 210.16 Claims against School Food Authorities.

* * * * *

(i) The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

[Amdt. 24]

1. In § 215.3, paragraph (c) is revised to read as follows:

§ 215.3 Administration.

* * * * *

(c) FNSRO shall administer the Program in any school as defined in § 215.2(v)(1) or § 215.2(v)(2) or in any child-care institution as defined in § 215.2(e) wherein the State agency is not permitted by law to disburse Federal funds paid to it under the Program; *Provided, however,* That FNSRO shall also administer the Program in all other schools and child-care institutions which have been under continuous FNS administration since October 1, 1980 unless the administration of such schools and institutions is assumed by a State agency. References in this part to "FNSRO where applicable" are to FNSRO as the agency administering the Program to schools or child-care institutions within certain States.

* * * * *

2. In § 215.12, a new paragraph (h) is added as follows:

§ 215.12 Claims against schools or child-care institutions.

* * * * *

(h) The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claims arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

PART 220—SCHOOL BREAKFAST PROGRAM

[Amdt. 42]

1. In § 220.3, paragraphs (b) and (c) are revised to read as follows:

§ 220.3 Administration.

* * * * *

(b) Within the States, responsibility for the administration of the Program in schools as defined in §§ 220.2 (u)(1) and (u)(3) shall be in the State educational agency, except that FNSRO shall administer the Program with respect to nonprofit private schools as defined in § 220.2(u)(1) of any State wherein the State educational agency is not permitted by law to disburse Federal funds paid to it under the Program; Provided, however, that FNSRO shall also administer the Program in all other nonprofit private schools which have been under continuous FNS administration since October 1, 1980, unless the administration of such private schools is assumed by a State agency.

(c) Within the States, responsibility for the administration of the Program in schools as defined in § 220.2(u)(2) shall be in the State educational agency, or if the State educational agency cannot administer the Program in such schools, such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in such schools: Provided, however, that FNSRO shall administer the Program in such schools if the State agency is not permitted by law to disburse Federal funds paid to it under the Program to such schools; and Provided, further, that FNSRO shall also administer the Program in all other such

schools which have been under continuous FNS administration since October 1, 1980, unless the administration of such schools is assumed by a State agency.

* * * * *

2. In § 220.14, a new paragraph (i) is added as follows:

§ 220.14 Claims against School Food Authorities.

* * * * *

(i) The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

(Catalog of Federal Domestic Assistance Nos. 10.553, 10.555, and 10.556)

(Secs. 804, 816 and 817, Pub. L. 97-35, 95 Stat. 521-535, 42 U.S.C. 1753, 1756, 1759, 1771 and 1785)

Signed on: March 26, 1982.

Samuel J. Cornelius,

Administrator, Food and Nutrition Service.

[FR Doc. 82-8681 Filed 4-1-82; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Parts 210, 215, 220, 230, 235, and 245

[Amdts., 49, 23, 41, 7, 6 and 23, Respectively]

Termination of Food Service Equipment Assistance Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: Based on provisions of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), this final rule amends the school lunch, school breakfast, special milk, and food service equipment assistance programs' regulations, and the regulations on State administrative expense funds and on determining eligibility for free and reduced price meals and free milk. This final rule terminates the Food Service Equipment Assistance Program (FSEA) because Public Law 97-35 repeals the authorization for the program. A technical amendment to the milk program regulations is also included.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, Food and Nutrition Service, USDA, Alexandria, VA 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3507), the reporting or recordkeeping provisions that are included in this final rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

Classification

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more nor will it have a major increase in costs or prices for individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

The rule has also been reviewed with regard to the requirements of Public Law 96-354. The Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

The Administrator has determined pursuant to 5 U.S.C. 553 (b) and (d) that good cause exists for making this rule effective earlier than 30 days after publication because Public Law 97-35 mandates that this rule be effective on October 1, 1981. Solicitation of public comments is unnecessary and contrary to the public interest because the provisions of this rule are nondiscretionary.

Background

Section 5 of the Child Nutrition Act of 1966, as amended, authorized the payment of funds to States to assist them in supplying schools with low income students with equipment other than real property, for the storage, preparation, transportation, and serving of food to enable them to establish, maintain, and expand school food service programs.

The Department has assisted as many eligible schools as possible within the limited funds available. Schools approved for such funds are required to participate in the lunch program or breakfast program, or both.

The need for the FSEA Program has diminished over the past few years alleviating the need for continuing Federal funding. Sections 805 and 819 of Pub. L. 97-35 repeal the authority for the FSEA Program resulting in the termination of the Program effective on October 1, 1981.

In the near future the Food and Nutrition Service will issue guidance on program closeout procedures for Fiscal Year 1981 and all previous fiscal years.

Technical Amendment to the Special Milk Program

On October 20, 1981 the Department published Amendment 22 to the Special Milk Program (46 FR 51363). That amendment contained two technical errors which are corrected in this rule. In § 215.8 Reimbursement payments, paragraph (a) should have been removed because it is now obsolete. As required by Section 807 of Pub. L. 97-35, only schools which do not participate in another federally funded food service program authorized by the Child Nutrition Act of 1966, or the National School Lunch Act may participate in the Special Milk Program. Amendment 22 stated that in § 215.8 paragraph (b)(1) the second sentence beginning with the word "However" and ending with the word "institution" was removed. This sentence was inadvertently removed. This sentence is reinstated in this rule.

Accordingly, Parts 210, 215, 220, 230, 235, and 245 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

§ 210.17 [Amended]

In § 210.17 *Management evaluations and audits,* paragraph (a)(4) is amended by removing the reference "and Food Service Equipment Assistance Program,".

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. In § 215.8 *Reimbursement payments,* paragraph (a) is removed and reserved; and at the end of paragraph (b)(1), a second sentence is added to read as follows.

§ 215.8 Reimbursement payments.

(a) [Reserved]

(b)(1) * * * However, in no event shall the reimbursement for each half-pint (236 ml.) of milk served to children exceed the cost of the milk to the school or child care institution.

* * * * *

§ 215.13 [Amended]

2. In § 215.13 *Management evaluations and audits*, paragraph (a)(4) is amended by removing the reference "and Food Service Equipment Assistance Program,".

PART 220—SCHOOL BREAKFAST PROGRAM

§ 220.15 [Amended]

In § 220.15 *Management evaluations and audits*, paragraph (a)(4) is amended by removing the reference "and Food Service Equipment Assistance Programs,".

PART 230—FOOD SERVICE EQUIPMENT ASSISTANCE PROGRAM [REMOVED]

Part 230—Food Service Equipment Assistance Program is removed in its entirety.

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

§ 235.7 [Amended]

1. In § 235.7 *Records and Reports*, paragraph (c) is amended by removing the reference "and Food Service Equipment Assistance Program".

§ 235.11 [Amended]

2. In § 235.11 *Other provisions*, paragraph (a) is amended by removing the reference "and Food Service Equipment Assistance Program".

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

§ 245.9 [Amended]

In § 245.9 *Special Assistance Certification and Reimbursement Alternatives*, paragraph (b)(1) is amended by removing the reference "230".

(Catalogue of Federal Domestic Assistance Nos. 10.555, 10.556, 10.553, 10.560, and 10.554, respectively.)

(Secs. 805 and 819, Pub. L. 97-35, Stat. 521-535, 42 U.S.C. 1773)

Dated: March 26, 1982.

Samuel J. Cornelius,

Administrator, Food and Nutrition Service.

[FR Doc. 82-8930 Filed 4-1-82; 8:45 am]

BILLING CODE 3410-30-M

7 CFR Part 253

[Amdt. No. 1]

Food Distribution Program on Indian Reservations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule:

SUMMARY: This rule applies only to the Food Distribution Program on Indian Reservations and consists of technical amendments to Part 283 which was published on June 19, 1979 (44 FR 35904-35942). The amendments correct oversights in the original rulemaking or provide interpretations of the intent of the June 19, 1979 rules. This rule also redesignates the contents of Part 283 in its entirety and renumbers them as Part 253.

EFFECTIVE DATE: June 1, 1982.

FOR FURTHER INFORMATION CONTACT: Gwena Kay Tibbits, Chief, Program Monitoring and Policy Development Branch, Food Distribution Division, U.S. Department of Agriculture, Alexandria, VA 22302, (703) 756-3660.

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

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (Sections 253.4, 253.5, 253.9) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35.

This action has been reviewed under Executive Order No. 12291 and Secretary's Memorandum No. 1512-1 and has been classified "not significant." The Department has also determined that the action meets none of the three criteria listed in the definition of "major rule" in Executive Order 12291 on Federal Regulations.

Further, the Administrator of the Food and Nutrition Service (FNS) has determined that this action will not have a significant economic impact on a substantial number of small entities. The primary purpose of these proposed rules is to clarify the June 19, 1979 (44 FR 35904-35942) rulemaking (Part 283) for proper application by Regional Offices and State agencies. These requirements will cause no significant increases in administrative costs of recipient agencies.

The Food Distribution Program on Indian Reservations is a program through which USDA provides donated foods (commodities) to eligible households living on Indian reservations or to eligible Indian tribal households living near a reservation. USDA acquires commodities for distribution under the following provisions: Section 416 of the Agricultural Act of 1949; Section 32 of Pub. L. 320; Section 709 of the Food and Agricultural Act of 1973; Section 4(a) of the Agriculture and Consumer Protection Act of 1973; and Section 1304 of the Food and Agricultural Act of 1977. Distribution of the commodities can be effected either through a State distributing agency or an Indian Tribal Organization (ITO). An ITO may operate a Food Distribution Program on all or part of a reservation once the Department determines the ITO capable of effective and efficient administration. Funds for costs incurred administering the program are provided, in part, by the Department. An ITO in-kind contribution often absorbs the remaining administrative costs.

Household eligibility for receiving donated foods is based on income level, family size and other economic factors. Eligible households receive monthly food packages, which consist of a variety of commodities. The food package provides Indian households with a nutritious diet and offers an acceptable alternative to Food Stamp Program benefits.

The Department issued regulations on June 19, 1979 for the overall operation of the Food Distribution Program on Indian Reservations. Since that time, several issues relating to the regulations have arisen. Proposed rules to amend the June 19 rules were published in the July 11, 1980 **Federal Register**, (45 FR 46809-46811) and comments were solicited. The Department received only fourteen comment letters in response to the proposed rule changes. Therefore, the Department felt that there were few objections to the amendments and is finalizing the rules with few changes from the proposed rules.

Numbering Change

The Food Distribution Program on Indian Reservations was included as a provision of the Food Stamp Act of 1977. Consequently, the 280 CFR unit numbers reserved for Food Stamp regulations were assigned to the Food Distribution Program on Indian Reservations. Since then, the Indian Food Distribution Program was reassigned within the Department, and is now part of the Food Distribution Division. Therefore, the content of Part 283 is redesignated in its entirety and renumbered as Part 253.

Areas Near the Reservation

Regulations published in the June 19, 1979 **Federal Register** allowed for the issuance of commodities to Indian tribal households which reside near the

reservation (Part 253.4). This issuance is consistent with the delivery of benefits under Bureau of Indian Affairs programs. It was presumed by the Department that the issue of "near" the reservation would become self-defining by the household based on the distance to the reservation, the availability of the Food Stamp Program and availability of commercial food stores. However, instances have arisen since the June 19, 1979 rules were ITO's have requested permission to serve Indian tribal households living in urban places as far as 200 miles of more from the reservation. It was our intent to be consistent with other Federal programs providing off-reservation services, but not to replace the Food Stamp Program, particularly in urban places.

The July 11, 1980 proposed amendment requires that if an ITO wishes to serve areas near the reservation with the Food Distribution Program, then it must describe the geographic boundaries of the near areas. Three commenters on the July 11 proposed rules stated that location should not be the determining factor for the provision of services under this program. They said that those eligible tribal members who regularly return to the reservation for services should be allowed to obtain all services, including food distribution, upon their return to the reservation.

It is the Department's position that clearly defined service areas are needed by the administering agencies for the effective provision and monitoring of services. Without defined boundaries, it is difficult to determine eligibility of participants, and to provide adequate services for these participants.

It is also difficult to maintain effective communication and cooperation between various agencies providing benefits to participants without well-defined service areas. Delineation of these areas provides each agency with distinct jurisdictional regions for which they are responsible. Exchange of participation data can then be effected with greater ease and reliability when areas of responsibility have been so defined. Therefore, the Department is requiring that the ITO delineate and describe the geographic boundaries of areas near the reservation it wishes to serve with a Food Distribution Program. Also, any urban places outside the reservation boundaries will be excluded from the Program service area. However, an ITO or State agency can request the Department to change this limitation with justification. Adjustments can be made on a case-by-case basis.

An urban place is a town or city with a population of 10,000 or more. This definition was selected as the result of research on the definitions of urban now used by various government agencies. The Department felt that the use of urban place to delineate Food Distribution Service areas was reasonable and consistent with other Federal programs.

Part 253.5 (former designation, § 283.5) of the June 19, 1979 regulations called for periodic consultation between the State agency and the ITO, if the State agency was not an ITO. The purpose of the consultation was to review the current status and applicability of provisions in the Plan of Operation and the possible need to submit amendments to FNS for approval. The Department proposed in the July 11, 1980 rules that this requirement for periodic consultation be deleted.

Two commenters favored the retention of this requirement. They felt this periodic consultation encourages a continuous working relationship between two parties. A provision for annual consultation remains in the regulations. This consultation is required in the preparation of annual State Plans of Operation. The number of communications or meetings between the two parties are not limited. The Department believes that the provision for annual consultation effects sufficient communication between the State agency and the ITO, and that a further required meeting is an unnecessary regulatory burden. Consequently, the Department is deleting the requirement for periodic consultation, yet maintaining the requirement for annual consultation, between the State agency and the ITO.

Certification and Eligibility of Households

The following regulation changes received few comments from interested parties. Therefore, the Department believes they are acceptable and is making them final as they were originally proposed in the July 11, 1980 regulations.

The examples provided in the June 19, 1979 regulations under the vendor payments provision (formerly § 283.6, now § 253.6) are eliminated. The examples appeared to be a source of confusion for program administrators, and were never intended to limit the situations under which vendor payments could be excluded as income.

In response to concerns expressed by Food Distribution Program administrators, we are allowing the use of emergency authorized representatives in case of household illness or other unforeseen circumstances that prevent the household from otherwise attaining commodities for which it is eligible. (Section 253.7, formerly § 283.7)

Newly designated § 253.7 (formerly § 283.7) is amended to no longer require the notice of adverse action form in instances where households are switching from the Food Distribution Program to the Food Stamp Program. The adverse action form was not intended to cover program switchovers, particularly because the amount of time left in the month of termination may not allow enough time to issue this form. The June 19, 1979 regulations did not specifically state the purpose of the adverse action form, and there was confusion on the part of Program administrators over the applicability of the notice of adverse action for households switching programs.

The June 19, 1979 regulations (§ 253.5, formerly § 283.5) require the State agency responsible for the Food Distribution Program to complete an annual budget submission which includes the five parts of Form AD-623. Part IV of this form calls for the submission of a program narrative. The information in this narrative is contained in the State Plan of Operation. The preparation and submission of a State Plan on a yearly basis has been an integral part of the Indian Food Distribution Program from its beginning. Section 283.5 of the regulations requests the submission of a State Plan without stipulating the frequency of submission. In order to clarify this point, newly designated § 253.5 is revised to specifically require the *annual* submission of a State Plan of Operation.

Section 253.9(h)(3), previously § 283.9(h)(3), which requires the SF-272 be submitted to FNS, will be revised to delete this reference. The submission of the SF-272 is required by Attachment H of OMB Circular A-102 to report on cash transactions. The Circular allows, however, that Federal agencies may waive the requirement for submission of the Report of Federal Cash Transactions when monthly advances do not exceed $10,000 per quarter, provided that the advances are monitored through other forms contained in the Attachment or the grantee's accounting controls are adequate to minimize excessive Federal advances. In fact, agencies which use the Treasury Check system (rather than a Letter of Credit) by definition have advances of less than $10,000 per month ($120,000 per year). Further, FNS regulations (253.9(h)(2)) require that agencies receiving funds from FNS must report their financial status quarterly on form SF-269 "Financial Status Report."

Since agencies using a Treasury Check system will have advances less than $10,000 monthly, and must report expenditures on the form SF–269, broken out by cost category, these agencies do not have to report using SF–272, "Federal Cash Transactions Report." Therefore, § 253.9(h)(3) will be deleted from the June 19, 1979 regulations. This change will benefit State agencies or ITO's by reducing their reporting burden.

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

Accordingly, 7 CFR Part 283, Subchapter C, is redesignated as 7 CFR Part 253, Subchapter B, and is amended as follows:

§ 283.1—283.9 [Redesignated as §§ 253.1—253.9]

1. Sections 283.1 through 283.9 are redesignated as §§ 253.1 through 253.9 with the table of sections reading as follows:

Sec.
253.1 General purpose and scope.
253.2 Definitions.
253.3 Availability of commodities.
253.4 Administration.
253.5 State agency requirements.
253.6 Eligibility of households.
253.7 Certification of households.
253.8 Commodity control, storage and distribution.
253.9 Administrative funds for State agencies.

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027)

2. In newly designated § 253.2, paragraph (i) is added, and reads as follows:

§ 253.2 Definitions.

* * * * *

(i) "Urban place" means a town or city with a population of 10,000 or more.

3. In newly designated § 253.4, paragraph (d) is revised to read as follows:

§ 253.4 Administration.

* * * * *

(d) *Application by an ITO.* Any ITO which desires to participate in the Food Distribution Program shall file an application with the FNS Regional Office serving the State or States in which the reservation is located. The ITO shall specify if it is requesting the Food Distribution Program alone or concurrently with the Food Stamp Program. The ITO shall also specify whether it wants either or both programs on all or part of the reservation, and if on part, shall describe the geographic boundaries of the relevant part(s). Additionally, if the ITO wishes to serve areas near the reservation, the ITO shall describe the geographic boundaries of the near area(s) for FNS review and approval. Any urban place inside a reservation can be served by the Food Distribution Program. Any urban place outside reservation boundaries may not be served. However, an ITO or State agency can request the Department to change those limitations with justification. The ITO application shall also provide other information requested by FNS, including but not limited to, that the ITO serves an established reservation or a reservation otherwise qualified as described in paragraph (c). Properly addressed applications shall be acknowledged by the FNS Regional Office in writing within five working days of receipt.

* * * * *

4. In newly designated § 253.5, the introductory text of paragraph (a)(1) is revised to read as follows; and paragraph (a)(1)(iii) is removed.

§ 253.5 State agency requirements.

(a) *Plan of Operation.* (1) The State agency which assumes responsibility for the Food Distribution Program shall submit an annual plan of operation for approval by FNS. Approval of the annual plan by FNS shall be a prerequisite to the donation of commodities available for use by households under § 253.9 of this part. No amendment to the plan of operation of any State agency shall be effective without prior approval of FNS, and FNS may require amendment of any plan as a condition of continuing approval. If the agency is not an ITO, the appropriate agency of the State government shall also:

* * * * *

5. In newly designated § 253.7, paragraphs (a)(10)(ii) and (b)(3)(iii)(A) are revised to read as follows:

§ 253.7 Certification of households.

(a) * * *
(10) * * *

(ii) *Obtaining commodities.* An authorized representative of the household may be designated to obtain commodities. Designation shall be made at the time the application is completed except that the household may be permitted to designate an emergency authorized representative in the event that illness or other unforeseen circumstances prevent the household from otherwise obtaining commodities. Designation of an emergency authorized representative must be made in writing by a responsible member of the household. State agencies may distribute commodities to household members or authorized representatives presenting an identification card or other appropriate identification that satisfactorily identifies the member obtaining commodities.

* * * * *

(b) * * *
(3) * * *
(iii) * * *

(A) Prior to any action to reduce or terminate a household's benefits within the certification period, except for households voluntarily switching program participation from the Food Distribution Program to the Food Stamp Program, State agencies shall provide the household timely and adequate advance notice before the adverse action is taken.

* * * * *

§ 253.9 [Amended]

6. In newly designated § 253.9, paragraph (h)(3) is removed. Paragraph (h)(4) is redesignated as (h)(3).

* * * * *

Dated: March 26, 1982.

Samuel J. Cornelius,

Administrator, Food and Nutrition Service.

[FR Doc. 82–8680 Filed 4–1–82; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 353]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period April 4–10, 1982. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: April 4, 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 is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California

and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 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 30, 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 week. The committee reports the demand for lemons is good.

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 is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of subjects in 7 CFR Part 910: Agricultural Marketing Service, Marketing Agreements and Orders, California, Arizona, Lemons.

Section 910.653 is added as follows:

§ 910.653 Lemon Regulation 353.

The quantity of lemons grown in California and Arizona which may be handled during the period April 4, 1982, through April 10, 1982, is established at 260,000 cartons.

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

Dated: April 1, 1982.

D. S. Kuryloski,

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

[FR Doc. 82–9110 Filed 4–1–82; 11:36 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

Direct Investment Reporting Forms; Solicitation of Written Comments on Proposed Rule Changes

Correction

In FR Doc. 82–8014, appearing at page 13138 in the issue of Monday, March 29, 1982, make the following correction:

In the third column of page 13139, the sentence designated as belonging to § 806.15(i)(4) should have been designated as belonging to § 806.15(j)(4).

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 81N–0301]

D&C Green No. 6; Listing as a Color Additive in Externally Applied Drugs and Cosmetics

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is "permanently" listing D&C Green No. 6 for use in externally applied drugs and cosmetics. This rule will remove all uses of this color additive in externally applied drugs and cosmetics from the provisional list on May 4, 1982. By a rule published in the **Federal Register** of March 27, 1981 (46 FR 18958), FDA removed all ingested uses of D&C Green No. 6 from the provisional list, but it did not address the disposition of existing stocks of the color. Therefore, this document also provides for the depletion of existing stocks of D&C Green No. 6 for all uses involving ingestion of the color additive.

DATES: Effective May 4, 1982; objections by May 3, 1982; all affected products initially introduced or initially delivered for introduction into interstate commerce are required to fully comply by May 3, 1983.

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

FOR FURTHER INFORMATION CONTACT:

For general information: Garnett R. Higginbotham, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690, and

For information relating to the safety evaluation of D&C Green No. 6: Terry C. Troxell, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Color Additive Amendments of 1960 (the amendments) require FDA premarket clearance of any color additive that is intended to be used or that is represented for use in or on food, drugs, certain medical devices, cosmetics, or the human body. Under the amendments, a use of a color additive may be approved and listed if there are sufficient data establishing that the color additive is safe for its intended use.

Recognizing that many colors were already in use at the time it enacted the amendments, Congress established transitional provisions to allow for the provisional listing and continued use of color additives for a period of time necessary to complete scientific investigations needed to evaluate their safety under the standards prescribed in the amendments.

Section 81.1 of the color additive regulations (21 CFR 81.1) identifies those color additives that are provisionally listed under section 203(b) of the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and sets forth the closing date for each color additive. A closing date is the last day upon which a provisionally listed color additive can be used legally, absent an approval of a color additive petition and its listing. (See section 203(a)(1) of the Transitional Provisions.)

The color additive D&C Green No. 6 has been provisionally listed for use in ingested and externally applied drugs and cosmetics since the enactment of the amendments. During that time, a series of toxicological studies have been performed on this color additive. Based upon the evaluation of the results of these studies and other pertinent data, the agency concludes that D&C Green No. 6 is safe for use in externally applied drugs and cosmetics. FDA is therefore listing D&C Green No. 6 for such uses.

II. Regulatory History of D&C Green No. 6

D&C Green No. 6 was provisionally listed as a color additive for use in drugs

and cosmetics in 1960 (25 FR 9759; October 12, 1960).

FDA published a notice in the Federal Register of November 20, 1968 (33 FR 17205) that a petition (CAP 8C0085) for the listing of D&C Green No. 6 as a color additive for use in drugs and cosmetics had been filed by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry, and Fragrance Association (CTFA)), the Pharmaceutical Manufacturers Association (PMA), and the Certified Color Industry Committee (now the Certified Color Manufacturers Association, Inc.), c/o Hazleton Laboratories, Inc., 9200 Leesburg Turnpike, Vienna, VA 22180. The petition was filed pursuant to section 706 of the act (21 U.S.C. 376). A subsequent notice published in the Federal Register of March 5, 1976 (41 FR 9584) amended the notice of filing of this petition to include the additional use of D&C Green No. 6 in cosmetics intended for use in the area of the eye.

Regulations published in the Federal Register of February 4, 1977 (42 FR 6991), required new chronic toxicity studies for D&C Green No. 6 as a condition of its continued provisional listing for ingested uses. Additional studies were not required for use in externally applied drugs and cosmetics. The closing date for the provisional listing of the color additive for both ingested and external uses was postponed until January 31, 1981, for completion of the studies. In a letter dated August 21, 1978, the petitioners advised FDA that, for business reasons only, CTFA would not initiate the chronic feeding studies required under 21 CFR 81.27(d) for listing of D&C Green No. 6 for ingested uses and requested that the agency discontinue consideration of such uses. In the absence of appropriate data from chronic feeding studies, the agency intended to permit the provisional listing of D&C Green No. 6 for all uses involving ingestion of the color to expire on January 31, 1981.

Although the agency has intended to issue a rule on D&C Green No. 6 before expiration of the January 31, 1981 closing date, the order did not publish before President Reagan signed his Executive Memorandum of January 29, 1981, which directed agencies to postpone for 60 days all pending regulations, with certain exemptions that were inapplicable to the D&C Green No. 6 rule. The rule was published as soon as possible after the end of the postponement, in the Federal Register of March 27, 1981 (46 FR 18958). In that rule the agency removed all ingested uses of D&C Green No. 6 from the provisional list. In the same rule, the agency established a new closing date of July 27, 1981, for external uses of D&C Green No. 6. The agency further extended the provisional listing of this color additive to September 29, 1981, by a regulation published in the Federal Register of July 28, 1981 (46 FR 38502); to December 1, 1981, by a regulation published in the Federal Register of September 29, 1981 (46 FR 47535); to January 30, 1982, by a regulation published in the Federal Register of December 4, 1981 (46 FR 59235); and to March 31, 1982 by a regulation published in the Federal Register of February 2, 1982 (47 FR 4677). The provisional listing in § 81.1(b) of D&C Green No. 6 for use in externally applied drugs and cosmetics (other than in the area of the eye), which is extended to June 29, 1982 by a regulation published elsewhere in this issue of the Federal Register, will be deleted when this order becomes effective on May 4, 1982, unless this order is stayed by the timely filing of objections.

FDA notified CTFA in a letter dated October 24, 1978, that consideration of the petitioned use of D&C Green No. 6 in cosmetics intended for use in the area of the eye would require the submission and evaluation of data adequate to support such use. The required data for eye area use have not been submitted to the agency. Therefore, that portion of the petition that was amended to include the listing of D&C Green No. 6 for eye area usage is now considered by the agency to be withdrawn without prejudice in accordance with the provisions of § 71.4 (21 CFR 71.4), which requires that such requested information be submitted within 180 days after filing of the petition. Use of D&C Green No. 6 in the area of the eye has never been covered by the provisional listing. Future consideration of the listing of D&C Green No. 6 for eye area use will require the submission of a new color additive petition for that use.

In 1962, FDA listed D&C Green No. 6 (21 CFR 74.1206) for coloring polyethylene terephthalate surgical sutures, including sutures for ophthalmic use (27 FR 12828; December 28, 1962). FDA issued this regulation in response to color additive petition CAP 2C0004. FDA extended this use of D&C Green No. 6 to polyglycolic surgical sutures in 1975 (40 FR 18167; April 25, 1975, as a result of a second petition (CAP 2C0104).

III. Description of D&C Green No. 6

D&C Green No. 6 is principally 1,4-bis[(4-methylphenyl)amino]-9,10-anthracenedione (CAS Reg. No. 128-80-3).[1] This material is formed by chemically reacting 1 molecule of quinizarin with 2 molecules of *p*-toluidine. Because no chemical reaction can be controlled to react all the starting materials and produce only the desired product, the resulting reaction mixture will contain some of the unreacted quinizarin and *p*-toluidine. This fact is significant because Weisburger, et al., have demonstrated that *p*-toluidine is a carcinogen in mice.[2]

Residual amounts of reactants, such as *p*-toluidine and related manufacturing aids, are commonly found among the constituents of many color additives. The presence of such constituents is not unique to color additives, however. Numerous contaminants are unavoidably present in all chemical products, even in highly purified reagent grade chemicals.

Until recently there was no firm evidence that *p*-toluidine actually is present in D&C No. 6. FDA did not detect *p*-toluidine in D&C Green No. 6, using a gravity elution method, an

[1] This name is the preferred designation for D&C Green No. 6 according to the Chemical Abstracts systematic nomenclature—9th collective period, 1972–1976. FDA is amending § 74.1206(a) to conform to this designation. Because this change is merely technical, the agency finds that notice and public procedure is unnecessary (5 U.S.C. 553(b)(B)).

[2] In a 1978 paper, Weisburger, et al., (Ref. 1) reported on the chronic bioassay testing of *p*-toluidine, among 20 other aromatic amines and related compounds, for potential carcinogenicity. These studies were conducted under contract from the National Cancer Institute. *p*-Toluidine was orally administered to male Charles River CD (Sprague-Dawley derived) rats and to male and female Charles River CD-1 (HaM/ICR derived) mice (25 animals/sex/dose). The treatment levels employed were the maximum tolerated dose (MTD) and ½ MTD and were administered for 18 months followed by either a 3-month (mice) or 6-month (rats) delay in terminal sacrifice to allow time for expression of latent tumors. The dietary treatment levels were: 1. Rats—MTD = 2,000 ppm (parts per million), ½ MTD = 1,000 ppm and 2. Mice—MTD = 2,000 ppm for 6 months and 1,000 ppm for the next 12 months. ½ MTD = 1,000 ppm for 6 months and 500 ppm for the next 12 months. The treated rats showed no increase in the incidence of tumors at any site examined. Male mice at both dose levels exhibited a statistically significant increase in hepatomas (liver tumors) as compared to untreated control groups. Female mice at the high dose level (MTD) showed a marginally significant increase of hepatomas. Male mice showed a much greater sensitivity to hepatoma induction than female mice.

Based on the conditions and results of this study, *p*-toluidine can be considered to be an animal carcinogen. Compared to other known animal carcinogens, its potency for inducing tumors is relatively weak, as shown by high dose levels required to induce tumors, and by the fact that tumor incidence was greatly enhanced in only 1 tissue type in 1 of the 3 sex/species groups tested.

The Cancer Assessment Committee of FDA's Bureau of Foods reviewed this study and other relevant data available in the literature pertaining to the potential carcinogenicity of *p*-toluidine. The Committee concluded that "the oral administration of *p*-toluidine induces liver tumors in male and, perhaps, female mice". The committee further concluded that an estimate of the upper limit of human cancer risk from exposure to *p*-toluidine can be made based on the Weisburger, et al., study.

unofficial unpublished procedure. However, in 1979, an FDA chemist published a paper that reported the possible presence of residual *p*-toluidine in D&C Green No. 6. This report was based on the use of a high pressure liquid chromatography (HPLC) procedure developed at FDA (Ref. 2). As a result of this paper and of the concern about the carcinogenic potential of *p*-toluidine, the agency asked CTFA to develop an analytical method that would reliably measure *p*-toluidine in the color additive.

In response to the FDA's request, CTFA submitted a report prepared by Shiseido Laboratories (Yokohama, Japan) on the determination of residual *p*-toluidine in D&C Green No. 6. Shiseido's method uses an HPLC separation procedure and either ultraviolet absorption (UV) or fluorescence detection. The reported limits of detection for this method are 100 ppm with UV detection and 10 ppm with fluorescence detection. The reproducibility and recovery data that are provided for D&C Green No. 6 samples containing 500 ppm and 650 ppm *p*-toluidine are very good. The results on the sample containing 650 ppm correlate well with the results in an independent preliminary report of a measurement on a D&C Green No. 6 sample from the same manufacturing lot by an HPLC method developed at Clairol Research Laboratories. Therefore, FDA considers this method to be a valid analytical procedure for determining residual *p*-toluidine levels in D&C Green No. 6 at least to 500 ppm (0.05 percent) and probably lower, especially using fluorescence detection.

Shiseido's HPLC method was used to analyze the residual *p*-toluidine levels in nine lots of D&C Green No. 6.[3] The *p*-toluidine levels reported by Shiseido for these samples of D&C Green No. 6 range from 119 ppm to 653 ppm. The average value is 393 ppm (0.0393 percent).

The residual *p*-toluidine does not contribute any color to D&C Green No. 6, nor does it impart any color to drugs, cosmetics, or the human body. Consequently, FDA concludes that, although a small amount of *p*-toluidine is added to externally applied drugs and cosmetics with the addition of D&C Green No. 6, this chemical is not a color additive within the meaning of 21 U.S.C. 321(t). Instead, *p*-toluidine is merely an impurity in D&C Green No. 6.

[3] Five lots were manufactured by H. Kohnstamm and four lots were manufactured by a Japanese company. CTFA reported that the H. Kohnstamm lots covered about 5 years production of D&C Green No. 6. H. Kohnstamm is currently the only American producer of D&C Green No. 6.

IV. Use of D&C Green No. 6.

The solubility of a color additive is a key factor in determining the uses for which the additive is suitable. D&C Green No. 6 is insoluable in water, slightly soluble in ethyl alcohol, and moderately soluble (less then 1 percent) in stearic acid, mineral oil, and petroleum jelly (Ref. 3). Consequently, D&C Green No. 6 is used predominantly for coloring oil- and alcohol-based products.

FDA has been able to monitor the use of D&C Green No. 6 because the agency requires that batches of this color be certified, and because some cosmetic manufacturers submit Cosmetic Product Ingredient Statements (formulations) to the agency under the Voluntary Cosmetic Regulatory Program (21 CFR 720).

Between 1971 and 1980, FDA certified an average of 1,790 pounds of D&C Green No. 6 per year. However, use of D&C Green No. 6 fell in the second half of the decade. The average certified poundage was 1,620 per year between 1976 and 1980. This poundage is extremely small. FDA annually certifies approximately 7 million pounds of all color additives (and their lakes), including approximately 480,000 pounds of D&C color additives (and their lakes).

The Voluntary Cosmetic Regulatory Program provides information on the specific types of products in which D&C Green No. 6 is used. As of August 1978, according to the Cosmetic Product Ingredient Statements, 184 products contained D&C Green No. 6. Of these, 34 percent were hair preparations (noncoloring) (primarily hair tonics/grooming aids and hair conditioners); 31 percent were fragrance preparations (e.g., perfumes and colognes); and 18 percent were bath preparations (e.g., bath oils). The other 17 percent included a wide range of products but did not include any baby products, oral hygiene products, lipsticks, or eye makeups.

The level of use of the color additive in most products fell in the lowest use category, 0.1 percent or less. Because D&C Green No. 6 is an intense color, most applications would employ far less than 0.1 percent (1,000 ppm) in the finished article. An approximate value for the use level of D&C Green No. 6 in cosmetic products can be calculated from its absorption properties (absorptivity and absorption spectrum) (Ref. 4). Based on D&C Green No. 6's absporption properties, a fairly strong coloring effect would be obtained at a 50 ppm use level in the products noted previously and packaged in typical size containers. Depending on considerations such as container shape and desired cosmetic coloration when poured from its container, the use level might be several times greater than or a small fraction of 50 ppm.

One of the major users of D&C Green No. 6 does not participate in the Voluntary Cosmetic Regulatory Program. FDA recently received information from this company, however, and this information supports the reasonableness of the 50 ppm use level in cosmetic products. This manufacturer reports that D&C Green No. 6 is used at levels ranging from 10 ppm to 50 ppm in its line of hair dressings and conditioners.

The 50 ppm use level also is consistent with the results of a survey CTFA conducted of its member firms in May 1960 on the use of color additives in cosmetic products. CTFA found that D&C Green No. 6 was used in 10 of 18 product groups. Based on responses to its questionnaire, CTFA tabulated the maximum reported use of D&C Green No. 6 (as pure dye) in each product group. The maximum use values ranged between 1 and 268 ppm, with the exception of 2,200 ppm for nail lacquer. The maximum use values reported in product groups similar to those cited above from FDA's Voluntary Cosmetic Regulatory Program were 74 ppm for the group containing hair grooming aids, 268 ppm for the group containing hair conditioners, 52 ppm for fragrance preparations, and 6 ppm for bath preparations. Thus, these values are within a reasonable range around FDA's 50 ppm estimate.

The use of D&C Green No. 6 in topical drug products appears to be minor compared to its use in externally applied cosmetics. In the 1968 petition, PMA reported that D&C Green No. 6 was used in only one external ethical drug product. Therefore, on the basis of the information available to FDA, prescription drug products do not represent a significant use of D&C Green No. 6.

V. Evaluation of the Safety of D&C Green No. 6 For External Drug and Cosmetic Use

A. Statutory Safety Requirements

Under section 706(b)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376(b)(4)), the so-called "general safety clause" for color additives, a color additive cannot be listed for a particular use unless the data presented to FDA establish that the color is safe for that use. Although what is meant by "safe" is not explained in the general safety clause, the legislative history makes clear that this word is to

have the same meaning for color additives as for food additives. (See H. Rep. No. 1761, "Color Additive Amendments of 1960," Committee on Interstate and Foreign Commerce, 86th Cong., 2d Sess. 11 (1960).) The Senate report on the Food Additives Amendment of 1958 establishes that Congress did not intend the term "safe" to require absolute proof of safety. The Senate report states:

> The concept of safety used in this legislation involves the question of whether a substance is hazardous to the health of man or animal. Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance.
>
> This was emphasized particularly by the scientific panel which testified before the subcommittee. The scientists pointed out that it is impossible in the present state of scientific knowledge to establish with complete certainty the absolute harmlessness of any chemical substance.

S. Rep. No. 2422, "Food Additives Amendment of 1958," Committee on Labor and Public Welfare, 85th Cong., 2d Sess. 6 (1958).

FDA has incorporated this concept of safety into its color additive regulations. Under 21 CFR 70.3(i), a color additive is "safe" if "there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive." Therefore, the general safety clause prohibits approval of a color additive if doubts about the safety of the additive for a particular use are not resolved to an acceptable level in the minds of competent scientists.

The general safety clause is buttressed by the anticancer or Delaney Clause, section 706(b)(5)(B) of the act (21 U.S.C. 376(b)(5)(B)). This provision establishes somewhat different standards for ingested and noningested uses. It provides that a noningested color additive like D&C Green No. 6 shall be deemed to be unsafe "if, after tests which are appropriate for the evaluation of additives for such use, or after other relevant exposure of man or animal to such additive, it is found by the Secretary to induce cancer in man or animal" (21 U.S.C. 376(b)(5)(B)(ii)).

B. Prior Action by FDA

In the past, FDA has terminated the provisional listing of several color additives that contained or were suspected to contain a carcinogenic impurity or constituent. FDA terminated the provisional listing of carbon black (41 FR 41857; September 23, 1976) and graphite (42 FR 60734; November 29, 1977) because the agency suspected that these colors contained polynuclear aromatic hydrocarbons (PNA's). The agency removed Ext. D&C Yellow No. 1 (42 FR 62478; December 13, 1977) from the provisional list because of evidence that this color could contain low levels of 4-aminobiphenyl and benzidine as impurities, and it terminated the listing of D&C Red Nos. 10, 11, 12, and 13 (42 FR 62475; December 13, 1977) because of the possibility that they contain β-naphthylamine. In each of these actions, FDA was unable to resolve questions about the safety of use of these additives that were created by the presence of the carcinogenic impurity or constituent. Consequently, the agency acted under section 203(d)(1)(E) of the Transitional Provisions to remove the colors from the provisional list.[4]

However, FDA no longer believes that it must refuse to list a color additive simply because it contains or is suspected to contain a carcinogenic constituent or impurity. This conclusion is supported by the 1979 decision by the United States Court of Appeals for the District of Columbia Circuit in *Monsanto v. Kennedy*, 613 F.2d 947 (D.C. Cir. 1979). In discussing whether a substance that migrates into food is a food additive, that court endorsed the concept that there is "administrative discretion, inherent in the statutory scheme, to deal appropriately with de minimis situations." (*Id.* at 955). The court's holding that FDA has discretion to find that low-level migration into food of substances in indirect additives is so insignificant as to present no public health or safety concern supports the agency's conclusion that, in appropriate circumstances, it can make a similar finding about a carcinogenic constituent or impurity that is present in a color additive.

In addition, the agency is confident that it possesses the capacity, through the use of extrapolation procedures, to assess adequately the upper limit of risk presented by use of a color additive that contains a carcinogenic impurity but that, in appropriate testing, has not been shown to cause cancer.

Theoretical extrapolation procedures for assessing the risk of low exposure to carcinogenic materials have been discussed for many years. However, FDA has been reluctant to use these procedures for regulatory decisionmaking. Many theoretical models have been developed to extrapolate from animal experimental data to the relatively low levels of possible human exposure, at which possible carcinogenic effects cannot be experimentally demonstrated. Athough most risk assessment models have their roots to some degree in the biological mechanisms of carcinogenesis (the processes of which still are not well understood), they can vary widely in the risk values that they predict. Thus, knowledge of the true risk at relatively low exposures is elusive.

Nevertheless, even though there is an inadequate scientific basis to have confidence in the accuracy of predictions of actual risk by these procedures, there has been growing recognition in FDA that by using certain conservative extrapolation models, it is possible to estimate an upper limit of risk. (See e.g., "Chemical Compounds in Food-Producing Animals" (44 FR 17069; March 20, 1979) and FDA's decision on lead acetate (45 FR 72112; October 31, 1980, and 46 FR 15500; March 6, 1981).) The estimate of the risk may be exaggerated by these models. However, for this reason, the estimate can be used with confidence to conclude that a substance is safe under specific conditions of use.

Relying on these developments, FDA has proceeded to evaluate the safety of D&C Green No. 6.

C. Safety Studies on D&C Green No. 6

To establish that D&C Green No. 6 is safe for use in externally applied drugs and cosmetics (excluding use in the area of the eye), the petitioners have submitted reports on a number of animal toxicology studies on D&C Green No. 6. These studies include: A lifetime skin painting study in mice, a skin irritation and percutaneous toxicity study in rabbits, subchronic toxicity feeding studies in rats and dogs, a short-term toxicity feeding study in rats, and acute oral toxicity studies in rats and dogs.

The lifetime skin painting study in mice is particularly relevant for assessing the safety of D&C Green No. 6 for external use. This type of study provides information on the possible chronic (long-term) adverse health effects from continued external use of the color additive, including an assessment of its potential tumorigenicity and carcinogenicity. In the study that was done, D&C Green No. 6 was applied as a 1 percent (10,000 ppm) solution in benzene to the skin of mice. No significant compound-related adverse effects were observed in this study or in any of the other toxicology studies listed above.

In addition, the petitioners submitted five oral toxicity studies to support the listing of D&C Green No. 6 for use in

[4] However, FDA has always established specifications for commonly occurring impurities such as lead and arsenic, which are known carcinogens.

ingested drugs and cosmetics, including teratology studies in rats and rabbits (by gavage), a multi-generation feeding study in rats, and chronic toxicity feeding studies in rats and dogs. No significant compound-related adverse effects were observed in these studies. FDA concluded that the sensitivity (or power) of the chronic feeding toxicity studies was insufficient by current standards to provide the requisite demonstration of safety for ingested use (see 41 FR 41860, 41863; September 23, 1976). Nevertheless, these studies do not suggest that D&C Green No. 6 is tumorigenic or carcinogenic, even when ingested.

D. Inapplicability of the Delaney Clause to D&C Green No. 6

The Delaney Clause requires the disapproval of any color additive that has been shown to be a carcinogen in appropriate testing.

The agency has examined the evidence pertinent to the possible carcinogenicity of D&C Green No. 6 and finds that there is no basis for concluding that the color additive as a whole would induce cancer in an animal bioassay. The lifetime mouse skin painting bioassay showed no tumorigenic or carcinogenic effects from the long-term application of D&C Green No. 6, and the chronic ingestion studies that are available on this color produced similar negative results.

The presence of residual *p*-toluidine in D&C Green No. 6 does not trigger the prohibition of the Delaney Clause for two reasons. First, considering the level of *p*-toluidine in D&C Green No. 6 (no more than 0.1 percent) and its weak tumorigenic potency, there is no reason to expect that the presence of this impurity will cause an animal lifetime carcinogenicity bioassay of this color additive to be positive.

Second, by its terms, the Delaney Clause applies only when the color additive as a whole is found to cause cancer. In its entirety, section 706(b)(5)(B) states:

> A color additive (i) shall be deemed unsafe, and shall not be listed, for any use which will or may result in ingestion of all or part of such additive, if the additive is found by the Secretary to induce cancer when ingested by man or animal, or if it (the additive) is found by the Secretary, after tests which are appropriate for the evaluation of the safety of additives for use in food, to induce cancer in man or animal, and (ii) shall be deemed unsafe, and shall not be listed, for any use which will not result in ingestion of any part of such additive, if, after tests which are appropriate for the evaluation of the safety of additives for such use, or after other relevant exposure of man or animal to such additive, it (the additive) is found by the Secretary to induce cancer in man or animal. * * *

The Delaney Clause does not say that a color additive shall not be deemed safe if it "or any of its constituents" are found to induce cancer. Addition of the quoted language to section 706(b)(5)(B) would significantly change its meaning. Rather, a natural reading of the language that does appear in the statute establishes that the Delaney Clause does not apply to the *p*-toluidine in D&C Green No. 6 absent a finding, after appropriate tests, that the color additive as a whole induces cancer. In appropriate testing D&C Green No. 6 was not found to be a carcinogen.

Although the legislative history of the Color Additive Amendments is silent on how Congress intended to treat carcinogenic impurities, the agency's contemporaneous interpretation of the amendments supports the interpretation of the Delaney Clause set forth above.

On January 24, 1961, FDA proposed to adopt regulations that would implement the Color Additive Amendments (26 FR 679). Proposed § 8.36(b) stated:

> * * * But, if, in the best judgment of the Commissioner based on information from qualified scientists, the test is an appropriate one for the consideration of safety for the proposed external use, and cancer has been induced by the color additive or any of its components or impurities, no regulation may issue which permits its use in external drugs and cosmetics.

Id. at 687.

Abbott Laboratories and PMA objected to this provision of the proposal on the grounds that it extended the meaning of section 706(b)(5)(B) of the act. FDA discussed these objections as follows:

> Abbott points out that under Sec. 706(b)(5)(B) the Secretary must find the color additive itself to induce cancer and whether or not under different circumstances a component or impurity can induce cancer is irrevelant. If a color additive can induce cancer it is true the causative substance may be a component or impurity and in such event the color additive cannot be used. However, the regulation can be construed to authorize rejection of the color additive on the basis merely of evidence against a component or impurity in another context and such a construction is not warranted. Both the Certified Color Industry Committee and Abbott suggest deletion of "or any of its components or impurities."

Discussion of § 8.36, Digest of objections to January 24, 1961, proposed color additive regulations.

Although the author of the digest disagreed with Abbott's recommendation, he apparently did agree with Abbotts's interpretation of the act:

> If we delete the words "or any of its components or impurities" we open the door to an even greater misunderstanding. In connection with any color additives—say, a "coal tar" color—which was carcinogenic, the argument could be advanced that it was not the color itself which produced the cancer but the impurity and that the Food and Drug had no authority therefore to reject the color itself. I think the section makes clear we consider the color additive actually tested, *including* any non-color components or impurities, as the one whose carcinogenicity we are evaluating.
>
> I do not think the section implies that if a color additive contains any impurity which is a known carcinogenic the color additive must be rejected. Division of Cosmetics interprets that section to mean this and therefore would delete the words "or any of its components or impurities." Division of Cosmetics cites, as an example, arsenic (a known carcinogen) and the impossibility of producing any color which is completely devoid of this impurity. I do not agree with Division of Cosmetics. However, it might clear up a misunderstanding if we change the word "or" to "including."

Id. (emphasis in original). The author's recommendation was accepted, and the agency issued its final regulation accordingly. The wording adopted at that time remains the same today. (See 21 CFR 70.50(b).)

Thus, shortly after the enactment of the Color Additive Amendments, the agency interpreted the Delaney Clause as being triggered only if tests of the color additive as a whole revealed that the color caused cancer. (However, this interpretation had little practical significance at a time when the presence of a carcinogenic constituent raised safety problems that could not be adequately resolved. Thus, this interpretation of the Delaney Clause has not served as the basis for a consistent, comprehensive policy.)

FDA is not suggesting that the presence of *p*-toluidine in D&C Green No. 6 should be ignored. On the contrary, it should be evaluated under the general safety standards of the act. As discussed in the following section, the agency has carefully evaluated the risks to the public health presented by the presence of this impurity. FDA believes that it can adequately evaluate, in accordance with an upper level of estimated risk, the safety of a color additive that does not cause cancer but that contains a constituent that does. The agency further believes that the Delaney Clause should be applied, in line with its literal terms, only to ban color additives that cause cancer. Because D&C Green No. 6 has not been shown to be carcinogenic, it is not subject to the Delaney Clause.

E. *Application of the general safety clause to D&C Green No. 6.—1. General principles.* The general safety clause states:

> The Secretary shall not list a color additive under this section for a proposed use unless the data before him establish that such use, under the conditions of use specified in the regulations, will be safe * * *

21 U.S.C. 376(b)(4).

Unlike the Delaney Clause, the general safety clause does not depend for its applicability on a positive finding that a substance is carcinogenic or otherwise harmful. Rather, the general safety clause prohibits approval of a color additive unless the agency finds that there is a reasonable certainty of no harm from use of the additive. Therefore, the agency must consider whether any aspect of the intended use of the additive, including the possible toxic effects of each expected constituent of the additive and of the additive as a whole, will render that use unsafe.

As stated previously, in the testing of D&C Green No. 6 that has been conducted, no significant compound-related adverse effects were observed. However, because residual *p*-toluidine is present in D&C Green No. 6, FDA's evaluation of whether the proposed use of D&C Green No. 6 will be safe must look beyond traditional testing of the additive as a whole to consider also the effects of exposure to *p*-toluidine.

2. *Appropriateness of risk assessment in this rulemaking.* FDA has concluded that by applying risk assessment procedures to the results observed in bioassays on test animals exposed to *p*-toluidine, the potential risks to humans from exposure to far lower amounts of the chemical can be adequately assessed. These procedures can be used to determine whether there is a reasonable certainty of no harm from use of D&C Green No. 6.

Two important factors in determining the human health hazard created by an animal carcinogen such as *p*-toluidine are exposure over a lifetime (i.e., exposure per unit time and duration of exposure) and carcinogenic potency. Because carcinogens vary widely in potency, and because, in most cases, human exposure to carcinogens occurs at levels below that at which human tumor incidence can be detected by scientific studies (frequently exposure occurs at levels less than one ten-thousandth of the levels studied in an animal bioassay), it has been necessary for scientists to develop quantitative extrapolation procedures to estimate the risk created by exposure to a carcinogen at very low levels.[5] FDA believes that the more conservative extrapolation procedures, such as the linear proportional model (Ref. 5), the 1-hit model (Ref. 6), and the Crump modified multistage model (Ref. 7), although not necessarily accurately predicting actual human risk at very low exposure levels, will provide an upper bound estimate for the potential risk created by such exposure. This estimate provides an appropriate means of evaluating whether there is a reasonable certainty of no harm from exposure to *p*-toluidine as a result of the use of D&C Green No. 6.

The agency believes that the upper limit risk estimate can appropriately be applied to humans, even though the estimate is based on an extrapolation from animal bioassay data. It can be argued that it is not possible to extrapolate from data obtained about a genetically homogeneous animal population studied under carefully controlled conditions to the human population, which is heterogenous in both genetics and lifestyle. In support of this argument it is pointed out that researchers have found that the potency of a carcinogen frequently varies among animal species. Indeed, a significant difference in carcinogenic potency for *p*-toluidine between rats and mice was observed in the Weisburger study.

However, the agency is confident that extrapolation from animal data can be used in appropriate cases to establish a reasonable estimate of the upper level of risk for regulatory purposes. The information available on relative potency of chemicals in animals versus humans, although limited, supports the conclusion that humans are, in general, no more sensitive to a carcinogen than the most sensitive animal species (Ref. 9). Thus, the availability of cancer bioassay studies on two species (e.g., the rat and mouse studies on *p*-toluidine) substantially decreases the possibility that the risk to humans will be underestimated if the data in which the carcinogen was found to be most potent (e.g., the male mouse data on *p*-toluidine) are used.

The risk assessment procedures employed in this document to estimate the upper limit of risk from exposure to *p*-toluidine in D&C Green No. 6 are among the most conservative procedures available. Although FDA has not promulgated an official procedure for quantitative estimation of the risk from carcinogens and for setting safe exposure levels, the agency believes that the results of these procedures provide an appropriate basis for deciding whether there is a reasonable certainty of no harm from the exposure to *p*-toluidine resulting from the use of D&C Green No. 6 in externally applied drugs and cosmetics.

3. *Risk evaluation of p-toluidine in D&C Green No. 6.* The risk evaluation of *p*-toluidine consists of two parts: (a) assessment of probable exposure to *p*-toluidine from use of D&C Green No. 6 in externally applied drugs and cosmetics, and (b) extrapolation of the risk from *p*-toluidine observed in the animal bioassay to the conditions of probable exposure for humans.

a. *Exposure to p-toluidine.* Two measures of exposure to carcinogenic compounds that are relevant in assessing the public health hazard presented by *p*-toluidine are the maximum probable individual exposure and the total population exposure.

The total population exposure to *p*-toluidine is the more accurate of the two estimates because the certified poundage of D&C Green No. 6 is known. If the average annual certification of D&C Green No. 6 containing 500 ppm *p*-toluidine (the observed average is 393 ppm) is 2,000 pounds, then the average external (amount applied to skin) exposure to *p*-toluidine would be less than 0.006 microgram (μg) per day per person, or if all of these products were consumed by only 10 percent of the publication, 0.06 μg per day per person.

Although a measure of the total population exposure can be calculated quite simply, the maximum probable individual exposure depends on many factors, including the concentration of *p*-toluidine in products, the types of products used, the amount of product used per application, and the frequency of application. The agency has already discussed the principal types of products in which D&C Green No. 6 is used and has explained that the level of

[5] Data about cigarette smoking and lung cancer provide an example of how risk estimates from relatively low exposure to carcinogens relate to scientifically detectable risk. "A heavy smoker will consume in 40 years nearly 500,000 cigarettes and this consumption will increase his risk of acquiring the disease by almost 20 times that of the nonsmoker. However, the individual who smokes only 10,000 cigarettes in his lifetime [approximately 3 cigarettes a week] is at no greater demonstrable risk than the nonsmoker of acquiring lung cancer. Nevertheless—whether it can be proven or not—proponents of certain biostatistical and theoretical tenets claim that less than one-tenth of one puff from one cigarette in an entire lifetime can be responsible for the development of lung cancer. Indeed, application of the one-hit biomathematical hypothesis asserts that if 100 million people were each to inhale that one-tenth of one puff in their lifetime, one individual from that population would acquire lung cancer as a consequence of the exposure. Whether this is true or not we may never know for certain, but it does point out the extraordinary nature of the problem presented by chemical carcinogens when viewed from the perspective of the 1-hit hypothesis." (Ref. 8.)

D&C Green No. 6 that would adequately color most products is approximately 50 ppm.[6] If 500 ppm of *p*-toluidine is present in an average sample of D&C Green No. 6, a typical drug or cosmetic product would contain 25 parts per billion *p*-toluidine, i.e., 0.025 μg *p*-toluidine per gram product (about 0.025 μg per milliliter (mL)). Thus, an individual who used 4 grams (about 4 mL) of such a typical product containing D&C Green No. 6 each day would have a possible external exposure of 0.1 μg per day *p*-toluidine.

More specific estimates of individual exposure can be made by calculating the exposure to *p*-toluidine per application for the primary product types. By this approach, rough estimates of external exposure to *p*-toluidine per application are (Ref. 10):

1. Hair preparations (hair tonics and conditioners).	0.15 μg.
2. Fragrance proparations	0.026 μg.
3. Bath preparations (bath oils)	0.09 μg.

On the basis of these values and the estimate discussed above, the agency believes that it is reasonable to expect that the average individual external exposure to *p*-toluidine in D&C Green No. 6 is not likely to exceed the 0.1 μg per day range.

The use of D&C Green No. 6 in topical prescription drugs is minor compared to its use in externally applied cosmetics. A daily dose of the only drug product in which D&C Green No. 6 reportedly is used contains 0.01 mg of the color additive. This dose would correspond to an estimated daily external exposure to *p*-toluidine of 0.005 μg per day.

A key factor in estimating exposure is determining what portion of the *p*-toluidine in a product will reach the interior of the body. This determination is based on the amount of the product that actually comes into contact with the skin, and the percentage of that amount that then penetrates the dermal barrier.

For two of the major uses of D&C Green No. 6, bath oils and hair dressings, a large fraction of the product either does not come into contact with the skin or does so only briefly. A large proportion of hair dressing merely coats the hair and thus is unavailable for skin penetration. Similarly, because bath oil is dispersed in a large volume of bath water, most of it would also not be available for skin penetration. Sometimes bath oils are applied more directly to the skin, e.g., by spreading the oil over the body with a wet wash cloth. Even in this case, a significant amount of the bath oil would not be available for penetration because it would be absorbed into the wash cloth itself. In either case, a portion of the bath oil that initially coats the skin is wiped off on drying after being on the skin only a short period of time.

The fraction of *p*-toluidine that penetrates the skin depends on the area of the skin to which it is applied, the medium in which it is dispersed, and the length of the time that it is in contact with the skin. At this time there are no data on dermal penetration by *p*-toluidine. However, based on the structure of the *p*-toluidine molecule, FDA expects that it penetrates moderately well. Nevertheless, one hundred percent penetration is an unrealistically high estimate for most contact conditions.

In summary, FDA believes that only a small amount of the *p*-toluidine found in topical cosmetic and drug products penetrates the skin and contributes to the internal exposure.

The risk extrapolation that is discussed below is based on mouse bioassay data obtained by oral exposure to *p*-toluidine over essentially a lifetime. However, the type of products that typically contain D&C Green No. 6 would not be used routinely until early adulthood, reducing significantly the possible individual lifetime exposure.

Based on these considerations, the agency concludes that the lifetime-averaged individual (high user) external exposure to *p*-toluidine from the use of cosmetics and drugs that contain D&C Green No. 6 is no more than 0.1 μg per day. Although it is presently not possible to develop a reasonable estimate of the actual internal exposure from these uses, it is clear that it is substantially less thant the external exposure to *p*-toluidine.

b. *Extrapolation of risk.* The second part of the evaluation of the risk presented by *p*-toluidine in D&C Green No. 6 is an extrapolation from the actual compound-related incidence (risk) found in animal bioassays to the conditions of probable exposure for humans.

The Weisburger paper reported the results of long-term feeding studies of *p*-toluidine in two rodent species, the mouse and the rat. The bioassay in the rate (male only) showed no evidence of *p*-toluidine-induced tumorigenicity. In the mouse bioassay, however, the incidence of *p*-toluidine-induced hepatomas was statistically significant. Male mice showed much greater sensitivity to hepatoma induction than female mice. Moreover, the tumor incidence per unit dose was higher in the low dose (½ MTD) than in the high dose (MTD) group. Consequently, the highest apparent potency was observed in the ½ MTD treated male mice group of all the experimental groups tested (dose/sex/species groups). Therefore, FDA chose the data on this group to estimate the upper limit of human risk because these data are unlikely to produce an underestimation of the actual risk.

FDA used two slightly different quantitative risk assessment procedures to extrapolate from the dose in the male mouse to the very low doses of possible human exposure. Both of these procedures are conservative and, therefore, are not likely to underestimate the actual risk from very low doses. The use of different risk extrapolation procedures, conservative to different degrees, provides a range of estimates of the maximum probable risk (each risk value to be taken in the context of the assumptions and principles on which the particular extrapolation procedure is based) that serves as a basis for the agency to judge whether it is possible to determine to a reasonable certainty that no harm will result from the probable exposure to *p*-toluidine from the intended use of D&C Green No. 6.

One of the procedures FDA employed was the linear proportional model with dosage data expressed as a concentration in the total diet (e.g., ppm) and using the upper 99 percent confidence interval of the observed tumor incidence, as described in FDA's March 20, 1979 proposal, "Chemical Compounds in Food-Producing Animals" (44 FR 17070). Under this procedure, the upper limit individual lifetime risk from exposure (oral) to 0.1 μg per day *p*-toluidine is 1 in 15 million. The second procedure the agency used, also a linear proportional model, estimated the even smaller possibility of risk of lifetime tumor incidence of 1 in 150 million.

Because the lifetime-averaged individual exposure to *p*-toluidine from the use of D&C Green No. 6 in externally applied drugs and cosmetics is less than 0.1 μg per day, the agency concludes that there is a reasonable certainty of no harm from the exposure to *p*-toluidine that results from the use of D&C Green No. 6.

[6] The exception to this general use level is the maximum use value of 2,200 ppm reported for nail lacquers. However, use of these products would result in even less internal exposure to *p*-toluidine than most other reported uses, because the amount of nail lacquer used per application is small; the frequency of use would tend to be less than daily; most of the *p*-toluidine would be entrapped in the solid enamel coating when the lacquer dries; and the nail is a much better penetration barrier against internal exposure than the skin.

FDA has also considered the possibility that other color additives may contain minor amounts of *p*-toluidine impurities as a result of the synthetic process of manufacturing these additives. Regulations for two color additives now contain specifications on the maximum amount of *p*-toluidine permitted in the additive: D&C Violet No. 2 (21 CFR 74.1602, 74.2602 and 82.1602)—0.2 percent *p*-toluidine and Ext. D&C Violet No. 2 (21 CFR 74.2602a)—0.1 percent *p*-toluidine. A preliminary review of the manufacturing processes for other color additives that might contain *p*-toluidine indicates that the level of *p*-toluidine in these color additives would be far less than the level found in D&C Green No. 6. The agency will review thoroughly each of these additives and, if necessary to protect the public health, will propose regulatory action to limit further exposure to *p*-toluidine from use of color additives. Regardless of the findings of these reviews, the agency considers the risk from exposure to *p*-toluidine from the external use of D&C Green No. 6 to be sufficiently low that the additional exposure to *p*-toluidine from these other color additives would not affect its evaluation that the use of D&C Green No. 6 is safe.

VI. Application of Monsanto Co. v. Kennedy to p-Toluidine in D&C Green No. 6

FDA's decision to list D&C Green No. 6 for use in externally applied drugs and cosmetics is consistent with the terms of the statute and is further supported by the decision in *Monsanto Co.* v. *Kennedy*. In that case, the court cited the growing line of decisions in administrative law cases that holds that an agency has discretion to deal appropriately with de minimis situations. Those cases have established that an agency has discretion to establish categorical exemptions when the burdens of regulation will yield a gain of trivial or no value. *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360–361 (D.C. Cir. 1979).

The court in *Monsanto* v. *Kennedy* held that the Commissioner has latitude under particular circumstances to find that the migration of a substance to a food is so insignificant that it may be disregarded for regulatory purposes.

> Thus, the Commissioner may determine based on the evidence before him that the level of migration into food of a particular chemical is so negligible as to present no public health or safety concerns, even to assure a wide margin of safety.
>
> 613 F.2d at 955.

FDA has looked to the principles set forth in *Monsanto* v. *Kennedy* in deciding whether to grant the petition to list D&C Green No. 6 for use in externally applied drugs and cosmetics. As this preamble makes clear, the agency has carefully considered the risks that are created by the presence of *p*-toluidine in the color additive. FDA has determined that in finished drugs and cosmetics containing D&C Green No. 6 the amount of *p*-toluidine is so small, and the risks from its use are so insignificant, that no public health or safety concerns are presented. Therefore, it is appropriate to grant the petition to list D&C Green No. 6.

Under the *Monsanto* decision, the presence of de minimis amounts of a toxic substance may, in the discretion of the agency, be disregarded for regulatory purposes. The court's conclusion thus directly supports FDA's decision to list D&C Green No. 6, although FDA's decision is in fact based on a broader analysis of the law than is found in the court's opinion.

Because the issues in *Monsanto* were raised by a food additive substance, the court's analysis was conducted in a different statutory context than the one involved here. As it relates to the agency's discretion in dealing with negligible amounts of carcinogenic substances, the court's reasoning is fully applicable to *p*-toluidine. However, FDA does not intend in this document to consider those elements of the court's decision that may relate to the specific statutory provisions involved in the *Monsanto* case (21 U.S.C. 321(s) and 348(c)).

VII. Specifications for p-Toluidine in D&C Green No. 6

The original petition to list D&C Green No. 6 for external use proposed that FDA establish a regulatory specification of 0.2 percent (2,000 ppm) for residual *p*-toluidine. However, based on the results of analyses of residual *p*-toluidine levels using the HPLC method that Shiseido has developed, CTFA has proposed that the specification be set at 0.1 percent (1,000 ppm).

FDA asked CTFA to try to develop a method for reducing residual *p*-toluidine levels in this additive. However, CTFA has reported that its attempts to do so by adding an acid extraction purification step to the manufacturing process have not produced a significant reduction.

Therefore, FDA concludes that the specifications for D&C Green No. 6 should establish a limit of 0.1 percent for *p*-toluidine.

The present § 74.1206, which provides for the use of D&C Green No. 6 in certain sutures, does not contain a specification for *p*-toluidine. However, the agency plans to establish a single set of specifications for all regulated uses of this color additive.

VIII. Phaseout of D&C Green No. 6 for Ingested Use

The provisional listing of D&C Green No. 6 expired January 31, 1981. Although the **Federal Register** document of March 27, 1981 (46 FR 18959) removed D&C Green No. 6 from the provisional list for ingested use, it did not provide for an orderly phaseout of the ingested use of the color. The remainder of this section provides for the phaseout of ingested use of D&C Green No. 6.

All certificates heretofore issued for batches of D&C Green No. 6 and its lakes are revoked for ingested use, and the addition of the color additive after May 4, 1982 to drugs or to cosmetics that may be ingested will cause such products to be adulterated within the meaning of the act and subject to regulatory action. This prohibition applies to the use of the straight color, its lakes, and color additive mixtures containing D&C Green No. 6. The agency concludes that the protection of the public health does not require the removal from the market of drugs and cosmetics for ingested use containing this color additive or the destruction of such drugs or cosmetics that are being manufactured to which this color additive has been added on or before May 4, 1982.

Manufacturers of new drugs and new animal drugs (including certifiable antibiotics for animal use) that may be ingested and that contain D&C Green No. 6 may either delete the color additive or substitute a different color additive in accordance with the provisions of § 314.8(d)(3) and (e) or § 514.8(d)(3) and (e) (21 CFR 314.8(d)(3) and (e) or 21 CFR 514.8(d)(3) and (e)), as appropriate. If a substitute color additive is used, the manufacturer shall file with FDA a supplemental new drug application or supplemental new animal drug application, which contains data describing the new composition and showing that the change in composition does not interfere with any assay and control procedures used in manufacturing the drug, or that the assay and control procedures used in manufacturing the drug have been revised to make them adequate. The applicant shall also submit data to establish the stability of the revised formulation. If the data are too limit[illegible] to support a conclusion that the [illegible]ing will retain its declared potency [illegible] reasonable marketing period.

applicant shall make a commitment to test the stability of marketed batches at reasonable intervals, to submit the data as they become available, and to recall from the market any batch found to fall outside the approved specification for the drug.

Each sponsor of a notice of claimed investigational exemption for a new drug (IND) or a notice of claimed investigational exemption for a new animal drug (INAD) containing the subject color additive should promptly amend the IND or INAD to indicate the color additive substituted.

The agency is aware that supplies of alternative color additives may be difficult to obtain immediately. Consequently, drug and cosmetic labeling that states that the product contains "artifical color", or that specifically identifies D&C Green No. 6, may continue to be used with uncolored products or products containing alternative colors, during the time necessary to obtain supplies of revised labeling or until May 3, 1983, whichever occurs first.

IX. References

The following references are on public file in the Dockets Management Branch. They may be seen in that office from 9 a.m. to 4 p.m., Monday through Friday.

1. Weisburger, E. K., et al., "Testing of Twenty-one Environmental Aromatic Amines or Derivatives for Long-Term Toxicity or Carcinogenicity," *Journal of Environmental Pathology and Toxicology*, 2:325–356, 1978.

2. Cox, E., "High Performance Liquid Chromatographic Determination of Quinizarin, *p*-Toluidine, and D&C Violet No. 2 in D&C Green No. 6," *Journal of the Association of Official Analytical Chemists*, 62:1338–1341, 1979.

3. Marmion, D. M., "Handbook of U.S. Colorants for Foods, Drugs, and Cosmetics," John Wiley and Sons, Inc., pp. 44–45, 1979.

4. Marmion, D. M., "Handbook of U.S. Colorants for Foods, Drugs, and Cosmetics," John Wiley and Sons, Inc., pp. 160–161, 1979.

5a. Hoel, D. G., et al., "Estimation of Risks of Irreversible, Delayed Toxicity," *Journal of Toxicology and Environmental Health*, 1:133–151, 1975.

b. Food and Drug Administration, Proposal to amend 21 CFR Parts 70, 500, 514 and 571—Chemical Compounds in Food-Producing Animals, 44 FR 17070 (March 20, 1979).

c. Gaylor, D. W. and R. L. Kodell, "Linear Interpolation Algorithm for Low Dose Risk Assessment of Toxic Substances," *Journal of Environmental Pathology and Toxicology*, 4:305–312, 1980.

6. Gaylor, W. D. and R. E. Shapiro, "Extrapolation and Risk Estimation for Carcinogenesis," in *Advances in Modern Toxicology*, Vol. 1, Part 2: "New Concepts in Safety Evaluation," Edited by Mehlman, M. most [illegible], John Wiley and Sons, New York, solid ene[illegible], 1979.

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b. Environmental Protection Agency, Notice of Availability: Water Quality Criteria Documents, *Federal Register*, Appendix C, 45 FR 79318, 79347; November 28, 1980.

8. Flamm, W. G., "The Need for Quantifying Risk from Exposures to Chemical Carcinogens," *Preventive Medicine*, 5:4–6, 1976.

9a. Williams, G. M., A. Leff, and J. H. Weisburger, "A Species to Species Comparison of Carcinogenicity Data, with Human Extrapolation," Final Report to the National Institute of Environmental Health Sciences (Contract No. 1–ES–6–2130), July 1978.

b. National Academy of Sciences, "Pest Control: An Assessment of Present and Alternative Technologies," in Vol. I, *Contemporary Pest Control Practices and Prospects*, pp. 54–101, 1975.

c. Crouch, E. and R. Wilson, "Interspecies Comparison of Carcinogenic Potency," *Journal of Toxicology and Environmental Health*, 5: 1095–1118, 1979.

10. Troxell, T. C., Memorandum for the Record, Color Additive Petition—CAP °C0085, August 27, 1981.

X. Conclusion

For the reasons discussed in this document, the agency finds that the color additive D&C Green No. 6 is safe for use in externally applied drugs and cosmetics and grants the petition to list this color additive for such uses.

With listing, the provisional entry for D&C Green No. 6 in § 81.1(b) (21 CFR 81.1(b)) will become obsolete. That entry will be deleted upon the effective date of this regulation.

The agency has determined under 21 CFR 25.24(d)(5) (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. 706 (b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), and (d))) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) 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 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. In Part 74:

a. Subpart B is amended in § 74.1206 by revising paragraphs (a) and (b) and by adding new paragraph (c)(5) to read as follows:

§ 74.1206 D&C Green No. 6.

(a) *Identity.* The color additive D&C Green No. 6 is 1,4-bis[(4-methylphenyl)amino]-9,10-anthracenedione (CAS. Reg. No. 128–80–3).

(b) *Specifications.* (1) D&C Green No. 6 for use in coloring surgical sutures shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Volatile matter (at 135° C), not more than 2.0 percent.

Water-soluble matter, not more than 0.3 percent.

Matter insoluble in carbon tetrachloride, not more than 1.5 percent.

Intermediates, not more than 0.5 percent.

Lead (as Pb), not more than 10 parts per million.

Arsenic (as As), not more than 1 part per million.

Pure color, not less than 96.0 percent.

(2) D&C Green No. 6 for use in coloring externally applied drugs shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Volatile matter (at 135° C), not more than 2.0 percent.

Water-soluble matter, not more than 0.3 percent.

Matter insoluble in carbon tetrachloride, not more than 1.5 percent.

p-toluidine, not more than 0.1 percent.

1,4-dihydroxyanthraquinone, not more than 0.2 percent.

1-hydroxy-4-[(4-methylphenyl)amino]-9,10-anthracenedione, not more than 5.0 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

Total color, not less than 96.0 percent.

(c) * * *

(5) D&C Green No. 6 may be safely used for coloring externally applied drugs in amounts consistent with good manufacturing practice.

b. Subpart C is amended by adding new § 74.2206 to read as follows:

§ 74.2206 D&C Green No. 6.

(a) *Identity and specifications.* The color additive, D&C Green No. 6, shall conform in identity and specifications to the requirements of §§ 74.1206 (a) and (b)(2) of this chapter.

(b) *Uses and restrictions.* D&C Green No. 6 may be safely used for coloring

externally applied cosmetics in amounts consistent with good manufacturing practice.

(c) *Labeling requirements.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of D&C Green No. 6 shall be certified in accordance with regulations in Part 80 of this chapter.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

2. In Part 81:

§81.1 [Amended]

a. Section 81.1 *Provisional listing of color additives* is amended in paragraph (b) by removing the entry for "D&C Green No. 6" from the table.

b. Section 81.10 is amended by adding new paragraph (o) to read as follows:

§81.10 Termination of provisional listings of color additives.

* * * * *

(o) D&C Green No. 6. In the absence of a petition to list D&C Green No. 6 for use in ingested drugs and cosmetics, there no longer exists a basis for provisional listing for such uses. Accordingly, the Commissioner of Food and Drugs hereby terminates the provisional listing of D&C Green No. 6 for use in ingested drugs and cosmetics, effective March 27, 1981.

c. Section 81.30 is amended by adding new paragraph (p) to read as follows:

§81.30 Cancellation of certificates.

* * * * *

(p)(1) Certificates issued for D&C Green No. 6, its lakes and all mixtures containing this color additive are cancelled and have no effect as pertains to their use in ingested drugs and cosmetics after May 4, 1982 and use of the color additive in the manufacture of ingested drugs or cosmetics after this date will result in adulteration.

(2) The agency finds, on the basis of the scientific evidence before it, that no action has to be taken to remove from the market ingested drugs and cosmetics containing the color additive.

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLOR, AND COSMETICS

3. In Part 82 by revising § 82.1206 to read as follows:

§82.1206 D&C Green No. 6.

The color additive, D&C Green No. 6 shall conform in identity and specifications to the requirements of § 74.1206 (a) and (b)(2) of this chapter. D&C Green No. 6 is restricted to use in externally applied drugs and cosmetics.

Any person who will be adversely affected by the foregoing regulation may at any time on or before May 3, 1982, file with the Dockets Management Branch (HFA–305), (address above), written objection thereto. Objections shall show how the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulations considered objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and should be identified with the docket number found in brackets in the heading of this regulation. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective May 4, 1982, except as to any provisions that may be stayed by the filing of proper objections. All affected products initially introduced or initially delivered for introduction into interstate commerce on or after May 3, 1983, are required to fully comply with this regulation. Notice of filing of objections or lack thereof will be announced by publication in the **Federal Register.**

(Secs. 706(b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376(b), (c), and (d)); sec. 203, Pub. L. 86–618, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: March 29, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 82–8902 Filed 3–31–82; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of D&C Green No. 6; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Green No. 6 for use as a color additive in externally applied drugs and cosmetics. A new closing date for D&C Green No. 6 is being established to provide for receipt and evaluation of any objections submitted in response to the final regulation approving the petition for the listing of D&C Green No. 6 for this use. The regulation that lists D&C Green No. 6 is published elsewhere in this issue of the **Federal Register.** The new closing date will be June 29, 1982.

EFFECTIVE DATE: March 31, 1982.

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

SUPPLEMENTARY INFORMATION: The current closing date of March 31, 1982 for the provisional listing of D&C Green No. 6 was established by a notice published in the **Federal Register** of February 2, 1982 (47 FR 4677). The March 31, 1982 closing date for D&C Green No. 6 was established to provide time for determining the applicability of the statutory standard for the listing of color additives to the results of scientific investigations of D&C Green No. 6.

After reviewing and evaluating the data, the agency has concluded that D&C Green No. 6 is safe for that use. Therefore, elsewhere in this issue of the **Federal Register,** FDA is publishing a regulation that lists D&C Green No. 6.

The regulation set forth below will postpone the March 31, 1982 closing date for the provisional listing of that color additive until June 29, 1982. This postponement will provide sufficient time for receipt and evaluation of comments or objections submitted in response to the regulation that lists D&C Green No. 6 for use in externally applied drugs and cosmetics.

Because of the shortness of time until the March 31, 1982 closing date, FDA concludes that notice and public procedure on this regulation are impracticable. Moreover, good cause exists for issuing this postponement as a final rule, because the agency has concluded that D&C Green No. 6 is safe for its intended use under the Color Additive Amendments of 1960. This regulation will permit the uninterrupted use of this color additive until June 29, 1982. To prevent any interruption in the provisional listings of D&C Green No. 6, and in accordance with 5 U.S.C. 553(d)(1) and (3), this regulation is being made effective on March 31, 1982.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOOD, DRUGS, AND COSMETICS

§ 81.1 [Amended]

Therefore, under the Transitional Provisions of the Color Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) 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)), Part 81 is amended in § 81.1 *Provisional lists of color additives,* by revising the closing date for "D&C Green No. 6" in paragraph (b) to read "June 29, 1982."

Effective date. This regulation is effective March 31, 1982.

(Sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: March 29, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 82-8886 Filed 3-31-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 510 and 558

New Animal Drugs; Change of Sponsor; Wayne Feed Division, Continental Grain Co.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Wayne Feed Division, Continental Grain Co., providing for change of sponsor from Allied Mills, Inc.

EFFECTIVE DATE: April 2, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Wayne Feed Division, Continental Grain Co., P.O. Box 459, Libertyville, IL 60048, filed a supplemental NADA (99-468) providing for a change of sponsor from Allied Mills, Inc., a wholly owned subsidiary of Continental Grain Co.

This action, the change of sponsor of an NADA, does not involve changes in manufacturing facilities, equipment, procedures, or personnel. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category I supplemental approval which does not require reevaluation of the safety and effectiveness data in the original application.

The regulations are amended in 21 CFR 510.600(c) and 558.625(b) to reflect this change.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (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.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Parts 510 and 558

Administrative practice and procedure; Animal drugs; Animal feeds; Labeling; Reporting requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) 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)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. In Part 510, § 510.600 is amended in paragraph (c)(1) by removing the entry "Allied Mills, Inc." and adding a new entry alphabetically, and in paragraph (c)(2) by removing the entry "012323" and adding a new entry numerically, to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Wayne Feed Division, Continental Grain Co., P.O. Box 459, Libertyville, IL 60048	034936
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
034936	Wayne Feed Division, Continental Grain Co., P.O. Box 459, Libertyville, IL 60048
* * * * *	

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

2. In Part 558, § 558.625 is amended by revising paragraph (b)(33), to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(33) To 034936: 0.8 and 2 grams per pound: paragraph (f)(1)(vi)(*a*) of this section.

* * * * *

Effective date. April 2, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 18, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-8923 Filed 4-1-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 520, 522, and 540

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor for several new animal drug applications (NADA's) from Abbott Laboratories to CEVA Laboratories, Inc. Supplemental NADA's filed by CEVA provide for this change.

EFFECTIVE DATE: April 12, 1982.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Bureau of Veterinary Medicine (HFV-104), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: CEVA Laboratories, Inc., 10560 Barkley, Overland Park, KS 66212, filed several supplemental NADA's providing for a change of sponsor from Abbott Laboratories. Abbott Laboratories filed a letter confirming the change of sponsor. The NADA's affected are:

NADA and Product

10-346—Combuthal (sodium thiopental-sodium pentobarbital).

35-456—Gallimycin-36 (Sterile) (erythromycin sterile solution for intramammary infusion).

38-241—Erythromycin Thiocyanate, Zoalene, Arsanilic Acid Premix.
38-242—Arsanilic Acid, Erythromycin Thiocyanate, Amprolium, Ethopabate Premix.
65-275—Penicillin VK Tablets (potassium phenoxymethyl penicillin).
65-276—Penicillin VK Granules (potassium phenoxymethyl penicillin).
93-483—Spectam Injectable, 100 mg/mL—Dogs (spectinomycin).
93-515—Spectam Tablets—Small animal (spectinomycin).
101-690—Erythro-100 (erythromycin injection).

This action, the change of sponsor of several NADA's, does not involve changes in manufacturing facilities, equipment, procedures, or personnel. Under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category I supplemental approval which does not require a reevaluation of the safety and effectiveness data in the original applications.

The regulations are amended in 21 CFR Parts 520, 522, and 540 to reflect this change.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (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.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Parts 520, 522, and 540

Animal drugs; Animal drugs, injectable; Animal drugs, oral use; Antibiotics, penicillin.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) 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)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 520, 522, and 540 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.2123a [Amended]

1. Part 520 is amended in § 520.2123a *Spectinomycin dihydrochloride pentahydrate tablets* in paragraph (b) by removing "043731" and inserting in its place "050604".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

2. Part 522 is amended:

§ 522.820 [Amended]

a. In § 522.820 *Erythromycin injection* in paragraph (b) by removing "043731" and inserting in its place "050604".

b. In § 522.2120 by revising paragraph (b), to read as follows:

§ 522.2120 Spectinomycin injection.

* * * * *

(b) See No. 000033 and No. 050604 in § 510.600(c) of this chapter.

* * * * *

§ 522.2444b [Amended]

c. In § 522.2444b *Sodium thiopental, sodium pentobarbital for injection* in paragraph (b) by removing "043731" and inserting in its place "050604".

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

3. Part 540 is amended:

§ 540.173a [Amended]

a. In § 540.173a *Phenoxymethyl penicillin for oral suspension; potassium phenoxymethyl penicillin for oral solution* in paragraph (c)(2) by removing "043731" and inserting in its place "050604".

§ 540.173b [Amended]

b. In § 540.173b *Penicillin tablets* in paragraph (c)(2) by removing "043731" and inserting in its place "050604".

Effective date. April 2, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 23, 1982.

Myron C. Rosenberg,

Acting Associate Director for Scientific Evaluation, Bureau of Veterinary Medicine.

[FR Doc. 82-8922 Filed 4-1-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 520, 522, and 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of several NADA's from American Cyanamid Co. to Bayvet Division of Cutter Laboratories, Inc. Supplemental NADA's filed by Bayvet Division of Cutter Laboratories, Inc., provide for this change.

EFFECTIVE DATE: April 2, 1982.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Bureau of Veterinary Medicine (HFV-112), Food and Drug Adminstration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Bayvet Division of Cutter Laboratories, Inc., P.O. Box 390, Shawnee Mission, KS 66201, filed several supplemental NADA's reflecting a change of sponsor from American Cyanamid Co., Berdan Ave., Wayne, NJ 07470. American Cyanamid Co. filed letters confirming the change of sponsor. The NADA's affected are:

NADA and Product

6-462—Caricide Tablets (diethylcarbamazine).
11-380—Caricide Powder.
12-103—Aristovet Ointment (triamcinolone).
12-392—Aristovet Parenteral (triamcinolone, procaine hydrochloride).
12-598—D.N.P. (sodium disophenol).
30-045—Neo-Aristovet Ointment (neomycin, triamcinolone).
35-263—Styrid Caricide Oral Liquid (styrylpyridinium, diethylcarbamazine).
49-555—Styrid Caricide Control Diet HRH and MSD.
91-628—Caricide Syrup.
96-031—Styrid Caricide Tablets.
100-356—Styrid Caricide Control Diet HRH II.
120-327—Caricide Edible Tablets.
120-670—Styrid Caricide Edible Tablets.
121-813—Styrid Caricide Film Coated Tablets.

This action, the change of sponsor of several NADA's, does not involve changes in manufacturing facilities, equipment, procedures, or personnel. Under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category I supplemental approval which does not require reevaluation of the safety and effectiveness data in the original applications.

The animal drug regulations are amended in 21 CFR Parts 520, 522, and 588 to reflect this change.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (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.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Parts 520, 522, and 558

Animal drugs; Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) 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)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 520, 522, and 558 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. Part 520 is amended:

§ 520.620a [Amended]

a. In § 520.620a *Diethylcarbamazine* in paragraph (c) by removing "010042" and inserting in its place "000859".

§ 520.620b [Amended]

b. In § 520.620b *Diethylcarbamazine chewable tablets* in paragraph (b) by removing "010042" and inserting in its place "000859".

§ 520.622a [Amended]

c. In § 520.622a. *Diethylcarbamazine citrate tablets* in paragraph (a)(1) by removing "010042" and inserting in its place "000859".

§ 520.622b [Amended]

d. In § 520.622b *Diethylcarbamazine citrate syrup* in paragraph (b)(2)(i) by removing "010042" and inserting in its place "000859".

§ 520.2160a [Amended]

e. In § 520.2160a *Styrylpyridinium, diethylcarbamazine tablets* in paragraph (b) by removing "010042" and inserting in its place "000859".

§ 520.2160b [Amended]

f. In § 520.2160b *Styrylpyridinium chloride, diethylcarbamazine (as base)* in paragraph (b) by removing "010042" and inserting in its place "000859".

§ 520.2160c [Amended]

g. In § 520.2160c *Styrylpyridinium, diethylcarbamazine edible tablets* in paragraph (b) by removing "010042" and inserting in its place "000859".

§ 520.2160d [Amended]

h. In § 520.2160d *Styrylpyridinium, diethylcarbamazine film-coated tablets* in paragraph (b) by removing "010042" and inserting in its place "000859".

§ 520.2480 [Amended]

i. In § 520.2480 *Triamcinolone tablets* in paragraph (c) by removing "010042" and inserting in its place "000859".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

2. Part 522 is amended:

§ 522.740 [Amended]

a. In § 522.740 *Disophenol sodium injection* in paragraph (c) by removing "010042" and inserting in its place "000859".

§ 522.2480 [Amended]

b. In § 522.2480 *Triamcinolone injection* in paragraph (c) by removing "010042" and inserting in its place "000859".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.565 [Amended]

3. In § 558.565 *Styrylpyridinium chloride, diethylcarbamazine* in paragraph (a) by removing "010042" and inserting in its place "000859".

Effective date: April 2, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 19, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-8921 Filed 4-1-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Cloxacillin for Intramammary Infusion

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Beecham Laboratories providing for use of a mixture of saturated vegetable oils as an alternate vehicle base for their cloxacillin sodium suspension used in lactating cows for treating mastitis.

EFFECTIVE DATE: April 2, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Carnevale, Bureau of Veterinary Medicine (HFV-125), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1788.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, filed a supplemental NADA (55-070) providing for use of a mixture of saturated vegetable oils as an alternate vehicle base for their cloxacillin sodium suspension used in lactating cows for treating mastitis due to *Streptococcus agalactiae* and *Staphylococcus aureus*. The firm currently holds approval for use of the drug product formulated with refined peanut oil.

The firm submitted data from a well-controlled field study that compared formulations comprised of 200 milligrams (mg) of cloxacillin (as cloxacillin sodium) suspended in a vehicle containing a mixture of saturated vegetable oils and in the currently approved peanut oil vehicle. The study demonstrates that the bactericidal effectiveness of the two formulations against *S. agalactiae* and *S. aureus* organisms in lactating, mastitic cows are comparable. Irritation field studies were conducted with cloxacillin sodium in the vegetable oils mixture in lactating cows and the formulation was shown to be nonirritating. Milk-out depletion studies justify imposing on this formulation the same milk-withholding period required for the peanut oil formulation (i.e., 48 hours). And finally, tissue residue studies justify imposing on this formulation the same 10-day, preslaughter drug withdrawal period required for the peanut oil formulation.

The studies demonstrate that substituting the mixture of saturated vegetable oils for the approved refined peanut oil vehicle does not compromise the safety or effectiveness of the drug. Accordingly, the supplemental NADA is approved and §§ 540.815 and 540.815a (21 CFR 540.815 and 540.815a) are amended to reflect the approval.

This action, approval of a supplemental NADA providing for use of an alternate drug vehicle base, poses no increased human risk for exposure to residues of the new animal drug because it does not alter usage of the drug product. Therefore, in accordance with the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of this supplement does not require reevaluation of the safety and effectiveness data in the parent application.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21

CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (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.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 540

Animal drugs; antibiotics, penicillin.

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512 (i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b (i) and (n))) 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)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), §§ 540.815 and 540.815a are amended by revising the first sentences in their respective (a)(1) paragraphs to read as follows:

§ 540.815 Sterile sodium cloxacillin for intramammary infusion.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Sterile sodium cloxacillin for intramammary infusion contains sterile sodium cloxacillin in a menstruum of refined natural or semi-synthetic vegetable oils with a suitable and harmless dispersing agent.* * *

* * * * *

§ 540.815a Cloxacillin sodium for intramammary infusion.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cloxacillin sodium for intramammary infusion contains sterile cloxacillin sodium in a menstruum of refined natural or semi-synthetic vegetable oils with a suitable and harmless dispersing agent.* * *

* * * * *

Effective date. This amendment is effective April 2, 1982.

(Sec. 512(i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b(i) and (n)))

Dated: March 23, 1982.

Myron C. Rosenberg,

Acting Associate Director for Scientific Evaluation, Bureau of Veterinary Medicine.

[FR Doc. 82–8926 Filed 4–1–82; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Roxarsone With Lasalocid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to correct a previous amendment which inadvertently omitted the approved use of roxarsone with lasalodic.

EFFECTIVE DATE: October 27, 1981.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Bureau of Veterinary Medicine (HFV–147), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 27, 1981 (46 FR 52330), FDA amended the regulation § 558.530 (21 CFR 558.530)) to reflect approval of a supplemental new animal drug application providing for the uses of roxarsone in animal feeds. The regulation as amended failed to include the previously approved combination of roxarsone with lasalocid as provided in § 558.311(e)(2) (21 CFR 558.311(e)(2)). This document amends the animal drug regulations to include that approved combination.

List of Subjects in 21 CFR Part 558

Animal Feeds

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.530 is amended by adding paragraph (f)(3)(xix) to read as follows:

§ 558.530 Roxarsone.

* * * * *

(f) * * *

(3) * * *

(xix) Lasalocid as in § 558.311.

Effective date. October 27, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 19, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82–8924 Filed 4–1–82; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Nitarsone

AGENCY: Food and Drug Administration:

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations concerning the use of nitarsone in animal feeds by removing the statement concerning cleaning the equipment between the manufacture of different feeds. FDA is removing the statement to avoid confusion, and also is reaffirming that the requirements of the current medicated feed good manufacturing practice regulations apply to the use of nitarsone premixes in the manufacture of complete chicken and turkey feeds.

EFFECTIVE DATE: April 2, 1982.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV–149), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 29, 1981 (46 FR 47534), FDA amended the animal drug regulations to reflect approval of supplemental NADA 7–616 filed by Salsbury Laboratories providing for revised labeling for use of nitarsone premixes in the manufacture of complete chicken and turkey feeds. The document provided for codification of the uses of nitarsone in animal feeds in § 558.369 (21 CFR 558.369). The limitations of the conditions of use included a statement that equipment used for mixing the drug with feed must be thoroughly cleaned after each use. A comment questioned whether inclusion of this statement was meant to preclude the application of other requirements provided under the current medicated feed good manufacturing practice regulations found in § 225.65 (21 CFR 225.65). The approval was intended merely to codify the approved use of the drug in animals and not to supersede other requirements concerning the proper manufacture and use of animal drugs. To avoid confusion, the agency hereby amends § 558.369 by removing the statement concerning cleaning equipment. In so doing, the agency affirms that the requirements in

§ 225.65 apply to the manufacture of feeds under § 558.369.

List of Subjects in 21 CFR Part 558

Animal drugs; Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.369 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) 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)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.369 *Nitarsone* in paragraph (f)(3) by removing the statement "Equipment used for mixing this drug with feed must be thoroughly cleaned before using to mix other feeds."

Effective date. April 2, 1982.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 19, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-8925 Filed 4-1-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Approval of Oklahoma's Permanent Regulatory Program Amendment and Director's Findings on the Status of the Oklahoma Permanent Regulatory Program

AGENCY: Surface Mining Reclamation and Enforcement Office (OSM), Interior.

ACTION: Final rule.

SUMMARY: On January 19, 1981, the State of Oklahoma received conditional approval of its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). *See* 46 FR 4902–4911. On January 22, 1982, the Oklahoma Department of Mines (DOM) submitted to OSM a proposed amendment to its permanent regulatory program. The amendment consists of a set of rules intended to replace those rules rescinded by the Oklahoma Legislature on February 12, 1981. The purpose of the amendment is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII.

This notice amends 30 CFR Part 936 to grant approval of the amendment to the Oklahoma permanent regulatory program. This notice also sets forth the Director's findings regarding the status of the Oklahoma permanent regulatory program and provides for DOM to continue the administration and enforcement of the State's approved regulatory program.

EFFECTIVE DATE: This approval is effective April 2, 1982.

ADDRESSES: Copies of the Oklahoma program and the administrative record on the Oklahoma program are available for public inspection and copying during regular business hours at:

Office of Surface Mining Reclamation and Enforcement, Oklahoma State Office, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 L Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markey, Director, Oklahoma State Office, Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 581–7927.

SUPPLEMENTARY INFORMATION: On January 19, 1981, the Secretary of the Interior conditionally approved Oklahoma's permanent regulatory program to control surface coal mining and reclamation operations (46 FR 4902–4911). Part of the approved program consisted of a body of State regulations needed for program implementation. The Oklahoma Legislature rescinded the State's regulations on February 12, 1981.

Previously, a January 9, 1981, court injunction barred Oklahoma from enforcing its program. The court also ordered the State to continue the initial regulatory program established by Section 502 of SMCRA and 30 CFR Chapter VII, Subchapter B. The injunction was lifted on July 20, 1981, upon a finding that the action of the Oklahoma Legislature had made the case moot.

On September 10, 1981, the Director notified DOM that he had reason to believe the State might be unable to implement, administer, maintain and enforce its permanent program (See Administrative Record OK–317). The Director noted that the reason for his belief was the rescission of the State's permanent regulatory program regulations by the Oklahoma Legislature and the subsequent lifting of the court injunction which prohibited the State from enforcing its approved program.

The DOM responded to the Director's September 10, 1981, letter and requested an informal conference with OSM (See OK–318) under the provisions of 30 CFR 733.12(c). The Director agreed to Oklahoma's request, notified the public of the informal conference (46 FR 49846–49847) and subsequently held the informal conference with Oklahoma officials on October 19, 1981, in Oklahoma City. A transcript of the informal conference has been placed in the Administrative Record (OK–323).

Based on the information Oklahoma provided at the informal conference, the Director still had reason to believe that Oklahoma might be unable to implement, administer, maintain and enforce its permanent regulatory program. On October 23, 1981, the Director so notified DOM (OK–324). On October 30, 1981, the Director announced that a public hearing would be held in Muskogee, Oklahoma, on November 19, 1981, and that public comments would be received until November 27, 1981, regarding the status of the Oklahoma program (46 FR 53695–53697). A copy of the transcript of the November 19, 1981, public hearing was placed in the Administrative Record (OK–333) as were all written comments received prior to the November 27, 1981, close of the comment period.

On December 11, 1981, DOM submitted to OSM a set of emergency regulations (OK–355). The emergency regulations became effective on December 14, 1981, under an emergency rulemaking provision of the Oklahoma Administrative Procedures Act. On January 22, 1982, DOM submitted a set of permanent regulations to OSM as an amendment to its approved program (OK–356).

Announcement of Oklahoma's program amendment was made in a newspaper of general circulation within the State of Oklahoma and published in the **Federal Register** on February 18, 1982 (47 FR 7262–7264). The notice also announced a public comment period extending to March 19, 1982, on the adequacy of the proposed amendment and reopened the public comment period on the status of the Oklahoma program. A public hearing was announced to be held on March 16, 1982, in Muskogee, Oklahoma. The transcript of the March 16, 1982, public hearing has been placed in the Administrative Record (OK–402).

Typographical and editorial errors were identified in the Oklahoma amendment. DOM transmitted a list of those typographical and editorial errors

which it had identified by a letter dated March 18, 1982, to OSM (OK–400). These errors, which do not substantively affect Oklahoma's proposed amendment, are not discussed further in this notice.

The OSM State Office Director completed his review of the proposed amendment on March 24, 1982, and forwarded the public hearing transcript, written presentations, and copies of all comments to the Director together with a recommendation that the program amendment be approved and that the Director continue the State program as approved according to the provisions of 30 CFR 733.12(e).

On March 23, 1982, the Administrator of the Environmental Protection Agency transmitted her written concurrence on the Oklahoma amendment (OK–406).

The Director's findings below pertaining to Oklahoma's proposed amendment are organized according to 30 CFR 732.15, as required by 30 CFR 732.17(h) regarding OSM approval of State program amendments.

The Director's findings below pertaining to the status of Oklahoma's permanent regulatory program are made according to the requirements of 30 CFR 733.12.

When the Secretary of the Interior announced his decision to conditionally approve the Oklahoma program, he included with the announcement his findings on the program provisions. Those findings regarding Oklahoma's regulations, which were not changed by the program amendment, are still applicable to the Oklahoma regulatory program and this program amendment.

Director's Findings on the Oklahoma Program Amendment

1. The Director finds in accordance with Section 503(a)(7) of SMCRA and 30 CFR 732.15, that Oklahoma has, except as noted in the findings below, fully enacted rules and regulations consistent with rules issued by the Secretary of the Interior pursuant to SMCRA.

2. As required by Section 503(b) (1)–(3) of SMCRA, the Director has:

(a) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the Oklahoma program amendment. (See document published in the Proposed Rules section of this issue.)

(b) Obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Oklahoma program amendment that relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act as amended, (33 U.S.C. 1151, *et seq.*), and the Clean Air Act as amended, (42 U.S.C. 7401 *et seq.*), and

(c) Held a public hearing in Muskogee, Oklahoma, on March 16, 1982, on the adequacy of the amendment to Oklahoma's permanent regulatory program.

3. In accordance with 30 CFR 732.15, and on the basis of a review of the Oklahoma program amendment, public comments, testimony at the public hearing and other relevant information in the administrative record, the Director makes the following findings:

(a) Pursuant to the requirements of 30 CFR 732.15(a), the Oklahoma program, as amended, provides, except as noted in the findings below, for DOM to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII.

(b) Pursuant to the requirements of 30 CFR 732.15(b)(1), the Director finds that DOM has authority under Oklahoma law and regulations to implement, administer and enforce performance standards consistent with 30 CFR Chapter VII, Subchapter K. These provisions are incorporated in sections 25–29 of the Oklahoma Coal Reclamation Act (OCRA) and Parts 810–828 of Oklahoma's regulations.

(c) Pursuant to the requirements of 30 CFR 732.15(b)(2), the Director finds that DOM has authority under Oklahoma law and regulations and the Oklahoma program includes provisions to implement, administer, and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G, to prohibit surface coal mining and reclamation operations without a permit issued by the regulatory authority. These provisions are incorporated in Sections 4–8 of the OCRA and Parts 770–788 of Oklahoma's regulations.

(d) Pursuant to the requirements of 30 CFR 732.15(b)(3), the Director finds that DOM has authority under Oklahoma law and regulations to regulate coal exploration consistent with 30 CFR Parts 776 and 815, and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815. These provisions are incorporated in Section 14 of the OCRA and Parts 776 and 815 of Oklahoma's regulations.

(e) Pursuant to the requirements of 30 CFR 732.15(b)(4), the Director finds that DOM has authority under Oklahoma law and regulations and the Oklahoma program includes provisions to require that persons extracting coal incidental to government financed construction maintain information on site consistent with 30 CFR Part 707. These provisions are incorporated in Section 4.F of the OCRA and Part 707 of Oklahoma's regulations.

(f) Pursuant to the requirements of 30 CFR 732.15(b)(5), the Director finds that DOM has authority under Oklahoma law and regulations to provide for entry, inspections, and monitoring of all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal lands within Oklahoma consistent with Section 517 of SMCRA and 30 CFR Chapter VII, Subchapter L. These provisions are incorporated in Sections 32–35 of the OCRA and Part 842 of Oklahoma's regulations.

(g) Pursuant to the requirements of 30 CFR 732.15(b)(6), the Director finds that DOM has authority under Oklahoma law and regulations to provide for implementation and enforcement of a system for performance bonds and liability insurance, or other equivalent guarantees, consistent with 30 CFR Chapter VII, Subchapter J. These provisions are incorporated in Sections 9 and 37–40 of the OCRA and Parts 800–809 of Oklahoma's regulations.

(h) Pursuant to the requirements of 30 CFR 732.15(b)(7), the Director finds that DOM has authority under Oklahoma law and regulations to provide for civil and criminal sanctions for violations of the Oklahoma law, regulations and conditions of permits and explorations approvals including civil and criminal penalties in accordance with Section 518 of SMCRA and 30 CFR Part 845 including the same or similar procedural requirements. These provisions are incorporated in Section 56 of the OCRA and Part 845 of Oklahoma's regulations.

(i) Pursuant to the requirements of 30 CFR 732.15(b)(8), the Director finds that DOM has authority under Oklahoma law and regulations to issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders in accordance with Section 521 of SMCRA and with 30 CFR Chapter VII, Subchapter L. These provisions are incorporated in Sections 42–47 of the OCRA and Part 843 of Oklahoma's regulations.

(j) Pursuant to the requirements of 30 CFR 732.15(b)(9), the Director finds that DOM has authority under Oklahoma law and regulations to provide for designation of areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F. These provisions are incorporated in Sections 48–50 of the OCRA and Parts 760–764 of Oklahoma's regulations.

(k) Pursuant to the requirements of 30 CFR 732.15(b)(10), the Director finds that DOM has authority under Oklahoma law and regulations to provide for public participation in the development and

revision of Oklahoma regulations consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. Oklahoma also has authority under Oklahoma law and regulations to provide for public participation in the permitting process and the enforcement of its laws and regulations consistent with SMCRA and 30 CFR Chapter VII, except for those deficiencies which were discussed by the Secretary in Finding 4(k) of his January 19, 1981, conditional approval of the Oklahoma program (46 FR 4906–4907). The correction of these deficiencies remain as conditions of Oklahoma's permanent regulatory program approval as set forth at 30 CFR 936.11(a), (b), and (c).

(l) Pursuant to the requirements of 30 CFR 732.15(b)(11), the Director finds that DOM has authority under Oklahoma law and regulations to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of DOM consistent with 30 CFR Part 705. These provisions are incorporated in Section 34 of the OCRA and Part 705 of Oklahoma's regulations.

(m) Pursuant to the requirements of 30 CFR 732.15(b)(12), the Director finds that DOM has statutory authority under 45 O.S. 1979 Section 902, but does not have the authority under fully enacted regulations, to require the training, examination, and certification of persons engaged in or responsible for the use of explosives in accordance with Section 719 of SMCRA. Under 30 CFR 732.15(b)(12), the State is not required to implement regulations governing such training, examination and certification until six months after Federal regulations have been promulgated for these provisions. The Secretary promulgated a new Subchapter M and Part 850 to 30 CFR Chapter VII, covering this subject, on December 12, 1980. (See 45 FR 82084–82100, effective January 12, 1981). However, the new Subchapter M is not complete and, as explained at 45 FR 82087, Oklahoma will have six months to submit to OSM, regulations in compliance with Subchapter M after it is complete. Therefore, Oklahoma's present inability to comply with Section 719 of SMCRA has no effect on the Director's decision published today.

(n) Pursuant to the requirements of 30 CFR 732.15(b)(13), the Director finds that DOM does not have authority under State law and regulations to operate a small operator assistance program (SOAP). This deficiency was discussed by the Secretary in Finding 4(n) of his Jaunary 19, 1981, conditional approval of the Oklahoma program (46 FR 4907). The correction of this deficiency remains a condition of Oklahoma's permanent regulatory program approval as set forth at 30 CFR 936.11(d).

(o) Pursuant to the requirements of 30 CFR 732.15(b)(14), the Director finds that DOM has statutory authority under Section 36.I of the OCRA, and the Oklahoma program contains provisions for protection of DOM employees consistent with the protection afforded Federal emloyees under Section 704 of SMCRA.

(p) Pursuant to the requirements of 30 CFR 732.15(b)(15), the Director finds that DOM has authority under Sections 53 and 54 of the OCRA to provide for administrative and judicial review of the Oklahoma program actions in accordance with Sections 525 and 526 of SMCRA and that DOM regulations Parts 842–845 are consistent with 30 CFR Chapter VII, Subchapter L, except as noted in Finding 3(k) above.

(q) Pursuant to the requirements of 30 CFR 732.15(b)(16), the Director finds that DOM has authority under the OCRA and the Oklahoma program contains provisions to cooperate and coordinate with, and provide documents and other information to, OSM under the provisions of 30 CFR Chapter VII.

(r) Pursuant to the requirements of 30 CFR 732.15(c), the Director finds that the laws and regulations of Oklahoma do not contain provisions that would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII.

Director's Findings on the Status of the Oklahoma Permanent Regulatory Program

The Director makes the following findings pursuant to Section 504 of SMCRA and 30 CFR 733.12:

1. On February 12, 1981, the Oklahoma Legislature rescinded the State's permanent program regulations that were approved by the Secretary in his decision of January 19, 1981 (46 FR 4902–4911).

2. During the period between January 19, 1981, and July 20, 1981, Oklahoma was required by an order of the Oklahoma County District Court (issued on January 9, 1981) to continue implementing the initial regulatory program established by Section 502 of SMCRA.

3. On July 20, 1981, the Oklahoma County District Court lifted the injunction issued on January 9, 1981, and dismissed the case on the grounds that as a result of the action of the State Legislature the lawsuit was moot.

4. Between July 20, 1981, and December 14, 1981, DOM was unable to properly implement, administer, maintain and enforce the conditionally approved permanent regulatory program due to the lack of implementing regulations. However, DOM did continue to enforce the OCRA and the standards of the initial regulatory program and initiated action to promulgate a new set of permanent program regulations.

5. On December 14, 1981, DOM adopted emergency regulations in order to implement and enforce its approved program.

6. On January 11, 1982, DOM promulgated a set of permanent regulations to supersede the emergency regulations. The permanent regulations are now in effect in Oklahoma.

7. On January 22, 1982, DOM submitted the permanent regulations to OSM as a proposed amendment to its approved program.

8. As discussed in the *Director's Findings on the Oklahoma Program Amendment* above, these regulations satisfy the requirements of Section 503 of SMCRA and 30 CFR Chapter VII, with the exceptions noted.

9. Based on a review of the public comments, testimony at the informal conference and public hearings, and other information in the administrative record, DOM has demonstrated a capability and an intent to implement, administer, maintain and enforce the State's program.

Disposition of Comments

Public comments were received in regard to both the status of the Oklahoma permanent regulatory program and the adequacy of the Oklahoma program amendment. OSM is now responding to comments regarding both the status of the Oklahoma program and the adequacy of the program amendment which were received during the comment periods announced October 30, 1981, (46 FR 53695–53697) and February 18, 1982, (47 FR 7262–7264).

The Director's responses to comments concerning the adequacy of the Oklahoma program amendment are set forth below.

1. The Environmental Policy Institute (EPI) and the Oklahoma Sierra Club (OSC) commented that Oklahoma has no section comparable to 30 CFR 771.21(b)(4) concerning filing deadlines for applications for new permits required of persons succeeding to an interest in a permit by transfer, sale or assignment. The comment is correct, but since Oklahoma does not allow the transfer, sale or assignment of surface mining permits, the Director finds the Oklahoma requirements acceptable.

2. EPI and OSC stated that § 771.12 of the Oklahoma regulations omits standards for coal exploration applications and public participation in the approval process of those applications. Because there is no § 771.12 in either the Oklahoma or OSM regulations, OSM assumes the intended reference was to § 776.12. However, § 776.12 of the Oklahoma regulations requires any person who intends to conduct coal exploration operations in which more than 250 tons of coal are removed to obtain a surface mining permit in accordance with the provisions of Parts 778–790 of the Oklahoma regulations. Because those Parts require a full permit application and provide full public participation rights, the Director finds that the Oklahoma regulations concerning exploration operations in which more than 250 tons are removed are consistent with 30 CFR Part 776.12.

3. EPI and OSC stated that § 771.14 of the Oklahoma regulations omits requirements for public notice and right to a hearing for decisions on coal exploration applications in which more than 250 tons are proposed to be removed. The commentors also asserted that the public is thus deprived of its right to challenge these decisions as provided for at 30 CFR 771.14(b) and 787.11(a). As noted in response to the preceding comment, a coal exploration operation that will remove more than 250 tons of coal must obtain a permit in accordance with the requirements of Parts 778–790, which includes appellate review rights under Part 787.

4. EPI and OSC suggested that Oklahoma must make information on coal exploration operations available at local offices of DOM as required by 30 CFR 776.17(a). The rule cited requires only that the information be provided at existing local offices. The Director finds that DOM does not have any local or field offices; therefore, Oklahoma has complied with the rule. However, coal exploration permit applications which involve removal of more than 250 tons will be required by Oklahoma to be available for public inspection at the county courthouse as provided under § 786.11(d)(1).

5. EPI and OSC commented that Oklahoma omitted the provisions of 30 CFR 788.5 and 788.17–19 regarding the transfer, sale or assignment of surface mining permits. As explained in response to comment number 1, Oklahoma does not allow the transfer, sale or assignment of surface mining permits. Therefore, regulations governing such activities are not necessary.

6. EPI and OSC commented that Oklahoma fails to establish a small operator assistance program in violation of Section 507(c) of SMCRA and 30 CFR Part 795. The Director noted in Finding 3(n) above that this deficiency remains as a condition of the Secretary's approval of the Oklahoma program. OSM will continue to work with the State to resolve this matter by the deadline prescribed under 30 CFR Part 936.11.

7. EPI and OSC commented that Oklahoma omits the definition of "person" found in the Federal regulations at 30 CFR 700.5. In the Secretary's January 19, 1981, conditional approval of the Oklahoma program, this omission was discussed and found to be acceptable (46 FR 4905).

8. EPI and OSC commented that Oklahoma regulations §§ 701.11(d)(1)(iii) and (iv) omit the requirements of 30 CFR 701.11(d)(1)(iii) and (iv) that existing structures be modified to meet the performance standards as well as the design standards. The Director assumes that the commentors were referring to Oklahoma regulations §§ 701.11(c)(1)(iii) and (iv). On March 18, 1982, OSM received from DOM an errata sheet listing corrections to the regulations (OK–400). In §§ 701.11(c)(1)(iii) and (iv) the words "design standards" were replaced by the phrase "performance and design standards." Therefore, the commentors' concern has been satisfied.

9. EPI and OSM identified errors in Oklahoma regulations §§ 800.5, 801.16(a), 806.12(e)(3), and 806.12(h)(2). The Director has determined that there were typographical and editorial errors in the Oklahoma amendment and Oklahoma has identified them as such in an errata sheet (OK–400) which was submitted to OSM and has been placed in the administrative record. Because Oklahoma has agreed to incorporate the contents of this errata sheet into its regulations, the Director will require no changes.

10. EPI and OSC commented that Oklahoma regulation Section 807.11(a) omits a sentence found in 30 CFR 807.11(a) which would make this section applicable to the provisions on bond adjustments contained in § 805.14(b). The Director has noted that § 807.11(a) does not contain a statement that the provisions of this section also apply to requests made pursuant to § 805.14(b). However, Oklahoma § 805.14(b) provides that requests for adjustment of the bond amount shall be considered as a request for a partial bond release in accordance with the procedures of Part 807; therefore, this provision is acceptable.

11. EPI and OSC commented that § 808.12 omits the requirement of 30 CFR 808.12(c) regarding the regulatory authority's power to forfeit bonds. Since 30 CFR 808.12(c) was suspended on August 19, 1981, (46 FR 42063), OSM will not require Oklahoma to adopt this regulation at this time.

12. EPI and OSC commented that Oklahoma failed to establish standards for the construction, maintenance and postmining conditions of roads in violation of Section 515(b)(17) of SMCRA. The Director is aware that the amended Oklahoma regulations do not contain standards addressing road construction and maintenance. However, the haul road requirements of 30 CFR 816.150–176 and 817.150–176 were remanded by a May 16, 1980, decision of the U.S. District Court for the District of Columbia and subsequently suspended by OSM on August 4, 1980 (45 FR 51549). Therefore, OSM cannot require the State to have design and performance standards for roads at this time. Once OSM has promulgated regulations on haul roads, Oklahoma will be required to amend its program to be consistent with them.

13. EPI and OSC commented that Oklahoma failed to establish procedures for administrative review of agency actions in violation of 43 CFR Part 4. The Director noted in Finding 3(k) above that this deficiency remains as a condition of the Secretary's approval. OSM will continue to work with the State to resolve this matter by the deadline prescribed under 30 CFR 936.11.

14. EPI and OSC commented that Oklahoma lacks provisions providing for the protection of government employees in violation of 30 CFR Part 865. The comment confuses the requirements of Section 703 of SMCRA, regarding the protection of coal mine employees (implemented at 30 CFR Part 865), with section 704 of SMCRA which imposes criminal penalties for interfering with government employees. Section 703 and 30 CFR Part 865 are not applicable to State programs. Oklahoma has enacted at Section 36(I) of OCRA criminal provisions consistent with Section 704 of SMCRA. Therefore, no changes need be made as a result of the comment.

15. EPI and OSC commented that Oklahoma failed to establish procedures and standards for blaster training as required by 30 CFR Part 895. It is assumed the commentor was addressing the blaster training requirements of 30 CFR Part 850. The Director is aware that the amended Oklahoma regulations do

not contain provisions addressing blaster training. However, as explained at 45 FR 82087, the State will not be required to implement Part 850 until six months after Part 850 has been completed. OSM is still in the process of completing Part 850.

16. Several comments were received from Federal agencies that reveal misconceptions about the permanent regulatory program, the Oklahoma program or particular regulations. Although the Director has no obligation to respond to comments on matters not germane to whether the Oklahoma program is consistent with the Federal law, he believes that the misconceptions should be clarified.

a. The U.S. Fish and Wildlife Service (FWS) and U.S. Bureau of Land Management (BLM) commented that the Federal regulations impose on Oklahoma the obligation to require permit applicants to submit a detailed fish and wildlife resources study. While 30 CFR 779.20, 780.16, 783.20 and 784.21 did address fish and wildlife studies, those regulations were enjoined by the U.S. District Court for the District of Columbia and were subsequently suspended by OSM on August 4, 1980, at 45 FR 51548. In addition, 30 CFR 786.17(a)(2) concerns only the suspended OSM regulations and is therefore not required in the Oklahoma regulations.

b. The FWS and BLM commented that a vegetation map is essential to document pre-mining vegetation types, identify habitats, and evaluate proposed post-mining land use, and recommended the phrase "If required by the Department" be deleted from §§ 779.19 and 783.19. The Oklahoma regulations are consistent with 30 CFR 779.19 and 783.19. Therefore, no change is required.

c. The FWS recommended that Oklahoma add the phrase "resident and migratory fish and wildlife resources" to § 783.22(a)(2)(i) of the Oklahoma regulations. The State's rule is consistent with 30 CFR 783.22(a)(2)(i), therefore, no change is necessary.

d. The BLM suggested adding language at § 761.11 to include floodplains of perennial streams to areas to be considered unsuitable for mining, and adding language at § 780.18 to include a requirement to mitigate impacts on fish and wildlife habitats. The provisions found at §§ 761.11 and 780.18 of the Oklahoma regulations are consistent with the requirements of 30 CFR 761.11 and 30 CFR 780.18; therefore, no change is required.

17. The BLM commented that unrecorded cultural resources and non-prime farmland soils will be affected by mine operators in the absence of general regulations requiring intensive field inventories to identify such resources. BLM specifically cited §§ 779.11, 779.12(b), 780.31, 783.11, 783.12(b), and 784.17 as regulations that should require provisions to identify unrecorded resources. Oklahoma's rules provide for consideration of cultural resources and non-prime farmland soils as required by the Federal rules in 30 CFR Chapter VII. OSM cannot require the suggested additions.

18. The BLM suggested that as an aid to its assessment of cumulative effects of coal leasing and subsequent development of both Federal and fee coal in Southeast Oklahoma, written notification regarding such activities should be sent to the Oklahoma Resource Area Office in Oklahoma City. The Director supports close cooperation between the BLM and DOM in this matter and believes that § 786.11(c)(1) is consistent with 30 CFR 786.11(c)(1) and adequately provides for such coordination.

19. The BLM commented on §§ 779.21 and 783.21 stating that a complete and accurate description of soil resources cannot be obtained if soils data are only collected when prime farmland soils are involved. Federal regulations requiring soil survey information in permit applications for land not qualifying as prime farmland have been remanded by the U.S. District Court for the District of Columbia and were suspended by OSM on August 4, 1980 (45 FR 51548). Section 507(b)(16) of SMCRA requires a full soil survey only for those lands on which a reconnaissance inspection suggests may be prime farmland. Sections 779.21 and 783.21 reflect the court's decision upon the remands of 30 CFR 779.21 and 783.21. Therefore, Oklahoma's rules are consistent with the Federal regulations as remanded.

20. The U.S. Soil Conservation Service suggested that Oklahoma amend § 779.27(b) to make prime farmland soils with land uses other than cropland exempt from the regulations for prime farmland. The Federal rules at 30 CFR 779.27(b) are specific in outlining the criteria by which land shall not be considered prime farmland. Although the State may adopt rules more stringent than the Federal rules, the Director finds Oklahoma's rules consistent with the Federal regulations; therefore no change is required.

The Director's responses to comments concerning the status of the Oklahoma program are set forth below.

1. The Environmental Policy Institute (EPI) and the Natural Resources Defense Council (NRDC) made several comments to support their view that OSM should immediately substitute for the State regulatory authority, direct Federal enforcement and permitting under 30 CFR 733.12. In presenting their argument, EPI and NRDC stated that due to the recession of Oklahoma's regulations by the State Legislature, Oklahoma lacks the authority necessary to implement and enforce its program. The EPI and NRDC also identified what they believe to be defects in Oklahoma's current permitting and enforcement practices. These alleged defects include: (1) Failure of the State to require permanent program permit applications within two months of program approval, (2) failure of the State to prohibit surface mining operations by operators that have not applied for a permit under the approved permanent program, (3) acceptance by the State of "Notice of Intent to Mine" letters in lieu of permanent program permit applications, (4) failure of the State to conduct the statutorily mandated rate of one complete inspection of each mine site per calendar quarter, and (5) failure of Oklahoma law to adequately provide for rights of intervention and discovery in administrative proceedings, and lack of standards for awarding attorney's fees, costs, and expenses as required by 43 CFR Part 4. The Director agrees that DOM may not have had adequate authority to enforce and did not enforce all provisions of its permanent regulatory program during the period between July 20, 1981, and December 14, 1981; however, since the time these comments were made, Oklahoma has adopted a set of permanent program regulations to administer and enforce the permanent regulatory program. With the approval of these regulations as a program amendment in this notice, the Director has also found that Oklahoma is now able to effectively implement, administer, maintain and enforce its approved program for the reasons set forth in the Director's findings on the status of the Oklahoma program.

2. The Oklahoma Wildlife Federation recommended that OSM assume responsibility for enforcement and permitting until DOM receives final approval of its regulations from the State Legislature and final approval of its program from OSM. Subsequent to this comment, the Oklahoma regulations have become effective in Oklahoma and are being approved today as a program amendment; therefore, this issue is moot.

3. One commentor stated that Oklahoma should have the authority for authorizing flexibility or alternatives to its regulations. Specifically mentioned were: (1) Reasonable bonding for operators doing a good job, (2) an overall State hydrologic study to limit

expenses to small mines and property owners, (3) a limit on the rights of non-involved parties or organizations to protest, (4) a requirement that protesters post bond for delays, and (5) a requirement that there be protection of the confidentiality of the operator's records. These comments were forwarded to the State for consideration in the drafting of its new permanent rules. However, the Director finds the comments not relevant to the issue of the status of the Oklahoma program under 30 CFR Part 733. Therefore, they will not be considered further.

4. Several commentors made recommendations for changes to the emergency rules submitted by Oklahoma. As noted in the preceding comment, copies of all comments were furnished to Oklahoma. However, the Director finds the comments not relevant to the issue of the status of the Oklahoma program under 30 CFR Part 733. Therefore, they will not be considered further.

5. Several landowners unhappy with reclamation efforts have contacted various agencies and the State. They allege to have received no response or assistance from DOM; therefore, they feel that the State of Oklahoma should not retain primacy. The cited cases were either on Federal coal land, or occurred during a pre-SMCRA period. OSM has initiated an enforcement action to remedy the concerns on Federal lands. The pre-SMCRA reclamation problems are not relevant to the issue of how DOM has enforced its conditionally approved program.

Director's Decision

The Oklahoma permanent regulatory program regulations that were submitted to OSM on January 22, 1982, as an amendment to the approved Oklahoma program under the provisions of 30 CFR 732.17, and corrected March 18, 1982, are approved. The approval of this amendment is effective April 2, 1982.

The Director has carefully reviewed all documents in the Oklahoma Administrative Record, including all comments made at public hearings, all written comments, and the Oklahoma program amendment to determine the status of the Oklahoma permanent regulatory program. The regulations contained in the program amendment are now in effect and provide Oklahoma adequate guidance and authority to regulate surface coal mining and exploration activities within the State. While problems concerning Oklahoma's program implementation were indentified, they have been resolved by the program amendment which is being approved in this notice. Based on the findings on the status of the Oklahoma program, the Director hereby determines that Oklahoma is now capable of implementing, administering, maintaining, and enforcing its approved program. Therefore, the Director has terminated the inquiry concerning the status of the Oklahoma regulatory program under 30 CFR Part 733.

Other Information

On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining (OSM) an exemption from Sections 3, 4, 6 and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State regulatory programs, actions, or amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Secretary has determined that pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this action.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96-354, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Dated: March 30, 1982.

J. R. Harris,

Director, Office of Surface Mining Reclamation and Enforcement.

PART 936—OKLAHOMA

A new section, 30 CFR 936.15, is added to read as follows:

§ 936.15 Approval of regulatory program amendments.

The Oklahoma permanent regulatory program amendment received by OSM on January 22, 1982, as corrected by Oklahoma on March 18, 1982, is approved effective April 2, 1982.

[FR Doc. 82-8950 Filed 4-1-82; 8:45 am]

BILLING CODE 4310-05-M

Bureau of Land Management

43 CFR Public Land Order 6153

[CA-7369 WR, CA-8191 WR]

California; Revocation of Stock Driveway Withdrawals

Correction

In FR Doc. 82-4368 appearing on page 7231 in the issue of Thursday, February 18, 1982, make the following correction.

On page 7232, first column, the second line should have read:

"lots 3 and 4, S½NW¼, section 4, T. *44* N.,".

BILLING CODE 1505-01-M

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43 CFR Public Land Order 6230

[M-40412 and M-41685]

Montana; Powersite Restoration No. 768; Partial Revocation of Powersite Reserve Nos. 141 and 734

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes Executive Orders dated July 2, 1910, and May 14, 1920, which created Powersite Reserve Nos. 141 and 734 insofar as they affect 120 acres of public lands in Lewis and Clark County, Montana. The public lands will be restored to operation of the public lands laws.

EFFECTIVE DATE: April 28, 1982.

FOR FURTHER INFORMATION CONTACT: Roland F. Lee, Montana State Office, 406-657-6291.

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, it is ordered as follows:

1. Executive Order dated July 2, 1910, which created Powersite Reserve No. 141 and Executive Order dated May 14, 1920, which created Powersite Reserve No. 734, are hereby revoked insofar as they affect the following described lands:

Principal Meridian

Powersite Reserve No. 141

T. 14 N., R. 3 W.,
Sec. 34, SE¼SW¼, SW¼SE¼.
Containing 80.00 acres.

Powersite Reserve No. 734

T. 14 N., R. 3 W.,
Sec. 34, SW¼SW¼.
Containing 40.00 acres.

The areas described are located in Lewis and Clark County.

2. The State of Montana 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 8 a.m. on April 28, 1982, the public lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8 a.m. on April 28, 1982, shall be considered as simultaneously filed at

that time. Those received thereafter shall be considered in order of filing.

The lands have been and continue to be open to applications and offers under the mineral leasing laws and to location under the United States mining laws subject to 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 Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 23, 1982.

[FR Doc. 82-8882 Filed 4-1-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6231

[M-40698]

Montana; Partial Revocation of Interpretations Designating Public Water Reserve No. 107

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes Secretarial Interpretations of the Executive order creating Public Water Reserve No. 107. This action will restore 40 acres of land in Montana to full operation of the Public Land Laws, including nonmetalliferous mining. All lands affected by this order have been and will remain open to metalliferous mining.

EFFECTIVE DATE: April 28, 1982.

FOR FURTHER INFORMATION CONTACT: Roland F. Lee, Montana State Office, 406-657-6291.

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, it is ordered as follows:

1. Interpretation No. 217 of Public Water Reserve No. 107, dated May 14, 1935, is partially revoked insofar as it affects the following described lands:

Principal Meridian

T. 1 N., R. 45 E.,
Sec. 20, SW¼NW¼.

The area described contains 40 acres in Custer County.

2. At 7:45 a.m. on April 28, 1982, the lands described in paragraph 1 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 laws. All valid applications received at or prior to 7:45 a.m. on April 28, 1982, shall be considered as simultaneously filed at that time. Those received thereafter will be considered in order of filing.

3. The lands described in Paragraph 1 will be open to nonmetalliferous mineral location under the mining laws at 7:45 a.m. on April 28, 1982.

The lands have been and continue to be open to location for metalliferous minerals under the mining laws and applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

March 23, 1982.

[FR Doc. 82-8883 Filed 4-1-82; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR 651

Atlantic Groundfish (Cod, Haddock, and Yellowtail Flounder); Conservation and Management Measures of the Interim Fishery Management Plan

Correction

In FR Doc. 82-8426 appearing on page 13357 in the issue of Tuesday, March 30, 1982, make the following corrections.

1. On page 13358, first column, the entry in the table of contents reading **"Subpart A—Management Measures"** should read **"Subpart B—Management Measures".**

2. In the same column, the heading above § 651.1 reading **"Subpart G—General Provisions"** should read **"Subpart A—General Provisions".**

BILLING CODE 1505-01-M

50 CFR Part 652

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of adjustment of quotas.

SUMMARY: NOAA issues adjustments of quotas for the surf clam and ocean quahog fisheries for 1982. The quotas have been selected from a range defined in Amendment 3 to the Fishery Management Plan for Surf Clam and Ocean Quahog Fisheries as the optimum yield for each fishery. The quotas establish allowable harvests of surf clams and ocean quahogs in the fishery conservation zone in 1982.

EFFECTIVE DATE: May 3, 1982.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, Surf Clam and Ocean Quahog Management Coordinator, 617-281-3600.

SUPPLEMENTARY INFORMATION: Portions of Amendment 3 to the Fishery Management Plan for Surf Clam and Ocean Quahog Fisheries were implemented by final regulations published on January 29, 1982 (47 FR 4268). One of the provisions of the amendment directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs from within ranges which have been identified as the optimum yield for each fishery.

To implement this regulatory provision for establishing quotas, the Regional Director has considered the following information: Stock assessments; catch records and other relevant information concerning exploitable biomass and spawning biomass; fishing mortality rates; incoming recruitment; projected effort and catches; and areas likely to be reopened to fishing.

The Secretary published proposed quotas based on the Regional Director's recommendation on January 27, 1982 (47 FR 3808). No comments on the proposed quotas were received from any source during the comment period which ended on February 26, 1982. The Secretary, therefore, after consultation with the Council, issues the following quotas for 1982 which are identical to those initially proposed:

[Quotas in bushels]

Fishery	1982
Mid-Atlantic surf clam	2,350,000
New England surf clam	50,000
Ocean quahog	4,000,000

Other Matters

This action is taken under the authority of regulations specified at 50 CFR 652.21, and is taken in compliance with Executive Order 12291. It is covered by the certification under the Regulatory Flexibility Act that regulations implementing Amendment 3 will not have a significant impact on a substantial number of small entities.

(16 U.S.C. 1801 *et seq.*)

Dated: March 30, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-9010 Filed 4-1-82; 3:25 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 46, No. 64
Friday, April 2, 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 Parts 272, 273 and 274

[Amdt. No. 211]

Food Stamp Program; Administrative Flexibility Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes changes to current Food Stamp Program regulations. This rule proposes to allow State agency discretion regarding the present specific provisions on solicitation of public input and comment on the overall Food Stamp Program operation. Also, the present rigid training requirements would be relaxed so that each State agency could design its own training program based on its needs. The rules governing the levels of certification and issuance service (points and hours) would be amended to increase the exception authority. Current regulations limiting staggering of the mailing of ATP cards and coupons would be relaxed to allow State agencies to adopt the mailing schedule that best fits their system and that ensures security of the issuance system. The existing regulations on mailing ATP cards to households would be amended to allow office pick-up as an alternative to mailing to reduce mail losses. Present regulations require that each household member 18 years of age or older and each child under 18 who receives countable income, have a social security number (SSN). These rules will require that each household member have an SSN. This rule proposes that the current regulations concerning verification procedures be expanded to give State agencies the authority to verify any information included on the food stamp application and this rule also proposes that the current regulations allowing household members to participate for 60 days pending verification of questionable citizenship status be changed to make those individuals ineligible until their citizenship is verified. These changes are intended to reduce fraud and error in the Food Stamp Program and to provide more flexibility to the State agencies in administering the Program.

DATE: Comments must be received on or before June 1, 1982 to be assured of consideration.

ADDRESS: Comments should be submitted to Thomas O'Connor, Supervisor, Policy and Regulations Section, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office 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, Room 708.

FOR FURTHER INFORMATION CONTACT: If you have any questions, contact Thomas O'Connor, Supervisor, Policy and Regulations Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756–3429.

SUPPLEMENTARY INFORMATION: This regulation does not contain reporting and recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act.

This proposed action has been reviewed under Executive Order 12291. It has been determined that the rule will not have (1) an annual economic impact of more than $100 million, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the rule has been classified as a non-major rule. Adoption of this proposal should result in a savings of program funds by reducing or eliminating losses of Authorization to Participate (ATP) cards and coupons while not adding significant additional costs. The proposed rules would increase flexibility in administering the program for State and local agencies and would reduce current administrative burdens on these agencies.

The proposal has been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354). The Administrator of the Food and Nutrition Service has certified that this proposal does not have a significant economic impact on a substantial number of small entities. The proposal would implement several provisions which affect food stamp certification, issuance, and operational issues. The provisions would amend the staggered mailing rules for the issuance of ATP cards and coupons and would allow State agencies to adopt mailing schedules more appropriate to their systems; would allow State agencies to use alternative issuance systems; would mandate that State agencies require each household member to provide a SSN as a condition of eligibility; would expand the State agencies option to verify any information included on the food stamp application; and would mandate that household members whose citizenship is in question be ineligible until proof of citizenship is obtained. In addition, this rule would allow greater administrative flexibility in the areas of points and hours, training, and the public comment component of the State Operating Guidelines. These provisions do not represent major changes in certification, issuance, or operational policy and should have no significant impact on State and local social service agency or issuance agency workload, staffing needs or paperwork.

Introduction

The Department is concerned with minimizing possibilities for fraud and error in the Food Stamp Program and with lessening the administrative burden currently placed on State agencies. With this in mind, the Department has re-examined the provisions concerning points and hours, training, public comment provisions on State operations, staggering the mail issuance of ATP cards and coupons, the mailing of ATP cards, the rules pertaining to SSN's, the rules governing the participation of people with questionable citizenship and the rules concerning verification procedures. This proposed rulemaking would revise the

policy in these areas. In developing this proposed rule, the Department focused on the development of procedures that are responsive to participant need and State agency flexibility.

Public Comment Provisions in the State Operating Guidelines

On January 21, 1981, a final rule was published (43 FR 47856) changing the regulatioins regarding State Plans of Operation (7 CFR 272.2) and State Operating Guidelines (7 CFR 272.3) under the Food Stamp Act, as amended. These sections set forth procedures and requirements for State agencies to follow to administer the Food Stamp Program.

The State Operating Guidelines require State agencies to submit, for FNS approval, their operating guidelines, such as instructions on certification and issuance procedures, procedures for program monitoring and evaluation, and a description of the State agencies' training programs. Section 272.3(d) of those rules requires State agencies to provide the public with an opportunity to comment on overall program operations, with special emphasis on administrative options available to the State agency. Public comment is required every four years beginning with the State agency's 1982 fiscal year. The regulations also specify that waivers requested by State agencies which have a major and direct impact on participants are subject to public comment prior to submission to FNS. (FNS, under certain conditions, grants State agencies waivers to deviate from program requirements.) However, with prior FNS approval, the comment period may be dropped if an emergency situation exists. In addition, the regulations require State agencies to publicize, prior to the beginning of the comment period, that public comment is being solicited.

Section 272.3(d) specifies that State agencies must use at least one of three prescribed methods to solicit input and comment on overall operations: Their State Administrative Procedures Acts (APA's); publication of a summary of the waiver or general program operations for public comment; or Statewide public hearings.

The Department proposes that State agencies be given the administrative flexibility to solicit comments as State laws require or as the individual State agency believes would be useful. Given State agency staff and budget restraints, soliciting and reviewing comments should be a decision made by the State agency examining their resources and State laws.

Eliminating the current public comment requirements would not, as some believe, prevent the public from learning how State agencies are operating the Food Stamp Program. Section 272.1(d) of the federal regulations requires that the public be allowed to examine regulations, plans of operations, State manuals and Federal procedures which affect the public. Moreover, the majority of States have APA's, or similar procedures, which require some degree of public participation. The APA provides a structured method for commenting and is readily known to most groups concerned with the operation of the food stamp program. Although public interest groups have voiced their concerns that State APA procedures are inadequate as a method for meaningful pblic participation, the Department believes that this is an issue best resolved within the State.

Training

Section 11(e)(6)(c) of the Food Stamp Act of 1977 requires the State agency to provide a "* * * continuing, comprehensive program of training for all personnel undertaking (Food Stamp) certification." The October 17, 1978 final regulations, (43 FR 47846) which implemented the 1977 Act, expanded the training requirement beyond certification personnel.

Those expanded provisions, § 272.4(e) of the Federal regulations, currently require State agencies to designate a full-time training coordinator to develop training materials, supervise training sessions, ensure that appropriate personnel receive training, and monitor compliance with the requirement for public participation in training sessions. In addition, the regulations require State agencies to designate additional staff at either the State or local level to provide training to the appropriate personnel. FNS may grant a waiver from the requirement for a full-time position if the State agency can demonstrate that the services of a training coordinator are not needed because of a limited caseload or because the State agency otherwise has the capability to fulfill the training requirements.

Current regulations also require that State agencies provide training to food stamp certification personnel, fair hearing officials, performance reporting system reviewers, and others who prescreen or provide other services to applicants or the public. More specifically, the regulations mandate that certification personnel, hearing officials, and performance reporting system reviewers be trained prior to initially assuming their duties and then on an as-needed basis. FNS intends to propose deletion of the training requirement for outreach workers because the Omnibus Reconciliation Act of 1981 (Pub. L. 97–35, enacted August 13, 1981) eliminated outreach as a mandated State agency activity.

Additionally, State agency training programs are currently required to cover eligibility criteria, certification procedures, household rights and responsibilities including nondiscrimination rights, and other job-related responsibilities concerning household certification. training for State agency hearing officials and performance reporting system reviewers must also include a detailed and comprehensive study of the regulations and State agency hearing or performance reporting procedures, as appropriate. In addition, the regulations require that the content of training programs be reviewed on a semi-annual basis in light of program deficiencies identified through the State agency's performance reporting system and modfications made where warranted.

Finally, the current regulations require State agencies to allow public attendance at formal certification training sessions that are conducted on a statewide, citywide, or regional (multi-project area) basis. State agencies must reserve five percent of the total number of training slots at each session for the general public, or five training slots, whichever number is smaller. Public attendance is not required if the session is conducted for fewer than twenty persons. State agencies are also required to invite persons representing recipients or organizations working on behalf of recipients.

The Department recognizes that the efficient and effective operation of the Food Stamp Program depends, in part, on training. In addition, the Department is determined to ensure that the Act's specific mandate for training certification personnel is carried out. The question that arises is whether it is necessary to require State agencies to conform to the detailed, national training requirements now in effect.

The Department has determined that the emphasis of training regulations should be on the end product of the training activities. That is, instead of specifying what training procedures the State agency must adhere to, the regulations would mainly address themselves to the FNS evalaution of State and local training. This would significantly reduce the amount of detailed regulations that now exist and would allow increased flexibility to State agencies. To this end, the

Department proposes to allow State agencies to determine their training staff needs, content to training, public attendance at training sessions, and, to a degree, personnel training requirements. The Department believes that the scope of training activities should be decided by the State agencies after they evaluate the regulatory requirements and their resources.

With regard to personnel training requirements, the Department is proposing to limit the requirement for training to certification personnel, fair hearing officials and performance reporting system reviewers and to allow State agencies to determine their staff training needs beyond these groups.

The training of certification personnel is mandated by the Act and, therefore, remains a regulatory requirement. Although not mandated by the Act, the Department would continue to require training for fair hearing officials and performance reporting system reviewers because of the important role they play in ensuring program integrity. Prior to implementation of the current training rules, some State agencies did not train these individuals. However, since they identify areas were program dollars are being unnecessarily spent, the Department wants to be certain that all hearing officials and system reviewers are trained.

Finally, while the proposed rule would allow State agencies to determine their own public attendance requirements, the Department would encourage State agencies to allow public participation since it would be in each State agency's best interest to disseminate information on the program. The Department, however, believes that the decision regarding public participation should be left to each State agency.

Points and Hours

The Department proposes to amend the rules governing the levels of certification and issuance service, the points and hours rules, to increase the exception authority. (The Department also proposes to amend the provisions regarding the over-the-counter issuance of coupons through the 15th of each month (§ 272.5(b)(4)(iii). This is discussed below under the section titled "Staggered Issuance.") Section 272.5(d) of the regulations currently specifies which standards may be excepted and under what circumstances exceptions may be granted. At present, the provisions governing exceptions are very specific and detailed. Further, the rule states that only those exceptions which are specifically provided for may be granted. This rule occasionally results in the inability to grant appropriate and reasonable requests for exceptions to some requirements.

Since implementation of the current regulations, requests for exceptions not currently covered by the exception provisions have been received. In general, these requests have presented legitimate reasons for granting exceptions, but the authority to do so has not been available. For example, because of increasing budget constraints at the State level, some State agencies have proposed to reduce the points and/or hours of service available in a particular county or city below the levels available in January 1980. However, the current maintenance of effort requirement can be waived only when the caseload changes in size or location or if the State agency can demonstrate that the change in points and hours will result in improvement in service delivery. Thus, even though the proposed reductions of sites and/or hours of service would not in any way reduce the actual quality of service available in terms of the real needs of the local population, the reductions could not be allowed becasue they did not reflect changes in caseload or actually improve the level of service delivery.

This proposal would remove the specificity in the current language and would establish a general authority which would allow for exceptions to any of the minimum requirements governing the levels of service. (This does not include requirements governing needs assessments or service plans.) The inclusion of a general authority for granting exceptions, rather than specific language, would add the flexibility to evaluate requests for exceptions, such as those described above, in terms of their own merit and impact.

Under a general authority to grant exceptions, the current minimum requirements would not be altered. Further, exceptions would still be subject to the same review process by the Food and Nutrition Service as is currently required. The authority to deny requests which would be to the detriment of the population in the county or city would be retained.

This rule also proposes to amend the requirement governing the submission of service plans. The regulations require the submission of an initial service plan for each county and city beginning 120 days after publication of rulemaking (§ 272.5(d)(5)). Subsequent plans are to be completed by July 1st of every fourth year beginning with July 1, 1983 or July 1, 1984, whichever year results in the synchronization of the service planning cycle with the State's legislative cycle. Preparation of the service plans requires the State agency to assess the certification and issuance needs of the population of each county or city. Need assessments are performed according to the same schedule as service plans.

Some State agencies have noted that requiring the submission of service plans every four years places an unnecessary administrative burden on them since it means that they will have to submit information which is already available, namely information on the existing levels of certification and issuance service. The Department agrees and proposes to change the service plan requirements. The proposal would retain the requirement to conduct a needs assessment for each county or city every four years, but would amend the requirement for submitting complete service plans to require that plans be submitted outlining only changes in the levels of service that are indicated or desired for each county or city as a result of the needs assessments. The requirement for needs assessments every four years ensures that a periodic formal evaluation is conducted to determine if circumstances warrant changes in the existing service levels. This guarantees that a determination will be made of any change in needs that has not been otherwise noted. Therefore, after initial assessments, the key factor in the ongoing points and hours process is determining if the service needs of the population have changed. Retaining the needs assessment requirement would continue to meet the need for evaluation while lessening the administrative burden on State agencies by eliminating the requirement that they continue to submit service plan information.

Verification/State Agency Flexibility

Current regulations identify three "categories" of information subject to verification prior to a household's initial certification. First, certain information must be verified for all households. This category includes gross nonexempt income, alien status, actual utility expenses of households claiming more than the standard allowance, deductible medical expenses, social security numbers, residency, and identity. Second, questionable information (as specified in the regulations) supplied on the application must be verified. The third category includes items which the State agency may elect to verify. These items include liquid resources or loans, continuing shelter charges, utility expenses of households using the standard allowance, dependent care costs, household size, and, for households meeting the State agency's

error-prone profile, any other eligibility factors. State agencies which wish to exercise the option on a project area basis rather than Statewide must receive prior approval from FNS. For households receiving expedited service, the State agency must postpone verification of all information other than identity and residency unless the verification can be completed within the expedited processing timeframes.

In the recertification process, these three categories of information subject to verification are more restricted. First, information which must be verified for all households includes income, medical expenses, and actual utility expenses, if the source has changed or the amount has changed by more than $25 since the last certification. In addition, State agencies are required to verify newly acquired social security numbers. Second, as in the certification process, any information affecting eligibility or allotments which is questionable must be verified. In the third category, the State agency has the option to verify income, medical expenses, and actual utility expenses which are unchanged by $25 or less. The State agency is not permitted to verify information not included in these categories.

Clearly, the current rules establishes rather strict guidelines for verification of information supplied on applications. The rules delineate both what information *must* be verified and what information *may* be verified. State agencies are not permitted to mandate verification of any information not specifically identified in the rules as being subject to verification.

In addition, the rules place a number of procedural restrictions on State agencies in verifying information. For example, the rules preclude the State agency from designating a particular individual as a collateral contact. A collateral contact is a third party source of information who can confirm a household's circumstances. As a result of these restrictions, State agencies have sometimes been prevented from securing verification which is as timely and accurate as they would like. The Department's Task Force on Food Stamp Regulatory Relief has recommended that the regulations be revised to delete several of these procedural restrictions.

These proposed rules would address the need to expand State agency flexibility in the verification process in several ways. The Department solicits public comment on the proposed changes discussed below, as well as any recommendations which commenters may have for increasing State flexibility and reducing program abuse.

1. *Optional verification.* The proposed rule would change the provisions for optional verification significantly. State agencies would be granted the option to mandate verification of *any* of the information supplied on the application, both at the time of initial certification and recertification. Therefore, the proposed rule would delete the list of selected items which the State agency may choose to verify. All of the current provisions for mandatory verification would be retained, including the requirement that questionable information be verified.

In addition, the proposed rule would delete the requirement that State agencies get prior approval from FNS to exercise optional verification on a project areas basis rather than Statewide. Consistent with this change, the proposed rule would delete the requirement that State agencies have their error-prone households profiles approved by FNS.

2. *Collateral contacts.* The proposed rule would permit the State agency to select a collateral contact for verification if the household fails to designate one or if the household designates one which is unacceptable to the State agency. A household objecting to the choice would have the option of requesting a fair hearing regarding the State agency's action.

3. *Questionable information.* Current rules provide a detailed discussion of what should be considered "questionable". The rules also contain specific casefile documentation requirements for cases where verification is required for questionable information. The proposed rule would delete the detailed discussion of what constitutes questionable information. This change is consistent with the change in the optional verification provisions and the Department's objective of extending greater flexibility to State and local agencies. Because the determination that information is questionable must be made on a case-by-case basis, the Department believes that greater discretion must be provided to State agencies and eligibility workers.

The proposed rule also would delete the specific case file documentation requirements for verification of questionable information. This change is consistent with the proposed changes regarding optional verification provisions. Since under this proposal there would be no special documentation requirements for the exercise of the optional vertification provisions, the Department believes that special provisions for documenting questionable information are not warranted.

Verification of Citizenship

Current rules require State agencies to allow participation for two months by household members with questionable but unverified citizenship, if the household is otherwise eligible and efforts are being made to obtain the needed verification. If verification is not obtained within 2 months, the member whose citizenship is in question becomes ineligible and that member's pro-rated income and all resources are considered available to any remaining household members. On the other hand, under the present rules, aliens must verify proper alien status prior to being found eligible.

The Department believes that the current presumptive eligibility system has increased the potential for fraud and abuse. The presumptive rule allows persons unable to prove that they are citizens to receive food stamps as a result of a verbal declaration even where the declaration is in serious doubt. Regarding this same problem, the current regulations do not provide a mechanism for two project areas to keep track of the two-month period of conditional participation in order to terminate the certification of persons after the second month. Thus, it has been easy for illegal residents who alleged citizenship to move among different project areas and continue receiving food stamps beyond the two-month period.

In addition, the citizenship verification provisions have proven to be administratively complex. Eligibility workers must certify the household member for food stamps, maintain a tickler system to identify those persons who are conditionally eligible for food stamps and, before the two month conditional period ends, contact the household member for verification of citizenship status in order for the member to remain eligible for food stamps. The tracking system to identify household members who must verify citizenship after a two month period is burdensome and error prone.

The proposed rule would amend existing regulations in § 273.2(f)(2)(ii)(B) to require that all household members whose citizenship is in question be ineligible for participation in the Food Stamp Program until proof is obtained. If acceptable verification cannot be obtained, the household member whose citizenship is in question would be ineligible, and that member's income and resources would be considered in accordance with the rules of § 273.11(c).

If this proposal is adopted, the household will have the primary responsibility for providing documentary evidence to resolve any questionable information. Since the types of acceptable verification of citizenship listed in the Food Stamp Program regulations have been expanded to include not only birth certificates but religious records, certificates of citizenship and United States passports, this proposed rule should not be a serious hardship for applicants.

The Department believes that all basic eligibility requirements for certification, such as verification of income, residency, identity, alien status and questionable citizenship should be verified prior to certification. In summary, the proposed rule will make the requirements for verifying questionable citizenship consistent with the requirements for verifying alien status, should help ensure that benefits are not issued erroneously to non-citizens, and should reduce fraud and abuse. Even though the proposed regulation would create some delay in the processing of food stamp applications for persons unable to demonstrate that they are citizens, the Program would be simpler, more uniform and easier to manage.

Expanding the Collection of Social Security Numbers (SSN's)

Current regulations require, as a condition of eligibility, that each household member 18 years of age or older and each child under 18 who receives countable income, have a social security number (SSN). Public Law 97-98 (1981 Farm Bill, enacted December 22, 1981) amended the Food Stamp Act of 1977 to require, as a condition of eligibility for participation in the Food Stamp Program, that each household member furnish to the State agency their SSN (or numbers, if they have more than one). This proposed rule would incorporate this change.

Section 273.6(b)(2)(ii) of the current food stamp regulations provides applicants (who do not have SSN's) the option of either applying for SSN's at Social Security Administration (SSA) offices or at State agency offices, if the State agency can take applications for a SSN. Offering the household the option of applying for a SSN at the State agency or at a SSA office has created control problems for some State agencies and a conflict between enumeration procedures (the completion of an application for a SSN) as established for AFDC and those established by our own regulations. For those State agencies experiencing control problems while enumerating food stamp applicants, the Department plans to give them the flexibility to solve their enumeration problems where they exist.

The Department therefore proposes to give State agencies the option of either requiring applicants to obtain SSN's at the State agency or allowing the State agency to follow the current rule. This proposal is warranted in view of the control problems of some State agencies and the inconsistency with the AFDC program referral policy. With the implementation of this provision, program administration error rates can be minimized and the State agency can administer program matters in the most effective manner possible.

Direct Pick-Up of ATP Cards

Current regulations require the State agency to mail the ATP to the household in a first class, non-forwarding envelope, except when the ATP is hand-delivered under expedited service. This procedure was initially developed as a recipient service so recipients would not have to go to the State agency to pick up their ATP's and to an issuance outlet to redeem them. The Department feared that people would be frozen out of the program because of their inability to pick up the ATP due to the location of the State agency and issuance outlet due to physical or mental health problems of recipients. The procedure of mailing the ATP to the household was also developed as a safeguard against loss or theft of ATP's or coupons. The Postal Service suggested to the Department that first class mail be used to help solve problems of nondelivery of allotments. However, even with this method of issuance, losses and thefts of ATP's ensued, primarily in urban areas. As a result, the Department proposes to allow the development of alternative ATP delivery systems by removing the requirement that ATP's be mailed to participants. This change would give State agencies more flexibility in designing issuance systems to curb fraudulent replacements, thefts and losses. Such systems would improve the integrity of the Food Stamp Program by reducing or eliminating the fraudulent duplicate issuance of food stamp authorizations.

FNS is currently involved in an alternate ATP issuance project in Pennsylvania. The State agency and the Department are testing a system involving the direct delivery of ATP's to issuance outlets where they are simultaneously picked up and used by participants to obtain coupons. So far, the system has been successful at reducing replacement issuances. In the first month of operation, there were no replacements at all issued in the Pennsylvania test districts. This system has also received positive reactions on the operation of the Program and improvement of service to recipients from the recipients themselves, issuance agents and public-at-large. From information on hand about the project, it was indicated that the participation rate in the program has remained constant, which refutes the Department's initial concern of people being frozen out of the program. Because of positive reactions to the Direct Delivery System and reduced replacement issuances, the Department feels that allowing State agencies to use an alternative issuance system is justifiable and will improve service to recipients.

By allowing State agencies the option of providing direct pick-up of ATP's for households or mailing the ATP's to households, they are afforded the latitude of using an alternative issuance system to help lessen the fraudulent duplicate issuance problem they may be experiencing. The Department believes that the State agency derives a benefit from this option by reducing the number of requests for replacement ATP's that they must process.

The Department intends for State agencies to use an alternative issuance system only when State agencies identify that they are having problems with fraudulent duplicate issuances. The State agencies should give adequate notification to households that must change to another issuance system. When an alternative issuance system is initiated by a State agency, special issuance needs of some recipients, such as the elderly and disabled should be considered. Therefore, in designing an alternative issuance system, States should make the system uncomplicated and should consider the distance of the issuance outlet from the recipients, the hours of operation of the issuance outlet and the needs of handicapped recipients.

Staggered Issuance

This proposed action would amend § 272.5(b)(4)(iii), § 274.2, paragraphs (e)(2) and (f)(6), and § 274.3, paragraphs (b)(6) and (b)(7), on the issue of staggering the issuance of ATP cards, over-the-counter issuance of coupons, and the direct mailing of coupons to certified households (staggered issuance involves issuing ATP's or coupons to certified households on a day-to-day basis, not at the same time). This new provision would relax the limitation on staggering of the mail issuance to allow

State agencies to adopt the mailing system that best fits their system.

Current rules allow State agencies to stagger the mailing of ATP cards and the over-the-counter issuance of coupons through the 15th day of each month. The rules also require that the direct mailing of coupons be staggered through the 10th day of each month and allow staggering through the 15th day. This system provides that each household's cycle be established so that it receives ATP's and coupons at the same time each month and it has an opportunity to obtain its coupons prior to the end of the month. These rules give State agencies some control over the volume of people at issuance sites and reduce the exposure to mail theft while ensuring that people will not need to wait an inordinate amount of time to receive their benefits.

In determining what changes to make in the staggering rules, the Department needed to combine the administrative needs of reducing exposure to theft and controlling lines at issuance offices with the desire to provide State agencies with increased flexibility.

As a means of curtailing losses and providing for State agency flexibility it is proposed to remove the standards and guidelines for staggering the issuance of ATP's and coupons to recipients. Thus, it would be entirely at the option of the State agencies when, during the certification month, authorization cards and coupons would be mailed to recipients. State agencies could mail out benefits whenever feasible, based on computer or personnel time, during the month. Once a monthly schedule is established, recipients would receive food stamp benefits at the same time each month throughout their period of eligibility. It should be stressed that no matter what decisions State agencies make on staggered issuance, adequate protection from exposure to loss or mail theft must be provided.

Some inconvenience may exist for recipients if the beginning of the staggered issuance period is moved back in time as compared to the prior month. The recipients who have been receiving the ATP and/or coupons early in the month or applicants who receive their initial allotment early in a month, might have to wait until later the next month to receive their next allotment. These people might have to readjust their food purchasing cycles. Money earmarked for other expenditures might have to be diverted to food. This adverse impact, however, would only occur during the month in which the mailing cycle was changed or in the month the first regular allotment was received. The Department has considered the potential inconvenience to those recipients who experience a change in their issuance cycle, but feels that this one-time inconvenience serves a useful function. The Department believes that State agencies can effectively tailor their mailing systems to reduce their problems of theft and can appropriately adjust the staggered issuance period to prevent control problems at issuance outlets. By giving State agencies the flexibility to mail ATP's and coupons at their discretion and having State agencies ensure protection from loss or mail theft, the Department will spend less on administrative and bonus dollar costs, thus, decreasing the importance of mail loss.

Implementation

The Department proposes that State agencies implement those regulations pertaining to questionable citizenship no later than the first of the month 120 days after publication in a final rulemaking. This period should provide sufficient time to amend food stamp handbooks and forms, make any necessary changes in data processing systems and administrative procedures, train eligibility workers and inform food stamp recipients. Since the other provisions contained in this proposed rule allow, but do not require State agencies to change their current procedures when to implement the allowable changes would be a State agency decision. These discretionary provisions would become effective 30 days following publication in final form. State agencies would be allowed to implement them at any time thereafter.

List of Subjects in: 7 CFR Part 272—Alaska, Civil rights, Food and Nutrition Service, Food Stamps, Grant programs—social programs, Records, Reporting requirements. 7 CFR Part 273—Administrative practice and procedure, Aliens, Claims, Food and Nutrition Service, Food Stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting Requirements, Social Security, Students. 7 CFR Part 274—Administrative practice and procedure, Food and Nutrition Service, Food Stamps, Grant programs—social services, Reporting requirements.

Parts 272, 273 and 274 are proposed to be amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. A new subparagraph (39) is added to § 272.1 (g) as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(39) Amendment 211. The regulations concerning questionable citizenship contained in Amendment 211 shall be implemented no later than the first of the month 120 days following publication of final regulations. State agencies may implement all other provisions of Amendment 211 anytime 30 days after publication of final regulations.

2. In § 272.3, paragraph (d) is revised as follows:

§ 272.3 Operating guidelines and forms.

* * * * *

(d) *Public Comment.* State agencies may solicit public input and comment on overall Program operations as State laws require or as the individual State agency believes would be useful.

3. In § 272.4, introductory paragraph (e) is removed, (e)(1) is revised and (e)(3) is removed. The revisions read as follows:

§ 272.4 Program administration and personnel requirements.

* * * * *

(e) *Training.* (1) *Minimum requirements.*

(i) The State agency shall institute a continuing training program for food stamp eligibility workers, hearing officials, and performance reporting system reviewers. Sufficient training shall be provided to these people prior to initially assuming their duties and, subsequently, on an as-needed basis.

(ii) The State agency shall provide sufficient staff time to ensure that the minimum training requirements are met.

* * * * *

4. In § 272.5:

a. In paragraph (a)(2)(v), the word "year" in the first sentence is replaced with the word "time".

b. Introductory paragraph (a)(3) and paragraph (a)(3)(i) are redesignated as paragraphs (a)(3)(i) and (a)(3)(ii), respectively; current paragraph (a)(3)(ii) is deleted.

c. Paragraphs (a)(4)(i) through (a)(4)(iv) are revised.

d. Paragraph (b)(4)(iii) is revised.

e. Paragraphs (b)(5) and (b)(5)(i) are redesignated as paragraphs (b)(5)(i) and (b)(5)(ii), respectively; current paragraph (b)(5)(ii) is removed. Newly designated paragraph (b)(5)(ii) is amended by removing the last sentence.

f. Introductory paragraph (c) and paragraph (c)(1) are redesignated as paragraphs (c)(1) and (c)(2) respectively; current paragraph (c)(2) is removed. Newly designated paragraph (c)(1) is revised.

g. Introductory paragraph (d)(3) and paragraph (d)(3)(i) are revised;

paragraph (d)(5)(ii) is revised and paragraph (d)(5)(iii) is removed.

The revisions read as follows:

§ 272.5 Locations and hours of operation of certification and issuance services.

(a) * * *

(4) * * *

(i) Whenever a State agency becomes aware of long-term increase in a county's or city's food stamp participation that lasts for at least four consecutive months and causes the county or city to move into the category described in paragraph (a)(2)(i) of this section, the State agency shall take action to bring the county or city into compliance with the requirements of paragraph (a)(2)(i) of this section. The State agency shall not delay taking action until the next needs assessment, as required by paragraph (d) of this section, is due. Rather, the Stage agency shall promptly undertake corrective action planning in accordance with Part 275.

(ii) Whenever a State agency becomes aware of a long-term decrease in a county's or city's food stamp participation that lasts for at least four consecutive months and causes the county or city to move into the category described in paragraph (a)(2)(ii) of this section, the State agency may change the certification services offered in the county or city so that they are consistent with the requirements specified in paragraph (a)(2)(ii) of this section. In such situations, State agencies are not required to wait until the next needs assessment, as required in paragraph (d) of this section, is due before making the changes.

(iii) Whenever a State agency becomes aware of a change in circumstances that would require deletion or rejustification of an exception, the State agency shall take action to reevaluate the situation, update the documentation or the plan, and resubmit, if required, the request to FNS for approval. The State agency shall not delay action until the next needs assessment but shall promptly take the necessary action.

(iv) Whenever a State agency becomes aware of a change in circumstances in a county of city that would warrant the requesting of an exception, the State agency may act on a request for an exception or submit it to FNS, if required. The State agency is not required to wait until the next needs assessments. FNS shall approve or deny requests for exceptions within 30 days of receiving them.

* * * * *

(b) *Issuance services.* * * *

(4) * * *

(iii) In counties and cities with HIR card systems, a total of at least six hours of issuance services shall be made available each calendar month to all participants on regular issuance cycles. The six hours of issuance service shall be divided between at least two days. State agencies shall determine how many hours to make available on each of these two days and shall schedule the two days so that they occur at approximately the same time each month. Thus, if they are scheduled for the fourth and sixth of the month, they should be on or nearly on those dates each month. The schedule shall not be irregular such as the third and fifth one month and the twelfth and fourteenth the next month. Any hours of issuance services provided to comply with this requirement may be counted towards compliance with the requirements of paragraph (b)(4)(i) of this section.

* * * * *

(c) *Maintenance of effort.* (1) Except as allowed for in paragraph (d)(3) of this section, State agencies shall not reduce the number of certification sites and hours or issuance hours in each county or, where applicable, incorporated city, below the number of sites and hours available in January 1980.

* * * * *

(d) * * *

(3) *Exceptions.* Requests for exceptions to the requirements in paragraphs (a), (b), and (c) of this section shall be considered according to the following procedures.

(i) The State-level office shall grant or deny only those exceptions specified as being subject to State agency approval. Granted exceptions shall be described in the service plans for the areas to which they apply, and shall be accompanied by documented justification. The State agency shall determine whether the service that would exist if the exception was granted would be adequate to meet the service needs of the people in the affected area. Exceptions shall be granted only if this determination is positive.

* * * * *

(5) *Scheduling service plans.* * * *

(ii) Subsequent revisions to the service plans shall be submitted when the service needs of the population have changed based on the results of the needs assessment conducted in compliance with the requirements of paragraph (d)(1) of this section.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. In § 273.2

(a) In paragraph (f)(1)(v)(B), the word "only" is removed from the last sentence.

(b) In paragraph (f)(2), the introductory paragraph and (f)(2)(ii)(B) are revised.

(c) Paragraph (f)(3) is revised.

(d) Paragraphs (f)(4)(ii) is revised.

(e) Paragraphs (f)(5)(ii), (f)(6), and (f)(9)(i)(C) are revised.

The revisions read as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(2) *Verification of questionable information.* The State agency shall verify, prior to certification of the household, all other factors of eligibility which the State agency determines are questionable and affect the household's eligibility and benefit level. Procedures described below shall apply when information concerning one of the following eligibility requirements is questionable.

* * * * *

(ii) *Citizenship.* * * *

(B) The member whose citizenship is in question shall be ineligible to participate until proof of U.S. citizenship is obtained. Until proof of U.S. citizenship is obtained, the member whose citizenship is in question will have his or her income, less a pro rata share, and all of his or her resources considered available to any remaining household members as set forth in § 273.11(c).

(3) *State agency options.* (i) In addition to the verification required in paragraphs (f)(1) and (f)(2) of this section, the State agency may elect to mandate verification of any of the other factors which affect household eligibility or allotment within the State or a specific project area.

(A) The State agency may establish its own standards for the use of verification, provided that, at a minimum, all questionable factors are verified in accordance with paragraph (f)(2) of this section and that such standards do not allow for inadvertent discrimination. For example, no standard may be applied which prescribes variances in verification based on race, religion, ethnic background or national origin, nor may a State standard target groups such as migrant farmworkers or American Indians for more intensive verification than other households. The options specified in this paragraph, including verification resulting from a State's error-prone profile, shall not apply in those offices of the Social Security Administration (SSA) which, in

accordance with paragraph (k) of this section, provide for the food stamp certification of households containing recipients of Supplemental Security Income (SSI) and social security benefits. The State agency, however, may negotiate with those SSA offices with regard to mandating verification of these options.

(B) If a State agency opts to verify a deductible expense and obtaining the verification may delay the household's certification, the State agency shall advise the household that its eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. This provision also applies to the allowance of medical expenses as specified in paragraph (f)(1)(iv) of this section. Shelter costs would be computed without including the unverified components. The standard utility allowance shall be used if the household is entitled to claim it and has not verified higher actual costs. If the expense cannot be verified within 30 days of the date of application, the State agency shall determine the household's eligibility and benefit level without providing a deduction of the unverified expense. If the household subsequently provides the missing verification, the State agency shall redetermine the household's benefits, and provide increased benefits, if any, in accordance with the timeliness standards in § 273.12 on reported changes. If the expense could not be verified within the 30-day processing standard because the State agency failed to allow the household sufficient time, as defined in paragraph (h)(1) of this section, to verify the expense, the household shall be entitled to the restoration of benefits retroactive to the month of application, as a result of the disallowance of the expense, provided that the missing verification is supplied in accordance with paragraph (h)(3) of this section. If the household would be ineligible unless the expense is allowed, the household's application shall be handled as provided in paragraph (h) of this section.

(ii) *Error-prone profiles.* The State agency may require additional verification of other eligibility factors as indicated by error-prone household profiles developed and based on statistically representative data derived from the State agency's quality control review, audits, or other special reviews in accordance with § 275.15(a)(2). These expanded verification requirements would be applied only to those particular eligibility factors and/or households identified as being error-prone, and would apply only on a uniform basis statewide or in one or more project areas. In addition, if the State agency's error-prone household profiles demonstrate that verification of particular eligibility factors (other than gross nonexempt income, declared alien status, and social security numbers) mandated under § 273.2(f)(1) is not needed for particular categories of households, the State agency may appropriately reduce mandatory verification. The State agency shall not implement verification policies that result in prohibited discrimination based on race, religion, ethnic group, or national origin. For example, an error-prone profile may not be used to target particular racial minorities, or groups such as migrant farmworkers or American Indians, to more intensive verification than other households. Error-prone profiles shall be used in a selective manner in modifying verification requirements.

(4) *Sources of verification.* * * *

(ii) *Collateral contacts.* A collateral contact is a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. The State agency may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the State agency. Examples of acceptable collateral contacts may include employers, landlords, social service agencies, migrant service agencies, and neighbors of the household. Sytems of records to which the State agency has routine access are not considered collateral contacts and, therefore, need not be designated by the household. Examples are the Beneficiary Data Exchange (BENDEX) and the State Data Exchange (SDX) and records of another agency where a routine access agreement exists (such as records from the State's unemployment compensation system).

* * * * *

(5) *Responsibility for obtaining verification.* * * *

(ii) Whenever documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, the State agency may require a collateral contact or a home visit. The State agency, generally, shall rely on the household to provide the name of any collateral contact. The household may request assistance in designating a collateral contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide an accurate third-party verification. When the collateral contact designated by the household is unacceptable, the State agency shall either designate another collateral contact, ask the household to designate another collateral contact, or substitute a home visit. The State agency is responsible for obtaining verification from acceptable collateral contacts.

(6) *Documentation.* Case files must be documented to support eligibility, ineligibility, and benefit level determinations. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

* * * * *

(9) *Verification subsequent to initial certification.*—(i) *Recertification.* * * *

(C) Other information, changed or unchanged, may be verified at recertification. However, any information which is questionable shall be verified in accordance with paragraph (f)(2) of this section. Verification under this paragraph shall be subject to the same verification procedures as apply during initial verification.

* * * * *

2. In Section 273.6, remove the following language in the title line of paragraphs (b), "18 years and over and children receiving income." Paragraph (a)(1) and (b)(2)(ii) are revised and read as follows:

§ 273.6 Social security numbers.

(a) *Requirements for participation.*

(1) The State agency shall require that a household participating or applying for participation in the Food Stamp Program provide the State agency with the social security number (SSN) (or numbers if they have more than one number) of each household member. If individuals have more than one number, all numbers shall be required. The State agency shall explain to applicants and participants that refusal to provide a SSN will result in disqualification of the individual for whom a SSN is not obtained in accordance with paragraph (c) of this section.

* * * * *

(b) *Obtaining SSN's for food stamp household members.* * * *

(2) * * *

(ii) In States where enumeration agreements are made with the SSA, State agencies may either require household members to apply for SSN's at the State agency office or give households the option of applying for SSN's at the State agency or at the SSA. In State in which no agreement with SSA exists, the State agency shall

inform the household member where to apply and what information will be needed. The State agency shall suggest that the household member ask for proof of application from SSA, in the event his or her application is not processed within the 90 day time period described in paragraph (a) of this section. SSA normally uses the Receipt for Application for a Social Security Number, Form SSA–5028, as evidence that an individual has applied for a SSN. State agencies may also use their own documents for this purpose.

* * * * *

PART 274—ISSUANCE AND USE OF FOOD COUPONS

1. In § 274.2, paragraphs (e)(2), (e)(5) and (f)(6) are revised and read as follows:

§ 274.2 Issuance systems.

* * * * *

(e) *ATP issuance* * * *

(2) The State agency shall choose when, during the certification month, ATP's are issued to recipents provided that each household's cycle shall be such that it receives its ATP at the same time every month and it has an opportunity to obtain its coupons prior to the end of the month.

* * * * *

(5) Whenever it determines it is having problems with fraudulent duplicate issuances the State agency may issue ATP cards to households by requiring households to visit an issuance outlet to pick up the ATP or by mailing the ATP cards to the households. If the ATP is mailed to the household, the State agency shall mail the ATP in a first class, non-forwarding envelop, except when the ATP is handled as specified in paragraphs (g) or (h) of this section. The State agency may also use certified mail for ATP delivery.

* * * * *

(f) HIR card issuance systems.* * *

(6) The State agency shall choose when, during the certification month, coupons are issued to recipients.

* * * * *

2. In § 274.3, paragraph (b)(6) is revised and paragraph (b)(7) is removed. The revisions read as follows:

§ 274.3 Issuance of coupons through the mail.

* * * * *

(b) *Mail issuance controls and records.** * *

(6) The State agency shall chose when, during the certification month, coupons are issued to recipients provided that each household will be likely to receive its coupons on the same date every month.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011–2027))

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

Dated: March 25, 1982.

Samuel J. Cornelius,

Administrator.

[FR Doc. 82–8691 Filed 4–1–82; 8:45 am]

BILLING CODE 3410–30–M

Food Safety and Inspection Service

9 CFR Parts 319 and 381

[Docket 81–060N]

Barbecue Standard

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Solicitation of Information.

SUMMARY: The Food Safety and Inspection Service (FSIS) has been petitioned to amend the standard for "barbecued meats" and "barbecued poultry" to include traditional and regional methods of barbecuing and recognize newly developed techniques which are considered more efficient by the petitioner. Before drafting any proposal revising the standards, the Agency would like the opportunity to solicit and review all public comments. Therefore, FSIS is seeking information from all interested members of the public regarding the need for revising the barbecue standards presently contained in the Federal meat and poultry products inspection regulations.

DATE: All comments must be received on or before June 1, 1982.

ADDRESS: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments concerning the poultry products inspection regulations should be directed to Mr. Brewington, (202) 447–5388. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. C. R. Brewington, Branch Chief, Labeling Branch, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, FSIS, USDA, Washington, DC 20250, Telephone (202) 447–5388.

SUPPLEMENTARY INFORMATION:

Comments

Interested parties are invited to submit comments concerning this notice. Written comments should be sent in duplicate to the Regulations Office. The comments should reference the docket number which appears in the heading of this document. Any person desiring an opportunity for an oral presentation of views concerning possible amendments to the poultry product regulations should make such request to Mr. Brewington so that arrangements may be made for such views to be presented. A transcript will be made of all oral presentations. All comments submitted pursuant to this notice will be available for public inspection in the Regulations Office between 8:00 a.m. and 4:30 p.m., Monday through Friday.

Background

A petition has been received from Smokaroma, Inc., Boley, Oklahoma, manufacturer of the "Smokaroma" barbecue device, requesting that the Agency amend the existing definition of the terms "barbecue," and "barbecuing," as they appear in the Federal meat and poultry products inspection regulations and change the definition of "barbecued poultry" in the Meat and Poultry Inspection Manual. The petitioner is seeking approval for alternative processing procedures to be used in conformance with a revised barbecue standard.

The current regulations are set forth below.

Section 319.80 of the Federal meat inspection regulations (9 CFR 319.80) defines "Barbecued Meats" as follows:

> Barbecued meats, such as product labeled "Beef Barbecue" or "Barbecued Pork," shall be cooked by the direct action of dry heat resulting from the burning of hard wood or the hot coals therefrom for a sufficient period to assume the usual characteristics of a barbecued article, which include the formation of a brown crust on the surface and the rendering of surface fat. The product may be basted with a sauce during the cooking process. The weight of barbecued meat shall not exceed 70 percent of the weight of the fresh uncooked meat.

"(Kind) barbecued" is defined in § 381.164 of the poultry products inspection regulations (9 CFR 381.164). This standard reads as follows: "Such product consists of ready-to-cook poultry of the kind indicated, that has been cooked in dry heat and basted with a seasoned sauce."

Section 381.165 of the poultry products

inspection regulations (9 CFR 381.165) identifies the product standard for "(Kind) barbecued prepared with moist heat" as follows: "Such product consists of ready-to-cook poultry of the kind indicated that has been cooked by the action of moist heat in a barbecue sauce." "Barbecuing (Poultry)" is further addressed and interpreted in § 18.30(d) of the Meat and Poultry Inspection Manual in the following manner:

> Moist or dry heat is permissible. When moist heat is used, it must be indicated as part of product name. Products, not barbecued by conventional methods but combined with barbecue sauce after cooking, must be identified as poultry "with barbecue sauce" or other wording to indicate such processing. Barbecue sauce may contain natural or approved artificial smoke flavorings.

Current policies applies by FSIS in the routine review of labels further provide that product cooked by electronically produced heat may be labeled as a barbecued product, provided the heat source (e.g., "infra-red cooked" or "electrically cooked") is shown not less than one-half as large as the term barbecue.

The petitioner maintains that there is an apparent inconsistency in the Federal meat and poultry products inspection regulations, since the poultry products inspection regulations permit barbecued poultry to be prepared using dry heat, or moist heat, if noted in the product name (i.e., "(Kind) barbecued prepared with moist heat"), while the Federal meat inspection regulations only permit the use of dry heat for barbecued meat food products. Additionally, the petitioner contends that the existing standard is obsolete, because the standard excludes many newly developed, more efficient methods of producing the usual barbecued characteristics in a finished product. The petition further states that the existing policy for barbecued meats essentially assumes there is only one way to barbecue which excludes several traditional methods of barbecuing that have been associated with particular regional or geographic localities. For example, sealed pit barbecuing, commonly used in the Southwest, would be an unacceptable barbecuing method.

In questioning the barbecue standard, the petitioner specifically has highlighted the following requirements, or words set forth in quotes below, in the existing standard for "barbecued meats":

1. Barbecued meats shall be cooked by "the direct action of dry heat";
2. Barbecued meats shall be cooked by "heat resulting from the burning of hard wood or the hot coals therefrom";
3. Barbecued meats shall be cooked for "a sufficient period to assume the usual characteristics of a barbecued article, which include the formation of a brown crust on the surface"; and
4. "The weight of barbecued meat shall not exceed 70 percent of the weight of the fresh uncooked meat."

The Agency believes that there may be various viewpoints on these issues and other aspects of the present barbecue standards which are of concern to the general public. Therefore, before deciding whether to propose any modifications to the existing standards, all interested parties are requested to present their views on this matter. We are particularly interested in hearing from persons in those states that have laws or regulations defining the term "barbecued meats" or "barbecued poultry" or "barbecue". Specifically, we are interested in receiving comments and data on the following:

1. Are the existing policies too restrictive?
2. Can both dry heat and moist heat be used?
3. Are there various sources of heat (e.g., hardwood, coals, gas, electric, infrared, etc.) appropriate for barbecuing products without further qualifications?
4. Are there certain characteristics expected of a finished barbecued product (e.g., formation of a brown crust, etc.)?
5. Is the presence of a basting sauce necessary or sufficient to characterize the product as barbecued?
6. Are there various methods of preparation which (e.g., open pit, sealed pit, hot smoke, etc.) should be included in the definition of barbecuing?
7. Are there styles of barbecuing (e.g., Western, Texas, Hungarian, Korean, Chinese, Thai, etc.) that should be recognized as having geographic significance?

These comments will assist the Agency in deciding whether or not to amend its regulations regarding this category of food products and, if so, to proceed in a manner which provides sufficient flexibility to food processors while assuring that products remain accurately labeled and continue to conform to consumer expectations.

Done at Washington, D.C. on March 29, 1982.

Donald L. Huston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 82-8948 Filed 4-1-82; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-111]

Occupational Exposure to Ethylene Dibromide

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of time for submission of written comments.

SUMMARY: On Feburary 26, 1982, OSHA published an extension of the comment period (47 FR 8380–8381) on the advance notice of proposed rulemaking for ethylene dibromide (46 FR 61671–61676). The comment period was extended until March 31, 1982. Recently, OSHA has received request from various interested parties who need additional time to prepare responses which include detailed and recently acquired information. OSHA believes that the extension of the comment period is appropriate and the information gathering process will be improved if all parties are granted additional time for submission of comments. Thus, OSHA has decided to extend the date for submission of comments by 60 days to May 31, 1982.

DATES: Comments in response to the December 18, 1981, advance notice of proposed rulemaking (46 FR 61671–61676) must be received on or before May 31, 1982.

ADDRESSES: Comments in quadruplicate, should be mailed to Docket Officer, Occupational Safety and Health Administration, Docket No. H–111, Room S–6212, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, telephone (202) 523–7894. All material submitted will be available for inspection and copying at this address.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Information and Consumer Affairs, Room N–3637, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, telephone (202) 523–8151.

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, D.C. 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655).

Signed at Washington, D.C., this 26th day of March 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 82-8814 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Public Disclosure of Comments Received From Federal Agencies on the Oklahoma Proposed Program Amendment

AGENCY: Surface Mining Reclamation and Enforcement Office (OSM), Interior.

ACTION: Disclosure of comments on the Oklahoma Proposed Program Amendment from Federal Agencies.

SUMMARY: Before the Director, OSM, may approve state regulatory program amendments submitted under Section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain Federal agencies must be solicited and disclosed. The Director has solicited comments from these agencies, and is today announcing their public disclosure.

ADDRESSES: Copies of the comments received are available for public review during business hours at:

Office of Surface Mining Reclamation and Enforcement, Oklahoma State Office, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103, Telephone: (918) 581-7927

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 L Street, NW., Washington, D.C. 20240, Telephone: (202) 343-7896

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521-3859

FOR FURTHER INFORMATION CONTACT: Robert L. Markey, Director, Oklahoma State Office, Office of Surface Mining Reclamation and Enforcement, Room 3432, 333 West Fourth St., Tulsa, Oklahoma 74103, Telephone: (918) 581-7927

SUPPLEMENTARY INFORMATION: The Director, OSM, is evaluating the proposed regulatory program amendment submitted by Oklahoma for his review on January 22, 1982. *See* the February 18, 1982, **Federal Register** (47 FR 7262). In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i), this amendment to Oklahoma's program may not be approved until the Director has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program amendment as proposed. In this regard, the following Federal agencies were invited to comment on the Oklahoma program:

Department of Agriculture:
- Soil Conservation Service
- Forest Service
- Agricultural Stabilization and Conservation Service

Advisory Council on Historic Preservation

Department of Labor:
- Mine Safety and Health Administration

Environmental Protection Agency

Water Resources Council

Department of Energy

Department of the Interior:
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Mines
- Bureau of Reclamation
- Fish and Wildlife Service
- National Park Service

Geological Survey

U.S. Army Corps of Engineers

Of those agencies invited to comment, OSM received comments from the following offices:

Department of the Interior:
- Bureau of Land Management
- Fish and Wildlife Service
- Bureau of Mines
- National Park Service
- Bureau of Reclamation
- Geological Survey

Department of Agriculture:
- Soil Conservation Service

U.S. Army Corps of Engineers

Department of Labor:
- Mine Safety and Health Administration

These comments are available for review and copying during business hours, at the locations listed above under "Addresses."

Dated: March 30, 1982.

James R. Harris,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 82-8949 Filed 4-1-82; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 943

Receipt of Proposed Amendment From Texas and Schedule for Public Comment Period and Hearing

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: On September 18, 1981, the State of Texas submitted to OSM a proposed amendment to the Texas State regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of new bonding regulations intended to supersede the bonding regulations included in the Texas program approved by the Secretary of the Interior. This notice describes the nature of Texas' proposed amendment, sets forth information concerning public participation in the Director's determination whether the amendment is adequate to comply with the statutory and regulatory requirements of SMCRA and 30 CFR Chapter VII, and requests comments on the proposed program amendment.

DATES: A public hearing has been scheduled to be held from 1:00 p.m. to 4:00 p.m., on Thursday, May 6, 1982.

Interested persons wishing to participate at the hearing should contact Mr. Robert Markey, Director, Oklahoma State Office by April 23, 1982.

If no interested person contacts Mr. Markey by April 23, 1982 to express interest in participating at the hearing, OSM may cancel the hearing. Written comments must be received on or before 4:00 p.m. C.S.T. on May 12, 1982, at the address shown below under "Addresses."

ADDRESSES: The public hearing has been scheduled to be held at: Austin Mariott Hotel, 6121 I-35 North, Austin, Texas 78752.

Written comments should be sent to: Mr. Robert Markey, Director, Oklahoma State Office, Office of Surface Mining, Room 3432, 333 West 4th Street, Tulsa, Oklahoma 74103.

Copies of the full text of the Texas program, all written comments and the proposed amendment are available for inspection during regular business hours at:

Office of Surface Mining, Oklahoma State Office, Room 3432, 333 West 4th Street, Tulsa, Oklahoma 74103

Oklahoma Department of Mines, 4040N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105

Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C. 20240

Each requestor may receive from the State Office Director, free of charge, one copy of the proposed amendment to the Oklahoma program.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markey, Director, Oklahoma State Office, Office of Surface Mining, Room 3432, 333 West 4th Street, Tulsa, Oklahoma 74103, Telephone: (918) 581–7927.

SUPPLEMENTARY INFORMATION: At the public hearing, all persons wishing to comment on the proposed amendment will have the opportunity to do so. Persons who wish to make arrangements to comment at the specific time at the hearing may contact Robert Markey at the OSM Oklahoma State Office or by phone at (918) 581–7927. In addition, the State Office Director has prescribed the following hearing format and rules of procedure in accordance with 30 CFR 732.12(b)(1). Individual testimony at the hearing will be limited to 15 minutes. For good cause, the hearing officer has the discretion to extend this time limit. The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and would facilitate the job of the court reporter. The public hearing will continue until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard following the scheduled speakers.

In addition to the public hearing, representatives of OSM will be available to meet now and May 23, 1982, at the request of the public to receive the public's advice and recommendations concerning the adequacy of the proposed amendment. Persons wishing to meet with representatives of OSM during the period, may place such a request with Robert Markey, State Office Director, telephone (918) 581–7927 at the State Office Director's Office above. Meetings may be scheduled between 9:00 a.m. and 12:00 and 1:00 p.m. and 4:00 p.m., Monday through Friday, excluding holidays, at the State Director's Office.

Public participation and review of State programs is a vital component in fulfilling the purposes of SMCRA. On September 19, 1979, OSM published guidelines in the **Federal Register** (44 FR 54444–54445) governing contacts between the Department of the Interior and both State officials and members of the the public.

Background on the Texas Program

The Secretary of the Interior has approved Texas's State regulatory program to control surface coal mining and reclamation operation. *See* 45 FR 13008, February 27, 1980; 45 FR 41137, June 18, 1980; and 45 FR 78637, November 26, 1980. Part of the approved program consists of a body of State regulations needed to implement, administer and enforce a system of performance bonds and liability insurance, or other equivalent guarantees, consistent with the requirements of 30 CFR Chapter VII, Subchapter J.

On September 18, 1981, the Railroad Commission of Texas submitted a set of proposed revisions to the State's bonding regulations (TX–259).

On March 11, 1982, the Office of Surface Mining notified the Railroad Commission of Texas that several elements of the State's proposed amendment required additional clarification (TX–260).

In response to OSM's request, the Railroad Commission of Texas submitted additional information on March 23, 1982, to clarify several provisions of the proposed amendment to the Texas State program (TX–261).

Summary of the Proposed Amendment

The proposed amendment submitted and subsequently clarified by the Railroad Commission of Texas would establish new criteria and procedures relating to: (1) General requirements for issuance and bonding of surface coal mining and reclamation operations under regulatory programs; (2) the amount and duration of performance bond; (3) form, conditions and terms of performance bond and liability insurance; (4) procedures, criteria and schedules for release of performance bond; and (5) performance bond forfeitures, criteria and procedures. The proposed amendment consists of the proposed revisions to the State's bonding rules submitted on September 18, 1981 (TX–260), as clarified by Texas on March 23, 1982 (TX–261).

Criteria for Approval of State Program Amendments

A complete listing of the requirements which the proposed amendment to the Texas State program must be able to meet can be found at 30 CFR 732.15(b)(6). That section establishes the criteria for approval or disapproval of State program provisions related to performance bonds and liability insurance. The procedures governing the approval or disapproval of amendments to State programs are contained in 30 CFR 732.17, as amended, January 23, 1981 (45 FR 7909 *et seq.*). The provisions of 30 CFR 732.17(h)(9) state that the applicable criteria for approval or disapproval of State programs set forth in 30 CFR 732.15 shall be utilized by the Director of OSM in approving or disapproving State program amendments.

Details on Public Participation

The public comment period and public hearing being announced today invite interested person to provide OSM information related to the adequacy of Texas' proposed amendment. Specifically, OSM is seeking information to be used in determining whether the proposed amendment to the proposed amendment to the Texas program meets the requirements of SMCRA and the Federal rules contained in 30 CFR Chapter VII.

If no interested person contacts Mr. Markey by April 23, 1982, to express interest in participating at the hearing, OSM may cancel the hearing. Notice of any hearing cancellation will be published in the **Federal Register.** Written comments must be received on or before 4:00 p.m. C.S.T. on May 12, 1982, at the address shown below under "Addresses." Comments received after the close of the public comment period will not necessarily be considered in the approval decision on the proposed amendment.

Other Information

If the Director decides to approve the amendment to the Texas program, his approval will consist of an amendment to the Federal rules contained in 30 CFR Part 943. That Part is reserved for the codification of decisions related to the State of Texas.

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this proposed rule. On August 28, 1981, the Office of Management and Budget (OMB) granted OSM exemption from Sections 3, 4, 6 and 8 of Executive Order 12291 regarding all actions taken to approve or conditionally approve State regulatory programs, actions, or amendments. Therefore, this proposed program amendment is exempt from the preparation of a Regulatory Impact Analysis and regulatory review by OMB.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96–354, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Dated: March 30, 1982.

James R. Harris,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 82-8952 Filed 4-1-82; 8:45 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Amendments to the Condominium Regulations

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The VA (Veterans Administration) is proposing to amend its condominium regulations in response to public comments and staff suggestions for needed program improvements or refinements. It is expected that these amendments, if adopted, will vastly improve the condominium regulations and hopefully increase veteran, declarant, and lender participation in this VA housing program.

DATES: Comments must be received on or before May 4, 1982. It is proposed that these amendments become effective on the date of final approval.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between 8 a.m. and 4:30 p.m. Monday through Friday (except holidays), until May 14, 1982. Persons visiting the Veterans Administration Central Office in Washington, D.C. for the purpose of inspecting comments will be received by the central Office Veterans Services Unit in room 132 of the above address. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, Washington, DC 20420, 202-389-3042.

SUPPLEMENTARY INFORMATION: On August 13, 1979, the VA published final regulations in the **Federal Register** (44 FR 47336) placing the condominium project approval requirements in the home loan § 36.4300 series of the Code of Federal Regulations. At that time, the public was invited to comment on these new regulations. Ten comments were received. Two of the commentators expressed considerable interest in the VA condominium program but made no comments concerning the new regulations. One commentator commended the Veterans Administration for including converted condominiums in the Loan Guaranty Program. The remaining seven commentators offered suggestions for regulatory improvement with two commentators extensively reviewing the regulations. Since the commentators offered suggestions in more than forty different areas, we are unable to discuss each comment, but we will discuss some of the more major comments leading to proposed amendments.

Several commentators suggested improvements to various definitions. Amendments are proposed to clarify the definitions of "Conversion Condominium," "Low-Rise Condominium" and "Series Condominium." Two of the commentators stated that the requirements for a detailed developmental plan contained in § 36.4357(d) were too burdensome for an expandable condominium with later development dependent upon market acceptance and market needs. Amendments are offered to require detailed developmental plans on only those portions of the condominium which are required to be built. One commentator suggested that § 36.4358(c)(4) be amended to allow an alternative approach to the current method of handling the problem of units, common elements etc. encroaching across adjoining property lines. We are proposing, therefore, to amend the regulation to allow both the "Easements for Encroachments" and the "Monuments as Boundaries" approach to this problem.

Another comment suggested the amendment of § 36.4359(b) to make the section a recommendation rather than a requirement. This section currently requires real estate taxes to be assessed only against the individual unit owners and not separately against unit owners and the homeowner's association. Unfortunately, some local authorities insist upon levying taxes separately against units and common properties. While we believe that this approach can result in double taxation of the common elements, our regulation has the effect of removing developments in those areas from eligibility for the VA Loan Guaranty Program. Therefore, we are proposing to make this provision only a recommendation of the best method for handling assessments of local real estate taxes. A comment also suggested that § 36.4359(c) be amended to allow Information Brochures (Public Offering Statements) to be furnished to the prospective purchaser after contract signing if State law authorizes a "cooling off" period in which the applicant may withdraw from the contract without penalty within a certain period of time of receiving the Information Brochure. We believe that this is an excellent idea and propose to amend the section accordingly.

A comment was received concerning § 36.4360(a)(1) that the section requires detailed plats and plans in expendable developments at a time when declarant is unable to furnish exact configurations of portions of the development to be constructed years into the future. Clarifying language on this matter is proposed for consideration. Another comment concerning § 36.4360(a)(3) (expansion of expandable condominiums) states that the regulation is unclear. The commentator protested that the regulation is unclear. The commentator protested that the regulation was an unreasonable burden if it required the prior approval of the Administrator to the amendment of documents adding later built phases to the development. We agree that the regulation should be written in more understandable language. However, in order to assure that developments are being completed in accordance with the general scheme of development, later phases may only be added after the Administrator has approved the legal measures to accomplish the expansion and is assured that the general plan of development has been followed. We firmly believe this requirement is needed to protect homeowners in existing phases of the development from haphazard development or development which is inconsistent with the general plan of development. We agree that the regulation should be clarified to preclude the possibility of it being interpreted as requiring a full review of all of the documents when the amendment is only for the purpose of adding a planned subsequent phase. However, we feel retention of the approval requirement is essential. Overall development approval was based on the general scheme of development. Value on individual units has been determined and the marketing and sale of the units to that point reflect considerations based on the original plan. Without the prior approval authority to annexation expressed in the proposed regulation the interest of the Government, as reflected in value of the properties which are the security for the

loans, and the interests of veterans who purchased units in an earlier phase could be seriously impaired if phases were added which adversely affected values in the earlier constructed phases.

Several commentators took issue with § 36.4360(d) governing condominium ownership and operation of offsite facilities. The regulation currently is drafted requiring that the offsite facilities must be owned through a non-profit corporation. Comments were received indicating that ownership of such offsite facilities through a trust arrangement or a corporation for profit was desirable for some developments, and these developments should not be excluded from the VA condominium program. We agree and propose to amend § 36.4360(d) to allow the condominum to own offsite facilities through other means than a non-profit corporation.

Section 36.4360a governs the appraisal requirements for condominiums. Numerous comments were received concerning the special requirements for condominium conversions and the warranty requirements for new condominiums (excluding conversions). Section 36.4360a(b)(3) currently requires declarants to assure that all major components of the proposed condominium conversion have an estimated remaining useful life of 10 years. The commentators noted that the requirement could force a declarant to replace the roof of a condominium even though the roof had an estimated remaining useful life of 8 years. We believe that in the foregoing type of circumstances the regulation is unreasonable and propose to amend the provision. Finally, § 36.4360a(d) was considered by some commentators to impose warranty requirements for the common elements which could not be of a consistent value to owners in different developments. We concur and propose to amend the requirement.

In general, some proposed amendments are major substantive changes necessary to reflect current condominium development practices. Other proposed amendments constitute refinements to facilitate VA guaranteed financing. It is expected that the regulations, if amended as proposed, will provide more flexibility for review and acceptance of the myriad forms of condominium development while continuing to afford genuine protection to the interests of veterans and the Government.

Brief Explanation of Each Proposed Amendment

Clarifications of the definitions of "Conversion Condominium" and "Low Rise Condominium" are proposed for §36.4356(b). Also, the deletion of an unneeded phrase in the definition of "Series Condominium" is proposed.

An amendment is proposed to § 36.4356(c) to require that all units and amenities must be substantially completed prior to guaranty of the first individual unit loan.

Section 36.4357(a) is proposed for amendment to state that condominium developments, in which condominium owners' associations own an interest in and are mandatory members of an offsite facility (in lieu of individual unit owners), may be approved by the Administrator. An unneeded phrase also is deleted from this paragraph. A technical amendment also is proposed to the definition of "Available" in § 36.4357(c)(3).

A new subparagraph (4) of § 36.4357(c) is proposed to specify that all amendments to the project enabling legal documentation must be VA approved only during the period of declarant control.

Clarification of VA requirements concerning developmental plans in proposed single phase and multiphase condominium developments is proposed for § 36.4357(d)(2).

Section 36.4358(b)(4)(i) is proposed for amendment to include assessment late charges as an item which an association may levy and collect from unit owners who do not timely pay association assessments. An amendment also is proposed to § 36.4358(c)(4) concerning encroachments of units and common elements upon adjoining realty as a result of repairs, construction, settlement, etc. This amendment would authorize the "Monuments as Boundaries" approach if permitted under local law.

Amended language is proposed for § 36.4358(c)(6)) to clarify leasing restrictions.

Revised VA requirements concerning the assessment of local real estate taxes are proposed in § 36.4359(b). An amendment also is proposed to § 36.4359(c) to extensively revise the requirements concerning Information Brochures which must be furnished prospective purchasers of declarant marketed units.

An amendment is proposed to § 36.4359(e)(2) to revise the recommended association fidelity bond requirements, while an amendment to § 36.4359(e)(3) extends the suggested maximum term for professional management contracts negotiated by the declarant to 2 years and makes a language change to assure uniform terminology throughout the condominium regulations.

An amendment is proposed to § 36.4360(a)(1) to clarify VA policies with respect to general plans and detailed plats and plans in expandable condominium developments. Clarifying language is proposed to § 36.4360(a)(3) concerning merger of phases in an expandable development. Clarifying language is also proposed for amendment of § 36.4360(a)(5) on VA requirements concerning declarant purchase of general liability insurance to protect unit owners from the liability of the declarant continuing construction of additional phases. A language change also is proposed to this subparagraph to assure uniform terminology.

Section 36.4360(b)(2) is proposed for amendment to clarify VA requirements concerning the minimum and maximum number of units in a Series condominium development.

Extensive amendments are proposed to § 36.4360(d) (1) and (2) to modify VA requirements concerning the ownership and operation of offsite facilities. Offsite facilities owned by an association comprised of unit owners' associations, a trust or a corporation will be considered for VA approval by the Administrator. In addition, language changes are proposed to § 36.4360(d)(3) to assure uniform terminology, also an amendment to § 36.4360(d)(4) is proposed to liberalize VA requirements concerning the first meeting of the board of directors of the offsite facility.

Amended appraisal requirements for proposed condominium conversions are proposed for § 36.4360a(b) (1) and (2). An amendment to § 36.4360a(b)(3) is proposed to the special requirements for condominium conversions to authorize a declarant to place funds for replacement of major components in the association's reserve fund. This would be an alternative procedure to the requirement that all major components have an estimated 10 years remaining useful life. An amendment also is proposed to the requirement of adequate offsite utilities servicing the condominium conversion.

A modification of the warranty requirements of the common elements for proposed condominiums (except conversions) is proposed in § 36.4360a(d). Finally, an amendment is proposed to add paragraph (e) to § 36.4360a which will clarify VA policy concerning commercial areas within the condominium development.

These regulatory proposals have been reviewed pursuant to Executive Order 12291, entitled Federal Regulation, and the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164). The proposed rules have been found to be nonmajor with respect to the Executive order and

nonsignificant with respect to the Regulatory Flexibility Act.

Concerning Executive Order 12291, a major rule is defined as having an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies; or significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets. The proposed condominium regulations will not impact on the public or private sectors as a major rule as defined by the Executive order because the proposed regulations are primarily liberalizing revisions to the existing requirements for the approval of condominium developments. One proposed amendment (§ 36.4356(c)) is a restatement of an existing policy position which was omitted when VA's condominium policies were published in regulatory form on August 13, 1979. Other proposed amendments are for the purpose of clarifying language. If adopted, the proposed regulations will not have an annual effect on the economy of $100 million and should not cause major increases in costs or adversely affect in a significant manner any element named above. With respect to the Regulatory Flexibility Act, each agency must analyze the effects of regulatory requirements on small business, government jurisdictions and organizations (collectively referred to as small entities). The Administrator hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b) these proposed regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the proposed regulations should have no impact upon small government jurisdictions or small organizations and should have a minor but beneficial economic impact upon small businesses participating in the Loan Guaranty program. The Administrator also has determined that condominium associations are not small entities (section 601(6)) under the RFA since they do not come within the RFA definition of small organization (section 601(4)). In addition, concerning the amendment to § 36.4356(c), it will not have a significant economic impact because it simply restates an existing VA policy and will not change present practice.

(Catalog of Federal Domestic Assistance Program Number is 64.114)

These amendments are proposed under authority granted the Administrator by sections 210(c), 1803(c)(1), and 1810(a)(6) of title 38, United States Code.

Approved: February 18, 1982.

Robert P. Nimmo,

Administrator.

PART 36—LOAN GUARANTY

The Veterans Administration proposes to amend 38 CFR Part 36 as follows:

1. In § 36.4356, paragraphs (b)(3), (11) and (13) and (c) are revised as follows:

§ 36.4356 Condominium loans-general

* * * * *

(b) *Definitions.* * * *

(3) *Conversion condominium.* Condominium projects not originally built and sold as condominiums but subsequently converted to the condominium form of ownership.

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(11) *Low rise condominium.* A condominium project in which all or a part of a living unit extends over or under another living unit, e.g. garden apartment or walk-up project.

* * * * *

(13) *Series condominium.* A number of adjoining but separately constituted condominiums. An assocation of owners is established for each project, and each association is responsible for maintenance and upkeep of the common elements in its own project. Cross-easements between the separate condominiums may be created to permit members of the separate condominiums to use the common areas of the other condominiums.

(c) *Project approval.* Prior to Veterans Administration guaranty of an individual unit loan in a condominium:

(1) The legal documentation establishing the condominium project or development must be approved by the Administrator.

(2) All units in the individual project or phase must be substantially completed.

(3) All amenities of the condominium (to include offsite community facilities), that are to be considered in the unit value, must be legally bound to the condominium regime. All such amenities, as well as the common elements of the project, must be substantially completed and available for use by the unit owners. The Administrator in appropriate cases may approve the placement of adequate funds by the declarant in an escrow or otherwise earmarked account to assure completion of amenities and allow closing of Veterans Administration guaranteed (or insured) loans. Such funds must be adequate to assure completion of the amenities free and clear of all liens. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

2. Section 36.4357 is amended as follows:

a. By inserting the words "as used in this paragraph (c)(3)" following the word "Available" in the last sentence and by removing the legal citation following paragraph (c)(3).

b. By revising the last two sentences of paragraph (a) and paragraph (d)(2) and by adding paragraph (c)(4) so that the added and revised material reads as set forth below:

§ 36.4357 Acceptable ownership arrangements and documentation.

(a) *Types of condominium ownership.* * * * The Administrator will consider for approval, individual ownership of units coupled with an undivided interest in the general common elements and/or limited common elements, with title to additional property for common use vested in an association of unit owners, with mandatory membership by unit owners or owners' associations. Any such arrangement must not be precluded by applicable State law. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

* * * * *

(c) *Condominium documentation.* * * *

(4) *Amendments to documents after Veterans Administration project approval.* While the declarant is in control of the owners' association, amendments to the declaration, bylaws or other enabling documentation must be approved by the Administrator. The declarant should have proposed amendments reviewed prior to recordation. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(d) *Real property descriptions in the declaration.* * * *

(2) *Developmental plan—proposed condominiums.* The declaration or other legally enforceable and binding document must state in a reasonable manner the overall development plan of the condominium, including building types, architectural style and the size of the units for those portions of the condominium which are required to be built. Under the applicable provisions of the declaration or such other legally enforceable and binding document, the development of the required portion of

the condominium must be consistent with the overall plan, except that the declarant may reserve the right to change the overall plan or decide not to construct planned units or improvements to the common elements if the declaration sets forth the conditions required to be satisfied prior to the exercise of that right, the time within which the right may be exercised, and any other limitations and criteria that would be necessary or appropriate under the particular circumstances. Such conditions, time restraints and other limitations must be reasonable in light of the overall plan for the condominium. In an expandable project, additional phases which are not required to be built may be described in the development plan in very general terms, or the declaration may provide that the declarant makes no assurances concerning the construction, building types, architectural style and size of the units, etc. of these phases. However, the minimum number of units to be built should be that which would be adequate to reasonably support the common elements. (See § 36.4360(a)(6)) (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

3. Section 36.4358 is amended as follows:

a. By inserting the words "late charges," following the words "with interest" in the second and third sentences of paragraph (b)(4)(i).

b. By revising paragraphs (c) (4) and (6) as set forth below:

§ 36.4358 Rights and restrictions.

* * * * *

(c) *Unit owners' rights and restrictions.* * * *

(4) *Encroachments—units and common elements*—(i) *Easements for encroachments.* In the event any portion of the common elements encroaches upon any unit or any unit encroaches upon the common elements or another unit as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. The declaration should provide, however, reasonable limits on the extent of any easement created by the overlap of units, common elements, and limited common elements resulting from such encroachments; or

(ii) *Monuments as boundaries.* If permitted by the governing law within the jurisdiction where the project is located, the existing physical boundaries of a unit or a common element or the physical boundaries of a unit or a common element reconstructed in substantial accordance with the original plats and plans thereof become its boundaries rather than the metes and bounds expressed in the deed, plat or plan, regardless of settling or lateral movement of the building, or minor variance between boundaries shown on the plats, plans or in the deed and those of the building. The declaration should provide reasonable limits on the extent of any such revised boundary(ies) created by the overlap of units, common elements, and limited common elements resulting from such encroachments.

* * * * *

(6) *Leasing restrictions.* All leases should be in writing and be subject to the declaration and bylaws. There shall be no prohibition or restriction on a condominium unit owner's right to lease his or her unit, except that a requirement that leases have a minimum initial term of up to 6 months is acceptable.

* * * * *

4. Section 36.4359 is amended as follows:

a. By removing the word "developer" and inserting the word "declarant" and removing the words "1 year" and inserting the words "2 years" in the last sentence of paragraph (e)(3).

b. By revising paragraphs (b), (c) and (e)(2) as set forth below:

§ 36.4359 Miscellaneous legal requirements.

* * * * *

(b) *Taxes.* Unless otherwise provided by State law, real estate taxes must be assessed and be lienable only against the individual units, together with their undivided interests in the common elements, and not against the multifamily structure. The owners' association usually owns no real estate, so it has no obligation concerning ad valorem taxes. Unless taxes are assessed only against the individual units, a tax lien could amount to more than the value of any particular unit in the structure. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(c) *Information brochure.* When units are being sold by the declarant (not applicable to resales), an information brochure must be given to veteran buyers prior to the time a downpayment is received and an agreement is signed, unless State law authorizes receipt of the downpayment and delivery of the information brochure followed by a period in which the veteran purchaser may cancel the purchase agreement without penalty for a specified number of days. Information brochures must be written in simple terms to inform buyers about the condominium regime, and the rights and obligations of unit owners. The information brochure must inform buyers that the association does not provide owner's contents and personal liability policies which are the owner's responsibility. In the event the development is expandable, series, etc., there must be full disclosure of the impact of the total development plan. In expandable, series, or other projects with more than one phase, the information brochure must fully disclose later development rights, and the general plans of the declarant for additional phases. If the declarant makes no assurances concerning phases which are not required to be built, the declarant should state that no assurances are given concerning construction, unit sizes, building types, architectural styles, etc.

* * * * *

(e) *Insurance and related requirements.* * * *

(2) *Fidelity bond coverage.* The securing of appropriate fidelity bond coverage is recommended for any person or entity handling funds of the owners' association, including, but not limited to, employees of the professional managers. Such fidelity bonds should name the association as an obligee, and be written in an amount equal to at least the estimated maximum of funds, including reserve funds, in the custody of the owners' association or the management agent at any given time during the term of the fidelity bond. However, the bond should not be less than a sum equal to 3 months' aggregate assessments on all units plus reserve funds.

* * * * *

5. Section 36.4360 is amended as follows:

a. By removing the word "developer" and inserting the word "declarant" in the headnote and in the first and second sentences (3 times) and removing the words "nonprofit corporation" and inserting the words "corporation or association" in the last sentence of paragraph (d)(3).

b. By revising paragraphs (a)(1), (3) and (5), (b)(2) and (d)(1), (2) and (4) as set forth below:

§ 36.4360 Documentation and related requirements—flexible condominiums and condominiums with offsite facilities.

(a) *Expandable condominiums.* The following policies apply to condominium regimes which may be increased in size by the declarant:

(1) The declarant's right to expand the regime must be fully described in the declaration. The declaration must contain provisions adequate to ensure that future improvements to the

condominium will be consistent with initial improvements in terms of quality of construction. The developer must build each phase in accordance with an approved general plan for the total development (§ 36.4357(d)(2)) supported by detailed plats and plans of each phase prior to the construction of the particular phase.

* * * * *

(3) The declaration or equivalent document must contain a covenant that the condominium regime may not be amended or merged with a successor condominium regime without prior written approval of the Administrator. The declarant may have the proposed legal documentation to accomplish the merger reviewed prior to recordation. However, the Administrator's final approval of the merger will not be granted until the successor condominium has been legally established and construction completed.

* * * * *

(5) The declarant must purchase (at declarant's own expense) a general liability insurance policy in an amount determined by the Administrator to cover any liability to which owners of previously sold units are exposed as a result of further condominium project development.

* * * * *

(b) *Series projects.* * * *

(2) In the case of proposed projects, or projects under construction, the declaration should state the projected minimum and maximum number of units that the developer intends to build on other sections of the development area.

* * * * *

(d) *Ownership and operation of offsite facilities*—(1) *Title requirements.* Evidence must be presented that the offsite facility owned by an owners' association with mandatory membership by condominium unit owners or condominium unit owners' associations has been completed and conveyed free of encumbrances by the declarant for the benefit of the unit owners with title insured by an owner's title policy or other acceptable title evidence. Offsite facilities conveyed to a nonprofit corporation are the preferred method of offsite facilities ownership; however, the Administrator will consider other forms of ownership on an individual case basis.

(2) *Mandatory membership.* The declaration of the condominium (each condominium in a series development) and the legal documentation of the corporation or association which owns the offsite facility must provide the following:

(i) The owner of a condominium unit is automatically a member of the offsite facility corporation or association and that upon the sale of the unit, membership is automatically transferred to the new owner/purchaser. It is also acceptable if each condominium owners' association (in lieu of each individual unit owner) is automatically a member of the offsite facility corporation or association coupled with use rights for each of the unit owners or residents. If membership in an offsite owners' association is voluntary, no credit in the CRV (certificate of reasonable value) valuation may be given for such offsite amenities.

(ii) Each member of the offsite facility corporation or association must be entitled to a representative vote at meetings of the offsite facility corporation or association. If the individual condominium owners' association is a member of the offsite facility corporation or association, each condominium owners' association must be entitled to a representative vote at meetings of the offsite facility corporation or association.

(iii) Each member must agree by acceptance of the unit deed to pay a share of the expenses of the offsite facility corporation or association as assessed by the corporation or association for upkeep, insurance, reserve fund for replacements, maintenance and operation of the offsite facility. The share of said expenses shall be equitably determined. Failure to pay such assessment must result in a lien against the individual unit in the same manner as unpaid assessments by the association of owners of the condominium. If each condominium owners' association is a member of the Offsite facility in lieu of individual unit owners, failure to the condominium owners' association to pay its equitable assessment to the offsite facility must result in an must result in an enforceable lien.

* * * * *

(4) *Board of directors, first meeting.* The offsite facility's corporation or association may be governed by an interim board composed of declarant representatives. The first annual meeting of the corporation or association should take place within 1 year after the first condominum unit is conveyed. Usually, at the first annual meeting the board of directors will be elected by owners of the condomium units. In large developments transfer of control of the offsite facility through election of members of the board of directors must be accomplished within a reasonable time depending upon the size of the total development. Declarant control should not extend beyond the requirements of § 36.4359(a)(1). (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6)

6. In § 36.4360a, paragraphs (b)(1), (2)(ii) and (3) and (d) are revised and paragraph (e) is added so that the added and revised materials reads as follows:

§ 36.4360a Appraisal requirements.

* * * * *

(b) *Proposed condominiums or existing condomniums with declarant in control or marketing units*—(1) *Low rise and high rise condominiums.* Low rise and high rise condominiums shall comply with local building codes. Alterations, improvements, or repairs to low rise and high rise buildings proposed to be converted to the condominium form of ownership must comply with current local building codes, unless local authorities require total code compliance. In those areas where local standards are nonexistent, inferior to, or in conflict with Veterans Administration objectives, a certification will be required from a registered professional architect and/or registered engineer certifying that the plans and specifications conform to one of the national building codes which is typical of similar construction methods and standards for condominiums used in the area. Those portions of the condominium conversion which are not being altered, improved or repaired must be appraised in accordance with paragraph (a) of this section.

(2) *Horizontal condominiums.* * * *

(ii) Proposed or existing (declarant in control or marketing units) horizontal condominium conversions shall comply with current local building codes for alterations and improvements or repairs made to convet the building to the condominium form of ownership unless local authorities require total code compliance. In those areas where local standards are nonexistent, inferior to, or in conflict with Veterans Administration objectives, a certification will be required from a registered professional architect and/or registered engineer certifying that the plans and specifications conform to one of the national building codes which is typical of similar construction methods and standards for condominiums used in the area. Those portions of the condominium conversion which are not being altered, improved, or repaired must be appraised in accordance with paragraph (a) of this section.

(3) *Additional condominium conversion requirements.* (i) The declarant of a condominium project, which is (A) proposed, (B) under

construction, or (C) an existing project with a declarant in control or marketing units not previously occupied, must furnish structural and mechanical component statements on the present condition of all accessible structural and mechanical components material to the use and enjoyment of the condominium. These statements must be completed by a registered professional engineer and/or architect prior to the guaranty of the first unit loan in the project. Each statement also must give an estimate of the expected useful life of the roof, elevators, heating and cooling, plumbing and electrical systems assuming normal maintenance. A minimum of 10 years estimated remaining useful life is required on all structural and mechanical components. In the alternative, the declarant may contribute an amount of funds to the condominium reserve fund equal to a minimum of 1/10 (one tenth) of the estimated costs of replacement of a major structural or mechanical component (as determined by an independent registered professional architect or engineer) for each year of estimated remaining useful life less than 10 years, e.g. 3 years remaining useful life equals a 7/10 required declarant contribution to the reserve fund of the component's estimated replacement cost. The noted statements and remaining useful life requirement are not applicable to existing resale conversion projects where the declarant is no longer marketing units and/or in control of the association. Expandable or series condominium conversions require engineering and architectural statements on each stage or phase.

(ii) In declarant controlled projects, a statement(s) by the local authority(ies) of the adequacy of offsite utilities servicing the site (e.g. sanitary or water) is required. If a local authority(ies) declines to issue such a statement(s), a statement(s) may be obtained from a registered professional engineer.

* * * * *

(d) *Warranty.* Except in condominium conversion projects, each CRV issued by the Administrator relating to a proposed or existing not previously occupied dwelling unit in a condominium project shall be subject to the express condition that the builder, seller, or the real party in interest in the transaction shall deliver to the veteran purchasing the dwelling unit with the aid of a guaranteed or insured loan a warranty against defects for the unit and common elements, in the form prescribed by the Administrator. The unit shall be warranted for 1 year from the date of settlement or the date of occupancy (whichever first occurs). The common elements shall be warranted for 2 years from the date each of the common elements is completed and conveyed to the owners' association. However, if the common elements are completed and conveyed prior to conveyance of the first unit or the first unit in the particular phase, the latest of the foregoing date or the following dates shall apply: (1) As to any common element within any additional land or portion thereof 2 years from the date the first unit in the additional land is conveyed, (2) as to any common element within any convertible land or portion thereof, 2 years from the date the first unit therein is conveyed, and (3) as to any common element within any other portion of the condominium, 2 years from the date the first unit therein is conveyed. For these purposes, defects shall be those items reasonably requiring the repair, renovation, restoration, or replacement of any of the components constituting the unit or common elements. Items of maintenance relating to the unit or common elements are not covered by the warranty. No certificate of guaranty or insurance credit shall be issued unless a copy of such warranty, duly receipted by the purchaser, is submitted with the loan papers. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

(e) *Commercial areas.* With respect to existing and proposed condominiums, commercial areas within condominium developments are acceptable, but such interests will be considered in value. (38 U.S.C. 210(c)(1), 1803(c)(1), 1810(a)(6))

[FR Doc. 82-8927 Filed 4-1-82; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[A-5-FRL-2090-6]

State Implementation Plan Requirements; Proposed Delayed Compliance Order for Columbus and Southern Ohio Electric; Extension of Public Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Extension of public comment period.

SUMMARY: On January 29, 1982, 47 FR 4320, the Environmental Protection Agency proposed to issue an order pursuant to section 113(d) of the Clean Air Act, 42 U.S.C. 7401 *et seq.* to Columbus and Southern Ohio Electric Company. A 30-day comment period was provided which was scheduled to end on March 1, 1982. In response to the Commonwealth of Pennsylvania, Department of Environmental Resource's request, the public comment period is being extended 30 days to March 31, 1982.

DATE: Comments must be recieved on or before Wednesday, March 31, 1982. If possible, please send an original and four copies.

ADDRESS: Comments should be submitted to: The Regional Administrator, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Catherine Fox at (312) 353-2084.

Dated: March 19, 1982.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 82-8928 Filed 4-1-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-745; RM-3846]

Radio Broadcast Services; TV Broadcast Station in Newark, Ohio; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order; dismissal of proposed rule.

SUMMARY: This action retains the assignment of TV Channels *31 and 51 to Newark, Ohio, in response to a petition filed by Christian Television of Ohio, Inc.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Philip Cross, Broadcast Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

Adopted: March 19, 1982.

Released: March 26, 1982.

In the matter of an amendment of § 73.606(b), table of assignments, television broadcast stations (Newark, Ohio); Report and Order (Proceeding terminated), BC Docket No. 81-745, Rm-3846.

1. The Commission has before it for consideration a *Notice of Proposed Rule Making*, 46 FR 55283, published November 9, 1981, in which Christian Television of Ohio, Inc. ("petitioner") requested that UHF noncommercial educational Channel *31, Newark, Ohio,

be dereserved and that UHF television Channel 51 there be reserved instead.

2. Petitioner operates Station WSFJ on Channel 51 in Newark and "desired to improve its facilities at the present WSFJ transmitter site." However, the station is currently short spaced with Station WOUC–TV operating on Channel *44 at Cambridge, Ohio.

3. Petitioner has on file with the Commission an application (File No. BPCT–8110 26 KE) seeking an increase in power to 126 kW ERP and antenna height above average terrain of approximately 700 feet.

4. The *Notice of Proposed Rule Making* herein set forth as Option I the petitioner's proposal and, as Option II, the maintaining of the *status quo* in Newark.

5. Petitioner had stated that it would abandon its attempt to have the Newark, Ohio, channels shifted if Ohio University, licensee of Station WOUC–TV, would consent to acceptance of the pending proposal to improve the facilities of Station WFSJ–TV and a future improvement which it proposes to file.

6. Ohio University filed comments in which it stated that no objection would be interposed against petitioner's proposal. The channel separation requirement is 60 miles, while separation under petitioner's proposal would be 57.7 miles, according to Ohio University's consulting engineer. This is more than the 57 miles of combined Grade A coverage provided by the two facilities. Ohio University made the comment that any other increases in facilties of Station WSFJ could result in serious interference to Station WOUC–TV and that "[a]ny subsequent application by Christian would be considered by Ohio University in the same open-minded spirit as the present proposal."

7. Petitioner filed comments in which it stated that in view of Ohio University's interposing no objection to the proposed operation on Channel 51, it is willing to withdraw its petition for rule making herein.

8. Support for Option II was expressed in comments filed by the Ohio Educational Broadcasting Network Commission, licensee of noncommercial educational television translator Station W31AA, Newark, Ohio, which is licensed to operate on Channel *31; and in comments and reply comments by Ohio State University, licensee of noncommercial educational Station WOSU–TV, Channel *34, Columbus, Ohio.

9. Option I was supported by Capital City Telecasting, Inc. and the Association of Maximum Service Telecasters, Inc. on the premise that the public interest favors the shifting of channels for a translator rather than the retention of a short separation.

10. Inasumuch as the petitioner now has no interest in the dereservation of Channel *31 for commercial use at Newark and, in fact, supports Option II for maintaining the *status quo* of television assignments there, we conclude that Option II should be adopted and this proceeding terminated.

11. Accordingly, the petition of Christian Television of Ohio, Inc. requesting the dereservation of Channel *31 and the reservation of Channel 51 at Newark, Ohio, IS HEREBY DISMISSED.

12. Authority for the action herein is contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and sections 0.281 and 0.204(b) of the Commission's Rules.

13. It is further ordered, That this proceeding is terminated.

14. For further information concerning the above, contact Philip Cross, Broadcast Bureau, (202) 632–5414.

(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. 82–8843 Filed 4–1–82; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 95

[PR Docket No. 82–84; RM–2943; RM–2972; FCC 82–74]

Updating and Codification of the General Mobile Radio Service Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to update and codify the rules for the General Mobile Radio Service (GMRS). GMRS systems heretofore have been licensed under staff policies based upon interpretations of broadly-worded rules. Licensing procedures that are based on policies and interpretations have become cumbersome in the light of the growth that is taking place in GMRS. Therefore, in order to provide for an orderly transition in handling the increasing number of GMRS system applications, it is desirable to update the rules and to codify in them the various staff policies and interpretations.

DATES: Comments are due by August 30, 1982 and replies by September 30, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Stephanie Spernak, Personal Radio Branch, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

In the matter of updating and codification of the General Mobile Radio Service (GMRS) Rules, PR Docket Nos. 82–84, RM–2943, RM–2972.

Adopted: February 11, 1982.

Released: March 16, 1982.

By the Commission: Commissioner Fogarty absent; Commissioner Dawson dissenting and issuing a statement.

1. The Commission proposes to update and codify the General Mobile Radio Service (GMRS) Rules, Part 95, Subpart A.

Background

2. Prior to 1976, Part 95 (Personal Radio Services [1]), Part 97 (Amateur Radio Service) and Part 99 (Disaster Communications Service) were contained in Volume VI of the Commission's rules. In March and April of 1976, each of these three parts was published separately. This enabled a user to purchase only that rule part for which there was a need. In April of 1977, Part 95 was published as four booklets:

Subpart A (GMRS)
Subpart C (R/C Radio Service)
Subpart D (CB Radio Service)
Subpart E (Technical Regulations)

3. The rules governing the GMRS have remained virtually unchanged since they were adopted in 1958. Yet, advances in land mobile technology have made many of the rules obsolete. For instance, GMRS systems using a mobile relay station were not adequately provided for in the original rules. Such systems have been licensed pursuant to policy decisions and staff interpretations of broadly-worded rules. Earlier, the number of GMRS systems was small. Now, however, the number of GMRS systems is increasing; there are 22,000 GMRS licensees at the present time. This growth makes the licensing procedures referred to above unwieldy. The rules need to be updated. In addition, the policies and interpretations, pursuant to which GMRS systems are presently licensed, should be incorporated into the GMRS Rules. This type of rule codification will be beneficial to applicants and licensees as well as to the Commission's staff.

The Proposal

4. The proposed rules are divided into five major segments, each addressed to

[1] Formerly designated Citizens Radio Service.

the particular interest of those persons needing to know them. The major divisions are:

a. General Provisions (for all interested parties);

b. Considerations when planning a GMRS system (for system designers);

c. Applying for a GMRS license (for applicants);

d. Managing a GMRS system (for licensees); and

e. Operating a GMRS station (for station operators).

5. Basic phrases have been identified and defined and are used consistently throughout the rules. By so doing, the confusion that can result from using words like operate, control, transmit and communicate in different contexts and with various nuances is eliminated. These basic phrases are:

a. A station transmits communcations.

b. The station operator operates the station by:

(1) Communicating messages; *and*

(2) Controlling the station.

6. To further enhance their usability, the proposed rules have been organized into more, but smaller, rule sections. This type of format minimizes the number of rules that are cast in long, complex and multilayered subsections. Also, it facilitates the finding of a particular requirement because of the expanded Table of Contents.

7. Present rule § 95.3 contains definitions of base and fixed stations. In that rule, a mobile relay station is considered a special type of base station, and a control station is considered a special type of fixed station. We believe that this current station nomenclature creates difficulties in understanding the rules. Hence, proposed rule § 95.25 expands the number of land stations from two to four: Base station, mobile relay station, fixed station and control station. Each of these land station types are then categorized by their permissible communication points. Therefore, the terms "base station" and "fixed station" have a more limited meaning than in the current rules.

8. Proposed § 95.31 provides that the same entity may have only one GMRS system within a 40 mile area. Forty miles is proposed as the separation between an entity's GMRS systems so that the same entity will not duplicate coverage in the same area. The present rule, § 95.57(b), limits a single applicant in given area to one frequency, unless the applicant can demonstrate need for a second frequency. However, the present rule lacks specificity in that the area in question is not delimited in any way. Comments are invited on the appropriateness of the 40 mile separation.

9. Fixed stations and control stations must comply with special requirements in and near large urban areas. Currently, there are 87 such areas. The 1960 Census statistics show each to have more than 200,000 inhabitants. In this proposal, we intend to update the list of large urban areas according to the 1980 Census. The list referred to in proposed rule § 95.45 is derived from provisional 1980 Census figures. That list will be further updated when the final census report entitled "Number of inhabitants, United States Summary", showing urbanized areas, is issued. It should be available in 1982, before these proposed rules are finalized. Since population shifts since 1960 may change the population centers that are considered large urban areas, we intend to extend "grandfather" rights to current GMRS licensees who otherwise would be affected by the updating of the large urban area list.

10. We are proposing to relax the station identification requirements in the GMRS. Under the present rule, the station that is transmitting must identify with its assigned call sign. Before system licensing was introduced in GMRS, every station in the same system could be assigned a different call sign. Our records, however, showed all of the call signs assigned to the same licensee. Now, in many cases, only one call sign is assigned to the system. Therefore, proposed rule § 95.127 would permit any call sign in the same system to be used.

11. The Commission has received two petitions for rulemaking, RM–2943 from Randolph B. Smith and RM–2972 from the California Mobile Radio Association. They both request that the upper frequency limit defining a subaudible tone be raised from the current limit of 150 Hertz. In GMRS a subaudible tone is often used to aid in calling particular stations. Proposed rule § 95.183(d)accommodates both requests by designating 250 Hertz as the upper frequency limit of a subaubible tone. Specific comments are invited as to the suitability of this, or some other frequency, as a new limit.

12. RM–2972 also seeks changes to clarify three specific rule sections. These clarifications are accommodated by the proposal. Another rule change requested by RM–2972 would require that remotely controlled base stations be equipped with specific devices to "* * * insure a high degree of control over who may or may not access (a) remote base station." These devices would include a subaudible tone decoder to activate and disable the transmitter, and a "time-out" timer to disable the transmitter if continuous activation by a mobile unit exceeds three minutes. While the Commission agrees that the petition's goals of avoiding unauthorized use is quite laudable, we believe that it is neither our place nor the place of any single entitly to prescribe to each GMRS licensee "how to" protect the station from such unauthorized use. Instead, we favor allowing each individual licensee the greatest possible flexibility in determining the most effective, practical and efficient method of meeting regulatory obligations. Accordingly, we are not adopting this aspect of the petition's request in the proposal.

13. We have eliminated the requirement in § 95.67(a) that specifies there be a written agreement between the licensee and a telephone answering service if a transmitter is to be installed on the premises of a telephone answering service. That arrangement can be worked out by the parties themselves. Our regulatory interest is that our licensee comply with these rules. Also deleted are the notice requirements of § 95.73(b) (mobile operation area change exceeding 7 days) and § 95.77(c) (use of the station for civil defense communications). These proposed changes are intended to relieve GMRS licensees from requirements which serve no real purpose. In addition certain rule sections relating to defective applications; amendment and dismissal of applications; and partial license grants have likewise not been carried forward into this proposal since they deal with procedural matters which are adequately covered in Part 1 of the Commission's Rules. We see no need to duplicate those provisions in the GMRS Rules.

Conclusion

14. Notice is hereby given that it is proposed to amend 47 CFR Part 95 in accordance with the proposed rules set forth in the attached Appendix.

Procedural Matters

15. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal

oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231. A summary of the Commission's procedures governing *ex parte* contacts in informal rule making proceedings is available from the Consumer Assistance Office, FCC, Washington, DC 20554, (202) 632–7000.

16. Authority for issuance of this Notice is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in § 1.415, of the Commission's rules, 47 CFR 1.415 interested persons may file comments on or before August 30, 1982, and reply comments on or before September 30, 1982. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information, if placed in the public file, and provided further that the fact of the Commission's reliance on such information is noted in the Report and Order.

17. In accordance with § 1.419 of the Commission's rules, 47 CFR 1.419, formal participants must file an original and five copies of their comments and other materials. Participants who wish each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, DC.

18. The Commission has determined that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) do not apply to this rule making proceeding since this proposal merely updates present rule provisions, makes compliance with requirements less burdensome for users and codifies existing policies by incorporating them into the GMRS Rules. For the most part, these rule changes are minor in nature and will not have a significant economic impact on a substantial number of small entities.

19. It is ordered, that the Secretary shall cause a copy of this Notice to be served upon the Chief Counsel for Advocacy of the Small Business Administration and that the Secretary shall also cause a copy of this Notice to be published in the **Federal Register.**

20. For information concerning this proposal, contact the Personal Radio Branch, Private Radio Bureau, Federal Communications Commission, Washington, DC, 20554, (202) 632–4964.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083 (47 U.S.C. 154, 303, 307))

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

The FCC proposes to revise Part 95, Subpart A, of its Rules as set forth below:

PART 95—PERSONAL RADIO SERVICES

Subpart A—General Mobile Radio Service (GMRS)

General provisions

Sec.

95.1 The General Mobile Radio Service (GMRS).
95.3 Using these Rules.
95.5 Key terms used in these Rules.
95.7 License required.
95.9 License eligibility.
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95.27 Paging receiver description.
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95.45 Additional restrictions in large urban areas.
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95.49 Antenna height restrictions.
95.51 Mobile station communication points.
95.53 Base station communication points.
95.55 Mobile relay station communication points.
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95.105 License term.
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95.139 Servicing station transmitters.
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95.143 Transmitter power limits.
95.145 Modifying a GMRS system.
95.147 Moving a small control station.
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95.151 Interconnection to a telephone prohibited.

Sec.

95.153 Managing a GMRS system in an emergency.

Operating a GMRS Station

95.171 Station Operator required at control point.
95.173 Station operator duties.
95.175 Cooperation in sharing the assigned channel.
95.177 Responsibility for station operator's communications.
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95.183 Permissible communications.
95.185 Prohibited communications.

Appendixes

Appendix A—How to prepare a functional system diagram.
Appendix B—Typical GMRS system examples.
Appendix C—Lines A and C.
Appendix D—Making a control station power test.
Appendix E—Where the FCC Field Offices are located.
Appendix F—Where the FCC Monitoring Stations are located.
Appendix G—How to determine effective radiated power (ERP).
Appendix H—Where the large urban areas are located.
Appendix I—Requesting an STA.

Authority: Secs 4, 303, 304, 48 Stat., as amended, 1066, 1089, 1083 47 U.S.C 154, 303 307.

Subpart A—General Mobile Radio Service (GMRS)

General Provisions

§ 95.1 The General Mobile Radio Service (GMRS).

The *GMRS* is a private radio service. Each licensee manages a system of mobile and land stations. Individual licensees and members of a licensee's family may use the system to exchange personal and business communications. All other licensees may use the system to exchange business communications only.

§ 95.3 Using these rules.

(a) These rules must be complied with by applicants, licensees and station operators (see § 95.117 for violation penalties).

(b) These rules have been arranged to be useful when:

(1) Planning a GMRS system (see § 95.21);

(2) Applying for a GMRS system license (see § 95.71);

(3) Managing a GMRS system (see § 95.101); *and*

(4) Operating a GMRS station (see § 95.171).

§ 95.5 Key terms used in these rules.

(a) Where these rules use the term *FCC*, it means the Federal Communications Commission. (Congress has given the FCC the responsibility to regulate radio services, including GMRS.)

(b) Where these rules use the term *license*, it means a written authorization from the FCC for a GMRS system.

(c) Other key terms are explained in the rules, as follows:

The key term—	Is explained in rule—
Antenna	§ 95.49(b).
Automatically	§ 95.55(a).
Base station (communication points)	§ 95.53.
Channel	§ 95.11.
Channel pair	§ 95.29(c).
Common carrier system	§ 95.103(b).
Communication points	§ 95.25(c).
Control (a station)	§ 95.173(b).
Control link	§ 95.135(a).
Control point	§ 95.133(a).
Control station (communication points)	§ 95.59.
Control station power test	§ 95.45(b)(2).
Cooperative sharing agreement	§ 95.33(b).
Defective (application)	§ 95.71(b).
Directly (transmit to)	§ 95.51(a).
Duplex type system	§ 95.21(c)(2).
Emergency message	§ 95.153(a).
Entity	§ 95.9(a).
Effective radiated power (ERP)	Appendix G.
Family members (immediate)	§ 95.179(a).
Fixed station (communication points)	§ 95.61.
Functional system diagram	§ 95.79(b)
General Mobile Radio Service	§ 95.1.
GMRS	§ 95.1.
GMRS system	§ 95.21(a).
Land (environmentally or historically important).	§ 95.41.
Land station	§ 95.25(a).
Large urban area	§ 95.45(c).
Licensee	§ 95.101(b).
Lines A and C	Appendix C.
Mailing address (applicant's)	§ 95.77(b).
MHz	§ 95.29(a)(1).
Mobile relay station (communication points).	§ 95.55.
Mobile station	§ 95.23(a).
Multiple licensing agreement	§ 95.33(a).
Name (applicant's)	§ 95.77(a).
National Radio Quiet Zone	§ 95.39(a).
Near a large urban area	§ 95.47(b).
One-way communications	§ 95.185(a)(13).
Operating area	§ 95.31(a).
Page	§ 95.27.
Paging receiver	§ 95.27.
Payment (direct/indirect)	§ 95.103(b).
Plain language	§ 95.183(b).
Point	§ 95.7(a)(1).
Selective calling tone	§ 95.183(d).
Shared (station)	§ 95.33.
Sharing (channel)	§ 95.175.
Simplex type system	§ 95.21(c)(1).
Small control station	§ 95.25(d).
STA	§ 95.115(b).
Station classes (land)	§ 95.25(c).
Station operator (duties)	§ 95.173.
System licensing	§ 95.75(b) (Note).
System records	§ 95.121(b).
Subaudible (tone)	§ 95.183(d).
Temporary period	§ 95.25(a)(2).
Tone-only page	§ 95.183(e).

§ 95.7 License required.

(a) An entity must obtain a license before any of its stations may transmit in the GMRS from:

(1) Any *point* (a geographic location) within or over the territorial limits of any area where radio services are regulated by the FCC. Those areas are:

(i) The fifty States:

(A) State of Alaska (coodination with the Government of Canada may be required (see §95.35));

(B) State of Hawaii; *AND*

(C) Remaining 48 states (coordination with the Government of Canada may be required (see § 95.35)).

(ii) The District of Columbia.

(iii) The Caribbean Insular areas:

(A) Commonwealth of Puerto Rico;

(B) Navassa Island;

(C) Quito Sueno Bank;

(D) Roncador Bank;

(E) Serrana Bank;

(F) Serranilla Bank;

(G) United States Virgin Islands (50 islets and cays).

(iv) The Pacific Insular areas:

(A) American Samoa (seven islands);

(B) Baker Island;

(C) Commonwealth of Northern Mariannas Islands;

(D) Guam Island;

(E) Howland Island;

(F) Jarvis Island;

(G) Johnsonton Island (islets East, Johnston, North and Sand);

(H) Kingman Reef;

(I) Midmay Island (islets Eastern and Sand);

(J) Palmyra Island (more than 50 islets); *AND*

(K) Wake Island (islets Peale, Wake and Wilkes).

(2) Aboard any vessel or aircraft registered in the United States; *OR*

(3) Aboard any vessel or aircraft not registered in the United States but owned or operated by a United States citizen or company.

(b) An entity obtains a license for a station in GMRS only if it is part of the entity's GMRS system.

(c) Before a person may be a station operator in a GRMS system, that person must either:

(1) Hold the license for the GMRS system; *OR*

(2) Have permission to be a station operator from the entity having the license for the GMRS system. (Only certain persons may receive such permission from the licensee (see § 95.179).)

WARNING: IF A STATION TRANSMITS WITHOUT A LICENSE IN VIOLATION OF SECTION 301 OF THE COMMUNICATIONS ACT, THE PERSON RESPONSIBLE IS LIABLE TO SEVERE PENALTIES (see § 95.117).

§ 95.9 License eligibility.

(a) An *entity* is eligible to obtain a license if:

(1) The entity is:

(i) A person 18 years of age or older;

(ii) A partnership, and each partner is 18 years of age or older;

(iii) A corporation;

(iv) An association;

(v) A State, territorial or local governmental unit; *OR*

(vi) Other legal entity.

(2) And the entity is not:

(i) A foreign government;

(ii) A representative of a foreign government; *OR*

(iii) A Federal Government agency.

(b) An entity is eligible to obtain a license if the entity is an agency, such as a civil defense agency, authorized by a state, territorial or local governmental unit.

(c) A corporation division or subsidiary entity is only eligible for its own license if the entity is separately incorporated.

§ 95.11 Channel must be shared.

Each GMRS system is assigned a transmitting *channel* (carrier frequency in megahertz), or channel pair (see § 95.29). The channel is subject to being shared with other GMRS systems (see § 95.175). No GMRS system is permitted exclusive use of any channel. (The applicant selects the channel when applying for the license (see § 95.77). Before indicating on the application the channel selected for a GMRS system, the applicant should monitor all of the GMRS channels to determine which one would be most compatible with the proposed system.)

Considerations When Planning a GMRS System

§ 95.21 GMRS system description.

(a) A *GMRS system* is one or more transmitting units used by station operators to communicate messages. A GMRS system is comprised of:

(1) Station operators;

(2) One mobile station (see § 95.23);

(3) One or more land stations (optional); *AND*

(4) Paging receivers (optional).

(b) In certain areas, point-to-point GMRS systems may be comprised of fixed stations, only (see § 95.45, § 95.47, and § 95.61).

(c) A GMRS system may be:

(1) A *simplex type.* (One station operator speaks at a time. All stations in the system transmit on the same channel);

(2) A *duplex type.* (Two station operators speak at the same time. One or more stations transmit on one channel. The other station(s) transmits on the channel pair counterpart (see § 95.29).); *OR*

(3) A combined simplex-duplex type.

§ 95.23 Mobile station description.

(a) A *mobile station* is one or more units which transmit while moving or during temporary stops at unspecified points.

(b) A mobile station unit may transmit from any point within or over:

(1) Its operating area (see § 95.31); *AND*

(2) Any area where radio services are regulated by the FCC, (see § 95.7) *EXCEPT* where additional restrictions apply.

(c) A mobile station unit may transmit from an aircraft or ship, with the captain's permission, which is:

(1) Within or over any area where radio services are regulated by the FCC (see § 95.7), *EXCEPT* where additional restrictions apply; *AND*

(2) On or over international waters. (The mobile station must also comply with any applicable treaties to which the United States is a party.)

(d) A mobile station unit must not transmit from points within or over the territorial limits of any area where radio services are only regulated by:

(1) A foreign government; *OR*

(2) A United States government agency other than the FCC.

§ 95.25 Land station description.

(a) A *land station* is a unit which transmits only from:

(1) An exact point as shown on the license; *OR*

(2) An unspecified point (see § 95.105) within the operating area (see § 95.31) as shown on the license, for a *temporary period.* (one year or less).

(b) The point every land station transmits from must be within an area where radio services are regulated by the FCC.

(c) Each land station is classed according to its *communication points* (the other stations or paging receivers to which the station operator communicates messages). There are four *land station classes:*

(1) Base station (see § 95.53);

(2) Mobile relay station (see § 95.55);

(3) Control Station (see § 95.59); *AND*

(4) Fixed station (see § 95.61).

Note.—The term fixed station used in these Rules differs from the definition given in the International Telecommunications Union Radio Regulations.

(d) A *small control station* is any control station which:

(1) Has an antenna no more than 6.1 meters (20 feet) high (see § 95.49); *AND*

(2) Is at a point where coordination with the Government of Canada:

(i) Is not required (south of Line A or west of Line C (see § 95.35); *OR*

(ii) Would otherwise be required (north of Line A or east of Line C), and the station transmits with less than 5 watts effective radiated power (see Appendix G).

(e) A land station may be licensed to transmit as more than one station class. (Example: A land station is licensed as both a base station and a control station. When it is transmitting as a base station, its communications points are those of a base station (see § 95.53). When it is transmitting as a control station its communication points are those of a control station (see § 95.59).)

§ 95.27 Paging receiver description.

A *paging receiver* is a unit capable of receiving the radio signals from a base station for the bearer to hear a *page* (someone's name or other identifier said in order to find, summon or notify him/her) spoken by the base station operator.

§ 95.29 Channels available.

(a) The applicant for a GMRS system must select the channel for the stations in the proposed system (see § 95.77) from the following lists.

(1) For a:	462 MHz (Megahertz) channels
(i) Base station; (ii) Mobile relay station; (iii) Fixed station; (iv) Mobile station.	462.550 462.575 462.600 462.625 462.650 462.675 462.700 462.725

(2) For a:	467 MHz channels
(i) Mobile station; (ii) Control station; (iii) Fixed station in a duplex system.	467.550 467.575 467.600 467.625 467.650 467.675 467.700 467.725

(b) The FCC will only assign one channel to stations in a simplex type GMRS system.

(c) The FCC will only assign one *channel pair* (one 462 MHz channel and its counterpart 467 MHz channel, spaced 5 megahertz apart) to stations in a duplex type GMRS system. (An example of a channel pair is channel 462.600 MHz and channel 467.600 MHz.)

§ 95.311 Number of GMRS systems the same entity may have.

The same entity may have:

(a) One GMRS system (but only one) in the same *operating area* (an area within a 64.4 kilometer (40 mile) diameter circle centered on a point);

(b) More than one GMRS system, each in a different operating area.

§ 95.33 Station may be shared.

Any station may be *shared* (use the same equipment in more than one GMRS system), if the entities whose GMRS systems share the station sign a written agreement. A copy of the agreement must be retained in the records for each GMRS system (see § 95.121). The agreement must be either a:

(a) *Multiple licensing agreement.* (Each entity obtains a license for its GMRS system which includes an authorization for the shared station. The shared station is licensed in each GMRS system sharing it.) The agreement must show how:

(1) Each licensee will be responsible for the communications the shared station transmits (see § 95.177) in his/her GMRS system; *AND*

(2) The station operator in each system will control the shared station (see § 95.173); *OR*

(b) *Cooperative sharing agreement.* (Only one of the entities obtains a license for its GMRS system which includes an authorization for the shared station. The other entities each obtain a license for their GMRS system which does not include an authorization for the shared station. The shared station is only authorized in one GMRS system.) The agreement must show how:

(1) Each licensee pays a part of the shared station expenses; *AND*

(2) No licensee will profit from the sharing arrangement.

§ 95.35 Additional restrictions near the Canadian border.

(a) The United States and the Government of Canada coordinate channel assignments to certain radio stations (including GMRS) in areas along the common border. Coordination is required north of Line A and east of Line C (see Figure 1 and Appendix C).

(b) If a station in a GMRS system is to transmit from a point where coordination is required, the Government of Canada may object because it anticipates harmful interference may occur to stations in Canada. If this happens, the applicant may reapply:

(1) For another point for the station;

(2) For another channel for the GMRS system; *OR*

(3) To use less transmitter power and a directional antenna in order to lessen the station's signal in Canada.

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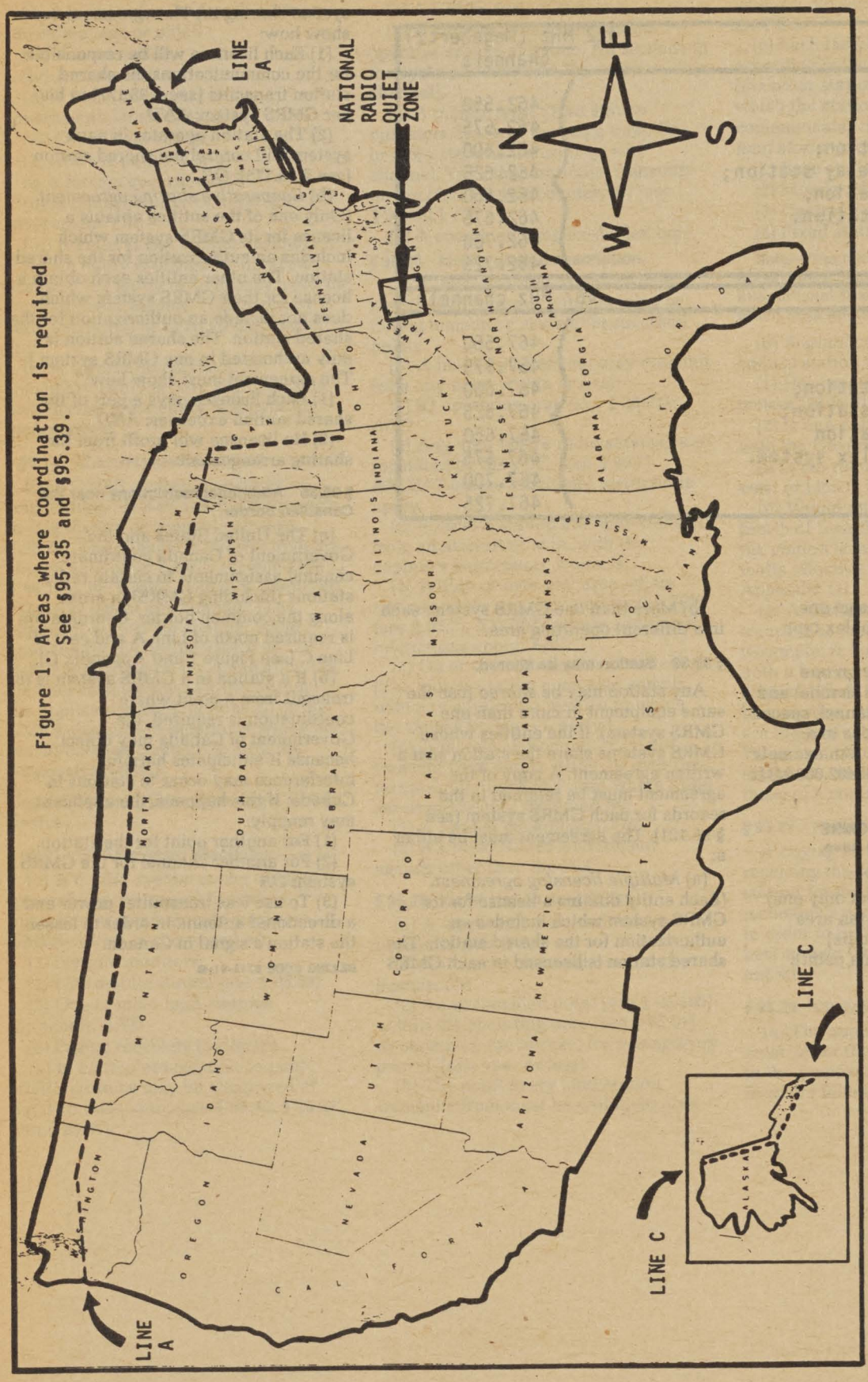

Figure 1. Areas where coordination is required. See §95.35 and §95.39.

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§ 95.37 Additional restrictions near FCC monitoring stations.

The FCC may impose additional restrictions on a land station in a GMRS system if it is at a point within 4.8 kilometers (3 miles) of an FCC monitorng station (see Appendix F for their points), and the station's transmissions degrade, obstruct or repeatedly interrupt the operation of the monitoring station. (Before applying for a license to put a land station at such a point, or before applying to change anything in a station already licensed for such a point, the entity should consult with the FCC (see § 95.125).)

§ 95.39 Additional restrictions in the National Radio Quiet Zone.

(a) The FCC may impose additional restrictions on a land station in a proposed GMRS system, or on one in a GMRS system proposed for modification, if the station is to be, or is, at a point within the *National Radio Quiet Zone* (an area within the States of Maryland, Virginia and West Virginia (see Figure 1)). The Zone is the area bounded by:

(1) 39° 15′ N. on the North;
(2) 78° 30′ W. on the West;
(3) 37° 30′ N. on the South; *AND*
(4) 80° 30′ W. on the West;

(b) When applying for a license to put a land station at a point in the National Radio Quiet Zone, or when applying to change certain details in a station already licensed for such a point, the entity must send a notice to the National Radio Astronomy Observatory (see § 95.81)

(c) The restrictions will be imposed if the National Radio Astronomy Observatory files an objection with the FCC within 20 days after the application is filed with the FCC.

§ 95.41 Additional restrictions on environmentally or historically important land.

No license will be issued for a GMRS system which includes a land station at a point on *environmentally or historically important land* (significant in American history, architecture or culture). (Before deciding whether to grant the license, the FCC may request public comment or conduct a hearing to determine how the station would affect its immediate surrounding.)

§ 95.43 Additional restrictions on Department of Defense land.

The Department of Defense may impose additional restrictions on a station transmitting on its land. (Before an entity applys to place or modify a station at such a point, it should consult with the commanding officer in charge of the land.)

§ 95.45 Additional restrictions in large urban areas.

(a) No fixed station may be at any point within a large urban area.

(b) A control station at a point within a large urban area must have:

(1) A directional antenna (at least 15 decibel front-to-back ratio); *AND*

(2) No more transmitter power than determined by a *control station power test* (a test to determine the appropriate transmitter power (see Appendix D)).

(c) Where these rules use the term *large urban area*, it means a circular region extending out 121 kilometers (75 miles) in all directions around the geographic center of certain cities (see Figure 2).

(d) The large urban areas and their geographic centers are shown in Appendix H.

§ 95.47 Additional restrictions near large urban areas.

(a) A fixed station at a point near a large urban area must have:

(1) A directional antenna (at least 15 decibel front-to-back ratio); *AND*

(2) No more than 15 watts transmitter power output.

(b) Where these rules use the term *near a large urban area*, it means the region within a circular band around a large urban area. The band is 40 kilometers (25 miles) wide. It begins at the rim of the large urban area, and extends out 161 kilometers (100 miles) around the geographic center of the city (see Figure 2).

§ 95.49 Antenna height restrictions.

(a) A land station antenna must not be a hazard to flying aircraft. The licensee of the GMRS system must get FCC permission (see § 95.85) before the uppermost tip of the antenna may be higher than this Rule allows.

(b) *Antenna* means the land station's radiating structure (for transmitting, receiving or both). It includes the tower, mast or pole supporting it. It includes everything attached to the structure.

(c) Regardless of any other requirement in this Rule, the antenna may be as high as:

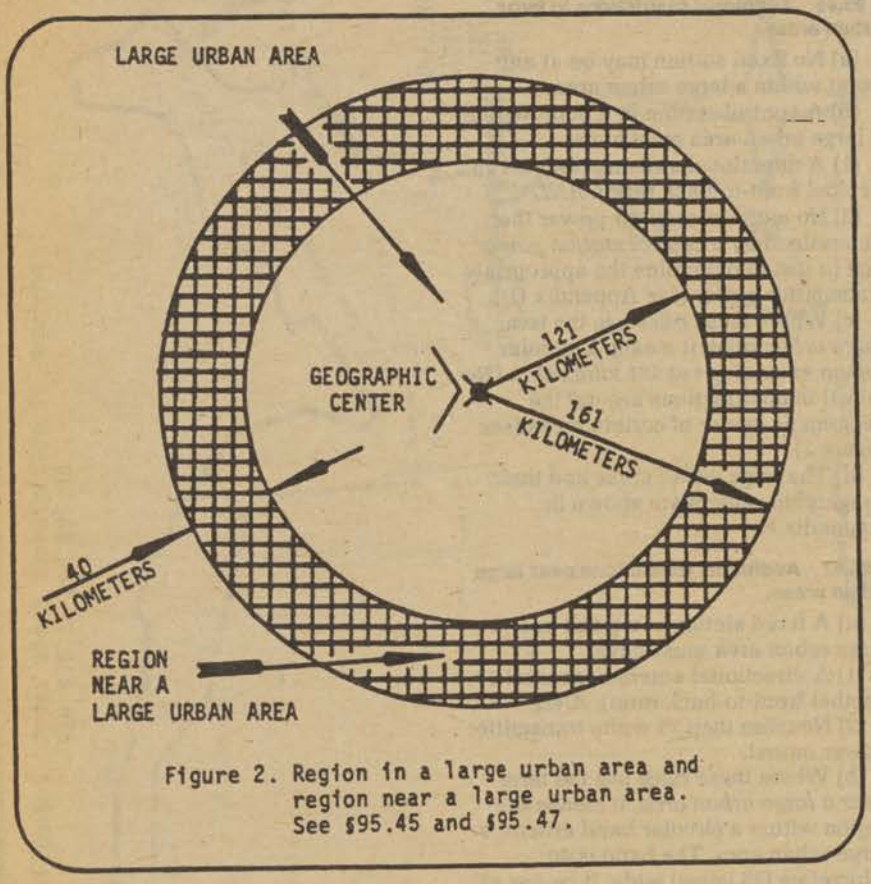


Figure 2. Region in a large urban area and region near a large urban area. See §95.45 and §95.47.

(1) 6.1 meters (20 feet) above the ground of above the building or tree the antenna is mounted on; *OR*

(2) An existing antenna to which the land station antenna is attached. The land station antenna must not be higher than the existing antenna.

(d) The antenna may be as high as 61 meters (200 feet) above the ground, unless it will be within 6.1 kilometers (20,000 feet) of an airport or heliport.

(e) If the antenna is near an airport or heliport listed in the FAA's Airport Facilities Directory, or one operated by the Department of Defense, it must not be higher than:

(1) One meter higher than the airport elevation for every 100 meters from the nearest runway. This applies only if the runway is longer than one kilometer (3,281 feet), and is within 6.1 kilometers (20,000 feet) of the antenna; *OR*

(2) Two meters higher than the airport elevation for every 100 meters from the nearest runway. This applies only if the runway is no longer than one kilometer (3,281 feet), and is within 3.1 kilometers (10,000 feet) of the antenna; *OR*

(3) Four meters higher than the heliport elevation for every 100 meters from the nearest landing pad. This applies only if the pad is within 1.5 kilometers (5,000 feet) of the antenna.

(f) If the FCC grants permission to put an antenna higher than this rule allows, the licensee may have to mark the antenna with bright paint and light it up at night (see Part 17 of the FCC Rules). The FCC permission must be kept in the GMRS system records (see § 95.121).

(g) A small control station antenna must not be more than 6.1 meters (20 feet) above the ground or above the building or tree it is mounted on.

WARNING: INSTALLING AND REMOVING ANTENNAS NEAR POWER LINES IS DANGEROUS.

§ 95.51 Mobile station communication points.

(a) A mobile station unit may transmit communications *directly* (not through a mobile relay station) to:

(1) Other mobile station units in the same GMRS system;

(2) Mobile station units in any other GMRS system assigned the same channel;

(3) A base station in the same GMRS system; *AND*

(4) A base station in any other GMRS system assigned the same channel.

(b) A mobile station unit may transmit communications through a mobile relay station in the same GMRS system to:

(1) Other mobile station units in the same GMRS system;

(2) Control stations in the same GMRS system; *AND*

(3) Mobile station units in any other GMRS system assigned the same channel.

(c) A mobile station unit may transmit communications through a mobile relay station not in the same GMRS system but assigned the same channel to:

(1) Mobile station units in the other GMRS system; *AND*

(2) Control stations in the other GMRS system.

(d) A mobile station unit may transmit communications as a radio control link (see § 95.135) to a remotely controlled station.

(e) A mobile station unit must not transmit communications to:

(1) Any station in any GMRS system which is not assigned the same channel;

(2) Any fixed station; *OR*

(3) Any control station, directly.

(f) A mobile station unit must not transmit communications through a mobile relay station not in the same GMRS system, for retransmission to:

(1) Other Mobile station units in the same GMRS system; *OR*

(2) A control station in the same GMRS system.

§ 95.53 Base station communication points.

(a) A base station may transmit communications directly to:

(1) Mobile station units in the same GMRS system;

(2) Mobile station units in any other GMRS system assigned the same channel; *AND*

(3) Paging receivers in the same GMRS system.

(b) A base station must not transmit communications to:

(1) Any mobile relay station;

(2) Any base station;

(3) Any paging receiver not in the same GMRS system;

(4) Any fixed station; *OR*

(5) Any control station.

§ 95.55 Mobile relay station communication points.

(a) A mobile relay station in only one GMRS system may *automatically* (without immediate thought or action by the station operator) retransmit communications between:

(1) A mobile station unit in the same GMRS system *AND:*

(i) Another mobile station unit in the same GMRS system; *OR*

(ii) A control station in the same GMRS system.

(2) A mobile station unit in any other GMRS system assigned the same channel *AND:*

(i) Another mobile station unit in the same GMRS system as the mobile relay station; *OR*

(ii) A control station in the same GMRS system as the mobile relay station.

(b) A mobile relay station only in one GMRS system must not automatically retransmit communications between:

(1) A mobile station unit in any other GMRS system *AND* another unit of the same mobile station;

(2) Any control station *AND* any other control station;

(3) Any other mobile relay station *AND* any station;

(4) Any base station *AND* any station; *OR*

(5) Any fixed station *AND* any station.

§ 95.57 Multiply-licensed and cooperatively-shared mobile relay station communication points.

(a) A mobile relay station licensed in more than one GMRS system or cooperatively shared with (an)other GMRS system(s), may automatically retransmit communications between:

(1) Mobile station units in the same GMRS system; *AND*

(i) Another mobile station unit in the same GMRS system; *OR*

(ii) A control station in the same GMRS system.

(2) A mobile station unit in any other GMRS system assigned the same channel, including one in a GMRS system sharing the mobile relay station (see § 95.33); *AND*

(i) Another unit of the same mobile station; *OR*

(ii) A control station in the same GMRS system.

(b) A mobile relay station licensed in more than one GMRS system or cooperatively shared with (an)other GMRS system(s), must not automatically retransmit communications between:

(1) A mobile station unit in any other GMRS system, except units of a mobile station in a GMRS system sharing the mobile relay station, *AND* another unit of the same mobile station;

(2) Any control station *AND* another control station;

(3) Any other mobile relay station *AND* any station;

(4) Any base station *AND* any station; *OR*

(5) Any fixed station *AND* any station.

§ 95.59 Control station communication points.

(a) A control station may transmit communications as a radio control link (see § 95.135) to a remotely controlled station.

(b) A control station may transmit communications through a mobile relay station to:

(1) Mobile station units in the same GMRS system as the control station; *AND*

(2) Mobile station units in any other GMRS system assigned the same channel as the control station.

(c) A control station must not transmit communications to any other station.

§ 95.61 Fixed station communication points.

(a) A fixed station may transmit communications from the point authorized for it on the license to another fixed station in the same GMRS system at the point authorized for it on the license.

(b) A fixed station must not transmit communications to any other station.

Applying for a GMRS System License

§ 95.71 Applying for a new license.

(a) An entity (see § 95.7) applies for a license for a new GMRS system by filling out an application form, attaching all additional information required and sending it to the FCC. The address is:

Federal Communications Commission
Attention: GMRS
Gettysburg, Pennsylvania 17325

(b) The application will be returned to the applicant if it is defective. An application is *defective* if:

(1) The form is not completely filled out;

(2) All necessary additional information is not included; *OR*

(3) All necessary certifications have not been made.

§ 95.73 Applying to modify a license.

The licensee applies to modify a license for an existing GMRS system the same way as for a new GMRS system. (see § 95.103 for name or mailing address change.)

§ 95.75 Forms to use.

(a) Application for a license for a new or modified GMRS system is made on Form 400. (See § 95.89 for renewing a license without modification.) The applicant must follow the *Instructions for Completion of FCC Form 400* (FCC Form 400–10 available at FCC Field Offices).

(b) One set of forms must be used for each system the applicant wants the FCC to license.

Note.—The FCC uses an application processing procedure called *system licensing.* Under this procedure, as many stations as possible must be listed on one form. However, no more than two land stations with their grographic coordinates may be listed on one form. The third (and fourth) such station(s), if any, must be listed on a second form; the fifth (and sixth) on a third form, etc.

(c) One form must be used to apply for the following stations in a GMRS system:

(1) The mobile station;

(2) All small control stations (see § 95.25); *AND*

(3) No more than two land stations which:

(i) Require coordination with the Government of Canada (see § 95.35); *AND/OR*

(ii) Have antennas more than 6.1 meters (20 feet) high (see § 95.49).

(d) An additional form must be used to apply for each one or two land stations in a GMRS system that cannot be listed in the preceding form.

§ 95.77 Basic information required.

The following information is required in all applications for a license for a new or modified GMRS system:

(a) Applicant's *name* (legal entity (see § 95.9));

(b) Applicant's *mailing address* (where mail from the FCC in the United States can be received from the FCC);

(c) Transmitting channel requested (see § 95.29);

(d) Number of transmitter units in a mobile station (see § 95.23);

(e) Number of land stations in each class (see § 95.25);

(f) Transmitter output power as follows:

(1) For a small control station north of Line A or east of Line C (see § 95.25), no information;

(2) For other control stations at a point within a large urban area, a certification that the power will be adjusted (see § 95.143);

(3) For all other stations, output power in watts;

(g) Each land station point (except small control stations):

(1) Latitude and longitude within one second; *AND*

(2) Street address (if none, local directions to the station);

(h) Each control point for each remotely controlled land station (see § 95.135):

(1) Street address (if none, local directions to the control point); *OR*

(2) Call sign of any control station already licensed to the applicant for that point;

(i) Mobile station operating area (see § 95.31);

(j) Antenna height (see § 95.49) for each land station (except small control stations);

(k) Environmental impact (see § 95.41);

(l) Communication services (see § 95.103) the proposed GMRS system would provide to, or receive from, another entity;

(m) Station accessibility and protection (see § 95.135);

(n) Transmitter type acceptance status (see § 95.137);

(o) Age eligibility statement (see § 95.9);

(p) Land station communication points (see § 95.25);

(q) Station classes already licensed for the proposed GMRS system;

(r) Rule copy certification (see § 95.113);

(s) Foreign government certification (see § 95.9);

(t) Frequency claim waiver certification (see § 95.11);

(u) Applicant's signature (see § 95.87); *AND*

(v) The date a notice to the National Radio Astronomy Observatory was sent (see § 95.81), if applicable.

§ 95.79 Additional information required for GMRS systems with more than one land station.

(a) The application for a license for a new or modified GMRS system having more than one land station (other than small control stations) must include a functional system diagram.

(b) A *functional system diagram* is a drawing showing certain details of a GMRS system. (Appendix A illustrates several functional system diagrams.) The functional system diagram describes the system to the FCC:

(1) When the application is being processed; *AND*

(2) During an inspection (see § 95.123).

(c) A copy of the functional system diagram must be kept in the GMRS system records (see § 95.121).

§ 95.81 Additional information required for stations in the National Radio Quiet Zone.

The application for a license for a new or modified GMRS system having a land station at a point within the National Radio Quiet Zone (see § 95.39) must:

(a) Send a notice to:

Director, National Radio Astronomy Observatory
P.O. Box 2
Green Bank, West Virginia 24944

(b) Provide the following details about the proposed station in the notice:

(1) Antenna point (latitude and longitude);

(2) Antenna height;

(3) Antenna directivity;

(4) Transmitting channel;

(5) Emission;

(6) Transmitter output.

(c) Include in the applciation to the FCC the date the notice was sent to the Observatory.

§ 95.83 Additional information required for stations on environmentally or historically important land.

The application for a license for a new or modified GMRS system having a land station at a point on environmentally or historically important land (see § 95.41) may have to include additional information. The applicant must refer to Subpart I of Part 1 of the FCC Rules to determine whether the information must be included with the application (see § 95.41).

§ 95.85 Additional information required for stations with antennas higher than normally allowed.

(a) If the applicant for a license for a new or modified GMRS system wants permission to have a land station antenna higher than normally allowed (see § 95.49), he/she must:

(1) Include notification (on the FCC Form 400 or on FCC Form 714) that the antenna would be higher than normally allowed; *AND*

(2) Notify either the:

(i) Federal Aviation Administration (on FAA Form 7460–1) that the antenna would be higher than normally allowed; *OR*

(ii) FCC (on FCC Form 714) that the antenna would not adversely affect air navigation safety. A detailed explanation must be included in the notification (see Part 17 of the FCC Rules).

(b) The FCC will not grant permission for a small control station to have an antenna higher than 6.1 meters (20 feet (see § 95.25)).

§ 95.87 Signature required.

(a) If the applicant is an individual, he/she must sign the application.

(b) If the applicant is any other entity, the following person must sign the application:

If the entity is—	The person who signs is—
(1) A partnership	A partner.
(2) A corporation	An officer, director or employee.
(3) An association	An officer.
(4) A governmental unit	An official.

(c) If the applicant makes a false statement on the application, he/she may be punished by fine or imprisonment, or both.

§ 95.89 Renewing a license.

(a) The licensee of a GMRS system may apply for the FCC to renew the license for another term (see § 95.105) by filling out FCC Form 405–A and sending it to the FCC (see § 95.125).

(b) If the renewal application is sent to the FCC before the existing license term expires, the stations in the GMRS system may continue to transmit under the expired license until the FCC acts on the renewal application. (A copy of the renewal application sent to the FCC should be kept in the GMRS system records (see § 95.121) until the renewed license, or other FCC action, is received.)

(c) All stations in a GMRS system, unless included in a timely-filed renewal application, must stop transmitting when the license expires.

Managing a GMRS System

§ 95.101 Entity must have license.

(a) No station may transmit in the GMRS until the responsible entity has obtained the license document for its system.

(b) The *licensee* (the entity to which the license is issued) is responsible for the proper operation of the GMRS system at all times.

(c) The licensee must have access to the station equipment and be able to disable it.

§ 95.103 What the license authorizes.

(a) A license authorizes the licensee to manage the GMRS system only as:

(1) The rules require;

(2) The license specifies;

(3) Proposed by the entity in the license application; *AND*

(4) Shown on the functional system diagram.

(b) The license does not authorize a *common carrier system* (communicating messages for pay). The licensee of a GMRS system must not accept either *direct payment* (money, goods, food, etc.) or *indirect payment* (good will, publicity, advertising, etc.) for communicating messages for other persons.

(c) If the licensee is a corporation and the license so indicates, the GMRS system may provide private radio communication service to a subsidiary or parent of that corporation. The service must be provided without making a profit.

(d) When the information about the licensee stated on the license changes, the licensee must take the following step(s):

(1) If the licensee's name or mailing address changes, he/she must notify the FCC in writing (see § 95.125). The notice must show the name and mailing address as they appear on the license, the station call sign(s), and the new name or new mailing address. A copy of the notice must be kept in the GMRS system records (see § 95.121). (FCC Form 405–A may be used for this purpose).

(2) If the licensee's legal entity (see § 95.9) changes, the licensee must:

(i) Send the license to the FCC (see § 95.125) for cancellation; *AND*

(ii) Apply for a new license for the system in the name of the new entity.

§ 95.105 License term.

A license for a GMRS system is usually issued for a 5-year term. (The FCC prints the expiration date on the license.)

§ 95.107 Keeping the license.

(a) The licensee must keep the license document until:

(1) The license expires; *OR*

(2) The license is terminated by the FCC; *OR*

(3) The licensee obtains a different license for the GMRS system.

(b) The license must be kept in the GMRS system records (see § 95.121).

(c) The license may be photocopied for any lawful purpose.

(d) If the license is lost, the licensee must request a duplicate document from the FCC (see § 95.125).

(e) If the license is no longer wanted, it must be sent to the FCC (see § 95.125) with a written request that it be cancelled.

§ 95.109 License not transferable.

(a) The licensee must not transfer, assign, sell or give the license for a GMRS system to another entity.

(b) If the licensee sells or gives away the GMRS system equipment, the new owner must obtain a new license before using it (see § 95.71).

§ 95.111 What a corporation licensed by the FCC does when control of the corporation changes.

If the licensee of a GMRS system is a corporation, and there is a change in the control of the corporation, the licensee requests consent for the change of control from the FCC on Form 703 (see § 95.125). The FCC document granting such consent must be kept with the station license in the GMRS system records (see § 95.121).

§ 95.113 Copy of Rules required.

(a) The GMRS system licensee must keep a copy of these Rules in the GMRS system records (see § 95.121).

(b) The licensee must keep up-to-date on changes to these Rules. (The official publication for changes to the GMRS Rules is the **Federal Register.** Other publications, such as trade magazines, also print GMRS rule changes.)

(c) Station equipment in a GMRS system must comply with the technical rules in this Part 95, Subpart E. (The technical rules do not have to be kept in the GMRS system records.)

§ 95.115 Changing these rules.

(a) Any entity may ask the FCC to change these Rules by submitting a petition to the FCC (see Part 1 of the FCC Rules).

(b) A licensee or applicant may ask the FCC for a waiver of these rules; *OR* for an *STA* (special temporary authorization) (see Appendix I) that applies only to the particular system (see § 95.125). If permission is granted, the document must be kept in the GMRS system records (see § 95.121).

§ 95.117 Penalties for violations.

(a) If the FCC finds that an entity has willfully or repeatedly violated the Communications Act, FCC Rules, the terms of the license or 18 U.S.C. 1464 (which prohibits the transmission of obscene, indecent or profane language), the entity may have to pay as much as $2,000 for each violation, up to a total of $5,000 (see Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b)).

(b) If the FCC finds that a licensee has willfully or repeatedly violated the Communications Act, FCC Rules or the terms of the license it may revoke the GMRS license. (Other grounds for revoking a GMRS license are listed in Section 312(a) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a).)

(c) If the FCC finds that an entity has violated any section of the Communications Act, FCC Rules or the terms of the license the entity may be ordered to stop whatever action caused the violation (see Section 312(b) of the Communications Act of 1934, as amended, 47 U.S.C. 312(b)).

(d) Any entity that willfully and knowingly violates any provisions of the Communications Act may be fined up to $10,000, or be imprisoned for one year, or both (see Section 501 of the Communications Act of 1934, as amended, 47 U.S.C. 501).

(e) Any entity that willfully and knowingly violates any FCC Rule may be fined up to $500 for each day the violation was committed (see Section 502 of the Communications Act of 1934, as amended, 47 U.S.C. 502).

§ 95.119 Answering a discrepancy notice.

(a) If it appears to the FCC that an entity has violated the Communications Act or these rules, the FCC may send a discrepancy notice.

(b) Within the time period stated in the notice the entity must answer with:

(1) A complete written statement about the apparent discrepancy;

(2) A complete written statement about any action taken to correct the apparent discrepancy to prevent it from happening again; *AND*

(3) The namé of the station operator at the time of the apparent discrepancy.

(c) The entity must not shorten the response by references to other communications or notices.

(d) The entity must send the answer to the FCC office which sent the notice.

(e) If the discrepancy notice cannot be answered within the time stated, it must be answered at the earliest possible time. The answer must include an explanation for the delay.

(f) If the notice covers a discrepancy related to transmitter technical standards, the station must stop transmitting immediately, except for necessary tests and adjustments. The station must not transmit again until all transmitter technical problems have been corrected. The FCC may require a licensee to conduct specific tests and to report the results of those tests.

(g) A copy of an answer from a licensee must be kept in the GMRS system records (see § 95.121).

§ 95.121 System records.

(a) The licensee must keep records for the GMRS system for the license term (see § 95.105).

(b) GMRS *system records* include the following documents (where applicable):

(1) The license (see § 95.107);

(2) A copy of the rules for the GMRS (see § 95.113);

(3) A list of station operators (see § 95.179);

(4) Copies of letters from the licensee to the FCC concerning name or mailing address changes (see § 95.103);

(5) Copies of answers to discrepancy notices (see § 95.119);

(6) A waiver of these rules or STA (see § 95.115);

(7) A copy of the FCC permission to put an antenna higher than these Rules allow (see § 95.49);

(8) A copy of the measurements and calculations (see Appendix D) made during a control station power test (see § 95.45);

(9) A copy of the agreement under which a station in the GMRS system is shared (see § 95.33); *AND*

(10) A copy of the FCC consent to a licensee corporation's change in its corporate control (see § 95.111).

(c) If an authorized FCC representative requests to inspect the GMRS system records, the licensee must make them available.

§ 95.123 Station inspection.

If an authorized FCC representative requests to inspect any station in a GMRS system, the licensee or station operator must make the station available.

§ 95.125 Where to contact the FCC.

(a) Write to:

The nearest FCC Field Office
(see Appendix E)

(1) For application forms (see § 95.75 and § 95.89);

(2) For instruction forms (see § 95.75);

(3) To complain about interference; *OR*

(4) To find out if the FCC has type-accepted a certain transmitter for use in GMRS (see § 95.137).

(b) Write to:

Federal Communications Commission
Attention: GMRS
Gettysburg, Pennsylvania 17325

(1) To ask a question about an application or about these rules;

(2) To file an application (see § 95.71) and § 95.89);

(3) To request a duplicate license (see § 95.107);

(4) To notify the FCC of a new name or mailing address (see § 95.103);

(5) To request consent to the change in the control of a licensee corporation (see § 95.111);

(6) To return a license to the FCC for cancellation (see § 95.103 and § 95.107); *OR*

(7) To file a request for an STA or waiver of these rules (see § 95.115(b)).

(c) Write to:

Chief, Field Operations Bureau
Federal Communications Commission
Washington, D.C. 20554

If consultation with the FCC is desired about putting a land station at a point within 4.8 kilometers (3 miles) of an FCC monitoring station (see § 95.37).

§ 95.127 Station identification required.

(a) Every station in a GMRS system must transmit a station identification:

(1) After transmitting communications or a series of communications; *AND*

(2) Every 15-minutes during a long transmission.

(b) The station identification is the call sign assigned to:

(1) The GMRS system; *OR*

(2) Any station in the same GMRS system.

(c) A unit number may be included after the call sign in the identification.

(d) the station identification must be transmitted in:

(1) Voice in the English language. (Letters may be said in a phonetic alphabet to aid intelligibility.); *OR*

(2) International Morse code telegraphy with a keyed tone (400 to 2,000 Hertz) between 8.34 and 20.85 baud (ten to twenty-five words per minute). The transmitted frequency deviation must be between 1,500 and 2,500 Hertz.

§ 95.129 Transmitting channel.

Each station in a GMRS system must transmit only on the channel (see § 95.11) printed on the license for that station.

§ 95.131 Sharing a station.

Every station in a GMRS system which is shared (see § 95.33) must be managed by the licensee in accordance with the written agreement.

§ 95.133 Station control point required.

(a) Each station in a GMRS system must have a *control point* (where the station operator can perform the required duties (see § 95.173)).

(b) The control point for each station must be at that station, unless the license authorizes the station to be controlled from a remote point.

§ 95.135 Controlling a station from a remote point.

(a) A station operator in a GMRS system may control the station from a remote point through a *control link* (a connection between the remote control point and the remotely controlled station). The control link must be either:

(1) A wireline control link (see § 95.151);*OR*

(2) A radio control link (see § 95.183).

(b) The remotely controlled station must not make unauthorized transmission.

(c) The station operator must perform the required duties (see § 95.173) when controlling the station from a remote point the same as when controlling it locally at the station point. Should the control link fail to function so that the station operator cannot perform the required duties, the remotely controlled station must not transmit.

(d) The FCC does not consider a station in a GMRS system as being remotely controlled if the connection is a wireline or mechanical control link, and the station and its control point are both:

(1) On the same vehicle: *OR*

(2) At the same street address, or within 152 meters (500 feet) of each other.

§ 95.137 Station equipment.

(a) Every station in a GMRS system must use transmitters the FCC has type-accepted for use in GMRS. Write to any FCC Field Office to find out if a particular transmitter has been type-accepted for GMRS (see Appendix E).

(b) No transmitter may be used at a station in a GMRS system which:

(1) Is not FCC type-accepted for GMRS;

(2) Has been internally modified to make it different from the FCC type-accepted model (see § 95.141); *OR*

(3) Has been internally adjusted or repaired by anyone, except a person:

(i) FCC-licensed as a General Radiotelephone Operator; *OR*

(ii) Supervised by an FCC-licensed General Radiotelephone Operator.

(c) A land station in a GMRS system must use a directional antenna if it is a:

(1) Control station at a point within a large urban area (see § 95.45); *OR*

(2) Fixed station at a point near a large urban area (see § 95.47).

(d) Every small control station must use an antenna no more than 6.1 meters (20 feet) high (see § 95.25).

§ 95.139 Servicing station transmitters.

(a) Each internal repair and each internal adjustment to a transmitter used in a station in a GMRS system must be made by a person:

(1) FCC-licensed as a General Radiotelephone Operator; *OR*

(2) Supervised by an FCC/licensed General Radiotelephone Operator.

(b) Except as provided in paragraph (c) of this section, test signals during internal adjustments to a station transmitter must be made using a non-radiating simulated antenna.

(c) Brief test signals using a radiating antenna may be transmitted to adjust the antenna to the station transmitter or to detect or measure spurious radiation. These test transmissions must not be longer than one minute during any five minute period.

§ 95.141 Modification to station transmitters prohibited.

(a) No internal changes may be made in a transmitter used in a station in a GMRS system to make the transmitter different from the FCC type-accepted model (see § 95.137).

(b) The FCC does not consider the conversion of one FCC type-accepted model to another FCC type-accepted model as an internal conversion, if the conversion is done:

(1) By the original manufacturer of the transmitter; *OR*

(2) In accordance with the original manufacturer's instructions by a person holding an FCC General Radiotelephone Operator License.

§ 95.143 Transmitter power limits.

(a) Each station in a GMRS system must transmit with the least output power needed to communicate.

(b) No station may transmit with more than 50 watts output power.

(c) A control station at a point within a large urban area must not transmit with more output power than the licensee determines by a test (see § 95.45 and Appendix D). The licensee must keep a copy of the measurements and calculations made during this test in the GMRS system records (see § 95.121).

(d) A small control station at a point where coordination with the Government of Canada is required must transmit with less than 5 watts effective radiated power (see § 95.25).

(e) A fixed station at a point near a large urban area must transmit with no more than 15 watts output power (see § 95.47).

§ 95.145 Modifying a GMRS system.

Before any modifications may be made in a GMRS system, the licensee must receive a license from the FCC for the modified GMRS system (see § 95.73). Exceptions to this requirement are the moving or adding of a small control station (see § 95.147(b) and § 95.149(b)).

§ 95.147 Moving a small control station.

(a) A small control station (see § 95.25) in a GMRS system may be moved from the point specified on the license to any other point:

(1) Within the operating area (see § 95.31); *AND*

(2) Where radio services are regulated by the FCC (see § 95.7).

(b) The licensee must file an application to modify the GMRS system (see § 95.73) to show the new point within 30 days after the small control station is moved.

§ 95.149 Adding a small control station.

(a) If a GMRS system is licensed under the system licensing procedure (see § 95.75), one or more small control stations may be added to the GMRS system at any point:

(1) Within the operating area (see § 95.31); *AND*

(2) Where radio services are regulated by the FCC (see § 95.7).

(b) The licensee must file an application to modify the GMRS system (see § 95.73) within 30 days after each small control station is added.

(c) If a GMRS system is not licensed under the system licensing procedure, the license must obtain a license for the modified GMRS system before adding a small control station.

§ 95.151 Interconnection to a telephone prohibited.

(a) No station in any GMRS system may be interconnected to a public telephone system to make or receive calls. Stations licensed in GMRS before October 16, 1978 may be so interconnected until the expiration of the license; *IF*

(1) The interconnection is made at a station which is not multiply-licensed nor cooperatively-shared; *OR*

(2) The interconnection is made at a station which is multiply-licensed or cooperatively-shared, and it is manually made by the station operator.

(b) A remotely controlled station (see § 95.135) in a GMRS system may be interconnected to a public telephone system in order to use the public telephone system as a wireline control link.

(c) [Any interconnection device attached to a public telephone system after April 1, 1976 must be registered with the FCC and must comply with the standards incorporated in a registration program to protect the public telephone system from harm (see Part 68 of the FCC Rules)].

Note.— No station in a GMRS system may be interconnected to a public telephone system to make or receive calls after October 16, 1983.

§ 95.153 Managing a GMRS system in an emergency.

(a) The stations in a GMRS system must cease transmitting when the station operator of any station on the same channel is communicating an *emergency message* (concerning the immediate protection of property or the safety of someone's life).

(b) If necessary to communicate an emergency message from a station in a GMRS system, the licensee may permit:

(1) Anyone to be the station operator (see § 95.179); *AND*

(2) The station operator to communicate the emergency message to any station.

Operating a GMRS Station

§ 95.171 Station operator required at control point.

When a station in a GMRS system is transmitting, it must have a station operator. The station operator must be at the control point (see § 95.133) for that station. The same person may be the operator for more than one station at the same time.

§ 95.173 Station operator duties.

The *station operator:*

(a) Communicates messages (see § 95.183);

(b) *Controls* the station by:

(1) Starting it to transmit communications;

(2) Listening to the communications it transmits; *AND*

(3) Stopping it from transmitting when:

(i) The communications are completed; *OR*

(ii) There is a possibility of a rule violation.

§ 95.175 Cooperation in sharing the assigned channel.

The station operator must cooperate in *sharing* the assigned channel with station operators at other stations by:

(a) Monitoring the channel before starting the station to transmit communications;

(b) Waiting until ongoing communications are completed before starting the station to transmit;

(c) Communicating only necessary messages; *AND*

(d) Stating the messages briefly.

§ 95.177 Responsibility for station operator's communications.

The licensee is responsible for all communications made by station operators in the GMRS system. (The licensee should be certain every station operator understands and complies with these Rules.)

§ 95.179 Persons eligible to be a station operator.

(a) The GMRS system licensee may permit his/her immediate family members living in the same household to be station operators in his/her GMRS system. They may communicate messages about personal activities and about the licensee's business activities. *Immediate family members* are the:

(1) Licensee;

(2) Licensee's spouse;

(3) Licensee's children, grandchildren, stepchildren;

(4) Licensee's parents, grandparents, stepparents;

(5) Licensee's brothers, sisters;

(6) Licensee's aunt, uncle, niece, nephew; *AND*

(7) Licensee's in-laws.

(b) The licensee may permit certain other persons to be station operators, if they communicate messages about the licensee's business activities only.

If the GMRS system licensee's entity is—	These persons may be a station operator—
(1) A person	Licensee's employees.
(2) A partnership	Licensee's partners and employees.
(3) A corporation	Licensee's officers, directors and employees.
(4) An association	Licensee's members and employees.
(5) A governmental unit	Licensee's employees.

(c) The licensee may permit a telephone answering service employee to be a station operator if:

(1) That employee only communicates messages received for the licensee to the licensee;

(2) The station equipment at the telephone answering point is not shared in any other GMRS system; *AND*

(3) The station at the telephone answering service point is not interconnected to a public telephone system (GMRS systems licensed before October 16, 1978, are excepted, (see § 95.151)).

(d) Except for emergency communications (see § 95.153), no other person may be a station operator unless the FCC has given prior approval. FCC approval may be requested when the application for license is filed or, if the licensee already has a license, by letter. The FCC approval must be kept with the system records (see § 95.121). It will state either the persons permitted to operate or unnamed persons for specific purposes. The request for approval must show:

(1) The nature of the proposed use;

(2) That the use relates to an activity of the licensee;

(3) How the licensee intends to maintain control over the station(s) transmitter(s); *AND*

(4) Why it is not appropriate for the other persons to obtain licenses in their own names.

(e) The licensee must keep a list of every person the licensee permits to be a station operator (see § 95.121).

§ 95.181 Persons ineligible to be a station operator.

(a) Any person not listed in § 95.179 must not be a station operator.

(b) The licensee must not permit any person to be a station operator if:

(1) That person's GMRS license was revoked by the FCC and that person has not obtained another GMRS license;

(2) That person surrendered his/her GMRS license for cancellation after the FCC served notice of apparent liability to pay a forfeiture (see § 95.117) on him/her;

(3) That person surrendered his/her GMRS license for cancellation after the FCC began revocation proceedings;

(4) An FCC cease and desist order against that person is in effect for unlawful operation of a GMRS system; *OR*

(5) The FCC denied or dismissed with prejudice that person's most recent GMRS license application.

§ 95.183 Permissible communications.

(a) A station operator may communicate two-way voice messages concerning:

(1) Personal activities (see § 95.179);

(2) Business activities (see § 95.179);

(3) Emergencies (see § 95.153);

(4) Assisting a traveler to reach a point and obtain services; *AND*

(5) Civil defense drills, if the responsible agency requests assistance.

(b) All messages must be in *plain language* (without codes or hidden meanings). They may be in a foreign language (call sign excepted (see § 95.127)).

(c) A station operator may communicate tone messages in a radio control link (see § 95.135). (The FCC considers a control tone as voice in this case.)

(d) A station operator may communicate a *selective calling tone* (a tone message to call a particular station). (The FCC considers such tones to be voice.) If the tone is *subaudible* (250 Hertz or less), it may be communicated during the entire voice message. If the tone is audible, it may be communicated for no more than 15 seconds at a time.

(e) A station operator may communicate a one-way voice page to a paging receiver. (A *tone-only page* (tones communicated in order to find, summon or notify someone) must not be communicated (see § 95.185).)

§ 95.185 Prohibited communications.

(a) A station operator must not communicate:

(1) Messages for someone for pay;

(2) Messages in connection with any activity which is against Federal, State or local law;

(3) False or deceptive messages;

(4) Coded messages with hidden meanings ("10-codes" are permitted);

(5) Intentional interference;

(6) Music, whistling, sound effects or material to amuse or entertain;

(7) Sounds only to attract attention;

(8) Obscene, profane or indecent words, language or meaning;

(9) Advertisements or offers for the sale of goods or services;

(10) Advertisements for a political candidate or political campaign. (Messages about the campaign business may be communicated);

(11) International distress signals, such as the word "Mayday", (except when on a vehicle in immediate danger to ask for help);

(12) Programs (live or delayed) for radio or television station broadcast. (Messages about news items or program preparation may be communicated);

(13) *One-way communications* (messages not intended to establish two-way communications), except:

(i) Emergency messages (see § 95.153);

(ii) Brief test signals (see § 95.139);

(iii) For a voice page (see § 95.183); *OR*

(14) Messages (except emergency messages) to any station not licensed in GMRS.

(b) If the GMRS system licensee is a telephone answering service, the station operator must not communicate messages or pages to customers.

APPENDIXES

Appendix A—How To Prepare a Functional System Diagram

The following information must be shown on a functional system diagram (see § 95.79):

(a) Entity's name (as shown on the application or license);

(b) The date (month, day, year) the diagram was prepared;

(c) Whether the diagram represents the complete GMRS system, or only part of it. (If the system is already licensed, only the part of the diagram that would be changed need be sent with the application.);

(d) Each land station point in relation to each other. (It does not have to be to scale. The station symbol is shown in Figure A–1, with either a directional or non-directional antenna. Each land station must be labeled with its class (see § 95.25). Small control stations need not be shown;

(e) The mobile station. The symbol in Figure A–2 must be used;

(f) The station operator at each station. The symbol in Figure A–3 must be used;

(g) Each station to be controlled from a remote location. The symbol in Figure A–4 must be used;

(h) Each control point for each land station to be controlled from a remote point. The symbol in Figure A–5 must be used;

(i) Authorization circle. The symbol in Figure A–6 must be used. The circle is

darkened in after the license for the station is issued;

(j) Each land station address;

(k) Each land station latitude and longitude (degrees, minutes, seconds);

(l) Each station transmitting and receiving channel;

(m) Communication routes (solid line for voice, dashed line for control tones); *AND*

(n) Kilometer distance between stations. (One mile is 1.61 kilometers.)

Appendix B—Typical GMRS System Examples.

(a) The simplest GMRS system is a mobile-only type. Two or more station operators control the mobile station units and communicate messages between each other. (A functional system diagram would not be needed for this system type, since it does not have two or more land stations (see § 95.79).)

(b) A base-mobile type is a common GMRS system. Its typical functional system diagram is shown in Figure A–7 (The diagram for this system would not be sent with the application since it does not have two or more land stations.) For an actual GMRS system, the call sign, base station address, latitude, longitude, and mile station operation area would be filled in. The diagram indicates:

(1) The system is licensed, because the authorization symbols have been darkened in;

(2) The station operator does not control the base station from a remote location, because there is no remotely controlled or control point symbol; *AND*

(3) It is a duplex system, because a channel pair is shown. (It could have been a simplex system with both stations transmitting and receiving on a 462 MHz channel.)

(c) A remotely controlled mobile relay system is shown in Figure A–8. (The diagram for this type system would be sent with the application since it does have two land stations.) The diagram indicates:

(1) The system is not yet licensed, because the authorization symbols have not been darkened in;

(2) The station operator for the mobile relay station is also the station operator for the control station; *AND*

(3) The control station is also licensed as a base station. The station operator can communicate directly with the mobile station operator (talk-around), with both stations transmitting on the 462 MHz channel.

(d) The fixed station system is shown in Figure A–9. No station in this type system may be at a point within a large urban area.

BILLING CODE 6712-01-M

Station legends: B= Base station
C= Control station
F= Fixed station

MR= Mobile relay station

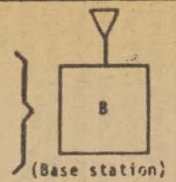


Figure A-1.
Recommended symbol for a land station.

Figure A-2.
Recommended symbol for a mobile station.

Figure A-3.
Recommended symbol for station operator.

Figure A-4.
Recommended symbol to indicate land station is remotely controlled.

Figure A-5.
Recommended symbol for a land station control point.

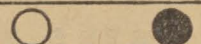


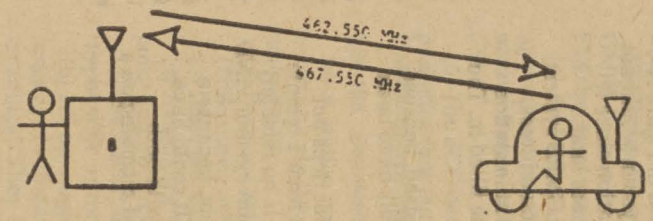
Figure A-6.
Recommended authorization symbols.

FUNCTIONAL SYSTEM DIAGRAM
General Mobile Radio Service

NAME: John Doe

DATE PREPARED: July 1 1981

SYSTEM COMPLETE ☒ PARTIAL ☐



(call sign)
(street address)
(city, state, ZIP)
(latitude)
(longitude)
transmit: 462.550 MHz
receive: 467.550 MHz

(call sign)
(area of operation)
transmit: 467.550 MHz
receive: 462.550 MHz

Figure A-7. Example of a base-mobile GMRS system.

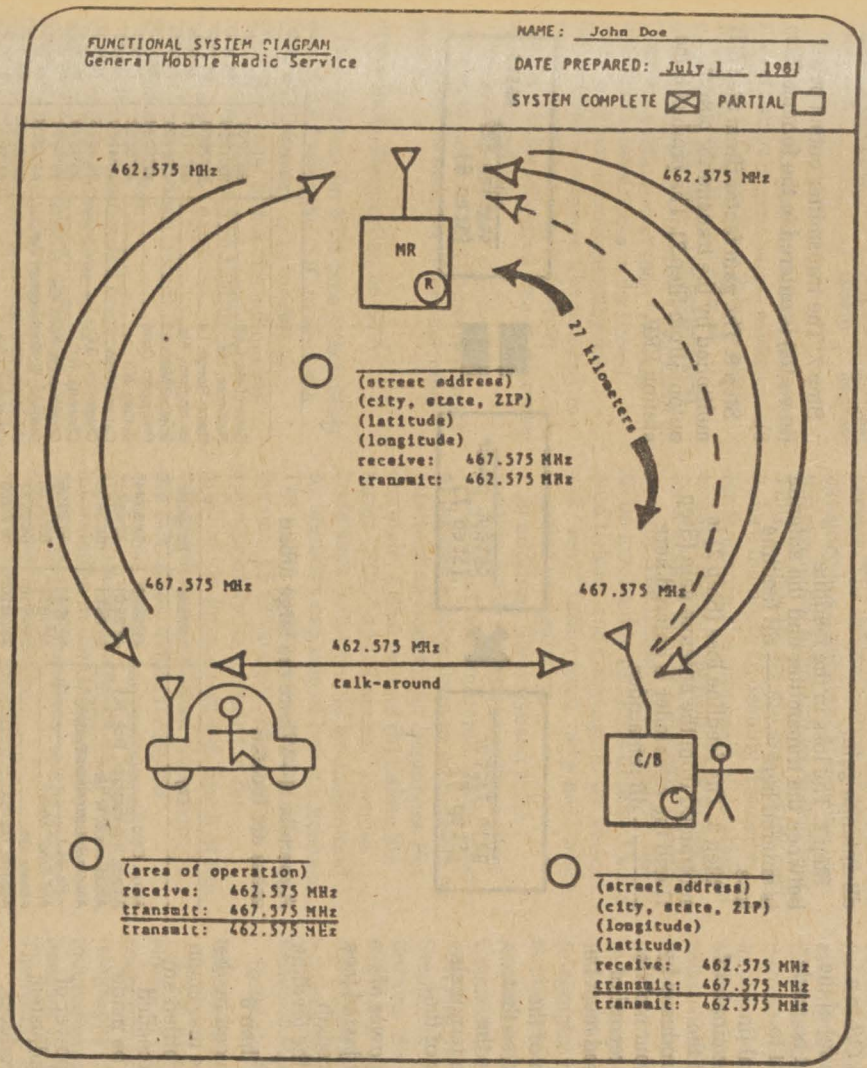


Figure A-8. Example of a remotely controlled mobile relay station GMRS system.

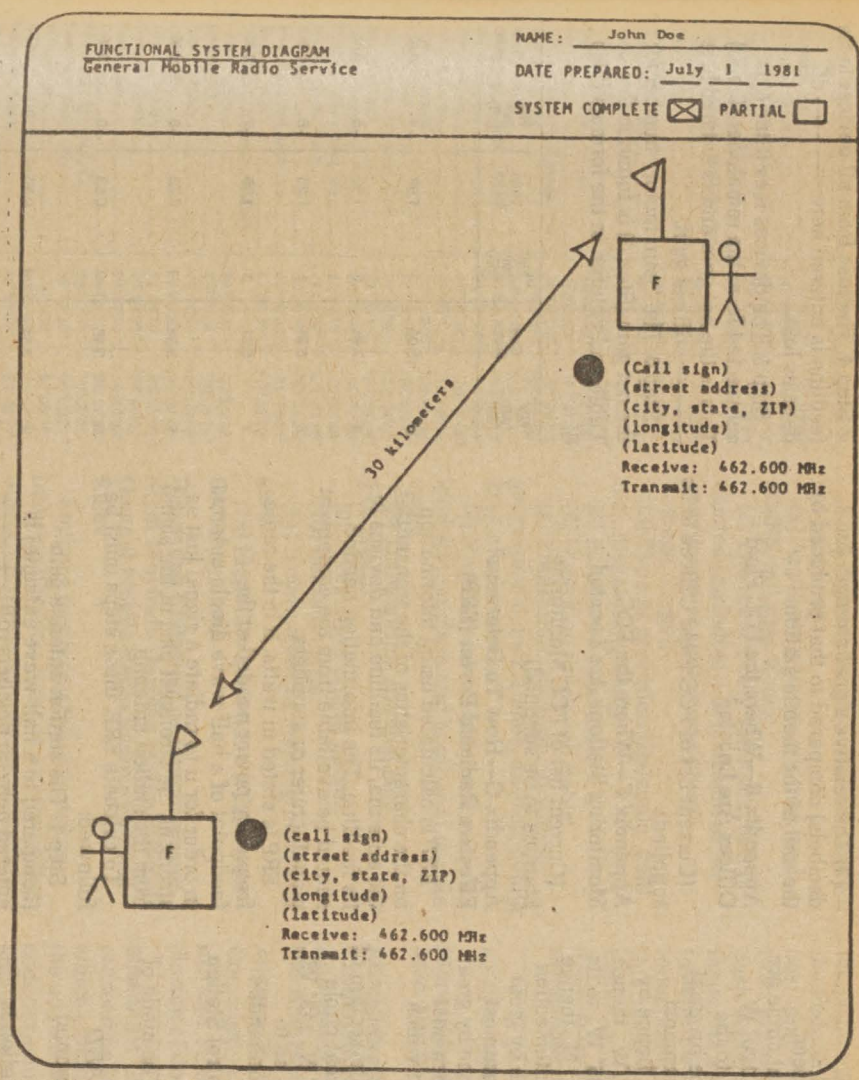


Figure A-9. Example of a fixed station GMRS system.

BILLING CODE 6712-01-C

Appendix C—Lines A and C

(a) Line A begins at Aberdeen, Washington, running by great circle arc to the intersection of 48° N., 120° W., thence along parallel 48° N., to the intersection of 95° W., thence by great circle arc through the southernmost point of Duluth, Minnesota, thence by great circle arc to 45° N., 85° W., thence southward along meridian 85° W., to its intersection with parallel 41° N., thence along parallel 41° N., to its intersection with meridian 82° W., thence by great circle arc through the southernmost point of Bangor, Maine, thence by great circle arc through the southernmost point of Searsport, Maine, at which point it terminates.

(b) Line C begins at the intersection of 70° N., 144° W., thence by great circle arc to the intersection of 60° N., 143° W., thence by great circle arc so as to include all of the Alaskan Panhandle.

Appendix D—Making a Control Station Power Test

(a) A written record must be made of the:

(1) Date the test is made; *AND*

(2) The name(s) of the person(s) making the test.

(b) A unit of the mobile station is brought to the control station *OR* to a point within 402 meters (¼ mile) of the control station. A record must be made of the point the unit is brought to.

(c) The strength of the signal (in microvolts) received at the terminals of the feedline to the antenna of the remotely controlled station produced by transmissions of the unit of your mobile station must be measured. A record of the signal strength so measured must be made.

(d) The directional antenna of the control station must be aimed so that transmissions from it produce the greatest signal strength at the terminals of the feedline to the antenna of the remotely controlled station.

(e) The transmitter output power of the control station must be adjusted (see § 95.143) so that the signal strength produced at the terminals of the feedline to the antenna of the remotely controlled station is no more than 6 decibels more than that produced by the unit of the mobile station. The maximum transmitter output power permitted any GMRS station must not be exceeded (see § 95.143). A record must be made of:

(1) The transmitter output power of the control station after it is adjusted;

(2) The signal strength it produces; *AND*

(3) The relative signal strength (in decibels) compared to that produced by the unit of the mobile station.

Appendix E—Where the FCC Field Offices Are Located

(Current list of FCC Field Offices to be supplied).

Appendix F—Where the FCC Monitoring Stations Are Located

(Current list of FCC Monitoring Stations to be supplied).

Appendix G—How To Determine Effective Radiated Power (ERP)

ERP is calculated using information on the characteristics of the transmitter, the antenna, its feedline and devices in its feedline. The information needed should be available from the equipment manufacturer or suppliers.

ERP is stated in watts. It is the radio frequency power needed at the feedpoint of a half-wave dipole antenna in order for it to radiate a signal just as strong as the strongest part of the signal from the station antenna.

To calcuate ERP, these steps must be followed:

Step 1. The station antenna gain (compared to a half-wave antenna) is entered here (in decibels (dB) ——— dB antenna gain.

Step 2. The loss in the feedline between the transmitter and the antenna is entered here ——— dB feedline loss.

Step 3. The feedline loss (Step 2) is subtracted from the antenna gain (Step 1) and the remainder is entered here ——— dB remainder.

Step 4. The loss from all devices in the feedline is entered here ——— dB devices loss.

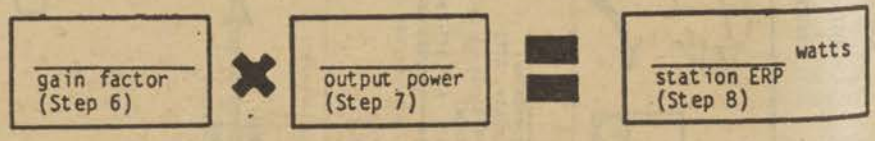
Step 5. The devices loss (Step 4) is subtracted from the remainder (Step 3). This is the net gain and is entered here ——— dB net gain.

Step 6. The "gain factor" number for the net gain (Step 5) is found in this Table and entered in the formula (Step 8).

Net gain (dB)	Gain factor	Net gain (dB)	Gain factor	Net gain (dB)	Gain factor
10	10.00	3	1.99	−4	0.40
9	7.94	2	1.59	−5	0.32
8	6.31	1	1.26	−6	0.25
7	5.01	0	1.00	−7	0.20
6	3.98	−1	0.79	−8	0.16
5	3.16	−2	0.63	−9	0.13
4	2.51	−3	0.50	−10	0.10

Step 7. The transmitter output power (in watts) is entered in the formula (Step 8).

Step 8. The gain factor (from Step 6) is multiplied by the transmitter power output (from Step 7). The product is the station ERP.



Appendix H—Where the large urban areas are located

City	Latitude	Longitude
Akron, Ohio	41°05'00"	81°30'44"
Albany, Schenectady, Troy, N.Y	42°39'01"	73°45'01"
Albuquerque, N. Mex	35°05'01"	106°39'05"
Allentown-Bethlehem-Easton, Pa.-N.J	40°36'11"	75°28'06"
Ann Arbor, Mich	42°16'59"	83°44'52"
Atlanta, Ga	33°45'10"	84°23'37"
Augusta, Ga.-S.C	33°28'20"	81°58'00"
Austin, Tex	30°16'09"	97°44'37"
Bakersfield, Calif	35°22'31"	119°01'16"
Baltimore, Md	39°17'26"	76°36'45"
Baton Rouge, La	30°26'58"	91°11'00"
Birmingham, Ala	33°31'01"	86°48'36"
Boston, Mass	42°21'24"	71°03'25"
Bridgeport, Conn	41°10'49"	73°11'22"
Buffalo, N.Y	42°52'52"	78°52'21"
Canton, Ohio	40°47'50"	81°22'37"
Charleston, S.C	32°46'35"	79°55'53"
Charlotte, N.C	35°13'44"	80°50'45"
Chattanooga, Tenn.-Ga	35°02'41"	85°18'32"
Chicago, Ill.-Northwestern Ind	41°52'28"	87°38'22"
Cincinnati, Ohio-Ky	39°06'07"	84°30'35"
Cleveland, Ohio	41°29'51"	81°41'50"
Colorado Springs, Colo	38°50'07"	104°49'16"

City	Latitude	Longitude
Columbia, S.C.	34°00'02"	81°02'00"
Columbus, Ga.-Ala.	32°28'07"	84°59'24"
Columbus, Ohio	39°57'47"	83°00'17"
Corpus Christi, Tex.	27°47'51"	97°23'45"
Dallas-Fort Worth, Tex.	32°47'09"	96°47'37"
Davenport-Rock Island-Moline, Iowa-Ill.	41°31'00"	90°35'00"
Dayton, Ohio	39°45'32"	84°11'43"
Denver, Colo.	39°44'58"	104°59'22"
Des Moines, Iowa	41°35'14"	93°37'00"
Detroit, Mich.	42°19'48"	83°02'57"
El Paso, Tex.	31°45'36"	106°29'11"
Fayetteville, N.C.	35°03'00"	78°53'00"
Flint, Mich.	43°00'50"	83°41'33"
Fort Lauderdale-Hollywood, Fla.	26°07'00"	80°09'00"
Fort Wayne, Ind.	41°04'21"	85°08'26"
Fresno, Calif.	36°44'12"	119°47'11"
Grand Rapids, Mich.	42°58'03"	85°40'13"
Greensville, S.C.	34°50'50"	82°24'01"
Harrisburg, Pa.	40°15'43"	76°52'59"
Hartford, Conn.	41°46'12"	72°40'49"
Honolulu, Hawaii	21°19'00"	157°52'00"
Houston, Tex.	29°45'26"	95°21'37"
San Francisco-Oakland, Calif.	37°46'39"	122°24'40"
San Jose, Calif.	37°20'16"	121°53'24"
Sarasota-Bradenton, Fla.	27°20'05"	82°32'20"
Scranton-Wilkes-Barre, Pa.	41°24'32"	75°39'46"
Seattle-Everett, Wash.	47°36'32"	122°20'12"
Shreveport, La.	32°30'46"	93°44'58"
South Bend, Ind.-Mich.	41°40'33"	86°15'01"
Spokane, Wash.	47°39'32"	117°25'33"
Springfield-Chicopee-Holyoke, Mass.-Conn.	42°06'21"	72°35'32"
Syracuse, N.Y.	43°03'04"	76°09'14"
Tacoma, Wash.	47°14'59"	122°26'15"
Tampa, Fla.	27°56'58"	82°27'25"
Toledo, Ohio-Mich.	41°39'14"	83°32'39"
Trenton, N.J.-Pa.	40°13'30"	74°45'00"
Tucson, Ariz.	32°13'15"	110°58'08"
Tulsa, Okla.	36°09'12"	95°59'34"
Washington, D.C.-Md.-Va.	38°53'51"	77°00'33"
West Palm Beach, Fla.	26°42'36"	80°03'07"
Wichita, Kans.	37°41'30"	97°20'16"
Wilmington, Del.-N.J.-Md.	39°44'46"	75°32'51"
Worcester, Mass.	42°15'37"	71°48'17"
Youngstown-Warren, Ohio	41°05'57"	80°39'02"
San Juan, P.R.	18°26'00"	66°07'00"

Note 1.—This Appendix lists the urbanized areas of 200,000 or more people as shown in the Bureau of Census News Release of July 27, 1981: "Provisional Population of Urbanized Areas, 1980." The geographical coordinates given are from the Department of Commerce publication of 1947: "Air-Line Distances Between Cities in the United States" and from data supplied by the National Geodetic Survey. The coordinates are determined by using the first city mentioned in the urbanized area as the center of the urbanized area.

Note 2.—"Grandfather" rights will be extended to current GMRS licensees who are affected by this updating of the large urban areas list.

Appendix I—Requesting an STA

(a) A request for STA (see § 95.115(b)) may be filed with the FCC to obtain a new GMRS license or to modify an existing license. It must be submitted:

(1) By letter (see § 95.125(b)(7));

(2) In duplicate; *AND*

(3) At least 10 days before the date of proposed operation.

(b) If the STA is needed because of station equipment damage or to communicate emergency messages (see § 95.153(a)), the request may be made by telephone or telegram and confirmed by letter within 10 days.

(c) A request for an STA must contain the following:

(1) Applicant's name, address, and GMRS call sign, if any;

(2) The reason why special action is needed (including a description of the emergency or station equipment damage, if any);

(3) Type of operation (Example: field test, dispatching, etc.);

(4) Purpose of operation;

(5) Operation times and dates;

(6) Transmitter location, including geographical coordinates, and/or mobile area of operations;

(7) Number of transmitters in each land station class and number of mobile units;

(8) Transmitting channel (see § 95.29(a));

(9) Transmitter output power;

(10) Emission type;

(11) Antenna height above ground and gain;

(12) Eligibility statement, if for a new GMRS system.

Dissenting Statement of Commissioner Mimi Weyforth Dawson re: Updating of General Mobile Radio Service (GMRS) Rules

I oppose beginning this rulemaking before a decision is made as to whether this is a Business or a Personal Radio service. The determination of service category has a substantial bearing on the regulatory approach we would take. Thus, it appears we are placing the cart before the horse by issuing this order. Furthermore, the proposed rules attempt to cover everything from how to apply for a system to how to manage a GMRS system. The Government does not need to be involved in all these details. I have said before, and I say again, we should ask "why" rather than "why not" when it comes to regulating.

In addition, the proposed rules contain much extraneous information which could be eliminated, made a part of the application form or included in an information booklet for beginners. For example, § 95.5 (a) and (b) define the terms "FCC" and "license." I would hope such terms would be understood by anybody capable of being a licensee. The entire section on applying for a license, §§ 95.71–95.87, could more appropriately be included in the application form, Form 400. Much of the information is contained elsewhere in the FCC rules. While it may be desirable, for the convenience of applicants and licensees, to include such information in the GMRS section, at a time of government fiscal austerity, such repetition is wasteful.

A further point regarding cost effectiveness can be made concerning the printing of these proposed rules in the **Federal Register**. Such printing will cost more than $6,000 and when final rules are adopted, the total printing costs will be more than double that figure. At a time when budgetary constraints call for every feasible reduction in spending, I cannot accept this as the most efficient way of updating these rules.

[FR Doc. 82-8427 Filed 4-1-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[General Docket No. 78-250; RM-2567; RM-3138; FCC 82-120]

Administration of Telegraphy Examinations to Handicapped Applicants for Operator Licenses in the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Termination of proceeding and closing of docket.

SUMMARY: This document terminates the proceeding in General Docket 78–250 which contained a Notice of Inquiry into the administration of telegraphy (Morse code) examinations to handicapped applicants for amateur radio operator licenses and dismisses petitions for rule making RM–2567 and RM–3138. The Commission decided to continue with its current policy of permitting handicapped applicants to demonstrate telegraphy skill by alternative testing methods and not to amend the telegraphy requirements for the handicapped applicants. RM–2567 proposed changes in telegraphy exams for deaf applicant. RM–3138 proposed elimination of telegraphy requirements and telegraphy subbands in the Amateur Radio Service.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Stephanie M. Spernak, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

Adopted: March 11, 1982.

Released: March 19, 1982.

By the Commission:

Introduction

1. On August 24, 1978, we released a Notice of Inquiry (Docket 78–250) concerning the administration of telegraphy (Morse code) examinations to handicapped applicants for operator licenses in the Amateur Radio Service.[1] The Notice of Inquiry contained

[1] 43 FR 37729, August 24, 1978.

information about our current examination procedures and sought comments about improvements that could be made in administering telegraphy examinations to handicapped applicants. After consideration of the issues and comments in Docket 78–250, we have decided to terminate the proceeding.

Background

2. The Commission receives numerous requests for special consideration from amateur radio license applicants with various disabilities that they say prevent them from passing amateur license telegraphy examinations. To obtain any of the current amateur operator licenses, an applicant must pass a telegraphy exam and a written exam. Many handicapped applicants contend that the telegraphy exams discriminate against them because of their disabilities. Some handicapped applicants, therefore, request waivers of the telegraphy examination requirements. The Commission denies requests to waive the telegraphy examination requirements because the United States is a member of the International Telecommunication Union (ITU), and is obligated to observe the Radio Regulations of the ITU. Article 41, section 3(1) of the Radio Regulations states:

> Any person operating the apparatus of an amateur station shall have proved that he is able to send correctly by hand and to receive correctly by ear, texts in Morse code signals. Administrations concerned may, however, waive this requirement in the case of stations making use exclusively of frequencies above 144 MHz.[2]

Amateur Rule §§ 97.21, 97.23, and 97.28 implement the terms of Article 41.[3]

3. Although the Commission does not waive the telegraphy requirements, our fundamental policy is that no qualified person should be denied an amateur radio license solely because of his or her handicap. We make specific efforts to assist handicapped applicants obtain amateur operator licenses by permitting them to demonstrate their operator qualifications in ways that accommodate their particular disability. For example, a blind applicant may use a Braille printer and a deaf person may use a vibrating surface or flashing light for the telegraphy examination. Further, in cases where the handicapped license applicant is unable to travel to the FCC Field Office for the examination, the Field Office will arrange to send an examiner to the applicant's home.[4] We emphasize that applicants who use alternative testing methods are still held to the same qualification standards.

4. In spite of these procedures, we continue to receive waiver requests from handicapped applicants who state they are unable to meet the telegraphy requirement in any way. Therefore, we issued the Notice of Inquiry in order to seek direction from the public on how we might improve the administration of telegraphy exams to the handicapped. The following alternative suggestions were set out for comment:

(1) Maintain the *status quo* by continuing to make special arrangements for handicapped applicants;

(2) Amend the rules to reduce the telegraphy speed requirement for handicapped applicants;

(3) Amend the rules to create a new class of amateur operator license without a telegraphy requirement and restrict eligibility to handicapped applicants;

(4) Waive the rules on a case-by-case basis to permit applicants to demonstrate their telegraphy qualifications at slower speeds than nonhandicapped applicants.

5. Over 60 comments were filed in Docket 78–250. The comments expressed no consensus in support of any one recommendation. Rather, the views expressed in the comments supported each of the alternatives. Some comments suggested the Commission make other changes in the telegraphy exam for handicapped applicants.

Why We Are Terminating General Docket 78–250

6. After careful consideration of the issues and comments in this proceeding, it appears that selecting a particular group of license applicants for favorable treatment in terms of less stringent amateur operator requirements would not be a sound licensing policy. For example, if such a policy were instituted, the Commission ultimately could find itself in the untenable position of deciding which applicants actually qualified for telegraphy examptions and which did not. Commission personnel clearly are not trained to make such judgments. Therefore, if we decide to introduce a class of amateur radio operator license without telegraphy requirements, it will be available to any applicant, instead of limited to applicants with certain physical or learning disability.

Related Petitions for Rule Making

7. The Mount Diablo Amateur Radio Club, Inc., of Pleasant Hill, California, filed petition for rule making, RM–2567, on July 9, 1975, proposing that the Commission amend its rules to expressly permit deaf applicants to demonstrate their knowledge of telegraphy by using a flashing light or a vibrating surface to simulate the Morse code signals. The club filed the petition because they believed that Amateur Rule § 97.28(c) which specifies that Morse code signals be received "by ear" discriminated against qualified deaf applicants.[5] Two comments supporting this petition were filed.

8. Although a literal reading of Amateur Rule § 97.28(c) may appear to preclude a qualified deaf applicant, we nevertheless dismiss this petition as unnecessary. As we noted above, it has long been the Commission's policy to permit deaf applicants to demonstrate their telegraphy skills by the very means suggested by the petitioner. The Commission construes the ITU telegraphy requirement to mean that amateur radio license applicants must demonstrate their ability to mentally convert Morse code signals to alphanumeric characters. We do not interpret this requirement as one which stipulates that amateur radio license applicants be free of certain physical disabilities. Furthermore, we believe that our alternative testing policy is applied most effectively, not by specific rules, but by a flexible, case-by-case procedure. With this procedure, disabled applicants may select the alternative testing method that is most convenient for them.

9. Rule making petition, RM–3138, filed by Ronnie D. Carter of Olivia, North Carolina, on June 7, 1978, proposes that the Commission eliminate all telegraphy requirements and telegraphy subbands in the Amateur Radio Service. The petitioner states that current amateur radio licensees and potential licensees desire a "code free" Service because telegraphy has become an "obsolete" mode of radio communication. Six comments were filed. All were opposed to the proposals. We dismiss this petition because we are prevented by the ITU regulations from dispensing totally with telegraphy requirements in the Amateur Radio Service. However, the matter of a "no-

[2] The frequency limit of 144 MHz was agreed to be changed to 30 MHz by participants at the World Administrative Radio Conference (WARC) in 1979. The United States has not yet ratified the WARC agreements.

[3] 47 CFR 97.21, 97.23, and 97.28. Amateur Rule § 97.21 sets forth the three telegraphy requirements necessary to obtain certain classes of amateur radio operator licenses: the Beginner's code test at five words per minute, General code test at thirteen words per minute, and the Expert's code test at twenty words per minute.

[4] 47 CFR 97.27.

[5] 47 CFR 97.28(c).

code" amateur radio operator license class, authorizing privileges which are consistent with the ITU regulations, remains open. We intend to again address this matter at a future date.

Conclusion

10. In view of the foregoing, we believe it is appropriate to terminate the proceeding in General Docket No. 78–250, and to dismiss rule making petitions RM–2567 and RM–3138. Therefore, pursuant to authority contained in section 4(i) of the Communications Act of 1934, as amended, it is ordered, That General Docket No. 78–250 is hereby terminated and that RM–2567 and RM–3138 are dismissed. It is further ordered that the proceeding in General Docket No. 78–250 is closed.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82–8947 Filed 4–1–82; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 47 No. 64
Friday, April 2, 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

Office of the Secretary

Section 22 Import Fees; Determination of Quarterly Import Fees on Sugar

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) requires the Secretary of Agriculture to determine on a quarterly basis the amount of the fees which shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended. This notice announces those determinations for the second calendar quarter of 1982.

EFFECTIVE DATE: April 1, 1982.

FOR FURTHER INFORMATION CONTACT: William F. Doering, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250 (202–447–6723).

SUPPLEMENTARY INFORMATION: By Presidential Proclamation No. 4887, dated December 23, 1981, Headnote 4 of Part 3 of the TSUS was amended to provide that quarterly adjusted fees shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15). Paragraph (c)(ii) of Headnote 4 provides that the quarterly adjusted fee for item 956.15 shall be the amount by which the average of the daily spot (world) price quotations for raw sugar for the 20 consecutive market days immediately preceding the 20th day of the month preceding the calendar quarter during which the fee shall be applicable (as reported by the New York Coffee, Sugar, and Cocoa Exchange or, if such quotations are not being reported, by the International Sugar Organization), expressed in United States cents per pound, Caribbean ports, in bulk, adjusted to a United States delivered basis by adding the applicable duty and 1.5032 cents per pound to cover attributed costs for freight, insurance, stevedoring, financing, weighing, sampling and International Sugar Agreement fees, is less than the market stabilization price. The market stabilization price for the second calendar quarter of 1982 is 19.08 cents per pound. However, whenever the average of the daily spot price quotations for 10 consecutive market days within any calendar quarter, adjusted to a United States delivered basis, plus the fee then in effect: (1) Exceeds the market stabilization price by more than one cent, the fee then in effect shall be decreased by one cent; or (2) is less than the market stabilization price by more than one cent, the fee then in effect shall be increased by one cent. The fee, in any event, may not be greater than 50 per centum of the average of such daily spot price quotations. Paragraph (c)(i) further provides that the quarterly adjusted fee for items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus .15 times the amount by which the applicable market stabilization price exceeds the 20 day average of the daily spot (world) price quotations for raw sugar as calculated in paragraph (c)(ii) of Headnote 4.

The average of the daily spot (world) price quotations for raw sugar for the applicable period prior to the second calendar quarter of 1982 has been calculated to be 11.6940 cents per pound. This results in a fee of 3.0703 cents per pound for item 956.15, the amount by which the sum of the 11.6940 cents average spot price + 2.8125 cents duty + 1.5032 cents attributed costs is less than 19.08 cents. Accordingly, the fee for items 956.05 and 957.15 for the second calendar quarter of 1982 is 4.1782 cents per pound
[3.0703+.15(19.08−11.6940)=4.1782].

Headnote 4(c) requires the Secretary of Agriculture to determine and announce the amount of the quarterly fees no later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable. The Secretary is also required to certify the amounts of such fees to the Secretary of the Treasury and file notice thereof with the **Federal Register** prior to the beginning of the calendar quarter during which the fees shall be applicable. This notice is therefore being issued in order to comply with the requirements of Headnote 4(c).

Notice

Notice is hereby given that, in accordance with the requirements of Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States, it is determined that the quarterly adjusted fees for raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) for the second calendar quarter of 1982 shall be as follows:

Item	Fee (cents per lb)
956.05	4.1782
956.15	3.0703
957.15	4.1782

The amounts of such fees have been certified to the Secretary of the Treasury in accordance with paragraph (c)(v) of Headnote 4.

Signed at Washington, D.C. on March 30, 1982.

John R. Block,

Secretary of Agriculture.

[FR Doc. 82–8899 Filed 4–1–82; 8:45 am]
BILLING CODE 3410–10–M

Soil Conservation Service

Chocolay Township, Michigan; 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 Chocolay Township RC&D Measure, Marquette, 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 critical area treatment. These measures include: (a) Land grading and shaping; (b) sodding or planting adapted vegetative species of grasses, legumes, trees and shrubs; (c) installation of minor structures such as rock riprap, grassed waterways, diversion, steps, and protective fencing. Total construction cost is estimated to be $72,000; $54,000 RC&D funds and $18,000 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.

Implementation of the proposal will not be initiated until May 3, 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)

Dated: March 8, 1982.

Homer R. Hilner,

State Conservationist.

[FR Doc. 82-8532 Filed 4-1-82; 8:45 am]

BILLING CODE 3410-16-M

Beaver Creek Watershed, Ga.; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: 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 Beaver Creek Watershed, Macon County, Georgia.

FOR FURTHER INFORMATION CONTACT: Dwight M. Treadway, State Conservationist, Soil Conservation Service, 355 East Hancock Avenue, (P.O. Box 832), Athens, Georgia 30613, telephone 404-546-2273.

SUPPLEMENTARY INFORMATION: 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. Dwight M. Treadway, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns are rill, sheet, and gully erosion affecting cropland and county maintained roads. The planned works of improvement include cost-sharing and accelerated technical assistance to increase the application of land treatment measures such as terraces, grassed waterways, no-till, critical area planting, etc.

The Finding of No Significant Impact (FONSI) and the Environmental Assessment have been forwarded to the Environmental Protection Agency and 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. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Mr. Dwight M. Treadway.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register** (May 3, 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)

Dated: March 25, 1982.

Dwight M. Treadway,

State Conservationist.

[FR Doc. 82-8811 Filed 4-1-82; 8:45 am]

BILLING CODE 3410-16-M

South Union Township Land Drainage and Critical Area Treatment R.C. & D. Measure, Pennsylvania; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT:

SUMMARY: 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 Nationall 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 South Union Township Land Drainage and Critical Area Treatment R.C. & D. Measure, Fayette 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 a plan for land drainage. The planned works of improvement include soil and water conservation practices to lower the water table and stabilize heavy use areas in township parks. Practices include subsurface drains, a waterway, a subsurface water diversion, a subsurface inlet, and vegetative seeding with mulch, all affecting approximately three acres of park land.

The Notice of a Finding of No Significant Impact (FONSI) 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. 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 the proposal will be taken until 30 days after the date of this publication in the **Federal Register** (May 3, 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 24, 1982.

Graham T. Munkittrick,

State Conservationist.

[FR Doc. 82-8812 Filed 4-1-82; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Docket 40545]

Airport Slot Allocations; Extension of Time for Comments on CAB Recommendation to FAA

Dated: March 30, 1982.

AGENCY: Civil Aeronautics Board.

ACTION: Extension of comment period.

SUMMARY: The CAB extends for 4 days the comment deadlines for a recommendation that it is considering making to the Federal Aviation Administration. The FAA administers the allocation of operating rights, or "slots," at the nation's airports that has been made necessary by the shortage of air traffic controllers. The CAB's recommendation will address concerns that the method currently being used by the FAA unnecessarily frustrates the procompetitive policies of the Airline Deregulation Act.

DATES: Comments by: April 9, 1982. Reply comments by: April 16, 1982.

Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket ———, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Susan B. Jollie, Associate General Counsel, Antitrust Division, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-6011.

SUPPLEMENTARY INFORMATION: In a notice released on March 19 and published at 47 FR 12369, March 23, 1982 ("the Notice"), the Board invited public comments on a recommendation that it is considering making to the Federal Aviation Administration about that agency's airport slot allocation program. The Board had previously recommended to the FAA that it broaden the definition of "new entrant." The Notice requested specific comments on whether to recommend further assistance for new entrants and on whether special consideration should be given to air carriers and communities that demonstrate unusual hardships. The Notice called for comments by April 5 and reply comments by April 12, 1982.

On March 26, 1982, counsel for Southwest Airline Co. filed a motion asking the Board to extend the initial comment deadline to at least April 18, 1982, and extend the reply comment date a corresponding amount. The motion noted that the FAA has issued a notice of proposed rulemaking (NPRM) to broaden the definition of "new entrant" on the basis of the Board's previous recommendation, with a comment deadline of April 18. It stated that, because of the interrelationship of the FAA's NPRM and the Board's Notice, it will be nearly impossible to respond to the Board without considering the effect of the new entrant definition. The motion also stated that the issues raised in the Notice are extemely complex and certain to be controversial, that they cannot be reasonably addressed without careful marshaling and analysis of the underlying facts, and that the comment period set by the Board is far too short for this purpose.

The Board recognizes the importance and complexity of the issues raised by the FAA's slot allocation program. That is the reason why it decided to invite public comments on possible recommendations even though there was no legal requirement to do so. A longer comment period would, of course promote more throughly considered comments and, other factors being equal, be more useful to the Board. In these circumstances, however, any Board recommendations to the FAA need to be made as soon as possible, in order to be useful to the FAA and effective in alleviating the economic effects of the slot restrictions. More important, FAA action to implement a Board recommendation would be subject to the notice and comment requirements of the Administrative Procedure Act, so interested persons should have a further opportunity to comment on any specific changes that the FAA might make. Moreover, the April 18 comment date for the FAA's NPRM on redefining "new entrant" does not compel an extension of the period for comments on the Board's Notice to the same date. In commenting on the Notice, interested persons are free to make alternative assumptions about what final action, if any, the FAA will take on its NPRM.

In view of the combined burden of commenting on the Notice in this docket, the slot exchange agreement in Docket 40176, and the FAA's NPRM, however, a short extension is warranted here. On balance, I find good cause to grant a 4-day extension of the comment dates for the Notice.

Accordingly, under authority delegated by the Board in 14 CFR 385.20(d), the time for filing initial comments in Docket 40545 is extended to April 9, 1982, and, for reply comments, to April 16, 1982.

Richard B. Dyson,

Associate General Counsel, Rules and Legislation.

[FR Doc. 82-8929 Filed 4-1-82; 8:45 am]

BILLING CODE 6320-10-M

[Docket 40508 (Order 82-3-157)]

Application of Air Atlanta, Inc. For a Certificate of Public Convenience and Necessity

AGENCY: Civil Aeronautic Board.

ACTION: Notice of Order Insituting a Fitness Investigation of Air Atlanta, Inc. in Docket 40508 (Order 82-3-157).

SUMMARY: The Board is instituting an investigation to determine the fitness of Air Atlanta, Inc. to engage in the interstate and overseas air transportation of persons, and the interstate and overseas air transportation of property and mail between all points in the United States, its territories and possessions, except in all-cargo service within Alaska or Hawaii.

DATE: Persons wishing to file petitions for leave to intervene in the *Air Atlanta Fitness Investigation* shall file their petitions in Docket 40508 by April 12, 1982 and shall serve such filings on all persons listed below.

ADDRESS: Petitions for leave to intervene should be filed in Docket 40508 and should be addressed to the Docket Section. Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on the persons listed in the attachment and on any other persons filing petitions.

FOR FURTHER INFORMATION CONTACT: Anne W. Stockvis, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, (202) 673-5198.

SUPPLEMENTARY INFORMATION: The complete text of Order 82-3-157 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82-3-157 to that address.

By the Civil Aeronautics Board: March 26, 1982.

Phyllis T. Kaylor,

Secretary.

Service List

Michael R. Hollis, Chairman,
Air Atlanta, Inc.,
The Grant Building,
Suite 602
Atlanta, Georgia 30303
Verner, Liipfert, Bernhard and McPherson,
Suite 1100,
1660 L Street NW.,
Washington, D.C. 20036
The Honorable Mayor,
City of Atlanta,
Altanta City Hall,
68 Metchell Street, S.W.,
Atlanta, Georgia 30303
The Honorable Mayor,
City of Memphis,
City Hail,
125 N. Main,
Memphis, Tennessee 38103
The Honorable Mayor,
City of Nashville,
City Office,
2nd Avenue & South Lindsley,
Nashville, Tennessee 37210
The Honorable Mayor,
City of Raleigh,
Post Office Box 590,
Raleigh, North Carolina 27602
The Honorable Mayor,
City of Durham,
101 City Hall Plaza,
Durham, North Carolina 27701
The Honorable Mayor,
City of Tampa,
City Hall,
315 J. F. Kennedy Blvd. East
Tampa, Florida 33602
Mr. G. H. Ridgeway, Jr.,
Manager—Aviation,
Wm. B. Hartsfield Atlanta International Airport,
Atlanta, Georgia 30320
Mr. W. M. Fletcher,
Director—Aviation,
Memphis International Airport,
Memphis, Tennessee 38130
Mr. James S. Graham,
Executive Director,
Airport Authority,
Nashville Metropolitan Airport,
Box 172080,
Nashville, Tennessee 37217
Mr. J. L. Thumma,
Manager,
Raleigh-Durham Airport,
Box 27284,
Raleigh, North Carolina 27611
Mr. Stewart D. Mast,
Manager, Tampa International Airport,
Hillsborough County Aviation Authority,
Box 22287,
Tampa, Florida 33622
Mr. William L. Cousins III,
Chief, Bureau of Aeronautics.
Georgia Dept. of Transportation,
5025 New Peachtree Road, N.E.,
Chamblee, Georgia 30341
Mr. Grover C. Jones,
Chief, Aviation Bureau,
Florida Dept. of Transportation
605 Suwannee Street,
Tallahassee, Florida 32301
Chairman,
Florida Public Service Commission,
700 S. Adams Street,
Tallahassee, Florida 32304
Mr. Willard G. Plentl, Director,
North Carolina Department of Transportation,
Division of Aviation,
Box 25201,
Raleigh, North Carolina 27611
Mr. Frank P. Pledger,
Director, Bureau of Aeronautics,
Tennessee Department of Transportation,
Box 17326,
Nashville, Tennessee 37217
Federal Aviation Administration,
Southern Regional Office,
Box 20636,
Atlanta, Georgia 30320
Samuel C. Clark III,
Regional Director—OCCCA,
Civil Aeronautics Board,
275 Peachtree Street,
Room 140,
Atlanta, Gergia 30303

[FR Doc. 82-8892 Filed 4-1-82; 8:45 am]
BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended March 26, 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 proceddings. (See 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
Mar. 22, 1982	40552	Aerocargo, S. A., c/o Robert E. Cohn, Butler, Binion, Rice, Cook & Knapp, 1747 Pennsylvania Avenue NW., Suite 900, Washington, D.C. 20006 Application of Aerocargo, S. A. pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations, requests a foreign air carrier permit to engage in nonscheduled foreign air transportation carrying individually waybilled cargo as follows: Between the terminal points Lima, Iquitos, Talara and Tacna, Peru, on the one hand, and the coterminal points Miami, Florida and Houston, Texas, on the other hand. Answers may be filed by April 19, 1982.
Mar. 23, 1982	40557	Continental Air Lines, Inc., c/o Emory N. Ellis, Fulbright & Jaworski, 1150 Connecticut Avenue NW., Washington, D.C. 20036. Application of Continental Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Rules of Practice, requests that the Board issue it a certificate of public convenience and necessity to engage in foreign air transportation of persons, property and mail on the following route: Between the co-terminal points Houston, and Dallas/Ft. Worth, Texas and New Orleans, Louisiana and the co-terminal points Maracaibo and Caracas, Venezuela. Conforming Applications, motions to modify scope, and Answers may be filed by April 20, 1982.
Mar. 26, 1982	40562	Transamerica Airlines, Inc., c/o Jeffrey A. Manley, Burwell, Hansen, Manley & Peters, 1706 New Hampshire Avenue, N.W., Washington, D.C. 20009. Application of Transamerica Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment of segment 3 of its Certificate of Public Convenience and Necessity for Route 194 authorizing it to engage in foreign air transportation of passengers, property and mail to read as follows: "3. Between a point or points in the United States, and a coterminal point or points in the Bahama Islands, Jamaica, Haiti, Dominican Republic, St. Maartin, St. Kitts, St. Lucia, Antigua and Barbuda, Guadeloupe, Martinique, Barbados, Grenada, Trinidad and Tobago, Curacao, Aruba, Belize, El Salvador, Guatemala, Honduras, Costa Rica, Nicaragua, Panama, the intermediate point Barranquilla, Colombia, and a coterminal point or points in Brazil." Conforming Applications, motions to modify scope, and Answers may be filed by April 2, 1982.
Do	40564	American Airlines., P.O. Box 61616, DFW Airport, Texas 75261.

Date filed	Docket No.	Description
		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 over the following segments: (1) Between co-terminal point or points in the United States, intermediate point or points in Argentina, Brazil, Chile, Colombia, Ecuador, and Panama, and co-terminal point or points in Peru. (2) Between co-terminal point or points in the U.S. Central Zone and co-terminal point or points in Venezuela. Conforming Applications, motions to modify scope, and Answers may be filed by April 2, 1982.
Do	40565	Earth Space Transport Systems Corporation, c/o Stephen L. Gelband, Hewes, Morella & Gelband, 1010 Wisconsin Avenue, N.W., Suite 640, Washington, D.C. 20007 Application of Earth Space Transport Systems Corporation pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests issuance of a certificate of public convenience and necessity which would authorize it to engage in scheduled and charter air transportation of persons, property and mail, as follows: Between and among the co-terminal points: New York, New York; Washington, D.C.; Orlando, Florida; Miami, Florida; Los Angeles, California; San Francisco, California, the intermediate points; Caracas, Venezuela; Rio De Janeiro, Brazil; Buenos Aires, Argentina; Santiago, Chile; Panama City, Panama; Lima, Peru, and the terminal point Caracas, Venezuela. Conforming Applications, motions to modify scope, and Answers may be filed by April 2, 1982.
Do	40566	Air Florida, Inc., 3900 N.W. 79th Avenue, Miami, Florida 33166. Application of Air Florida, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment of its certificate of public convenience and necessity for Route 197–F authorizing it to engage in air transportation with respect to persons, property and mail on the following new segement as follows: Between the coterminal points New York City, New York; Washington, D.C. (through any suitable airport including Baltimore/Washington International Airport); New Orleans, Louisiana; and Miami, Florida; on the one hand, and the coterminal points Panama City, Panama; Bogota and Cali, Colombia; Quito and Guayaquil, Ecquador; Lima, Peru; Santiago, Chile; Buenos Aires, Argentina; La Paz, Bolivia; Asuncion, Paraguay; Rio de Janiero and Sao Paulo, Brazil, on the other. Conforming Applications, motions to modify scope, and Answers may be filed by April 2, 1982.
Do	40567	Capitol International Airways, Inc., P.O. Box 325, Smyrna, Tennessee 37167. Application of Capitol International Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests authorization to provide scheduled air transportation of persons, property and mail: Route "A" 1. Between the coterminal points Dallas/Fort Worth and Houston, Texas, and New Orleans, Louisiana, the intermediate points Havana, Cuba; Panama City, Panama; Bogota, Columbia, and (a) beyond Bogota, the terminal point Manaus, Brazil. (b) beyond Bogota, the intermediate points Cali, Columbia; Quito; and Guayaquil, Ecuador; Lima, Peru; and La Paz, Bolivia, and (i) beyond La Paz, the intermediate point Asuncion, Paraguay, and (1) beyond Asuncion, the intermediate point Sao Paulo, Brazil, and the terminal point Rio de Janeiro, Brazil, and (2) beyond Asuncion, the terminal point Buenos Aires, Argentina. (ii) beyond La Paz, the intermediate point Santiago, Chile, and the terminal point Buenos Aires, Argentina. 2. Between the coterminal points Boston, Massachusetts, New York, New York-Newark, New Jersey; Washington, D.C. (to be served through Dulles International Airport); and Miami, Florida, the intermediate points Balboa, Canal Zone-Panama City, Panama; Bogota, Columbia; and (a) beyond Bogota, the terminal point Manaus, Brazil. (b) beyond Bogota, the intermediate points Cali, Colombia; Quito and Guayaquil, Ecuador; Lima, Peru; and La Paz, Bolivia and beyond La Paz, as described in 1(b)(i) and 1(b)(ii) above. 3. Between the coterminal points San Francisco and Los Angeles, California, the intermediate point Bogota, Colombia; and (a) beyond Bogota, the terminal point Manaus, Brazil. (b) beyond Bogota, the intermediate points Cali, Colombia; Quito and Guayaquil, Ecuador; Lima, Peru; and La Paz, Bolivia, and beyond La Paz, as described in 1(b)(i) and 1(b)(ii) above. 4. Between the coterminal points New Orleans, Louisiana, and Dallas/Fort Worth and Houston, Texas, the intermediate points Caracas and Maracaibo, Venezuela, and the terminal point Barranquilla, Colombia. 5. Between the coterminal points New York, New York-Newark, New Jersey, Miami, Florida, New Orleans, Louisiana, and Los Angeles, California, and the terminal point Barranquilla, Colombia. Route "B" 1. Between the coterminal points Dallas/Fort Worth and San Antonio, Texas, the intermediate points Mexico City and Acapulco, Mexico; Panama City, Panama; Bogota and Cali, Colombia; Quito and Guayaquil, Ecuador; Lima, Peru; and La Paz, Bolivia and (a) beyond La Paz, the intermediate point Asuncion, Paraguay; and (i) beyond Asuncion, the intermediate point Sao Paulo, Brazil and the terminal point Rio de Janeiro, Brazil and (ii) beyond Asuncion, the terminal point Buenos Aires, Argentina. 2. Between the terminal point Houston, Texas and the terminal point Acapulco, Mexico. 3. Between the terminal point Dallas/Fort Worth, Texas, intermediate points in Guatemala and Panama, and the terminal point Bogota, Colombia. Conforming Applications, motions to modify scope, and Answers may be filed by April 2, 1982.
Do	40569	Western Air Lines, Inc., P.O. Box 92005, World Way Postal Center, Los Angeles, California 90009. Application of Western Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests amendment of its certificate of public convenience and necessity for Route 152 so as to authorize it to engage in foreign air transportation with respect to persons, property and mail on the following new route segment: Between the coterminal points Los Angeles and San Francisco, California and a point or points in Panama, Colombia, Ecuador, Peru, Chile, Bolivia, Paraguay, Brazil, Uruguay and Argentina. Conforming Applications, motions, to modify scope, and Answers may be filed by April 2, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-8890 Filed 4-1-82; 8:45 am]

BILLING CODE 6320-01-M

Commuter Fitness Determination

The Board is proposing to find the following carriers fit, willing and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that aircraft used in this service conform to applicable safety standards.

Order	Applicant	Response date
82-3-130	Air National Aircraft Sales and Service.	Apr. 13, 1982.
82-3-141	Crested Butte Air Service, Inc., d.b.a. Colorado Airlines, D.B.A. Cimarron Air.	Apr. 14, 1982.

All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed in Attachment A of the respective orders and file response or additional data for Orders 82–3–130 and 82–3–141 with the Special Authorities Division, Room 915; 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

The complete text of the orders is available from the Distribution Section, Room 100, 1825 Connecticut Avenue,

Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request to the above address.

FOR FURTHER INFORMATION CONTACT:

Mr. J. Kevin Kennedy, (202) 673–5918, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428.

By the Civil Aeronautics Board: March 29, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-8891 Filed 4-1-82; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Indiana 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 Indiana Advisory Committee to the Commission will convene at 7:00 p.m., and will end at 10:00 p.m., on April 22, 1982, at the Gary City Hall, 401 Broadway Street, in the Council Lounge, located on the Second Floor, Gary, Indiana, 46402. The purpose of this meeting is to discuss future program activities, and report on the status of the Housing Discrimination study in Indiana.

Persons desiring additional information or planning a presentation to the Committee, should contact the Acting Chairperson, Lotte Meyerson, 650 North Tippecanoe Street, Gary, Indiana, 46403, (219) 938–1933 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois, 60604, (312) 353–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 25, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-8933 Filed 4-1-82; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advsory 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 West Virginia Advisory Committee to the Commission will convene at 1:00 p.m., and will end at 5:00 p.m., on April 22, 1982, at the Federal Court House, 500 Quarrier Street, Room 5110, Charleston, West Virginia 25301. The purpose of this meeting is to discuss program plans for the remaining period of fiscal year 1982.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Donald L. Pitts, 416 South Fayette, Beckley, West Virginia 25801, (304) 252–5309 or the Mid-Atlantic Regional Office, 2120 L. Street, North West, Room 510, Washington, D.C., 20037, (202) 254–6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 25, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-8934 Filed 4-1-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Order No. 41–1; D.O.O. Reference 10–3, 40–1]

Organization and Function

February 15, 1982.

Part I. Effect on Other Orders

This order supersedes ITA Organization and Function Order 41–1 of January 30, 1908, as amended (45 FR 11862, 46 FR 13537, 46 FR 35329, 46 FR 51948).

Part II. Purpose, Scope, and Principal Organization

Section 1. Purpose

.01 This order prescribes the internal organization and assignment of functions within the International Trade Administration (ITA). Department Organization Order 40–1 prescribes the principal organization structure of ITA.

.02 This order also delegates authorities from the Under Secretary for International Trade to the Deputy Under Secretary for International Trade, the Director General of the Commercial Services, and the Assistant Secretaries for Trade Development, Trade Administration and International Economic Policy. Department Organization Order 10–3 prescribes the scope of authority of the Under Secretary.

.03 This order reflects a realignment of functions under the Director General of the Commercial Services, the Assistant Secretary for Trade Development, and the Assistant Secretary for International Economic Policy.

Section 2. Organization and Line of Authority

.01 The internal organization structure and line of authority of ITA shall be as depicted in the attached organization chart (Exhibit 1).[1]

[1] Filed as part of the original document.

.02 *The Under Secretary for International Trade*

a. The Under Secretary for International Trade (the "Under Secretary") is the head of ITA and determines policy, directs the programs, and is responsible for all activities of ITA. The Under Secretary coordinates all issues and programs concerning trade administration, international trade and commercial policy and trade development; and, in the absence of the Secretary of Commerce, represents the Department on the Trade Policy Committee, as ex-officio member of the Board of the Export-Import Bank of the United States and, as assigned, serves on all other Secretarial-level boards, committees or panels of which the primary focus is international trade.

b. The Office of the Under Secretary provides Congressional liaison for ITA in coordination with the Assistant Secretary for Congressional Affairs.

c. The Office of the Under Secretary includes the *Planning and Evaluation Staff* which identifies issues or problems requiring the attention of the Under Secretary or coordination between program areas; monitors and coordinates the preparation of studies, reports, Congressional testimony and other items addressing these issues; directs, coordinates and monitors ITA participation in interagency staff activity and represents ITA in this activity when appropriate; develops and reviews policy options and recommendations on issues when requested by the Under Secretary.

d. The Under Secretary is assisted by the following officials in carrying out his responsibilities:

The Deputy Under Secretary for International Trade
The Director General of the Commercial Services
The Assistant Secretary for International Economic Policy
The Assistant Secretary for Trade Administration
The Assistant Secretary for Trade Development

Part III. The Deputy Under Secretary for International Trade

Section 1. Delegation of Authority

.01 Subject to such policies, directives, and delegations of authority as may be issued by the Secretary of Commerce, and the Under Secretary, and in accordance with applicable Department Organization Orders and Department Administrative Orders, the Deputy Under Secretary for International Trade is hereby delegated the authorities of the Under Secretary for International Trade as necessary to provide for all administrative

management and public affiars activities and direct such activities for all organizational elements in the International Trade Administration.

.02 Except as otherwise provided, the Deputy Under Secretary for International Trade may redelegate this authority, subject to such conditions in the exercise of such authority as he or she may prescribe.

Section 2. Organization and Functions

.01 The *Deputy Under Secretary for International Trade* (the "Deputy Under Secretary") is the principal deputy to the Under Secretary; performs such duties as the Under Secretary may assign; and performs the functions of the Under Secretary in the latter's absence. The Deputy Under Secretary is responsible for the day-to-day management of ITA.

.02 The Office of the Deputy Under Secretary includes the *Director of Administration* who is the principal advisor to the Under Secretary and the Deputy Under Secretary on management policy for the International Trade Administration. The Director of Administration directs the following offices:

a. The *Office of Personnel* develops and administers, for Civil Service personnel, personnel management programs including recruitment, placement, employee development, classification, labor-management relations, equal employment opportunity, and employee relations, and provides liaison with the Departmental Office of Personnel;

b. The *Office of Management and Systems* provides management, organization and systems analysis, including management studies and surveys and organizational planning studies; coordinates ADP systems development; performs the committee management, directives management, records management, forms management, correspondence management and reports management functions for ITA; coordinates GAO and Departmental audits; coordinates activity under the Freedom of Information Act and the Privacy Act of 1974; operates an ITA-wide text processing system; and provides liaison with the Departmental Office of Organization and Management Systems, the Office of Information Management, the Office of Program Evaluation, and the Office of Inspector General;

c. The *Office of Budget* formulates, presents, executes, and assesses program effectiveness of the ITA budget; effects financial and budgetary controls; prepares budget reports; and provides liaison with the Departmental Office of Budget;

d. The *Office of Public Affairs* advises on all public affairs and information service matters; provides ITA centralized information services, conducts and is responsible for all publications programs, consonant with the provisions of Department Organization Order 20–9, *"Office of Publications"*; provides speech writing and scheduling services; coordinates all audiovisual, exhibit, and advertising activities; maintains liaison with the Departmental Office of Publications, the Departmental Office of Public Affairs and the news and trade media consonant with the provisions of Department Organization Order 15–3, *"Office of Public Affairs"*; and publishes *Business America* magazine; and

e. The Office of Administrative Support provides administrative support services for ITA, including physical and document security, safety, correspondence control, space and property management, and procurement liaison.

Part IV. The Director General of the Commercial Services

Section 1. Delegation of Authority

.01 Pursuant to the authority delegated to the Under Secretary by the Secretary of Commerce, and subject to such policies and directives as the Under Secretary may prescribe, the Director General of the Commercial Services is hereby delegated the authority of the Under Secretary under:

a. The Act of February 14, 1903, as amended, (15 U.S.C. 1512 *et seq.*; 15 U.S.C. 171 *et seq.*) to foster, promote and develop the foreign and domestic commerce of the United States;

b. The trade promotion and commercial functions transferred to the Secretary from the Department of State or the Secretary of State by section 5(b)(1) of Reorganization Plan No. 3 of 1979, and by section 1–104 of Executive Order 12188 of January 2, 1980, as amended;

c. The Foreign Service Act of 1980 (22 U.S.C. 3901 *et seq.*), and such laws the exercise of which are authorized to the Secretary under section 5(b)(2) of Reorganization Plan No. 3 of 1979 and by section 1–104 of Executive Order 12188 of January 2, 1980, as amended; and

d. Section 2(8) of the Small Business Act, as amended (15 U.S.C. 637(e)) relating to obtaining and publishing notices of U.S. government procurement.

.02 Except as otherwise provided, the Director General of the Commercial Services may redelegate the above authorities, subject to such conditions in the exercise of such authorities as he or she may prescribe.

Section 2. Organization and Functions

The Director General of the Commerical Services (the "Director General") serves as visible spokesman for the Commerical Services, notably with business, particularly with small and medium-sized firms, and other external constituencies; provides management processes and management support functions for the Foreign Commercial Service (FCS) and the U.S. Commerical Service (USCS); coordinates the appropriate functions and the Assistant Secretary for International Economic Policy (and the regional Deputy Assistant Secretaries) for specific FCS country program and supervisory purposes, with the Assistant Secretary for Trade Development (and the Deputy Assistant Secretary for Export Development) for USCS program support supervision purposes, with the Assistant Secretary for Trade Administration (and the appropriate Deputy Assistant Secretaries) for specific program support, and with the Director of Administration for USCS personnel management purposes; develops, in coordination with the Departmental Office of Personnel and the Department of State, and administers for Foreign Service and Foreign Service National (FSN) employees of the FCS, personnel management programs, including recruitment and placement, employee development, classification, labor-management relations, equal employment opportunity, employee relations, promotions, career planning and separations, and provides liaison with the Department of State on FCS personnel issues; develops and implements, in cooperation with ITA's Office of Personnel, recruitment, training, career development, and personnel assignment programs for both Commerical Services; evaluates the performance of senior FDC and USCS personnel (coordinating with appropriate line Deputy Assistant Secretary who evaluates senior personnel for relevant program purposes); develops and implements a unified personnel and post goal-setting and evaluation process which integrates the activities of the two services with each other and the rest of ITA; develops and manages a country planning process in coordination with the relevant regional and trade program Deputy Assistant Secretaries; administers a system of Foreign Commercial Service posts and U.S. Commercial Service District Offices located in commercial

centers throughout the world and the United States, respectively; publishes the *Commerce Business Daily* and directs Federal Procurement and Business and Development Conferences, the District Export Councils, Associate Office program, and the development and implementation of a cooperator program for the FCS with participants from manufacturing and service industries; and carries out emergency preparedness functions through District Office Directors in the Uniform Federal Regional Council cities.

The Director General carries out these functions through:

01. The *Deputy Assistant Secretary for the Commerical Services* who serves as principal deputy to the Director General; performs such duties as the Director General may assign; and assumes the duties of the Director General in the latter's absence.

02. The *Office of Personnel Administration* develops, in coordination with the Departmental Office of Personnel and the Department of State, and administers for Foreign Service and Foreign Service National (FSN) employees of the FCS, personnel management programs, including recruitment, selection, classification and assignment of FCS officers and nationals; develops and implements, in cooperation with ITA's Office of Personnel, recruitment and assignment programs for the USCS; monitors FCS personnel records and processing; supports the Department's activities on the Board of the Foreign Sevice and the Board of Examiners of the Foreign Service; maintains liaison with the Department of State on FCS personnel issues; administers FCS grievance, labor-management relations and EEO programs; provides for the movement of personnel, shipment of household goods, and medical coverage for FCS employees; develops and manages career development and education programs for FCS officers and nationals, and USCS trade specialists, in cooperation with ITA's Office of Personnel; and develops and administers the FCS Officer Evaluation System and related selection boards.

.03 The *Office of Planning and Management* analyzes FCS post workload plans (PCAP's) USCS District Office program plans, overall accomplishments against those plans; and in conjunction with the Offices of USCS and FCS Operations, recommends long-term staffing and resource allocations and is responsible for fiscal planning and monitoring; monitors the State Department's shared administrative support policies and represents the FCS on the Foreign Affairs Administrative Support Inter-Agency Council; maintains liaison with State and Commerce Department administrative offices to provide for administrative support for FCS posts and USCS District Offices, including space, negotiation and management of leased quarters renovation, supply, and local transportation; participates on the Inter-Agency Allowance Committee to determine appropriate overseas allowances; cooperates with Commerce and State Department security offices to provide policy guidance and support to the FCS in the areas of employment and physical security; develops management reports, briefings and conferences; and develops and maintains operations manuals for the FCS and USCS.

.04 The *Office of FCS Operations* is responsible for developing post commerical action plans and maintaining liaison with the Trade Development, Trade Administration, and regional Deputy Assistant Secretaries on behalf of the overseas posts; provides day-to-day operational management of the FCS posts in coordination with the regional Deputy Assistant Secretaries and country offices; regularly monitors accomplishments against the country plans and mediates workloads disputes between FCS posts and trade program Deputy Assistant Secretaries; appraises the performance of senior commercial officers on the non-program support critical elements of their performance plans (i.e., (1) counseling for small and medium-sized businesses, (2) major multipliers, and (3) administration, training, management and supervision, and external representation) and reviews, for the Director General, the program performance appraisals provided by the regional Deputy Assistant Secretaries; establishes and maintains liaison with other government agencies, industry consultative groups, and academe to develop techniques for delivering programs to promote U.S. commerical interests abroad; establishes and monitors the use of small business facilities abroad; provides management oversight of the commerical libraries abroad; proposes overseas staffing levels; and, in conjunction with the Office of Planning and Management, makes recommendations to the Director General for allocating FCS resources.

.05 The *Office of USCS Operations* develops District Office plans and maintains liaison with the relevant deputy assistant secretaries of Trade Development and Trade Administration in order to provide day-to-day guidance and direction to the USCS District Offices through the Regional Managing Directors in conjunction with the program priorities of the relevant deputy assistant secretaries; monitors program operations and accomplishments against the District Office plans and mediates workload conflicts between the Regional Managing Directors and relevant deputy assistant secretaries; appraises the performance of the Regional Managing Directors on the non-program support elements of the performance plans (i.e., (1) counseling for small and medium-sized business, (2) major mutipliers, (3) administration, training, management and supervision) and reviews, for the Director General, the program performance appraisals provided by the relevant deputy assistant secretaries; establishes and maintains liaison with other Government agencies, industry consultative groups, and academe to develop techniques for more effective program implementation; communicates and interprets matters affecting ITA programs and participates in interdepartmental, interagency and private sector meetings which involve program issues related to field program implementation; establishes and monitors a program activity reporting system for district offices in consultation with the Office of Planning and Management; coordinates the operation of the District Export Council, Associate Office, Federal-State Relations, Federal Procurement conference and Business Development Conference programs with the District Offices through the Regional Managing Directors; coordinates tasking and activities of the field advisory group and ad hoc task forces; and manages the publication of the *Commerce Business Daily*.

.06 The *FCS Overseas*, consistent with the country plan, supports and carries out trade promotion activities; develops marketing and commercial intelligence; facilitates U.S. investment; monitors U.S. rights and opportunities created by trade agreements; supports ITA import and export administration activities; and provides representation to host governments on behalf of U.S. business firms. The senior commercial officer in a country coordinates the activities of all ITA personnel in that country.

.08 The *USCS District Offices*, consistent with plans developed in coordination with the relevant ITA deputy assistant secretaries, offer U.S. firms counselling on overseas marketing, technical export information, and guidance on marketing opportunities and strategies; conduct seminars, workshops and conferences; obtain commercial information from U.S. firms for use in planning and evaluating trade

programs; and disseminate to the business community information on trade developments, trade policy issues, and technological developments. District Directors in the ten Uniform Federal Regional Council Cities of Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco and Seattle act as designated Regional Emergency Coordinators in accordance with instructions and guidance issued by the Departmental Office of Emergency Readiness through the Director General.

Part V. Assistant Secretary for International Economic Policy

Section 1. Delegation of Authority

.01 Pursuant to the authority delegated to the Under Secretary by the Secretary of Commerce, and subject to such policies and directives as the Under Secretary may prescribe, the Assistant Secretary for International Economic Policy is hereby delegated the authority of the Under Secretary under:

a. The Act of February 14, 1903, as amended (15 U.S.C. 1512 *et seq.)* U.S.C. 171 *et seq.*), to foster, promote, and develop the foreign and domestic commerce of the United States, and related provisions;

b. Such portions of the Foreign Service Act of 1980 (22 U.S.C. 3901 *et seq.* and such other laws the exercise of which are authorized to the Secretary under section 5(b)(2) of Reorganization Plan No. 3 of 1979 and by section 1–104 of Executive Order 12188 of January 2, 1980, as amended, as are necessary to carry out the Assistant Secretary's responsibility to supervise the program activities of the Foreign Commercial Service.

.02 Except as otherwise provided the Assistant Secretary may redelegate the above authorities, subject to such conditions in the exercise of such authorities as he or she may prescribe.

Section 2. Organization and Functions.

The *Assistant Secretary for International Economic Policy* carries out programs to promote world trade and to strengthen the international trade and investment position of the United States; examines and develops trade and investment policy recommendations which are bilateral, regional and multilateral in nature (in consultation with units of Trade Development where significant industry sector or product-specific issues are involved); represents the Department on such matters, as assigned; promotes U.S. trade objectives in particular countries and regions through supervision of the relevant program support activities of the Foreign Commercial Service posts overseas (through the regional Deputy Assistant Secretaries, and in coordination with the Director General); manages bilateral joint commissions and other institutions; implements and monitors the non-sectoral aspects of the Multilateral Trade Negotiations; and coordinates ITA participation arising in the context of the General Agreement on Tariffs and Trade (GATT) and in international organizations such as the Organization for Economic Cooperation and Development (OECD), the United Nations (UN), the UN Conference on Trade and Development (UNCTAD), and others. The Assistant Secretary carries out these functions through:

.01 The *Deputy Assistant Secretary for International Economic Policy* who serves the principal deputy to the Assistant Secretary, performs such duties as the Assistant Secretary may assign, and performs the functions of the Assistant Secretary during the latter's absence; develops positions on international economic and trade policy issues which are multilateral in nature (in consultation with Trade Development officials when significant sectoral issues are involved); develops positions on outward investment issues and functional trade policy issues which are not country or sector specific; and ensures effective operations by overseeing, with the Director General of the Commercial Services, the regional Deputy Assistant Secretaries in the supervision of the program activities of the Foreign Commercial Service.

The DAS manages two offices:

a. The *Office of Policy Coordination* provides support to the Assistant Secretary and the DAS in ensuring policy and program consistency across the various units of International Economic Policy; manages International Economic Policy issues which are crosscutting in nature. including outward investment issues; and develops uniform policies for supervising the program activities of the Foreign Commercial Service.

b. The *Office of Multilateral Affairs* coordinates the development of ITA's positions on non-sectoral international trade and investment policy issues which arise in a multilateral context, including the GATT, OECD, the UN, and other international organizations; as assigned, provides representation to these organizations, and to interagency bodies working on multilateral non-sectoral issues; provides central secretariat services for ITA participation in these international organizations; implements the non-sectoral aspects of the Multilateral Trade Negotiations (MTN); and develops special studies related to the formulation of U.S. trade and investment policy within a multilateral context, with particular emphasis on the reform of the multilateral system of rights and obligations on trade policy matters.

.02 Four regional Deputy Assistant Secretaries as follows:

a. The *Deputy Assistant Secretary for Europe* directs:

1. The Office of the European Community;
2. The Office of Non-EC Europe; and
3. The Office of USSR and Eastern Europe.

b. The *Deputy Assistant Secretary for the Western Hemisphere directs:*

1. The Office of North America;
2. The Office of Central America; and
3. The Office of South America.

c. The *Deputy Assistant Secretary for East Asia and the Pacific directs:*

1. The Office of Japan;
2. The Office of the PRC and Hong Kong; and
3. The Office of the Pacific Basin.

d. The *Deputy Assistant Secretary for Africa, the Near East, and South Asia* directs:

1. The Office of Africa;
2. The Office of the Near East; and
3. The Office of South Asis.

.03 Each of the regional Deputy Assistant Secretries, for the region and, through the county offices, for the countries within his or her region, analyzes and develops recommendations for international economic, trade, and investment policy strategies and objectives and serves as the focal point within the Department for dealing with bilateral and regional economic, investment, and commercial policy issues; formulates positions on economic and commercial policies affecting the region, including preparation and representation at interagency and international meetings and negotiations on bilateral and regional economic issues; monitors information on economic and commercial developments and maintains in-depth commercial and economic expertise on individual countries and the region; and provides geographic supervision of the Foreign Commercial Service country senior officers overseas, and, jointly with the Director General, appraises their performances. The DAS and his or her country offices are the contact point for communications between ITA and FCS overseas posts on country program issues.

Part VI. Assistant Secretary for Trade Administration

Section 1. Delegation of Authority

.01 Pursuant to the authority delegated to the Under Secretary by the Secretary of Commerce, and subject to such policies and directives as the Under Secretary may prescribe, the Assistant Secretary for Trade Administration is hereby delegated the authority of the Under Secretary under:

a. The Act of February 14, 1903, as amended (15 U.S.C. 1512 *et seq.*; 15 U.S.C. 171 *et seq.*) to foster, promote, and develop the foreign and domestic commerce of the United States, and related provisions;

b. Section 303 and Title VII (including section 771(l)) of the Tariff Act of 1930 (19 U.S.C. 1303; 1671 *et seq.*) in accordance with section 5(a)(1)(C) of Reorganization Plan No. 3 of 1979 (44 FR 69273, December 3, 1979), relating to antidumping and countervailing duties, except that the authority to make final determinations as "Secretary" or "administering authority" may not be redelegated beyond the Assistant Secretary;

c. Sections 514, 515, and 516 of the Tariff Act of 1930 (19 U.S.C. 1514, 1515, and 1516) and section 5(a)(1)(D) of Reorganization Plan No. 3 of 1979, insofar as they relate to any protest, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979;

d. Sections 318, 502 (a) and (b), and 617 of the Tariff Act of 1930 (19 U.S.C. 1318, 1502 (a) and (b), and 1617) and sections 5(a)(1)(E), 5(a)(1)(F) and 5(a)(1)(G), respectively, of Reorganization Plan No. 3 of 1979, insofar as they relate to antidumping and countervailing duty investigations and the assessment of duties;

e. Section 2632(e) of Title 28 of the United States Code and Section 5(a)(1)(H) of Reorganization Plan No. 3 of 1979, insofar as they relate to actions taken by the Secretary reviewable under section 516A of the Tariff Act of 1930 (19 U.S.C. 1516a);

f. Section 402 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 512), relating to the importation of foreign excess property;

g. The Educational, Scientific and Cultural Materials Importation Act of 1966 (19 U.S.C. 1202);

h. Headnote 6(d) of Schedule 7, part 2, subpart E of the Tariff Schedules of the United States (19 U.S.C. 1202), added by Public Law 89–905, pertaining to the allocation of quotas for duty-free importation into the customs territory of the United States of watches and watch movements;

i. The Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a *et seq.*), as it relates to the Secretary's authority to designate an alternate to chair the Committee of Alternates of the Foreign-Trade Zones Board and to appoint an Executive Secretary of the Board (see 15 CFR Part 400);

j. The Defense Production Act of 1950, as amended (50 U.S.C. app. 2061 *et seq.*) conferred on the Secretary under: (1) Executive Order 10480 of August 14, 1953, as amended, including authority to restrict surface transportation and discharge of commodities or to prohibit movement of American carriers to designated destinations, except the authority to create new agencies within the Department of Commerce; and (2) Executive Order 11912 of April 13, 1976;

k. Executive Order 11490 of October 28, 1969, as amended, as it relates to the development, as required for the programs of the Director, Federal Emergency Management Agency, of national emergency plans and preparedness programs covering production and distribution of materials, use of production facilities, control of construction materials, the furnishing of basic industrial services, and regulation and control of exports and imports;

l. The National Security Act of 1947, as amended (50 U.S.C. 401 *et seq.*) and Executive Order 11490 of October 28, 1969, as amended, relating to mobilization preparedness;

m. Executive Order 11179 of September 22, 1964, as amended, with respect to the establishment and training of the National Defense Executive Reserve;

n. Executive Order 10421 of December 31, 1952, providing for the physical security of facilities important to the national defense;

o. Section 1441 of the Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300j) conferred on the Secretary under Executive Order 11879 of September 17, 1975, involving materials allocation of chemicals or substances necessary for treatment of water;

p. Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) and section 5(a)(1)(B) of Reorganization Plan No. 3 of 1979, relating to the conduct of national security investigations on imports;

q. The Export Administration Act of 1979 (50 U.S.C. app. 2401 *et seq.*) and the authority under that Act conferred on the Secretary under Executive Order 12214 of May 2, 1980, and Executive Order 12002 of July 7, 1977, except that the following power, authority, and discretion shall be reserved to the Secretary:

1. The determination required by section 12(c) with respect to the publication or disclosure of confidential information obtained under the Act, and

2. The submission of reports to the Congress required by section 14 of the Act;

r. Executive Order 11958 of January 18, 1977, as it relates to the carrying out, on behalf of the Department of State, of functions under section 38(e) of the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), as agreed to by the Departments of Commerce and State;

s. Executive Order 11322 of January 5, 1967, and Executive Order 11419 of July 29, 1968, relating to the Rhodesian sanctions with respect to transactions occuring prior to December 16, 1979 (Executive Order 12183 of December 16, 1979, revoked the provisions of Executive Orders 11322 and 11419 with respect to transactions occuring after December 16, 1979);

t. The Nuclear Non-proliferation Act of 1978 (22 U.S.C. 3201 *et seq.*) and the authority under that Act conferred on the Secretary under Executive Order 12058 of May 11, 1978, pertaining to nuclear exports and related matters;

u. Sections 103 and 251 of the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*) conferred on the Secretary under Executive Order 11912 of April 13, 1976, relating to: (1) Export restrictions of coal, petroleum products, natural gas, or petrochemical feedstocks and supplies of material or equipment necessary to maintain or further exploration, production, refining, or transportation of energy supplies or for the construction or mainteance of energy facilities within the United States; and (2) rules to authorize the export of petroleum and petroleum products as may be necessary for implementation of the obligations of the United States under the International Energy Program.

.02 Except as otherwise provided, the Assistant Secretary may redelegate the above authorities subject to such conditions in the exercise of such authorities as he or she may prescribe.

Section 2. Organization and Functions

The *Assistant Secretary for Trade Administration* directs the activities of the Deputy Assistant Secretaries for Import Administration and Export Administration; exercises the functions of the "Secretary" and "administering authority" of U.S. antidumping and countervailing duty laws within the meaning of Section 3.03 and Title VII of the Tariff Act of 1930, as amended;

chairs the Committee of Alternates of the Foreign-Trade Zones Board; and chairs the Advisory Committee on Export Policy.

The Assistant Secretary carries out these responsibilities through:

.01 The *Deputy Assistant Secretary for Import Administration* coordinates the formulation and implementation of U.S. antidumping and countervailing duty policies and programs; and administers programs relating to foreign-trade zones, allocation of watch quotas, duty-free entry of scientific instruments, and importation of foreign excess property. The DAS directs the following offices:

a. The *Office of Investigations* evaluates petitions received and conducts investigations under the antidumping and countervailing duty (AD/CVD) laws; performs analyses which will form the basis of recommendations regarding the disposition of individual AD/CVD cases; serves as primary contact point with the U.S. International Trade Commission on matters pertaining to administration of AD/CVD cases, such as determination of the product definition and provision of calculations and analyses which form the basis of determinations reached; and arranges public hearings involving interested parties when requested in the course of investigations.

b. The *Office of Compliance* collects and analyzes data used to determine the amount of antidumping and countervailing duties to be collected yearly on existing antidumping and countervailing duty orders; monitors negotiated agreements resulting in the suspension of antidumping and countervailing duty investigations; serves as primary contact point with the U.S. Customs Service on matters pertaining to administration of antidumping and countervailing duty laws, such as collection of antidumping and countervailing duties, and development of data required for AD/CVD cases; and arranges public hearings when requested regarding the proposed results of annual reviews.

c. The *Office of Policy* serves as principal staff to the DAS in the formulation and implementation of policies governing the administration of antidumping and countervailing duty statutes, ensuring that actions taken are consistent with overall U.S. trade policy; in consultation with the Office of General Counsel, ensures the uniform application of statutory and regulatory provisions of AD/CVD laws on a case-by-case basis; participates with the Office of the U.S. Trade Representative in negotiations regarding possible suspension of antidumping or countervailing duty investigations; and acts for the DAS and, as appropriate, the Assistant Secretary for Trade Administration, in representing their views in domestic, interagency, and international forums.

.02 The *Deputy Assistant Secretary for Export Administration* carries out the Department's responsibilities for regulating exports of U.S. goods and technology, opposing foreign boycotts against countries friendly to the United States and ensuring industrial mobilization and resource administration for the national defense. The DAS directs the following offices:

a. The *Office of Export Administration* administers the programs required to regulate the export of U.S. commodities and technical data under the Export Administration Act of 1979 for purposes of national security and foreign policy; enforces, in consultation with the Office of General Counsel, programs required to regulate exports of U.S. commodities and technical data under the Export Administration Act of 1979 for purposes of national security and foreign policy; seeks, in collaboration with other Federal agencies, the adoption by foreign countries of such controls over their exports as will advance the policies of the United States with respect to national security and foreign policy; and provides secretariat and administrative support services to Technical Advisory Committees established under the Export Administration Act and to the Subcommittee on Export Administration of the President's Export Council.

b. The *Office of Antiboycott Compliance* administers and, in consultation with the Office of General Counsel, enforces the regulations and programs required to carry out responsibilities under the Export Administration Act of 1979 regarding foreign boycotts against countries friendly to the United States; develops and coordinates policies and measures for opposing such boycotts; and operates the automated boycott reporting system to provide statistical summaries and enforcement data.

c. The *Office of Industrial Resource Administration* performs national defense and strategic industrial resource functions, including those authorized by the Defense Production Act of 1950, as amended; administers priorities and allocations to assist in achieving an adequate supply of strategic, critical, and other products and materials for defense and defense-supporting activities and essential civilian needs, including the timely completion of current military, atomic energy, and space programs for production, construction, and research and development, and maximizing domestic energy supplies; participates in the development of national plans to assure maximum readiness of the strategic industrial resources of the United States, including the means for administering them, to meet future demands of any national emergency; plans and coordinates ITA's emergency readiness functions; conducts investigations in those instances where imports threaten to impair the national security; and administers and, in consultation with the Office of General Counsel and the Office of Export Administration, enforces the short supply commodity control regulations and program under the Export Administration Act of 1979.

Part VII. The Assistant Secretary For Trade Development

Section 1. Delegation of Authority

.01 Pursuant to the authority delegated to the Under Secretary by the Secretary of Commerce, and subject to such policies and directives as the Under Secretary may prescribe, the Assistant Secretary for Trade Development is hereby delegated the authority of the Under Secretary under:

a. The Act of February 14, 1903 as amended (15 U.S.C. 1512 *et seq.*; 15 U.S.C. 171 *et seq.*) to foster, promote, and develop the foreign and domestic commerce of the United States, and related provisions;

b. Section 601(b)(1) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2351(b)(1)) conferred on the Secretary under Executive Order 12163 of September 29, 1979, relating to drawing the attention of private enterprise to opportunities for investment and development in less developed friendly countries and areas;

c. The delegation of authority, dated June 25, 1962, from the United States Information Agency under section 5(e) of Executive Order 11034 of June 25, 1962, as amended by Executive Order 11380 of November 8, 1967, with respect to U.S. participation in trade missions abroad under the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451 *et seq.*);

d. The Act of October 18, 1962, as amended (46 U.S.C. 1122b), which authorized mobile trade fairs;

e. The China Trade Act of 1922, as amended (15 U.S.C. 141 *et seq.*);

f. Executive Order 10978 of December 5, 1961, regarding the Presidential "E" Award, "E" Certificate of Service, and

"E Star" Award, except final selection of recipients;

g. The Act of May 27, 1970 (Pub. L. 91–269, 22 U.S.C. 2801 *et seq.*) relating to U.S. participation in international expositions;

h. Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, regarding Textile Trade Agreements;

i. Section 104 of the Trade Act of 1974 (19 U.S.C. 2114) and section 135 of the Trade Act of 1974 as amended by section 1103 of the Trade Agreements Act of 1979 (19 U.S.C. 2155) and section 4(d) of Executive Order 11846 of March 27, 1975, relating to the industry consultations program;

j. Executive Order 11858, of May 7, 1975, relating to foreign investment in the United States;

k. Section 4221 of the Internal Revenue Code of 1954 (26 U.S.C. 4221) and section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309), insofar as they relate to findings with respect to exemptions from taxes and import duties on supplies and equipment for aircraft;

l. Section 5(b) and 5(c) of Executive Order 11846 of March 27, 1975, relating to quantitative import restrictions and monitoring of imports under orderly market agreements;

m. Sections 3 and 4 of Executive Order 11961 of January 19, 1977, as amended by Executive Order 12013 of October 7, 1977, which delegates to the Secretary of Commerce the authority of the President under sections 4(a), 4(b), and 5(c) of the International Investment Survey Act of 1976 (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3103(a) and (b), and 3104(c)), and Section 4(e) of the International Investment Survey Act, as amended by Pub. L. 97–33 (95 Stat. 170, to be codified at 22 U.S.C. 3101 (e)). The functions thereunder shall be carried out in coordination with the Bureau of Economic Analysis, (DOO 35–1A), including, to the extent feasible, the division or assignment of responsibilities. All regulations established to carry out functions under the Act shall be issued by the Under Secretary for International Trade in consultation with the Director, Bureau of Economic Analysis. All reports to be submitted to the Congress required to be undertaken pursuant to the Act, shall be issued by the Secretary;

n. Title III of Pub. L. 96–481 (15 U.S.C. 649a–649d), relating to making grants (including contracts and cooperative agreements) for small business international marketing programs;

o. The Act of December 29, 1979 (Pub. L. 96–169, 93 Stat. 1281) regarding U.S. participation in the International Energy Exposition to be held in Knoxville, Tennessee in 1982; and

p. Chapters 3 and 4 of Title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*, 2371 *et seq.*), pertaining to trade adjustment assistance to firms, industries, and communities, except the provisions of 19 U.S.C. 2354 pertaining to studies and reports and information activities in response to investigations and findings of the International Trade Commission (See Department Organization Order 35–5A). The Assistant Secretary for Economic Development retains this authority through September 30, 1981, with respect to adjustment assistance projects in process prior to September 20, 1981, and thereafter such authority to perform all functions related to the furnishing of adjustment assistance (excluding additional assistance or increasing the Government's liability) with respect to those adjustment assistance projects approved prior to October 1, 1981 (See DOO 10–4).

.02 Except as otherwise provided, the Assistant Secretary may redelegate the above authorities subject to such conditions in the exercise of such authorities as he or she may prescribe.

Section 2. Organization and Functions

The *Assistant Secretary for Trade Development* advises on international trade and investment policies pertaining to U.S. business sectors and carries out programs to promote world trade and to strengthen the international trade and investment position of the U.S. In carrying out these functions, the Assistant Secretary directs the Department's programs for participation in trade fairs, trade missions and other overseas trade promotion events; conducts programs within the U.S. to expand the export-consciousness of American firms, particularly small and medium-sized businesses, and to facilitate their entry into international trade; implements and monitors the sectoral aspects of the Multilateral Trade Negotiations (MTN) and provides advice and assistance to U.S. businesses on rights and opportunities resulting from the MTN; carries out special industry activities to promote exports of major projects and high technology products; examines and develops trade and investment policy recommendations which are industry sector or product-specific in nature (in consultation with units of International Economic Policy, where significant country or regional issues are involved); represents the Department on such matters, as assigned; obtains private sector views with respect to international economic and commercial policy issues; conducts programs aimed at assistance to industries faced with import competition; and manages ITA's trade-related information and research gathering and dissemination functions. The Assistant Secretary advises Departmental and ITA officials on policies and programs relating to these functions and serves as the National Export Expansion Coordinator.

The Office of the Assistant Secretary includes the *Office of Policy and Coordination* which functions as a policy development, analysis and coordination unit on issues requiring coordination among Trade Development program areas or issues to be handled by Trade Development together with the staffs of other Assistant Secretaries or the Under Secretary; provides staff support to the President's Export Council (PEC) and Departmental officials participating in PEC activities and communicates the President's Export Council recommendations through the Secretary of Commerce to the President; advises the Assistant Secretary in the latter's capacity as coordinator of the National Coal Export Program; maintains liaison with the coal industry and other private sector and state and local government organizations concerned with coal exports; monitors trade and domestic economic situations which affect coal exports; coordinates and proposes ITA programs dealing with coal exports; evaluates and analyzes U.S. and foreign export incentives and disincentives; develops policy options related to international adjustment and export policy issues; formulates positions and recommends alternatives to improve U.S. trade performance; and carries out special projects as assigned by the Assistant Secretary and the Deputy Assistant Secretary for Trade Development.

The Assisant Secretary carries out these responsibilities through:

.01 The *Deputy Assistant Secretary for Trade Development* serves as the principal deputy to the Assistant Secretary; performs such functions as the Assistant Secretary may assign; and assumes the duties of the Assistant Secretary during the latter's absence.

.02 The *Deputy Assistant Secretary for Export Development* develops domestic and overseas programs designed to stimulate the expansion of U.S. exports, including activities to foster and export consciousness among U.S. manufacturing and service industries, particularly small and medium-sized businesses and evaluates the effectiveness of these programs; develops programs to improve the

access of U.S. products and services to foreign markets, including identifying barriers and surveying U.S. laws and practices affecting international trade; directs the delivery of export development programs relevant to field support implementation through the Regional Managing Directors of the U.S. commercial Service; provides Departmental recognition of domestic and foreign trade promotion events; and directs overseas event scheduling, including exhibitor recruitment, resource management, and staging of the Department's trade promotion events. The Office of the DAS contains the International Expositions Staff which is responsible for Federal recognition and participation in international expositions to be held in the United States. The DAS directs the following offices:

a. The *Office of Export Marketing Assistance* develops programs designed to foster and export consciousness in the United States; identifies and attracts to exporting U.S. companies that do not export and assists U.S. companies to export to their full potential; informs U.S. companies of export methods, benefits and opportunities; develops and carries out programs to attract small and minority businesses to exporting, including the Small Business Export Expansion grant program; assesses industry's needs for promotional assistance and marketing information through contacts with trade associations, experienced exporters, government entities and individual U.S. companies; assists firms in the resolution of trade complaints; attracts foreign buyers on U.S. trade shows and assists foreign buyers to meet with appropriate U.S. producers; and facilitates foreign direct capital investments and licensing by foreign firms in the U.S.

b. The *Office of Export Promotion* implements trade promotion programs in free world countries; recruits participants for all overseas trade events; provides logistical, design, and operations market promotion activities at foreign trade fairs and Export Development Offices overseas; and develops and carries out special trade promotion techniques such as trade and seminar missions and other selective marketing techniques.

c. The *Office of East-West Trade Development* implements trade promotion programs in centrally-planned economy nations, including trade fairs, trade and seminar missions, and other selective marketing techniques.

d. The *Office of International Services* provides policy guidance and program recommendations to foster the international operations of U.S. service industries (such as insurance accounting, engineering and construction, advertising, computer services leasing, franchising, air and marine shipping); develops and implements policies relating to U.S. and foreign taxation of international service and other business operations the economic impact of international technology transfer, international business practices, international aspects antitrust, international standardization, patent and copyright protection, and related matters arising from the international commercial and investment operations of U.S. firms.

.03 The *Deputy Assistant Secretary for Industry Projects* examines and develop trade policy recommendations which are industry sector or product-specific in nature (in consultation with units of International Economic Policy, where significant country or regional issues are involved); obtains private sector views with respect to international economic and commercial policy issues; implements, monitors, and participates in international consultation and renegotiation of MTN tariff, non-tariff and other agreements for non-agricultural industries and services and develops and provides U.S. business with information and assistance on new U.S. rights and opportunities under the MTN codes and other agreements; represents the Department in international finance and development assistance affairs; provides representation on or staff support to Departmental representatives on committees or other groups dealing with export finance, export guarantees, credit insurance and related issues; and conducts a program to assist U.S. companies to compete for major infrastructure and industrial systems contracts abroad. The DAS directs the following offices:

a. The Office of International Sector Policy develops and implements policies relating to international sectoral issues, including trade problems and opportunities of individual industries, safeguard issues, product-specific trade legislation, import relief cases and Orderly Marketing Agreements (OMA's); provides staff support for the OECD Steel Committee and as appropriate, other interagency and international meetings on industry-specific trade policy matters; develops foreign country industry-specific trade policy negotiating goals and objectives; and coordinates private sector participation in the international industry sector and trade policy development process, including the provision of information and advice to the private sector concerning rights and opportunities created by U.S. trade agreements and operation of the Industry Consultations Program.

b. The *Office of Major Projects* serves as the focal point in the Department for providing Government-wide assistance to U.S. firms on major intenational business tansactions; identifies foreign capital projects with major export potential which should be brough to the attention of U.S. industry or which are likely to require special U.S. Government assistance for successful participation by Ameriacan firms; informs U.S. firms of large-scale projects with significant potential for exports of U.S. goods and services; and assists them on a case-by-case basis in competing for such projects coordinating support from other areas of ITA and other Federal agencies as necessary. The office communicate with other Federal agencies, international financial institutions, and with U.S. Missions abroad including FCS posts and is responsible for advising senior Department officials on U.S. Government actions which would increase the chances for major contract awards to U.S. businesses, or on major obstacles to successful U.S. competition for major contracts abroad.

c. The *Office of International Finance* identifies key issues and develops policies relating to international finance and monetary affairs; represents the Department on the National Advisory Council on International Monetary and Financial Policies (NAC) and other bodies dealing with export financing, export and investment guarantees, credit insurance, foreign lending and assistance activities of U.S. and international agencies, and balance of payments measures; and provides analytical and staff support for the Secretary's participation as a member of the Export-Import Bank Board and as Chairman of the Export Expansion Advisory Committee of the Export Expansion Facility administered by the Export-Import Bank. The Office actively supports measures to obtain adequate and competitive financing for U.S. firms competing for major infrastructure and industrial systems contracts abroad.

.04 The *Deputy Assistant Secretary for Trade Information and Analysis* initiates and reviews research studies and forecasts on developments affecting U.S. international trade and competitiveness and manages a program of trade, and international economic analyses and statistics for U.S. Government and business; monitors and analyzes foreign investment in the

United States; prepares studies and reports on the economic effects of foreign investment and represents the Department on committees or groups concerned with these issues; and develops and operates export information programs, including an automated trade policy data and information system, and an automated export information transfer system. The DAS directs the following offices:

a. The *Office of Trade and Investment Analysis* undertakes statistical and analytical studies of U.S. and international economic and trade issues and policies; conducts a program of policy-oriented research and analysis of short-term developments in U.S. foreign trade and is responsible for the forecasting of U.S. trade; conducts a program of research into long-term factors affecting U.S. trade performance and international economic position; analyzes U.S. and foreign country economic policies in light of expected global economic trends; advises on policies relating to foreign direct investment in the United States; develops and analyzes information on such investment and reports on the status and economic impact of the investment flows in accordance with the International Investment Survey Act of 1976 and Executive Orders 11858 and 11961; and initiates and participates in the development of positions, policies and programs and legislative proposals bearing on the monitoring, reporting, review, facilitation of, and restraints on direct investment into the United States.

b. The *Office of Trade Data Analysis* develops and implements an International Trade Policy Information System (TPIS); acquires and integrates into the system quantitative and narrative data bases; carries out quantitative research studies using trade and trade-related information; maintains data on U.S. and international trade; and publishes a series of reports, including a system of international economic statistics for advance warning of international economic developments.

c. The *Office of Trade Information Services* acquires and produces research on the marketability of U.S. products abroad for use by the U.S. business community and in domestic and overseas export development activities; identifies and provides guidance for program planning purposes on the mix of industries, products and foreign markets that represent an optimum focus for trade development programs; develops and operates systems designed to facilitate the flow of trade-related information among ITA units, state governments, and businesses; and provides business users timely access to export information and services, such as World Traders Data Reports, and information about foreign markets, promotional events, opportunities for U.S. exporters, and sources of governmental and non-governmental assistance to U.S. companies engaged in or interested in exporting.

d. The *Office of Program Evaluation and Support* develops and manages a planning system for Trade Development programs which includes guidance on short and long-term goals, objectives and strategies, new programs, and allocation of resources; evaluates the impact and effectiveness of Trade Development programs; forecasts quantitative results for these programs and analyzes the implications of actual program accomplishments; and develops and manages the Trade Development user fee program.

.05 The *Deputy Assistant Secretary for Textiles and Apparel* directs the development of the Department's position on international textile agreements and relations and the domestic textile and apparel industries; chairs the Committee for the Implementation of Textile Agreements, the Management-Labor Textile Advisory Committee the Importers and Retailers' Textile Advisory Committee, and the Exporters' Textile Advisory Committee; and directs the following office:

a. The *Office of Textiles and Apparel* participates in and provides analytical support for international textile negotiations in consultation with the appropriate regional Deputy Assistant Secretary; provides studies and analyses of domestic and foreign fiber, textile, and apparel industries; monitors textile and apparel imports; develops and coordinates domestic trade and export expansion programs; develops, as resources permit, initiatives to improve domestic textile and apparel industries' productivity and marketing; provides legislative comment and serves as liaison with industry, trade groups, and foreign government officials; provides appropriate administrative support to the committees mentioned above.

.06 The *Deputy Assistant Secretary for Trade Adjustment Assistance* directs the trade adjustment assistance program, including the development of policies to implement the program, and directs the following office:

a. The *Office of Trade Adjustment Assistance* certifies firms as eligible to apply for assistance and provides technical and financial assistance to certified firms; provides trade adjustment assistance to industries and communities adversely affected by imports; develops a monitoring program to assure that firms comply with the terms of their adjustment proposals and any agreements pertaining to the adjustment assistance received; maintains reserves against outstanding loan guarantees as authorized by section 255(f) of the Trade Act of 1974; establishes procedures for dealing with delinquent firms; evaluates the performance of firms which have received trade adjustment assistance; coordinates the trade adjustment assistance program with other federal agencies, including the Department of Labor, the International Trade Commission, and the Office of the United States Trade Representative (USTR); and provides representation for the Commerce Labor Adjustment Action Committee (CLAAC).

Lionel H. Olmer,

Under Secretary for International Trade.

[FR Doc. 82-8863 Filed 4-1-82; 8:45 am]

BILLING CODE 3510-25-M

Agriculture Subcommittee of the President's Export Council; Open Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The President's Export Council was initially established by Executive Order 11753 of December 20, 1973. The Council was reconstituted by Executive Order 12131 of May 4, 1979, and continued by Executive Order 12258 of December 31, 1980. The Council's purpose is to advise the President on matters relating to United States export trade. The Agriculture Subcommittee was formed by the Council to study agricultural trade issues.

TIME AND PLACE: April 19, 1982, from 10:00 a.m.–4:00 p.m. The meeting will be held at the Hall of States, 444 North Capitol Street, Washington, D.C., Room 263–265.

AGENDA: *General Session.*

The following subjects will be discussed: Subcommittee Business; The Role of the Department of State in Agriculture Export Policy; A Private Sector View of the European Economic Community's Use of Export Subsidies; Foreign Infrastructure Development; Cost of the Soviet Embargo; U.S. Agricultural Export Outlook.

PUBLIC PARTICIPATION: The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits, members of the public may present oral

statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTRACT: Ms. Wendy Haimes, Executive Secretary, President's Export Council, Room 2128, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 377–1124.

Dated: March 29, 1982.

Henry Misisco,

Acting Director, Office of Policy and Coordination.

[FR Doc. 82–8874 Filed 4–1–82; 8:45 am]

BILLING CODE 3510–25–M

National Bureau of Standards

National Voluntary Laboratory Accredition Program (NVLAP); Electromagnetic Calibration Services, Public Workshop

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of public workshop to develop the technical requirements of a laboratory accreditation program for electromagnetic calibration service.

SUMMARY: The National Bureau of Standards (NBS) hereby announces that it will hold an informal public workshop whose purpose is to provide interested parties an opportunity to participate in the development of technical requirements of a laboratory accreditation program (LAP) for electromagnetic calibration services (Electromagnetic Calibration LAP) under the Procedures of the National Voluntary Laboratory Accreditation Program (NVLAP), 15 CFR Part 7a, as amended (46 FR 37029, July 17, 1981) and to enable the NBS to secure valuable expert advice to develop these requirements.

DATES: The workshop will start on Thursday, July 1, 1982, at 1:00 p.m. and end Friday, July 2, 1982, at 5:00 p.m.

ADDRESS: The workshop will take place at the National Bureau of Standards, 325 Broadway, Boulder, Colorado, in Room 1107 of the Radio Building.

FOR FURTHER INFORMATION CONTACT: Robert Gladhill, NVLAP Project Leader, National Bureau of Standards, Technology Bldg., Room B06, Washington, D.C. 20234, phone: 301–921–2427. Persons who wish to attend the workshop should inform Mr. Gladhill not later than May 15, 1982, in order to allow enough time for mail delivery of preparatory documents for the workshop.

SUPPLEMENTARY INFORMATION: On January 14, 1982, a final finding of need to accredit laboratories that provide electromagnetic calibration services was published in the **Federal Register** (47 FR 2146–2149).

Before NBS can formally establish this LAP, the technical requirements for accrediting laboratories that provide electromagnetic calibration services must be developed. Information needed and issues to be discussed at the workshop include but are not limited to:

1. Necessary materials and protocols for assessing a laboratory's performace, including appropriate documentation;
2. Use of a Measurement Assurance Program (MAP) as a proficiency test mechansim;
3. Qualifications of metrology technicians and supervisory personnel;
4. Applicability of test methods and recommendations for other methods; and
5. Sources of assessors for this LAP and credentials or qualifications which assessors should possess.

The following procedures are established for the workshop:

1. *Conduct of Workshop.* This workshop will be an informal non-adversary meeting. The presiding officer shall have the right to allocate the time available for discussion of each issue on the workshop agenda and to exercise such authority as may be necessary to insure the equitable and efficient conduct of the workshop and to maintain order.

2. *General Provisions.* This informal workshop will be open to the public. Summary minutes of the workshop will be prepared. A copy of those minutes will be available for inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between E Street and Constitution Avenue NW., Washington, D.C. 20230.

Dated: March 29, 1982.

Ray Kammer,

Acting Director, National Bureau of Standards.

[FR Doc. 82–8877 Filed 4–1–82; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The New England Fishery Management Council, established by section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265), will meet to discuss comments on proposed regulations for the interim groundfish fishery management plan; discuss foreign fishing permits and other fishery management and administrative matters.

DATES: The public meetings will convene on Tuesday, April 20, 1982, at approximately 10 a.m., and will adjourn on Wednesday, April 21, 1982, at approximately 5 p.m. The meetings may be lengthened or shortened or agenda items rearranged depending upon progress on the agenda.

ADDRESS: The meetings will take place at the Howard Johnson Motor Lodge, 65 Newbury Street, Danvers, Massachusetts.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, Massachusetts 01906, telephone: (617)–231–0422.

Dated: March 30, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82–8931 Filed 4–1–82; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council and Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The South Atlantic and Gulf of Mexico Fishery Management Councils were established by section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265). These two Councils will hold joint and separate sessions as follows:

Joint Session: The two Councils will meet jointly to discuss fishery management plan (FMP) activities; receive a statistics presentation from the National Marine Fisheries Service; discuss fishery matters of concern with Fisheries Administrator, William G. Gordon and with NOAA Administrator, John V. Byrne and discuss other Council business as appropriate. This joint public session will convene on Wednesday, May 12, 1982, at approximately 9 a.m., and will adjourn at approximately 5 p.m.

Separate Sessions—South Atlantic Fishery Management Council: The Council will meet to discuss a status report on the Calico Scallop FMP; update Shrimp FMP activities; review the Snapper-Grouper FMP and discuss

other administrative and management matters as appropriate. These separate public sessions will convene May 10–11, 13, 1982, at approximately 9 a.m., each day, and adjourn at approximately 5 p.m., on May 10–11, and adjourn at approximately noon on May 13.

Separate Sessions—Gulf of Mexico Fishery Management Council: The Council will meet to review status reports on the development of FMPS; consider foreign fishing applications, if any, and conduct other fishery management business. These separate public sessions will convene May 11 and 13, 1982, at approximately 9 a.m., each day, and will adjourn at approximately 5 p.m., each day.

ADDRESS: All public meetings mentioned above will take place at the Ponce de Leon Lodge, Highway One, St. Augustine, Florida. For further information regarding seating, changes to the agenda or written comments, contact either the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, South Carolina 29407; telephone (803) 571–4366, or the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 W. Kennedy Boulevard, Tampa, Florida 33609; telephone (813) 228–2815.

Dated: March 30, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82–8932 Filed 4–1–82; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The invention listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to:

Office of Government Inventions and Patents, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

SN 6–108,260—Sample Mount for X-Ray Diffraction. PATENT 4,278,883 issued 14 Jul 81 by the Dept. of Interior

SN 6–211,556—Chromatography Developing Chamber. Filed 12/1/80. PATENT 4,306,977 issued 12/22/81 by Dept. of Interior

SN 6–136,126—Slideboard Device for Underground Mine Face Ventilation. PATENT 4,282,802 issued 11 Aug 81 by the Dept. of Interior

SN 6–168,822—Process of Electroplating a Platinum—Rhodium Alloy Coating. PATENT 4,285,784 issued 25 Aug 81 by the Dept. of Interior

SN 6–186,090—Recovery of Bismuth from Chloride Process Solutions. PATENT 4,285,912 issued 25 Aug 81 by the Dept. of Interior

SN 6–114,536—Mounting Block to Rotate Coal Cutter Bits. Filed 2/2/80. PATENT 4,302,053 issued 11/24/81 by the Dept. of Interior

SN 6–116,697—Recovery of Lithium from Low-Grade Ores. PATENT 4,285,914 issued 25 Aug 81 by the Dept. of Interior

SN 6–162,542—High Surface Area Transition Metal Catalysts and Method of Preparing Same. PATENT 4,287,095 issued 1 Sept 81 by the Dept. of Interior

SN 6–184,852—Sputtering Apparatus for Coating Elongated Tubes and Strips. PATENT 4,290,877 issued 22 Sept 81 by the Dept. of Interior

SN 6–275,033—Antiviral Activities of Dansyl-cadaverine & Closely Related Compounds, Filed 18 June 81 by Dept. of Health & Human Services

SN 6–296,239—Fiber Optic Probe for Tissue Measurements. Filed 25 Aug 81 by Dept. of Health & Human Services

SN 6–321,689—The Use of Context to Simplify Two-Dimensional Computer Input. Filed 16 Nov 81 by Dept. of Health & Human Services

SN 6–324,464—Modular Scientillation Camera. Filed 24 Nov 81 by the Dept. of Health & Human Services

SN 817,887—Auger Construction Providing Reduced Noise. PATENT 4,266,830 issued 12 May 81 by the Dept. of the Interior

SN 968,046—Automatic Feed and Rotational Speed Control System of a Hydraulic Motor Operated Drill. PATENT 4,271,914 issued 9 June 81 by the Dept. of Interior

SN 6–114,522—Metal Hydride Actuation Device. PATENT 4,282,931 issued 11 Aug 81 by the Dept. of Interior

SN 81,505—Passive Explosion Barrier for Mines. PATENT 4,284,144 issued 18 Aug 81 by the Dept. of Interior

SN 6–268,592—Open Surface Flotation Method for Extracted Crude Oil. Filed 29 May 81 by the Dept. of Interior

SN 6–285,247—Power Supply for an Intrinsically Safe Circuit. Filed 21 July 81 by the Dept. of Interior

SN 6–300,834—Recovery of Chromium from Waste. Filed 10 Sept 81 by Dept. of Interior

6–237,617—Prodrug Derivatives of 9-B-D-Arabinofuranosyl-2-fluoroadenine. Filed 2/24/81. Dept. of Health and Human Services

6–165,336—Mthd. for Producing Tripdiolide Triptolide and Celastrol. Filed 7/2/80. Dept. of Health and Human Services

6–310,406—B-Ketocarboxyl & Phosphonate Dihydrochalcone Sweeteners. Filed 10/9/81. Dept. of Health and Human Services

6–314,477—Vitro Cellular Interaction with Amnion Membrane Substrate. Filed 10/23/81. Dept. of Health and Human Services

6–300,363—Frequency Stabilization for Two-Mode Laser. Filed 9/8/81. Department of Commerce

6–329,870—A Non-transformed Thymidine Kinaseless Cell LIne and Its Use for Testing Tumorigenic Potential of Genes. Filed 12/11/81. Dept. of Health and Human Services

6–321,689—The use of Context to Simplify Two-Dimensional Computer Input. Filed 11/16/81. Dept. of Health and Human Services

SN 6–118,959—Triangular Shaped Cutting Head for Use with a Longwall Mining Machine. Filed 2/6/80. PATENT 4,303,277 issued 12/1/81 by Dept. of Interior

SN 6–147,690—Method for Measuring the Ionic Activities in Water with a Differential Pressure Transducer. PATENT 4,301,676 issued 11/24/81 by Dept. of Interion

SN 6–310,584—Apparatus for Splitting Fluid Samples into a Plurality of Representative Sub-samples. Filed 13 Oct 81 by Dept. of the Interior

SN 6–311,487—Froth Flotation of Rutile. Filed 15 Oct 81 by the Dept. of Interior

SN 6–317,652—Apparatus for Lifting a Flexibile Cable. Filed 11/2/81 by Dept. of Interior

SN 6–319,862—Anti-Incentive Coal Cutter Bits. Filed 11/9/81 by Dept. of Interior.

[FR Doc. 82–8887 Filed 4–1–82; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Community College of the Air Force (CCAF) Advisory Committee; Meeting

The Community College of the Air Force Advisory Committee will hold a meeting on April 29, 1982 at 8:30 a.m. in the Conference Room, Number 121, Building 836, located at Maxwell Air Force Base, Montgomery, Alabama.

The meeting is open to the public.

Agenda items include: State of the College, Tenth Anniversary Spring Commencement, Professional Development of Affiliated School Faculty, Realignment of Senior Staff Responsibilities, Affiliated School Advisory Panel Findings, Affiliated Visit Requirements.

For further information contact Lt. Col. James H. Conely, 205–293–7937,

Community College of the Air Force, Maxwell AFB, Ababama 36112.

Winnibel F. Holmes,

Air Force Federal Register, Liaison Officer.

[FR Doc. 82-8861 Filed 4-1-82; 8:45 am]

BILLING CODE 3910-01-M

Space Shuttle Program, Vandenberg AFB, CA; Extension of Public Review and Comment Period on Draft Supplement to the Final Environmental Impact Statement

The Environmental Protection Agency announced the availability of the Draft Supplement to the Final Environmental Impact Statement on the Space Shuttle Program, Vandenberg AFB, CA in the **Federal Register**, Vol. 47, No. 30, Friday, February 12, 1982, page 6483, with review and comment period to end March 29, 1982.

In response to requests from other agencies, the public review and comment period is extended to April 13, 1982.

For further information contact HQ Space Division/DEV, Post Office Box 92960, Worldway Postal Center, Los Angeles CA 90009. Phone 213-640-0933.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82-8951 Filed 4-1-82; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tuesday, 27 April 1982; Wednesday, 28 April 1982

Times: 0830-1700 hours 27 April 1982 (Closed); 0830-1600 hours 28 April 1982 (Closed)

Place: Air Force Geophysics Laboratory, Lincoln Laboratory, Raytheon, and Army Materiel and Mechanics Research Center, all in the Boston, MA area.

Agenda: The Civilian Physical Life and Social Scientists Working Group of the Army Science Board 1982 Summer Study on Science and Engineering Personnel will meet for briefings, discussions, and assessment of science and engineering personnel needs. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and non-classified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen Bowen, may be contacted for further information at (202) 695-3039 or 697-9703.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 82-8876 Filed 4-1-82; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Follow Through Program

AGENCY: Office of Elementary and Secondary Education, Education.

ACTION: Application notice for fiscal year 1982 (school year 1982-83).

Applications are invited for continuation awards in the following categories under the Follow Through Program.

(1) Grants for carrying out local Follow Through projects;

(2) Grants or contracts for demonstration (Sponsors);

(3) Grants for expanded demonstration activity (Resource Centers).

Authority for these categories is contained in section 661-669 of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, 95 Stat. 508-511. (42 U.S.C. 9861-9868)

The purpose of the awards is to provide comprehensive services to low-income children in grades K-3.

Closing date for transmittal of applications: To be assured of consideration for funding, an application for an award should be mailed or hand-delivered to the U.S. Department of Education by May 3, 1982. If the application is late, the Department of Education may lack sufficient time to review it and may decline to accept it.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.014A for Follow Through local projects, 84.014B for grants or contracts for demonstration (sponsor awards), and 84.014D for expanded demonstration activity (Resource Centers), Washington, D.C. 20202-3651.

An applicant must show proof of mailing consisting of one of the following:

(a) A legibly dated U.S. Postal Service postmark.

(b) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(c) A dated shipping label, invoice, or receipt from a commercial carrier.

(d) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(a) A private metered postmark.

(b) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th & D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Program information: In formulating applications for continuation of a local project grant, an applicant should give special attention to 34 CFR 215.15 (formerly 45 CFR 158.15) of the Follow Through regulations which explains the criteria used in awarding these grants.

In formulating applications for continuation of a sponsor award, an applicant should give special attention to 34 CFR 215.52 (formerly 45 CFR 158.52) of the Follow Through regulations which provides an explanation of the criteria used in awarding these grants. In the case of a sponsor application, the Secretary will award a grant only if a grant also is being made to at least one local project that implements the sponsor's approach.

In formulating applications for continuation of an expanded demonstration activity award (Resource Center), an applicant should give special attention to 34 CFR 215.15a (formerly 45 CFR 158.15a) of the Follow Through regulations which provides an explanation of the procedures and criteria used in evaluating these applications.

Application forms: Application forms and program information packages are ready for mailing.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information package. The Secretary strongly urges that applicants not submit information that is not requested.

Special procedures: Every applicant is subject to the State and areawide clearinghouse review procedures under OMB Circular A-95.

An applicant should check with its appropriate Federal regional office to obtain the name(s) and address(es) of the clearinghouse(s) in its State. OMB Circular A–95 requires the applicant to give the clearinghouse(s) sufficient time for review, consultation, and comments on the application.

In its application each applicant must provide—

(a) The comments of each clearinghouse that commented on the application; or

(b) A statement that the applicant used the procedures of Part I of OMB Circular A–95 but did not receive any clearinghouse comments.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Follow Through Program, 34 CFR Part 215 (formerly 45 CFR Part 158), published in the **Federal Register** on June 29, 1977 (42 FR 33146) and amended in the **Federal Register** on April 3, 1980 (45 FR 22537) and January 19, 1981 (46 FR 5375); and

(b) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 75 and 77.

Available funds: Under the Continuing Resolution, up to $19,440,000 would be available for grants for carrying out local Follow Through projects, grants or contracts for demonstration (Sponsors), and grants for expanded demonstration activity (Resource Centers).

The President, however, has proposed budget rescissions to the Congress that may eliminate funds for this program. The deadline established in this notice will not be extended, and applicants should prepare and submit applications pending further notification. Applications must be submitted to the Application Control Center at the address in this notice.

In addition, if the rescission is not approved, the final appropriation may be insufficient to continue all current grantees. In the event that the funds available preclude the continuation of all local project grants, the criteria for refunding, enumerated in the Follow Through regulations (34 CFR 215.15), will be used to determine the rank order of funding. Likewise, in the event that the funds available preclude the continuation of all sponsors and resource centers, the criteria in the Follow Through regulations for sponsors (34 CFR 215.52) and resource centers (34 CFR 215.15a) will be used to determine the rank order of funding.

However, this is an estimate and does not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

The Congressional Conference Report on the Education Consolidation and Improvement Act of 1981 (ECIA) specifies that Follow Through will be phased into that Act over a three-year period (1982–1984) with declining authorizations for each successive year. Therefore, local project grantees are encouraged to provide financial support for the entry level (kindergarten or first grade) in their program from ECIA funds or other funding sources.

Further information: For further information contact Mr. Wilbert A. Cheatham, Director, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3616, ROB–3), Washington, D.C. 20202. Telephone (202) 245–3081).

(42 U.S.C. 9861–9868)

(Catalog of Federal Domestic Assistance No. 84.014, Follow Through Program)

Dated: March 25, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82–8900 Filed 4–1–82; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council for Career Education; Meeting

AGENCY: National Advisory Council for Career Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council for Career Education. This notice also describes the functions of the Council. Notice of this meeting is required, under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: April 19–21, 1982.

ADDRESS: Room 403A–425A (April 19) and 303A–305A (April 20–21), Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Dr. O. Ray Warner, Delegate, 400 Maryland Avenue, S.W., Room 2025, Washington, D.C. 20202, (202) 245–8385.

SUPPLEMENTARY INFORMATION: The National Advisory Council for Career Education was established under section 406 of the Education Amendments of Pub. L. 93–380, (20 U.S.C. 1865) to advise the Secretary of Education and the Assistant Secretary for Elementary and Secondary Education on the implementation of section 406 of the Education Amendments of 1974, sections 331–336 of the Education Amendments of 1976, and the Career Education Incentive Act. The Council may carry out such advisory functions as it deems appropriate, including reviewing the implementation of the legislation and all other programs of the Department of Education pertaining to the development and implementation of career education, evaluating their effectiveness in meeting the needs of career education throughout the United States, and in determining the need for further legislative remedy in order that all citizens may benefit from the purposes of career education, as described in section 406 and in the Career Education Incentive Act.

The Secretary, to the extent practicable, seeks the advice and assistance of the Council concerning the lifelong learning activities authorized by sec. 133 of Title I of the Higher Education Act of 1965, as amended.

The Council proceedings shall be open to the public. The schedule and meeting location are as follows: Hubert H. Humphrey Building, 200 Independence Avenue, Washington, D.C., Room 403A–425A (April 19, 9:00 a.m.–4:30 p.m.), and Room 303A–305A (April 20–21, 9:00 a.m.–4:30 p.m.)

The proposed agenda:

1. Swearing in new Council members;
2. Review of current status and past accomplishments in career education;
3. Issues and recommendations regarding the future of career education; and
4. Council business: old and new.

The records of all Council proceedings are available for public inspection at the Division of Career Education, 400 Maryland Avenue, S.W., Room 2025, Washington, D.C. 20202, from the hours of 8:00 a.m. to 4:30 p.m.

Monika Edwards Harrison,

Acting Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 82–8935 Filed 4–1–82; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Hudson Oil Company, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration hereby gives notice of a Proposed Remedial Order which was issued to Hudson Oil Company, Inc. of Westwood, Kansas.

This Proposed Remedial Order charged Hudson Oil Company, Inc. with

pricing violations in the amount of $7,086,621.00 in sales of motor gasoline during the time period of February 1, 1977 through October 31, 1979.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from David H. Jackson, Director, Kansas City Office, Economic Regulatory Administration, 324 East 11th Street, Kansas City, Missouri 64106–2466. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objections with the Office of Hearings and Appeals, 12 & Penn. Ave., NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Kansas City, Missouri on the 23rd day March, 1982.

David H. Jackson,

Director, Kansas City Office, Economic Regulatory Administration.

Concurrence:

Jeanmarie Homan,

Office of General Counsel.

[FR Doc. 82–8889 Filed 4–1–82; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–51407; TSH–FRL–2089–1]

Certain Chemicals; Premanufcture 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 fourteen PMNS and provides a summary of each.

DATES: Close of Review Period:

PMN 82–218, 82–219, 82–220, 82–221 & 82–222 June 17, 1982.

PMN 82–223, 82–224, & 82–225, June 20, 1982.

PMN 82–226, June 21, 1982.

PMN 82–227, 82–228, 82–229, & 82–230, June 23, 1982.

PMN 82–231, June 24, 1982.

Written comments by:

PMN 82–218, 82–219, 82–220, 82–221 & 82–222, May 18, 1982.

PMN 82–223, 82–224, & 82–225, May 21, 1982.

PMN 82–226, May 22, 1982.

PMN 82–227, 82–228, 82–229, & 82–230 May 24, 1982.

PMN 82–231, May 25, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS–51407]" 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 Dividion (TS–794), Office of Toxic Substances, Envirnmental 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 82–218

Manufacturer. Confidential.

Chemical. (G) Di-arylamine.

Use/Production. (G) Industrial organic chemical. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg, Acute dermal: >2 g/kg, Skin: 1.1/8.0, Eye: 2.0/110 @ 24 hrs, Ames Test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 82–219

Manufacturer. Confidential.

Chemical. (G) Polyetherpolyol reaction with isophorne diisocyanate—HEA blocked.

Use/Production. (S) Site-limited paper coatings. Prod. range: Confidential

Toxicity Data. Acute oral: Non-toxic, Acute dermal: Non-toxic, Skin: Non-irritating, Eye: Mildly irritating.

Exposure. Manufacturer: dermal, a total of 8 workers, up to 1 hr/da, up to 150 da/yr.

Environmental Release/Disposal. No release.

PMN 82–220

Manufacturer. Confidential.

Chemical. (G) Polymer of linear glycols and aromatic dicarboxylic acids.

Use/Production. (S) Thermoplastic resin for the production of tubing, wire coating and similar molded articles. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Disposal by approved landfill.

PMN 82–221

Manufacturer. Confidential.

Chemical. (G) Disubstituted benzene.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: 6,000 to 9,000 kg/yr.

Toxicity Data. No data submitted.

Exposure: Manufacturer and use: dermal, a total of 30 workers, up to 2 hrs/da, up to 5 da/yr.

Environmental Release/Disposal. No release.

PMN 82–222

Manufacturer. Confidential.

Chemical. (G) Disubstituted benzene.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: 7,000 to 10,000 kg/yr.

Toxicity Data. Acute oral: > 3,000 mg/kg, Acute dermal: > 1,000 mg/kg, Skin: Slight, Eye: Slight.

Exposure. Manufacturer and use: dermal and inhalation, a total of 40 workers, up to 2 hrs/da, up to 5 da/yr.

Environmental Release/Disposal. Release to water and land with no release to air.

PMN 82–223

Manufacturer. Confidential.

Chemical. (G) Polyester-urethane.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacturer and disposal: dermal, a total of 6 workers, up to 1 hr/da, up to 2 da/yr.

Environmental Release/Disposal. No release. Disposal by approved landfill.

PMN 82–224

Manufacturer. Confidential.

Chemical. (G) Neutralized reaction products of fatty acid derivatives and a substituted alkyl ester.

Use/Production. (G) Open use. Prod. range: 0–45,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacturer, processing and use: dermal and eye, a total of 102 workers, up to 6 hrs/da, up to 350 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 82–225

Manufacturer. Confidential.

Chemical. (G) Neutralized reaction products of fatty acid derivatives and a substituted alkyl ester.

Use/Production. (G) Open use. Prod. range: 0–45,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacturer, processing and use: dermal and eye, a total of 102 workers, up to 6 hrs/da, up to 350 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 82–226

Importer. Confidential.

Chemical. (G) Substituted phenyl, substituted naphthalenyl azo dye.

Use/Import. (S) Industrial dye for fibers and fabrics. Import range: 400–10,000 kg/yr.

Toxicity Data. Acute oral: > 5 g/kg, Skin: Irritating, Eye: Mildly irritating, Interperitoneal LD_{50}: 200–700 mg/kg.

Exposure. Processing: dermal and inhalation, 1–3 workers, 2–3 hrs/da, 70–100 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air with 100–1,000 kg/yr to water 2–3 hrs/da, 75–100 da/yr. Disposal by publicly owned treatment works (POTW), incineration and approved landfill.

PMN 82–227

Importer. Duolite International, Inc.

Chemical. (S) 2-propenamide,N–[3-(dimethylamino)propyl]-, polymer with diethenylbenzene and 2,2-bis[(2-propenyloxy)methyl]-1-butanol.

Use/Import. (S) Boiler feedwater and industrial waste treatment. Import range: 5,000 to 40,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing and disposal: dermal, a total of 10 workers, less than 8 hrs/da, less than 1 da/yr.

Environmental Release/Disposal. No release.

PMN 82–228

Importer. Duolite International, Inc.

Chemical. (S) 1-propanaminium,N,N,N-trimethyl-3-[(1-oxo-2-propenyl)amino]-, chloride, polymer with diethenylbenzene and 2,2-bis[(2-propenyloxy)methyl]-1-butanol.

Use/Import. (S) Boiler feedwater and industrial waste treatment. Import range: 18,000 to 144,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing and disposal: dermal, a total of 12 workers, less than 8 hrs/da, less than 1 da/yr.

Environmental Release/Disposal. No release.

PMN 82–229

Importer. Duolite International, Inc.

Chemical. (S) 1-propanaminium,N,N,N,-trimethyl-3-[(1-oxo-2-propenyl)amino]-, hydroxide, polymer with diethenylbenzene and 2,2-bis[(2-propenyloxy)methyl]-1-butanol.

Use/Import. (S) Industrial boiler feedwater treatment. Import range: 1,000 to 8,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing and disposal: dermal, a total of 12 workers, less than 8 hrs/da, less than 1 da/yr.

Environmental Release/Disposal. No release. Disposal by sanitary landfill site.

PMN 82–230

Importer. Duolite International, Inc.

Chemical. (S) 1-propanaminium,N,N,N-trimethyl-3-[(1-oxo-2-propenyl)amino]-, sulfate, polymer with diethenylbenzene and 2,2-bis[(2-propenyloxy)methyl]-1-butanol.

Use/Import. (S) Industrial boiler feedwater treatment. Import range: 1,000 to 8,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing and disposal: dermal, a total of 12 workers, less than 8 hrs/da, less than 1 da/yr.

Environmental Release/Disposal. No release. Disposal by sanitary landfill site.

PMN 82–231

Manufacturer. Confidential.

Chemical. (G) Laurylsulfate salt of substituted p-diazo diphenylamine, polymer with formldehyde.

Use/Production. (S) Site-limited paper coating material. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg.

Exposure. Manufacturer and use: dermal, a total of 6 workers, up to 80 da/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

Dated: March 26, 1982.

Linda A. Travers,

Acting Director, Management Support Division.

[FR Doc. 82–8748 Filed 4–1–82; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2090–3] [1]

Availability of Environmental Impact Statements Filed March 22 Through 26, 1982, Pursuant to 40 CFR Part 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities, Ms. Kathi Wilson (202) 245–3006.

Corps of Engineers:

EIS# 820161, Draft, COE, AK, Bradley Lake 135 MW Hydroelectric Project, Kenai Peninsula Borough, Due: May 17, 1982

Department of Transportation:

EIS# 820164, Draft, FHW, IN, Pennsylvania Street Corridor Improvement and Extension, Grant County, Due: May 17, 1982

EIS# 820165, Final, FHW, CA, Mendocino Pass Road/CA Forest Highway 7, Mendocino National Forest, Due: May 3, 1982

EIS# 820159, Final, FHW, IA, State Arterial 500 Construction, IA–5 and IA–46 to I–80, Polk County, Due: May 3, 1982

EIS# 820158, Final, FHW, CA, Mar Vista Street Upgrading, Whittier Boulevard to College Avenue, Due: May 3, 1982

EIS# 820162, Final, FHW, NB, Bellevue Interchange (NB–370 and US 73/75) Reconstruction (F–1), Due: May 3, 1982

EIS# 820160, DSuppl, FHW, IN, US 27 NW Bypass Construction, US 30 to I–69, Allen County, (DS–1), Due: May 17, 1982

Department of Housing and Urban Development:

EIS# 820157, Final, HUD, NJ, Saddlebrook Farms Subdivision, Mortgage Insurance, Gloucester County, Due: May 3, 1982

Department of Agriculture:

EIS# 820163, DRevised, AFS, MT, Lolo National Forest Land and Resource Management Plan (DR), Due: June 24, 1982

EIS# 820166, DSuppl, AFS, AK, Quartz Hill Molybdenum Claims, Access/Bulk Sampling Tongass NF (DS–1), Due: May 17, 1982

Amended Notice:

EIS# 820146, Draft, BPA, SEV, ID MT WA Garrison-Spokane 500 kV Transmission Line (BPA FY 76), Due: *May 28, 1982

Dated: March 30, 1982.

Louis J. Cordia,

Acting Director, Office of Federal Activities.

[FR Doc. 82–8893 Filed 4–1–82; 8:45 am]

BILLING CODE 6560–37–M

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[1] Published Federal Register 3–26–82—Review Extended.

[ERFRL–2090–3]

Withdrawl of Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Environmental Protection Agency.

ACTION: Withdrawl of notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: On October 20, 1981, EPA published in the Federal Register (46 FR 51471) a Notice of Intent to prepare an EIS on the proposed issuance of a NPDES permit for the Cumberland I Generating Station in Millville, New Jersey. However, due to the recent decision of Atlantic City Electric Company to suspend environmental licensing activities on its proposed Cumberland I facility until 1984, EPA Region II will cancel preparation of the EIS. For further information contact: Mr. Edward Als, EIS Project Officer, Environmental Impact Branch, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 400, New York, New York 10278.

Dated: March 30, 1982.

Louis J. Cordia,

Acting Director, Office of Federal Activities.

[FR Doc. 82-8894 Filed 4-1-82; 8:45 am]

BILLING CODE 6560-37-M

[A-10-FRL-2089-2]

Approval of Reduction in Non-Federal Match for Clean Air Act Grant to the State of Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reduction in minimum match.

SUMMARY: EPA is reducing the minimum non-Federal matching share for the Washington Department of Ecology (DOE) which must be provided to be eligible for a section 105 Clean Air Act program grant. This reduction is a result of the Governor's request for uniform reductions in State spending and allows the State to continue to meet the minimum matching requirements for receiving Federal grant support.

DATE: April 2, 1982.

ADDRESSES: The material supporting this decision may be examined during normal business hours at the following locations:

Central Docket Section (10A-82-2), West Tower Lobby, Gallery I, Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460

Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

FOR FURTHER INFORMATION CONTACT: Clark L. Gaulding, Chief, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206/442-1275), FTS: 399-1275.

SUPPLEMENTARY INFORMATION: On February 1, 1982, EPA published in the **Federal Register** (47 FR 4591) a request for public comment and an opportunity for a public hearing on the intent to allow a reduction in the non-Federal matching share to the Section 105 Air Program Grant. It is suggested that the reader refer to this published document to obtain background information. The same notification also appeared in the public notice sections of the *Daily Olympian* and the Seattle *Post-Intelligencer* on January 29 and February 2, respectively. No hearing was requested, however, one commentor did agree with the action to reduce the non-Federal match share.

Therefore, EPA approves a $189,400 reduction in match (to $2,663,496 [includes funding to local agencies]) for the WDOE FY 82 Section 105 air grant.

Dated: March 18, 1982.

John R. Spencer,

Regional Administrator.

[FR Doc. 82-8897 Filed 4-1-82; 8:45 am]

BILLING CODE 6560-50-M

[AS-FRL-2090-5]

Science Advisory Board Executive Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Executive Committee of the Science Advisory Board (SAB). The meeting will be held on April 22-23, 1982, starting at 9:15 a.m. each day in Room 1101, West Tower, EPA, 401 M Street, S.W., Washington, D.C. The agenda for the meeting includes the following issues: Committee review of EPA's five-year research and development plan, "Research Outlook 1982," Committee review of the Agency's "Guidance for the Preparation of Exposure Assessments," (dated January 30, 1981)); and other issues of member interest.

Copies of "Research Outlook 1982" may be obtained by contacting Dr. Richard Laska, Office of Research and Development, EPA, on (202) 755-0468. Copies of the "Guidance for the Preparation of Exposure Assessments" may be obtained by contacting Mr. James Falco, Office of Research and Development, EPA, on (202) 382-2931.

The meeting is open to the public. Any member of the public wishing to comment on either of the two documents being reviewed or wishing further information should contact Terry F. Yosie or Cheryl B. Bentley on (202) 755-0696 by close of business April 16, 1982.

Dated: March 29, 1982.

Terry F. Yosie,

Acting Director, Science Advisory Board.

[FR Doc. 82-8898 Filed 4-1-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC Advisory Committee)

March 25, 1982.

Task Group A-1 of Working Group A: U.S. Requirements

Chairman: W. Naleszkiewicz (301) 652-4660

Date: Thursday, April 1, 1982

Time: 9:30 A.M.-4:00 P.M.

Location: Direct Broadcast Satellite Corporation, 7315 Wisconsin Avenue, Room 518E, Bethesda, Maryland

Task Group A-2 Working Group A: Facilities and Technology

Chairman: Jeffrey Binckes (202) 863-6864

Date: Friday, April 2, 1982

Time: 9:00 A.M.-2:00 P.M.

Location: Communications Satellite Corporation, 950 L'Enfant Plaza, S.W., 6th Floor Conference Room, Washington, D.C. 20024.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-8872 Filed 4-1-82; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee on Preparations for the ITU 1983 Region 2 Broadcasting Satellite Service Planning Conference

March 29, 1982.

Meeting: Tuesday, April 20, 1982, 9:00 a.m., COMSAT Theater, Off the Lobby, 950 L'Enfant Plaza SW., Washington, D.C.

Agenda:

(1) Approval of Agenda
(2) Approval of Minutes of previous meeting
(3) Presentation of Draft Report, including questions of clarification
(4) Discussion of Draft Report
(5) Preview of remaining Committee tasks
(6) Other Business
(7) Adjournment

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-8873 Filed 4-1-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-155, File No. BPH-810112AD, et al.]

Broadco, Inc., et al.; Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Broadco, Incorporated, Lawton, Oklahoma, Req: 96.3 MHz, Channel 237A, 3 kW (H&V), 295 feet, BC Docket No. 82-155, File No. BPH-810112AD; and James E. McCuiston, Lawton, Oklahoma, Req: 95.3 MHz, Channel 237A, 3 kW (H&V), 135 feet, BC Docket No. 82-156, File No. BPH-810415AD; for construction permit for a new FM station.

Hearing Designation Order

Adopted: March 22, 1982.

Released: March 26, 1982.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration: (i) The above-captioned mutually exclusive applications filed by Broadco, Incorporated (Broadco) and James E. McCuiston (McCuiston), (ii) a Petition To Deny, filed August 10, 1981, by Broadco and (iii) related pleadings.[1]

2. *Broadco.* Analysis of the financial portion of Broadco's application reveals that it will require $151,411 to construct the proposed facility and operate for three months, itemized as follows:

Equipment	$60,016
Land	25,000
Building	3,000
Miscellaneous and other costs	20,050
Operating costs (three months)	43,345
Total	151,411

Broadco plans to finance construction and operation with the following funds: (i) Existing capital—$49,831.29 and (ii) an SBA guaranteed loan—$102,781 (net). Broadco indicates it has $461.55 on deposit in existing capital. Stockholder subscriptions aggregating $39,800 have been provided, but the financial statements of all subscribers and others making funds available to subscribers were more than 90 days old at the time of submission, and fail to comply with the requirements of Paragraph 2(a) of section III of FCC Form 301. Since Broadco has shown only $103,242.55 available, an amount insufficient to meet proposed costs of $151,411, a financial issue will be specified.

3. *McCuiston.* Analysis of the financial portion of the application reveals that he will require $44,431 to construct the proposed facility and operate for three months, itemized as follows:

Equipment	$32,600
Miscellaneous and other costs	2,700
Operating costs (including land and building rental) (three months)	9,131
Total	44,431

McCuiston plans to finance construction and operation with the following funds: (i) New capital—$40,004 and (ii) first quarter revenue—$10,000. McCuiston's balance sheet dated March 31, 1981 indicates he has only $425 in net liquid assets. He expects to receive $40,004 from the sale of his minority interest in Station KJAK–FM, Slaton, Texas. Although the assignment of license of KJAK–FM was granted on June 19, 1981, the applicant has failed to provide an updated balance sheet showing that the $20,000 down payment and monthly payments of $1,667 have been received. Thus, McCuiston has not shown that any proceeds from the sale of KJAK–FM are current and liquid assets rather than accounts or notes receivable. Since McCuiston has not complied with the requirements for treatment of accounts receivable as liquid assets contained in section III, paragraph 4(b) of FCC Form 301, no credit can be given for new capital. In addition, the Commission's financial qualifications standard requires an applicant to demonstrate that it has sufficient funds to cover construction costs and the initial start-up period between inauguration of broadcast service and the point where advertising accounts begin to "pay-off." Consequently, an applicant must show the ability to construct and operate for three months without reliance on advertising revenues. *New Financial Qualifications Standard for Aural Broadcast Applicants,* 69 FCC 2d 407, 43 RR 2d 1101. Thus, the applicant may not rely upon advertising to establish financial qualification. *Amber Productions, Inc.,* 46 RR 2d 448 (1979). Therefore, the applicant has shown only $425, an amount insufficient to meet proposed costs of $44,431. A financial issue will be specified.

4. *Other matters.*[2] Broadco's petition to deny asserts that McCuiston's application, denominated "The Church of Jesus Christ," is not a religious organization or congregation, and represents an attempt to deceive the Commission as to the intent and purpose of the application, and due to statements in the application and pleadings regarding ownership, control and management by Jesus Christ, question is raised as to whether McCuiston will maintain absolute control of the proposed station. As indicated above (see Footnote 1), the application evidences religious belief and motivation by McCuiston, which from all appearance is sincere and deeply held. For the purposes of regulation we hold Mr. McCuiston accountable for the prosecution of the application and the operation of the station if he is the successful applicant. We do not read Mr. McCuiston's statements to absolve him of his obligations as an applicant or licensee. Accordingly, the petition to deny will be denied.

5. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas which would receive service from the proposals.[3] Consequently, for the purpose of comparison, the areas and population which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Broadco:

(a) The source and availability of additional funds over and above the $103,242.55 indicated; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

2. To determine with respect to McCuiston:

(a) The source and availability of additional funds over and above the $425 indicated; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

4. To determine which of the proposals would, on a comparative basis, better serve the public interest.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

[1] Although the applicant has at various places in its filings referenced himself as "James E. McCuiston, doing business through the Church of Jesus Christ," and offered explanatory statements regarding the meaning of this terminology, it is apparent from an examination of the entire application that Mr. McCuiston as an individual will exercise ultimate licensee control and management of the proposed station. Accordingly, references and statements to the contrary notwithstanding, the Commission will look solely to Mr. McCuiston, and individual, as the applicant and proposed licensee.

[2] The other matters sought to be raised by Broadco are more appropriately raised in issue pleadings post-designation pursuant to the procedures announced in the Commission's *Report and Order* in re *Revised Procedures for the Processing of Contested Broadcast Applications; Amendments of Part 1 of the Commission's Rules,* 72 FCC 2d 202, 45 RR 2d 1220 (1979), and will not be discussed here.

[3] Since McCuiston's engineering data in Section V–B of the application is based on the 1960 U.S. Census of Population, an opportunity will be afforded the applicants to submit current population data in amendment form to the presiding Administrative Law Judge.

8. It is further ordered, that the petition to deny filed by Broadco, Incorporated is denied to the extent indicated above.

9. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

10. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

Appendix

11. The Commission has not yet received Federal Aviation Administration clearance for the antenna tower proposed by the below listed applicant. Accordingly, it is further ordered, that the following issue be specified:

3. To determine whether there is a reasonable possibility that a hazard to air navigation would occur as a result of the tower height and location proposed by Broadco, Incorporated.

12. It is further ordered, that the Federal Aviation Administration is made a party to the proceeding.

[FR Doc. 82-8870 Filed 4-1-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-157, File No. BPH-801121AA, et al.]

Ford County Broadcasters, Inc., et al.; Designation of Applications for Consolidated Hearing on Stated Issuse

In re applications of Ford County Broadcasters, Inc., Paxton, Illinois, Req: 104.9 MHz, Channel 285, 3 kW (H&V), 300 feet, BC Docket No. 82-157, File No. BPH-801121AA; and Plowshares Broadcasting, Inc., Paxton, Illinois, Req: 104.9 MHz, Channel 285, 3 kW (H&V), 300 feet, BC Docket No. 82-158, File No. BPH-810427AG; for construction permit for a new FM station.

Hearing Designation Order

Adopted: March 23, 1982.

Released: March 26, 1982.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration: (a) The above-captioned mutually exclusive applications filed by Ford County Broadcasters, Inc. (Ford) and Plowshares Broadcasting, Inc. (Plowshares); (b) a petition for acceptance of supplement to amendment as of right filed by Plowshares; and (c) related pleadings thereto.

2. On September 21, 1981, the cut-off date for all amendments as of right in this proceeding, Plowshares filed unsigned copies of an amendment to its application. Thereafter, on September 23, 1981, Plowshares filed signed copies of the same amendment. The competing applicant, Ford, opposes acceptance of the amendment stating that a submission without the requisite signature cannot be considered an amendment and that the signed copies of such amendment was filed after the cut-off date.

3. Plowshares pleads that due to delays in the receipt of mail from applicant to counsel the amendment was filed without the signature of a corporate officer, with the representation that executed copies would be filed as soon as received by counsel. A prior Commission decision support the acceptance of the amendment. See *Communications Gaithersburg, Inc.*, 60 FCC 2d 537, 38 RR 2d 239 (1976). Ford contends that the amendment of Plowshares should be accepted only for informational purposes, but not for the purpose of affecting any comparative position. However, all of the facts contained in the amendment, as well as Plowshares' comparative position were available to Ford by the cut-off date. Therefore, we believe that Plowshares' supplement to its amendment should be accepted, nunc pro tunc and will consider it as timely filed.

4. Since no determination has been reached that the antenna tower proposed by Plowshares would not constitute a menace to air navigation, and issue regarding this matter is required.

5. Except for the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, that, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

2. To determine with respect to Plowshares whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that Plowshares' petition for acceptance of supplement to its amendment IS GRANTED.

8. It is further ordered, that the Federal Aviation Administration IS MADE A PARTY to the proceeding.

9. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

10. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

Appendix

11. The Commission has not yet received Federal Aviation Administration clearance for the antenna tower(s) proposed by the below listed applicant(s). Accordingly, it is further ordered, that the following issue is specified:

1. To determine whether there is a reasonable possibility that a hazard to air navigation would occur as a result of the tower height and location(s)

proposed by Ford County Broadcasters, Inc.

[FR Doc. 82-8871 Filed 4-1-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Starks Associates, Inc.; Intent To Grant Exclusive Patent License

Pursuant to 45 CFR 6.3 and 41 CFR 1-9, notice is hereby given of intent to grant to Starks Associates, Inc., an exclusive license to make, use and sell the invention by Dr. Jack L. Parsons, et al., entitled "AN IMPROVED MULTI-STEP PROCESS FOR THE PRODUCTION OF 2-Beta-D-RIBOFURANOSYLTHIAZOLE-4-CARBOXAMIDE," which is described and claimed in Application for Letters Patent of the United States Serial No. 294 368, filed August 19, 1981. A copy of the patent application may be obtained upon written request submitted to the Chief, Patent Branch, Department of Health and Human Services, c/o National Institutes of Health, Westwood Building, Room 5A03, Bethesda, MD 20205.

The proposed license will have a duration of five (5) years, may be royalty-bearing, and will contain other terms and conditions to be negotiated by the parties in accordance with Department of Health and Human Services Patent Regulations. The Department of Health and Human Services will grant the license unless, within sixty (60) days of this Notice, the Chief, Patent Branch, receives in writing any of the following, together with supporting documents:

(1) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license, or

(2) An application for a nonexclusive license to manufacture, use or sell the invention in the United States is submitted in accordance with 41 CFR 101-4-104-2, and the applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Assistant Secretary for Health of the Department of Health and Human Services will review all written responses to this Notice.

(45 CFR 8.2 and 41 CFR 1-9)

Dated: March 26, 1982.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

[FR Doc. 82-8945 Filed 4-1-82; 8:45 am]

BILLING CODE 4150-04-M

[Docket No. 79N-0015; DESI 11316]

Methdilazine and Trimeprazine Preparations for Oral Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: FDA announces the conditions for marketing methdilazine and trimeprazine for the indications for which they are now regarded as effective, and offers an opportunity for hearing concerning indications reclassified to lacking substantial evidence of effectiveness. These drugs are used in the treatment of various pruritic (itching) medical conditions.

DATES: Hearing requests due on or before May 3, 1982; supplements to new drug applications and data in support of hearing requests due on or before June 1, 1982.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 79N-0015, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Surgical-Dental Drug Products (HFD-160), Bureau of Drugs.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

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.

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 notice published in the **Federal Register** of October 21, 1970 (35 FR 16430), FDA classified certain drug products containing methdilazine and trimprazine as effective in the treatment of pruritic symptoms in urticaria, and as probably effective and possibly effective for certain other indications. The notice also announced conditions for marketing duplicates of the products. On August 10, 1979 (44 FR 47162), the notice was amended to allow for the submission of abbreviated new drug applications (ANDA's).

NDA 11-950: Tacaryl Tablets and Syrup containing methdilazine hydrochloride; Westwood Pharmaceuticals, 4618 Dewitt St., Buffalo, NY 14213 (NDA was formerly owned by Mead Johnson Laboratories).

NDA 11-950: Tacaryl Chewable Tablets containing methdilazine (base); Westwood Pharmaceuticals.

NDA 11-316: Temaril Syrup, Tablets, and Spansules containing trimeprazine tartrate; SmithKline & French Laboratories, 1500 Spring Garden St., P.O. Box 7929, Philadelphia, PA 19101.

ANDA 87-122: Methdilazine Hydrochloride Syrup containing methdilazine hydrochloride; National Pharmaceutical Manufacturing Co., Division of Barre-National Inc., 7205 Windsor Blvd., Baltimore, MD 21207.

FDA's conclusions in 1970 were that methdilazine and trimeprazine were: (1) effective in the tretment of pruritic symptoms in urticaria; (2) probably effective for symptomatic relief in the management of nasal allergies (hay fever, allergic rhinitis, etc.); and (3) possibly effective for (a) prolonged relief of pruritic symptoms in a variety of allergic and non-allergic conditions including neurodermatitis, contact dermatitis, pityriasis rosea, poison ivy dermatitis, eczematous dermatitis, pruritus ani and vulvae, drug rash, and chicken pox, (b) symptomatic relief in the management of various allergic conditions such as allergic conjunctivitis, (c) allergic bronchitis and bronchial asthma, (d) angioneurotic edema, (e) for treatment of pruritus whether acute or chronic, and (f) for prolonged relief of pruritic symptoms in atopic dermatitis.

In response to the 1970 notice, the holders of the new drug applications listed above submitted studies intended to demonstrate the effectiveness of the drugs for some, though not all, indications classified in the notice. These studies, as well as other information, were presented to the Pulmonary Allergy Drugs Advisory Committee on May 3, 1979. FDA has

now reached the following conclusions about each of the indications listed above.

Treatment of pruritic symptoms in urticaria. Both methdilazine and trimeprazine were classified in 1970 as effective for this indication. This classification remains unchanged.

Symptomatic relief in the management of nasal allergies (hay fever, allergic rhinitis, etc.). No data were submitted in support of trimeprazine (Temaril) for this indication and it is now classified as lacking substantial evidence of effectiveness for this indication. The following studies were among those submitted in support of methdilazine (Tacaryl) for this indication: Crawford, L. V., and F. T. Grogan, "Clinical Evaluation of Methdilazine Hydrochloride, a New Histamine, Using Double-Blind and Placebo Control," *Journal of the Tennessee State Medical Association,* 53:307, 1960; Miller, J., "A Double-Blind, Placebo-Controlled Crossover Study of Methdilazine Hydrochloride in the Management of Hay Fever," *Current Therapeutic Research,* 5:568, 1962; Wahner, H. W., and C. A. Peters, "An Evaluation of Some Newer Antihistaminic Drugs Against Pollinosis," *Proceedings of the Staff Meeting of the Mayo Clinic,* 35:161, 1960; and an unpublished study by McGovern. On the basis of these four studies, methdilazine (Tacaryl) is now classified as effective for this indication.

Prolonged relief of pruritic symptoms in a variety of allergic and non-allergic conditions including neurodermatitis, contact dermatitis, pityriasis rosea, poison ivydermatitis, eczematous dermatitis, pruritus ani and vulvae, drug rash, and chicken pox. Except for the inclusion of chicken pox, methdilazine and trimeprazine are now classified as safe and effective for this indication. The following studies were submitted in support of methdilazine (Tacaryl) for this indication and found to show substantial evidence of effectiveness: Frohman, I. P., "Methdilazine Hydrochloride in Pruritic Dermatoses, A Double-Blind Evaluation in General Office Practice," *Medical Times,* 90:25, 1962; and an unpublished study by Rising. The following studies were submitted in support of trimeprazine (Temaril) for this indication and found to provide substantial evidence of effectiveness; an unpublished study by H. L. Roth and one by Wittig and Spangler.

Chicken pox is not included because of the association between chicken pox and Reye's syndrome. Beeson, P. B., W. McDermott, and J. B. Wyngaarden, editors, "Cecil's Textbook of Medicine," 15th Ed., W. B. Saunders Co., Philadelphia, pp. 253 and 839, 1979. Methdilazine and trimeprazine are both phenothiazines, and the potential neurological side effects to phenothiazine administration (e.g., seizures) are similar to the symptoms of Reye's syndrome. See Baldessarini, R. J., "Drugs and the Treatment of Psychiatric Disorders," *in* "The Pharmacological Basis of Therapeutics", 6th Ed., edited by L. S. Goodman and A. Gilman, The Macmillan Co., New York, p. 407, 1980, and "Cecil's Textbook of Medicine," *supra,* at p. 253. Because of the possibility of mistaking the symptoms of Reye's syndrome for drug side effect, FDA concludes that insubstantial evidence has been presented to show that either methdilazine or trimeprazine is of suffficient value in the symptomatic treatment of chicken pox to overcome the dangers of the misdiagnosis of Reye's syndrome.

No evidence was presented to support the claim that the action of these drugs is prolonged. Accordingly, this description has been dropped from the indication statements.

Symptomatic relief in the managment of various allergic conditions such as allergic conjunctivitis. No data were submitted. Both methdilazine and trimeprazine are therefore classified as lacking substantial evidence of effectiveness for this indication.

Allergic bronchitis and bronchial asthma. No data were submitted. Both methdilazine and trimeprazine are therefore classified as lacking substantial evidence of effectiveness for this indication.

Angioneurotic edema. No data were submitted in support of trimeprazine (Temaril) for this indication and it is now classified as lacking substantial evidence of effectiveness for this indication. In support of methdilazine (Tacaryl) for this indication, the manufacturer made no new submission apart from the original five reports submitted to the National Academy of Sciences—National Research Council. These are (1) Council on Drugs of the American Medical Association, "Antihistaminics," *in* "New Drugs—1966," American Medical Association, Chicago, pp. 207–214, 1966; (2) Feinberg, A. R., "The Antihistamines in the Treatment of Allergic Diseases," *Postgraduate Medicine,* 13:266–269, 1953; (3) Reports from the Clinical Research Department of Mead Johnson Research Center; (4) Siegel, S. C., and B. J. Lovin, Jr., "Pediatric Allergy; a Critical Review of the Literature," *Annals of Allergy,* 19:404–434, 1961; and (5) Waldriff, G. A., J. Davis, and G. M. Lewis, "Antihistaminic Drugs in Dermatologic Therapy," *Archives of Dermatology and Syphilology* (now *Archives of Dermatology*), 61:361–378, 1950. None of these is a report of a controlled study. 21 CFR 314.111(a)(5)(ii). They are only general summaries and do not constitute substantial evidence of the effectiveness of methdilazine in the treatment of angioneurotic edema.

For treatment of pruritus, whether acute or chronic. No data were submitted in support of either product for this broad indication. Pruritus has many possible etiologies. The data submitted in support of the products' effectiveness for pruritus of particular etiologies, therefore, cannot be inferred to support the general indication of pruritus. Both methdilazine and trimeprazine are classified as lacking substantial evidence of effectiveness for this indication.

For prolonged relief of pruritic symptoms in atopic dermatitis. On the basis of trimeprazine's and methdilazine's effectiveness in the prolonged relief of pruritic symptoms in a variety of allergic and non-allergic conditions (above) both products are now classified as effective for this indication. No evidence was presented to support the claim of prolonged effect, and this word has been dropped from the indication.

Accordingly, the October 21, 1980 notice is amended to read as follows.

These drugs are regarded as new drugs (21 U.S.C. 321(p)), and an approved new drug application is required for marketing them. Supplemental new drug applications are now required to revise the labeling in and to update previously approved applications providing for these drugs.

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 is identical to a drug product named above. It may also be applicable, under 21 CFR 310.6, to a similar or related product that is not the subject of an approved new drug application. 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).

A. *Effectivenes classification.* The Food and Drug Administration has reviewed all available evidence and

concludes that the drugs are effective for the indications listed in the labeling conditions below. The drugs lack substantial evidence of effectiveness for their other labeled indications.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* Preparations of methdilazine (base and hydrochloride) or trimeprazine (as the tartrate) are in one of the dosage forms described above, suitable for oral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indications are as follows:

Methdilazine

Treatment of pruritic symptoms in urticaria.

Symptomatic relief in the management of nasal allergies (hay fever, allergic rhinitis, etc.).

Relief of pruritic symptoms in a variety of allergic and non-allergic conditions including atopic dermatitis, neurodermatitis, contact dermatitis, pityriasis rosea, poison ivy dermatitis, eczematous dermatitis, pruritus ani and vulvae, and drug rash.

Trimeprazine

Treatment of pruritic symptoms in urticaria.

Relief of pruritic symptoms in a variety of allergic and non-allergic conditions including atopic dermatitis, neurodermatitis, contact dermatitis, pityriasis rosea, poison ivy dermatitis, eczematous dermatitis, pruritus ani and vulvae, and drug rash.

3. *Marketing Status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that, on or before June 1, 1982, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)).

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained before marketing such products. The bioavailability regulations (21 CFR 320.21) require any person submitting a full or abbreviated new drug application after July 7, 1977, to include either evidence demonstrating the in vivo bioavailability of the drug or information to permit waiver of the requirement. No waiver will be granted for methdilazine tablets or trimeprazine tablets and controlled-release capsule dosage forms. These drugs are included in the list of effective drugs having a known or potential bioavailability problem (21 CFR 320.22, as amended on July 14, 1981 (46 FR 36130)).

Full manufacturing information will be required for abbreviated applications proposing a controlled-release capsule form of trimeprazine tartrate.

Marketing drug products before approval of a new drug application will subject those products, and those persons who caused the products to be marketed, to regulatory action.

C. *Notice of opportunity for hearing.* 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 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) and 21 CFR 314.111(a)(5), and demonstrates the effectiveness of the drug products for those indications referred to above which lack substantial evidence of effectiveness.

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 indications lacking substantial evidence of effectiveness 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 all the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order withdrawing approval will not issue with respect to any application supplemented, in accord with this notice, to delete the claims lacking substantial evidence of effectiveness.

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 of all identical, related, or similar drug products not the subject of a new drug application.

An applicant or any other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing, shall file (1) on or before May 3, 1982, a written notice of appearance and request for hearing, and (2) on or before June 1, 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 granting or denial of a 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 labeled for the indications referred to in this notice as lacking substantial evidence of effectiveness may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such a drug product from the market. Any new drug product marketed without an approved new drug application 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 hearing, 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).

J. Richard Crout,

Director, Bureau of Drugs.

March 23, 1982.

[FR Doc. 82-8848 Filed 4-1-82; 8:45 am]

BILLING CODE 4160-01-M

Food and Drug Administration

[Docket No. 81M-0336]

Allergan Pharmaceuticals, Inc.; Premarket Approval of Lensoak™ Sterile Buffered Isotonic Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing approval of the application for premarket approval under the Medical Device Amendments of 1976 of the LENSOAK™ Sterile Buffered Isotonic Solution, sponsored by Allergan Pharmaceuticals, Inc., Irvine, CA. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by May 3, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On September 24, 1979, Allergan Pharmaceuticals, Inc., Irvine, CA, submitted an application for premarket approval of LENSOAK™ Sterile Buffered Isotonic Solution. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On October 20, 1981, FDA approved the application by a letter to the sponsor from the Acting Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), soft contact lens solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Comestic Act (the act) (21 U.S.C. 321(h)), soft contact lens solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of Part 310 (21 CFR Part 310), Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Charles Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of LENSOAK™ Sterile Buffered Isotonic Solution states that the solution is designed for rinsing, storage, and cold disinfection of soft (hydrophilic) contact lenses. Sponsors of any soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved soft contact lens, the sponsor of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as FDA prescribes by letter to the sponsor. A sponsor that fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41-58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93-637). Furthermore, failure to update the restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens, under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)).

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will

publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 3, 1982, file with the Dockets Management Branch (address above) four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 24, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-8813 Filed 4-1-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[M 166]

Montana; Partial Termination of Proposed Withdrawal and Reservation of Land

The Forest Service, United States Department of Agriculture, filed an application for withdrawal of the following described land from location and entry under the mining laws. The Notice of Proposed Withdrawal was published in the Federal Register on August 19, 1966, Volume 31, No. 161, page 11039–11040, and republished in Federal Register, on June 16, 1977, Volume 42, No. 115, pages 30692–30693. The applicant agency has cancelled its application in part as to the following:

Principal Meridian

Beaverhead National Forest

Boot Lake Campground

Unsurveyed, but which probably will be when surveyed:

T. 5 S., R. 11 W.,
Sec. 4, SW¼NE¼NW¼, and NW¼SE¼NW¼.

Total area—20 acres.

Pear Lake Campground

Unsurveyed, but which probably will be when surveyed:

T. 5 S., R. 11 W.,
Sec. 5, SE¼SW¼NE¼SW¼, SW¼SE¼NE¼SW¼, NW¼NE¼SE¼SW¼, and NE¼NW¼SE¼SW¼.

Total area—10 acres.

Crockett Lake Administrative Site

Unsurveyed, but which probably will be when surveyed:

T. 8 S., R. 2 W.,
Sec. 20, W½NW¼NE¼, and N½NW¼SW¼NE¼.

Total area—25 acres.

The area described contains 55 acres in Madison and Beaverhead Counties.

Therefore, pursuant to the regulations contained in 43 CFR 2091.2–5(b)(1), at 8 a.m. on April 30, 1982, such land will be relieved of the segregative effect of the above mentioned application.

Inquiries concerning these lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Roland F. Lee,

Chief, Branch of Lands and Minerals Operations.

March 26, 1982.

[FR Doc. 82-8866 Filed 4-1-82; 8:45 am]

BILLING CODE 4310-84-M

Amendments to Bureau Order No. 701 Redelegating Cadastral Survey Approval Authority

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Amendments to Bureau Order No. 701 Redelegating Cadastral Survey Approval Authority.

SUMMARY: These amendments to Bureau Order No. 701 redelegates from the Washington Office of the Bureau of Land Management to Chief Cadastral Surveyor for each State Office of the Bureau the cadastral survey approval authority and to the Chief, Division of Survey and Mapping at the Denver Service the approval authority for Outer Continental Shelf Official Protraction Diagrams. This will speed the approval process for surveys completed by the Bureau of Land Management.

EFFECTIVE DATE: April 1, 1982.

ADDRESS: Any inquiries or suggestions should be addressed to: Director (720), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Keith R. Williams, (202) 653–8798.

SUPPLEMENTARY INFORMATION: The Amendments are as follows:

Bureau Order No. 701, dated July 23, 1964, is further amended to read as follows:

Part X is added to read:

Part X—Redelegation of Authority to the Chief Cadastral Surveyor of Each State Office

Section 10.0—Functions of the Chief Cadastral Surveyor. (a) In accordance with existing policies, regulations, and procedures of this Department, and under the administrative supervision of the appropriate State Office officials, and the technical supervision of the Chief, Division of Cadastral Survey, Headquarters Office, the Chief Cadastral Surveyor is authorized to perform all functions and to sign for the Director all documents relating to (1) approval and acceptance of all types of surveys and (2) approval of all types of protracted surveys, except for the Outer Continental Shelf. The State Director will review official survey protests and appeals and will issue a decision document dismissing or accepting the protest. Amendment No. 30, dated November 23, 1979, and all redelegations made pursuant thereto, are repealed. Part IX, June 4, 1979, is repealed.

Part XI is added to read:

Part XI—Redelegation of Authority to the Chief, Division of Survey and Mapping, Service Center

Section 11.0—Functions of the Chief, Division of Survey and Mapping. (a) In accordance with existing policies, regulations, and procedures of this Department, and under the administrative supervision of the Assistant Service Center Director for Technical and Scientific Services, and the technical supervision of the Chief, Division of Cadastral Survey, Headquarters Office, the Chief, Division of Survey and Mapping, is authorized to perform all functions and to sign for the Director all documents relating to the approval of Outer Continental Shelf Official Protraction Diagrams. The effective date of this order is April 1, 1982.

Robert F. Burford,

Director.

March 30, 1982.

[FR Doc. 82-8904 Filed 4-1-82; 8:45 am]

BILLING CODE 4310-84-M

Colorado, New Mexico; Denver-Raton Mesa Coal Production Region

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice cancelling the Denver-Raton Mesa Coal Production Region and opening the seventeen county area to lease by application.

SUMMARY: On November 9, 1979, the Bureau of Land Management (BLM)

established the Denver-Raton Mesa Coal Production Region for the management of federally owned coal (44 FR 65196–65197). Subsequent assessments indicate that industry interest, based on coal quality and mining conditions, do not justify federally initiated coal lease sale program procedures of 43 CFR 3420.4 through 3420.7. In accordance with 43 CFR 3420.3–1(a)(2), this notice cancels the Denver-Raton Mesa Coal Production Region. Further, this notice designates Federal coal reserves in the seventeen-county area of Colorado and New Mexico as open to lease on application in accordance with 43 CFR Part 3425.

EFFECTIVE DATE: April 2, 1982.

FOR FURTHER INFORMATION CONTACT: Kenneth P. Smith, (303) 837–3008, Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colordao 80202.

SUPPLEMENTARY INFORMATION: The Denver-Raton Mesa Coal Production Region was established by the Bureau of Land Management (BLM) on November 9, 1979, together with a number of other Regions to implement competitive coal leasing under regulations contained in 43 CFR Part 3420. The Denver-Raton Mesa Region includes the following Colorado counties: Adams, Araphoe, Boulder, Denver, Douglas, Elbert, El Paso, Fremont, Huerfano, Jefferson, Las Animas, Morgan, Park, Pueblo, Teller and Weld. It also includes Colfax County in New Mexico. The coal production region was estimated to contain sufficient Federal coal deposits to justify offering coal leases through the competitive leasing process set out in 43 CFR 2420.4 through 3420.7.

During the initial phases of activity planning, the Regional Coal Team determined that as a result of limited industry interest in additional tracts of Federal coal in the area that coal in these counties should be handled on a lease on application basis under 43 CFR Part 3424.

This proposal was discussed at the June 11, 1981, Regional Coal Team meeting. The Governors of the States of Colorado and New Mexico concurred in the recommendation and the Assistant Secretary of the Department of the Interior for Land and Water Resources approved the modification.

The expected benefits are a substantial savings in administrative costs to both the Federal government and the States of Colorado and New Mexico, while retaining a responsive leasing process for the coal industry. No additional social, economic or environmental impacts are anticipated as a result of this change in the method of leasing.

In accordance with 43 CFR 3420.3–1(a)(2) this notice is to advise the public that the Denver-Raton Mesa Coal Production Region is cancelled, thereby declaring that the Federal coal reserves of those portions of Colorado and New Mexico will be leased under 43 CFR Part 3425 (lease on application) rather than under 43 CFR 3420.4 through 3420.7.

Any applications for Federal coal leasing being processed prior to this notice shall continue to be processed according to the procedures in effect at the time of application.

Applications under 43 CFR 3425.1 shall be accepted by the BLM to lease Federal coal in the seventeen counties named above. Three copies of the application shall be filed in the Colorado State Office of the BLM, 1037 20th Street, Denver, Colorado 80202, or the New Mexico State Office of the BLM, P.O. Box 1449, Santa Fe, New Mexico 87501.

Supportive information on Federal coal reserve areas is available for public inspection at the Minerals Management Service, Deputy Conservation Manager—Resource Evaluation, 505 Marquette Avenue, NW., No. 815, P.O. Box 6124, Albuquerque, New Mexico 87125, or the Minerals Management Service, District Supervisor—Resource Evaluation, DOE Compound, 2597 B-¾ Road, South Redlands, Grand Junction, Colorado 81503.

Dated: March 26, 1982.

Robert F. Burford,

Director, Bureau of Land Management.

[FR Doc. 82-8896 Filed 4-1-82; 8:45 am]

BILLING CODE 4310-84-M

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: ADEX, INC., 4670 Paddock Road, Cincinnati, Ohio 45229.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: SHOWPORT, INC., an Ohio corporation, 4670 Paddock Road, Cincinnati, Ohio 45229.

1. Parent corporation and address of principal office: Ashland Oil, Inc., 1409 Winchester Avenue, Ashland, KY 41101.

2. Wholly-owned subsidiaries which will participate in the operations and States of incorporation:

Subsidiary and Jurisdiction of Incorporation

Ashland-Breckinridge, Inc., Delaware
Ashland Chemical, Inc., Delaware
Ashland Development, Inc., Delaware
Ashland Ethanol, Inc., Delaware
Ashland Oil and Transportation Company, Kentucky
Ashland Petroleum, Inc., Delaware
Ashland Pipe Line Company, Ohio
Ashland Synthetic Fuels, Inc., Delaware
Ash Property, Inc., Ohio
Eastates Petroleum Company, Inc., Delaware
Eastern Seaboard Petroleum Company, Inc., Florida
Inland Towing Company, Delaware
Lexington Pipe Line Company, Delaware
Mid-Valley Supply Co., Kentucky
Southern Oil Company of New York, Inc., New York
Tri-State Marketing Services, Inc., Delaware
Valvoline Oil Company, Ohio
APAC—Alabama, Inc., Delaware
APAC—Arkansas, Inc., Delaware
APAC—Carolina, Inc., Delaware
APAC—Georgia, Inc., Delaware
APAC—Inc., Delaware
APAC—Kansas, Inc., Delaware
APAC—Mississippi, Inc., Delaware
APAC—Oklahoma, Inc., Delaware
APAC—Tennessee, Inc., Delaware
APAC—Texas, Inc., Delaware
APAC—Virginia, Inc., Delaware
MacAsphalt, Inc., Delaware
MacDougald Construction, Inc., Georiga
Magaw Construction, Inc., Indiana
Magaw Hot Mix, Inc., Indiana
Muncie Paving Asphalt, Inc., Indiana
Reg X Condor, Inc., Delaware
Scurlock Oil Company, Delaware
TAP-CO, Inc., North Carolina
United States Filter Corportion, Delaware
Algonquin Pipe Line Company, Illinois
Ohio River Pipe Line Company, Delaware
Owensboro-Ashland Company, Delaware
SOCO Pipeline Company, Texas
Transport Supply Company, Inc., Texas
Blanton Marine Corp., Texas

1. Parent Corportation: Brewster Plastics, Inc., Route 6A, Brewster, Mass. 02631.

2. The wholly-owned subsidiary which will participate in the operation: Brewster Equipment, Inc., incorporated in the State of Massachusetts.

1. Parent corporation and address of principal office: Chrysler Corporation, 12000 Lynn Townsend Drive, Highland

Park, Michigan; Mailing address: P.O. Box 1919, Detroit, Michigan 48288.

2. Wholly-owned subsidiaries which will participate in the operations, and State of Incorporation:

(a) Wholly-owned domestic subsidiaries:

Chrysler Defense, Inc.
Chrysler Export Corporation
Chrysler Export Sales, Inc.
Chrysler Outboard Corporation
Chrysler Plastic Products Corporation
Chrysler Transport, Inc.
New Process Gear Corporation
Nu Car Prep System, Inc.
Van Pool Services, Inc.

All of the above-named subsidiaries are incorporated in the State of Delaware.

(b) Wholly-owned Canadian subsidiaries:

Chrysler Canada Ltd.
Chrysler Canada Outboard Ltd.

1. Parent Corporation and address of principal office: Dart & Kraft, Inc., 2211 Sanders Road, Northbrook, IL 60062.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(A) Dart Industries, Inc. (Delaware) and the following divisions:

(1) Absorbent Cotton Company
(2) Action Technology Company
(3) American Gasket & Rubber Co.
(4) Aztec Chemicals
(5) Capitol Controls Company
(6) Catalyst Division
(7) Colorite Plastics Company
(8) Dart Resorts
(9) Electrochemicals
(10) Environmental Research/Lancy
(11) Equipment & Systems Division
(12) Fiberfil Company
(13) Gering Products
(14) Interpur International
(15) Liggett Drug Company
(16) Nappe/Babcock
(17) Plastech Alloys Division
(18) PureChem
(19) Ralph Wilson Plastics Co.
(20) Rexcel
(21) San Fernando Laboratories
(22) Seamco Sporting Goods
(23) Seamless Hospital Products
(24) Styro Products
(25) Synthetic Products Company
(26) Thatcher Plastic Packaging
(27) Thermo-Serv Company
(28) The West Bend Company
(29) Thompson Industries Co.
(30) Tupco
(31) Tupcraft Company
(32) Tupperware Home Parties
(33) Tupperware Manufacturing International
(34) U.S. Operations Tupperware Company
(35) Ware Chemical Company
(36) Wilson Products Company

(B) Duracell International Inc. (Delaware) and the following division:

(1) Duracell Company, U.S.A.

(C) Hobart Corporation (Delaware)

(D) Kraft, Inc. (Delaware) and the following groups (divisions):

(1) Dairy Group
(2) Foodservice Group
(3) Industrial Foods Group
(4) Retail Food Group
(5) Humko-Sheffield Division

(E) Universal Packaging Corporation (Delaware)

(F) Universal Bow Transport, Inc. (New Hampshire)

1. Parent corporation and address of principal office: Johnston-Tombigbee Furniture Manufacturing Company, Inc., 1402 Water Works Road, Columbus, MS 39701.

2. Wholly-owned subsidiary which will participate in operations and address of its respective principal office: B. and B. Brothers Trucking Company, Inc., A Mississippi Corporation, 1402 Water Works Road, (P.O. Box 2128), Columbus, MS 39701.

1. Parent corporation and address of principal office: M.P.M., Inc., 1590 West Twelfth Avenue, P.O. Box 5183 T.A., Denver, Colorado 80217.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principle offices:

(a) Mobile Premix Concrete, Inc., 1590 West Twelfth Avenue, P.O. Box 5183 T.A., Denver, Colorado 80217.
(b) Mobile Pre-Mix Transit, Inc., 1590 West Twelfth Avenue, P.O. Box 5183 T.A., Denver, Colorado 80217.
(c) Cowan Concrete Products, Inc., 625 East Third Street, P.O. Box 1647, Greeley, Colorado 80632.
(d) Mobile Premix Company, Inc., 621 17th Street, Suite 2000, Denver, Colorado 80202.

1. Parent corporation and address of principal office: PepsiCo. Inc., Purchase, NY 10577.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(1) Beverages, Foods & Service Industries, Inc., c/o PepsiCo, Purchase, NY 10577
(2) Conroe Packaging, Inc., 222 Loop 336 East, P.O. Box Y, Conroe, TX 77301
(3) Frito-Lay, Inc., P.O. Box 35034, Dallas, TX 75235
(4) National Beverages, Inc., 1700 Directors Row, Orlando, FL 32809
(5) PBG Beverage Distributors, Inc., c/o PepsiCo, Purchase, NY 10577
(6) Pepsi-Cola Bottling Co. of Los Angeles, Inc., P.O. Box 3338, Torrance, CA 90510
(7) Pepsi-Cola Bottling Company of Puerto Rico, Inc., P.O. Box 1709, Hato Rey, Puerto Rico 00919
(8) Pepsi-Cola Interamericana, S.A., c/o PepsiCo, Purchase, NY 10577
(9) Pepsi-Cola Metropolitan Bottling Company, Inc., c/o PepsiCo, Purchase, NY 10577
(10) Pepsi-Cola Panamericana, S.A., c/o PepsiCo, Purchase, NY 10577
(11) PepsiCo World Trading Company, Inc., c/o PepsiCo, Purchase, NY 10577
(12) Advance Moving & Storage, Inc., 650 North Second Ave., Phoenix, AZ 85003
(13) Agency Media Services, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801
(14) Fleet Insurance Management, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801
(15) Great Falls North American, Inc., P.O. Box 1414, Great Falls, MT 59401
(16) Lee Way Motor Freight, Inc., P.O. Box 12750, Oklahoma City, OK 73157
(17) Marlew of El Paso, Inc., 8201 Lockheed Drive, El Paso, TX 79225
(18) Moving Credit, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801
(19) NACAL, Inc., 12842 Valley View, Garden Grove, CA 92645
(20) North American Distribution System, Inc., P.O. Box 411, New Haven, IN 46774
(21) North American Forwarding, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801
(22) North American Moving & Storage, Inc., 2122 Bremer Road, Fort Wayne, IN 46803
(23) North American Properties, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801
(24) North American Van Lines, Inc., P.O. Box 988, Fort Wayne, IN 46801
(25) North American Van Lines of Texas, Inc., 811 Central Expressway, Richardson, TX 75080
(26) Tractor Power, Inc. d.b.a. Fleet Service, c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801
(27) Transportation Collections, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801
(28)Triangle Fleet Service, Inc., 801 W. California Road, Fort Wayne, IN 46808
(29) PepsiCo Building System, Inc., 3031 LaJolla St., Anaheim, CA 92806
(30) Pizza Hut, Inc., P.O. Box 428, Wichita, KS 67201
(31) Aurora Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(32) Bender Pizza Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(33) Buckeye PH, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(34) Blues Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201

(35) Chesapeake Bay Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(36) Denver Pizza Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(37) East Moline Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(38) Fiesta Cantina of Ohio, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(39) Franchise Services, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(40) Franchise Services of Kansas, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(41) Indianapolis Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(42) J & G Products, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(43) Lake Michigan Management Co., Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(44) Long's Appleton, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(45) Long's Green Bay #2, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(46) Long's Marshfield, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(47) Long's Neenah, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(48) Long's Wausau #2, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(49) Mountaineer Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(50) Oriole Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(51) Pizza Hut, Inc. of LaCrosse, c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(52) Pizza Hut of America, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(53) Pizza Hut of Boston, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(54) Pizza Hut of Columbia, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(55) Pizza Hut of Gainesville, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(56) Pizza Hut of Georgia, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(57) Pizza Hut of Jeffersonville, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(58) Pizza Hut of Kalamazoo, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(59) Pizza Hut of Knoxville Corporation, c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(60) Pizza Huts of Las Vegas, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(61) Pizza Hut of Louisiana, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(62) Pizza Hut of Louisville, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(63) Pizza Hut of Massachusetts, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(64) Pizza Huts of North Carolina, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(65) Pizza Hut of North Haven, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(66) Pizza Hut of Oklahoma, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(67) Pizza Hut of Oregon, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(68) Pizza Hut of Racine, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(69) Pizza Hut of Rochester, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.
(70) Pizza Hut of San Diego, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(71) Pizza Hut of Santa Fe, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(72) Pizza Hut of Spokane, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(73) Pizza Hut of Utah, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(74) Pizza Hut of Virginia, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(75) Pizza Hut of West Allis, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(76) Pizza Hut of Wichita, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(77) Pizza Hut of Wisconsin, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(78) Pizza Hut of Zion, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(79) Ross Pizza, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(80) Second Concept, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(81) Sioux Falls Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(82) Sun Devil Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(83) Taco Kid of Wichita #2, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(84) Taco Bell, 17381 Red Hill Ave., Irvine, CA 92714
(85) Bell Food Services, Inc., c/o Taco Bell, 17381 Red Hill Ave., Irvine, CA 92714
(86) Taco Bell of Ohio, Inc., c/o Taco Bell, 17381 Red Hill Ave., Irvine, CA 92714
(87) Southwest Snack Equipment, Inc., 900 North Loop 12, Irving, TX 75061
(88) Marlew of Lubbock, Inc., 23rd St. at Ave. E., Box 818, Lubbock, TX 79408
(89) Tri-City Moving & Storage, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801
(90) Franchise Services, Inc., P.O. Box 3037, Wichita, KS 67201
(91) Wilson Sporting Goods Co., 2233 West St., River Grove, IL 60171
(92) Sabritas S.A. de C.V., Apartado Postal 15–112, Mexico 15, D.S., Mexico

1. Patent Corporation: TBW Industries Incorported, P.O. Box 4036, Houma, Louisiana 70361.

2. Wholly-owned subsidiaries which will participate in the operations:

I. PNU-Tank, Inc., 542 Back Street, Thibodaux, Louisiana 70301
II. PNU-Tank, Inc., Madison Port Road, Tallulah, Louisiana 71282
III. SMATCO, Inc., P.O. Box 4036, Houma, Louisiana 70361
IV. Pressed Steel Products Company, Route 2 Box 505, Abilene, Texas 79601
V. Pedestal Crane, Inc., 228 Thruway Park, Broussard, Louisiana 70518

1. Parent corporation and address of principal office: Tyler Corporation, Southland Center, Dallas, Texas 75201

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices:

(1) Atlas Powder Company, 12700 Park Central Place—Suite 1700, Dallas, Texas 75251
  (A) D & H Explosive Co., Inc., P.O. Box 757, Coeburn, Virginia 24230
  (B) East Kentucky Explosives, Inc., P.O. Box 157, West Prestonburg, Kentucky 41668
  (C) Explo-Midwest, Inc., P.O. Box 1826, 2803 South Rangeline, Joplin, Missouri 64801
  (D) Hazards Explosive Company, Route 1,—Box 227, Hazard, Kentucky 41701
  (E) Atlas Powder International, 16201 S.W. 95th Avenue, Miami, Florida 33157
  (F) Kinepak, Inc., P.O. Box 1155, Louisville, Texas 75067
  (G) Oriard Powder Company, P.O. Box 220, Deer Park, Washington 99006
  (H) Powder River Explosives, 1120 16th Street West, Alpine Village Center—Suite 13, Billings, Montana 59102
  (I) West Kentucky Explosives, Inc., P.O. Box 8, Madisonville, Kentucky 42431
  (J) Star Export Services, Port Bienvelle Industrial Park, P.O. Box 74, Tearlington, Mississippi 39572
  (K) West Virginia Explosives, P.O. Box 175, Glen Morgan, West Virginia 25847
(2) Tyler Pipe Industries, Inc., P.O. Box 2027, Tyler, Texas 75710

(A) Tyler Plastics, Inc., P.O. Box 2027, Tyler, Texas 75710
(B) Wade, Inc., P.O. Box 2027, Tyler, Texas 75710
(C) Tyler Pipe Industries of Texas, P.O. Box 2027, Tyler, Texas 75710
(D) Tyler Pipe Industries of Pennsylvania, P.O. Box 2027, Tyler, Texas 75710
(3) Reliance Universal, Inc., 1930 Bishop Lane, Louisville, Kentucky 40218
(A) Reliance Universal, Inc., A New Jersey Corp., Somerset Valley Industrial Campus, 100 Belmont Drive, Somerset, New Jersey 08873
(B) Reliance Universal of Ohio, 500 West Whittier Street, Columbus, Ohio 43215
(C) Reliance Universal of Louisiana, 6901 Cabalcade, Houston, Texas 77001
(D) Reliance International Sales Corp., Cypress Village Shopping Center, 5810 Miami Lake Drive West, Miami Lake, Florida 33014
(E) Reliance Universal of Puerto Rico, Inc., G.P.O. Box 3126, San Juan, Puerto Rico 00936
(F) Leeder Chemical, Inc., 16961 Knott Avenue, La Mirada, California 90636
(G) Reliance Universal, Inc. (Canada), 1001 Daniel Johnson Blvd., St. Jerome, Quebec, Canada
(H) Reliance Universal (B.C.), Ltd., 20100 No. 10 Highway, Langley, British Columbia, Canada V3A 5E7
(4) Hall-Mark Electronics Corporation, P.O. Box 222035, Dallas, Texas 75222
(5) Tyler Fuel Corporation, P.O. Box 270535, Dallas, Texas 75227
(6) Thurston Motor Lines, Inc., 600 Johnston Road, Charlotte, North Carolina 28206
(7) C & H Transportation Co., Inc., 9757 Military Parkway, P.O. Box 270535, Dallas, Texas 75227

3. This notice is submitted in behalf of the following:

C & H Transportation Co., Inc., P.O. Box 270535, Dallas, Texas 75227
Thurston Motor Lines, Inc., 600 Johnston Road, Charlotte, North Carolina 28206

1. Parent corporation and address of principal office: William R. Barnes Co. Limited, P.O. Box 260, Parkside Drive, Waterdown, Ontario L0R 2H0.

2. Wholly-owned subsidiary which will participate in the operations, and Province of incorporation: (1) William R. Barnes Quebec Limited, Parkside Drive, Waterdown, Ontario L0R 2H0, incorporated under the laws of the Province of Quebec, Canada.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-8678 Filed 4-1-82; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

FD-29850. By decision of February 26, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1151, Review Board Number 3 approved the transfer to WESTERN CARLOADING CO., INC. of Permit FF-81 sub-numbers 5, 6F, 7X, and 8 issued to CALIFORNIA WESTERN FREIGHT ASSOCIATION d.b.a. WESTERN FREIGHT ASSOCIATION which collectively authorizing a freight forwarder of *general commodities* (with named exceptions) between points in the United States. Representative: S. S. Eisen, 370 Lexington Ave., New York, NY 10017.

MC-FC-79523. By supplemental decision of March 1, 1982, issued under 49 U.S.C 10826 and the transfer rules at 49 CFR 1132. Review Board Number 3 approved the transfer to ROGER TEUT d.b.a. ROGER TUET TRUCKING, a portion of Certificate No. MC-145743 (Sub-No. 22X) issued July 1, 1981 to T. F. S., INC., authorizing the transportation of food and related products between points in Carroll, Cherokee, Crawford, Webster and Hardin Counties, IA, Sioux City, IA, Saline and Lancaster Counties, NE, Des Moines, IA and Omaha, NE on the one hand, and, on the other, points in AZ, CO, ID, NM, NV, MT, OR, WA, CA, WY, UT, NE, IN, MI, OH, PA and NY. Representative: A. J. Swanson, P.O. Box 1103, Sioux Falls, SD.

MC-FC-79529. By decision of March 1, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to AWC TRANSPORTATION CORPORATION, of Sioux Falls, SD, of Certificate No. MC-157219, issued February 24, 1982, to AMERICAN WESTERN CORPORATION, also of Sioux Falls, SD, which authorizes the transportation of *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in SD, on the one hand, and, on the other, points in the United States (except AK and HI). Representative: Foster L. Kent, P.O. Box 285, Council Bluffs, IA 51502.

Notes.—TA has not been filed. Transferee is not a carrier but is a wholly-owned subsidiary of transferor.

MC-FC-79603. By decision of February 9, 1982, at 49 CFR 1132, Review Board Number 3 approved the transfer to Exhibitors Film Service, Inc. of Indianapolis, IN, of a portion of Certificate No. MC-71452 (Sub-No. 22)X issued to Indiana Transit Service Inc. of Indianapolis, IN authorizing: (a) film, the entire equipment and supplies and printed matter service between points in

IN, and (b) film and theatre equipment and supplies radially between points in OH, KY, IL and IN. Representative: Mel P. Booker, P.O. Box 1281, Old Town Station, Alexandria, VA 22313. TA lease is sought. Transferee is not a carrier.

MC–FC–79636. By decision of March 2, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to LUND COACHES, INC., of Certificate No. MC–111662 issued August 23, 1977 to LUND BUS SERVICE, INC., authorizing the transportation of passenger and baggage, in round trip charter service, from Plainfield, IL to IN, IA, KY, MI, MO, OH, and WI subject to the following conditions if any. Representative: Jeffrey Strange, 3330 Dundee Rd., Northbrook, IL 60062.

MC–FC–79637. By decision of February 26, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to HCI, Inc., of Wrentham, MA, of Certificate No. MC–146479 (Sub-No. 13)X issued October 6, 1981, to HARRISON CARRIERS, INC., of Grafton, MA, authorizing: (a) *such commodities as are dealt in by manufacturers and distributors of automotive supplies* and (b) *materials and supplies used in the manufacturer of the commodities in (a) above,* between points in the United States. Representative: David M. Marshall, 101 State Street, Suite 304, Springfield, MA 01103; phone (413) 732–1136. TA lease is not sought. Transferee is not a carrier.

MC–FC–79647. By decision of March 1, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132. Review Board Number 3 approved the transfer to FLOOR MASTER, INC., CHATTANOOGA, TN, of Certificate No. MC–151260 (Sub 1F), issued March 9, 1981 to B & P TRUCK LINES, INC., of Chattanooga, TN, authorizing operations over irregular routes, transporting *such commodities as are dealt in or used by discount department stores, grocery stores and liquor stores* (except commodities in bulk), between Chattanooga, TN, on the one hand, and, on the other, points in the United States in and east of MN, IA, MO, AR, and TX. Representative: Blaine Buchanan, 1012 James Building, Chattanooga, TN 37402.

Note: (1) Transferee is a non-carrier. (2) TA application has not been filed.

MC–FC–79650. By decision of March 1, 1982 issued under 49 U.S.C. 10924 and the transfer rules at 49 CFR 1133, Review Board Number 3 approved the transfer to IMOGENE L. AND LLOYD D. PITTMAN d.b.a. SEE AMERICA FIRST TOURS of License No. MC–156933 issued to IMOGENE L. PITTMAN d.b.a. SEE AMERICA FIRST TOURS authorizing: Passengers and their baggager beginning and ending at points in Alexander, Avery, Burke, Caldwell, Catawba, Lincoln, Rutherford, Watauga, and Wilkes Counties, NC, and extending to points in the United States. Representative: J. G. Dail, Jr., P.O. Box 11, McLean, VA 22101.

MC–FC–79652. By decision of March 1, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132. Review Board Number 3 approved the transfer to JUPITER, A Corporation of Certificate No. MC–147045 Sub–No 2F issued to CALIFORNIA TRANSPORTATION LABOR, INC. authorizing (1) refined petroleum products, (except asphalt, fuel oils and road oils), from points in Los Angeles County, CA to points in and Nye Counties, NV, and Phoenix, Tucson, and Bull Head City, AZ, (2) refined petroleum products in bulk, (except asphalts and road oils), from points in Los Angeles County, CA, to points in Maricopa County, Casa Grande and Tucson, AZ, and (3) petroleum products, in bulk, from Phoenix, Casa Grande, and Tucson, AZ, to points in Los Angeles County, CA. Representative: Marvin Handler, 100 Pine Street, Suite 2550, San Francisco, CA 94111. TA lease is not sought. Transferee is not a carrier.

MC–FC–79655. By decision of March 1, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to THOMAS MANAGEMENT CORPORATION, of Cedar City, UT, of Certificate No. MC–102793, issued November 17, 1980, to COLOR COUNTRY TOURS, INC., of Cedar City, UT, which authorizes the transportation of the following: (A) over regular routes, *passengers and their baggage, and express, and newspapers,* in the same vehicle with passengers, between Cedar City and Lund, UT, serving all intermediate points, over UT Hwy 19 [incidental charter rights and authorized under this section of the Certificate]; and (B) over irregular routes *passengers and their baggage,* in charter operations, during the season extending from June 1 to October 1, both inclusive of each year, from the Kaibab Forest Post Office, AZ, points in the Zion National Park, points in the Cedar Breaks National Monument, and points in the Bryce Canyon National Park, UT, to specified points in CO, NM, AZ, NV and UT. Representative: Steven D. Thomas, 281 South Main Street, Box 1032, Cedar City, UT 84720.

Note.—TA has not been filed. Transferee is not a carrier.

MC–FC–79666. By decision of March 18, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to BESTWAY SYSTEMS, INC., of Lilburn, GA, of Certificate No. MC–77424 (Sub-No.55) F issued October 2, 1981, to WENHAM TRANSPORTATION, INC., of Cleveland, OH, authorizing the transportation of rubber and plastic products, metal products, and machinery between points in 30 Eastern and Midwestern States and the District of Columbia. Representative is: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–8901 Filed 4–1–82; 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 statues and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment of applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the

Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documets will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquires to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–54

Decided: March 19, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 88370 (Sub-10), filed March 11, 1982. Applicant: LANDA MOTOR LINES, 4601 Blanchard Road, Shreveport, LA 71107. Representative: William J. Wochner, 301 West 11th Street, Kansas City, MO 64105, (816) 556–0324. 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 128490 (Sub-3), filed March 10, 1982. Applicant: ROBERT J. ERICKSON, d.b.a. BOB ERICKSON TRUCKING, Rt. 2, Rush City, MN 55069. Representative: Robert J. Erickson (same address as applicant), (612) 358–4363. Transporting (1) *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, and (2) transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 160980, filed March 12, 1982. Applicant: QUICKSHOP, INC., 140 South 100 West, Hyrum, UT 84319. Representative: Michael McGill (same address as applicant), (801) 245–6018. 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).

Volume No. OP2–60

Decided: March 23, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 160873, filed March 8, 1982. Applicant: MID AMERICA EXPRESS, INC., 8730 Grant, Overland Park, KS 66212. Representative: John Sperry (same as applicant) (913) 648–6103. 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. (excluding AK and HI).

Volume No. OP4–113

Decided: March 23, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Carleton not participating.)

MC 161087, filed March 18, 1982. Applicant: AGNEW TRUCKING, 12241 10th St., Yucaipa, CA 92399. Representative: Robert A. Agnew (same address as applicant), (714) 797–7571. Transporting (1) 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), and (2) *used household good* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI).

Volume No. OP5–69

Decided: March 24, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 142189 (Sub-54), filed March 3, 1982. Applicant: C. M. BURNS, d.b.a. WESTERN TRUCKING, P.O. Box 980, Baker, MT 59313. Representative: James B. Hovland, 525 Lumber Exchange Bldg., Minneapolis, MN 55402, 612–340–0808. Transporting, for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (including AK but excluding HI).

MC 160938, filed March 10, 1982. Applicant: CHARLES M. FARRIS, 7614 NE 147th Ave., Vancouver, WA 98662. Representative: Charles M. Farris (same address as above), (206) 256–4649. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, 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. OP5–71

Decided: March 26, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 120618 (Sub-30), filed March 15, 1982. Applicant: SCHALLER TRUCKING CORPORATION, 5700 W. Minnesota St., Indianapolis, IN 46241. Representative: Stephen M. Gentry, 55 S. Harding St., Indianapolis, IN 46222, (317) 637–7385. Transporting *shipments weighing 100 pounds of 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 161109, filed March 19, 1982. Applicant: DONALD R. BOYDEN, d.b.a. BOYDEN TRUCKING, 101 Indiana Ave., Platte, SD 57369. Representative: Donald R. Boyden (same address as above), (605) 337–3808. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S., (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-8903 Filed 4-1-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Attorney General

Consent Decree Amendment Pursuant to Steel Industry Compliance Extension Act of 1981; U.S. v. Ford Motor Co.

In accordance with Departmental policy, 28 CFR § 50.7, 38 FR 19029, notice is hereby given that on March 24, 1982 a proposed consent decree amendment in *United States* v. *Ford Motor Company*, Civil Action No. 81-70392, was lodged with the United States District Court for the Eastern District of Michigan, Southern Division. The proposed decree amendment provides for the extension of certain final compliance dates pursuant to the Steel Industry Compliance Extension Act of 1981 (Pub. L. 97-23; 42 U.S.C 7413(e)). See generally, 46 FR 62356.

The Department of Justice will receive for a period of thirty (30) days from the date of lodging comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *Ford Motor Company and Rouge Steel*, D.J. Ref. 90-5-1-141.

A proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Michigan, Southern Division, Eighth Floor, United States Courthouse, 231 W. Lafayette, Detroit, Michigan 48226, at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.80 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82-8865 Filed 4-1-82; 8:45 am]

BILLING CODE 4410-01-M

DRUG ENFORCEMENT ADMINISTRATION

McNeilab, Inc.; Approval of Registration

On July 2, 1981, the Drug Enforcement Administration gave notice that McNeilab, Inc., 803 East Fourth Street, Wilmington, Delaware 19801, had applied for registration as an importer and bulk manufacturer of certain controlled substances. The notices concerning these applications were published in the **Federal Register**, Volume 46, pages 34732 and 34733.

On January 7, 1982, the Drug Enforcement Administration gave notice that the above applicant was granted registration as an importer and bulk manufacturer of certain controlled substances contingent upon the successful completion of all necessary actions outlined in the applications and the ultimate approval of these actions by the Drug Enforcement Administration. The notice concerning this contingent approval was published in the **Federal Register**, Volume 47, page 875.

On March 19, 1982, an inspection of the applicant's Wilmington, Delaware facility revealed that all necessary actions had been successfully completed. The Acting Administrator hereby orders that the applications submitted by the above firm for registration as an importer and bulk manufacturer are granted.

Dated: March 30, 1982.

Francis M. Mullen, Jr.,

Acting Administrator.

[FR Doc. 82-8862 Filed 4-1-82; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 15, 1982–March 19, 1982.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-11,847; Saywood Sportswear, Inc., New York, NY
TA-W-12,163; Tri City Sportswear, Inc., Cohoes, NY
TA-W-11,897; Wells Manufacturing Corp., Fond Du Lac, WI
TA-W-12,173; Snob Fashions, Inc., Jersey City, NJ
TA-W-11,445; Thompson Steel Co., Inc., Franklin Park, IL
TA-W-12,442; Rico Fashions, Inc., Jersey City, NJ
TA-W-11,289; McCord Gasket Div., Ex-Cell-O Corp., Wyandotte, MI
TA-W-12,070; Hamilton Digital Controls, Inc., Utica, NY
TA-W-11,703; AMF, Inc., Wheel Goods Div., Little Rock, AR Warehouse
TA-W-11,704; AMF, Inc., Wheel Goods Div., Little Rock, AR Plant
TA-W-11,837; Moss Sportswears, Inc., Baltimore, MD
TA-W-12,275; Bristol Locknut Co., Madison Heights, MI
TA-W-12,099; Oak Rubber Co., Oak Medical Supply Co., Ravenna, OH
TA-W-11,909; Arvin Industries, Inc., Arvinyl Div., Columbus, IN
TA-W-11,834; Fashiuons By Ande, Inc., Bayside, NY
TA-W-12,245; The Varbros Corp., Cleveland, OH
TA-W-12,459; Del-Ba Coat, Inc., Hoboken, NJ
TA-W-12,529; Tilton Spongers Corp., Hammonton, NJ
TA-W-12,532; William B. Kessler, Inc., Hammonton, NJ
TA-W-12,533; Decision Makers, Inc., Hammonton, NJ
TA-W-11,356; Long Island City Coat & Suit Corp., Long Island City, NY
TA-W-11,584 and 11,585; Tommy Alpren Togs, Inc., New York, NY Plants
TA-W-11,597; Peterson Spring Corp., Three Rivers, MI
TA-W-11,581; Melville Corp., Miller Shoe Co., Brunswick, ME
TA-W-11,675; Clover Fashions, Inc., Newark, NJ
TA-W-12,006; Mario Sportswear Co., Inc., Boston, MA
TA-W-12,271; Morgan Shirt Co., Morgantown, WV

TA-W-12,253; Homemaker Industries, Inc., Chicago, IL
TA-W-12,858; Homemarker Industries, Inc., Salem, IL
TA-W-12,622; Duvid Sportswear, Reading, PA
TA-W-11,906; Russell, Burdsall & Ward Corp., Los Angeles, CA
TA-W-10,633; Indianapolis Glove Co., Noxapater, MS
TA-W-12,038; United Industries Sindicate, Inc., Airtex Products Div., Fairfield, IL
TA-W-11,530; Industrial Electronic Rubber Co., Twinsburg, OH
TA-W-12,228; Cinderella Knitting Mills, Inc., Moss Point, MS
TA-W-12,247; Anderson Development Corp., Miami AZ
TA-W-12,395; Bendex Corp., Cleveland, TN

In the following case the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-12,534; Abbot Fabrics, Inc., Dunnellen, NJ
TA-W-11,678; H & D Sportwear, Inc., West Paterson, NJ
TA-W-*11,226; Galileo Electro/Optics Corp., Wannamassa, NJ
TA-W-11,238; FMC Corp., Specialty Chemical Div., Buffalo, NY
TA-W-12,399; J. X. Palms Co., Mount Clemens, MI
TA-W-12,630; American Steel Foundries, Alliance, OH
TA-W-12,531; Wasser & Fluhrer, Inc., Kalama, WA
TA-W-12,525; Alpha Portland Cement Co., Jamestown, NY
TA-W-12,417; Suzette Fashions, Jersey City, NJ
TA-W-12,849; Suzette Fashions, New York, NY

In the following case the investigation revealed that criterion (3) had not been met for the reason specified.

TA-W-12,704; Allegheny Foundry Co., Bolivar, PA

Aggregate U.S. imports of iron castings did not increase as required for certification.

Affirmative Determinations

TA-W-12,235; Litton Systems, Inc., Triad-Utrad Div., Huntington, IN

A certification was issued in response to a petition received on February 2, 1981 covering all workers separated on or after January 29, 1980 and before December 31, 1980.

TA-W-11,586; Twine Products Corp., New Orleans, LA

With respect to workers producing agricultural hard fiber twine, a certification was issued in response to a petition received on October 29, 1980 covering those workers separated on or after April 1, 1980.

TA-W-11,875; Meco Knitting Mills, Brooklyn, NY

A certification was issued in response to a petition received on December 1, 1980 covering all workers separated on or after June 27, 1980 and before January 1, 1981.

TA-W-11,684; Char-Len Handbags, Inc., New Haven, CT

A certification was issued in response to a petition received on November 10, 1980 covering all workers separated on or after December 14, 1980.

TA-W-11,757; Smart Maid Coat & Suit Corp., New York, NY

A certification was issued in response to a petition received on November 19, 1980 covering all workers separated on or after November 14, 1979.

I hereby certify that the aforementioned determinations were issued during the period March 15–19, 1982. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW, Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 23, 1982.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-8853 Filed 4-1-82; 8:45 am]
BILLING CODE 4510-30-M

Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or impove facilities at the locations listed. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment of business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, The Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.
2. Employment trends in the same industry in the local area.
3. The potential effect of the new facility upon the local labor market with particular emphasis upon its potential impact upon competitive enterprises in the same areas.
4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).
5. In the case of application involving the establishment of branch plants or facilities, the potential effect of such new facilities in other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication on this notice. Comments received after the two-week period may not be considered. Send comments to: David O. Williams, Administrator, U.S. Employment Service, Employment and Training Administration, 601 D Street, NW., Room 8000—Patrick Henry Building, Washington, D.C. 20213.

Signed at Washington, D.C., this 29th day of March 1982.

J. Terrell Whitsitt,
Director, Office of Program Service.

Applications Received During the Week Ending April 3, 1982

Name of Applicant, Location of Enterprise, and Principal Product or Activity

Sargento Cheese Company, Inc., Plymouth and Elkhart Lake, Wisconsin—Manufacturing of cheese products.

[FR Doc. 82-8849 Filed 4-1-82; 8:45 am]
BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a)

of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 12, 1982.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 12, 1982.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 22d day of March 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Albany International, Appleton Wire Division (workers)	Appleton, Wis	3/17/82	3/11/82	TA-W-13,353	Cloth—wire, fourdriner.
Ford Motor Credit Co. (workers)	Springfield, Mass	3/16/82	3/8/82	TA-W-13,354	Financing—auto.
General Electric Co., Semiconductor Products Department (IAMAW).	Auburn, N.Y.	3/12/82	3/5/82	TA-W-13,355	Semiconductors and silicon products.
H. W. Gossard, Inc. (workers)	Malden, Mo	3/4/82	2/25/82	TA-W-13,356	Lingerie—ladies.
Rhone-Poulenc (OCAW)	New Brunswick, N.J.	3/11/82	2/22/82	TA-W-13,357	Chemicals—aroma.

[FR Doc. 82-8850 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-11,010]

Cal Feather Products; Sand City, Calif.; Revised Determination on Reconsideration

On November 25, 1981, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at Cal Feather Products' plant in Sand City, California.

The petitioners claim that Cal Feather's sole customer of covers for musical instruments switched its purchases of covers away from Cal Feather to a plant in Mexico resulting in worker separations and a decrease in production.

On reconsideration, the Department found that the worker petition had, in fact, met the "contributed importantly" test of Section 222 of the Trade Act of 1974. Cal Feather's sole customer for covers contracted with a firm in Mexico for the production of covers for musical instruments. Also, the Department found, on reconsideration, that the production of musical covers at Cal Feather Products accounted for a substantial amount of production costs in 1980 and that the workers producing musical covers are separately identifiable.

Conclusion

After careful review of the facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with covers for musical instruments produced at Cal Feather Products contributed importantly to the decline in sales or protection and to the total or partial separation of workers and former workers at Cal Feather Products, Sand City, California. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Cal Feather Products, Sand City, California who were engaged in employment related to the production of covers for musical instruments and who became totally or partially separated from employment on or after January 1, 1980 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 18th day of March 1982.

Robert S. Kenyon,

Deputy Director, Office of Program Management Unemployment Insurance Service.

[FR Doc. 82-8851 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-13,080]

Long Island Coat and Suit Co., Long Island City, New York; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 30, 1981 in response to a worker petition received on October 29, 1981 which was filed by the International Ladies' Garment Workers Union on behalf of workers at Long Island Coat and Suit Company, Long Island City, New York.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-11,356). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 4th day of March 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-8852 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-12,567]

Sjoblom Shake Mill; Winlock, Washington; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 6, 1981 in response to a worker petition received on March 30, 1981 which was filed on behalf of workers at Sjoblom Shake Mill, Winlock, Washington.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, D.C. this 4th day of March 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-8854 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-13,052]

S.M. Astro Drilling & Blasting Co., Inc.; Kingston, New York; Affirmative Determination Regarding Application for Reconsideration

By an application dated January 22, 1982, counsel for the union requested adminstrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for former workers of S.M. Astro Drilling & Blasting Company, Inc., Kingston, New York. The determination was published in the **Federal Register** on December 29, 1981 (46 FR 62972).

The application for reconsideration claims that workers of S.M. Astro should be considered in the same light as workers directly employed by the Independent Cement Corporation as being engaged in the production of "articles" within the meaning of the Trade Act of 1974. Workers at Independent Cement are certified for trade adjustment assistance (see TA-W-9530A-C).

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 18th day of March 1982.

Robert S. Kenyon,

Deputy Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 82-8855 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-82-26-C]

Kentland Elkhorn Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kentland Elkhorn Coal Corporation, P.O. Box 500, Mouthcard, Kentucky 41548 has filed a petition to modify the application of 30 CFR 75.329-1 (sealing or ventilation of pillared or abandoned area) to its Cain Branch Mine located in Pike County, Kentucky. 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 for sealing or ventilating abandoned areas of the mine—E, F, G, H and I panels at this mine.

2. The mine has never been considered gaseous; no methane or other explosive gases have ever been detected.

3. The mine was designed to use the existing portals for ventilation and to maintain two separate return airways, one on each side ventilating directly to the surface. The ventilation system is a blowing type using the fishtail system of ventilation with a fan capacity of 150,000 c.f.m. This ventilation system establishes positive pressure on the outby stoppings constructed between the mine's returns on the right side of the panels stated above.

4. The mine is located above the water table; water is roofed in these panels where the coal seams drop in elevation, thereby effectively sealing those panels.

5. As an alternative methods, petitioner proposes to establish a checkpoint off the immediate return air entry at the mouth of each panel in question. These checkpoints will be checked weekly for air quality, and the results recorded in an approved book at the mine site.

6. Petitioner states that this proposed alternative method will provide the same degree of safety for the miners affected as that afforded by 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 May 3, 1982. Copies of the petition are available for inspection at that address.

Dated: March 24, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-8852 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-14-C]

Preece Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Preece Coal Company, Inc., Route 2, P.O. Box 5, Turkey Creek, Kentucky 41570 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 4 Mine located in Pike County, Kentucky. 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 cabs or canopies be installed on the mine's scoops, shuttle cars, continuous miner and roofbolter.

2. The coal seam ranges from 43 to 46 inches in height with ascending and descending grades creating dips in the coal bed.

3. Installation of canopies on the mine's equipment specified above would limit the equipment operator's visibility and result in a cramped operator position, increasing the chances of an accident.

4. 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 May 3, 1982. Copies of the petition are available for inspection at that address.

Dated: March 24, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-8858 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-18-C]

Sahara Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Sahara Coal Co., Inc., Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 7 (I.D. No. 11-02770), Mine No. 20 (I.D. 11-00766), Mine No. 21 (I.D. No. 11-00784), and its Mine No. 22 (I.D. No. 11-02684), all located in Saline County, Illinois. 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 use of a locked padlock to secure screw caps in place on plugs of a battery-operated S & S scoop tractor.

2. Petitioner states that there is an element of danger in having plugs locked together in the event of a short circuit or a fire occurring in the scoop's electrical components.

3. As an alternative method, petitioner proposes that a self-snapping harnass snap device be used, in lieu of a padlock This modified locking device will serve the same purpose as a padlock; it could not fall out of

place and could be removed quickly in the event of an emergency.

4. Petitioner states that the proposed alternative method will provide the same measure of safety for the miners affected as that afforded by 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 May 3, 1982. Copies of the petition are available for inspection at that address.

Dated: March 24, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-8859 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-10-C]

South Hopkins Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

South Hopkins Coal Company, P.O. Box 554, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.803 (fail safe ground check circuits on high-voltage resistance grounded systems) to its Mine No. 4 located in Hopkins County, Kentucky. 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 high-voltage, resistance grounded systems include a fail safe ground check to monitor continuously the grounding circuit to assure continuity. The fail safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken.

2. The overland 7200 volt 3 phase circuit used at the mine supplies power to the underground oil circuit breaker and consists of 3 phase conductors, one of which is neutral (ground). This line is a continuation of power from the South Hopkins #2 mine power transformer station approximately 4,000 feet from the #4 mine underground oil circuit breaker and breakers which serve the fan and surface facilities. The line is suspended on poles approximately 300 feet apart. The ground conductor is grounded at alternate poles along the line. The ground conductor is continuous back to the grounded side of the grounding resistor located at the #2 mine substation. This line is strung on open terrain and in a triangular configuration having neutral (ground) conductors on the bottom side of the phase conductors which makes the entire length of line accessible and the ground conductor visible.

3. When a ground fault condition occurs inby the underground oil circuit breaker at the mine, an instantaneous tripping of this breaker occurs through the current transformer ground fault sensing device of this breaker. This does not cause a trip of the oil circuit breaker at the originating end of the overland 7200 volt line, and does not cause an interruption of power to the mine ventilation fan or surface facilities.

4. The type of ground check monitor systems now available are very susceptible to outages caused by strong currents burning out the small rectifiers that provide the low voltage for the circuit. This line, open to the atmosphere, is subject to electical currents caused by lightning striking anywhere within a proximity of the line. Petitioner states that failure of this system would interrupt power to the mine ventilation fan and due to the nature of the most common cause of failure (an electrical storm), it would be very hazardous for an electrician to repair at the time of failure.

5. As an alternative method, petitioner proposes to install a ground field bed of less than 4 ohms to earth at the site of the oil circuit breaker for the mine and to visually inspect the full length of this line on a weekly basis to be sure that the line is in good and safe condition. The inspection will be performed by a qualified person as required by subpart B of 30 CFR 77.103.

6. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by 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 May 3, 1982. Copies of the petition are available for inspection at that address.

Dated: March 24, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-8860 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 82-51; Exemption Application No. D-1572]

Exemption From the Prohibitions for Certain Transactions Involving the RREEF Corp., Located in San Francisco, Calif.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption allows collective investment funds (together, the Funds) that are managed by the RREEF Corporation or any of its affiliates, in which employee benefit plans participate, to engage in certain transactions provided specified conditions are met.

EFFECTIVE DATE: This exemption is effective October 20, 1981.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 20, 1981, notice was published in the **Federal Register** (46 FR 51510) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for transactions described in an application filed on behalf of the RREEF Corporation, its affiliates and the Funds. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicants have represented that they have complied with the notice to interested persons requirement as set forth in the notice of proposed exemption.

The Department received comments from three interested persons with respect to the proposed exemtion. No requests for a public hearing were received by the Department.

One commentator requested that the Department issue a class exemption for all collective investment funds that are not maintained by banks, but which are managed by registered investment advisers under the Investment Advisers Act of 1940 and whose participants are

large tax-exempt organizations making long-term investments. The Department maintains the position set forth in the Preamble section of the notice of proposed exemption that relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis. The Department finds that the record is still insufficient to determine the nature of the funds and the entities managing the funds which would be covered by such a broad class exemption.

A second commentator objected to language in the proposed exemption which states that one of the Funds, RREEF–I, is a closed-end investment fund which acts as a title-holding corporation. The commentator remarked that all the funds are group trusts and that the above language is therefore misleading. The applicants have represented, however, that some of the Funds are organized in corporate form while others are organized in the form of group trusts. Properties owned by the Funds organized in the form of group trusts may be held by title-holding corporations which are exempt from tax under section 501(c)(2) of the Code. The applicants represent that notwithstanding this difference in legal structure between some of the Funds, the purpose, investment objectives and operations of all of the Funds are substantially the same.

The third comment was submitted by the applicants. Since the date of the applicants' last correspondence with the Department, another affiliate of the RREEF Corporation, RREEF America Partners, has been formed. It is operated in substantially the same manner as RREEF Corporation and its other affiliates. In addition, three more Funds have been recently established. These include RREEF West–V, RREEF MidAmerica Fund–II, and RREEF USA Fund–II. The management and operation of these Funds is essentially the same as that of the Funds specifically named in the proposed exemption. The applicants requested that RREEF America Partners and these three recently established Funds be included within the final exemption, and they are hereby included.

The applicants also requested that the exemption apply to affiliates of the RREEF Corporation and Funds not in existence as of the date of publication of this exemption. The Department takes the position that to the extent a future affiliate of the RREEF Corporation is operated under essentially the same methods of operation as RREEF Corporation and its present affiliates, it is intended that such future affiliate be encompassed by the exemption. In addition, to the extent that a Fund created in the future is managed and operated in essentially the same manner as the current Funds, such future Fund is intended to be encompassed within the exemption.

The applicants also requested that the effective date of the exemption be established so that the exemption will apply to the acquisition of One Main Place, a 33 story office building located in Dallas, Texas, by RREEF USA Fund–II. RREEF USA Fund–II made a formal offer to purchase the building on November 19, 1981 for $71,500,000, a price that was acceptable to the owner of the building, the Equitable Life Assurance Society of the United States (Equitable). RREEF America Partners, the investment manager for RREEF USA Fund–II, believes the building represents an excellent investment opportunity for RREEF USA Fund–II. However, Equitable manages assets for several plans that have subscribed to invest in RREEF USA Fund–II (although it does not manage plan assets that will be invested in RREEF USA Fund–II) and, thus, is a party in interest with respect to those plans. Because it was important to Equitable that the closing occur on or before December 31, 1981, the closing was scheduled for December 22, 1981. Accordingly, the applicants requested that the effective date of the exemption be established at the date of publication of the notice of pendency. The Department has accepted this request, and, accordingly, this exemption is effective October 20, 1981.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited, transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the plans participating in the Funds and their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plans participating in the Funds.

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1

Section I. Exemption for Certain Transactions Involving the Fund

(a) Effective October 20, 1981, the restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions Between Parties In Interest and the Fund: General*

Any transaction between a party-in-interest with respect to a plan that is

participating in the Fund (a Participating Plan) and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if the party in interest is not the RREEF Corporation or one of its affiliates and if, at the time of the transaction, acquisition or holding, the interest of the plan, together with the interests of any other plans maintained by the same employer or employee organization in the Fund, does not exceed 5 percent of the total of all assets in the Fund.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiple Employer Plan and the Fund.*

Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiple employer plan that is a Participating Plan and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

(A) The interest of the multiple employer plan in the Fund does not exceed 10 percent of the total assets in the Fund, and the Employer is not a "substantial employer" with respect to the plan (within the meaning of section 4001(a)(2) of the Act), or

(B) The interest of the multiple employer plan in the Fund exceeds 10 percent of the total assets in the Fund, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" within the meaning of section 4001(a)(2) of the Act if "5 percent" were substituted for "10 percent" in that definition.

(3) *Acquisitions, Sales or Holdings of Employer Securities and Employer Real Property.*

(A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Fund which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this Section I, if no commission is paid to RREEF Corporation or to the employer, or any affiliate of RREEF Corporation or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither RREEF Corporation nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either:

1. The Fund owns the obligation at the time the plan acquires an interest in the Fund, and interests in the Fund are offered and redeemed in accordance with valuation procedures of the Fund applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation: (a) not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and (b) in the case of an obligation that is a restricted security within the meaning of Rule 144 under the Securities Act of 1933, at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. RREEF Corporation, its affiliates and any collective investment fund maintained by RREEF Corporation or its affiliates shall be considered to be persons independent of the issuer if RREEF Corporation is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which RREEF Corporation or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which RREEF Corporation or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party-in-interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14)(E), (G), (H) or (I) of the Act.

(b) Effective October 20, 1981, the restrictions of section 406(a)(1)(A), (B), (C), and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section III are met.

(1) *Transactions with Persons Who Are Parties in Interest With Respect to a Participating Plan Solely by Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers.*

Any transaction between the Fund and a person who is a party-in-interest with respect to a Participating Plan that has an interest in the Fund, if—

(A) The person is a party-in-interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Fund, and

(B) The person is not an affiliate of RREEF Corporation.

(2) *Certain Leases and Goods.*

The furnishing of goods to the Fund by a party-in-interest with respect to a Participating Plan or the leasing of real property owned by the Fund to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund;

(B) The party-in-interest is not RREEF Corporation, any affiliate of RREEF Corporation, or one of the other Funds; and

(c) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party-in-interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(3) *Management of Real Property.*

Any services provided to the Fund by RREEF Corporation or by an affiliate of RREEF Corporation in connection with the management of the real property owned by the Fund, if the compensation paid to RREEF Corporation or its affiliate does not exceed the cost of the services to RREEF Corporation or its affiliate.

(4) *Transactions Involving Places of Public Accommodation.*

The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party-in-interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) Effective October 20, 1981, the restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if (1) the acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Fund; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section III of this exemption are met.

Section III—General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of RREEF Corporation or its affiliate, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) RREEF Corporation or its affiliate maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of RREEF Corporation or its affiliate, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Fund of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of RREEF Corporation or its affiliate, or commercial or financial information which is privileged or confidential.

Section IV—Definitions and General Rules

For the purposes of this exemption,

(a) An "affiliate" of a person includes—

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) any officer, director, employee, relative of, or partner in any such person, and

(3) any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(d) The term "multiple employer plan" means an employee benefit plan that satisfies at least the requirements of section 3(37)(A)(i), (ii) and (v) of the Act and section 414(f)(1)(A), (B) and (E) of the Code.

(e) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to a holding exempt by virtue of Section I(a)(1) at such time as the interest of the Participating Plan exceeds the percentage interest limitation of Section I(a)(1), unless no portion of such excess results from an increase in the assets allocated to the Fund by the Participating Plan. For this purpose, assets allocated do not include the reinvestment of Fund earnings. Nothing in this paragraph (e) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(f) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this exemption.

Signed at Washington, D.C., this 29th day of March, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Program, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-8905 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-62; Exemption Application No. D-3078]

Exemption From the Prohibitions for Certain Transactions Involving the McGuire Lumber Company, Inc. Pension Plan Located in Yakima, Washington

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits a loan (the Loan) by the McGuire Lumber Company, Inc. Pension Plan (the Plan) of $125,000 to McGuire Lumber Company, Inc. (the Employer), a party in interest with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the **Federal Register** (47 FR 5545) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the applications of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed by the Plan trustees. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been provided to interested persons in compliance with the requirements set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978 transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Loan of $125,000 by the Plan to the Employer, provided the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time the transaction is consummated.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 30th day of March 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-8806 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-61; Exemption Application No. D-2869]

Exemption From the Prohibitions for Certain Transactions Involving Pezrow Companies Profit Sharing Plan Located in Montvale, New Jersey

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption will permit (1) the proposed loan of $700,000 (the Loan) by the Pezrow Companies Profit Sharing Plan (the Plan) to Pezrow Enterprises, Inc. (Pezrow), a party in interest with respect to the Plan; and (2) the guarantee of Pezrow's obligations pursuant to the Loan by Ken J. Pezrow Corporation (the Employer), the Plan sponsor.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216. (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the **Federal Register** (47 FR 5522) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of

the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the above-described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the applications for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been provided to all interested persons in accordance with the requirements set forth in the notice of proposed exemption. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (E) of the Code, shall not apply to (1) the Loan by the Plan to Pezrow provided that the terms and conditions of the Loan are not less favorable to the Plan than those obtainable in a similar transaction with an unrelated party; and (2) the guarantee of Pezrow's obligations under the Loan by the Employer.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 30th day of March, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-8907 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-60; Exemption Application No. D-2793]

Exemption From the Prohibitions for Certain Transactions Involving Charter Mortgage Co., Located in Jacksonville, Florida

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits: (1) Transactions relating to the origination, maintenance and termination of mortgage pool investment trusts (Mortgage Pools) sponsored by Charter Mortgage Company (Charter); and (2) the acquisition and holding of certain multi-family dwelling mortgage-backed pass-through certificates (Certificates) of Mortage Pools under certain circumstances by employee benefit plans (Plans) when Charter or Chemical Bank, the trustee (Trustee) of the Mortgage Pools, is a party in interest with regard to the Plans.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the **Federal Register** (47 FR 5502) of the pendency before the Department of Labor (the Department) of a proposal to grant and exemption from the restrictions of sections 406(a), 406(b)(1) and (2) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resultine from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the above-described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1982, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieves a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

According the restrictions of sections 406(a), 406(b)(1) and (2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Mortgage Pools:

(1) The direct or indirect sale, exchange or transfer of Certificates in the initial issuance of Certificates between Charter and a Plan when Charter or the Trustee of such Pool is a party in interest with respect to such Plan provided that the Plan pays no more than fair market value for such Certificates, and provided further that the rights and interests evidenced by such Certificates are not subordinated to the rights and interests evidenced by other Certificates of the same Mortgage Pool; and

(2) The continued holding of Certificates acquired pursuant to subparagraph (1) above, by a Plan.

B. The restrictions of sections 406(a), 406(b)(1) and (2) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the following transactions involving Mortgage Pools:

(1) The direct or indirect sale, exchange or transfer of Certificates in the initial issuance of Certificates when Charter or the Trustee is a fiduciary with respect to the Plan assets invested in such Certificates provided:

(a) Such sale, exchange or transfer is expressly approved by a fiduciary independent of Charter or the Trustee who has authority to manage and control those Plan assets being invested in such Certificates;

(b) The Plan pays no more for the Certificates than would be paid in an arm's-length transaction with an unrelated party;

(c) No investment management advisory or underwriting fee or sales commission or similar compensation is paid to Charter with regard to such sale, exchange or transfer;

(d) The total value of Certificates purchased by a Plan does not exceed 25% of the amount of the issue; and

(e) At least 50% of the aggregate amount of the issue is acquired by persons independent of Charter or the Trustee.

C. The restrictions of sections 406(a), 406(b)(1) and (2) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to transactions in connection with the servicing and operation of a Mortgage Pool provided that:

(1) Such transactions are carried out in accordance with the terms of the Pooling and Servicing Agreement; and

(2) Such Pooling and Servicing Agreement is made available to investors for their review before they purchase Certificates issued by the Mortgage Pool.

D. The restrictions of sections 406(a) and 407(a) of the Act and taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a Plan by virtue of providing services to the Plan (or who has a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act, solely because of the ownership of a Certificate by such Plan.

II. General Conditions

A. The relief provided under section I. above, is available only if the following conditions are met:

(1) The Trustee for each Mortgage Pool must not be an affiliate of Charter provided, however, that the Trustee shall not be considered to be an affiliate of Charter solely because the Trustee has succeeded to the rights and responsibilities of Charter pursuant to the terms of the Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by Charter; and

(2) The sum of all payments made to and retained by Charter in connection with a Mortgage Pool and all funds inuring to the benefit of Charter as a result of the administration of the Mortgage Pool must represent not more than adequate consideration for selling the Certificates and underwriting the sale of the Certificates, plus reasonable compensation for services provided by Charter to the Mortgage Pool.

III. Definitions

A. For the purposes of this exemption, the term "Mortgage Pool" means an investment pool the corpus of which

(1) Is held in trust; and

(2) Consists solely of

(a) Interest bearing obligations secured by multi-family residential property;

(b) Property which had secured such obligations and which has been acquired by foreclosure; and

(c) Undistributed cash.

B. For the purposes of this exemption, the term "Certificate" means a certificate representing a beneficial undivided fractional interest in a Mortgage Pool and entitling the holder of such Certificate to pass-through payment of principal and interest from the Pooled mortgage loans, less any fees retained by Charter.

C. For the purposes of this exemption the term "affiliate" of another person means:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(ii) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(iii) Any corporation or partnership of which such other persons is an officer, director or partner.

For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

D. For the purposes of this exemption, a person will be "independent of Charter or the Trustee" only if:

(1) Such person is not an affiliate (as defined in paragraph III(C) of this exemption) of Charter or the Trustee; and

(2) Neither Charter nor the Trustee, nor any affiliate thereof, is a fiduciary who has investment management authority or renders investment advice with respect to any of the assets of such person.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 30th day of March, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-89.8 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-59; Exemption Application No. D-2770]

Exemption From the Prohibitions for Certain Transactions Involving the Tip Top Poultry, Inc. Profit Sharing Plan Located in Marietta, Georgia

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the cash sale by the Tip Top Poultry, Inc. Profit Sharing Plan (the Plan) to Tip Top Poultry, Inc. (the Employer) of an undivided one-half interest held by the Plan (the Plan's Interest) in certain unimproved real property (the Real Property).

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216. (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the **Federal Register** (47 FR 5534) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed on behalf of the Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been provided to interested persons in accordance with the requirements set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and tihe exemption is being granted solely be the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in

ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan to the Employer of the Plan's Interest in the Real Property located in Cobb County, Georgia, for $156,250 provided this amount is not less than the fair market value at the time of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 30th day of March, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–8909 Filed 4–1–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–58; Exemption Applications Nos. D–2724, D–2725, D–2726, D–2727 and D–2728]

Exemption From the Prohibitions for Certain Transactions Involving Ern Construction Co., Inc., Profit Sharing Plan, Located in New Jersey, et. al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: In the matter of Exemption from the prohibitions for certain transactions involving Ern Construction Co., Inc., Employees' Profit Sharing Plan; Pollution Control Co., Inc., Employees' Profit Sharing Plan; Gordon's Corner Water Co., Employees' Profit Sharing Plan; Gordon's Corner Water Co., Money Purchase Retirement Plan; A. C. Schultes & Sons, Inc. pension Plan, (collectively, the Plans). This exemption would exempt loans totalling $463,500 by the Plans to Gordon's Corner Water Company (Gordon's Corner), a party in interest with respect to the Plans and the guarantee of repayment by all the stockholders of Gordon's Corner (the Stockholders).

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523–8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the **Federal Register** (47 FR 5507) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b) (1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the transactions described in an application filed by legal counsel for the Plans. The notice sets forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been furnished to interested persons in compliance with the requirements set forth in the notice of proposed exemption. No public comments and no requests for a hearing were received by the Department.

The notie of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1) (F) of the Code.

(3) This exemption is supplemental to, and not in deregation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinatins:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to loans totalling $463,500 by the Plans to Gordon's Corner and to the personal guarantee of repayment by the Stockholders, provided that the terms of the transactions are not less favorable to the Plans than those obtainable in an arms-length transaction with an

unrelated party at the time of consummation of the transactions.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 30th day of March 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-8910 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-52; Exemption Application No. D-2581]

Exemption From the Prohibitions for Certain Transactions Involving Bee Line Cooling, Ltd., Employees Pension Plan Located in Bronx, New York

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits, effective January 1, 1981 and for a period two years thereafter, the lease (the Lease) of certain real properties (the Bee Line Stores) by the Bee Line Cooling, Ltd., Employees Pension Plan (the Plan) to Bee Line Cooling, Ltd. (the Employer), the sponsor of the Plan.

EFFECTIVE DATE: The effective date of this exemption is January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the **Federal Register** (47 FR 5497) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) Code, for certain transactions described in an application filed by the trustees of the Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that they have complied with the provisions for notification to interested persons as described in the notice of pendency. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption of transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the applications of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply effective January 1, 1981 and two years thereafter, to the Lease of the Bee Line Stores by the Plan to the Employer provided the terms and conditions of the Lease are as favorable to the Plan as the Plan could obtain in an arm's length transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 26th day of March, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-8911 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-53; Exemption Application No. D-2715]

Exemption From the Prohibitions for Certain Transactions Involving the John Wieland Homes, Inc. and Affiliated Companies Profit Sharing Plan Located in Atlanta, Georgia

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits, for a period of five years, certain loans of money by the John Wieland Homes, Inc.

and Affiliated Companies Profit Sharing Plan (the Plan) to John Wieland Homes, Inc. (the Employer), the sponsor of the Plan.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523–8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the **Federal Register** (47 FR 5516) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of sections 4975(c)(1)(A) through (E) of the Code, for certain transactions described in an application filed by the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements of notification to interested persons as described in the notice of pendency. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason or sections 4975(c)(1)(A) through (E) of the Code, shall not apply for a five-year period to the loans of amounts of money by the Plan to the Employer, provided that the outstanding balances of such loans at no point in time exceed 30% or the assets of the Plan and that the terms of the loans are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 26th day of March 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–8912 Filed 4–1–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–56; Exemption Application No. D–2143]

Exemption From the Prohibitions for Certain Transactions Involving CCR Marine, Inc. Profit Sharing Plan and Trust Located in Seattle, Washington

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption would exempt: (1) The proposed sale to CCR Marine, Inc. Profit Sharing Plan and Trust (the Plan) of an interest in land sale contracts by CCR Marine, Inc. (the Employer); and (2) an extension of credit resulting from an agreement by officers and shareholders of the Employer to place collateral with an independent trustee for purposes of securing the Plan's interest in the event of default.

FOR FURTHER INFORMATION CONTACT: C. E. Beaver of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. (202) 523–8671. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the **Federal Register** (47 FR 5500) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the transactions described in the application filed by the Employer.

The notice set forth a summary of facts and representations contained in the application for exemption and

referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice of pendency of the exemption as published in the Federal Register on February 5, 1982, has been given to interested parties as required by the regulations. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disaqalified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact that the transaction is the subject of an exemption affect the requirement of section 410(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the sale by the Employer of its interest in the 1971 and 1977 real estate contracts; and (2) the guarantee of the Plan's interest in the 1971 and 1977 real estate contracts by Jack E. Chambers, Ralph Chambers, and Norman Runions.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 30th day of March 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Department of Labor.

[FR Doc. 82-8913 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-55; Exemption Application No. D-2926]

Exemption From the Prohibitions for Certain Transactions Involving the RREEF MidAmerica Fund-II, Located in Chicago, Illinois

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption exempts the purchase of a shopping center by RREEF MidAmerica Fund–II (the Fund) from an unrelated party, and the assumption by the Fund of existing leases to Household Finance Corporation (HFC) and its subsidiary, T.G.&Y. Stores Company (TGY), parties in interest with respect to one of the employee benefit plans participating in the Fund.

EFFECTIVE DATE: This exemption is effective July 30, 1981.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the Federal Register (47 FR 55245) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for transactions described in an application filed on behalf of RREEF MidAmerica, the Fund's investment manager. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements of the notice to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 or Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respectign the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Fund and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Fund.

Accordingly the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective July 30, 1981, to the sale by the LaSalle National Bank as trustee for Wayne Johnson, the beneficial owner, to the Fund of the Brentwood Commons Shopping Center (the Shopping Center), located in Bensenville, Illinois, the lease of a portion of the Shopping Center to HFC, which began on March 3, 1980, and the lease of another portion of the Shopping Center to TGY, which began on April 1, 1962, provided the sale and lease terms are no less favorable to the Fund than those available in arm's-length transactions with unrelated parties.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this exemption.

Signed at Washington, D.C., this 26th day of March, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–8914 Filed 4–1–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–54; Exemption Application No. D–2976]

Exemption From the Prohibitions for Certain Transactions Involving the Middlesex Ophthalmologists, Inc. Profit Sharing Trust Located in Cambridge, Massachusetts

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption will permit (1) the proposed loan of $60,000 (the Loan) from Dr. Charles E. Beyer's (Dr. Beyer) directed investment account (the Account) in the Middlesex Ophthalmologists, Inc. Profit Sharing Plan (the Plan) to the 180 Cambridge Street Trust (Cambridge), a party in interest with respect to the Plan; and (2) the guarantee of the obligations of Cambridge pursuant to the Loan by Middlesex Ophthalmologists, Inc. (the Employer), the Plan sponsor.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1982, notice was published in the **Federal Register** (47 FR 5547) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. Because Dr. Beyer's Account will be the only Plan assets involved in the transactions it was determined that there was no need to distribute the notice of pendency to interested persons. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of

the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the Loan from Dr. Beyer's Account in the Plan to Cambridge provided that the terms and conditions of the Loan are not less favorable to the Plan than those obtainable in a similar transaction with an unrelated third party: and (2) the guarantee by the Employer of Cambridge's obligations under the Loan.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 26th day of March 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-8915 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-57; Exemption Application No. D-2263]

Exemption From the Prohibitions for Certain Transactions Involving the Laird Noller Ford, Inc., Employee Pension Benefit Plan Located in Topeka, Kansas

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the past sale by the Laird Noller Ford, Inc., Employee Pension Benefit Plan (the Plan) of certain real property (Tract B) to Mr. and Mrs. Laird Noller (the Nollers), parties in interest with respect to the Plan.

EFFECTIVE DATE: This exemption is effective December 21, 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 29, 1982, notice was published in the **Federal Register** (47 FR 4363) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed on behalf of the Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been provided to interested persons in accordance with the requirements set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past sale of Tract B by the Plan to the Nollers for the cash consideration of $50,000, provided this amount was not less than the fair market value of the land at the time of the sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of this exemption.

Signed at Washington, D.C., this 30th day of March, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-8916 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-29-M

Office of Pension and Welfare Benefit Programs

[Application No. D-2905]

Proposed Exemption for Certain Transactions Involving the Profit-Sharing Plan for Employees of Gibraltar Savings Association Located in Houston, Texas

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale by the Profit-Sharing Plan for Employees of Gibraltar Savings Association (the Plan) of all of its non-cash assets to Gibraltar Savings Association (the Employer), the Plan sponsor. The proposed exemption, if granted, would affect the Plan and its participants and beneficiaries, the Employer, and any other persons participating in the proposed transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before May 21, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2905. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan which as of August 15, 1981, had twenty-five (25) participants and a net worth of $2,081,657. The Employer, a savings and loan association organized under the laws of Texas, resolved on March 18, 1981, to liquidate the Plan and distribute its assets in cash to its participants. In accordance with this resolution the Employer has rescinded all prior appointments to the Plan and appointed Mr. Milton W. Cowden to serve as sole trustee of the Plan (the Trustee). The prior trustees of the Plan also served as members on the board of directors of the Employer. Mr. Cowden is the senior vice president of the Employer.

2. Since April 1, 1981, the Trustee has actively attempted to sell the non-cash assets of the Plan to unrelated parties. These assets consisted of mortgage notes purchased by the Plan from unrelated third parties, notes held by the Plan as a result of the Plan's participation in an apartment project joint venture, notes received by the Plan as a result of certain real estate transactions (collectively, the Notes), and vacant lots of real property (the Properties) located in Travis County, Texas, known as the Windmill Bluff Estates Subdivision. The Trustee advertised in the *Wall Street Journal* and the *Houston Business Journal* seeking investors to purchase the Notes at a discounted value computed on the basis of a 15% to 16% yield. The Plan also offered obligors on the Notes the opportunity to purchase their obligations based upon the same discounted value. There have been no offers to purchase the Notes as a result of the advertising and only three obligors have offered to purchase their obligations. One obligor's offer was not accepted because the obligor offered to purchase his note computed on the basis of a 25% yield.

3. Since April 1, 1981, the Plan has sold all of the lots comprising the Properties to unrelated third parties at their appraised fair market values. The Plan received a 10% down payment and took back notes (the Mortgage Notes) bearing 12% interest amortized over ten years. The Properties were marketed through Ft. Worth, Dallas, San Antonio, Austin and Houston newspapers and a salesperson was on site. The Mortgage Notes have not been offered for sale to third parties.

4. Mr. Paul Yates, the chief operating officer of University Savings Association, appraised all of the notes held by the Plan. Mr. Yates is not related in any way to the Employer. Mr. Yates discounted the notes based upon the current interest rate prevailing on November 3, 1981, 17½% to 18%, in order

to arrive at the value of the notes. As of November 3, 1981, Mr. Yates determined that the Mortgage Notes had a total fair market value of $618,080, and the Notes had a total fair market value of $656,981.

5. The Employer requests an exemption to purchase all of these non-cash assets held by the Plan at their appraised fair market value for cash.[1] The Plan will not incur any sales commissions with respect to the sales. The applicant represents that the sale of the Plan's non-cash assets will allow for a more orderly and efficient liquidation of the Plan.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because (a) the sale of the non-cash assets will be a one-time transaction for cash and the Plan will not incur any commissions with regard to the proposed sale; (b) the assets will be sold at their appraised fair market value as determined by an independent appraiser; (c) the distribution of the Plan's assets in cash will allow for the efficient liquidation of the Plan; and (d) the Trustee represents that the proposed transaction will be in the best interests of the Plan and its participants and beneficiaries.

Notice to Interested Persons

By April 19, 1982, notice of this proposed exemption will be mailed to all participants in the Plan. Certain participants will receive notice by hand delivery. Such notice will include a copy of this notice of pendency as published in the **Federal Register** and will inform interested persons of their right to comment and/or request a hearing regarding the proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

((3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and to in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale by the Plan of all of its non-cash assets to the Employer for $1,275,061, provided that the sales price of each asset is not less than its fair market value as of the date of sale.

The proposed exemption, if granted will subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 30th day of March, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–8920 Filed 4–1–82; 8:45 am]

BILLING CODE 4510–29–M

[1] In this proposed exemption the Department expresses no opinion as to whether the Plan's acquisition of any of the non-cash assets violated any provision of Part 4 of Title I of the Act.

[Application No. D–2641]

Proposed Exemption for Certain Transactions Involving the Mittleman, Smith, Wynn Money Purchase Pension Plan Located in Los Angeles, California

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption form certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale (the Sale) of certain real property (the Property) by the Mittleman, Smith, Wynn Money Purchase Pension Plan (the Plan) to a partnership (the Partnership) which is a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the Partnership, the participants and beneficiaries of the Plan and other persons participating in the transaction.

DATE: Written comments and requests for a public hearing must be received by the Department on or before May 24, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2641. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S.

Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Mittleman, Smith, Wynn, Inc. (the Employer), the sponsor of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a money purchase pension plan with approximately 21 participants. The Employer is the exclusive sales agent for approximately thirty manufacturers in the states of California, Arizona and Nevada. The Partnership is composed of Joseph B. Mittleman (Mittleman), Earl Wynn, Rupert Carson and Dennis Pessin, 67%, 20%, 7% and 6% shareholders of the Employer, respectively. The Employer is the trustee of the Plan. The Property is located in Los Angeles, California and consists of an office building and adjacent warehouse. As of January 1, 1980, the Property represented 20% of the total assets of the Plan.

2. In December of 1974, Mittleman sold the Property to the Plan for a total purchase price of $170,000. This purchase price included a cash payment by the Plan of $98,014 to Mittleman plus an assumption by the Plan of a note (the Note) held by an unrelated party with an outstanding balance, at the time, of $71,985. The Note is payable in equal installments of principal and interest, has an interest rate of 6½% and is due in August of 1985. As of January, 1980, the outstanding balance on the Note was $24,380.

3. On January 1, 1975, the Property was leased by the Plan to the Employer for a ten year term with monthly rentals of $2,500 for the first seven years of the lease and $3,600 for the remaining three years. In 1976, the employer applied to the Department for an exemptio for a prospective leasing of the Property by the Plan to the Employer because it realized the lease entered into on January 1, 1975 may have been prohibited by section 406 of the Act and 4975 of the Code. The Department denied the Employer's request for an exemption.

4. The Employer is now requesting an exemption for the Sale of the Property by the Plan to the Partnership. The Sale will be for the cash sum of $350,000. This price was determined to be the fair market value of the Property, as of December 5, 1981, by Paul Jackle (Jackle) C.R.A., an independent appraiser, located in Huntington Beach, California. Jackle represents that the Property is located on the southern border line of Los Angeles where rental and sales demand for industrial and office space drops dramatically and that the best use of the Property would be a conversion to warehouse space. No sales commission or fees of any kind will be charged the Plan in connection with the Sale.

5. The Employer concedes that the lease of the Property by the Plan to the Employer since January 1, 1975 constituted a prohibited transaction under section 406 of the Act and 4975 of the Code. Accordingly, the Employer represents that it will pay all excise taxes which are applicable under section 4975(a) of the Code by reason of the lease of the Property since January 1, 1975 by the Plan to the Employer within 90 days of the publication in the **Federal Register** of a final notice of the grant of the exemption proposed herein.

6. In summary, the applicant represents that the Sale satisfies the statutory criteria of section 408(a) of the Act because: (1) It will be a one time transactio for cash; (2) the Sales price for the Property was determined by an independent appraiser; (3) no real estate commissions or fees of any kind will be charged the Plan; (4) the Employer represents that it will fully comply with the excise tax provisions of section 4975(a) of the Code with respect to the lease of the Property since January 1, 1975 by the Plan to the Employer; and (5) the Plan will realize a substantial profit.

Notice to Interested Persons

Notice of the proposed exemption will be given to participants and beneficiaries of the Plan by hand delivery or by mail within 20 days of the publication of the notice of pendency in the **Federal Register**. Notice will include a copy of the notice of pendency as it appears in the **Federal Register** as well as a statement informing all interested persons of their right to comment or request a hearing on the proposed exemption.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; not does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the Sale of the Property by the Plan to the Partnership for the cash sum of $350,000, provided that this amount is at least the fair market value of the Property at the time of the sale.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 30th day of March 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-8917 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3039]

Proposed Exemption for a Certain Transaction Involving the Ro-Mac Lumber and Supply, Inc., Profit Sharing Plan, Located in Tavares, Fla.

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the loan of $175,000 by the Ro-Mac Lumber & Supply, Inc., Profit Sharing Plan (the Plan) to Ro-Mac Lumber & Supply, Inc. (the Employer) and the guarantee of this loan by the principal shareholders of the Employer. The proposed exemption, if granted, would affect the Plan, the Employer and others participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before May 21, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–3039. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Department of Labor, telephone (202) 523–7462. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan and the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan with total assets of $723,000 as of March 31, 1981. There are an estimated 35 Plan participants.

2. The Employer, a Florida corporation, is engaged in the business of retailing and wholesaling lumber and building supplies.

3. An exemption is requested for the loan of an amount not to exceed $175,000 (the Loan) from the Plan to the Employer to be utilized for capital expansion. The Loan will be for a 4-year term, principal and interest payable monthly, interest floating at the prime rate plus one-half percent, adjusted monthly, and based upon the prime rate as published in the Money Rate Table of the Wall Street Journal. In no event shall the interest rate be less than 12 percent.

4. The collateral for the Loan will be a second mortgage on certain real estate (the Property) owned by the Employer. The first mortgage indebtedness encumbering the Property does not exceed $14,500. An appraisal performed by Sam S. Cook, M.A.I., an independent appraiser, established the fair market value of the Property to be $554,500 as of December 1, 1981.

5. The Loan will be guaranteed by the three principal shareholders of the Employer. These individuals represent that the net worth of each exceeds $1,000,000.

6. The Trust Department of the Sun Bank of Lake County in Orlando, Florida (the Bank) will serve as the independent fiduciary for the Loan transaction. The Bank has determined that the Loan is in the interests of and protective of the Plan and its participants and beneficiaries. The Loan will be reviewed and monitored by the Bank. Furthermore, the Bank has determined that the second mortgage on the collateral is appropriate because there is very little debt outstanding on the first mortgage.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(1) The Plan will receive a favorable return on the Loan;

(2) The Loan will be secured by a second mortgage on real property whose value greatly exceeds the amount of the Loan and the first mortgage;

(3) The Loan will be monitored by an independent trustee who has approved the terms of the Loan and will enforce collection in the event of a default;

(4) The Loan will be secured by the personal guarantees of the three principal shareholders of the Employer; and

(5) The independent trustee has determined that the Loan is in the interests of and protective of the Plan and its participants and beneficiaries.

Notice to Interested Persons

All participants and beneficiaries of the Plan will be provided with a copy of the notice of pendency as published in the **Federal Register** and a statement informing them of their right to comment and/or request a hearing regarding the proposed exemption. The notice will be hand delivered to all participants and beneficiaries and a copy of the notice will be posted on the bulletin board of the Employer within 15 days after publication of the notice of pendency in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; not does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the Loan of an amount not to exceed $175,000 by the Plan to the Employer and the guarantee of the Loan by the principal shareholders of the Employer, provided the terms of the Loan are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 30th day of March 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-8918 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3031]

Proposed Exemption for Certain Transactions Involving the Retirement Program Plan for Union Carbide Corp. and Its Participating Subsidiaries Located in New York, N.Y.

AGENCY: Office of Pension and Welfare Benefit Programs; Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the following transactions: (1) The investment by Metropolitan Life Insurance Company Special Account No. 28 (the Account), a single customer separate account maintained by the Metropolitan Life Insurance Company (Metropolitan) for the Retirement Program Plan for Union Carbon Corporation and its Participating Subsidiaries (the Plan) in a joint venture (the Joint Venture) with O'Donnell, Brigham and Partners/Northwest (Northwest), a party in interest with respect to the Plan by virtue of its business relationships with Metropolitan; (2) the participation by Metropolitan in the Plan's decision to invest in the Joint Venture; and (3) the loan of money (the Loan) by the Plan to Northwest in connection with the Joint Venture. The proposed exemption, if granted, would affect the Plan, Northwest, Metropolitan and Union Carbide Corporation (UCC).

DATES: Written comments and requests for a public hearing must be received by the Department on or before May 10, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–3031. The application for exemption

and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Department, telephone (202) 523–8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b) (1) and (2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Metropolitan and UCC, the Plan sponsor, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a defined benefit plan with approximately 89,200 participants and beneficiaries and nearly $1.7 billion in total assets as of December 30, 1980. Metropolitan is the second largest insurance company in the United States with total assets exceeding $50 billion. The Account was established in 1980 to invest a portion of Plan assets primarily in income-producing real properties on both an equity and debt basis. As of November 15, 1981, $14.6 million of Plan assets was invested in the Account.

2. UCC and Metropolitan have the following additional relationships. UCC has purchased group health and group term life insurance from Metropolitan for its employees. The Savings Plan for Employees of Union Carbide Corporation and Participating Subsidiary Companies (Savings Plan) permits participants to invest their accounts in a fixed income general account contract issued by Metropolitan, as one of several investment options under the Savings Plan. One member of UCC's Board of Directors, William Sneath, who was the Chairman of the Board of Directors and Chief Executive Officer of UCC from 1977 through 1981, is also a member of the Board of Directors of Metropolitan. Although Mr. Sneath also serves on the Investment Committee on the Metropolitan Board of Directors which reviewed and approved the investment in the Joint Venture, he did not participate in that review and approval and would not participate in the future in any decisions regarding the Joint Venture.

3. Northwest is a partnership whose four equal partners are John D. O'Donnell, Terence W. Brigham, Roy Grame and Joseph Shephard. In addition to Northwest, several of the partners are involved in other partnerships referred to hereinafter as the O'Donnell Partnerships and the O'Donnell Partners. The O'Donnell Partnerships have developed over 6 million square feet of commercial real estate in California, Washington and Alaska since 1972. The total fair market value of the O'Donnell Partnerships' investments in commercial real property currently exceeds $250 million.

4. While Northwest has no prior relationships with UCC or the Plan, the applicants believe that Northwest may be a party in interest with respect to the Plan under section 3(14)(I) of the Act by virtue of its 10% or more interest in a prior existing partnership in which Metropolitan's general account has a 50% or more ownership interest. The O'Donnell Partners may be parties in interest with respect to the Plan under section 3(14)(I) of the Act by virtue of their 25% interest in Northwest. The currently existing partnership between Metropolitan and Northwest in which each partner owns 50% is Everett Industrial Associates, a general partnership formed in March, 1981 to own and manage property in Everett, Washington. A number of other joint ventures and real estate financing transactions between Metropolitan and Northwest or the O'Donnell Partnerships are contemplated. It is also possible that the Plan or Metropolitan, through one or more of its accounts, will enter into additional transactions with Northwest, the O'Donnell Partnerships or the O'Donnell Partners in the future.

5. The Account proposes to enter into the Joint Venture with Northwest to acquire the Kent Facility, which will consist of four concrete warehouse-distribution buildings on 16.36 acres located in Kent, Washington, which is 30 miles south of Seattle. The Kent area is a major distribution point for the movement of merchandise material. The ports of Seattle, Everett and Tacoma, all nearby to Kent, process more than 50% of all West Coast foreign imports destined for domestic markets.

6. The Plan will have a 60% interest and Northwest will have a 40% interest in the Joint Venture. The Kent Facility will be completed on or around March 1, 1982 and the Joint Venture will be formed at that time. The Plan, through the Account, will invest $11,700,000 in the Kent Facility, which is its appraised value in complete form as determined by Keith M. Riely, M.A.I., who is independent of the parties to the proposed transactions. This amount includes a developer's fee of $300,000 to Northwest to cover the office and staff expenses it incurred in the construction of the Kent Facility. The Kent Facility will be leased to third parties. Northwest will not knowingly lease any portion of the Kent Facility to a party in interest with respect to the Plan. Northwest will receive from the Plan through the Account, a brokerage commission of 5% of the gross rent for each new tenant it secures for the Kent Facility and a brokerage commission of 2½% of gross rent for negotiating lease renewals. A subsidiary of Northwest will manage the Kent Facility for an annual fee payable by the Plan through the Account, equal to 3% of the gross rental excluding taxes, insurance, maintenance and other operating expenses that are reimbursable to the Joint Venture, as Lesser.[1] The Plan, through the Account, will receive a priority net return on its capital investment of 11½% from cash flow available after expenses during the first five years and 12½% thereafter. Cash flow in excess of the amount needed to pay the Plan its priority return will be divided between the Plan and Northweast, with 60% going to the Plan and 40% to Northwest.

7. To the extent the cash flow within the first 12 months of operation is not sufficient to service the Plan's priority return, the Plan, through the Account, will enter into the Loan in an amount up to $750,000 in addition to its original $11,700,000 capital investment. The Loan will accrue interest compounded at 11½% for five years and 12½% thereafter. The Loan will mature in ten years and may be prepaid at any time without penalty. Any cost savings

[1] The Department is not proposing an exemption in this notice for the above-described provision of services beyond that which is provided by section 408(b)(2) of the Act and the regulations promulgated thereunder.

realized during construction will be applied directly to the Loan with cost savings in excess of the Loan amount being applied to reduce the Plan's capital investment in the Kent Facility. If the Loan is not required, all construction cost savings will be applied to reduce the Plan's capital investment. The proceeds of a sale or refinancing of the Kent Facility will go first to repay the principal and interest on the Loan, if still extant. The remaining proceeds will go to repay the Plan's capital investment. Any excess proceeds will be divided by the Joint Venture, 60% to be kept by the Plan and 40% by Northwest. UCC and Metropolitan represent that the compensation and commissions to be paid to Northwest and its affiliates are reasonable and comparable to what an unrelated party would be paid for similar services.

8. The Plan's decision to have the Account invest in the Joint Venture was arrived at in the following manner. Investments for the Account are proposed by UCC to Metropolitan but must be approved by both parties. Prior to proposing the Joint Venture to Metropolitan, UCC had its in-house director of real estate investment review the proposed project for investment soundness, suitability for Plan needs and potential return on investment. His decision was reviewed and approved by UCC's director of pension fund investments. UCC also had William Leahy, a senior consultant to Goldman Sachs who is independent of the parties to the transactions described herein, review and approve the investment in the Joint Venture. The Plan then presented the proposal to invest in the Joint Venture to Metropolitan. Metropolitan conducted its own review of the Joint Venture by analyzing the proposed project with attention to location, physical improvements, demand for space and associated market and economic conditions.

9. UCC was aware that Metropolitan might have prior existing relationships with Northwest before it approached Metropolitan about the possibility of investing in the Kent Facility through the Account. UCC did not know the nature or extent of those relationships at that time. Prior to signing the letter of intent, but after negotiating the general terms of the investment, UCC requested Metropolitan to provide details of its existing relationships with Northwest so as to determine whether Northwest was a party in interest with respect to the Plan. Once the potential party in interest relationships of Northwest and the O'Donnell Partners to the Plan were determined, the letter of intent was signed contingent upon the securing of an exemption from the Department.

10. Both UCC on the Plan's behalf and Metropolitan have independently reached the conclusion that the terms and conditions of the Plan's investment in the Joint Venture present an exceptional investment opportunity for the Plan due to the strength of the Kent, Washington real estate and rental markets, the excellent location and occupancy rate for warehouse-distribution buildings in the Kent area and the favorable price and rate of return to the Plan. They state that a partnership between an institutional investor such as the Plan and an experienced major developer such as Northwest is advantageous to the Plan because of Northwest's entrepreneurial skills and real estate development expertise. It is also stated that because of the increasing interest and involvement in real estate investments by employee benefit plans, quality investment opportunities on favorable terms have become difficult to locate. The applicants represent that all negotiations between Metropolitan, the Plan and Northwest concerning the Joint Venture have been and will continue to be conducted on an arm's length basis.

11. Metropolitan will have the primary responsibility of monitoring the Plan's investment in the Joint Venture. Metropolitan will provide the Plan with a quarterly statement summarizing financial matters relating to the Joint Venture and a detailed annual statement regarding the Account. The applicants emphasize that UCC, on behalf of the Plan, will also monitor the investment performance of the Joint Venture and will retain the authority, at its sole discretion, to withdraw the Plan from the Joint Venture in accordance with the terms of the Account contract. The applicants further emphasize that neither UCC nor the Plan has or will have any relationships with Northwest or its affiliates while the Plan retains its investment in the Joint Venture.

12. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act due to the following:

a. Both UCC and Metropolitan have independently determined that the proposed transactions are in the best interests of the Plan and its participants and beneficiaries;

b. An independent MAI appraiser has determined the fair market value of the Kent Facility;

c. Northwest will not knowingly lease any portion of the Kent Facility to a party in interest with respect to the Plan;

d. The percentage of Plan assets invested in the Kent Facility would be less than 1 percent;

e. The applicants represent that all negotiations between Metropolitan, the Plan and Northwest concerning the Joint Venture have been and will continue to be conducted on an arm's length basis;

f. UCC will monitor the Plan's investment in the Joint Venture and UCC will have the authority to withdraw the Plan from the Joint Venture;

g. Mr. William Leahy, an independent party who is a senior consultant to Goldman Sachs, reviewed and approved the Plan's investment in the Joint Venture; and

h. Neither UCC nor the Plan has or will have any relationships with Northwest or its affiliates while the Plan retains its investment in the Joint Venture.

Notice to Interested Persons

Notice of the proposed exemption will be provided to Plan participants within 6 days of its publication in the **Federal Register** by posting the notice on all bulletin boards normally used for employee notices by UCC and all other companies whose employees are covered by the Plan. The notice will include a copy of the proposed exemption and will inform Plan participants of their right to comment on or request a hearing with respect to the proposed exemption.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the

Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The investment by the Plan, through the Account, in the Joint Venture; (2) the participation by Metropolitan in the Plan's decision to invest in the Joint Venture; and (3) the Loan; provided that the terms and conditions of the above transactions are and remain at least as favorable to the Plan as those obtainable from unrelated parties.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 30th day of March 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-8919 Filed 4-1-82; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Chemistry; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Chemistry.
Date and time: April 29-30, 1982; 9:00 a.m. to 5:00 p.m. each day.
Place: Room 338, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.
Type of meeting: Open.
Contact person: Dr. Richard S. Nicholson, Director, Chemistry Division, Rm. 340, National Science Foundation, Washington, D.C. 20550 Telephone (202) 357-7947.
Summary minutes: May be obtained from Dr. Richard S. Nicholson.
Purpose of committee: To provide advice and recommendations concerning NSF support for research in chemistry.
Agenda: Open—General discussion of the current status and future plans of the Chemistry Division.

M. Rebecca Winkler,

Committee Management Coordinator.

March 30, 1982.

[FR Doc. 82-8942 Filed 4-1-82; 8:45 am]

BILLING CODE 7550-01-M

Advisory Committee for Ocean Sciences, Subcommittee for Ocean Sciences Research; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee for Ocean Sciences Research.
Date and time: April 29 and 30, 1982, 9:00 a.m. to 6:00 p.m. each day.
Place: Rooms 628, 642, 643, and 1224, National Science Foundation, 1800 G Street, NW., Washington, D.C.
Type of meeting: Closed.
Contact person: Dr. Robert E. Wall, Head, Ocean Science Research Section, Room 611, National Science Foundation, Washington, D.C. 20550 Telephone (202) 357-7924.
Purpose of meeting: To provide advice and recommendations concerning support for research in Oceanography.
Agenda: To review and elaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determination by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

March 30, 1982.

[FR Doc. 82-8937 Filed 4-1-82; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Social and Economic Science, Subpanel on Regulation and Policy Analysis; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subpanel on Regulation & Policy Analysis of the Advisory Panel for Social and Economic Science.
Date/time: April 26, 1982—8:00 a.m. to 4:00 p.m.
Place: National Science Foundation, 1800 G St. NW. (*Rm. 628*) Washington, D.C. 20550.
Type of meeting: Closed—8:00 a.m. to 4:00 p.m., April 26, 1982.
Contact person: Dr. Laurence C. Rosenberg, Program Director Regulation and Policy Analysis, National Science Foundation Room 413—Phone: (202) 357-7417.
Purpose of subcommittee: To provide advice and recommendations concerning research in Regulation and Policy Analysis.
Agenda: Closed: to review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee

Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

March 30, 1982.

[FR Doc. 82–8938 Filed 4–1–82; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Behavioral and Neural Sciences, Subpanel on Memory and Cognitive Processes; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subpanel of Memory and Cognitive Processes of the Advisory Panel for Behavioral and Neural Sciences.

Date and time: April 18–20, 1982, 9:00 a.m.–5:00 p.m. each day.

Place: National Science Foundation, 1800 G St. NW., Washington, D.C. 20550, Room 421.

Type of meeting: Part Open. Closed—4/18 & 4/20 9:00 a.m. to 5:00 p.m. and 4/19 9:00 a.m. to 1:00 p.m. and 3:00 p.m. to 5:00 p.m. Open—4/19 1:00 p.m. to 3:00 p.m.

Contact person: Dr. Joseph L. Young, Program Director, Memory and Cognitive Processes Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone (202) 357–9898.

Summary minutes: May be obtained from the Contact Person, Dr. Joseph L. Young, at the above stated address.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Memory and Cognitive Processes.

Agenda: Closed—April 18 & 20 9:00 a.m. to 5:00 p.m., April 19 9:00 a.m. to 1:00 p.m. & 3:00 p.m. to 5:00 p.m., to review and evaluate research proposals as part of the selection process for awards. Open—April 19, 1:00 p.m. to 3:00 p.m., general discussion of the current status and future plans of the Memory and Cognitive Processes Program.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10 (d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

March 30, 1982.

[FR Doc. 82–8939 Filed 4–1–82; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Behavioral and Neural Sciences, Subpanel on Social and Developmental Phychology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subpanel on Social and Developmental Psychology of the Advisory Panel for Behavioral and Neural Sciences.

Date and time: April 26–27, 1982: 9:00 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G Street NW., Washington, D.C.

Type of meeting: Part Open—Open April 27—9:00 a.m.–12:00 a.m.; Closed April 26—9:00–5:00; and Closed April 27—1:00–5:00.

Contact person: Dr. Richard T. Louttit, Acting Program Director for Social and Developmental Psychology, Room 320, National Science Foundation, Washington, D.C. 20550, telephone/202–357–7564.

Summary minutes: May be obtained from the contact person as listed above.

Purpose of subcommittee:To provide advice and recommendations concerning support for research in Social and Developmental Psychology.

Agenda: Open—April 27, 9:00–12:00 a.m. General discussion of activities in Social and Developmental Psychology and future support requirements; Closed—April 26–9:00–5:00; April 27—1:00–5:00 to review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

March 30, 1982.

[FR Doc. 82–8941 Filed 4–1–82; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel For Environmental Biology, Subpanel on Systematic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–436, the National Science Foundation announces the following meeting:

Name: Subpanel on Systematic Biology of the Advisory Panel for Environmental Biology.

Date and time: April 22 and 23, 1982—8:30 a.m. to 5:00 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Grady L. Webster, Program Director, Systematic Biology (202) 357–9588, Room 336, National Science Foundation, Washington, D.C. 20550.

Purpose of meeting: To provide advice and recommendations concerning support for research in systematic biology.

Agenda: To review and evaluate research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

March 30, 1982.

[FR Doc. 82–8936 Filed 4–1–82; 8:45 am]

BILLING CODE 7555–01–M

Availability of Advisory Committee Reports

The National Science Foundation has filed with the Library of Congress reports of the NSF Advisory Committees listed below.

The reports were filed as required by the Federal Advisory Committee Act and are available for public inspection and use at the Library of Congress, Room 632, Madison Building, First and Independence Avenue, S.E., Washington, D.C., and at the Committee Management Office, Room 217–A, National Science Foundation, Washington, D.C.

The names of the committees and titles of the reports are:

1980 Reports

Advisory Committee for Atmospheric Sciences:
—Report of the Meteorology Program Review Subcommittee: October, 1980
—Report of the Solar Terrestrial Program Review Subcommittee: October, 1980
Advisory Committee for Chemistry:
—Oversight Review Report: May, 1980
Advisory Committee for Earth Science:
—Report of Oversight Committee for Geology: September, 1980
Advisory Committee for Engineering and Applied Science:
—Report of the Subcommittee on Civil and Mechanical Engineering: January, 1980
Advisory Committee for Environmental Biology:
—Report of the Oversight Committee for Systematic Biology Programs and the Biological Research Resources Program: June, 1980
Advisory Committee for Information Science and Technology:
—Report on Behavioral and Linguistics Research Bearing on Information Science: June, 1979
Advisory Committee for International Programs:
—Interim Report: November, 1980
Advisory Committee for Materials Research:
—Report of the Oversight Review Committee of the Solid State Physics Programs: October, 1980
—Report of the Polymers Oversight Subcommittee: October, 1980
Advisory Committee for Mathematical and Computer Science, Subcommittee on Computer Science:
—Report on Special Projects Program: October, 1980
—Report on the Theoretical Computer Science Program: May, 1980
Advisory Committee for Mathematical and Computer Science, Subcommittee on Mathematical Science:
—Report of the External Peer Oversight Committee on the Algebra Program: August, 1980
Advisory Committee for Minority Programs in Science Education:
—Oversight and Evaluation of the Resource Centers for Science and Engineering Program: January, 1980
Advisory Committee for Ocean Sciences:
—Report of the Oversight Review Committee of the Oceanography Section: January, 1980
Advisory Committee for Physics:
—Review of Elementary Particle Physics: February, 1980
Advisory Committee for Science Education:
—Science Education for the 1980's: January, 1980
—Oversight Report 1980: October, 1980
National Science Foundation Advisory Council:
—Task Group #9—Multinational Projects: November, 1980
—Task Group #10—Funding of Innovative High Risk Proposals: November, 1980
—Task Group #11—Research Opportunities in Alternate Academic Institution: November, 1980

1981 Reports

Advisory Committee for Astronomical Sciences:
—Report by the Oversight Committee to Review Programs of the Astronomy Research Section: June, 1981
Advisory Committee for Engineering, Subcommittee on Chemical and Process Engineering:
—Review of the Chemical and Process Engineering Division: June, 1981
Advisory Committee for Information Science and Technology:
—Report of the Working Group on Information Technology: June, 1981
—Program Review of the Division of Information Science and Technology: June, 1981
Advisory Committee for Materials Research:
—Materials Research Laboratories: Program External Peer Oversight Report: October, 1981
—Ceramics Program External Peer Oversight: December, 1981
Advisory Committee for Mathematical and Computer Science:
—Report of the Applied Mathematics Oversight Committee and the External Peer Oversight Committee for Modern Analysis: February, 1981
—The Role of the NSF in Supporting Cryptological Research: July, 1981
—Oversight Review Reports of the Computer Science Section: December, 1981
—Report on Computing Needs of the Mathematical Community and Report on Allocating Limited Mathematical Sciences Resources: May, 1981
—Program Review of the Mathematical Sciences Section: December, 1981
—Statistics: Change and Resources in a Growing Science: December, 1981
Advisory Committee for Ocean Sciences:
—Technical Stewardship of the Office for Oceanographic Facilities and Support of the National Science Foundation: February, 1981
Advisory Committee for Physics:
—Report of the Review Subcommittee for Atomic Molecular and Plasma Physics: October, 1981
—Oversight Review of NSF Theoretical Physics Program: February, 1981
—Prospectus for Computational Physics: March, 1981
Advisory Committee for Science Education:
—Oversight Report 1981: November, 1981
Advisory Committee for Social and Economic Science:
—Report of the Oversight Committee of the NSF Program in History and Philosophy of Science: January, 1981
National Science Foundation Advisory Council:
—Task Group #12—Relationship Between Scientists and Public Policymakers: March, 1981
—Task Group #13—National Science Foundation and Technology Transfer: March, 1981
—Task Group #14—Continuing Education of Engineers and Computer Professionals in Universities and/or Industries: June, 1981
—Task Group #15—The Role of NSF in the Science Education of the General Public: May, 1981
—Task Group #16—The Role of Rotators in the National Science Foundation: April, 1981
—Task Group #17—Faculty Salaries: June, 1981

M. Rebecca Winkler,

Committee Management Coordinator.

March 30, 1982.

[FR Doc. 82-8943 Filed 4-1-82; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 801]

Fishery Conservation and Management Act of 1976; Applications for Permits To Fish Off the Coasts of the United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) as amended (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to section 204 of the Act.

The Act also requires that a notice of receipt of all applications for such permits, a summary of the contents of such applications, and the names of the Regional Fishery Management Councils that receive copies of these applications, be published in the **Federal Register.**

Individual vessel applications for fishing in 1982 have been received from the Governments of the Union of Soviet Socialist Republics, the People's Republic of Bulgaria, the Polish People's Republic, Italy and Japan.

If additional information regarding any applications is desired, it may be obtained from: Permits and Regulations Division (F/CM7), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, (Telephone: (202) 634-7432).

Dated: March 25, 1982.

James A. Storer,

Director, Office of Fisheries Affairs.

Fishery codes and designation of regional councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional council
ABS	Atlantic Billfishes and Sharks.	New England. Mid-Atlantic. South Atlantic. Gulf of Mexico. Caribbean.
BSA	Bering Sea and Aleutian Islands Trawl, Longline and Herring Gillnet.	North Pacific.
CRB	Crab (Bering Sea)	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic	New England. Mid-Atlantic.
SMT	Seamount Groundfish (Pacific Ocean).	Western Pacific.
SNA	Snails (Bearing Sea)	North Pacific.
WOC	Washington, Oregon, California Trawl.	Pacific.
PBS	Pacific Billfish and Sharks	Western Pacific.

Activity codes specify categories of fishing operations applied for are as follows:

1	Catching, processing, and other support.
2	Processing and other support only.
3	Other support only.

BILLING CODE 4710-09-M

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
POLAND			
PERSEUS LARGE STERN TRAWLER	PL-82-0004	BSA,GOA	2
POLLUX LARGE STERN TRAWLER	PL-82-0006	BSA,GOA	2
SIRIUS LARGE STERN TRAWLER	PL-82-0062	BSA,GOA	2
HAJDUK LARGE STERN TRAWLER	PL-82-0066	BSA,GOA	2
DENEBOLA LARGE STERN TRAWLER	PL-82-0075	BSA,GOA	2
LACERIA LARGE STERN TRAWLER	PL-82-0076	BSA,GOA	2
CARINA LARGE STERN TRAWLER	PL-82-0083	BSA,GOA	2
GEMINI LARGE STERN TRAWLER	PL-82-0048	BSA,GOA	2
REGULUS STERN TRAWLER	PL-82-0095	BSA,GOA	2
LYRA LARGE STERN TRAWLER	PL-82-0002	BSA,GOA	2
GARNELA LARGE STERN TRAWLER	PL-82-0008	BSA,GOA	2
BOGAR LARGE STERN TRAWLER	PL-82-0085	BSA,GOA	2
DELFIN LARGE STERN TRAWLER	PL-82-0065	BSA,GOA	2
ORCYN LARGE STERN TRAWLER	PL-82-0077	BSA,GOA	2
ORLEN LARGE STERN TRAWLER	PL-82-0078	BSA,GOA	2
ITALY			
DE GIOSA GIUSEPPE FREEZER/CATCHER VESSEL	IT-82-0016	NWA	1
CORRADO SECONDO LARGE STERN TRAWLER	IT-82-0012	NWA	1
BULGARIA			
SLANCHEV BRIAG SUPPLY/FREEZER	BU-82-0015	NWA,WOC	3
ZLATNI PIASATZI SUPPLY/FREEZER	BU-82-0016	NWA,WOC	3
LAZUREN BRIAG SUPPLY/FREEZER	BU-82-0012	NWA,WOC	3
U.S.S.R			
CHUKOTSKIY BEREG CARGO/TRANSPORT	UR-82-0749	GOA,BSA, WOC	3
AMURSKIY BEREG CARGO/TRANSPORT	UR-82-0750	GOA,BSA, WOC	3
KAMCHATSKIE GORY CARGO/TRANSPORT	UR-82-0260	GOA,BSA, WOC	3
SAKHALINSKIE GORY CARGO/TRANSPORT	UR-82-0261	GOA,BSA, WOC	3
SAJANSKIE GORY CARGO/TRANSPORT	UR-82-0262	GOA,BSA, WOC	3
ALTAISKIE GORY CARGO/TRANSPORT	UR-82-0259	GOA,BSA, WOC	3
OSTROV SHOKALSKOGO CARGO/TRANSPORT	UR-82-0257	GOA,BSA, WOC	3
OSTROV KARAGINSKIY CARGO/TRANSPORT	UR-82-0255	GOA,BSA, WOC	3
OSTROV USHAKOVA CARGO/TRANSPORT	UR-82-0258	GOA,BSA, WOC	3
OSTROV SHMIDTA CARGO/TRANSPORT	UR-82-0256	GOA,BSA, WOC	3

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
U.S.S.R. (Continued)			
OSTROV LISYANSKOGO CARGO/TRANSPORT	UR-82-0254	GOA,BSA, WOC	3
KHRUSTALNYI BEREG CARGO/TRANSPORT	UR-82-0732	GOA,BSA, WOC	3
ZVEZDNYI BEREG CARGO/TRANSPORT	UR-82-0726	GOA,BSA, WOC	3
MARSHAL MALINOVSKIY CARGO/TRANSPORT	UR-82-0273	GOA,BSA, WOC	3
MARSHAL ROKOSSOVSKIY CARGO/TRANSPORT	UR-82-0274	GOA,BSA, WOC	3
ARKHIP KUINDJI CARGO/TRANSPORT	UR-82-0263	GOA,BSA, WOC	3
ZOLOTOI ROG CARGO/TRANSPORT	UR-82-0270	GOA,BSA, WOC	3
GRANITNYI CARGO/TRANSPORT	UR-82-0268	GOA,BSA, WOC	3
ALMAZNYI CARGO/TRANSPORT	UR-82-0264	GOA,BSA, WOC	3
KHUDOZHNIK VRUBEL CARGO/TRANSPORT	UR-82-0276	GOA,BSA, WOC	3
NEVER CARGO/TRANSPORT	UR-82-0516	GOA,BSA, WOC	3
RECHITSA CARGO/TRANSPORT	UR-82-0303	GOA,BSA, WOC	3
YUGANSK TANKER FUEL/WATER	UR-82-0637	GOA,BSA, WOC	3
UST-ILIMSK TANKER FUEL/WATER	UR-82-0748	GOA,BSA, WOC	3
UST-KUT TANKER FUEL/WATER	UR-82-0727	GOA,BSA, WOC	3
MYS KODOSH TANKER FUEL/WATER	UR-82-0731	GOA,BSA, WOC	3
GALVE TANKER FUEL/WATER	UR-82-0733	GOA,BSA, WOC	3
UST-KARSK TANKER FUEL/WATER	UR-82-0728	GOA,BSA, WOC	3
U.S.S.R. (Continued)			
RESHITELNYI SALVAGE/REPAIR	UR-82-0644	GOA,BSA, WOC	3
SNOROVISTYI SALVAGE/REPAIR	UR-82-0724	GOA,BSA, WOC	3
SULAK FACTORY/MOTHERSHIP	UR-82-0238	WOC	2
SVETLAJA LARGE STERN TRAWLER	UR-82-0080	BSA	2
TURKUL LARGE STERN TRAWLER	UR-82-0172	BSA	2
NOVAYA ERA LARGE STERN TRAWLER	UR-82-0065	BSA	2
TIGIL LARGE STERN TRAWLER	UR-82-0162	BSA	2
TAMAN LARGE STERN TRAWLER	UR-82-0188	BSA	2
15 SYEZD PROFSOYUZOV LARGE STERN TRAWLER	UR-82-0087	BSA	2
MYS EGOROVA LARGE STERN TRAWLER	UR-82-0097	BSA	2
SOYUZ -5 LARGE STERN TRAWLER	UR-82-0235	BSA	2
MYS MALTSEVA LARGE STERN TRAWLER	UR-82-0192	BSA	2
MYS OTRADNYI LARGE STERN TRAWLER	UR-82-0073	BSA	2
MYS OREKHOVA LARGE STERN TRAWLER	UR-82-0017	BSA	2
MYS KURILSKIY LARGE STERN TRAWLER	UR-82-0711	BSA	2
MYS CHASOVOY LARGE STERN TRAWLER	UR-82-0176	BSA	2
MYS OBRUCHEVA LARGE STERN TRAWLER	UR-82-0075	BSA	2

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
U.S.S.R. (Continued)			
MYS MALTSEVA LARGE STERN TRAWLER	UR-82-0192	WOC	2
ARAGONIT LARGE STERN TRAWLER	UR-82-0224	WOC	2
MYS OTRADNYI LARGE STERN TRAWLER	UR-82-0073	WOC	2
IZUMRUDNYI LARGE STERN TRAWLER	UR-82-0747	WOC	2
MYS OREKHOVA LARGE STERN TRAWLER	UR-82-0017	WOC	2
MYS BELKINA LARGE STERN TRAWLER	UR-82-0214	WOC	2
KARAGACH LARGE STERN TRAWLER	UR-82-0028	WOC	2
15 SYEZD PROFSOYUZOV LARGE STERN TRAWLER	UR-82-0087	WOC	2
TAMAN LARGE STERN TRAWLER	UR-82-0188	WOC	2
MRAMORNYI LARGE STERN TRAWLER	UR-82-0713	WOC	2
MYS KURILSKIY LARGE STERN TRAWLER	UR-82-0711	WOC	2
ALEKSANDROVSK LARGE STERN TRAWLER	UR-82-0207	WOC	2
MYS CHASOVOY LARGE STERN TRAWLER	UR-82-0176	WOC	2
MYS OBRUCHEVA LARGE STERN TRAWLER	UR-82-0075	WOC	2
NADEZHDA LARGE STERN TRAWLER	UR-82-0061	WOC	2
AMURSK	UR-82-0746	GOA,BSA, WOC,NWA	3

NATION/VESSEL NAME/VESSEL TYPE	APPLICATION NO.	FISHERY	ACTIVITY
JAPAN			
KAZUSHIMA MARU CARGO/TRANSPORT	JA-82-1046	BSA,GOA, SMT,SNA, NWA	3
NIITAKA MARU LARGE STERN TRAWLER	JA-82-0289	BSA,GOA, SMT	1
TOKACHI-MARU STERN TRAWLER/FACTORY SHIP	JA-82-0360	NWA	2
ZUIYO MARU NO.3 LARGE STERN TRAWLER	JA-82-0331	BSA,GOA	1
CHIKUBU-MARU STERN TRAWLER/FACTORY SHIP	JA-82-0336	BSA,GOA	1
OHTORI MARU STERN TRAWLER/FACTORY SHIP	JA-82-0342	BSA,GOA	1
DEJIMA MARU PAIR TRAWLER	JA-82-1179	BSA	1
HIRADO MARU PAIR TRAWLER	JA-82-1180	BSA	1
OSE MARU PAIR TRAWLER	JA-82-1181	BSA	1
SHIRASE MARU PAIR TRAWLER	JA-82-1182	BSA	1
KAIKOMARU NO. 8 DANISH SEINER	JA-82-1560	BSA	1
MITSU MARU NO.51 DANISH SEINER	JA-82-1559	BSA	1
KONGO-MARU STERN TRAWLER/FACTORY SHIP	JA-82-0341	BSA,GOA	1
ZUIYO MARU NO.3 LARGE STERN TRAWLER	JA-82-0331	BSA,GOA	1
HARUNA MARU LARGE STERN TRAWLER	JA-82-0350	BSA,GOA	1

JOINT VENTURES

VESSEL NAME/TYPE	APPLICATION NO.	FISHERY	ACTITIVY
JAPAN			
TOKACHI-MARU STERN TRAWLER/FACTORY SHIP	JA-82-0360	NWA	2

Nippon Suisan Kaisha, Ltd. and Lund's Fisheries, Inc. of Cape May, New Jersey, have applied to engage in a joint venture squid fishery aimed at producing 1000 MT of loligo squid during the June-August 1982 time frame.

CHIKUBU MARU STERN TRAWLER/FACTORY SHIP	JA-82-0336	BSA,GOA	1,2,3

Hoko Fishing Co./, Ltd. and Clinton E. Atkinson, 8000 Crest Drive NE, Seattle, Washington, have applied to engage in a joint venture fishery aimed at producing 10,000 MT of pollock and bycatch during the May-July 1982 time frame.

OHTORI MARU STERN TRAWLER/FACTORY SHIP	JA-82-0342	BSA,GOA	1,2,3

Ohtori Suisan Co., Ltd. and Whitney-Fidalgo Seafoods, Inc., 2360 West Commodore Way, Seattle, Washington, have applied to engage in a joint venture fishery aimed at producing 10,000 MT of pollock and bycatch during 1982.

HARUNA MARU LARGE STERN TRAWLER	JA-82-0350	BSA,GOA	1,2

Nippon Suisan Kaisha, Ltd. and Universal Seafoods, Ltd., 15110 NE 90th St., Redmond, Washington, have applied to engage in a joint venture fishery aimed at producing 10,000 MT of pollock and bycatch during 1982.

KONGO-MARU STERN TRAWLER/FACTORY SHIP	JA-82-0341	BSA,GOA	1,2,3

Nippon Suisan Kaisha, Ltd. and Universal Seafoods, Ltd., Redmond, Washington, have applied to engage in a joint venture fishery aimed at producing 10,000 MT of pollock and bycatch during 1982.

JOINT VENTURES (Continued)

VESSEL NAME/TYPE	APPLICATION NO.	FISHERY	ACTITIVY
ITALY			
DE GIOSA GIUSEPPE FREEZER/CATCHER	IT-82-0016	NWA	1,2

Meridionalpesca, S.P.A., and Fass Brothers, Hampton, VA, have applied to engage in a Joint Venture fishery aimed at producing 1600 MT loligc squid and 1600 MT of illex squid during the April-November 1982 time frame.

POLAND			
PERSEUS LARGE STERN TRAWLER	PL-82-0004	BSA,GOA	2,3
POLLUX LARGE STERN TRAWLER	PL-82-0006	BSA,GOA	2,3
SIRIUS LARGE STERN TRAWLER	PL-82-0062	BSA,GOA	2,3
HAJDUK LARGE STERN TRAWLER	PL-82-0066	BSA,GOA	2,3
DENEBOLA LARGE STERN TRAWLER	PL-82-0075	BSA,GOA	2,3
LACERIA LARGE STERN TRAWLER	PL-82-0076	BSA,GOA	2,3
CARINA LARGE STERN TRAWLER	PL-82-0083	BSA,GOA	2,3
GEMINI LARGE STERN TRAWLER	PL-82-0048	BSA,GOA	2,3
REGULUS STERN TRAWLER	PL-82-0095	BSA,GOA	2,3
LYRA LARGE STERN TRAWLER	PL-82-0002	BSA,GOA	2,3
GARNELA LARGE STERN TRAWLER	PL-82-0008	BSA,GOA	2,3

VESSEL NAME/TYPE	APPLICATION NO.	FISHERY	ACTITIVY
POLAND			
BOGAR LARGE STERN TRAWLER	PL-82-0085	BSA,GOA	2,3
DELFIN LARGE STERN TRAWLER	PL-82-0065	BSA,GOA	2,3
ORCYN LARGE STERN TRAWLER	PL-82-0077	BSA,GOA	2,3
ORLEN LARGE STERN TRAWLER	PL-82-0078	BSA,GOA	2,3

The Polish Foreign Trade Office, Rybex-Szczecin, ul. Ordrowaza 1, and Mrs. Paul's Kitchen, 5830 Henry Ave., Philadelphia, PA, have applied to engage in a joint venture fishery aimed at producing 16,000 MT pollock and 1,500 MT pacific cod from BSA, and 6,000 MT pollock and 800 MT pacific cod from GOA during 1982.

U.S.S.R.			
MYS MALTSEVA LARGE STERN TRAWLER	UR-82-0192	WOC	2,3
ARAGONIT LARGE STERN TRAWLER	UR-82-0224	WOC	2,3
MYS OTRADNYI LARGE STERN TRAWLER	UR-82-0073	WOC	2,3
IZUMRUDNYI LARGE STERN TRAWLER	UR-82-0747	WOC	2,3
MYS OREKHOVA LARGE STERN TRAWLER	UR-82-0017	WOC	2,3
MYS BELKINA LARGE STERN TRAWLER	UR-82-0214	WOC	2,3
KARAGACH LARGE STERN TRAWLER	UR-82-0028	WOC	2,3

JOINT VENTURES (Continued)

VESSEL NAME/TYPE	APPLICATION NO.	FISHERY	ACTITIVY
U.S.S.R.			
15 SYEZD PROFSOYUZOV LARGE STERN TRAWLER	UR-82-0087	WOC	2,3
TAMAN LARGE STERN TRAWLER	UR-82-0188	WOC	2,3
MRAMORNYI LARGE STERN TRAWLER	UR-82-0713	WOC	2,3
MYS KURILSKIY LARGE STERN TRAWLER	UR-82-0711	WOC	2,3
ALEKSANDROVSK LARGE STERN TRAWLER	UR-82-0207	WOC	2,3
MYS CHASOVOY LARGE STERN TRAWLER	UR-82-0176	WOC	2,3
MYS OBRUCHEVA LARGE STERN TRAWLER	UR-82-0075	WOC	2,3
NADEZHDA LARGE STERN TRAWLER	UR-82-0061	WOC	2,3
SULAK FACTORY/MOTHERSHIP	UR-82-0238	WOC	2,3

The U.S.S.R. (Nakhodkinskaya Baza Aktivnogo Morskogo Rybolovstva) and Marine Resources Co., 192 Nickerson Suite 307, Seattle, WA, have appli to engage in a joint venture fishery aimed at producing 50,000 MT of pacific whiting, plus 1,500 MT of Jack Macherel, plus incidental amoun of other species in the time frame between April 1, 1982 and October 3 1982.

SVETLAJA LARGE STERN TRAWLER	UR-82-0080	BSA	2,3
TURKUL LARGE STERN TRAWLER	UR-82-0172	BSA	2,3
NOVAYA ERA LARGE STERN TRAWLER	UR-82-0065	BSA	2,3

JOINT VENTURES (Continued)

VESSEL NAME/TYPE	APPLICATION NO.	FISHERY	ACTITIVY
U.S.S.R.			
TIGIL LARGE STERN TRAWLER	UR-82-0162	BSA	2,3
TAMAN LARGE STERN TRAWLER	UR-82-0188	BSA	2,3
15 SYEZD PROFSOYUZOV LARGE STERN TRAWLER	UR-82-0087	BSA	2,3
MYS EGOROVA LARGE STERN TRAWLER	UR-82-0097	BSA	2,3
SOYUZ - 5 LARGE STERN TRAWLER	UR-82-0235	BSA	2,3
MYS MALTSEVA LARGE STERN TRAWLER	UR-82-0192	BSA	2,3
MYS OTRADNYI LARGE STERN TRAWLER	UR-82-0073	BSA	2,3
MYS OREKHOVA LARGE STERN TRAWLER	UR-82-0017	BSA	2,3
MYS KURILSKIY LARGE STERN TRAWLER	UR-82-0711	BSA	2,3
MYS CHASOVOY LARGE STERN TRAWLER	UR-82-0176	BSA	2,3
MYS OBRUCHEVA LARGE STERN TRAWLER	UR-82-0075	BSA	2,3

The U.S.S.R. (Korsakovskaja Baza Okeanicheskogo Ribolovstva) and Marine Resources Co. have applied to engage in a joint venture fishery aimed at producing 35,000 MT of yellowfin sole and other flounders, 7000 MT Pacific cod, and incidental amounts of other species in the time frame between April 15, 1982 and September 30, 1982.

[FR Doc. 82-8864 Filed 4-1-82; 8:45 am]
BILLING CODE 4710-09-C

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Commodity Policy Advisory Committee; Meeting and Determination of Closing of Meeting

The meeting of the Commodity Policy Advisory Committee (the Advisory Committee) to be held Wednesday, April 14, 1982, from 2:00 p.m. to 5:00 p.m. at the Office of the United States Trade Representative, will involve a review and discussion of the current issues involving the trade policy of the United States. The review and discussion will deal with information submitted in confidence by the private sector members of the Committee under section 135(g)(1)(A) of the Trade Act of 1974, as amended, (the Act), information submitted by government officials under section 135(g)(2) of the Act the disclosure of which could be reasonably expected to prejudice United States negotiating objectives, information the disclosure of which would be likely to significantly frustrate implementation of proposed government action, and information properly classified pursuant to Executive Order 12065 and specifically required by such Order to be kept secret in the interests of national security (i.e., the conduct of foreign relations) of the United States. All members of the Advisory Committee have all necessary security clearances. Consistent with previous determinations concerning other advisory committees, established under section 135(c) of the Act, I hereby determine that the meeting of the Advisory Committee will be concerned with matters listed above with and matters listed in section 552b(c) of Title 5 of the United States Code. Therefore, the meeting of the Commodity Policy Advisory Committee will be closed to the public.

More detailed information can be obtained by contacting Phyllis O. Bonanno, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, D.C. 20506.

William E. Brock,

United States Trade Representative.

[FR Doc. 82-8868 Filed 4-1-82; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954). The list is the same as the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954).

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

John E. Chapoton,

Assistant Secretary for Tax Policy.

March 30, 1982.

[FR Doc. 82-8985 Filed 4-1-82; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 64
Friday, April 2, 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).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:15 p.m. on Tuesday, March 30, 1982, the Board of Directors of the Federal Deposit Insurance Corporation met in the closed session to consider a recommendation with respect to an administrative enforcement proceeding against an insured bank (name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Chairman's office, Room 6023, of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Dated: March 30, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-481-82 Filed 3-31-82; 12:25 pm]

BILLING CODE 6714-01-M

2

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10 a.m., Wednesday, April 7, 1982.

PLACE: Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. (1) Publication for comment of proposed exemptions and preemption determinations under Regulation Z (Truth in Lending), concerning truth in lending laws in certain states; and (2) proposed revision of the Board's Rules Regarding Delegation of Authority regarding such decisions.

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 30, 1982.

James McAfee,

Associate Secretary of the Board.

[S-481-82 Filed 3-31-82; 12:25 pm]

BILLING CODE 6210-01-M

federal register

Friday
April 2, 1982

Part II

Department of Energy

Privacy Act of 1974; Annual Publication of System Notices

DEPARTMENT OF ENERGY

Privacy Act of 1974; Publication of System Notices

AGENCY: Energy Department.

ACTION: Privacy Act of 1974; Systems of Records, Annual Publication.

SUMMARY: Federal agencies are required by the Privacy Act of 1974 to give annual notice of the Systems of Records they maintain, 5 U.S.C. 552a(e). On August 30, 1979, a complete compilation of Privacy Act records system notices were published for the Department of Energy (DOE) (44 FR 51072). This publication is a current compilation of system notices to reflect the Department's regulations implementing the Privacy Act.

In addition, this notice will reflect the deletion of three Systems of Records and five subsystems; the proposal to establish two new Systems of Records, and a new routine use to be added to three system notices. This Notice gives the new locations of DOE offices since the Department has reorganized and consolidated the regional offices with the operations offices.

EFFECTIVE DATE: May 3, 1982.

ADDRESS: Comments should be directed to the following address: U.S. Department of Energy, Milton Jordan, Director, Division of FOI and PAA, MA–43, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

U.S. Department of Energy, Milton Jordan, Director, Division of FOI and PAA, MA–43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–5955,

or

U.S. Department of Energy, Leslie Borden, Office of General Counsel, GC–41, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–8618.

SUPPLEMENTARY INFORMATION:

I. Report on New Systems: Proposal of two new systems not Previously Reported.
II. Proposal of a new routine use for Systems of Records.
III. Revision of two Systems of Records previously reported.
IV. Deletion of three Systems of Records previously reported.
V. Deletion of five subsystems previously reported.
VI. Comment Procedure.
VII. Table of Contents of all DOE Systems as Adopted or Proposed.
VIII. Table of Contents of Reorganization of Field Components.

I. Report on New Systems: Proposed are two new Systems not previously reported.

A. Background

This report on new systems consisting of separate parts, is submitted by the DOE as required by the Privacy Act of 1974 5 U.S.C. 552a(o), and paragraph 2a(2) of the Transmittal Memorandum No. 1 to the Office of Management and Budget (OMB) Circular A–108. OMB Circular A–108 requires a Report on New Systems by a Government agency whenever a new System of Records is proposed or certain significant changes occur to previously established systems. The DOE is proposing to establish two Systems of Records not heretofore noticed. Their proposed designations are as follows:

B. DOE–76, California, Nevada and Utah Milk Directory

1. Purpose: The DOE Nevada Operations Office, in order to provide for the public safety while conducting underground nuclear experiments, must maintain information on the location of dairy herds and family milk cows in Nevada and certain counties in California and Utah. In the event of an accidental leakage of radioactivity into the atmosphere as the result of a nuclear test, ranch and farm owners can be notified of a potentially hazardous condition and milk samples can be analyzed to determined whether radiation levels are excessive. This procedure must be carried out without delay. This is accomplished by maintaining a record of each ranch, farm, or dairy, including the ranch location and owner's name, and telephone number.

2. Authority under which the System will be Maintained: This system is established under the authority vested in the Secretary contained in 5 U.S.C. 301 and section 644 of the Department of Energy Organization Act, Pub. L. 95–91, to prescribe such procedural and administrative rules as he may deem necessary or appropriate to manage functions vested in him.

3. Effect of the System on the Privacy of Individuals: The records maintained in connection with this proposed system contain only the minimum information necessary to locate dairy herds and family milk cows and to notify their owners in the event of an emergency. The DOE does not believe that such information is sensitive since it is provided voluntarily by the ranchers, farmers, and dairymen, and will have no substantial effect on individual privacy. The DOE further believes that the consequences of not having such information available in the event of an emergency are far more serious than the very limited effect on personal privacy.

4. Safeguards: The records are disclosed only to those with a need-to-know and are maintained in limited access areas. Computer files are protected by a password mechanism and are accessible only to a limited number of individuals who operate the computer system. The safeguards are considered to be more than adequate for this System of Records.

C. DOE–77, Physical Fitness Test Records

1. Purpose: The Physical Fitness Test Records serve to provide information on security guards' ability to annually perform certain fitness tests. This information is used to determined whether an individual should be placed on limited duty (unarmed status).

2. Authority: This system is established under the authority vested in the Secretary contained in 5 U.S.C. 301 and section 644 of the Department of Energy Organization Act, Pub. L. 95–91, to prescribe such procedural and administrative rules as he may deem necessary or appropriate to manage functions vested in him.

3. Effects of the System on the Privacy of Individuals: The data in this system will be available only to the administrative and training personnel of the contracted protective force management or the responsible Federal force management who maintain the records and to other authorized higher management officials. As a result, DOE believes there will be a minimal effect on the privacy and other personal or property rights of the subject individuals.

4. Safeguards: The records will be stored in locked file cabinets in buildings under guard protection. Only those having a need-to-know will be permitted access to the records. It is the Department's evaluation that the risk of unauthorized disclosure is minimal.

II. Proposal of New Routine Use

DOE Proposes to establish a new routine use of the following systems of records: DOE–33 Personal Medical Records; DOE–35 Personnel Radiation Exposure Records; and DOE–36 Statistical Analysis Using Personnel Security Questionnaires. The new routine use would permit disclosure of records in the systems to the staff of the National Institute of Occupational Safety and Health (NIOSH), so that NIOSH may conduct an epidemiological study of the workers at the DOE Portsmouth Gaseous Diffusion Plant at

Piketon. The purpose of the study is to determine whether there are health effects from occupational exposures at the Portsmouth Gaseous Diffusion Plant, as assessed through the mortality study in correlation with data on exposure at the plant.

The Privacy Act requires that routine use disclosure of records be "compatible with the purpose for which the record was collected." It has been determined that the proposed routine use will be compatible, because the records are maintained for purposes of assessing worker's health and safety and conducting a health and mortality study, and because the purpose of the NIOSH is to research health and safety in the workplace.

III. Revision of Two Systems of Records

DOE–11 Emergency Locator Records: This system was previously reported as being maintained by the Office of the Secretary and having two subsystems (A) Startegic Petroleum Reserve Office in New Orleans and (B) Energy Information Administration, Washington, DC. It is now being expanded to encompass the entire DOE, since other departmental elements are maintaining similar records with the same purpose. This arrangement is administratively more convenient for DOE than to continuously add future subsystems as necessary. This consolidation also simplifies the public task of identifying such records.

DOE–20 Imprest Fund Cashiers: This system was previously reported as being maintained by the Southwestern Power Administration which was tranferred to DOE from the Department of Interior. The system is now being expanded to encompass the entire DOE since imprest fund cashiers are located at all DOE locations. The Assistant Secretary for Management and Administration is authorized to designate imprest fund cashiers to the Treasury Department in order to make cash payments for travel advances, local travel vouchers, and miscellaneous purposes.

IV. Deletion of Systems

Since the reorganization of DOE, several programs have been eliminated entirely or merged with other DOE components. In view of this some of the System of Records previously reported are no longer being maintained and therfore are being deleted from DOE system notices. The deleted Systems are DOE–30 Nuclear Qualification Examination Records. DOE–60 Environmental Impact Document Monitoring, Processing and Correspondence Tracking System, and DOE–63 Electric Rate Demonstration Data Base.

V. Deletion of Five Subsystems of Records

Subsystems A & B are being deleted from the DOE–10 Time and Accountability Records. The Office of Enforcement and the Energy Information Administration have reorganized and these subsystems are no longer being maintained. In addition, Subsystems B, C, and D are being deleted from DOE–67 Participants in Experiments, Studies and Surveys. These subsystems were being maintained by Energy Information Administration and are being deleted due to the reorganization of that organization and the completion of the studies. Further, DOE is changing Subsystem E to become Subsystem B. This change will keep the flow of future subsystems in sequential order and it would be more convenient to the public in identifying these records.

VI. Comment Procedures

As provided by section 3(e)(11) of the Privacy Act of 1974 (5 U.S.C. 552a(e)(11)), interested persons are invited to submit written data, views or arguments related to these proposals to U.S. Department of Energy, Division of FOI and Privacy Acts Activities, 1000 Independence Avenue, SW., Mail Stop MA–43, Washington, DC 20585.

"Comments" should be written on the outside of the envelope and on the document submitted to DOE with the designation "Department of Energy Privacy Act Systems Proposals." These comments and all other relevant information will be considered by DOE before the various proposals are adopted in their final form.

If no comments to the contrary are received with respect to a particular proposed system, it is the intent of the DOE to operate any such system as proposed at the expiration of the 60-day advance notice period for informing Congress and the Office of Management and Budget of proposed new systems, as defined in OMB Circular A–108.

The DOE is submitting the Reports on New System required by OMB Circular A–108 concurrently with publication of this **Federal Register** Notice.

The DOE has determined that this document does not contain a proposal requiring preparation of a regulatory analysis under Executive Order 12044.

Privacy Act of 1974, Pub. L. 93–579; Department of Energy Organization Act. Pub. L. 95–91; Executive Order 12009, 42 FR 42667; and those authorities vested in the Department's predecessor agencies which are incorporated by reference in Title III of the Department of Energy Organization Act.

In consideration of the foregoing, the measures described above are proposed. Set forth below is the table of contents of all DOE Systems as adopted or proposed, the text of those notices, and a table reflecting the reorganization of field components.

Issued in Washington, DC, March 25, 1982.

Harry L. Peebles,

Acting Assistant Secretary, Management and Administration.

VII. Table of Contents of All DOE Systems as Adopted or Proposed

DOE–1 DOE Personnel and General Employment Records
DOE–2 DOE Personnel: Supervisor-Maintained Personnel Records
DOE–3 DOE Personnel: Appraisal and Development Records
DOE–4 Applications for DOE Employment
DOE–5 Personnel Records of Former Contractor Employees
DOE–6 Report of Consultants to DOE Contractors
DOE–7 Applications and Reference Checks for Overseas Employment with the International Atomic Energy Agency (IAEA)
DOE–8 Intergovernmental Personnel Act (IPA) Contracts
DOE–9 Members of DOE Advisory Committees
DOE–10 Office of General Counsel Time and Accountability Reports
DOE–11 Emergency Locator Records
DOE–12 Nationwide Traineeship Reporting System
DOE–13 Payroll and Leave Records
DOE–14 Report of Compensation
DOE–15 Payroll and Pay-Related Data for Employees of Terminated Contractors
DOE–16 Reports of Financial Interest
DOE–17 Certificates of Eligibility for FHA Insured Loans
DOE–18 Accounts Payable Financial System
DOE–19 Accounts Receivable Financial System
DOE–20 Imprest Fund Cashiers
DOE–21 Emergency Defense Mobilization Files
DOE–22 Plant Services History
DOE–23 Property Accountability System
DOE–24 Land Records
DOE–25 Employee Parking Records
DOE–26 Official Travel Records
DOE–27 Foreign Travel Records
DOE–28 General Training Records
DOE–29 Technology Training Program—Skill Training at Technician Level

DOE–30 Nuclear Qualification Examination Records (Deleted)
DOE–31 Firearms Qualification Records
DOE–32 Government Motor Vehicle Operator Records
DOE–33 Personnel Medical Records
DOE–34 Employee Assistance Program (Alcohol and Drug Abuse Program)
DOE–35 Personnel Radiation Exposure Records
DOE–36 Statistical Analysis Using Personnel Security Questionnaire (Health and Mortality Study)
DOE–37 Equal Employment Opportunity Complaint Files
DOE–38 Occupational and Industrial Accident Records
DOE–39 Labor Standards Complaints and Grievances
DOE–40 Contractor Employees Insurance Claims
DOE–41 Legal Files (Claims, Litigations, Criminal Violations, Patents, and Others)
DOE–42 Personnel Security Clearance Index
DOE–43 Personnel Security Clearance Files
DOE–44 Special Access Authorization for Categories of Classified Information
DOE–45 Weapon Data Access Control System
DOE–46 Clearance Board Cases
DOE–47 Security Investigations
DOE–48 Security Education and/or Infraction Reports
DOE–49 Security Correspondence File
DOE–50 Personnel Assurance Program Records
DOE–51 Employee and Visitor Access Control Records
DOE–52 Alien Visits and Participation
DOE–53 Access Authorization for ADP Equipment
DOE–54 Investigative Files of Inspector General
DOE–55 Freedom of Information and Privacy Act Requests for Records
DOE–56 Congressional Constituent Inquiries
DOE–57 Congressional Profiles
DOE–58 General Correspondence Files
DOE–59 Mailing Lists for Requesters of Energy Related Information
DOE–60 Environmental Impact Document Monitoring, Processing, and Correspondence Tracking System (IMPACT) (Deleted)
DOE–61 Census of High Energy Physicists
DOE–62 Historical Files—Published Information Concerning Selected Persons in the Energy Field
DOE–63 Electric Rate Demonstration Data Base (Deleted)
DOE–64 Low-Income Weatherization Program Home Report Records
DOE–65 Energy Extension Service Records
DOE–66 Power Sales to Individuals
DOE–67 Participants in Experiments, Studies, and Surveys
DOE–68 Minority Energy Technical Assistance Program (METAP) Records
DOE–69 Residential Solar Water Heating Workshops Pilot Program Records
DOE–70 Electricity Use and Conservation Analysis Records
DOE–71 The Radiation Accident Registry
DOE–72 The Department of Energy Radiation Study Registry
DOE–73 The US–DTPA Registry
DOE–74 Bonneville Power Administration Conservation Program
DOE–75 Savannah River Plant Telephone Call Account System (Call Account System)
DOE–76 California, Nevada, and Utah Milk Directory (Proposed)
DOE–77 Physical Fitness Test Records (Proposed)

VIII. Table of Contents of Reorganization of Field Components

1. Alaska Power Administration
2. Albuquerque Operations Office
3. Bartlesville Energy Technology Center
4. Bonneville Power Administration
5. Central District Office of Enforcement (Reports to Headquarters)
6. Chicago Operations Office
7. Grand Forks Energy Technology Center
8. Headquarters
9. Idaho Operations Office
10. Laramie Energy Technology Center
11. Morgantown Energy Technology Center
12. Nevada Operations Office
13. Northeast District Office of Enforcement (Reports to Chicago Operations)
14. Oak Ridge Operations Office
15. Pittsburgh Energy Technology Center
16. Region I—Reports to Chicago Operations Office
17. Region II—Reports to Chicago Operations Office
18. Region III—Reports to Chicago Operations Office
19. Region IV—Reports to Savannah River Operations Office
20. Region V—Reports to Chicago Operations Office
21. Region VI—Reports to Albuquerque Operations Office
22. Region VII—Reports to Albuquerque Operations Office
23. Region VIII—Reports to Idaho Operations Office
24. Region IX—Reports to San Francisco Operations Office
25. Region X—Reports to Richland Operations Office
26. Richland Operations Office
27. Rocky Mountain District Office of Enforcement (Reports to Idaho Operations Office)
28. San Francisco Operations Office
29. Savannah River Operations Office
30. Southeast District Office of Enforcement (Reports to Savannah River Operations Office)
31. Southeastern Power Administration
32. Southwest District Office of Enformement (Reports to Albuquerque Operations Office)
33. Southwestern Power Administration
34. Western District Office of Enforcement (Reports to San Francisco Operations Office)
35. Western Power Administration

DOE–1

SYSTEM NAME:

DOE Personnel and General Employment Records (this system of records supplements the General Personnel Records System of the Office of Personnel Management.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The records are maintained at the personnel office in each DOE location as listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees, consultants, board members, and applicants (only to the extent they are considered for competitive selection), specifically including all such personnel of the Federal Energy Regulatory Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, sex, grade level, occupational code, Official Personnel Folders (SF–66), Service Record Cards (SF–7), records on suggestions and awards, training request and authorization data, training course evaluation statements, appraisals resulting from annual supervisor-employee review, pay requests and dispositions, reduction in-force registers (including associated records of competitive levels and competitive areas), reemployment and repromotion priority lists, retirement-associated eligibility and calculations, records on competitive selections (Form 178, Standard Form 39, and supporting documents), central copy of approved position descriptions, correspondence related to and copies of employee appeals, grievances, and complaints, including records of hearing's or

examiner's reports, lists of separated employees, correspondence from employees requesting transfer or reassignment, average grade data, minority group code, data related to and derived from the Payroll/Personnel System (PAY/PERS) and Energy Manpower and Personnel Reporting Information System (EMPRIS).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; 5 U.S.C. 2102 et seq.; Executive Order 12009; Office of Personnel Management regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer printouts, punched cards, magnetic tape and disk, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locked file cabinets in controlled access rooms. Computerized records are maintained in the DOE computer center with access limited to those with a need-to-know.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Personnel, MA–10, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of personnel in the locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Act Activities, Department of Energy (Headquarters), or the Privacy Acts Officer identified in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, and, if appropriate, the geographic location(s) and organization(s) where requester believes such record may be located, social security number, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, supervisors, other Government agencies, former employers, and references provided by subject individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has exempted this system from subsection (c)(3), (d), (e)(1), (e)(4), (G), (H), (I) and (f) of 5 U.S.C. 552a under the Privacy Act of 1974. This exemption applies only to information in this system of records which is exempt pursuant to 5 U.S.C. 552a(k) (2)(5), or (6).

DOE–2

SYSTEM NAME:

DOE Personnel: Supervisor-Maintained Personnel Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The records are maintained at all DOE offices, by employees' respective supervisors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current DOE employees; in a few cases, records include former employees, assigned military personnel, or applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

The contents vary from office to office, but include all or some of the following: Copies and summaries of employment history, job description, education, address, next of kin, telephone number, date of birth, awards and commendations received, participation in professional or community activities, training, earnings and leave data, travel actions, certification or qualification examinations, injury reports, appraisals, copy of ADP-produced Form 702, copy of Form 50, assignment records, security infraction notices, records of supervisor-employee discussions, reprimands, admonitions, adverse actions, contingency planning data, security clearance status, and Government property in employee's possession.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer printout, punched cards, magnetic tape, disk, paper, and microfiche.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are usually maintained in files under the control of supervisory officials.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Personnel, MA–10, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of personnel in the locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The great majority of the data comes directly from the individuals or cognizant supervisory officials; other data comes from copies of personnel action documents.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-3

SYSTEM NAME:

DOE Personnel: Appraisal and Development Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The records are maintained at the personnel office in each DOE location as listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DOE employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Supervisor-employee appraisal (by name of employee), of performance, and preparation of development plans; and, for employees GS-15 and above, an appraisal of managerial potential for the agency Executive Development Program.

AUTHORITY FOR MAINTENACE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper ERDA Forms 622, 622A, 622B, 622C, with some older records on Form 625; computer printouts; punched cards; magnetic tape; disk; other paper; and microfiche.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are usually maintained in lockable file cabinets under the control of supervisory personnel.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Personnel, MA-10, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of personnel in the locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as *Notification procedures* above.

CONTESTING RECORD PROCEDURES:

Same as *Notification procedures* above.

RECORD SOURCE CATEGORIES:

Supervisors and employees.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-4

SYSTEM NAME:

Applications for DOE Employment.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The records are maintained at the personnel office in each DOE location as listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals applying for, or inquiring about, employment with DOE and the Federal Energy Regulatory Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters of inquiry, application supply file (Standard Form 171, "Personal Qualifications Statement"; general applications; resumes of personal data, education, work experience, military, and employment history statements); personnel evaluation forms; completed reference check letters and record check forms; interview summary sheets; candidate ratings performed by DOE; authorization of payment of travel expenses; correspondence related to recruitment, application, and employment; test records and academic transcripts (as appropriate); referrals for consideration; medical records; certification of performance ability and medical reports concerning candidates under selective placement programs, such as handicapped persons, offenders, and Vietnam veterans; and other documents related to application and employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Key operating officials and supervisors (including military personnel assigned to DOE or directly associated with the naval or military application functions of DOE): Referrals of applicants; evaluation of qualifications and selection of candidates under consideration for employment; or in other activities directly concerned with their official responsibilities.

Colleges and universities participating in the DOE recruiting program: Performance of regular practices in placement of students and in receiving information concerning evaluation or selection of their graduates.

Additional routine uses as listed in Appendix B.

POLICIES AND PRACTICIES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer printouts, punched cards, magnetic tape, disk, paper, and microfiche.

RETRIEVABILITY:

By name, occupational category, date, register number; in college recruitment files, retrievable by educational institution's name.

SAFEGUARDS:

Physical security varies with records maintained either in a locked and guarded building or in locked file cabinets. In either case, access is limited on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, a appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Personnel, MA–10, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of personnel in the locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Full name, social security number, date of birth, occupational category and location at which application or other material was submitted; in case of college recruitment material, applicable college or university name, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Individuals seeking, or referred for, employment; personal references provided by individuals; personnel administrators, officials, assistants, and other staff; interviewers; current and former employers, teachers, supervisors, and other Government agencies; Congressmen, testing officials, State Employment Service; and educational institutions.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–5

SYSTEM NAME:

Personnel Records of Former Contractor Employees.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The records are maintained at the personnel office in locations listed as items 1, 3, 6, 8, 11, 12, and 14 through 18 in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former contractor employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, employment history, earnings, medical history, and other related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses of records include employment history verification, radiation exposure records for medical and litigation purposes, and issuance of clearances. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in locked or guarded buildings.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Industrial Relations, MA–70, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of personnel in the locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 6, 8, 11, 12, and 14 through 18 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORDS ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual's employer.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–6

SYSTEM NAME:

Report of Consultants to DOE Contractors.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 6, 8, 9, 11, 12, and 15 through 19 in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual consultants to DOE contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, budget and reporting classification number, former employer, speciality, services category, specific services provided, contract duration, employer, rate, days worked, total direct compensation, and total contract cost.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The data is used by Headquarters and field offices in the review of consultant agreements and in determining the extent to which DOE policy is being complied with by contractor employees who are also consultants. The information is also used as a source for identifying individuals possessing special skills relevant to energy concerns. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tape.

RETRIEVABILITY:

By name, social security number, area of specialization, DOE field office, DOE contractor, and budget and reporting classification number.

SAFEGUARDS:

Records are maintained in locked file cabinets in secured and guarded buildings with access on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Industrial Relations, MA–70, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The officials responsible for industrial relations at the location where the systems are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 2, 6, 8, 11, and 13 through 18 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Reports from individuals, contractors, and Dun and Bradstreet.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–7

SYSTEM NAME:

Applications and Reference Checks for Overseas Employment with the International Atomic Energy Agency (IAEA).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Office of Personnel, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States citizens interested in employment with International Atomic Energy Agency, Vienna, Austria.

CATEGORIES OF RECORDS IN THE SYSTEM:

Education, employment history, salary, and personal reference checks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

United States Mission to IAEA, Vienna and other governmental agencies interested in foreign programs: Evaluation prior to offers of employment. Additional routine use listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name, specialty, and IAEA organizational designation.

SAFEGUARDS:

Records are maintained in locked file cabinets, with access limited to personnel of the Office of Personnel and the Office of International Affairs.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 13234.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Director, Office of Personnel, MA–10, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as *Notification procedures* above.

CONTESTING RECORD PROCEDURES:

Same as *Notification procedures* above.

RECORD SOURCE CATEGORIES:

Individuals seeking employment, references, and information provided by knowledgeable agency personnel.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-8

SYSTEM NAME:

Intergovernmental Personnel Act (IPA) Contracts.

SECURITY CLASSIFICATIONS:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1 through 12, 15 through 17, and 19 through 21 in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are now or have been under IPA contract to DOE.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, social security number, telephone number, salary, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Transmittal of data to State and local governments or institutions of higher education to implement IPA contracts. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in lockable metal file cabinets with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for 5 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Director, Office of Personnel, MA-10, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The directors of personnel for the locations where the records are maintained are designated the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified in items 1 through 12 and 14 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, social security number, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, State or local governments, and institutions of higher education.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-9

SYSTEM NAME:

Members of DOE Advisory Committees.

SECURITY CLASSIFICATIONS:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Office of Organization and Management Systems, Chief of Advisory Committee Management, MA-243, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who are members of of a DOE Advisory Committee.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, biographical information, home address and telephone number, work address and telephone number, type of business or organizational affiliation, present position with business or other organization, number of years in present position, other related experience, congressional district, and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authoriti⅛es incorporated by reference in Title III of the Department of Energy Organization Act; Federal Advisory Committee Act, 5 U.S.C. Appendix 1, Executive Order 2009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The name and mailing address of any Advisory Committtee member is provided to anyone requesting it. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in a locked room, with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained in a binder while the individual is a member of a committee. Upon a member's termination, records are destroyed or returned to individual.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Director, Office of Organization and Management Systems, MA-20, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where

requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, members of Congress, and public interest groups.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-10

SYSTEM NAME:

Office of General Counsel Time and Accountability Reports.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Office of General Counsel, GC-41, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Office of General Counsel employees in Headquarters or the field counsel offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel data including name, grade, salary, social security number, duplicates of personnel action data maintained by DOE personnel office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

This system is used to conduct analyses and evaluations of Office of General Counsel activities, including personnel, financial management, and budget activities. Records in this system are used only by Office of General Counsel management on a need-to-know basis.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name, reporting period, office location code, grade, salary, and promotion date. Retrieval varies, depending on the type of project for which records are being used.

SAFEGUARDS:

Records are maintained in lockable file cabinets in offices that are locked during nonworking hours. Records are provided, as a matter of administrative procedure, only to those General Counsel officials with a need to use the records for the performance of management functions.

RETENTION AND DISPOSAL:

Records retained for 2½ years.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Office of General Counsel, GC-41, Administrative Officer, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The directors of personnel for the locations where the records are maintained are designated the system manager for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), at the appropriate address identified as item 1 in Appendix A; in accordance with DOE's Privacy Act regulations [10 CFR Part 1008 [45 FR 61576, September 16, 1980]).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individuals, their supervisors and the DOE Office of Personnel.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-11

SYSTEM NAME:

Emergency Locator Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

These records are maintained at all DOE locations identitfied as items 1 through 21 in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE senior staff officials, office directors and key support staff, DOE contractors, and other various Federal officials involved in DOE business.

CATEGORIES OF RECORDS IN THE SYSTEM:

By name, home telephone number, home address, individual's title, and the name of person to contact in case of an emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act, Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are made available to the DOE personnel, contractors, and other Government agency personnel on a need-to-know basis. The information is also used in order to enable contact with appropriate personnel in the event of an emergency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name of subject individual.

SAFEGUARDS:

Records are located in lockable drawers or file cabinets in secured rooms with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are revised when appropriate, at which point the older records are destroyed, in accordance with DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Assistant Secretary for Management and Administration, MA-1, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of records at the field locations where the system is maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or Privacy Act Officer at the appropriate address identified in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-12

SYSTEM NAME:

Nationwide Traineeship Reporting System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Office of Energy Research, ER-44, 1000 Independence Avenue, SW., Washington, DC 20585

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99562.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

College graduate students participating in the DOE-sponsored traineeship/laboratory graduate program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Academic background, employment history, traineeship area of study, and mailing/permanent addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

University traineeship advisers—compliance with contract terms covering traineeship administration functions. Contractor officials—for possible employment selection/notification. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, punched cards, and magnetic tape.

RETRIEVABILITY:

By name, institution, laboratory, traineeship program class, and traineeship identification number.

SAFEGUARDS:

Records are maintained in a secure building. Access to magnetic tapes is controlled through established DOE computer center procedures (personnel screening and physical security). Access is on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." "Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Field Operations Management, ER-40, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Office: The director of the Richland Operations Office is the system manager for his portion of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer, Richland Operations Office, at the appropriate address identified as items 1 and 15 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

University traineeship advisors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-13

SYSTEM NAME:

Payroll and Leave Records.

SYSTEM LOCATION:

The records are maintained at all DOE locations identified in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE personnel and consultants, specifically including personnel and consultants of the Federal Energy Regulatory Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance records, earning records, payroll actions, deduction information requests, authorizations for overtime, and night differential, and Office of Personnel Management retirement records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Sections 112(a) and 113 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 66(a)); 5 U.S.C. 5101-5115; T.766 General Accounting Office Policy and Procedures Manual; Federal Personnel Manual Supplement 296-31/293-31; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Treasury Department—To collect withheld taxes, print payroll checks and issue savings bonds.

Internal Revenue Service—To process Federal income tax.

State and Local Governments—To process state and local income tax processing.

Office of Personnel Management—Retirement records and benefits.

Social Security Administration—Social Security records and benefits.

Department of Labor—To process Workmen's Compensation claims.

Department of Defense—Military Retired Pay Offices—To adjust Military Retirement.

Savings Institutions—To credit accounts for savings made through payroll deductions.

Employee Unions—To credit accounts for employees with union dues deductions.

Health Insurance Carriers—To process insurance claims.

General Accounting Office—Audit—To verify accuracy and legality of disbursement.

Veterans' Administration—To evaluate veteran's benefits to which the individual may be entitled.

States' Departments of Employment Security—To determine entitlement to unemployment compensation or other state benefits.

Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, punched cards, magnetic tape and disc, and microfiche.

RETRIEVABILITY:

By name, social security number, and payroll number.

SAFEGUARDS:

Access to magnetic tapes and disc files is controlled through established DOE computer center procedures (personnel screening and physical security). Paper records are maintained in locked cabinets and desks. Access to any record is on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Controller, MA–80, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of field locations 2 through 21 in Appendix A are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number, location(s) of employment, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, supervisors, timekeepers, official personnel records, and the IRS.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–14

SYSTEM NAME:

Report of Compensation.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 6, 8, 11, 12, 14 through 18 and 21 in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of DOE contractors performing and operating onsite service work in DOE-owned or -controlled facilites, including long-term architect-engineering, and cost-reimbursement construction contractors (ref. DOE–PR 9–50.001 of June 30, 1979).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, job title, contractor, current salary (list for $40,000 and above only), amount reimbursed, and other compensation (actual and amount reimbursed).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used in reviewing reasonableness of compensation paid to top level contractor employees.

Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Computer security procedures for data safekeeping. Associated records are maintained in locked file cabinets in secured and guarded buildings with access on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Industrial Relations, MA–70, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of the locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 6, 8, 11, 12, 14 through 18, and 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Contractor salary administrative personnel.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-15

SYSTEM NAME:

Payroll and Pay-Related Data for Employees of Terminated Contractors.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 6, 8, 12, 15, and 21 in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former contractor employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee payroll data from terminated contractors, employment history, job titles, complaints, salary reviews, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used to verify past earnings, job titles, periods of employment, and pay status for Government agencies, litigation and medical decisions. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in DOE records holding area.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Industrial Relations, MA-70, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The directors of contractors industrial relations at the location where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains informatin about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 6, 8, 12, 15, and 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

DOE contractors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-16

SYSTEM NAME:

Reports of Financial Interest.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 6, 8, 9, 11, 12, 14 through 19, and 21 in Appendix A, and the following additional locations:

U.S. Department of Energy, Brookhaven Area Office, Upton, NY 11973

U.S. Department of Energy, Kansas City Area Office, Office of Chief Counsel, P.O. Box 202, Kansas City, Mo 64141

U.S. Department of Energy, Los Alamos Area Office, Office of the Chief Counsel, 528 35th Street, Los Alamos, NM 87544

U.S. Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, CO 80401

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former officers, employees and special Government employees of the DOE or its predecessor agencies, excluding employees of the Federal Energy Regulatory Commission (FERC) (and its predecessor, the Federal Power Commission (FPC)), required to submit financial interest forms in accordance with Executive Order 11222; Title VI of the Department of Energy Organization Act; and regulations or other instructions issued by the DOE and its predecessor agencies (except for the FERC and FPC) in implementation of the Government financial interest program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in DOE Report of Financial Interests Forms DOE-459, 460, 461, and in Energy Research and Development Administration (ERDA) Conflict of Interest Forms 443 and 269, and in Federal Energy Administration (FEA) Financial Interest Forms FEA F-82, F-91, and F-254, including individual's name, position title, date of appointment, employment and financial interests, creditors, interest in real property, names and addresses of other persons requested to supply information, individual's certificate of truth and veracity, and correspondence pertaining to the individual's financial interest statement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act; including authorities incorporated by reference in Title III of the Department of Energy Organization Act; 5 CFR Part 735 (also Federal Personnel Manual, Chapter 735); Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF SUCH USERS AND THE PURPOSES OF SUCH USES:

Cognizant appointing officials—to assist the Department, OPM, and the President in determining whether individuals have conflicts or apparent conflicts of interest in the performance of official duties; for counseling of personnel in avoiding violations; for assignment of duties; for law enforcement review.

The public—pursuant to statute, portions of the DOE Forms 459 and 460 (Parts A thereof), and all of FEA Form F-254 are required to be made available to the public.

Additional routine uses 1, 2, 3, 4, 7, 8, and 9 listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in locked filing cabinets and rooms, or in Class C manipulation-proof, three-way combination locked steel containers. Access is by authorized personnel only.

RETENTION AND DISPOSAL:

Records generated pursuant to the Department of Energy Organization Act are retained for 6 years after receipt. ERDA forms and related papers are retained for 2 years after the individual leaves the position for which the submission is required, or 2 years after separation, whichever is earlier. FEA records are maintained until the individual severs connection with the agency; no time period for retention after severance was developed by the FEA. Records within DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Office of General Counsel, GC-45, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers, directors, or administrators of field locations identified as items 3, 6, 8, 9, 11, 12, 14 through 19, and 21 in Appendix A are system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 6, 8, 9, 11, 12, 14, 19 and 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Individual's name, DOE (or ERDA or FEA) location of last employment or cognizant office, and time period of employment.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained, or other person (such as a trustee, attorney, or accountant) identified by the individual as a supplier of information.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-17

SYSTEM NAME:

Certificates of Eligibility for FHA Insured Loans.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons having Certificates of Eligibility for FHA insured loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, employment, and loan information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

FHA—for approval by area manager and processing of loan. Additional routine uses as listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in a locked building.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Manager, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87115.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87115, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individual, employer, and real estate broker.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-18

SYSTEM NAME:

Accounts Payable Financial System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1 through 21 in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Creditors due money from the agency (including employees), former employees, and members of the general public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address; amount owed and service performed; underpayment or other accounting information; and invoice number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Paying creditors and the additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and machine readable records.

RETRIEVABILITY:

By name and purchase order or contract number, as appropriate.

SAFEGUARDS:

Physical, technical, and administrative security is maintained, with all storage equipment and rooms locked when not in use. Access is restricted to authorized personnel.

RETENTION AND DISPOSAL:

Records are retained until payment is made and account is audited. Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Controller, MA–80, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of the locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address indentified as items 1 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individual, contracting officer and, as appropriate, accounting records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–19

SYSTEM NAME:

Accounts Receivable Financial System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1 through 21 in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons owning money to DOE.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address, services rendered, amount receivable, billing date, and invoice number, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; 31 U.S.C. 66a; 5 U.S.C. 5701–09; Federal Property Management Regulations 101–7; Treasury Fiscal Requirements Manual; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Billing debtors and reporting to the Office of Personnel Management.

Additional routine uses as listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic tape, microfilm, and microfiche.

RETRIEVABILITY:

By name or invoice number.

SAFEGUARDS:

Access to records is by authorized personnel only.

RETENTION AND DISPOSAL:

Records are retained until payment is received and account is audited. Records retention and disposal authorities are contained in DOE 1324.2 "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Chief, Financial Operations, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of field locations 2 through 21 in Appendix A are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A; accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic locations(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual who is the subject of the record, contracting officer, and accounting records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–20

SYSTEM NAME:

Imprest Fund Cashiers.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The records are maintained at all DOE locations identified in Appendix A.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

DOE personnel who are imprest fund cashiers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of appointment, authorized amount of funds, and reports of unannounced administrative reviews.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For control of funds handling appointments. Additional routine uses as listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records (letter memoranda or forms).

RETRIEVABILITY:

By name and office location.

SAFEGUARDS:

Records are maintained in a locked building.

RETENTION AND DISPOSAL:

Records are destroyed after 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Controller, MA–80, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of field locations 2 through 21 in Appendix A are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters) or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number, location(s) of employment, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individual, supervisors, and employees appointed to conduct administrative reviews.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–21

SYSTEM NAME:

Emergency Defense Mobilization Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Utility Systems & Emergency Communication, EP–422, 1000 Independence Avenue, SW., Washington, D.C. 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the National Defense Executive Reserve and other individuals assigned responsibilities in the event of a national defense emergency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical and related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009; Defense Production Act of 1950.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

DOE officials and officials of other departments and agencies—use of records to administer the National Defense Executive Reserve Program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in lockable drawers or file cabinets in secured rooms with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for 2 years following the resignation or death of the subject individual.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Assistant Secretary, Environmental Protection, Safety and Emergency Preparedness (or his designee), EP–1, 1000 Independence Avenue, SW., Washington, D.C. 20585.

NOTIFICATION PROCEDURES:

Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy, Washington, D.C. 20585, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–22

SYSTEM NAME:

Plant Services History.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been or are employed by the Division of Plant Services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records concerning labor performed by the above-defined individuals, including type of work, rate, pay, travel and per diem status, and for whom these services were performed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to provide a detailed record of costs incurred for labor against any plant services requested on a monthly basis, to provide backup for charges for work performed for other Federal agencies under the cross-servicing agreements authorized by GSA Bulletin FPMR 100.G–23, and to provide backup for charges against contractors and other vendors for corrective work performed by the Branch of Plant Services. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape.

RETRIEVABILITY:

By name, position number, and time period involved.

SAFEGUARDS:

Records are maintained in a locked building.

RETENTION AND DISPOSAL:

Tapes are erased after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Field Offices: U.S. Department of Energy, Director, Division of Plant Services, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

NOTIFICATION PROCEDURE:

a. Requests by an indivudual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Daily time reports and leave applications completed and signed by subject individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–23

SYSTEM NAME:

Property Accountability System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 2, 5, 13, 15, 19, 20, and 21 in Appendix A, and the following additional location:

U.S. Department of Energy, Division of Plant Services, EJ, Bonneville Power Administration, P.O. Box 491, Vancouver, WA 98660.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE employees authorized to be custodians of controlled DOE equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains records concerning the types, quantity, make and models, and value of equipment assigned to individuals and crews. Also, the employees assigned equipment, their account numbers, organization, and location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Federal Property and Administrative Services Act of 1949, Section 202(b), 40 U.S.C. 483(b), Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary uses of the records are (a) to provide inventories to satisfy other FPMR requirements; (b) to maintain a record of location of emergency equipment; (c) to control equipment assignments authorized under union contracts; (d) to provide management information necessary for the budgeting and allocation of equipment funds; and (e) to provide evidence of assignment, location, and value in the event that Government property is stolen. Additional routine uses 1, 4, 8, and 9 listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic disks and paper records.

RETRIEVABILITY:

By name, position number, and/or employee identification number.

SAFEGUARDS:

Access is restricted to authorized personnel.

RETENTION AND DISPOSAL:

Tapes are erased after 10 years. Paper records are held no longer than 6 years after final payment.

SYSTEM MANAGER(S) AND ADDRESS:

The managers or directors of filed locations 2, 5, 13, 15, 19, 20, and 21, and of the Bonneville office listed above under System location are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Request by an individual to determine if a system of records contains information about him/her should be directed the Privacy Act Officer at the appropriate address identified as items, 2, 5, 13, 15, 19, 20, and 21 in Appendix A; and in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–24

SYSTEM NAME:

Land Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Western Area Power Administration, Division of Land, P.O. Box 3402, Golden, CO 80401.

Subunits of the Bonneville Power Administrative:

U.S. Department of Energy, Division of Land Resources, P.O. Box 3621, Portland, OR 97208

U.S. Department of Energy, Lower Columbia Area, P.O. Box 3621, Portland, OR 97208

U.S. Department of Energy, Ross Complex, P.O. Box 491, Vancouver, WA 98666
U.S. Department of Energy, Upper Columbia Area, U.S. Court House, Room 561, West 920 Riverside Avenue, Spokane, WA 99201
U.S. Department of Energy, Snake River Area, West 101 Poplar, P.O. Box 1518, Walla Walla, WA 99362

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and/or companies from whom or to whom WAPA or BPA has acquired or given interests in land.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain the individual's name, description of land tract, type of agreement, rights granted or received, and history of the transaction.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To answer questions regarding land rights which WAPA or BPA has granted to individuals or land rights individuals which have granted to BPA; and as a data source used to update maps. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer punched cards and magnetic tapes; maintained manually in file folders, on cards and on microfilm. Computer reports and keypunched cards are stored in cabinets; the land tract register is stored in a safe.

RETRIEVABILITY:

By line identification, tract number, and contract number; cross referenced by name of landowner, grantee, or grantor.

SAFEGUARDS:

Access to the records is limited to authorized persons. During nonworking hours, access to the records is restricted by their storage in locked metal file cabinets or a locked room.

RETENTION AND DISPOSAL:

Land records are retained for 10 years after unconditional sale or release by the Government, of conditions, restrictions, mortgages or other liens. Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Bonneville Power Administration, Director, Division of Land, P.O. Box 3621, Portland, OR 97208
U.S. Department of Energy, Western Area Power Administration, Director, Division of Land, P.O. Box 3402, Golden, CO 80401

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer at the address identified as items 5 and 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES;

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Information in this system comes from individual landowners, grantees, or grantors; WAPA or BPA officials; and state and local authorities.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-25

SYSTEM NAME:

Employee Parking Records (this system concerns parking managed and controlled by DOE under the general direction of the General Services Administration).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items, 1, 3, 5, 16, 17, and 20 in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DOE employees who apply as members of a carpool or vanpool for DOE parking spaces managed and controlled by DOE under the general directon of the General Services Administration. Also, employees of DOE, DOE contractors, and of nearby employers at the locations listed above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Federal service computation date; payroll or other assigned number; office address and telephone; home address and telephone; make, year, state of registration, and tag number of pool vehicles; and number of days per week in the carpool or vanpool, and other carpooling or vanpooling information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009; Federal Management Circular 1–74.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Dissemination to individuals seeking to join a carpool or vanpool which operates from their residence area. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic tape.

RETRIEVABILITY:

By name, location of parking assignment, home address, payroll or other assigned number, and license number.

SAFEGUARDS:

Paper records are maintained in a lockable metal file cabinet. Magnetic tapes are stored in a restricted area. Access is limited to DOE and contractor personnel who need the information to perform their official duties.

RETENTION AND DISPOSAL:

Parking records are retained until new parking assignments are made (approximately 6 months). Carpool records are retained for 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of

Administrative Services, Washington, DC 20585.

Field Offices: The managers and directors of field locations listed as items 3, 5, 16, 17, and 20 in Appendix A, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 5, 16, 17, and 20 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-26

SYSTEM NAME:

Official Travel Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1 through 21 in Appendix A, and the following additional locations:

U.S. Department of Energy, Clinch River Breeder Reactor Plant Project, P.O. Box U, Oak Ridge, TN 37830

U.S. Department of Energy, Naval Petroleum and Oil Shale Reserve, Colorado, Utah, Wyoming, 400 East First Street, Suite 311, Casper, WY 82601

U.S. Department of Energy, Naval Petroleum Reserve in California, P.O. Box 11, Tupman, CA 93276

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE employees who have traveled on official business or changed official duty stations, and other individuals authorized to travel at Government expense for DOE. Also official guests of DOE.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, social security number, destination, itinerary, mode and purpose of travel, date of travel, expenses (including amount advanced, if any), amounts claimed, amounts reimbursed, travel orders, travel vouchers, receipts, and passport record card.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; 5 U.S.C. 5701–5709; Executive Order 12009; Federal Property Management Regulations 101–7; Federal Travel Regulations; Budget and Accounting Act of 1921; Accounting and Auditing Act of 1950; Federal Claims Collection Act of 1966.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Transmittal to the U.S. Treasury for payment of claim, to General Accounting Office for audit and verification of accuracy and legality of disbursements, to IRS for notification regarding taxable travel reimbursements. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, punched cards, magnetic tape and disk, microfiche, and computer printouts.

RETRIEVABILITY:

By name, social security number, travel order number, and date.

SAFEGUARDS:

Access to magnetic tapes and disk files is controlled through established DOE computer center procedures (personnel screening and physical security). Records are maintained in locked cabinets and desks with access on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Controller, MA–80, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of field locations 2 through 21 in Appendix A, and the additional locations listed above under System location are system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number, location of employment, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals, supervisors, and finance (or accounting) office standard references.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-27

SYSTEM NAME:

Foreign Travel Records.

SECURITY CLASSIFICATION:

Classified and unclassified.

SYSTEM LOCATION:

The locations listed as items 1 through 21 in Appendix A, and the following additional location:

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE employees and contractor employees authorized to travel to foreign countries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Security evaluation of individual's access to classified information and background data relating to proposed foreign travel; travel itinerary, and summary report following completion of travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; 5 U.S.C. 5701–5709; Executive Order 12009; Federal Property Management Regulations 101–7; Federal Trade Regulations; Budget and Accounting Act of 1921; Accounting and Auditing Act of 1950; Federal Claims Collection Act of 1966.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Transmittal to U.S. Treasury for payment of claims, to General Accounting Office for audit and verification of accuracy and legality of disbursements, to IRS for notification regarding taxable travel reimbursements, to State Department for passports, and to law enforcement and intelligence agencies for post-travel discussions.

Additional routine uses as listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, punched cards, magnetic tape, disk, paper, and microfiche.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to employees with a need-to-know. Records are maintained in guarded buildings.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Safeguards and Security, DP–34, Washington, DC 20545.

Field Offices: The managers and directors of field locations 2 through 21 in Appendix A, and the Los Alamos Area Office are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete full name, date of birth, location of employment, and dates of travel.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals and supervisors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has exempted this system from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), (I), and (f) of 5 U.S.C. 552a under the Privacy Act of 1974 (10 CFR Part 1008 (45 FR 61576, September 16, 1980)). This exemption applies only to information in this system of records which is exempt pursuant to 5 U.S.C. 552a(k) (1), (2) and (5).

DOE–28

SYSTEM NAME:

General Training Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1 through 21 in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have requested and participated in training programs administered by DOE, other agencies, or other organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, grade, organization, date of birth, social security number; home address and telephone number and special interest area; education completed, course name, justification for attending the course, direct and indirect costs of training, coded information dealing with purpose, type, source; of 170; course evaluation form, accounting records and central personnel data file quarterly training report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009; Government Employees Training Act of 1958; Federal Personnel Manual Bulletin 290–15; Federal Personnel Manual, Chapter 410 and Appendix A thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in these records is transmitted to intra- and interagency program offices for purposes of determining eligibility for training; to Federal agencies, including the Office of Personnel Management, as source documents for training reports; to training institutions that personnel have requested to attend; and to other Federal agencies as the information documents for payment of funds for training. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICIES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETREVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in secured file cabinets with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Training requests and authorizations are retained for 3 years and then destroyed. Other training records are incorporated in the individual's personnel folder.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Employee Development and Training, MA–13, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers, directors, or administrators of field locations 2 through 21 in Appendix A, are the

system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as *Notification procedures* above.

CONTESTING RECORD PROCEDURES:

Same as *Notification procedures* above.

RECORD SOURCE CATEGORIES:

The subject individuals and the individuals' supervisors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-29

SYSTEM NAME:

Technology Training Program—Skill Training at Technician Level.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 8, and 15 in Appendix A, and the following additional location:

U.S. Department of Energy, Oak Ridge Associated Universities, Oak Ridge Operations Office, P.O. Box 117, Oak Ridge, TN 37830.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Technicians in skill-level training for industrial employers within the energy industry, e.g., construction, electro/mechanical drafting, inhalation toxicologists, radiation monitoring, welding inspection, vacuum techology, and laser and optics technology.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for training assigment, work histories, education, training evaluations.

AUTHORITY FOR MAINTENACE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETREIVEING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, punched cards, magnetic tapes, disks, paper, and mirofiche.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in a guarded building.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Industrial Relations, MA-70, Washington, DC 20585.

Field Offices: The managers and directors of field locations 8 and 15 of Appendix A, and the Oak Ridge Operations Office are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 8 and 15 in Appendix A, in accordance with DOE's Privacy regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as *Notification procedures* above.

CONTESTING RECORD PROCEDURES:

Same as *Notification procedures* above.

RECORD SOURCE CATEGORIES:

Subject individual and contractor by whom the individual is employed.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-31

SYSTEM NAME:

Firearms Qualification Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 6, 8, 11, 12, and 14 through 18 in Appendix A, and the following additional locations:

U.S. Department of Energy, Amarillo Area Office, Pantex Plant, P.O. Box 1086, Amarillo, TX 79105

U.S. Department of Energy, Dayton Area Office, Mound Laboratory, Box 66, Miamisburg, OH 45342

U.S. Department of Energy, Kansas City Area Office, P.O. Box 202, 200 E. Bannister Road, Kansas City, MO 64141

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544

U.S. Department of Energy, Pinellas Area Office, GE Pinellas Peninsula, P.O. Box 11500, St. Petersburg, FL 33733

U.S. Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, CO 80401

U.S. Department of Energy, Sandia Area Office, Technical Area I, Kirtland Air Force Base-East, Albuquerque, NM 87115

U.S. Department of Energy, San Francisco Livermore Site Office, Trailer 125, Room 106, Livermore, CA 94550

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Energy employees and contractor employees who familiarize themselves or qualify with firearms in the performance of their regular duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of an individual's annual qualification scores; approvals of gun permits; records concerning accountability of firearms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities

incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Wackenhut Services Inc. (Nevada) Training and Administrative Personnel-performance of regular duties.

Los Alamos County Sheriff-deputation of individuals.

Los Alamos County Clerk-recording of Deputy Commission.

Los Alamos District Court Clerk-recording of Deputy Commission.

Additional routine uses 1, 2, 3, 5, 8, and 9 listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to employees having a need-to-know. Records are stored in security areas under guard and/or alarm protection.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Record Disposition." Records within the Department of Energy are destoryed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headqarters: U.S. Department of Energy, Director, Office of Safeguards and Security, DP-34, Washington, DC 20545.

Field Offices:

The managers and directors of field locations 3, 6, 8, 11, 12, and 14 through 18 in Appendix A, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 3, 6, 8, 11, 12 and 14 through 18 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Gun permit notifications and firearm qualifications results from individuals and training personnel.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-32

SYSTEM NAME:

Government Motor Vehicle Operator Records.

SEURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1 through 21 in Appendix A, and the following additional locations:

U.S. Department of Energy, Bonneville Power Administration, Portland Area Office, 919 Northeast 19th Avenue, P.O. Box 3621, Portland, OR 97208

U.S. Department of Energy, Bonneville Power Administration, Seattle Area Office, 415 First Avenue North, Room 250, Seattle, WA 98109

U.S. Department of Energy, Bonneville Power Administration, Spokane Area Office, United States Court House, Room 561, West 920 Riverside Avenue, Spokane, WA 99201

U.S. Department of Energy, Bonneville Power Administration, Ross Complex, 5400 Northeast Highway 99, P.O. Box 491, Vancouver, WA 98660

U.S. Department of Energy, Bonneville Power Administration, West 101 Polar, P.O. Box 1518, Walla Walla, WA 99362

U.S. Department of Energy, Carbondale Mining Research Center, P.O. Box 2587, Carbondale, IL 62901

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544

U.S. Department of Energy, Naval Petroleum Reserve, P.O. Box 11, Tupman, CA 93276

U.S. Department of Energy, New Brunswick Laboratory, D-350, 9800 S. Cass Avenue, Argonne, IL 60439

U.S. Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, CO 80401

U.S. Department of Energy, Solar Energy Research Institute, 1536 Cole Boulevard, Golden, CO 80401

U.S. Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road, East, New Orleans, LA 70123

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each DOE employee and contractor employee whose job duties require frequent or occasional use of Government-owned or-leased vehicles and who apply for Motor Vehicle Operator Identification Cards (Standard Form 46). Also, some U.S. Geological Survey personnel, U.S. Forest Service personnel, and Nuclear Regulatory Commission personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Motor Vehicle Operator Identification Cards (Standard Form 46) which contains, name, card number, date issued, date expires, sex, date of birth, color of hair, color of eyes, height, weight, birthplace, name and location of issuing unit, signature of operator, vehicle qualified to operate, other records (optional), (Social Security number and traffic arrests have been deleted from this form for Headquarters); Application for Motor Vehicle Operators Identification Cards (DOE Form 97) which contains, name, home address, place of birth, employer, job title, sex, date of birth, color of hair, color of eyes, height, weight, number of years driving, number of years driving manual shift, whether driven 5000 miles in past 3 years, whether completed driving course, state of chauffers license and number, state of operators license and number, state and expiration date, whether road test was required for operators license, convictions traffic violations in past 2 years, accidents in past 2 years, medical history, glasses/contacts/hearing aid.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; 40 U.S.C. 491(j); Executive Order 12009; Federal Property Management Regulations concerning use of Government-owned and leased vehicles.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

To determine eligibility for operation of Government motor vehicles.

Additional routine uses 1, 2, 3, 4, 8, and 9 listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, microfiche, computer printouts, punched cards, magnetic tape, and disk.

RETRIEVABILITY:

By name, chronologically by expiration date and date of any incidents, and numerically by badge number.

SAFEGUARDS:

Maintained in buildings with controlled access, combination file safe, and key lock file.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Administrative Services, MA–40, 1000 Independence Avenue SW., Washington, DC 20585.

Filed Offices:

The managers and directors of field locations identified as items 2 through 21 in Appendix A, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, location(s) of DOE installation, where Government driver's license was issued, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Individual applications, accident reports, examinations (for qualifications) by medical personnel, National Driver Register, reports by citizens on alleged misuse of Federal vehicles, and state or local police.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–33

SYSTEM NAME:

Personnel Medical Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1 through 21 in Appendix A, and the following additional locations:

U.S. Department of Energy, Bendix Corporation, P.O. Box 1159, Kansas City, MO 64141

U.S. Department of Energy, Bettis Atomic Power Laboratory, P.O. Box 79, Pittsburgh, PA 15122

U.S. Department of Energy, Carbondale Mining Research Center, P.O. Box 2587, Carbondale, IL 62901

U.S. Department of Energy, Dayton Area Office, Mound Laboratory, Box 66, Miamisburg, OH 45342

U.S. Department of Energy, Kansas City Area Office, 2006 East Bannister, Box 202, Kansas City, MO 64141

U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544

U.S. Department of Energy, Naval Petroleum Reserve, P.O. Box 11, Tupman, CA 93276

U.S. Department of Energy, Naval Reactors Facility, P.O. Box 2068, Idaho Falls, ID 83411

U.S. Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road, East, New Orleans, LA 70123

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former DOE employees and DOE contractor employees. This system includes individuals admitted to or treated at Kadlec Hospital, Richland, prior to September 9, 1956.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories on employees resulting from medical examinations and radiation exposure. In cases of injury, description of injury occurrence and treatment. In addition, medical records of periodic physical examinations and pyschological testing, blood donor program records, audiometric testing, routine first aid, and other visits. Also, hospital in-patient records and emergency room out-patient records for private patients at Kadlec Hospital. Results of monitoring individuals for exposure to chemical agents (not covered in DOE–35) and physical stress and related data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; 5 U.S.C. 7901; Executive Order 12009; OMB Circular A–72.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Physicians, U.S. Department of Labor, various state departments of labor and industries, and contractors use information (a) to ascertain suitability of an employee for job assignments with regard to health, (b) to provide benefits under Federal programs or contracts, and (c) to maintain a record of occupational injuries or illnesses in the performance of regular diagnostic and treatment services to patients. A record from this system of records may be disclosed to officials of the National Institute of Occupational Safety and Health for the purpose of conducting an epidemiological study of workers at DOE's Portsmouth Gaseous Diffusion Plant at Piketon, Ohio. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, magnetic tape, paper, computer disc, and microfilm.

RETRIEVABILITY:

By name, social security number, and plant area.

SAFEGUARDS:

Active records are maintained in locked file cabinets in locked buildings. Inactive records are maintained in locked storage vaults.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Deputy Assistant Secretary for Environment, Safety and Health, EP–30, Washington, DC 20585.

Field Offices:

The managers and directors of field locations identified as items 2 through 21 are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Applicable location or locations where individual is or was employed, full name of requester, social security number, employer(s), and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual who is the subject of the record, physicians, medical institutions, Office of Workers Compensation Programs, military retired pay systems records, Federal civilian retirement systems, pay and leave records, Office of Personnel Management retirement life insurance and health benefits records system, and the Office of Personnel Management personnel management records system.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-34

SYSTEM NAME:

Employee Assistance Program (Alcohol and Drug Abuse Program).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

These records are maintained at all DOE offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees receiving counseling and referral services to resolve alcohol and/or drug abuse problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, job title, grade level, date of employment, work history, community social service agency referrals, and medical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; Federal Personnel Manual Letter No. 792–4; 5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are located in lockable metal file cabinets with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Division of Personnel Policies and Programs, MA–12, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices:

The managers and directors at all DOE locations are the system managers for their respective portions of the system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual and the individual's supervisors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-35

SYSTEM NAME:

Personnel Radiation Exposure Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 4, 6 through 18 in Appendix A and the following additional locations:

U.S. Department of Energy, Amarillo Area Office, Pantex Plant, P.O. Box 1086, Amarillo, TX 79105

U.S. Department of Energy, Brookhaven Area Office, Upton, NY 11973

U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342

U.S. Department of Energy, Environmental Measurements Laboratory, 376 Hudson Street, New York, NY 10014

U.S. Department of Energy, Idaho Health Services Laboratory, CF–690, INEL and Computer Science Center, Idaho Falls, ID 83401

U.S. Department of Energy, Kansas City Area Office, P.O. Box 202, Kansas City, MO 64141

U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544

U.S. Department of Energy, Naval Reactors Representative Office, Building 195, Charleston Naval Shipyard, Charleston, SC 29408

U.S. Department of Energy, Naval Reactors Representative Office, P.O. Box 21, Groton, CT 06340

U.S. Department of Energy, Naval Reactors Representative Office, Mare Island Naval Shipyard, P.O. Box 2053, Mare Island, CA 94592

U.S. Department of Energy, Naval Reactors Representative Office,

Newport News Shipbuilding & Dry Dock Company, P.O. Box 973, Newport News, VA 23607
U.S. Department of Energy, Naval Reactors Representative Office, Norfolk Naval Shipyard, P.O. Box 848, Portsmouth, VA 23705
U.S. Department of Energy, Naval Reactors Representative Office, P.O. Box 1687, Pascagoula, MS 39567
U.S. Department of Energy, Naval Reactors Representative Office, Pearl Harbor Naval Shipyard, P.O. Box 128, FPO San Francisco, CA 96610
U.S. Department of Energy, Naval Reactors Representative Office, Portsmouth Naval Shipyard, Building 178, P.O. Box 2008, Portsmouth, NH 03801
U.S. Department of Energy, Naval Reactors Representative Office, Puget Sound Naval Shipyard, P.O. Box 1A, Bremerton, WA 98314
U.S. Department of Energy, New Brunswick Laboratory, D–350, 9800 S. Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Pinellas Area Office, P.O. Box 11500, St. Petersburg, FL 33733
U.S. Department of Energy, Puerto Rico Office, P.O. Box BB, San Juan, PR 00935
U.S. Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, CO 80401
U.S. Department of Energy, Sandia Area Office, P.O. Box 5800, Albuquerque, NM 87115
U.S. Department of Energy, Shippingport Branch Office, P.O. Box 11, Shippingport, PA 15077

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE personnel, contractor personnel, and any other persons having access to certain DOE facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

DOE and contractor personnel and other individuals' radiation exposure records, and other records in connection with registeries of uranium, transuranics, or other elements encountered in the nuclear industry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Departmant of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

U.S. Navy uses these records to monitor radiation exposure of Naval and other personnel at Navy activities.

NRC uses these records to monitor radiation exposure of contractor personnel. DOE and its contractors and consultants, other contractors, and organizations, including various states' departments of labor and industry groups, use these records to monitor radiation explosure of personnel.

Department of Defense uses these records for the limited purpose of identifying DOD and DOD-contractor personnel exposed to ionizing radiation during nuclear testing; and for conducting epidemiological studies of radiation effects on individuals so identified.

National Academy of Sciences and Center for Disease Control (and appropriate management personnel of the Department of Health and Human Services) use these records for conducting epidemiological studies of the effects of radiation on individuals exposed to ionizing radiation.

A record from this system of records may be disclosed to officials of the National Institute of Occupational Safety and Health, for the purpose of conducting an epidemiological study of workers at DOE's Portsmouth Gaseous Diffusion Plant at Piketon, Ohio. Additional routine uses 1, 2, 4, 7, 8, 9, and 10 listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, paper records, index cards, magnetic tape, punched cards, microfilm, and disc.

RETRIEVABILITY:

By name, alphanumeric code, and social security number.

SAFEGUARDS:

Records are maintained in locked file cabinets, locked safes, guarded areas, and secured buildings, with access on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Deputy Assistant Secretary for Environment, Safety and Health, EP–30, Washington, DC 20585.

Field Offices:

The managers and directors of field locations 3, 4, and 6 through 18 in Appendix A, and the additional locations listed above under *System location* are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 4, and 6 through 18 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, and geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, accident-incident investigations, film badges, dosimetry records, and previous employee records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–36

SYSTEM NAME:

Statistical Analysis Using Personnel Security Questionnaire (Health and Mortality Study).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830
U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 98174

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE and predecessor agency employees, consultants and contractor employees, and consultants who were granted access authorizations (clearances).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of employees of the Manhattan Engineering District Project, Atomic Energy Commission, Energy Research and Development Administration, and DOE, including copies of Personnel Security Questionnaires completed after termination of employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Statistical analyses using Personnel Security Questionnaires. A record from this system of records may be disclosed to officials of the National Institute of Occupational Safety and Health, for the purpose of conducting an epidemiological study of workers at DOE's Portsmouth Gaseous Diffusion Plant at Piketon, Ohio. Additional routine uses 7, 8, and 9 as listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in alarm storage areas in locked file cabinets. Access is limited to individuals having a need-to-know.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Field Offices:

The managers and directors of field locations at Oak Ridge and Richland Operations Offices are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Request by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, at the appropriate address identified as items 12 and 15 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Clearance histories of Manhattan Engineering District, Atomic Energy Commission, Energy Research and Development Administration, and DOE employees; access permittees' security clearances; and reports from investigative agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-37

SYSTEM NAME:

Equal Employment Opportunity Complaint Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

All DOE locations listed in Appendix A, and the following additional location: U.S. Department of Energy, Brookhaven Area Office, Upton, NY 11973.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each DOE employee, or applicant for employment who in accordance with the provisions of Federal Personnel Manual No. 1613, has filed a written complaint of discrimination based on race, age, sex, color, religion, national origin, and physical or mental handicap with DOE or with another Federal agency which has referred the complaint to DOE.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, job title, wage rate, earnings, dates of employment, data on applications for employment race, sex, work history, the complaint, investigation reports (with affidavits), Equal Opportunity Officer disposition with respect to complaint, and agency head decision regarding complaint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009; Equal Employment Opportunity Act of 1972; Federal Personnel Manual No. 1613.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Equal Employment Opportunity Commission—To process discrimination complaints in accordance with Federal regulations.

Department of Justice—To represent DOE in cases that have entered litigation.

Merit Systems Protection Board—To process cases of adverse actions which include equal employment opportunity aspects.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name of complainant.

SAFEGUARDS:

Records are located in a combination safe with access limited to those whose official duties require access.

RENTENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Equal Opportunity, MA-9, 1000 Independence Avenue SW., Washington, D.C. 20585.

Field Offices:

The managers and directors of field locations 2 through 21 in Appendix A, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, co-workers, and other employees.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-38

SYSTEM NAME:

Occupational and Industrial Accident Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

All DOE locations listed in Appendix A, and the following additional locations:

U.S. Department of Energy, Amarillo Area Office, Pantex Plant, P.O. Box 1086, Amarillo, TX 79105

U.S. Department of Energy, Brookhaven Area Office, Upton, NY 11973

U.S. Department of Energy, Carbondale Mining Research Center, P.O. Box 2587, Carbondale, IL 62901

U.S. Department of Energy, Clinch River Breeder Reactor Plant Project, P.O. Box U, Oak Ridge, TN 37830

U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342

U.S. Department of Energy, Environmental Measurements Laboratory, 376 Hudson Street, New York, NY 10014

U.S. Department of Energy, Idaho Branch Office, P.O. Box 2469, Idaho Falls, ID 83401

U.S. Department of Energy, Kansas City Area Office, P.O. Box 202, Kansas City, MO 64141

U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schnectady, NY 12301

U.S. Department of Energy, Los Alamos Area Office, P.O. Box 5800, Los Alamos, NM 87544

U.S. Department of Energy, Naval Petroleum Reserve, P.O. Box 11, Tupman, CA 93276

U.S. Department of Energy, Nevada Test Site, Mercury, NV 89023

U.S. Department of Energy, New Brunswick Laboratory, D–350, 9800 S. Cass Avenue, Argonne, IL 60439

U.S. Department of Energy, Pinellas Area Office, P.O. Box 11500, St. Petersburg, FL 33733

U.S. Department of Energy, Puerto Rico Area Office, P.O. Box BB, San Juan, PR 00935

U.S. Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, CO 80401

U.S. Department of Energy, Sandia Area Office, P.O. Box 5800, Albuquerque, NM 87115

U.S. Department of Energy, Shippingport Branch Office, P.O. Box 11, Shippingport, PA 15077

U.S. Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road, East, New Orleans, LA 70123

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE employees, contractor employees, and any other persons having access to DOE facilities who have had accidents on DOE facilities. Also individuals involved in accidents with employees or contractor employees or other persons having access to DOE facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Accident/incident information, occupational injury and illness experience property damage experience, and motor vehicle accidents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Federal Tort Claims Act, 28 U.S.C. 2671–2680; Military Personnel and Civilian Employees Claims Act, 31 U.S.C. 240–243; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

PHYSICIANS:

For purpose of treating patients.

Property owners and insurance companies: For purpose of processing insurance claims.

DOE contractors and consultants, state departments of labor and industries and other state agencies, U.S. Department of Labor, National Drivers Registry, and Department of Transportation: For purposes of processing insurance claims and accident reporting.

Pertinent provisions of 29 CFR 1904.7 apply to the records maintained in this system of records.

Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, punched cards, paper records, and microfilm.

RETRIEVABILITY:

By name and by alphabetic, numeric, or alphanumeric code.

SAFEGUARDS:

Records are maintained in locked file cabinets, locked safes, guarded areas, and secured buildings with access limited to personnel with a need-to-know.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE are 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Deputy Assistant Secretary for, Environment, Safety and Health, EP–30, Washington, DC 20585.

Field Offices:

The managers and directors of field locations 2 through 21 and the additional locations listed above under System location are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified items 1 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number, and/or birth date, geographic location of the accident, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, the individual's supervisor, medical officers or personal physicians, accident investigators, investigation boards,

investigating law enforcement officers, the National Drivers Registry, and previous employer records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-39

SYSTEM NAME:

Labor Standards Complaints and Grievances.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 6, 8, 11, 12, 14, 15, 16, 17, and 18 in Appendix A, and the following additional location: U.S. Department of Energy, Brookhaven National Laboratory Industrial Medicine Division, Upton, NY 11973.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former contractor employees who have filed complaints and grievances against contractors and labor unions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints against contractors and labor unions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

U.S. Department of Labor—contract labor standards enforcement.

Additional routine uses as listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIERING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name and case number.

SAFEGUARDS:

Records are maintained in locked files.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Industrial Relations, MA-70, Washington, DC 20585

Field Offices:

The managers and directors of field locations 3, 6, 8, 11, 12, 14 through 18 in Appendix A, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 6, 11, 12, 14 through 18 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals, contractors, and members of the public.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-40

SYSTEM NAME:

Contractor Employees Insurance Claims.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed in items 1, 3, 6, 8, 11, 12, and 14 through 18 in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants under worker's compensation insurance and third-party claimants against DOE contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Accident reports, physician statements, pictures, maps, sketches, claimant and witness statements, doctor and hospital bills, reports from engineering firms, and claims activity reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Insurance companies—in administering claims against DOE Contractors and DOE.

State and local agencies—for consideration of insurance claims.

Physicians—for claim evaluations.

Lawyers—for claim evaluations.

State industrial commissions—for claim evaluations.

Claims-adjustment services firms—for claim evaluations.

The additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer printouts.

RETREVABILITY:

By contractor, name and claim number.

SAFEGUARDS:

Records are maintained in a locked building.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Industrial, Relations, MA-70, Washington, DC 20585.

Field offices: The managers and directors of field locations 3, 6, 8, 11, 12, and 14 through 18 in Appendix A, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy

(Headquarters), or the Privacy Act Officer at the appropriate address identified as items, 1, 3, 6, 8, 11, 12, and 14 through 18, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Claimants, witnesses, and insurance company claim files.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-41

SYSTEM NAME:

Legal Files (Claims, Litigations, Criminal Violations, Patents, and Others).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

All DOE locations listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE related debtors and bankrupts; claimants with respect to radiation, tort, patent, contract employee compensation and workmen's compensation matters; injured parties, litigants and complaints generally; inventors; those against whom claims have been filed; persons suspected of violating DOE regulations and criminal laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claims relating to personal injury, radiation injury, property damage and other tort matters, and contract matters; litigation records, accident reports; addendums to inspection reports; employment records; consultants agreements; cases alleging discrimination; conflict of interest files; criminal litigation records; Personal Security Review Board cases; medical records; photographs; telephone records; investigations; government orders; inventions; and correspondence and other data relating to the foregoing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of Justice; GAO; state and local law enforcement agencies; civil and criminal courts; administrative arbitrators; litigants; investigators; Congress; attorneys; physicians; consultants; insurance carriers—for appraisal, evaluation, settlement and denial of claims and other matters and as a basis for administrative and legal action and all matters pertaining thereto, including civil and criminal remedies. The additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name and control card locator.

SAFEGUARDS:

Records are maintained in vaults and locked safes (under surveillance during business hours).

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are distroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Office of General Counsel, GC-41, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The regional counsels are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals, inspection reports, other agencies, Office of General Counsel attorneys, other agency officers and staff, contractors, investigators, and auditors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system has been exempted under subsection (k)(1), (k)(2), and (k)(5) of the Privacy Act, to the extent that information within the System meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections (c)(3), (d), and (e)(1) of the Act; see the DOE Privacy Act regulations at (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

DOE-42

SYSTEM NAME:

Personnel Security Clearance Index.

SECURITY CLASSIFICATION:

Classified and unclassified material.

SYSTEM LOCATION:

The locations listed as items 1, 3, 5, 6, 8, 11, 12, 14 through 18 in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DOE and DOE contractors and access permittees for whom access authorizations (clearances) have been initiated, granted, and/or terminated.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records identifying history and status or processed access authorizations (clearances).

Category A—Personnel security index: Name, position, organization, social security number, and date and place of birth. May also contain position sensitivity description, date of appointment, date and type of clearance, basis of clearance, briefing and debriefing data, folder was retired, and date folder was destroyed.

Category B—Automatic data processing index: Name and social

security number. Contains references to organization, position sensitivity, access clearances issued, security briefing data, date of background investigation, date of security interview, and existence of personnel security folder of index card.

Category C—Identification pass index: Name, social security number, location, issue date and expiration date of passes issued to individuals who hold valid, permanent identification passes for DOE Headquarters offices, and a photograph of the individual.

Category D—DOE credential index: Name, organization, location and position of individuals who hold DOE credentials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorties incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009; Executive Order 10450 and 9830; Federal Personnel Manual, Chapters 731 and 736.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In investigations concerning DOE personnel, contractors, and access permittees, with regard to loyalty, classified access, and suitability determinations. Additional routine uses as listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, data cells, magnetic tape, punched cards, and disk packs.

RETRIEVABILITY:

By name and access authorization (clearance) number.

SAFEGUARDS:

Access is limited to employees having a need-to-know. Records are stored in secured building subject to guard patrols and/or alarm protection.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Record Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Safeguards and Security, DP-34, Washington, DC 20545.

Field Offices:

The managers and directors of field locations 3, 5, 6, 8, 11, 12, 14 through 18 in Appendix A, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 5, 6, 8, 11, 12, 14 through 18 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR 1008 (45 FR 61576, September 16, 1980)).

b. Required indentifying information: Complete name, date of birth, social security number, and dates of employment.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Personnel Security Questionnaire and fingerprint card executed by the subject individual, other sources contacted during security investigaton, and DOE Security Offices.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has exempted this system from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a under the Privacy Act of 1974. This exemption applies only to information in this system of records which is exempt pursuant to 5 U.S.C. 552a(k) (1), (2) and (5).

DOE-43

SYSTEM NAME:

Personnel Security Clearance Files.

SECURITY CLASSIFICATION:

Classified and unclassified materials.

SYSTEM LOCATION:

The locations listed as items 1, 3, 5, 6, 8, 11, 12, 14 through 18, and 21, in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DOE and DOE contractors; consultants; other individuals requiring access to classified information and facilities; access permittees who are authorized access.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of investigations concerning individuals processed for access authorizations (clearances).

PERSONNEL SECURITY FOLDERS:

Name, grade, organization, date and place of birth, and social security number. Contains requests for security clearance, OPM Standard Forms 85, 86, 87, and 171, and OS Forms DPS 24 and 24A; results of national agency check and inquiries and a record of authorized individuals who have had access to the folder. May also contain action checklist, termination checkout sheet OPM Standard Forms 50, 52, or 73, as well as notification to Office of Personnel Management of agency action on case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009; Executive Orders 10450 and 9830; Federal Personnel Manual, Chapters 731 and 736.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses as listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, disk, magnetic tape, computer printouts and microfiche.

RETRIEVABILITY:

By name and numeric code.

SAFEGUARDS:

Access is limited to employees having a need-to-know. Records are stored in locked file cabinets in locked buildings.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Safeguards and Security, DP-34, Washington, DC 20545.

Field Offices: The managers and directors of field locations 3, 5, 6, 8, 11, 12, 14 through 18, and 21 in Appendix A, listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 5, 6, 8, 11, 12, 14 through 18, and 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, date of birth, social security number, clearance processing location, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Personnel Security Questionnaire and fingerprint card executed by the subject individual; background investigation reports by Federal Bureau of Investigation, Office of Personnel Management, and other Government agencies conducting background investigations; summaries and transcripts of interviews with the individual; interrogatory letters to the individual; local police department reports; and security infraction reports received from the individual's supervisor.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has exempted this system from subsections (c)(3), (d), (e)(1), of the 5 U.S.C. 552a under the Privacy Act of 1974. This exemption applies only to information in this system of records which is exempt pursuant to 5 U.S.C. 552a(k) (1), (2) and (5); or including internal memoranda specifically identified as OS Forms DPS 24 and 24A.

DOE-44

SYSTEM NAME:

Special Access Authorization for Categories of Classified Information.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 6, 8, 9, 11, 12, 15, 16, and 17 in Appendix A, and the following additional locations:

U.S. Department of Energy, Amarillo Area Office, Pantex Plant, P.O. Box 1086, Amarillo, TX 79105

U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342

U.S. Department of Energy, Kansas City Area Office, P.O. Box 202, Kansas City, MO 64141

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544

U.S. Department of Energy, Pinellas Area Office, P.O. Box 11500, St. Petersburg, FL 33733

U.S. Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, CO 80401

U.S. Department of Energy, Sandia Area Office, P.O. Box 5400, Albuquerque, NM 87115

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals authorized to access special categories of information and compartmentalized DOE facilities and/or areas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters and memoranda of authorization to access special categories of classified information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

DOE contractors—for purposes of performing contractual functions. NATO, National Security Agency, and CIA—for determining individuals who have access to classified information generated by these agencies. The additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files; also magnetic tape (at Headquarters).

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to employees with a need-to-know. Records are stored in security areas under either guard or alarm protection.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Safeguards and Security, DP-34, Washington, DC 20545.

Field Offices: The managers and directors of field locations 3, 6, 8, 9, 11, 12, 15, 16, and 17 in Appendix A, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 6, 8, 9, 11, 12, 15, 16, and 17 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FRI 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURE:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Individual reports from Federal investigation agencies; letters and/or plans from DOE operating offices, operating divisions, and contractor facilities.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has exempted this system from subsections of 5 U.S.C. 552a under the Privacy Act of 1974. This exemption applies only to information in this system of records which is exempt pursuant to 5 U.S.C. 552a(k) (1), (2) and (5). The DOE exemption regulation

appears at 10 CFR Part 1008.12(b), 45 FR 61576, 61583, September 16, 1980.

DOE–45

SYSTEM NAME:

Weapon Data Access Control System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 11, 12, 13, 16, and 17, in Appendix A, and the following additional locations:

U.S. Department of Energy, Amarillo Area Office, Panter Point, P.O. Box 1086, Amarillo, TX 79105

U.S. Department of Energy, Kansas City Area Office, P.O. Box 202, Kansas City, MO 64141

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544

U.S. Department of Energy, Pinellas Area Office, P.O. Box 11500, St. Petersburg, FL 33733

U.S. Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, CO 80401

U.S. Department of Energy, Sandia Area Office, P.O. Box 5406, Albuquerque, NM 87115

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE, DOD, and other Government agency empoloyees, Government contractors and consultants requiring access to classified weapons data and/or DOE nuclear weapons program facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, date of birth, citizenship, employer, type of clearance, number and date of clearance, categories of information requested and authorized, locations to be visited and dates of visit, purpose of visit, point of contact, and Government agency certifying need-to-know.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

DOE and DOD contractors—to determine whether persons have appropriate security clearances to gain access to classified weapons data. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfiche, paper, magnetic tapes, and computer printouts.

RETRIEVABILITY:

By name and by specific weapon program.

SAFEGUARDS:

Records are maintained in buildings with controlled access.

RETENTION AND DISPOSAL:

Headquarters master copy of visit request is retained for 3 years. Records retention and disposal authorities are contained in DOE 1324.2, Records Disposition. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESSES:

Headquarters: U.S. Department of Energy, Director, Office of Military Application, DP–22, Washington, DC 20545.

Field Offices: The managers and directors of field locations 3, 11, 12, 16, and 17 in Appendix A, and additional locations listed are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 11, 12, 16 and 17 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individuals, Government agencies, and Government contractors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–46

SYSTEM NAME:

Clearance Board Cases.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 6, and 17.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE employees, access permittees, consultants and prospective employees, and contractors and contractor access permittees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of investigations concerning individuals processed for access authorizations (clearances).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Personnel involved in administrative review-information used for reference during review board hearings. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to employees having a need-to-know. Records are stored in security areas under guard and/or guard protection.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Safeguards

and Security, DP-34, Washington, DC 20545.

Field Offices: The managers and directors of field locations 6 and 17 in Appendix A, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 6, and 17 in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Personnel Security Questionnaire and Fingerprint Card executed by the individual; background investigation reports by Federal Bureau of Investigation, Office of Personnel Management and other Government agencies; summaries and transcripts of interviews with the individual; transcripts of Administrative Review Board hearings with the individual; correspondence to the individual concerning administrative processing of clearance action; and local and state police agency reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has exempted this system from subsections (c)(3), (d), (e)(1), of 5 U.S.C. 552a under the Privacy Act of 1974. This exemption applies only to information in this system of records which is exempt pursuant to 5 U.S.C. 552a(k) (1), (2) and (5).

DOE-47

SYSTEM NAME:

Security Investigations.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 6, 8, 15, 16, 17, and 21 in Appendix A, and the following additional location: U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE employees, specifically including employees of the Federal Energy Regulatory Commission; contractor employees, private citizens.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports to determine cause and circumstance of accidents and/or incidents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009; Executive Orders 10450 and 9830; Federal Personnel Manual, Chapters 731 and 736.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Property Owners and Insurance Companies—Insurance claims. DOE Fire and Safety and Administrative Personnel—Evaluation of fire and safety incidents. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to individuals having a need-to-know. Records are maintained in locked and guarded buildings.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Safeguards and Security, DP-34, Washington, DC 20545.

Field Offices: The managers and directors of field locations 3, 6, 8, 15, 16, 17, and 21 in Appendix A, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 6, 8, 15, 16, 17, and 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, date of birth, employer, dates of employment, and social security number

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, other sources contacted during security investigations, and official records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Internal memoranda specifically identified as OS Forms DPS 24 and 24A are exempted from certain of the Privacy Act's requirements, in accordance with 5 U.S.C. 552a(k)(2), (5). Additionally, with regard to certain records pursuant to 5 U.S.C. 552a(k)(5), this system is exempt from 5 U.S.C. 552a(d), to the extent that disclosure would reveal a source who furnished information under an express promise of confidentiality, or prior to September 27, 1975, under an express or implied promise of confidentiality.

DOE-48

SYSTEM NAME

Security Education and/or Infraction Reports.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 6, 8, 12, 14 through 18 in Appendix A, and the following additional locations:

U.S. Department of Energy, Amarillo Area Office, Pantex Plant, P.O. Box 1086, Amarillo, TX 79105

U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342
U.S. Department of Energy, Kansas City Area Office, P.O. Box 202, Kansas City, MO 64141
U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544
U.S. Department of Energy, Pinellas Area Office, P.O. Box 11500, St. Peterburg, FL 33733
U.S. Department of Energy, Rocky Flats Area Ofice, P.O. Box 928, Golden, CO 80401

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE employees having access authorization (clearance) to classified information and/or materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of security education lectures, and investigative and summary reports of security infraction incidents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to employees with a need-to-know. Records are stored in security areas.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Safeguards and Security, DP-34, Washington, DC 20545.

Field Offices: The managers and directors of field locations 3, 8, 11, 12, and 14 through 18 in Appendix A, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 9, 12, 13, 15, 16, 18, and 19 in Appendix A, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Training officers; security personnel; individual's supervisor; and local, state, and Federal authorities.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-49

SYSTEM NAME:

Security Correspondence File.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Assistant Secretary for Defense Programs, DP-1, Washington, DC 20545.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals of interest to DOE officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence received from individuals, articles from news media, and informational reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to individuals having a need-to-know. Records are stored in security area under guard protection.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfil, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Director, Office of Safeguards and Security, DP-34, Washington, DC 20545.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individual, official records, and articles from news media.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has exempted this system from subsections (c)(3), (d), (e)(1), of 5 U.S.C. 552a under the Privacy Act of 1974. This exemption applies only to information in this system of records

which is exempt pursuant to 5 U.S.C. 552a(k)(1), (2), and (5). See DOE regulation at 10 CFR Part 1008.12(b), 45 FR 61576, 61583, September 16, 1980.

DOE-50

SYSTEM NAME:

Personnel Assurance Program Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 3, 11, and 16 in Appendix A, and the following additional locations:

U.S. Department of Energy, Amarillo Area Office, Pantex Plant, P.O. Box 1086, Amarillo, TX 79605

U.S. Department of Energy, Sandia Area Office, P.O. Box 5800, Albuquerque, NM 87115

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE or contractor employees performing work which affords both technical knowledge and access to assembled nuclear explosives or certain nuclear weapon components.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of medical examination, employment review, credit/consumer reports; data pertaining to access authorizations (clearances); and training records pertaining to individual's duties involving assembled nuclear explosives or certain nuclear weapon components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to employees having a need-to-know. Records are stored in locked file cabinets in secured buildings.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Filed Offices: The managers and directors of field locations 3, 11, and 16 in Appendix A, are the system managers for their respecative portions of this system.

NOTIFICATION PROCEDURES:

A. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, at the appropriate address identified as items 3, 11, and 16 in Appendix A, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Medical records, occupational training records, and personnel security records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-51

SYSTEM NAME:

Empoyee and Visitor Access Control Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 7, 8, 11, 12, 14 through 18 in Appendix A, and the following additional locations:

U.S. Department of Energy, Amarillo Area Office, Pantex Plant, P.O. Box 1086, Amarillo, TX 79105

U.S. Department of Energy, Dayton Junction Office, P.O. Box 66, Miamisburg, OH 45342

U.S. Department of Energy, Kansas City Area Office, P.O. Box 202, Kansas City MO 64141

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544

U.S. Department of Energy, Pinellas Area Office, P.O. Box 11500, St. Petersburg, FL 33733

U.S. Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, CO 80401

U.S. Department of Energy, Sandia Area Office, P.O. Box 5400, Albuquerque, NM 87115

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals visiting DOE facilities, DOE employees seeking access to DOE facilities and classified records.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of individuals visiting DOE and employee identification files (including photographs) maintained for access purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

DOE contractors—to control access to classified information and areas. Department of Defense contractors—to authorize access to classified information and areas. Additional routine uses as listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and microfiche.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to employees with a need-to-know. Records are stored in guarded security areas.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Safeguards and Security, DP-34, Washington, DC 20545.

Field Offices: The managers and directors at the locations where the records are maintained are the system

managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Request by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 7, 8, 11, 12, and 14 through 18 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individual, Department of Defense, DOE offices and contractors, National Aeronautics and Space Administration, and other Government agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-52

SYSTEM NAME:

Aliens Visits and Participation.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 6, 8, 11, 12, 13, 15, 16, and 17 in Appendix A, and the following additional location: U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Resident and nonresident aliens who visit and participate at DOE offices and contractor facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Federal agency checks and DOE records regarding alien visits and participation at DOE offices and/or contractor facilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Engery Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

By name and visit number.

SAFEGUARDS:

Access is limited to employees with a need-to-know. Records are stored in security areas under guard and/or alarm protection.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Safeguards and Security, DP-34, Washington, DC 20545.

Field Offices: The managers and directors of field locations 3, 6, 8, 11, 12, 13, 15, 16, and 17 in Appendix A, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 6, 8, 11, 12, 13, 15, 16, and 17 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Full name, nationality, and date and location of visit.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individual; reports from Federal investigation agencies; and letters and/or plans from DOE operating offices, operating divisions, and contractor facilities.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-53

SYSTEM NAME:

Access Authorization for ADP Equipment.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, ADP Services Staff, EI-10, Energy Information Administration, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of the Energy Information Administration computer system, including DOE employees and contractor employees (including employees and contractor employees of the Federal Energy Regulatory Commission), and other authorized users of the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, user identification number, office address and telephone number, organizational code, computer usage figures, data accessed, and other management-related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009; OMB Circular A-71; Department of Commerce Federal Information Processing Standards Publications (FIPS PUBS) on computer security; GSA Procurement Regulations Amendment 155, adding Section 1-1.327.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used by the ADP Services Staff to control and manage Energy Information Administration computer resources and to insure that sensitive information is properly safeguarded.

Additional routine uses as listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Disk, computer tape, and printouts.

RETRIEVABILITY:

Name, user identification number, and project number.

SAFEGUARDS:

Records are maintained in the Forrestal Building with 24-hour guard service. Access is limited to authorized personnel on a need-to-know basis.

RETENTION AND DISPOSAL:

Updated on a regular basis. Older records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Director ADP Services Staff, EI–10, Energy Information Administration, Washington, DC 20585.

NOTIFICATION PROCEDURES:

Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy, Washington, DC 20585, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individual, with some information assigned by the ADP Services Staff.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–54

SYSTEM NAME:

Investigative Files of Inspector General.

SYSTEM CLASSIFICATION:

Generally unclassified. Classified material is sometimes maintained.

SYSTEM LOCATION:

All DOE locations listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOE and contractor employees and applicants for employment who are subjects of investigations, and individuals involved in miscellaneous investigative matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative reports, and files, including interview transcripts, memoranda, and letters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; section 208 of the Department of Energy Organization Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system represents that portion of the files of the Inspector General which covers IG investigations of individuals. The records are used in IG investigations and for the referral of violations of law to law enforcement authorities. Records may be disclosed in accordance with the routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name, case number, and title of investigative report.

SAFEGUARDS:

Information is kept in locked General Services Administration approved Class 6 security containers. Access is on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Inspector General, IG–1, Washington, D.C. 20585.

Field Offices: The representatives of the IG of field locations 2 through 21 in Appendix A, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information Acts Activities, Department of Energy, Washington, D.C. 20585, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such records may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, complaints, witnesses, respondents, confidential sources, agency files and records, and official Federal, state, or local records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under subsection (j)(2) of the Privacy Act, this system has been exempted from subsections (c)(3) and (4), (d)(1)–(4), (e)(1)–(3), (5), and (8), and (g) of the Act; see DOE's Privacy Act regulation at 10 CFR Part 1008–12(a), 45 FR 61576, 61582, September 16, 1980. This exemption applies to information in the system that relates to criminal law enforcement and meets the criteria of the (j)(2) exemption. Under Subsections (k)(1), (2), and (5) of the Act, this system has been exempted from subsections (c)(3), (d), and (e)(1) of the Act; see DOE's Privacy Act regulation at 10 CFR 1008.12(b). This exemption applies to information in the system that meets the criteria of the (k)(2) and (5) exemptions.

DOE–55

SYSTEM NAME:

Freedom of Information and Privacy Act Requests for Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

All DOE locations listed in Appendix A, and the following additional location: U.S. Department of Energy, Brookhaven National Laboratory, Industrial Medicine Division, Upton, NY 11973.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requesting copies of records from DOE under the provisions of the Freedom of Information Act and under the Privacy Act of 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and telephone number; description or identification of records requested, furnished, and/or denied; dates of request and responses; amount of fees paid, if any; payment delinquencies, if any; final determinations of appeals or denials; and the names and titles of authorizing officials, and officials responsible for denials. Copies of requested records are not maintained in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Freedom of Information Acts; (5 U.S.C. 552) Privacy Act of 1974; (5 U.S.C. 552a); 5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Annual report to the Congress under section (d) of the Freedom of Information Act. Additional routine uses listed in Appendix B.

These records are available for public inspection at all times.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and Microfiche.

RETRIEVABILITY:

By name of requester.

SAFEGUARDS:

Records are located in lockable metal file cabinets with access limited to those whose official duties require access. Indices of records held are available for public inspection.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2 "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Freeom of Information and Privacy Acts Activities, MA-43, Washington, DC 20585.

Field Offices: The Privacy Act Officers of field locations 2 through 21 in Appendix A, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 2 through 21 in Appendix A, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-56

SYSTEM NAME:

Congressional Constituent Inquiries.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

All DOE locations (except item 11) in Appendix A, and the following additional location: U.S. Department of Energy, Brookhaven National Laboratory, Industrial Medicine Division, Upton, NY 11973.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals on whose behalf there have been Congressional inquiries and members of Congress making requests on behalf of their constituents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of constituent and date of letter by a Senator or member of Congress on behalf of the constituent; materials forwarded by a member of Congress; and DOE response.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The records are used to record Congressional inquiries on behalf of constituents, to ensure proper document control of the response, and to reference DOE responses to such inquiries. Additional routine uses 4, 7, 9, and 10 as listed in Appendix B.

POLICIES AND PRACTCIES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name of constituent and name of member of Congress.

SAFEGUARDS:

Records are located in lockable metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2 "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

The head of each office which maintains such records.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy, (Headquarters) or the Privacy Act Officer at the appropriate address identified as items 2 through 21 (except item 11) in Appendix A, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individual, member of Congress, and drafter of DOE response.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-57

SYSTEM NAME:

Congressional Profiles.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Office of Congressional Affairs, CP-30, Washington, D.C. 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current members of Congress.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, picture (taken from Congressional Pictorial Directory), personal background (as developed from published sources), demographic information by state or district, committee assignments, and energy interests (as developed from published sources, information from members's office, abstracts from Congressional Record, committee hearings and other public sources).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures to Office of Congressional Affairs personnel and senior Departmental officials for informational purposes in the ordinary course of business.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer printouts.

RETRIEVABILITY:

Name, committee membership, state, region, and energy issue topic.

SAFEGUARDS:

Records are maintained in Federal building with 24-hour guard service. Access is limited to authorized personnel on a need-to-know basis.

RETENTION AND DISPOSAL:

Records are retained as long as the subject individual remains a member of Congress.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Deputy Assistant Secretary, Office of Congressional Affairs, CP-30, Washington, D.C. 20585.

NOTIFICATION PROCEDURES:

Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy, Washington, D.C. 20585, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Published sources, committee hearings, and the members' offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-58

SYSTEM NAME:

General Correspondence Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

All DOE locations listed and the following additional location: U.S. Department of Energy, Brookhaven National Laboratory, Industrial Medicine Division, Upton, NY 11973.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals communicating by letter with DOE.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address of correspondent, and copies of the agency response. This is the portion of DOE's correspondence files that relates to correspondence with individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by DOE personnel to record written communications from correspondents outside of DOE, to ensure proper document control of the DOE response, and as a reference for such response. Additional routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are located in lockable metal file cabinets in secured rooms with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2 "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

The head of each office which maintains such records.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21, in Appendix A, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals and drafter of DOE response.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–59

SYSTEM NAME:

Mailing Lists for Requesters of Energy Related Information.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

All DOE locations listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons requesting energy related information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each of DOE's mailing lists contains the name and address of the subject individual; some mailing lists may also indicate specific interests of or publications requested by the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are released to contractors handling bulk and single copy mailings for DOE. Names and addresses of such contractors may be requested from the appropriate system manager. Additional routine uses 8 and 9 as listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, punched cards, magnetic tape and disk, and microfiche.

RETRIEVABILITY:

Records are retrieved by record identification code number; by type of information being disseminated (e.g., solar, nuclear, etc); or by the occupation, profession, or other stated interest of an individual.

SAFEGUARDS:

Access is limited to employees with a need-to-know in the performance of their duties. Records are maintained in buildings with controlled access. Computer information is controlled through established DOE computer center procedures of personnel screening and physical security.

RETENTION AND DISPOSAL:

The lists are cotinually updated.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Printing and Graphics, MA–45, Washington, DC 20585.

Field Offices: The managers and directors of field locations 2 through 21 in Appendix A are system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) or organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, generally as the result of a request for information by that individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–61

SYSTEM NAME:

Census of High Energy Physicists.

SECURITY CLASSIFICATION:

SYSTEM LOCATION:

U.S. Department of Energy, Office of Energy Research, ER–1, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Scientists and graduate students in the field of high energy physics.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, education, employment history, research support agencies, and technical specialities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Physicists, research organizations and various Government organizations engaged in physics research—to obtain information on individuals and organizations engaged in high energy physics research. Additional routine uses 2, 3, 4, 6, 8, and 9 listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and disk.

RETRIEVABILITY:

By name, employer, or any other combination of data.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Associate Director, High Energy and Nuclear Physics, ER–20, Washington, DC 20545.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy, Washington, DC 20585, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where

requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

High energy physics research group leaders and laboratory directors. Other personnel in the field of high energy physics.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-62

SYSTEM NAME:

Historical Files—Published Information Concerning Selected Persons in the Energy Field.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, History Division, Office of the Executive Secretariat, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected senior staff officials of the Manhattan Project, Atomic Energy Commission, Nuclear Regulatory Commission, Energy Research and Development Administration, DOE, and other selected individuals prominent in the energy field.

CATEGORIES OF RECORDS IN THE SYSTEM:

Newspaper and magazine articles, press releases, announcements, and speeches.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used to prepare histories in responding to informational inquiries from members of the public including the media, and in responding to requests from DOE officials.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in a locked vault with access dependent upon the permission of the Historian's Office.

RETENTION AND DISPOSAL:

Records are retained indefinitely with no plans for their disposal.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, History Division, Office of the Executive Secretariat, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy, Washington, DC 20585, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

DOE press releases, DOE News Clips (a daily compilation of energy related newspaper and magazine articles), and other published sources.

SYSTEMS EXEMPTED FROM PROVISIONS OF THE ACT:

None.

DOE-64

SYSTEM NAME:

Low-Income Weatherization Program Home Report Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

For each state participating in this program, the records will be located in the community action agency designated by the state to implement the program. A list of participating states and community action agencies is available from the Director, Office of Weatherization Assistance, Office of Conservation and Renewable Energy, Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons eligible for weatherization assistance participating in DOE-sponsored weatherization programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about weatherization program participants, including name, address, annual income; whether participant receives public assistance; whether the participant owns or rents; and number of elderly, handicapped, native American, migrants, and total members in a participant's household; informaton about the characteristics of a participant's dwelling, including fuel use data; before and after information about improvements to the dwelling to be undertaken in connection with the program and information about the costs of such improvements; information about the hours and source of labor involved in making the improvements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Title III of the Energy Conservation and Production Act, Pub. L. 94–305, as amended by Title II, National Energy Conservation Policy Act, Pub. L. 95–619, and Title V of the Energy Security Act, Pub. L. 96–294; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The participating community action agencies will use the records maintained for the following purposes: determination of whether and which improvements should be undertaken; determination of correlation of the demographic and building characteristics to the quantity, quality, and cost of the work undertaken to enable the DOE to monitor the effectiveness of the program.

The DOE will use the record for the following purposes: to assure the effective provisions of weatherization assistance for the dwelling units of low-income persons; to carry out periodic evaluations of the program.

Additional routine uses 1, 4, 7, 8, and 9 as listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

The contracts with the community action agencies stipulate that the community action agencies will exercise all diligence in controlling access to the records maintained under this program and that only authorized members of the community action agency and other routine users will be allowed to use the data. All personnel that handle or process the data are to be instructed and cautioned as to the confidentiality of the data and its proper disposition.

RETENTION AND DISPOSAL:

Records will be retention for 3 years or until the completion of the low-income weatherization program. Records retention and disposal authorities are contained in "DOE 1324.2, Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

For each state participating in the program, the system manager will be head of the community action agency designated by the State to implement the program. A list of participating states and community action agencies is available from: U.S. Department of Energy, Director, Office of Weatherization Assistance, Office of Conservation and Renewable Energy, CE–25, Washington, DC 20585.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy, Washington, DC 20585, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required indentifying information. Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individuals and those authorized by the individuals to furnish information.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–65

SYSTEM NAME:

Energy Extension Service Records.

SUBSYSTEM A:

Energy Extension Service Client Names.

SUBSYSTEM B:

Energy Extension Service—Listing of State EES Employees, Contractors, and Volunteers.

SECURITY CLASSIFICATION:

Subsystems A and B; Unclassified.

SYSTEM LOCATION:

Subsystem A: for each state or territory participating in this program, the records will be located in the office(s) designated by the state or territory to implement the program. A list of participating states and territories and the corresponding offices implementing the program is available from the Evaluation Coordinator, Energy Extension Service, Office of Conservation and Renewable Energy, Washington, DC 20585.

Subsystem B: Office of the Evaluation Coordinator, Energy Extension Service, Office of Conservation and Renewable Energy.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subsystem A: State Energy Extension Service employees, contractors, and volunteers participating in the pilot projects implementing the Energy Extension Service program

CATEGORIES OF RECORDS IN THE SYSTEM:

Subsystem A: Names, addresses, and telephone numbers.

Subsystem B: Names, addresses, telephone numbers, and project roles.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Subsystems A and B: 5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009; National Energy Extension Service Act (Title V of the Energy Research and Development Administration Authorization Act of 1977).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Subsystem A:

States: Use the records for the administration of the subject programs. Also will, in some cases, use the DOE evaluations derived from the records (described immediately below) for evaluation and administration of the subject programs.

DOE: Client names, addresses, and telephone numbers will be used to select a sample for a telephone survey of users of the energy Extension Service. The survey will provide information on client evaluation of the service and on energy conserving activities which clients may have taken as a result of the availability of the service. The prime contractor for the survey is ICF, Inc., which will receive the requisite records from the State EES's and, in turn, make them available to Westat, Inc., the subcontractor which will actually perform the evaluation. DOE will receive only information which is distinguishable between persons, but which is not identifiable to specific persons. However, DOE anticipates that it will retain the capability to disclose to a participating state not only the evaluation but also the corresponding client identities for clients of that particular state.

Subsystem B:

DOE: Uses the records to evaluate the implementation of the program by participating states and territories.

Subsystems A and B:

The additional routine uses 1, 2, 3, 4, 7, 8, and 9 as listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Subsystems A and B: Paper records.

RETRIEVABILITY:

Subsystems A and B: By name.

SAFEGUARDS:

Subsystem A: The agreements with the states stipulate that the offices maintaining the records will exercise all diligence in controlling access to them with only authorized personnel and routine users allowed access. All personnel who handle or process these records are instructed and cautioned as to the confidentiality of the data and its proper disposition.

Subsystem B: Records are retained in lockable metal file cabinets with access limited to authorized personnel on a need-to-know basis.

RETENTION AND DISPOSAL:

SUBSYSTEM A:

The records will be retained as long as they are useful in implementing the program.

SUBSYSTEM B:

The records will be retained only for the time necessary to evaluate the states' implementation of the Energy Extension Service pilot projects.

SYSTEM MANAGER(S) AND ADDRESS:

Subsystems A and B:

U.S. Department of Energy, Evaluation Coordinator, Energy Extension Service, Office of Conservation and Renewable Energy, Washington, DC 20585.

NOTIFICATION PROCEDURES:

Subsystems A and B: Requests by an individual to determine if a system of records contains informatin about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy, Washington, DC 20585, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subsystem A: Subject individuals.

Subsystem B: The state or territory implementing the program and the subject individuals.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Subsystems A and B: None.

DOE-66

SYSTEM NAME:

Power Sales to Individuals.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401.

Also, records in this system are located at various regional offices of the Western Area Power Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals purchasing power from the Western Area Power Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Executed contracts, agreements, amendments, extensions, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in a locked facility with access limited to authorized personnel on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Administrator, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401

NOTIFICATION PROCEDURES:

Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-67

SYSTEM NAME:

Participants in Experiments, Studies, and Surveys.

Subsystem A: EIA-23 Survey Reports (Annual Survey of Domestic Oil and Gas Reserves) Submitted by Natural Persons.

Subsystem B: Hanford Clinical Epidemiologic Studies.

SECURITY CLASSIFICATION:

Subsystems A and B: Unclassified.

SYSTEM LOCATION:

Subsystem A:

U.S. Department of Energy, Office of Oil and Gas, 1000 Independence Avenue, SW., Washington, DC 20585

Information Systems Program/Energy Resources Center, University of Oklahoma, Physical Sciences Building, Norman, OK 73070

Subsystem B: Richland Operations Office, Post Office Box 550, Richland, WA 99352.

Portions of the system may be located with contractors or other entities involved in conducting the experiments, studies or surveys, or in any DOE office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are participants in experiments, studies, and surveys undertaken in furtherance of authorized DOE research activities.

Subsystem A: Operators of oil and/or natural gas wells as of December 31 of each year.

Subsystem B: All present and former DOE and DOE contractor Richland Operations employees, their spouses and offspring, and selected controls.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subsystems A and B: Name, age, birth date, place of birth, sex, race, social security number, home address and telephone number, business address and telephone number, education, income, occupation, family size and composition, patterns of product use, and such other information as is necessary, to be determined by the subject matter and purpose of the experiment, study or survey, including data derived from participants' responses during the course of the authorized research. System also consists of a variety of records pertinent to the health status of individuals and their families: medical history; reproductive history; birth records; developmental history; occupational history and work environment; demographic information; and selected items such as smoking

habits, alcohol use, family medical history, and location of residence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Generally, including authority for establishment of system: 5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009. Subsystem A—Section 13(b) of the Federal Energy Administration Act of 1974, and Subsystem B—Section 161(i)(3), Atomic Energy Act of 1954. Amended, 42 U.S.C. 2201(i)(3) (1976).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Generally and Subsystem A: Information in this system may, on occasion, be disclosed to Federal agencies and other entities which are participating in research in connection with which the data were obtained. Information in the possession of the Energy Information Administration must be disclosed, upon request, to any DOE office which determines the information relates to its functions. Additional routine uses 8 and 9 listed in Appendix B.

Subsystem B: Disclosure may be made to DOE contractors and collaborating researchers and their staff for the purposes of determining influences of the workplace, other factors on the health of workers and their families. The contractor and/or collaborating researchers and their staff shall be required to maintain Privacy Act safeguards with respect to such records. Portions of records (name, social security number if known, date of birth, and last known address) may be disclosed to one or more of the following to obtain a current address for the individual: Federal, state, and local agencies; employers; retail credit associations. The purpose of obtaining the address is so that the individual can be contacted and asked to provide additional research information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Generally paper records in file folders, electromagnetic storage material, and microfiche.

Subsystem A: Paper records, microfiche, disk, and tape.

Subsystem B: Paper records, computer printouts, index cards, microfilm, and disk.

RETRIEVABILITY:

Generally: By name, control number, or other code identifier.

Subsystem A: By data element.

Subsystem B: By name, alphanumeric code, and social security number.

SAFEGUARDS:

Generally during business hours, the records at DOE sites are maintained in secured buildings with access limited to those whose official duties require access; during nonbusiness hours, the records are in secured rooms with access controlled by security guards. Any records maintained by other entities will be maintained in a similar fashion in accordance with DOE specifications. Records are maintained in lockable cabinets, in secured buildings. Access is limited to individuals having a need-to-know.

Subsystem A: The contract with the University of Oklahoma stipulates that it will exercise all diligence in controlling access to the records maintained under the program and that only authorized members of the contractor, and DOE will be allowed to use the data. All personnel that handle or process the data are instructed and cautioned as to the confidentiality of the data and its proper disposition.

Subsystem B: Records are maintained in lockable cabinets, in secured buildings. Access is limited to individuals having a need-to-know.

RETENTION AND DISPOSAL:

Generally: Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within DOE are destroyed by shredding, burning or burial in a sanitary landfill, as appropriate.

Subsystem A: It is intended that the records will be maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Subsystem A: U.S. Department of Energy, Administrator, Energy Information Administration (or designee), 1000 Independence Avenue, SW., Washington, D.C. 20585.

Field Offices: Subsystem B: U.S. Department of Energy, Richland Operations Office, P.O. Box 550 Richland, WA 99352.

The designated person in each office conducting the relevant experiment, study, or survey.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to: Subsystem A—Director, Freedom of Information and Privacy Acts Activities, Department of Energy, Washington, DC 20585, or for Subsystem B—Privacy Act Officer, Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name at the time of study, birthdate, social security number, current name, address, and telephone number.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-68

SYSTEM NAME:

Minority Energy Technical Assistance Program (METAP) Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

For the DOE, Records are located at: U.S. Department of Energy, Office of Special Projects, Office of Conservation and Renewable Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

For the Center For Urban Environmental Studies (CUES), records are located at: U.S. Department of Energy, Center for Urban Environmental Studies, 1012 14th Street, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected elected officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, position, sources of energy information, and perception of needs of constituents for energy information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
CUES:

Records are used to construct training programs for the DOE. Additional routine use 8 as listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

At DOE, computer medium records; at CUES, paper records.

RETRIEVABILITY:

By name and Federal region.

SAFEGUARDS:

DOE records are maintained in a locked facility, with access limited to authorized personnel on a need-to-know basis; at CUES, the grant agreement with CUES stipulates that CUES will exercise all diligence in controlling access to the records maintained under this program and that only authorized members of CUES, DOE, and routine users will be allowed to use the data. All personnel that handle or process the data are to be instructed and cautioned as to the confidentiality of the data and its proper disposition.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Assistant Secretary for Conservation and Renewable Energy (or designee), Washington, DC 20585.

NOTIFICATION PROCEDURES:

Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy, Washington, DC 20585, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF TH ACT:

None.

DOE-69

SYSTEM NAME:

Residential Solar Water Heating Workshops Pilot Program Records.

SYSTEM LOCATION:

U.S. Department of Energy, Bonneville Power Administration, Division of Program, (KP), P.O. Box 3621, Portland, OR 97206, and utilities that may participate in the program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested participation in the Residential Solar Water Heating Workshops Pilot Program and who meet the homeowner eligibility criteria agreed upon by BPA and by participating utilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about a participants household hot water consumption prior to installation of a solar hot water heating system, electric energy consumption for water heating, family size, siting and orientation of house, roof area available for solar collectors, hours of daily sunlight on the roof top year round, extent of shading by nearby buildings or vegetation, storage area for water tank(s), structual aspects relating to solar system installation, and data about the performance of the water heating system after installation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Bonneville Project Act of 1937, 16 U.S.C. Chapter 12B(1976), as amended by the Flood Control Act of 1944 (16 U.S.C. Section 8258), and the Federal Columbia River Transmission Act of 1974 (16 U.S.C. Chapter 838).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information will be maintained by the utility and will be used to assess the electric energy displacement for water heating by the solar system; evaluate the performance of several types of solar water heating systems, under varying seasonal and climatic conditions; assess the potential regional impact of solar energy used for water heating; determine eligibility of participants for BPA rebates; and evaluate the performance of owner-built solar water heating systems.

BPA will use this information in statistical form to evaluate the overall effectiveness of the program, and provide a public data base which will be used to plan and analyze appropriate conservation measures for residents of the Pacific Northwest.

The utility will make information available to Federal, state, and local agencies and organizations with an interest in solar development in the region, and to BPA for audit and prgram evaluation purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computer tapes.

RETRIEVABILITY:

By utility account number.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. All files are locked when unattended.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Director, Division of Programs (KP), Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

NOTIFICATION PROCEDURES:

Requests by an individual to detrmine if a system of records contains information about him/her should be directed to the Privacy Acts Officer, Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The information in this system is solicited from the individual to whom the record pertains. Information about homes will be gathered by representatives of the utilities based on an examination of the home conducted in cooperation with the customer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-70

SYSTEM NAME:

Electricity Use and Conservation Analysis Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Bonneville Power Administration, Division of Programs (KP), P.O. Box 3621, Portland, OR 97208, and utilities that may be participating in the program and announced here annually.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested participation in the Residential Conservation Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about a person's household energy consumption, family size, characteristics of his/her dwelling, including heating and cooling systems; structural aspects related to thermal efficiency, and other characteristics which affect patterns of residential energy consumption.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Bonneville Project Act of 1937, 16 U.S.C. Chapter 12B(1976), as amended by the Flood Control Act of 1944 (16 U.S.C. 825s) and the Federal Columbia River Transmission System Act of 1974 (16 U.S.C. Ch. 838).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information will be maintained by the utility and will be used to evaluate various energy-saving opportunities in the home; calculate energy and financial savings which could result from weatherization improvements in the home; make recommendations concerning weatherization improvements in the home; determine eligibility for DOE weatherization financing; and provide a record of weatherization improvements and household energy efficiency to subsequent owners of the home.

BPA will use this information in aggregated statistical form, without identifiers, to evaluate the overall effectiveness of the program through statistical analysis, and provide a public data base which will be used to plan and analyze appropriate conservation measures for residents of the Pacific Northwest.

The utility will make information available to building contractors for use in preparing and submitting bids for the performance of weatherization work, and DOE for audit and program evaluation purposes. The information provided to DOE will include a unique utility company account number for each customer, but not the customer's name and address.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computer tapes.

RETRIEVABILITY:

By utility account number.

SAFEGUARDS:

Access to and use of individually identifiable records are limited to those persons whose official duties require such access. All files are locked when unattended.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within DOE are destroyed by shredding, burning or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Director, Division of Programs (KP), Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The information in this system is solicited from the individual to whom the record pertains. Information about homes will be gathered by representatives of the utilities based on an examination of the home conducted in cooperation with the customer.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-71

SYSTEM NAME:

The Radiation Accident Registry.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those persons accidentally exposed to acute doses of ionizing radiation as defined by exposure dose criteria agreed to by the DOE and the Nuclear Regulatory Commission (NRC) by an interagency agreement. The dose criteria established by this agreement include one or more of the following: Greater than or equal to 25 REM (Roentgen Equivalent Man) to the whole body, active blood-forming organs or gonads; greater than or equal to 600 REM to skin of whole body or extremities; greater than or equal to 75 REM to other tissues or organs from an external source; and greater than or equal to ½ NCRP maximum permissible organ burden internally; all those medical misadministrations of radioisotopes that result in a dose or organ burden equal to or greater than those given above.

Those individuals known to have been involved in an event in which one or more other persons received a dose equal to or in excess of the DOE/NRC criteria but whose personal dose was less than these criteria. The histories of these individuals contribute control population data.

CATEGORIES OF RECORDS IN THE SYSTEM:

Official accident reports including reports of those accidents that have occurred within the jurisdiction of the NRC; and have been transferred to the DOE for the Accident Registry according to the DOE/NRC agreement; names, addresses, social security numbers, date of birth, and sex; medical records compiled at the time of the accident (such records include physician and hospital records, diagnostic and laboratory test reports, radiographs, EKGs, and radiation exposure report); medical records of illnesses, examinations, including routine follow-up exams, and investigations that have occurred since the radiation exposure; photographs of facsimiles of radiation-induced injuries; search and contact information for registrants not identified and/or located; consent to release information forms completed by registrants; death certificates; anecdotal information; correspondence relating to the accident and/or the individuals involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide a current record of radiation accidents for use by the DOE, and its contractors and consultants; to identify specific populations for use in epidemiological and clinical studies; and to conduct medical surveillance during the lifetime of the registrants. Additional uses 4, 8, 9, and 10 listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer tapes, computer printouts, punched cards, disk, magnetic tape, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locke security areas in locked file cabinets. Access is limited to individuals whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830, in accordance with the DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Name, social security number, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and reports of incident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-72

SYSTEM NAME:

The Department of Energy Radiation Study Registry.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants are those present and former employees of contractors of the DOE and its predecessor organizations including the Manhattan District, USAEC, and ERDA, and present and former civilian employees in the DOE Naval Reactor Program who received a whole body exposure of ionizing radiation equal to or in excess of 5 REM in any 1 year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Rosters of names of individuals meeting the above criteria for inclusion in the Registry submitted through the DOE field operation offices from DOE owned and operated facilities and sites. In addition to names of such individuals, these rosters include social security number or other identifying information, sex, race, date of birth, date and/or place of death, first date of hire, last date of termination, continuity of hire, year in which they received first dose greater than or equal to 5 REM, actual radiation dose in excess of 5 REM, and total career radiation exposure dose.

Original or copied lifetime medical records from plant and private physicians and hospitals including routine physical examinations, reports of diagnostic and laboratory tests, radiographs, EKG's, etc., or abstracted portions of such records as are required for the purposes of the study.

Search and contact information for registrants who are no longer employed at qualified sites or who are deceased; and death certificates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301: Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide a current record of registrants for use by DOE, its contractors, and consultants; to identify specific populations for use in epidemiological and clinical studies; to conduct medical surveillance during the lifetime of the registrants. Additional uses 4, 8, 9 and 10 listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer tapes, computer printouts, punched cards, disks, magnetic tape, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locked security areas in locked file cabinets. Access is limited to individuals whose offical duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830, in accordance with the DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number, and time period.

RECORD ACCESS PROCEDURE:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and reports of incident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-73

SYSTEM NAME:

The US-DTPA Registry.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants are those individuals who, because of real or suspected internal contamination with transuranic elements, have received diethylenetriaminepentaacetic acid (DTPA), in the calcium or zinc form during the course of chelation therapy. Administration of the agent DTPA is limited to physicians who are co-investigators with the DOE contractor staff on the Investigative New Drug License of the Food and Drug Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records compiled by the physician administering DTPA in the event of an exposure that was known to have or was suspected of having caused transuranic contamination internally requiring chelation therapy with DTPA. These records include a description of the exposure, the results of serial bioassays and investigations conducted to evaluate the level of internal contamination and the efficacy of subsequent chelation by DTPA. The form of DTPA and the route and frequency of administration are recorded together with any untoward effects of the therapy.

Names, social security numbers or other identifiers and vital status of treated persons. The last known address and the name of the private physicians of individuals who have relocated or who are no longer within the practice of the administering physician(s) are included in the DTPA Registry to facilitate the search and contact of these individuals; medical records of illnesses, examinations, including routine followup examinations, investigations, etc., that have occurred since the initial administration of DTPA; and death certificate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301: Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide a current record of individuals treated with DTPA for use by the DOE and its contractors and consultants; identify by epidemiological methods any long-term untoward effects associated with DTPA therapy; to provide information to FDA in accord with the IND license and issuances.

Additional uses 4, 8, 9, and 10 as listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer tapes, computer printouts, punched cards, disk, magnetic tape, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locked security areas in locked file cabinets. Access is limited to individuals whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830, in accordance with the DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and reports of incident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE-74

SYSTEM NAME:

Bonneville Power Administration Conservation Program.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

U.S. Department of Energy, Bonneville Power Administration, Division of Programs (KP), P.O. Box 3621, Portland, OR 97208, and utilities or other entities which may participate in the program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any participant in a Bonneville conservation program will be included in the system of records. For example, participants include but are not limited to, residential consumers, commercial consumers, contractors, utility personnel, and personnel of other implementing entities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about individual energy consumption including names, addresses, and other demographic data; characteristics of buildings; characteristics about natural phenomenon (such as wind, sunlight, geothermal activity, etc.); structual aspects related to thermal efficiency; information as to type, location, and number of installed measures; performance data; information relating

to BPA financial assistance to consumers; and information as to auditor/analyst training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Bonneville Project Act of 1937, 16 U.S.C. Chapter 12B (1976), as amended by the Flood Control Act of 1944 (16 U.S.C. 825s), the Federal Columbia River Transmission System Act of 1974 (16 U.S.C. Chapter 838), and the Pacific Northwest Electric Power Planning and Conservation Act (Pub. L. 96–501).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information will be maintained by BPA, a utility, or other entity administering the program and will be used to determine eligibility for and to account for BPA payments; evaluate the electric energy displacement for conservation and direct application renewable resource measures; to evaluate the performance of specific measures; to assess potential regional impact of individual pilot measures; to make recommendations to consumers concerning energy efficiency; to assist in preparing detailed resource assessments; to assist in installation or repair of measures; and to assist in verification or correction of services rendered under this program. Information may also be released to the public in aggregated form for purposes of survey and program analysis. Except in cases 1, 7, and 8, above, information will not be released in other than aggregated form without the prior consent of the individual.

BPA will use this information in statistical form to evaluate the overall effectiveness of the program, and to provide and make available a public data base which will be used to plan and analyze appropriate conservation and direct application renewable resource measures for firms and residents of the Pacific Northwest.

The utility or other entity administering the program will make information available in aggregated form to Federal, state, and local agencies and organizations with an interest in conservation and direct application renewable resource measures; and to BPA for audit and program evaluation purposes. When necessary for accomplishing a measure, the utility or other entity will make information available to contractors for use in preparing and submitting bids for work, and to repair person called upon to evaluate, correct deficiencies in, or otherwise repair installed measures. The utility or other entity may disclose site or building-specific information to subsequent purchasers.

POLICIES PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

STORAGE:

Paper records, computer tapes, and disk.

RETREVABILITY:

Records maintained by the utility are indexed by a utility account number assigned to each utility customer. Records are indexed by other assigned numbers when maintained at a location other than a utility.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. All files are locked or otherwise secure when unattended.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Director, Division of Programs (KP), Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208, in accordance with the DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The information in this system is solicited from the individual to whom the record pertains. Information will also be gathered from data collection and other monitoring equipment such as electric meters, flowmeters, air quality monitors, and so forth. Information will be gathered by representatives of the utilities or by others at BPA's request.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–75

SYSTEM NAME:

Savannah River Plant Telephone Call Account System (Call Account System).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of Department of Energy (DOE), other Federal agencies and contractors who are assigned telephone station numbers under the Savannah River Plant telephone system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Calling station number and Julian date, time call originated, duration of call, and called number. Similar information is recorded on incoming calls except the numbr of rings are recorded rather than calling station number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Section 644 of the Department of Energy Organization Act (Pub. L. 95–91), includiong authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To maintain an adequate grade of service on the trunk groups, to certify toll charges, and to improve system usage by correcting misuse and by management to monitor system usage. Additional routine uses 1, 2, 3, 4, 5, 8, and 9 listed in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, magnetic tapes, and microfilm.

RETRIEVABILITY:

By telephone numbers, which are assigned to staff members on a nearly one-to-one basis.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. All records are maintained in locked files.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) ADDRESSES:

U.S. Department of Energy, Telecommunications and Emergency Planning Branch, Savannah River Operations Office, Aiken, SC 29801.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801, in accordance with the DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The information contained in this system of records is derived from use of the Savannah River Telephone System.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–76

SYSTEM NAME:

California, Nevada, and Utah Milk Directory.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Energy, Nevada Operations Office, P.O. Box 14100, Las Vegas, NV 89114.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Ranchers, farmers, and dairymen in Nevada and certain countries in California and Utah.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on dairy herd and family milk cow owners including location, owners' names, and telephone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system are used to identify and notify farmers, ranchers, and dairymen in Nevada and certain counties in California and Utah if there is accidental leakage of radioactivity in the atmosphere, so that milk samples can be taken and analyzed to determine whether radiation levels are excessive.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, punched cards, magnetic tape and disk, and computer printouts and plots.

RETRIEVABILITY:

By location.

SAFEGUARDS:

Access to magnetic tapes and disk files is controlled through established computer center procedures (personnel screening and physical controls). Records are maintained in limited access areas with visibility limited to those having a need-to-know.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Nevada Operations Office, P.O. Box 14100, Las Vegas, NV 89114.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Nevada Operations Office, P.O. Box 14100, Las Vegas, NV 89114, in accordance with the DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Information in this system comes from individual ranch, farm, and dairy owners.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–77

SYSTEM NAME:

Physical Fitness Test Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1 through 21 in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE contractor employees (armed uniform guards).

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of individual's ability to complete the physical fitness test as set forth in applicable DOE directives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authorities vested in and transferred to the Secretary of Energy, under the Department of Energy Organization Act, Pub. L. 95–91.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system provide information on security guards' ability to annually perform fitness tests. Records are disclosed to administrative and training personnel of the contracted protective force management or the responsible Federal force managed in the performance of regular duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper file, manually retrieved.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access limited to employees having need-to-know. Records are stored in

locked file cabinets in secured building under guard protection.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Director, Office of Safeguards and Security, DP-34, Washington, DC 20545.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts Activities, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21, in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individuals themselves, their supervisors, physicians, and persons administering the tests.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

(1) U.S. Department of Energy (Headquarters), 1000 Independence Avenue, SW., Washington, DC 20585
(2) U.S. Department of Energy, Alaska Power Administration, P.O. Box 50, Juneau, AK 99802
(3) U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87115
(4) U.S. Department of Energy, Bartlesville Energy Technology Center, P.O. Box 1398, Bartlesville, OK 74003
(5) U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208
(6) U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
(7) U.S. Department of Energy, Grand Forks Energy Technology Center, P.O. Box 8213, University Station, Grand Forks, ND 58201
(8) U.S. Department of Energy, Idaho Operations Office, 550 Second Street, Idaho Falls, ID 83401
(9) U.S. Department of Energy, Laramie Energy Technology Center, P.O. Box 3395, University Station, Laramie, WY 82071
(10) U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26505
(11) U.S. Department of Energy, Nevada Operations Office, P.O. Box 14100, Las Vegas, NV 89114
(12) U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box E, Oak Ridge, TN 37830
(13) U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, PA 15122-0109
(14) U.S. Department of Energy, Pittsburgh Naval Reactors, P.O. Box 109, Pittsburgh, PA 15122
(15) U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352
(16) U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612
(17) U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801
(18) U.S. Department of Energy, Schenectady Naval Reactors Office, P.O. Box 1069, Schenectady, NY 12301
(19) U.S. Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Elberton, GA 30635
(20) U.S. Department of Energy, Southwestern Power Administration, P.O. Box 1619, Tulsa, OK 74101
(21) U.S. Department of Energy, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401

Appendix B—Additional Routine Uses.

The following routine uses apply to and are incorporated by reference into each system of records as stated therein:

1. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. A record from this system of record may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

5. A record maintained by this agency to carry out its functions which relates to civil and criminal procedings may be disclosed to the news medial in accordance with guidelines contained in Department of Justice regulations 28 CFR 50.2.

6. A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations.

7. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

8. A record form this system of record may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employee have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

9. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance

from the member with respect to the subject matter of the record.

10. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 52a(f)(3) and applicable DOE regulations.

[FR Doc. 82-8536 Filed 4-1-82; 8:45 am]
BILLING CODE 6450-01-M

federal register

Friday
April 2, 1982

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California: CA81–5132	July 7, 1981.
Colorado: CO82–5103	Feb. 12, 1982.
Florida: FL82–1003	Feb. 19, 1982.
Idaho: ID81–5157	Oct. 9, 1981.
New Jersey: NJ81–3053	Oct. 9,, 1981.
Oregon: OR82–5100	Mar. 12, 1982.
Texas:	
TX81–4075	Oct. 2, 1981.
TX81–4076	Oct. 2, 1981.
TX81–4078	Oct. 2, 1981.
TX82–4005	Jan. 2, 1982
Utah: UT81–5156	Oct. 2, 1981.
Washington: WA81–5163	Dec. 4, 1981.

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.

Alabama:	
AL80–1112(AL82–1023)	Oct. 17, 1980.
AL81–1267(AL82–1020)	July 10, 1981.
Illinois: IL79–2074(IL82–2025)	Sept. 14, 1979.
Kentucky: KY81–1199(KY82–1025)	Apr. 17, 1981.
Mississippi: MS80–1110(MS82–1024)	Oct. 3, 1980.
Missouri: MO81–4034(MO82–4012)	May 20, 1981.

Signed at Washington, D.C. this 26th day of March 1982.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Divisions.

BILLING CODE 4510-27-M

DECISION NO. CA81-5132 - Mod. # 8
(46 FR 35860 - July 7, 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 16:					
Electricians	$21.00	1.62	3%+3.75		.05
Cable Splicers	23.63	1.62	3%+3.75		.05

DECISION NO. CO82-5103 - Mod. #3
(47 FR 6549-February 12, 1982)

Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson Lake, Larimer, Morgan, Park, Summit and Weld Counties, Colorado	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Electricians:					
Remaining Counties:					
Electricians	$17.85	.85	3%+1.25		3/10%
Cable Splicers	18.10	.85	3%+1.25		3/10%

DECISION NO. FL82-1003 - MOD. #1
(47 FR 7594 - February 19, 1982)

Palm Beach and Martin Counties, Florida Building Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
IRONWORKERS	$13.70	.90	1.43		.15

DECISION NO. ID81-5157 - Mod #8
(46 FR 50223 - Oct. 9, 1981)
Statewide Idaho

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
LINE CONSTRUCTION:					
(Area 2) Remaining Counties:					
Cable Splicer	$17.56	.45	3% + .75		1/2%
Lineman	15.92	.45	3% + .75		1/2%
Line Equipment Mechanic:					
Right of Way	15.05	.45	3% + .75		1/2%
Base Shop	14.07	.45	3% + .75		1/2%
Line Equipment Serviceman	14.07	.45	3% + .75		1/2%
Line Equipment Operator	14.31	.45	3% + .75		1/2%
Groundman	11.40	.45	3% + .75		1/2%

MODIFICATIONS P. 3

DECISION NO. NJ81-3053 - MOD. #10 (46 FR 50243 - October 9, 1981) BERGEN, ESSEX, HUDSON, HUNTERDON, MIDDLESE, 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:					
BRICKLAYERS, STONE MASONS, CEMENT MASONS & PLASTERERS ZONE 2	15.60	.84	.90		.02
LABORERS, HEAVY & HIGHWAY CONSTRUCTION:					
GROUP 1	12.20	1.25	1.25	d	.10
GROUP 2	12.15	1.25	1.25	d	.10
GROUP 3	11.90	1.25	1.25	d	.10
GROUP 4	12.15	1.25	1.25	d	.10
GROUP 5	11.90	1.25	1.25	d	.10
GROUP 6	11.70	1.25	1.25	d	.10
GROUP 7	11.40	1.25	1.25	d	.10
GROUP 8	11.20	1.25	1.25	d	.10
GROUP 9	11.20	1.25	1.25	d	.10
LABORERS - FREE AIR TUNNEL JOBS:					
GROUP 1	12.65	1.00	1.25		.10
GROUP 2	12.25	1.00	1.25		.10
GROUP 3	12.10	1.00	1.25		.10
GROUP 4	11.60	1.00	1.25		.10
LABORERS, ASPHALT CONSTRUCTION:					
ZONE 1					
Street:					
Head Raker	9.80	1.16	.89	d	.10
Rakers & Screen Men	9.65	1.16	.89	d	.10
Tampers, Smoothers, Kettlemen, Painters, Top Shovelers & Roller Boys	9.65	1.16	.89	d	.10
Plant:					
Scale Mixer & Burner Men	9.65	1.16	.89	d	.10
Feeders & Dust Men	9.40	1.16	.89	d	.10

MODIFICATIONS P. 4

DECISION NO. OR82-5100 - Mod #1 (47 FR 10954 - March 12, 1982) Statewide Oregon	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS:					
Area 2:					
Electricians	$19.32	.95	3% + 1.80		.10
Lead Cable Splicers	20.29	.95	3% + 1.80		.10
LINE CONSTRUCTION:					
(Area 2) Malheur County:					
Cable Splicer	17.56	.45	3% + .75		1/2%
Journeyman Lineman	15.92	.45	3% + .75		1/2%
Line Equipment Mechanic (Right of Way)	15.05	.45	3% + .75		1/2%
Line Equipment Mechanic (Base Shop)	14.07	.45	3% + .75		1/2%
Line Equipment Serviceman	14.07	.45	3% + .75		1/2%
Line Equipment Operator	14.31	.45	3% + .75		1/2%
Groundman	11.40	.45	3% + .75		1/2%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX81-4075 - MOD. #7 (46 FR 48863 - October 2, 1981) Galveston & Harris Counties, Texas					
CHANGE:					
Painters:					
East Harris Co.: Group 1	$16.73				
Group 2	17.085				
Group 3	16.825				
Group 4	16.98				
Group 5	17.125				
Group 6	17.39				
Plumbers	17.51	.75	.80		.10
DECISION NO. TX81-4076 - MOD. #7 (46 FR 48857 - October 2, 1981) Brazos County, Texas					
CHANGE:					
Plumbers	17.51	.75	.80		.10
DECISION NO. TX81-4078 - MOD. #5 (46 FR 48865 - October 2, 1981) Bexar County, Texas					
CHANGE:					
Cement masons	12.72	.45		.65	.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX82-4005 - MOD. #2 (47 FR 4465 - January 2, 1982) Jefferson & Orange Cos., Texas					
CHANGE:					
Carpenters:					
Carpenters:					
Commercial	$15.92	.85	.60		.065
Residential construction of not more than 2 units & condominium townhouses of not more than 10 units excluding all apartment construction & multiple buildings for rental purposes	13.94	.85	.60		.065
Millwrights	16.175	.85	.60		.05
Piledrivermen	16.06	.85	.60		
Cement masons	16.12				
Glaziers:					
Southern 1/2 of Jefferson Co. & all of Orange Co.:					
Commercial	15.36	.82			.05
Ironworkers	14.80	.80	2.00		.15
Lathers	15.92	.85	.60		.065
Painters:					
Southern 1/2 of Jefferson Co. & all of Orange Co.:					
Commercial - Group 1	15.36	.82			.05
Group 2	15.81	.82			.05
Group 3	16.16	.82			.05
Pipefitters	16.17	.87	1.00		.15
Sheet metal workers:					
Commercial	14.48	3%+.85	.84		.18
Work on a single family dwelling or multiple family housing unit less than 3 stories in height where each individual family apartment is individually conditioned by a separate & independent unit or system	9.41	3%+.85	.84		.18

: MODIFICATIONS P. 7

DECISION NO. TX82-4005 - MOD. #2 (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Truck drivers - Group 1	$12.60	.79			
Group 2	13.39	.79			
Group 3	13.68	.79			
Group 4	13.86	.79			
Power equipment ops.:					
Group 1	16.735		.75		
Group 2	14.11		.75		
Group 3	12.99		.75		
Group 4	12.74		.75		

DECISION NO. UT81-5156 - Mod. #5
(46 FR 48870 - October 2, 1981)
Statewide, Utah

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$16.06	$1.30	$1.25	$1.00	.04
Marble Setters	12.02	.95	.60		.07
Terrazzo Workers and Tile Layers	12.02	.95	.60		.07

DECISION NO. WA81-5163 - Mod #8
(46 FR 59457 - Dec.4, 1981)
Statewide Washington

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BRICKLAYERS; MARBLE SETTERS:					
Area 3	$17.84	1.05	1.00		.07
Area 8	16.64	1.22	1.80		.23

SUPERSEDEAS DECISION

STATE: ALABAMA COUNTIES: CULLMAN,JACKSON,LIMESTONE, MORGAN,MADISON, & MARSHALL

DECISION NUMBER: AL82-1023 DATE: Date of Publication

Supersedes Decision No.: AL80-1112, October 17, 1980, 45 FR 69142.

DESCRIPTION OF WORK: Residential Construction 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.
AIR CONDITIONING MECHANICS	$6.75				
BRICKLAYERS	7.20				
CARPENTERS	6.09				
CEMENT MASONS	6.81				
DRYWALL FINISHERS	7.00				
DRYWALL HANGERS	5.00				
ELECTRICIANS	6.62				
INSULATORS	4.68				
IRONWORKERS	5.00				
LABORERS:					
Asphalt Raker	4.75				
Pipelayer	6.30				
Unskilled	4.31				
PAINTERS, Brush	6.00				
POWER EQUIPMENT OPERATORS:					
Backhoe	7.00				
Bulldozer	8.00				
Front End Loader	5.77				
Motor Grader	5.50				
Pan	6.25				
Roller	4.79				
Tractor	5.55				
PLUMBERS & PIPEFITTERS	6.50				
ROOFERS	5.00				
SHEET METAL WORKERS	5.46				
TRUCK DRIVERS	4.31				
WELDERS--Rate for Craft					

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: ALABAMA COUNTY: MADISON
DECISION NUMBER: AL82-1020 DATE: Date of Publication
Supersedes Decision No.: AL81-1267 dated July 10, 1981 in 46 FR 35860.
DESCRIPTION OF WORK: Building Construction Projects (does not include 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	$14.66	.66	1.00		.10
BRICKLAYERS	12.75				
CARPENTERS	10.50	.65	.65		.09
CEMENT MASONS	11.00				
ELECTRICIANS	13.80	.80	3% + .90		
IRONWORKERS	12.62	.75	.75		.08
LABORERS, Unskilled	7.07	.45	.55		
MILLWRIGHTS	11.15	.65	.65		.09
PAINTERS	8.25	.40	.25		.05
PLUMBERS & PIPEFITTERS	13.50	.65	.75		.15
ROOFERS	7.50				
SHEET METAL WORKERS	12.88	.79	1.07		.09
TRUCK DRIVERS	5.00				
WELDERS - Rate for Craft					
POWER EQUIPMENT OPERATORS:					
Crane	12.98	.70	.75		.05
Front End Loader	12.98	.70	.75		.05
Oiler (35 Ton Crane & over)	11.34	.70	.75		.05

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: ILLINOIS COUNTIES: *SEE BELOW
DECISION NUMBER: IL82-2025 DATE: Date of Publication
Supersedes Decision No. IL79-2074, dated September 14, 1979 in 44 FR 53623
DESCRIPTION OF WORK: Heavy and Highway Construction Projects (Including Dredging)

*FORD, GRUNDY, IROQUOIS, KANKAKEE, LASALLE, LIVINGSTON, MCLEAN, MARSHALL, PUTNAM & WOODFORD

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS:					
Ford (Garber, Guthrie & Areas South thereof) Co.	$14.655	.65	1.30		.08
Ford (Remainder of Co.), Iroquois, & Kankakee Cos.	15.86	.95	.80		.03
Grundy & LaSalle (Marseilles & Vic.) Cos.	17.07	1.30	1.25		.04
LaSalle (Remainder of Co.), Marshall, & Putnam Cos.	14.78	1.00	1.15		.06
Livingston & McLean Cos.	14.58	.75	1.50		.07
Woodford Co.	14.51	.75	1.50		.07
CEMENT MASONS:					
Ford Co.	15.475	.55			.025
Grundy Co.	15.55	1.10	1.96		.05
Iroquois & Kankakee Cos.	15.20	.80	1.55		
LaSalle & Putnam Cos.	15.60		1.00		
Livingston, McLean & Woodford (East of Roanoke) Cos.	15.49	.75			
Marshall & Woodford (Remainder of Co.) Cos.	14.31	1.20	1.20		.05
ELECTRICIANS:					
Ford (S. of Benton Twp.), Iroquois (Artesia, Pigeon Grove & Loda Twps.), LaSalle (SE part), Livingston, McLean (Cropsey, Anchor, Cheney Grove, & Belleflower Twps.), Marshall (Roberts, Evans, Bell, Plain, & Bennington Twps.), Putnam (Magnolia Twp.), & Woodford (Linn, Clayton, Minonk, Roanoke, Green, & Panola Twps.) Cos.	16.05	.80	3%+.75		.3%
Ford (Remainder of Co.), Grundy, Iroquois (Exclu. Artesia, Pigeon Grove, Loda, Fountain Creek, Lovejoy & Prairie Green Twps.), Kankakee, LaSalle (N ½ & Central Southern part of Co.) Cos.:					
Joliet & Ottawa Area	17.68	.88	3%+1.20		.6%
Kankakee Area	16.88	.88	3%+1.20		.6%

DECISION NO. IL82-2025

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS (CONT'D):					
Iroquois (Fountain Creek, Lovejoy & Prairie Green Twps.) Co.	$15.97	.65	3%+.50		½%
LaSalle (Deer Park, Eden, LaSalle, Peru, Utica, & Vermilion Twps.), & Putnam (Granville, Hennepin & Senachwine Twps.) Cos.	15.80	.55	3%+.70		½%
McLean (Remainder of Co.), & Woodford (Palestine, El Paso & Kansas Twps.) Cos.	15.65	.65	3%+.85		½%
Marshall (Area W. of Bell Plain & Roberts Twps.), Woodford (Area W. of Kansas, Linn, Palestine, & Roanoke Twps.) Cos.	16.00	.55	3%+1.00		3/4%
IRONWORKERS:					
Ford & McLean (E ½) Cos.	14.10	.95	1.50		.08
Grundy Co.	14.77	3.345	1.56		.05
Iroquois & Kankakee Cos.	16.00	1.345	1.255		.05
LaSalle, Marshall (Except SW Corner), & Putnam Cos.	16.58	.915	1.355		.02
Livingston, McLean (Western ½), Marshall (SW Corner), & Woodford Cos.	15.23	1.065	1.175		.025
LINE CONSTRUCTION:					
Ford, LaSalle, Livingston, McLean, Marshall, Putnam, & Woodford Cos.:					
Linemen	17.16	.45	7%		.5%
Groundmen-Equipment Ops., Class 1	16.01	.45	7%		.5%
Groundmen-Truck Drivers with Winch	12.16	.45	7%		.5%
Groundmen-Truck Drivers w/o Winch	11.45	.45	7%		.5%
Groundmen	10.91	.45	7%		.5%
Grundy & Kankakee (Exclu. Ill. Power Co.) Cos.:					
Equipment Operators; Linemen	17.05	4.4%	6.50%	5.6%	.25%
Groundmen	12.10	4.4%	6.50%	5.6%	.25%

DECISION NO. IL82-2025

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION (CONT'D):					
Iroquois (Fountain Creek, Lovejoy & Prairie Green Twps.) Co.:					
Groundmen-Equipment Ops.; Linemen	$13.12	.50	3%+.50		½%
Groundmen Truck Driver with Winch	10.67	.50	3%+.50		½%
Groundmen Truck Driver without Winch	9.98	.50	3%+.50		½%
Groundmen	9.45	.50	3%+.50		½%
PAINTERS:					
Ford & McLean Cos.:					
Brush	14.03	.70	.50		
Spray; Structural Steel	14.53	.70	.50		
New Industrial Work	14.28	.70	.50		
Airless Spray; Bridges	15.03	.70	.50		
Grundy Co.:					
Bridges w/o Superstructure, Industrial Work under 40 ft.	14.55	.80	1.00		.05
Industrial Work 40 ft. or over from Ground Up; Bridges with a Superstructure or Lift Type Bridges	15.05	.80	1.00		.05
Iroquois & Kankakee Cos.:					
Brush	12.45	.70	1.50		
Sandblasting	14.45	.70	1.50		
Spray	13.95	.70	1.50		
LaSalle (Vic. of LaSalle, Mendota, Ogelsby, Utica, & Peru) & Putnam Cos.:					
Brush	11.00	.60	.45		
Sandblasting; Spray	12.00	.60	.45		
LaSalle (Vic. of Ottawa, Streator, & Marseilles) Co.:					
Brush; Roller	15.00	.75	.60		
Sandblasting; Spray	16.00	.75	.60		
Livingston Co.:					
Brush	12.00				
Structural Steel	12.50				
Work Over 40 ft.	13.00				

DECISION NO. IL82-2025

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D):					
Marshall & Woodford Cos.:					
Brush	$14.37	.70	.70		.03
Bridge & New Structural Steel; Pressure Roller; Sandblasting; & Spray	15.22	.70	.70		.03
TRUCK DRIVERS:					
Ford (S ½), Iroquois (SE Corner), LaSalle, Livingston (Reading, New Town, Sunbury, Nevada, Long Point & Amity), McLean (Except NE Corner), & Putnam Cos.:					
GROUP I	13.30	1.00	46.00a		
GROUP II	13.70	1.00	46.00a		
GROUP III	13.90	1.00	46.00a		
GROUP IV	14.15	1.00	46.00a		
Marshall & Woodford (NW Corner) Cos.:					
GROUP I	13.65	1.00	46.00a		
GROUP II	14.05	1.00	46.00a		
GROUP III	14.25	1.00	46.00a		
GROUP IV	14.50	1.00	46.00a		

CLASSIFICATIONS FOR ABOVE COUNTIES

GROUP I: Drivers on 2 Axles hauling less than 9 tons; Air Compressor & Welding Machine incl. those pulled by separate units; Fork Lifts up to 6,000 lbs. cap.; Mechanic Tenders; Pick-ups when hauling materials, tools, or men to and from and on the job site; & Truck Driver Tenders

GROUP II: 2 or 3 Axles hauling more than 9 tons, but hauling less than 16 tons; A-Frame Winches; Fork Lifts over 6,000 lbs. cap.; 4-Axle Combination units; Hydrolifts or similar equipment when used for transportation purposes; & Winches

GROUP III: 2, 3 or 4 Axles hauling 16 tons or more; Dispatcher; 5-Axles or more combination units; Mechanics & Working Foreman; & Water Pulls

GROUP IV: Drivers on Oil Distributors; & Drivers on Semi-Lowboys when moving equipment

DECISION NO. IL82-2025

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS (CONT'D):					
Ford (N ½), Grundy, Livingston (NW Corner), & McLean (NE Corner) Cos.:					
2-3 Axles	$13.90	40.00a	48.00a		
4 Axles	14.05	40.00a	48.00a		
5 Axles	14.25	40.00a	48.00a		
6 Axles	14.45	40.00a	48.00a		
Iroquois (Exclu. SE Corner) & Kankakee Cos.:					
2-3 Axles	13.675	39.50a	51.00a	b	
4 Axles	13.875	39.50a	51.00a	b	
5 Axles	14.075	39.50a	51.00a	b	
6 Axles	14.225	39.50a	51.00a	b	

FOOTNOTES:

a. Per Week Per Employee

b. 900 straight-time hours or more in any 1 calendar year for same employer - 1 week's paid vacation; 3 years - 2 weeks' paid vacation; less than the aforementioned - $.10 per hour

LABORERS:					
Ford, Iroquois, & Kankakee Cos.:					
Unskilled	13.20	.65	.85		.05
Semi-skilled	13.40	.65	.85		.05
Skilled	13.60	.65	.85		.05
Livingston & Woodford Cos.:					
Unskilled	13.00	.65	1.05		.05
Semi-skilled	13.20	.65	1.05		.05
Skilled	13.40	.65	1.05		.05
McLean Co.:					
Unskilled	13.00	.75	.95		.05
Semi-skilled	13.20	.75	.95		.05
Skilled	13.40	.75	.95		.05
Marshall Co.:					
Unskilled	13.00	.65	1.05		.05
Semi-skilled	13.20	.65	1.05		.05
Skilled	13.40	.65	1.05		.05

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LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Grundy County					
Common; Plasterer Tenders; Pumps for Dewatering & other unclassified Laborers	$12.40	.62	1.30		
Cement Gun Laborers	12.475	.62	1.30		
Scaffold Laborers & Chimney		.62	1.30		
Laborers over 40 ft.	12.50	.62	1.30		
Windlass & Cement Gun Nozzle Laborers - Gunnite	12.55	.62	1.30		
Stone Handlers & Derrickmen	12.60	.62	1.30		
Jackhammermen	12.625	.62	1.30		
Concrete Vibrator; Plumbers' Tenders; & Chain Saw Operators	12.65	.62	1.30		
Firebrick & Boiler Setters' Tenders	12.725	.62	1.30		
Chimney Tenders on Firebrick; Caisson Diggers & Well Point System Men	12.75	.62	1.30		
Boiler Setter Plastic Tenders	12.85	.62	1.30		
Jackhammer on Firebrick Only	12.975	.62	1.30		
LaSalle (Streator & Vic.) Co.:					
Unskilled	12.77	.55	1.20		.04
Semi-skilled	12.97	.55	1.20		.04
Skilled	13.17	.55	1.20		.04
LaSalle (Marseilles & Vic.) Co.:					
Unskilled	13.17	.55	.80		.04
Semi-skilled	13.37	.55	.80		.04
Skilled	13.57	.55	.80		.04
LaSalle (Ottawa & Vic.) Co.:					
Unskilled	12.72	.55	1.25		.04
Semi-skilled	12.92	.55	1.25		.04
Skilled	13.12	.55	1.25		.04
LaSalle (LaSalle & Vic.) Co.:					
Unskilled	12.17	.65	1.70		.04
Semi-skilled	12.37	.65	1.70		.04
Skilled	12.57	.65	1.70		.04
Putnam Co.:					
Unskilled	12.42	.65	1.45		.04
Semi-skilled	12.62	.65	1.45		.04
Skilled	12.82	.65	1.45		.04

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LABORERS CLASSIFICATIONS FOR LASALLE & PUTNAM COUNTIES

Unskilled: Asphalt Plant Laborers; Carpenter Tenders; Cleaning Lumber; Common Laborers; Driving of Stakes; Dumpmen & Spotters; Fencing Laborers; Fireman or Salamander Tenders; Fireproofing Laborers; Form Handlers; Gravel Box Men; Landscapers; Laying of Sod; Pitmen; Planting of Trees; Removal of Trees; Stringlines for all Machinery; Tool Cribmen; Unloading Explosives; Wallmen & Housemovers; Wrecking, Dismantling Buildings; & Wrecking Laborers

Semi-Skilled: Asphalt Rakers; Batch Dumpers; Bankmen on Floating Plant; Cement Handlers; Cement Silica, Clay, Fly Ash, Lime & Plasters; Chloride Handlers; Cofferdam Workers plus depth on Concrete Paving; Concrete Workers (Wet); Deck Hand; Dredge Hand; Grade Checker; Handlers (Bulk or Bag); Handling of Materials Treated with Oil, Creosote, Asphalt or any Foreign Material; Kettle & Tarmeh; Laborers with De-Watering Systems; Mason & Plasterer Tenders & Material Wheelers; Mortar Mixers; Motorized Buggies or Motorized Unit for Wet Concrete or Handling of Building Materials; Placing, Cutting & Tying or Reinforcing; Plastic Installers; Scaffold Workers; Sewer Workers plus depth; Shore Laborers; Tank Cleaners; Track Laborers; Tunnel Tenders in Free Air; Unloading & Laborers with Steel Workers & Rebars; & Vibrator Operators

Skilled: Air Tamping Hammerman; Caisson Workers plus depth; Chain Saw Operators; Concrete Burning Machine Operators; Concrete Saw Operators; Coring Machine Operators; Curb Asphalt Machine Operators; Cutters, Burners & Torchmen; Dynamite Man or Blasters; Gunnite Nozzle Men; Jackhammer & Drill Operators; Laborers Handling Masterplate or Similar Materials; Laborers Tending Masons with Hot Material or Where Foreign Materials are Used; Laser Beam Operators; Layout Man; Lead Man on Sewer Work; Luteman; Multiple Concrete Duct-Leadman; Portable or Temporary Plant; Ready-Mix Scaleman; Screedman on Asphalt Pavers; Signalman on Crane; Steel Form Setters (Street & Hwy); & Welders

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POWER EQUIPMENT OPERATORS: Ford & Iroquois Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$13.70	.75	.75		.08
CLASS II	13.60	.75	.75		.08
CLASS III	13.40	.75	.75		.08
CLASS IV	8.75	.75	.75		.08

CLASS I - Master Mechanic

CLASS II - Utility Operator

CLASS III - Power Cranes, Draglines, Derricks, Shovels, Gradalls, Mechanics, Concrete Mixers with Skip, Tournamixers, Two Drum Machine, One Drum Hoists with Tower or Boom, Cableways, Tower Machines, Motor Patrol, Boom Tractor, Boom or Winch Truck, Winch or Hydraulic Boom Truck, Truck Crane, Tournapull, Tractor Operating Scoops, Bulldozer, Push Tractor, Asphalt Planer, Finishing Machine on Asphalt, Large Rollers on Earth, Rollers on Asphalt Mix, Ross Carriers or similar Machine, Gravel Processing Machine, Asphalt Plant Engineer, Paver Operator, Farm Tractor w/half yard Bucket and/or Backhoe Attachment, Dredging Equipment or Dredge Engineer or Dredge Operator, Central Mix Plant Engineer, CMI or similar type machine, Concrete Pump, Truck or Skid Mounted, Tower Crane, Engine or Rock Crusher Plant, Concrete Plant Engineer, Ditching Machine with dual attachment, Tractor Mounted Loaders, Cherry Picker, Hydro Crane, Standard or Dinkey Locomotives, Scoopmobiles, Euclid Loader, Soil Cement Machine, Back Filler, Elevating Machine, Power Blader, Drilling Machines, incl. Well Testing, Caissons, Shaft or any similar type Drilling Machines, Motor Driven Paint Machine, Pipe Cleaning Machine, Pipe Wrapping Machine, Pipe Bending Machine, Apsco Paver, Boring Machine, Head Equipment Greaser, Barber-Greene Loaders, Formless Paver, Well Point System, Concrete Spreader, Hydra Ax, Resco Concrete Saw, Marine Scoops, Brush Mulcher, Brush Burner, Mesh Placer, Tree Mover, Helicopter Crew (3), Piledriver - Skid or Crawler, Stump Remover, Root Rake, Tug Boat Operator, Refrigerating Machine, Freezing Operator, Chair Cart - Self-Propelled, Hydra Seeder, Straw Blower, Power Sub Grader, Bull Float, Finishing Machine, Self-Propelled Pavement Breaker (Backhoe Attached), Lull (or similar type machine), Two Air Compressors, Compressors hooked in Manifold, Overhead Crane, Chip Spreader, Mud Cat, Sull-Air

POWER EQUIPMENT OPERATORS (CONT'D)

CLASS IV - Concrete Mixers without Skips, Rock Crusher, Ditching Machine under 6', Curbing Machine, One Drum Machines without Tower or Boom, Air Tugger, Self Propelled Concrete Saw, Machine Mounted Post Hole Digger, Two to Four Generators, Water Pumps, or Welding Machines, within 400 feet, Air Compressor 600 cu. ft. and under, Rollers on Aggregate and Seal Coat Surfaces, Fork Lift, Concrete and Blacktop Curb Machine, Farm Tractor with less than half yard Bucket, One Water Pump, Oilers, Air Valves or Steam Valves, One Welding Machine, Truck Jack, Mud Jack, Gunite Machine, House Elevators when used for Hoisting Material, Engine Tenders, Fireman, Wagon Drill, Flex Plane, Conveyor, Siphons and Pulsometer, Switchman, Fireman on Paint Pots, Fireman on Asphalt Plants, Distributor Operator on Trucks, Tampers, Self-Propelled Power Broom, Striping Machine (motor driven), Form Tamper, Seaman Tiller, Bulk Cement Plant Equipment Greaser, Deck Hands, Truck Crane, Oiler Driver, Cement Blimps, Form Grader, Temporary Heat, Throttle Valve, Farm Tractor

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POWER EQUIPMENT OPERATORS: Sewer, Heavy & Highway Construction: Grundy, Kankakee, LaSalle, Livingston, & Putnam (Rem. of Co.)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	15.45	1.50	1.35	.80	.05
CLASS 2	14.90	1.50	1.35	.80	.05
CLASS 3	13.90	1.50	1.35	.80	.05
CLASS 4	12.65	1.50	1.35	.80	.05
CLASS 5	11.55	1.50	1.35	.80	.05

CLASS 1: Asphalt Plant; Asphalt Heater & Planer Combination; Asphalt Spreader; Autograder; Belt Loader; Caisson Rigs; Car Dumper; Central Redi-Mix Plant; Combination Backhoe Front End Loader Machine (1 cu. yd. Backhoe Bucket or over or with Attachments); Concrete Breaker (Truck Mounted); Concrete Conveyor; Concrete Paver over 27E cu. ft.; Concrete Placer; Concrete Tube Float; Cranes, all attachments; Cranes, Hammerhead, Linden, Peco & Machines of a like nature; Creter Crane; Crusher, stone, etc.; Derricks; Derrick Boats; Derricks, traveling; Dredges; Field Mechanic-Welder; Formless Curb & Gutter Machine; Gradall & Machines of a like nature; Grader, elevating; Grader, Motor Grader, Motor Patrol, Auto Patrol, Form Grader, Pull Grader, Subgrader; Guard Rail Post Driver Mounted; Hoists, 1, 2, & 3 drum; Hydraulic Backhoes; Locomotives; Mucking Machine; Piledriver & Skid Rig; Pre-stress Machine; Pump Cretes Dual Ram; Rock Drill - Crawler or Skid Rig; Rock Drill - Truck Mounted; Roto Mill Grinder (36" & Over); Roto Mill Grinder (Less than 36"); Slip Form Paver; Soil Test Drill Rig (Truck Mounted); Straddle Buggies; Hydraulic Telescoping Form (Tunnel); Tractor Drawn Belt Loader with or w/o attach. Pusher; Tractor with boom; Tractaire with attachments; Trenching Machine; Truck Mounted Concrete Pump with Boom; Underground Boring and/or Mining Machines under 5 ft.; Wheel Excavator; & Widener (Apsco)

CLASS 2: Batch Plant; Bituminous Mixer; Bobcats (Over 3/4 cu. yd.); Boiler & Throttle Valve; Bulldozers; Car Loader Trailing Conveyors; Combination Backhoe Front End Loader Machine (Less than 1 cu. yd. Backhoe Bucket or over or with attachments); Compressor & Throttle Valve; Compressor, Common receiver (3); Concrete Breaker or Hydrohammer; Concrete Grinding Machine; Concrete Mixer or Paver 7S series to & inclu. 27 cu. ft.; Concrete Spreader; Concrete Curing Machine, Burlap Machine, Belting Machine & Sealing Machine; Conveyor Muck Cars (Haglund or Similar type); Finishing Machine - Concrete; Greaser Engineer; Highlift Shovels or Front End Loader; Hoist - Sewer Dragging Machine; Hydraulic Boom Trucks (all attachments); Locomotives, Dinky; Pumpcretes: Squeeze Cretes - Screw type Pumps, Gypsum Bulker & Pump; Roller, Asphalt; Rotory Snow Plows; Rototiller, Seaman, etc., self-propelled; Scoops - Tractor Drawn; Self-propelled Compactor Spreader - Chip - Stone, etc.; Scraper; Scraper - Prime mover in Tandem (regardless of size); Tank Car Heater; Tractors, Push, Pulling Sheeps Foot, Disc, Compactor, etc.; & Tug Boats

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POWER EQUIPMENT OPERATORS (CONT'D):

CLASS 3: Boilers; Brooms, All Power Propelled; Cement Supply Tender; Compressor, Common Receiver (2); Concrete Mixer (2 Bag & Over); Conveyor, Portable; Farm-type Tractors used for mowing, seeding, etc.; Firemen on Boilers; Forklift Trucks; Grouting Machine; Hoists, Automatic; Hoists, all Elevators; Hoists, Tugger Single Drum; Jeep Diggers; Pipe Jacking Machines; Post Hole Digger; Power Saw, Concrete, Power Driven; Pug Mills; Rollers, other than Asphalt; Seed & Straw Blower; Steam Generators; Stump Machine; Winch Trucks with "A" Frame; Work Boats; & Tamper - Form-Motor Driven

CLASS 4: Air Compressor - Small 170 & Under (1 to 5 not to exceed a total of 300 Ft.); Air Compressor - Large over 170; Asphalt Spreader Backend Man; Combination - Small Equipment Operator; Generators - Small 50KW & Under; Generators - Large over 50KW; Heaters, Mechanical; Hydraulic Power Unit (Piledriving or extracting); Light Plants, (1 through 5); Pumps, Over 3" (1 to 3 not to exceed a total of 300 ft.); Pumps, Well Points; Tractaire; Welding Machines (2 through 5); Winches, 4-small electric drill winches; & Bobcats (up to & inclu. 3/4 cu. yd.)

CLASS 5: Oilers

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POWER EQUIPMENT OPERATORS McLean, Marshall, Putnam (W. of Illinois River), & Woodford Cos.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$15.92	.75	.80		.05
GROUP 2	15.72	.75	.80		.05
GROUP 3	14.77	.75	.80		.05
GROUP 4	14.50	.75	.80		.05
GROUP 5	13.06	.75	.80		.05

GROUP 1: Cranes; Hydro Crane; Shovels; Crane type Backfiller; Tower Cranes, Mobile & Crawler & Stationary; Derricks & Hoist (3-drum); Dragline; Drott Yumbo & similar Types considered as Cranes; Backhoe; Derrick Boats; Pile Driver & Skid Rigs; Clam Shells; Locomotive Cranes; Road Pavers, Single Drum, Dual Drum & Tri Batcher; Motor Patrols & Power Blades, Dumore, Elevating & Similar types; Mechanics; Central Concrete Mixing Plant Op.; Blacktop Plant Ops. & Plant Engineers; Gradall; Caisson Rigs, requires Oiler; Skimmer Scoop, Koehring Scooper; Dredges (all types); Hoptoe, Crane type (require Oiler); Escalated rate on Crane & Derricks Booms, $.01 per hour, per ft., over 80' incl. jib; All Cherry Pickers; Cherry Pickers (Over 15 ton require Oiler); Work Boat; Ross Carrier; Helicopter; Dozer & Tournadozer

GROUP 2: Asphalt Heater & Planer Combination (used to plane streets); Trench Machines; Pump Crete; Belt Crete; Squeeze Crete; Screw type Pumps & Gypsum; Bulker & Pump; Dinkeys; Tournapulls, all, & similar types; Multiple Unit Earth Movers, $.25 per hour for each scoop over one; Scoops (all sizes); Pushcats; End Loaders (all types); Side Booms; P-H One Pass Soil Cement Machines & similar types; Wheel Tractors (industrial or farm type with Dozer, Hoe, End Loader or other attachments; Back-fillers; Asphalt Surfacing Machine; Euclid Loader; Fork Lifts; Formless Finishing Machine; Jeep with Ditching Machine or other attachments; Tune-luger; Rockcrusher; Automatic Cement & Gravel Batching Plants; Mobile Drills (Soil Testing); & Similar types; Pugmill with Pump; Flaherty Spreader & similar types (require Oiler); Heavy Equipment Greaser (Top Greaser on Spread); Power Launches; Boring Machine & Pipe Jacking Machine; C.M.I. & similar types (require Oiler); All (1) & (2) Drum Hoists; Dewatering System; Straw Blower; Hydro-seeder; Boring Machine; Hydro-broom; Starting Engineer on Pipeline; F.W.D. & similar types

GROUP 3: Apsco Spreader or similar types; Tractors (track-type) without Power Units pulling Rollers; Rollers on Asphalt-brick or Macadam; Concrete Breakers; Concrete Spreaders; Center Stripper; Cement Finishing Machines; Vibro Tampers (all similar types) self-propelled; Mechanical Bull Floats; Mixers, over 3 bag to 27E; Winch & Boom Trucks; Tractor, pulling Power Blade or Elevating Grader; Porter Tex Rail; Clary Screed; Mule, pulling Rollers; Pugmill without Pump; Barber Greene or similar Loaders; Track-type Tractors with Power unit attached (minimum); Fireman; Screed Man on Laydown Machine; & Spray Machine on Paving

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POWER EQUIPMENT OPERATORS (CONT'D):

GROUP 4: Power Subgrader; Oil Distributor; Straight Tractor; Tracair (without attachments); Curb Machines; Paved Ditch Machines; Truck Crane Oiler; & Truck type Hoptoe Oilers

GROUP 5: Herman Nelson Heater, Dravo, Warner, Silent Glo & Similar types: One Engineer will operator 1 - 5 & after 5, two Operators will be required; Self-propelled Concrete Saws; Assistant Heavy Equipment Greaser; Crawler Crane & Skid Rig Oilers; Rollers, 5 tons & under on Earth & Gravel; Form Graders; Pump (1) or (2); Light Plant (1) or (2); Generator (1) or (2); Conveyor (1) or (2); Mixer, 3 bags & under; Bulk Cement Plant; Air Compressor (1) or (2); & Welding Machine (1) or (2)

ILL-1-D

McLean, Marshall, Putnam, & Woodford Counties DREDGING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$13.07	.45	.80		.05
GROUP 2	12.87	.45	.80		.05
GROUP 3	12.495	.45	.80		.05
GROUP 4	12.22	.45	.80		.05
GROUP 5	11.61	.45	.80		.05

CLASSIFICATIONS:

GROUP 1: Operators on hydraulic dipper or clamshell dredges, Engineers & Repairmen, Operators on Work Boats.
GROUP 2: Power Winches 1-2-3 Drums
GROUP 3: Security Engineer
GROUP 4: Cranemen on Dipper Dredges, Operators on Launches or Power Boats.
GROUP 5: Fireman & Oilers

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: KENTUCKY

COUNTIES: CARROLL, JEFFERSON, OLDHAM, & TRIMBLE

DECISION NUMBER: KY82-1025

DATE: DATE OF PUBLICATION

Supersedes Decision Number KY81-1199, dated April 17, 1981, in 46 FR 22547.

DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS - include single family homes and apartments up to and including four (4) stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING & HEATING MECHANICS	$ 6.29				
BRICKLAYERS	7.00				
CARPENTERS	6.88				
CEMENT MASONS	7.66				
DRYWALL FINISHERS	9.00				
DRYWALL HANGERS	8.61				
ELECTRICIANS	7.50				
INSULATION INSTALLERS	5.29				
LABORERS - GENERAL	5.29				
PAINTERS	5.29				
PIPEFITTERS - JEFFERSON COUNTY ONLY	17.15	.95	1.80		.12
PLUMBERS	8.90				
ROOFERS	5.29				
SHEET METAL WORKERS	6.59				
TRUCK DRIVERS	6.00				
WELDERS - RATE FOR CRAFT.					
POWER EQUIPMENT OPERATORS:					
BACKHOE	7.85				

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 clause (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: MISSISSIPPI

COUNTIES: COVINGTON, FORREST, GREENE, JEFFERSON DAVIS, JONES, LAMAR, MARION, PERRY, & WAYNE

DECISION NUMBER: MS82-1024

DATE: Date of Publication

Supersedes Decision No.: MS80-1110, October 3, 1980, 45 FR 65891.

DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION 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.
AIR CONDITIONING MECHANICS	$8.00				
BRICKLAYERS	9.00				
CARPENTERS	7.17				
CARPET LAYERS, SOFT FLOOR LAYERS	6.17				
CEMENT MASONS	8.00				
DRYWALL FINISHERS	6.00				
DRYWALL HANGERS	6.00				
ELECTRICIANS	7.50				
LABORERS:					
Mason Tenders	5.50				
Mortar Mixers	6.00				
Unskilled	4.42				
PAINTERS, Brush	6.64				
POWER EQUIPMENT OPERATORS:					
Backhoe	6.00				
Bulldozer	6.10				
Front End Loader	5.93				
Motor Grader	6.00				
PLUMBERS & PIPEFITTERS	6.00				
TILE SETTERS	6.25				
TRUCK DRIVERS	4.42				
WELDERS - Rate for Craft					

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) (ii)).

STATE: MISSOURI COUNTY: STATEWIDE
DECISION NO.: MO82-4012 DATE: Date of Publication
Supersedes Decision No. MO81-4034 dated May 20, 1981 in 46 FR 28102

DESCRIPTION OF WORK: Heavy and Highway Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS & PILEDRIVERMEN:					
Zone 1	$13.96	.90	.95	.50	.03
Zone 1A	13.56	.90	.95	.50	.03
Zone 2	13.41	.90	.95	.50	.03
Zone 3	14.40	.60	.50		.03
Zone 4	13.80	.60	.50		.03
Zone 5	12.55	.90	.95	.50	.03
Zone 6	14.22	.43	.25		.03
Zone 7	14.37	.53			.03
Zone 7A	14.07	.53	.30		.03
Zone 8	13.30	.70		.50	.10
Zone 9	15.05	.75	1.25		.07
Zone 10	14.26	1.00	1.05		.18

AREAS COVERED BY CARPENTERS & PILEDRIVERMEN ZONES

Zone 1 - Franklin, Jefferson, St. Charles, Counties
Zone 1A - Lincoln, Warren Counties
Zone 2 - Pike, ST. Francois & Washington Counties
Zone 3 - Cass and Lafayette Counties
Zone 4 - Atchison, Andrew, Barry, Barton, Bates, Buchanan, Caldwell, Camden, Carroll, Cedar, Christian, Clinton, Dade, Dallas, Daviess, DeKalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Jasper, Johnson, Laclede, Lawrence, Livingston, McDonald, Mercer, Newton, Nodaway, Ozark, Polk, St. Clair, Saline, Stone, Taney, Vernon, Webster, Worth & Wright Counties
Zone 5 - Crawford, Dent, Gasconade, Iron, Madison, Maries, Montgomery, Phelps, Pulaski, Reynolds, Shannon & Texas Counties
Zone 6 - Boone, Cooper & Howard Counties
Zone 7 - Adair, Audrain, Benton, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Morgan, Pettis, Putnam, Ralls, Randolph, Schuyler, Scotland, Shelby and Sullivan Counties
Zone 7A - Callaway, Cole, Miller, Moniteau and Osage Counties
Zone 8 - Boillinger, Butler, Cape Girardeau, Carter, Dunklin, Howell, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Ripley, Ste. Genevieve, Scott, Stoddard and Wayne Counties
Zone 9 - Clay, Jackson, Platte and Ray Counties
Zone 10 - St. Louis County & City

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS					
Zone 1	$15.075	.95	$1.00		
Zone 2	10.93				
Zone 3	14.97	.95	1.00		
Zone 4	7.50	.85	.50	.55	
Zone 5	12.75				
Zone 6	13.98				
Zone 7	14.60				
Zone 8	7.40				
Zone 9	14.60				
Zone 10					
(a) Heavy Construction	13.30	.80	.85		
(b) Highway Construction	14.97	.95	1.00		
Zone 11	14.15	1.50	1.10		
Zone 12	13.45	1.50	1.10		

AREAS COVERED BY CEMENT MASONS ZONES

Zone 1 - Bates, Carroll, Cass, and Lafayette Counties
Zone 2 - Dent, Phelps, Pike, Pulaski, and Texas Counties
Zone 3 - Clay, Jackson, Platte and Ray Counties,
Zone 4 - Bollinger, Butler, Cape Giradeau, Carter, Dunklin, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Ripley, Scott, Stoddard and Wayne Counties
Zone 5 - Cedar, Christian, Dade, Dallas, Douglas, Greene, Howell, Laclede, Ozark, Polk, Stone, Taney, Webster, & Wrights Counties
Zone 6 - Benton, Henry, Hickory, Johnson, Morgan, Pettis, Saline and St. Clair Counties
Zone 7 - Adair, Audrain, Boone, Chariton, Cooper, Howard, Linn, Macon, Moniteau, Monroe, Randolph, Shelby, Schuyler, Sullivan, and Putnam Counties
Zone 8 - Barry, Barton, Jasper, Lawrence, McDonald, Newton, and Vernon Counties
Zone 9 - Callaway, Camden, Cole, Gasconade, Maries, Miller, Montgomery and Osage Counties
Zone 10 - (a&b) - Andrew, Atchinson, Buchanan, Caldwell, Clinton, Daviess, DeKalb, Gentry, Grundy, Harrison, Holt, Livingston, Mercer, Nodaway and Worth Counties.
Zone 11 - St. Louis City and County, Jefferson, and St. Charles Counties
Zone 12 - Franklin, Lincoln, Warren, Iron, St. Fransoic, Ste. Genevieve, Washington, Reynolds, and Madison Counties

ELECTRICIANS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 1					
Electrical contract over $30,000.00	$14.54	.94	3%	11.5%	¼%
Electrical contracts $30,000.00 & under	12.40	.94	3%	11.5%	¼%
Zone 2	16.18	.69	3%+1.00	7%	.12%
Zone 3					
Electrical contracts not to exceed 2000 man hours	15.18	.69	3%+1.00	7%	.12
Electrical contract 2000 man hours and over	16.18	.69	3%+1.00	7%	.12%
Zone 4					
Electrical contracts not to exceed 2000 man hours	15.18	.69	3%+1.00	7%	.12%
Electrical contracts 2000 man hours and over	16.18	.69	3%+1.00	7%	.12%
Zone 5					
Electrical contract not to exceed 2000 man hours	14.58	.69	3%+1.00	7%	.12%
Electrical contracts 2000 man hours and over	16.18	.69		7%	.12%
Zone 6	14.79	.91	3%+5⅛%	15⅛%	.12%
Zone 7					
Electrical contracts over $15,000.00	14.79	.91	3%+.5⅛%	15⅛%	.12
Zone 8					
Electrical Contract $15,000.00 and under	12.84	.91	3%+.5⅛%	15⅛%	.12
Zone 9					
Electrical contract $15,000.00 and under	10.70	.91	3%+.5⅛%	15⅛%	.12
Zone 10					
Electrical contract $15, 000.00 and under	7.56	.91	3%+.5⅛%	15⅛%	.12

ELECTRICIANS CONT'D:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 11	$14.55	.47	3%+1.00	6%	.02
Zone 12	15.04	.47	3%+1.00	6%	.02
Zone 13	14.47	.60	3%+1.00	7%	.01
Zone 14					
Electricians	12.26	.65	3%+1.00	5%	.01
Cable splicers	12.61	.65	3%+1.00	5%	.01
Zone 15					
Electricians	13.90	.60	3%+1.50	7%+.30	.01
Cable splicers	15.19	.60	3%+1.50	7%+.30	.01

AREAS COVERED BY ELECTRICIANS ZONES

Zone 1 - Adair, Audrain (that part of east of Highway 19), Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Montgomery, Pike, Putnam, Ralls, Schuyler, Scotland, Shelby and Sullivan Cos.
Electrical contracts over $15,000.00
Electrical contracts $15,000.00 and under

Zone 2 - Area bounded on the North by State Highway 92 in Platte & Clay Counties; east by a straight line from Intersection of State Highway 92 & 33 in Clay County Intersection of U. S. Highway 24 & State Highway 7 in Jackson County; south on Highway 7 to Pleasant Hill; South from Pleasant Hill due West to the Missouri-Kansas State Line; West by the Missouri-Kansas State Line. Towns of Pleasant Hill & Blue Springs are excluded

Zone 3 - Portion of Cass, Clay, Jackson and Platte Counties not included in Zone 2

Zone 4 - Bates, Benton, Henry, Johnson, Lafayette and Pettis Cos.

Zone 5 - Carroll, Cooper, Morgan, Ray and Saline Counties

Zone 6 - St. Charles County, St. Louis County and City

Zone 7 - Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Franklin, Iron, Jefferson, Lincoln, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, St. Francois, Ste. Genevieve, Stoddard, Warren, Washington, and Wayne Cos.:
Electrical contract over $15,000.00

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ELECTRICIANS (CONT'D)

Zone 8 - Franklin, Jefferson, Lincoln, and Warren Counties.
Electrical contracts $15,000.00 and under
Zone 9 - Bollinger, Cape Girardeau, Perry, Scott, St. Francois, and Ste. Genevieve Counties:
Electrical contracts $15,000.00 and under
Zone 10 - Butler, Carter, Dunklin, Iron, Madison, Mississippi, New Madrid, Pemiscot, Ripley, Reynolds, Stoddard, Washington, and Wayne Counties:
Electrical contracts $15,000.00 and under
Zone 11 - Christian, Dallas, Douglas, Greene, Hickory, Howell, Laclede, Oregon, Ozark, Polk, Shannon, Stone, Teney, Texas, Webster, and Wright Counties
Zone 12 - Pulaski County
Zone 13 - Andrew, Buchanan, Clinton, and DeKalb Counties
Zone 14 - Barry, Barton, Caldwell, Cedar, Dade, Daviess, Gentry, Holt, Jasper, McDonald, Newton, Nodaway, St. Clair, Vernon, and Lawrence Counties
Zone 15 - Atchinson, Audrain (except Cuivre Township), Boone, Callaway, Camden, Chariton, Cole, Crawford, Dent, Gasconade, Grundy, Harrison, Howard, Livingston, Maries, Mercer, Miller, Moniteau, Osage, Phelps, Randolph and Worth Counties

IRONWORKERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 1	$14.725	.80	1.05		.06
Zone 2	15.15	.85	1.80	1.00	.10
Zone 3	15.035	.85	1.80	1.00	.10
Zone 4	13.35	.80	1.15		.12
Zone 5	15.05	.80	1.05		.06
Zone 6	12.80	.80	1.05		.06
Zone 7	12.45	.55	.95		.05

AREAS COVERED BY IRONWORKERS ZONES

Zone 1 - Audrain, Boone, Bollinger, Callaway, Camden, Carter, Cole, Crawford, Dent, Douglas, Franklin, Gasconade, Howell, Iron, Jefferson, Lincoln, Madison, Maries, Miller, Monroe, Montgomery, Oregon, Osage, Perry, Phelps, Pike, Pulaski, Ralls, Reynolds, St. Charles, St. Francois, St. Genevive, St. Louis, & City, Shannon, Texas, Warren, Washington, Wayne and Wright Counties.
Zone 2 - Andrew, Atchison, Barton, Bates, Benton, Buchanan, Caldwell, Carroll, Cass, Cedar, Chariton, Clay, Clinton, Cooper, Dallas, Daviess, DeKalb, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Jackson, Johnson, Lafayette, Laclede, Linn, Livingston, Mercer, Moniteau, Morgan, Nodaway, Pettis, Platte, Polk, Putnam, Randolph, Ray, St. Clair, Saline, Sullivan, Vernon and Worth Cos.
Zone 3 - Christian, Dade, Greene and Webster Cos.
Zone 4 - Barry, Jasper, Lawrence, McDonald, Newton and Stone Cos.
Zone 5 - Adair, Clark, Knox, Lewis, Macon, Marion, Schuyler, Scotland and Shelby Cos.
Zone 6 - Ozark and Taney Cos.
Zone 7 - Butler, Cape Girardeau, Dunklin, Mississippi, New Madrid, Pemiscot, Ripley, Scott, and Stoddard Counties.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
GROUP 1					
Zone 1	$11.08	.60	1.00	.80	.10
Zone 2	9.68	.60	1.00	.80	.10
Zone 3:					
(a)	12.70	.60	.50		.10
(b)	12.30	.60	.90		.10
Zone 4:					
(a)	11.90	.60	.50		.10
(b)	11.50	.60	.90		.10
GROUP 2					
Zone 1	11.23	.60	1.00	.80	.10
zone 2	9.83	.60	1.00	.80	.10
Zone 3					
(a)	13.20	.60	.50		.10
(b)	12.80	.60	.90		.10
Zone 4					
(a)	12.40	.60	.50		.10
(b)	12.00	.60	.90		.10
GROUP 3					
Zone 1	11.38	.60	1.00	.80	.10
Zone 2	9.98	.60	1.00	.80	.10
Zone 3					
(a)	13.45	.60	.50		.10
(b)	13.05	.60	.90		.10
Zone 4					
(a)	12.65	.60	.50		.10
(b)	12.25	.60	.90		.10
GROUP 4					
Zone 1	11.58	.60	1.00	.80	.10
Zone 2	10.18	.60	1.00	.80	.10
GROUP 5					
Zone 1	11.83	.60	1.00	.80	.10
Zone 2	10.43	.60	1.00	.80	.10

LABORERS CLASSIFICATION DEFINITIONS ZONES 1 AND 2

GROUP 1 - General Laborers - Carpenter tenders; salamander tenders; dump man and ticket takers on stock piles; flagmen; loading trucks under bins, hoppers, and conveyors; track men and all other general laborers

GROUP 2 - First Semi-skill - Air tool operator; cement handler, bulk or sack; dump man on earth fill; georgie buggie man; material batch hopper man; spreader on asphalt machine; material mixer man (except on manholes); coffer dams; riprap pavers - rock, block or brick; signal man; scaffolds over ten feet not self-supported from ground up; skipman on concrete paving; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile and duct lines and all other pipe lines, power tool operator, all work in connection with hydraulic or general dredging operations; puddlers (paving only); straw blower nozzleman

GROUP 3 - Second Semi-skill - Asphalt plant platform man; chuck tender; crusher feeder; men handling creosote ties or creosote materials; men working with and handling epoxy material or materials (where special protection is required); head pipe layer on sewer work; topper of standing trees; batter board man on pipe and ditch work; vibrator man; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; deck hands; pile dike and revetment work; all laborers working on underground tunnels less than 25 feet where compressed air is not used; abutment and pier hole men working six (6) feet or more below ground; men working in coffer dams for bridge piers and footings in the river

GROUP 4 - Third Semi-skill - Laser beam man; asphalt raker; barco tamper; jackson or any other similar tamp; wagon driller; churn drills, air track drills and all other similar drills; cutting torch man; form setters; liners and stringline men on concrete paving, curb, gutters, ditch liners, hot mastic kettleman, hot tar applicator, hand blade operators, and mortar men on brick or block manholes; sand blasting and gunite nozzle men; rubbing concrete; air tool operator in tunnels; caulker and lead man; screed man on asphalt machine, chain or concrete saw; cliff scalers working from scaffolds, bosuns' chairs or platforms on dams or power plants over ten (10) feet above ground; grade checker on cuts and fills string line man for electronic grade control; pressure groutmen

GROUP 5 - Fourth Semi-skill - Manhole builders, - brick or block dynamite and powder men; welder

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LABORERS CLASSIFICATION DEFINITIONS ZONES 3 and 4

GROUP 1 - General Labor-Carpenter tenders; salamander tenders; dump man; ticket takers; loading trucks under bins, hoppers, and conveyors; track men; cement handler; dump man on earth fill; georgie buggie man; material batch hopper man; spreader on asphalt machine; material mixer man (except on manholes); coffer dams; riprap pavers-rock, block or brick; signal man; scaffolds over ten feet not self-supported from ground up; skipman on concrete paving; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; form setters, puddlers (paving only); straw blower nozzleman; asphalt plant platform man; chuck tender; crusher feeder; men handling creosote ties or creosote materials; men working with and handling epoxy material; topper of standing trees; feeder man on wood pulverizers, board and willow mat weavers and cable tiers on river work; deck hands; pile dike and revetment work; all laborers working on underground tunnels less than 25 ft. where compressed air is not used; abutment and pier hole men working six (6) ft. or more below ground; men working in coffer dams for bridge piers and footings in the river; barco tamper; jackson or any other similar tamp; cutting torch man; liners, curb, gutters, ditch liners; hot mastic kettleman; hot tar applicator; hand blade operator; mortar men on brick or block manholes; rubbing concrete, air tool operator under 65 lbs.; caulker and lead man; chain or concrete saw under 15 h.p.

GROUP 2 - First Semi-Skill-Vibrator man; asphalt raker; head pipe layer on sewer work; batterboard man on pipe and ditch work; cliff scalers working from bosun's chairs; scaffolds or platforms on dams or power plants over 10 ft. high; air tool operator over 65 lbs.; stringline man on concrete paving; sand blast man

GROUP 3 - Second Semi-Skill-Laser beam man; wagon drill; churn drill; air track drill and all other similar type drills, gunite nozzle man; pressure grout man; screed man on asphalt; concrete saw 15 h.p. and over; grade checker; stringline man on electronic grade control; manhole builder; dynamite man; powder man; welder; tunnel man

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AREA COVERED BY LABORERS

Zone 1 - Buchanan, Cass and Lafayette Counties

Zone 2 - Andrew, Atchison, Barry, Barton, Bates, Benton, Caldwell, Camden, Carroll, Cedar, Christian, Clinton, Dade, Dallas, Daviess, DeKalb, Douglas, Greene, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Jasper, Johnson, Laclede, Lawrence, Livingston, McDonald, Mercer, Morgan, Newton, Nodaway, Ozark, Pettis, Polk, St. Clair, Saline, Stone, Taney, Vernon, Webster, Wright and Worth Counties.

Zone 3 :

a - Franklin and Jefferson Counties

b - St. Charles County

Zone 4

a - Adair, Audrain, Bollinger, Boone, Butler, Callaway, Cape Girardeau, Carter, Chariton, Clark, Cole, Cooper, Crawford, Dent, Dunklin, Gasconade, Howard, Howell, Iron, Knox, Lewis, Linn, Macon, Madison, Maries, Marion, Miller, Mississippi, Moniteau, Monroe, New Madrid, Oregon, Osage, Pemiscot, Perry Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St. Francois, Ste. Genevieve, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Sullivan, Texas, Washington and Wayne Counties

b - Lincoln, Montgomery and Warren Counties

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Zone 5					
Group 1	$12.02	.95	1.00	1.05	.10
Group 2	12.17	.95	1.00	1.05	.10
Group 3	12.32	.95	1.00	1.05	.10
Group 4	12.52	.95	1.00	1.05	.10
Group 5	12.82	.95	1.00	1.05	.10

CLASSIFICATION DEFINITIONS

Group 1 - General laborer - Carpenter tenders, salamander tenders; dump man, & ticket takers on stock piles; flagmen; loading trucks under bins, hoppers and conveyors; track men and all other general laborers

Group 2 - First Semi-skill - Air tool operator; cement handler (bulk or sack); chain or concrete saw; deck hands; dump man on earth fill; grade checkers on cuts and fills; georgie buggies man; material batch hopper man; scale man; material mixer man (except on manholes, coffer dams, abutments and pier hole men working below ground); riprap pavers rock, block or brick; signal man; scaffolds over 10 ft. not self-supported from ground up; skipman on concrete paving; vibrator man; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile & duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; puddlers (paving only)

Group 3 - Second Semi-skill - Crusher feeder; men handling creosote ties or creosote materials; men working with and handling epoxy material or materials (where special protection is required); head pipe layer on sewer work; topper of standing trees; batter board man on pipe & ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; all laborers working on underground tunnels where compressed air is not used

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CLASSIFICATION DEFINITIONS CONT'D

Group 4 - Third Semi-skill - Spreader or screed man on asphalt machine; asphalt raker; laser beam man; barco tamper; jackson or any other similar tamp; wagon driller, churn drills, air track drills and all other similar drills; cutting torch man; form setter; liners and stringline men on concrete paving, curb, gutters and etc.; hot mastic kettleman; hot tar applicator; hand blade operators; and mortar men on brick or block manholes; sand blasting and gunnite nozzlemen; rubbing concrete; air tool operator in tunnels

Group 5 - Fourth Semi-skill - Manhole builder (brick or block); dynamite and powder men

AREA COVERED BY LABORERS

ZONE 5 - Clay, Jackson, Platte and Ray Counties

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS					
Zone 6 - St. Louis City and County:					
General laborer	$12.475	.65	1.05		.05
Dynamiter or powderman	12.975	.65	1.05		.05
LINE CONSTRUCTION:					
ZONE 1					
Lineman	17.33	.45	3%+.25		½%
Lineman operator	16.13	.45	3%+.25		½%
Groundman powderman	12.02	.45	3%+.25		½%
Groundman	11.42	.45	3%+.25		½%
ZONE 2					
Lineman	16.56	.45	3%+.25		½%
Lineman operator	15.77	.45	3%+.25		½%
Groundman powderman	11.47	.45	3%+.25		½%
Groundman	10.59	.45	3%+.25		½%
ZONE 3					
Lineman & cable splicers	14.79	.45	11%	12½%	½%
Groundman - winch driver	10.87	.45	11%	12½%	½%
Groundman - driver	10.48	.45	11%	12½%	½%
Equipment operator	13.23	.45	11%	12½%	½%
Groundman	10.48	.45	11%	12½%	½%
ZONE 4					
Lineman	14.10	.45	3%+8%		½%
Groundman equipment op.	12.51	.45	3%+8%		½%
Groundman - class A	8.87	.45	3%+8%		½%
ZONE 5 - Railroad and Cross Country Transmission Lines:					
Lineman	13.34	.45	3%+.25		½%
Lineman operator	12.34	.45	3%+.25		½%
Groundman powderman	9.17	.45	3%+.25		½%
Groundman	8.56	.45	3%+.25		½%
Pole treating specialist	14.00	.45	3%+.25		½%
Pole treating truck driver	9.17	.45	3%+.25		½%
Pole treating groundman	8.56	.45	3%+.25		½%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
ZONE 6 - Telephone and Telegraph Railroad Communications and C.A.T.V. Work:					
Cable splicer, air pressure technician, central office equipment man, & key system installer	$10.16	.50	3%	5%	½%
Telephone lineman, installer, CATV terminator, & equipment operator(D-4 or larger crawler, wheel trencher quarter yard backhoe or larger)	9.73	.50	3%	5%	½%
Equipment operator (all other small quipment	8.50	.50	3%	5%	½%
Groundman-winch driver	7.61	.50	3%	5%	½%
Groundman	6.67	.50	3%	5%	½%
ZONE 7 - Telephone and Telegraph and C.A.T.V. Work;					
Cable splicers, air pressure technician, central office equipment man	9.96	.45	3%		
Telephone lineman and installer repairman, CATV Terminator, equipment operator (¼ yd. backhoe & larger & D-4 crawler & larger)	9.45	.45	3%		
Equipment operator (trenchers & all other equipment	8.28	.45	3%		
Groundman-winch driver	7.15	.45	3%		
Groundman	5.78	.45	3%		

AREA COVERED BY LINE CONSTRUCTION

ZONE 1 - Bates, Benton, Carroll, Cass, Clay, Henry, Johnson, Jackson, Lafayette, Pettis, Platte, Ray and Saline Counties
ZONE 2 - Andrew, Atchinson, Barry, Barton, Buchanan, Caldwell, Cedar, Christian, Clinton, Dade, Dallas, Daviess, DeKalb, Douglas, Gentry, Greene, Grundy, Harrison, Hickory, Holt, Jasper, Laclede, Lawrence, Livingston, McDonald, Mercer, Newton, Nodaway, Ozark, Polk, St. Clair, Stone, Taney, Vernon, Webster, Worth and Wright Counties

AREA COVERED BY LINE CONSTRUCTION CONT'D

ZONE 3 - Crawford, Franklin, Iron, Jefferson, Reynolds, St. Charles, St. Francois, St. Louis, Washington, Adair, Audrain, Boone, Callaway, Camden, Carter, Chariton, Clark, Cole, Cooper, Dent, Gasconade, Howard, Howell, Knox, Lewis, Licoln, Linn, Macon, Maries, Marion, Miller, Moniteau, Monroe, Montgomery, Morgan, Oregon, Osage, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Ripley, Ste. Genevieve, Schuyler, Scotland, Shannon, Shelby, Sullivan, Texas, and Warren Counties

ZONE 4 - Boillinger, Butler, Cape Girardeau, Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Scott, Stoddard, and Wayne Cos.

ZONE 5 - Atchison, Nodaway, Worth, Harrison, Mercer, Holt, Andrew, Dekalb, Davies, Grundy, Buchanan, Clinton, Caldwell, Livingston, Platte, Clay, Ray, Carroll, Jackson, Lafayette, Saline, Cass, Johnson, Pettis, Bates, Henry, Vernon, Benton, St. Clair, Hickory, Barton, Cedar, Polk, Dallas, Laclede, Jasper, Dade, Lawrence, Greene, Webster, Wright, Newton, McDonald, Barry, Stone, Christian, Douglas, Taney, Ozark and Gentry Counties

ZONE 6 - Adair, Audrain, Boone, Callaway, Camden, Carter, Chariton, Clark, Cole, Cooper, Crawford, Dent, Franklin, Gasconade, Howard, Howell, Iron, Jefferson, Knox, Lewis, Lincoln, Linn, Macon, Maries, Marion, Miller, Moniteau, Monroe, Montgomery, Morgan, Oregon, Osage, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St. Charles, St. Francois, St. Louis & City Ste. Genevieve, Schuyler, Scotland, Shannon, Shelby, Sullivan, Texas, Warren and Washington Counties

ZONE 7 - Atchison, Nodaway, Worth, Harrison Mercer, Holt, Andrew, DeKalb, Daviess, Grundy, Buchanan, Clinton, Caldwell, Livingston, Platte, Clay, Ray, Carroll, Jackson, Lafayette, Saline, Cass, Johnson, Pettis, Bates, Henry, Benton, Vernon, St. Clair, Hickory, Barton, Cedar, Polk, Dallas, Laclede, Jasper, Dade, Lawrence, Greene, Webster, Wright, Newton, McDonald, Barry, Stone, Christian, Douglas, Taney, Ozark, Gentry Counties.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
ZONE 1					
Brush and roller	$15.04	.65	.75		.08
Spray	16.04	.65	.75		.08
Bridge	15.79	.65	.75		.08
ZONE 2					
Brush	11.30	.50	.25		.01
Spray	12.05	.50	.25		.01
Sandblasting, bridges, towers, stacks, walkways, cables & tanks 15,000 gal. or more capacity)	12.80	.50	.25		.01
ZONE 3					
Brush	8.20				
Spray	8.70				
ZONE 4					
Brush and roller	11.00	1.00	.70	.50	
Spray, structural steel and sandblasting	12.25	1.00	.70	.50	
ZONE 5					
Brush	13.25				
Bridge	14.00				
Spray, sandblasting opr.; work performed on bridges 75 ft. in height	14.25				
All structural steel over 50 ft. in height	14.00				
ZONE 6					
Brush	11.85	.85	.35		
Spray	12.85	.85	.35		
Steel, storage bin & tank	12.25	.85	.35		
Bridge, stage; belt; bazooka	12.35	.85	.35		
ZONE 7					
Brush, roller	11.77		.55		
Spray	12.27		.55		
ZONE 8					
Brush	12.20		.20		
Spray & steel	12.70		.20		
ZONE 9					
Brush	14.98	.68	.37		.15
Spray	16.98	.68	.37		.15

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS CONT'D:					
ZONE 10					
Brush	$ 9.90	.50			
Spray, Bridgemen, steelmen	10.40	.50			
ZONE 11					
Brush	9.10		.25		
Structural steel	9.60		.25		
Bridges	9.85		.25		
ZONE 12					
Brush	13.00				
Spray	15.00				

AREA COVERED BY PAINTERS

ZONE 1 - Bates, Caldwell, Carroll, Clinton, Cass, Clay, Daviess, Grundy, Henry, Harrison, Jackson, Johnson, Lafayette, Livingston, Mercer, Platte, and Ray Counties
ZONE 2 - Bollinger, Cape Girardeau, Dunklin, Mississippi, New Madrid, Pemiscot, Scott, Stoddard, Reynolds, Iron, Butler, Carter, Shannon, Wayne, Oregon and Ripley Counties
ZONE 3 - Lincoln and Pike Counties
ZONE 4 - Camden, Crawford, Dent, Laclede, Maries, Miller, Phelps, Pulaski and Texas Counties
ZONE 5 - Benton, Cooper, Moniteau, Morgan, Pettis, and Saline Counties
ZONE 6 - Andrew, Atchinson, Buchanan, DeKalb, Gentry, Holt, Nodaway and Worth Counties
ZONE 7 - Barry, Barton, Cedar, Dade, Jasper, Lawrence, McDonald, Newton, St. Clair and Vernon Counties
ZONE 8 - Audrain, Boone, Callaway, Chariton, Cole, Gasconade, Howard, Monroe, Montgomery, Osage and Randolph Counties
ZONE 9 - Jefferson, St. Charles, St. Louis & City, Warren and Franklin Counties
ZONE 10 - Christian, Dallas, Douglas, Greene, Hickory, Howell, Ozark, Polk, Stone, Taney, Webster and Wright Counties
ZONE 11 - St. Francois, Ste. Genevieve, Madison, Perry and Washington Counties
ZONE 12 - Marion County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
ZONE 1					
Group I	$14.00	$1.05	$1.50	$1.07	.15
Group II	13.75	1.05	1.50	1.07	.15
Group III	13.05	1.05	1.50	1.07	.15
Group IV					
(a)	9.03	1.05	1.50	1.07	.15
(b)	12.05	1.05	1.50	1.07	.15
Group V	14.25	1.05	1.50	1.07	.15
Group VI	14.00	1.05	1.50	1.07	.15
ZONE 2					
Group I	14.32	1.05	1.25		.20
Group II	13.02	1.05	1.25		.20
Group III	12.57	1.05	1.25		.20
Group IV:					
(a)	15.02	1.05	1.25		.20
(b)	15.87	1.05	1.25		.20
(c)	16.32	1.05	1.25		.20
(d)	17.07	1.05	1.25		.20
(e)	14.82	1.05	1.25		.20
ZONE 3					
Group I	14.85	.90	1.00		.07
Group II	14.65	.90	1.00		.07
Group III	14.45	.90	1.00		.07
Group IV	13.85	.90	1.00		.07
Group V	13.95	.90	1.00		.07
Group VI	15.35	.90	1.00		.07
ZONE 4					
Group I	13.85	.90	1.00		.07
Group II	13.50	.90	1.00		.07
Group III	13.30	.90	1.00		.07
Group IV	12.45	.90	1.00		.07
Group V	14.10	.90	1.00		.07
Group VI	14.45	.90	1.00		.07
ZONE 5					
Group I	13.10	1.00	1.25	1.05	.20
Group II	12.85	1.00	1.25	1.05	.20
Group III	12.15	1.00	1.25	1.05	.20
Group IV:					
(a)	9.03	1.00	1.25	1.05	.20
(b)	11.15	1.00	1.25	1.05	.20
Group V	13.35	1.00	1.25	1.05	.20
Group VI	13.10	1.00	1.25	1.05	.20

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS CONT'D					
ZONE 6					
Group I	$12.60	1.00	1.25	1.05	.20
Group II	12.25	1.00	1.25	1.05	.20
Group III	12.05	1.00	1.25	1.05	.20
Group IV	10.25	1.00	1.25	1.05	.20
Group V	12.85	1.00	1.25	1.05	.20
Group VI	13.10	1.00	1.25	1.05	.20
Group VII	13.35	1.00	1.25	1.05	.20
ZONE 7					
Group I	13.00	.60	1.25	.71	
Group II	12.65	.60	1.25	.71	
Group III	12.45	.60	1.25	.71	
Group IV	10.40	.60	1.25	.71	
Group V	13.25	.60	1.25	.71	
Group VI	13.50	.60	1.25	.71	
Group VII	13.75	.60	1.25	.71	
ZONE 8					
Group I	13.00	.60	1.25	.71	
Group II	12.65	.60	1.25	.71	
Group III	12.45	.60	1.25	.71	
Group IV	10.40	.60	1.25	.71	
Group V	13.25	.60	1.25	.71	
Group VI	13.50	.60	1.25	.71	
Group VII	13.75	.60	1.25	.71	
ZONE 9					
Group I	14.30	.90	1.00		.07
Group II	14.10	.90	1.00		.07
Group III	13.90	.90	1.00		.07
Group IV	13.30	.90	1.00		.07
Group V	14.55	.90	1.00		.07
Group VI	14.80	.90	1.00		.07

CLASSIFICATION DEFINITIONS
POWER EQUIPMENT OPERATORS ZONE 1 & 5

Group I - Asphalt paver and spreader; asphalt plant console operator; auto grader; back hoe; blade operator, all types; boilers-2; booster pump on dredge; boring machine (truck or crane mounted); bulldozer operator; clamshell operator; compressor maintenance operator-2; concrete plant operator, central mix; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dragline operator; dredge engineman; dredge operator; drillcat with compressor mounted on cat; drilling or boring machine, rotary, self-propelled; highloader-fork lift, and welders, field or shop; maintenance operator; mucking machine; piledriver operator; pitman crane operator; pump-2; quad-trac; scoop operator-all types; pushcat operator; scoops in tandem; self-propelled rotary drill (Leroy or Equal-not Air Trac); shovel operator; side discharge spreader; side boom cats; skimmer scoop operator; slip form paver (CMI, REX, or Equal); throttle man; truck crane; welding machine maintenance operator-2

Group II - "A" frame truck; asphalt hot mix silo; asphalt plant fireman; drum or boiler; asphalt plant mixer operator; asphalt plant man; asphalt roller operator; backfiller operator; chip spreader; concrete batch plant, dry, power operated; concrete mixer operator, skip loader; concrete pump operator; crusher operator; elevating grader; greaser; hoisting engine-1 drum; Latourneau rooter; multiple compactor; pavement breaker, self-propelled, of the hydra- hammer or similar type; power shield; pug mill operator; stump cutting machine; towboat operator; tractor operator-over 50 h.p.

Group III - Boilers - 1; chip spreader (front man); churn drill operator; compressor maintenance operator - 1; concrete saws, self-propelled; roller operator, other than dredge; conveyor operator; distributor operator; finishing machine operator; fireman, rig; float operator; form grader operator; pump; pump maintenance operator, other than dredge; roller operator, other than high type asphalt; screening and washing plant operator, self-propelled street broom or sweeper, siphons and jets; subgrading machine operator; tank car heater operator-combination boiler and booster; tractor 50 hp or less, without attachments; vibrating machine operator, not hand; welding machine maintenance operator - 1

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CLASSIFICATION DEFINITIONS
POWER EQUIPMENT OPERATORS ZONE 1 & 5 CONT'D

Group IV:
(a) Oiler
(b) Oiler drivers, all types

Group V - Clamshells, 3 yds. capacity or over; crane or rigs, 80 ft. of boom or over (incl. jib); draglines, 3 yds. capacity or over; piledrivers, 80 ft. of boom or over (incl. jib); shovels and backhoes, 3 yds. capacity or over

Group VI - Hoists (each additional drum over 1 drum)

POWER EQUIPMENT OPERATORS ZONE 2

GROUP I - Backhoe; cableway; crane, crawler or truck; crane, hydraulic-truck or cruiser mounted - 16 tons & over; crane locomotive; derrick, steam; derrick car & derrick boat; dragline; dredge; gradall, crawler or tire mounted; locomotive, gas, steam & other powers; pile driver, land or floating; scoop, skimmer; shovel, power (steam, gas, electric, or other powers); switch boat; whirley; air tugger w/air compressor; anchor-placing barge; asphalt spreader; athey force feeder loader (self-propelled); backfilling machine; boat operator-push boat or tow boat (job-site); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine, footing foundation; bull-float; cherry picker; combination concrete hoist & mixer (such as mixermobile); compressors, two, not more than 50 ft. apart; compressor (when operator runs throttle); compressor-generator combination; compressor-pump combination; generators, two 30 KW or over, or any number developing over 30 KW; generator-pump combination : compressor-welder combination; concrete breaker (truck or tractor mounted); concrete pump, such as pump-crete machine; concrete spreader; conveyor, large (not self-propelled), hoisting or moving brick and concrete into, or into and on floor level, one or both; crane, hydraulic-rough terrain, self-propelled; crane hydraulic-truck or cruiser mounted-under 16 tons; drilling machines, self-powered, used for earth or rock drilling or boring (wagon drills and any hand drills obtaining power from other

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POWER EQUIPMENT OPERATORS ZONE 2 CONT'D

GROUP I CONT'D
sources including concrete breakers jackhammers and barco equipment - no engineer required); elevating grader; engineman, dredge; excavator or powerbelt machine; finishing machine, self-propelled oscillating screed; forklift; grader, road with power blade; high-lift; hoist; concrete and brick (brick cages or concrete skips operating in or on tower, towermobile, or similar equipment); hoist; stack; hydro-hammer; lad-a-vator, hoisting brick or concrete; loading machine (such as barber-greene); mechanic, on job site; mixer, paving; mixer-mobile; mucking machine; pipe cleaning machine; pipe wrapping machines; plant asphalt; plant, concrete producing or ready-mix job site; plant heating-job site; plant mixing-job site; plant power, generating-job site; pumps, two self-powered over 2" through 6"; pumps, electric submersible, one through three, over 4"; quad-track; roller, asphalt, top or sub-grade; scoop, tractor drawn; spreader box; sub-grader; tie tamper; tractor-crawler, or wheel type with or without power unit, power take-offs, and attachments regardless of size; trenching machine; tunnel boring machine; vibrating machine automatic, automatic propelled; welding machines (gasoline or diesel) more than one but not over four (regardless of size); well drilling machine

GROUP II - Conveyer, large (not self-propelled); conveyer, large (not self-propelled) moving brick and concrete (distributing) on floor level; mixer two or more mixers of one bag capacity or less, air tugger w/plant air; boiler, for power or heating on construction projects; boiler, temporary; compressor, air-one; compressor air (mounted on truck); concrete saw, self-propelled; curb finishing machine; ditch paving machine; elevator (building construction or alteration); endless chain hoist; form grader; generator, one over 30 KW or any number developing over 30 KW; greaser; hoist; one drum regardless of size (except brick or concrete); lad-a-vator, other hoisting; manlift; mixer, asphalt, over 8 cu. ft. capacity, mixer, if two or more mixers of one bag capacity or less are used by one employer on job an operator is required; mixer, with outside loader, 2 bag capacity or more; mixer, with side loader, regardless of size, not paver; oiler on dredge; oiler on truck crane; pug mill operator; pump, sump-self-powered, automatic controlled over 2" during use in connection with construction work; sweeper, street; welding machine, one over 400 amp.; winch operating from truck; scissor lift (used for hoisting); tractor, small wheel type 50 h.p. & under with grader blade & similar equipment

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POWER EQUIPMENT OPERATORS ZONE 2 CONT'D

GROUP III - Boat operator-outboard motor (job site); conveyor (such as con-vay-it) regardless of how used; oiler; sweeper, floor

GROUP IV - (a) Air pressure, oiler engineer, operating under ten pounds (b) Air pressure, oiler engineer operating over ten pounds (c) Air pressure engineer operating under ten pounds (d) Air pressure engineer operating over ten pounds (e) Crane-piledriving and extracting; crane using rock socket tool; dragline - 7 cu. yds. & over; shovel, power - 7 cu. yds. and over; crane, climbing such as Linden); derrick, diesel, gas or electric hoisting material and erecting steel - 150' or more above ground; hoist, three or more drums; scoop, tandem; tractor, tandem crawler

Crane with boom (including jib), over 100' from pin to pin (add 1¢ per foot to maximum of $2.00) above basic rate for crane

Work in tunnel or tunnel shaft, .50¢ above base rate

POWER EQUIPMENT OPERATORS ZONES 3, 4, and 9

GROUP I - Asphalt finishing machine & trench widening spreader, asphalt plant console operator; autograder; automatic slipform paver; back hoe; blade operator - all types; boat operator - tow; boiler - 2; central mix concrete plant operator; clam shell operator; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dozer operator; dragline opr.; dredge booster pump; dredge engineman; dredge operator; drill cat with compressor mounted on cat; drilling or boring machine rotary self-propelled; highloader; hoisting engine - 2 active drums; launch-hammer wheel; locomotive operator - standard guage; mechanics and welders; mucking machine; piledriver operator; pitman crane operator; push cat operator; quad-trac; scoop operator; sideboom cats; skimmer scoop operator; trenching machine operator; truck crane, shovel operator

GROUP II - A-Frame; asphalt hot-mix silo; asphalt roller operator; asphalt plant fireman (drum or boiler); asphalt plant man; asphalt plant mixer operator; backfiller operator; barber-greene loader;

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POWER EQUIPMENT OPERATORS ZONES 3, 4 and 9 CONT'D

GROUP II CONT'D
boat operator (bridge & dams): chip spreader; concrete mixer operator - skip loader; concrete plant operator; concrete pump operator; dredge oiler; elevating grader operator; fork lift; grease fleet; hoisting engine - 1; locomotive operator - narrow gauge; multiple compactor; pavement breaker; powerbroom - self propelled; power shield; rooter; slip-form finishing machine; stumpcutter machine; side discharge concrete spreader; throttleman; tractor operator (over 50 hp); winch truck; asphalt roller operator; crusher operator

GROUP III - Spreader box operator, self-propelled (not asphalt); tractor operator (50 h.p. or less); boilers - 1; chip spreader (front man); Churn drill operator; compresor over 105 CFM 2 - 3 pumps 4" & over; 2 - 3 light plant 7.5 KWA or any combination thereof; clef plane opr.; compressor maintenance operator 2 or 3; concrete saw operator (self-propelled): curb finishing machine; distributor operator; finishing machine operator; flex plane operator; float operator; form grader operator; pugmill operator; roller operator, other than high type asphalt; screening & washing plant opeator; siphons & jets; subgrading machine operator; tank car heater (combination boiler & booster); ulmac, ulric or similar spreader; vibrating machine operator; hydrobroom

GROUP IV - Oiler; grout machine; oiler-driver; compressor over 105 CFM-1; conveyor operator-1; maintenance operator; pump-4" & over-1

GROUP V - Crane with 3 yds. & over buckets; dragline operator - 3 yds & over; shovel - 3 yds. & over; piledrivers - all types; clam-shell - 3 yds. & over; hoists - each additional active drum over 2 drums

GROUP VI - Tandem scoop operator

Crane, rigs over 100 feet (incl. jib)-1¢ per foot

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POWER EQUIPMENT OPERATORS ZONES 6, 7 and 8

GROUP I - Asphalt finishing machine & trench widening spreader; asphalt plant console operator; automatic slipform paver; autograder; backhoe; blade operator, - all types; boat operator - tow; boilers - 2; central mix concrete plant operator; clamshell operator; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dozer operator; dragline operator; dredge booster pump; dredge engineman; dredge operator; drill cat with compressor mounted on cat; drilling or boring machine rotary self-propelled; highloader; hoisting engine - 2 active drums; launch hammer wheel; locomotive operator; - standard guage; mechanics and welder; mucking machine; piledriver operator; sideboom cats; skimmer scoop operators; trenching machine operator; truck crane; scoop operators - all types

GROUP II - A-frame; asphalt hot mix silo; asphalt plant fireman (drum or boiler); asphalt roller operator; asphalt plant man; asphalt plant mixer operator; backfiller operator; barber-greene loader; boat operator (bridges and dams); chip spreader; concrete mixer operator - skip loader; concrete plant operator; concrete pump operator; crusher operator; dredge oiler; elevating grader operator; fork lift; greaser-fleet; hoisting engine - 1; locomotive operator - narrow guage; multiple compactor, pavement breaker; power - broom - self-propelled; power shield; rooter; slip form finishing machine; stumpcutter machine; side discharge concrete spreader; throttle man; tractor operator (over 50 hp); winch truck

GROUP III - Boilers - 1; chip spreader (front man); churn drill operator; clef plane operator; concrete saw operator (self-propelled); curb finishing machine; distributor operator; finishing machine operator; flex plane operator; float operator; form grader operator; pugmill operator; roller operator, other than high type asphalt; screening & washing plant operator; siphons & jets; subgrading machine operator; spreader box operator, self-propelled (not asphalt); tank car heater operator (combination boiler & booster); ulmac, ulric, or similar spreader; vibrating machine operator, not hands; tractor operator (50 hp or less)

GROUP IV - Oiler; oiler driver, fireman - rig; maintenance operators

GROUP V - Dragline operator - 3 yds. & over; shovel - 3 yds. & over; clamshell - 3 yds. & over; crane, rigs or piledrivers, 100' of boom or over (incl. jib), hoists - each additional active drum over 2 drums

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POWER EQUIPMENT OPERATORS ZONE 6, 7 and 8 CONT'D

GROUP VI - Tandem scoop operator; crane, rigs or piledrivers 150' to 200' of boom (inc. jib)

GROUP VII - Crane rigs, or piledrivers 200 ft. of boom or over (incl. jib)

AREAS COVERED BY POWER EQUIPMENT OPERATORS ZONES

ZONE 1 - Clay, Jackson, Platte and Ray Counties

ZONE 2 - St. Louis City and County

ZONE 3 - Franklin, Jefferson, St. Charles Counties

ZONE 4 - Adair, Audrain, Boillinger, Boone, Butler, Callaway, Cape Girardeau, Carter, Clark, Cole, Crawford, Dent, Dunklin, Gasconade, Howell, Iron, Knox, Lewis, Macon, Madison, Maries, Marion, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St. Francois, Ste. Genevieve, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Texas, Washington, and Wayne Counties

ZONE 5 - Buchanan, Cass, Clinton and Lafayette Counties

ZONE 6 - Andrew, Atchinson, Bates, Benton, Caldwell, Carroll, Charlton, Cooper, Daviess, DeKalb, Gentry, Grundy, Harrison, Henry, Holt, Howard, Johnson, Linn, Livingston, Mercer, Nodaway, Pettis, Saline, Sullivan and Worth Counties

ZONE 7 - Christian, Greene, Jasper, Lawrence and Taney Counties

ZONE 8 - Barry, Barton, Camden, Cedar, Dade, Dallas, Douglas, Hickory, Laclede, McDonald, Newton, Ozark, Polk, St. Clair, Stone, Vernon, Webster and Wright Counties

ZONE 9 - Lincoln and Warren Counties

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS					
ZONE 1					
Group 1	$12.66	$1.25	1.50	.75	
Group 2	12.86	1.25	1.50	.75	
Group 3	13.17	1.25	1.50	.75	
Group 4	13.32	1.25	1.50	.75	
Group 5	12.44	1.25	1.50	.75	

CLASSIFICATION DEFINITIONS
TRUCK DRIVERS

Group 1 - One team; station wagons; pickups, material, single axle; tank wagon, single axle
Group 2 - Two teams, material tandem; semi-trailers; winch, fork distributor drivers and operators, agitator and transit mix, tank wagon, tandem or semi-trailers, insley wagons, dump excavating, 5 cu. yds. & over, dumpsters, half-tracks, speedace, euclids and other similar excavating equipment
Group 3 - A-frame, low boy, boom
Group 4 - Mechanics & welders
Group 5 - Oilers and greasers

AREA COVERED BY TRUCK DRIVERS ZONES

ZONE 2 - Clay, Jackson, Platte and Ray Counties

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS					
ZONE 2					
Group 1	$15.54				
Group 2	15.69				
Group 3	15.76				
Group 4	15.65				
Group 5	15.44				
ZONE 3					
Group 1	14.49				
Group 2	14.64				
Group 3	14.71				
Group 4	14.60				
Group 5	14.39				
ZONE 4					
Group 1	13.33	1.00	1.50		
Group 2	13.48	1.00	1.50		
Group 3	13.55	1.00	1.50		
GRoup 4	13.44	1.00	1.50		
Group 5	13.23	1.00	1.50		
ZONE 5					
Group 1	12.12	1.00	1.50		
Group 2	12.27	1.00	1.50		
Group 3	12.39	1.00	1.50		
Group 4	12.28	1.00	1.50		
Group 5	12.02	1.00	1.50		
ZONE 6					
Group 1	11.39	1.00	1.50		
Group 2	11.54	1.00	1.50		
Group 3	11.66	1.00	1.50		
Group 4	11.55	1.00	1.50		
Group 5	11.29	1.00	1.50		

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CLASSIFICATION DEFINITIONS
TRUCK DRIVERS

Group 1 - Flat bed trucks - single axle; station wagon; pickup trucks; material trucks - single axle; tank wagon - single axle
Group 2 - Flat bed trucks - tandem axle; material trucks, tandem, axle; tank wagon - tandem axle
Group 3 - Semi and/or pole trailers; winch fork and steel trucks; Insley wagons, dumpsters, half tracks, speedace, euclids, and other similar equipment, a-frame and derrick trucks, float or low boy, distributor drivers and operators, tank wagon, semi-trailer
Group 4 - Agitor and transit mix trucks
Group 5 - Warehouseman

AREA COVERED BY TRUCK DRIVERS ZONES

ZONE 2 - Franklin, Jefferson and St. Charles Counties
ZONE 3 - Lincoln and Warren Counties
ZONE 4 - Buchanan, Cass, Johnson and Lafayette Counties
ZONE 5 - Andrew, Audrain, Barton, Bates, Benton, Bollinger, Boone, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Christian, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, DeKalb, Dent, Douglas, Gasconade, Greene, Henry, Hickory, Howard, Iron, Jasper, Laclede, Lawrence, Linn, Livingston, Macon, Madison, Maries, Marion, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Newton, Osage, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Ralls, Randolph, Reynolds, St. Clair, St. Francois, Ste. Genevieve, Saline, Scott, Shannon, Shelby, Stoddard, Texas, Vernon, Washington, Wayne, Webster and Wright Counties
ZONE 6 - Adair, Atchison, Berry, Butler, Clark, Dunklin, Gentry, Grundy, Harrison, Holt, Howell, Knox, Lewis, McDonald, Mercer, Nodaway, Oregon, Ozark, Putnam, Ripley, Schuyler, Scotland, Stone, Sullivan, Taney and Worth Counties

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)".

[FR Doc. 82-8601 Filed 4-1-82; 8:45 am]
BILLING CODE 4510-27-C

federal register

Friday
April 2, 1982

Part IV

Consumer Product Safety Commission

Ban of Urea-Formaldehyde Foam Insulation, Withdrawal of Proposed Information Labeling Rule, and Denial of Petition to Issue a Standard

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1306

Ban of Urea-Formaldehyde Foam Insulation

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission issues a rule banning urea-formaldehyde (U.F.) foam insulation in residences and schools.* The Commission's ban is based on findings that U.F. foam insulation is being distributed in commerce and presents an unreasonable risk of injury from irritation, sensitization, and cancer because of the release of formaldehyde gas from the product after it is installed. The Commission has evaluated the effectiveness of existing standards as well as other possible approaches to controlling consumer exposure to formaldehyde gas released from the product. The Commission finds that no feasible standard, including labeling or information disclosure, would adequately protect the public from the risk of injury associated with the product.

In a document published in the Proposed Rule section of this separate part, the Commission withdraws a previously proposed rule that would have required potential purchasers of U.F. foam insulation to be given notice of some of the possible adverse health effects associated with this product.

In the notices, section of this separate part, the Commission also denies a petition from the Formaldehyde Institute, which requested that the Commission establish a mandatory standard to address the risk of injury associated with U.F. foam insulation.

DATES: Effective Date: The ban applies to all U.F. foam insulation that is manufactured for use in residences or schools in the United States on or after August 10, 1982 or the day after the expiration of the 90 calendar day period of continuing session of Congress following promulgation of the ban, whichever date is later.

The Commission will publish a document at a later time confirming the effective date of this ban.

For purposes of judicial review, the Commission has specified that this ban shall be promulgated at 12:00 noon, Eastern Standard Time, on April 12, 1982.

ADDRESS: All materials the Commission has that are relevant to this proceeding may be seen in, or copies obtained from, the Office of the Secretary, Third Floor, 5401 Westbard Avenue, Bethesda, Maryland 20207.

FOR FURTHER INFORMATION CONTACT: Paul Galvydis, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 492–6400.

SUPPLEMENTARY INFORMATION: .

A. Summary of the Commission's Concern and the Need for a Ban

Urea-formaldehyde (U.F.) foam insulation is a thermal insulation material for residences or other buildings. The product is manufactured at the job site by mixing resin, foaming agent, and a compressed gas and then pumping this mixture, which resembles shaving-cream, into the walls of the building being insulated. After the material is in the wall for a period of time, it is expected to become firm and self-supporting. However, the Commission has received a number of reports and other data indicating that there can be adverse health effects caused by formaldehyde gas that is emitted from the insulation after it is installed.

In one case that has been reported to the Commission, U.F. foam insulation was installed in selected exterior locations of the home in the spring of 1979. After the heat was turned on in September, an occupant developed a cough and sore throat which culminated in a severe asthma attack. Her allergist diagnosed her symptoms as a formaldehyde allergy.

In another case, a few outside walls of a dwelling were insulated with U.F. foam insulation in September of 1979. The three occupants then developed symptoms such as violent coughing, eye, nose, and throat irritation, dryness of the mouth, and headaches. The symptoms improved greatly when the persons were away from home. The family doctor recommended removal of the foam. Six months after installation, the formaldehyde level was measured at 0.06 parts per million (ppm).

One family of four had to leave their home for two months after U.F. foam insulation was installed in their exterior walls in January 1980. Immediately after installation, they experienced eye, nose, and throat irritation, loss of voice, headache, chest pain, diarrhea, cramps, shortness of breath, fatigue, and sleep disturbance. All the victims improved when they were away from home, but the symptoms recurred when they returned. The air, when tested four months after installation, had 0.451 ppm formaldehyde.

An elderly couple noticed an odor immediately after U.F. foam insulation was installed in the exterior walls of their home in January of 1978. They experienced bouts of watery eyes, coughing, dizziness, and sneezing, and two years later they still occasionally experienced these symptoms.

Within a few days of moving into a new home insulated with U.F. foam insulation in February 1979, another healthy family of four began experiencing running noses, nose bleeds, eye irritation, and sore throats. Their symptoms subsided away from home. Attempts to alleviate the problem failed, including painting the walls, installing a charcoal filter in the air conditioner, and drilling holes for ventilation. The family moved out after two months.

In another case, within a day of installation of U.F. foam insulation in a home in January 1980, the owner developed headaches, throat irritation, and numbness of his face and hands, which were diagnosed by a hospital emergency room as due to formaldehyde poisoning. He and his family were advised to stay away from the house, but he returned after a week and continued to be troubled with headaches.

The Commission is concerned about the adverse health effects from irritation, sensitization, and cancer that can occur when consumers are exposed to formaldehyde gas that is released from the product into the interiors of buildings. Although the amount and duration of formaldehyde release can vary, laboratory tests have shown that every U.S. foam insulation product tested releases a measurable amount of formaldehyde gas and that the release continues for a prolonged period of time. The Commission is not aware of any brand or type of the product that does not release some formaldehyde gas after it is installed. After installation, the product may continue to release formaldehyde gas for years.

In a study by the Chemical Industry Institute for Toxicology (CIIT), formaldehyde gas has been shown to cause nasal cancer in rats. There is also evidence that formaldehyde causes cancer in mice. The laboratory rats developed cancer because of their exposure to formaldehyde gas at concentrations within a factor of 10 of

* The ban was approved by a 4–1 vote of the Commission. Chairman Nancy Harvey Steorts and Commissioners R. David Pittle, Edith Barksdale Sloan and Samuel Zagoria approved the ban. Commissioner Stuart M. Statler voted against the ban and filed a dissenting opinion dated March 3, 1982, in which he advocated a three-part program, including a safety standard for the product, to address the risk.

those to which humans may be exposed in U.F. foam insulated residences.

To evaluate the carcinogenic effects of formaldehyde, the Commission established a Federal Panel on Formaldehyde, consisting of 16 senior government scientists. In a report to the Commission, the Federal Panel concluded that formaldehyde should be presumed to pose a carcinogenic risk to humans. Other scientific groups, including the National Institute for Occupational Safety and Health (NIOSH) and the Inter-national Agency for Research on Cancer (IARC), have reached similar conclusions. The Commission staff's latest quantitative assessment of the risk to humans presented by the formaldehyde gas released from U.F. foam insulation concludes that, on the average, any person living in a U.F. foam insulated home for nine years after the product was installed would have, as an upper estimate, a 51 in a million additional risk of developing cancer from the formaldehyde released by the insulation. If U.F. foam insulation installations continue, this risk may be expressed as 1.8 additional cases of cancer from every 10,000 additional residences that are insulated with U.F. foam.

At the time of the proposal, the Commission had received nearly 1600 complaints of health related problems from persons who have had the product installed, and the Commission had conducted and reviewed over 350 in-depth investigations of these complaints. In nearly a fourth of the investigated complaints, consumers reported that they had to leave their home for varying periods of time, refrain from using a part of their home, or delay their move into a home insulated with U.F. foam insulation.

The common symptoms in the complaints are typical of the acute illness that can result from formaldehyde exposure, and include eye, nose, and throat irritation, persistent cough, respiratory distress, skin irritation, nausea, headaches, and dizziness. The range of severity of reported reactions varies from short-term discomfort to long-term impairment. In some cases, persons have been hospitalized, primarily for respiratory distress, after U.F. foam insulation was installed.

Many (31.6 percent) of the complaint residences in which formaldehyde measurements were made had levels of formaldehyde at or below 0.1 parts per million (ppm).

The Commission also requested the Committee on Toxicology of the National Academy of Sciences (NAS) to determine whether there is a level of formaldehyde in the air of homes that will not cause adverse symptoms. After researching and considering this issue, this Committee concluded that there is no population threshold for the acute irritant effects of formaldehyde in humans. The Committee recommended that formaldehyde be kept at the lowest practical concentration in indoor residential air. The Committee estimated that at a formaldehyde concentration of 0.25 ppm, somewhat less than 20 percent of healthy adults may respond to the irritant effects of formaldehyde. In addition, the NAS Committee on Aldehydes and the NAS Committee on Indoor Pollutants estimated that 10 to 12 percent of the U.S. population may have hyper-reactive airways, and this group could be more susceptible to the irritant effects of formaldehyde.

Furthermore, formaldehyde is a sensitizer; persons allergic to formaldehyde would suffer more severely than would normal adults.

There is no generally reliable remedy for eliminating formaldehyde gas problems after the insulation is installed, short of physically removing the product from the walls of the building. In some reported cases, even removal of the product has not eliminated the problem.

The Commission has carefully examined existing standards and manufacturers' specifications for the product, as well as draft standards that have been submitted to the Commission. None of these standards or specifications have been shown to adequately address the release of formaldehyde from the product and thus the acute and chronic risks of injury associated with that release. The provisions that purport to reduce formaldehyde emissions are unsupported by a technical rationale with documentation as to their effectiveness. Moreover, even those installations which do not result in complaints of acute illness may pose a risk of injury from cancer to consumers exposed to the formaldehyde. Unlike the case of many other formaldehyde-containing products, the technology and support for a standard that would adequately and predictably control the release of formaldehyde from U.F. foam insulation is not presently at hand and has not been shown to be available in the foreseeable future.

The Commission has also considered other regulatory alternatives, such as labeling and information disclosure to consumers. However, these alternatives will not adequately address the problem because of (1) the nature of the product, which is manufactured at the site of installation and is essentially a nonreturnable product and one that is removable only at great expense, (2) the difficulty of providing notification to subsequent purchasers of the building where the insulation is installed, and (3) the fact that the information is likely to be presented by salespersons stressing claimed advantages of the insulation. In addition, warnings are not likely to be effective for persons who are or may become sensitive to formaldehyde, since such persons may not be aware of this fact.

The Commission recognizes that banning a product is a serious action. The economic consequences to the U.F. foam segment of the insulation industry, which includes a number of small businesses, are likely to be severe. At the same time, however, given the unreasonable risk of injury presented by the product, the availability of substitute forms of insulation for nearly all applications, and the fact that there is no feasible standard, including labeling or information disclosure, that would eliminate or adequately reduce the risk, a ban is necessary and is in the public interest. The rule includes a procedure for interested persons to apply for an exemption from the ban, based on evidence showing that they have developed a product that will not present an unreasonable risk of injury from the release of formaldehyde gas.

B. Background

In October, 1976, the Metropolitan Denver District Attorney's Consumer Office filed a petition (CPSC Petition No. CP 77–1) under section 10 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2059, (now revoked) requesting the Commission to develop a safety standard under section 7 of the CPSA, 15 U.S.C. 2066, for certain types of home insulation products, including U.F. foam insulation. The petitioner claimed that there is an unreasonable risk of injury of irritation and poisoning associated with U.F. foam insulation. After considering information compiled by its staff, the Commission decided, on March 5, 1979, to defer a decision on that part of the petition relating to U.F. foam insulation and instructed the Commission staff to evaluate additional information on possible means of addressing this alleged unreasonable risk of injury (44 FR 12080).

After gathering additional information, the Commission held public hearings on U.F. foam insulation in Portland, Oregon; Atlanta, Georgia; Minneapolis, Minnesota; and Hartford, Connecticut, during the period from

December 1979 through February, 1980 (44 FR 69578; December 3, 1979).

From April 9–11, 1980, the Commission's staff held a technical workshop on formaldehyde at the National Bureau of Standards. At this workshop, experts from the United States and eight foreign countries presented information on U.F. foam insulation, formaldehyde chemistry, product applications and properties, and the measurement and sampling of formaldehyde.

On June 10, 1980, the Commission published a proposed rule that would have required that potential purchasers be given notice concerning the potential adverse acute health effects associated with the release of formaldehyde gas from U.F. foam insulation (45 FR 39434). The proposal would have required manufacturers of U.F. foam insulation to give specified technical and performance information to purchasers and prospective purchasers to assist them in making an informed choice in purchasing the product. The proposed rule would have required information concerning the release of formaldehyde gas, symptoms of the acute illness associated with its release, and certain conditions under which the release of formaldehyde gas is more likely. The Commission solicited comments on the proposal and received 66 comments from interested persons.

As is discussed in more detail below, the Commission has concluded that merely providing a printed statement to consumers will not adequately address the risk of injury and is withdrawing the proposal of June 10, 1980 in another document in this separate Part.

After considering the information that it had available at that time, the Commission preliminarily concluded that there was an unreasonable risk associated with U.F. foam insulation and that no feasible standard applicable to the product could adequately reduce that risk. Accordingly, on February 5, 1981, the Commission proposed a ban of this product (46 FR 11188).

A 60 day period for submission of written comments was provided, and an opportunity for the presentation of oral comments was provided on March 20, 1981. In addition, the Commission itself acquired additional data and decided to solicit comment on the issues associated with these new data. Therefore, on October 6, 1981 (46 FR 49140), the Commission published a **Federal Register** notice announcing that it would seek comment on the additional data. At that time, the Commission also extended the time in which it must issue a consumer product safety rule or withdraw the proposal to February 15, 1982. On November 18, 1981, the Commission published a description of the additional data and provided that written comments on that data could be submitted until December 18, 1981 (46 FR 56762).

On April 16, 1981, the Commission received a petition from the Formaldehyde Institute, requesting that the Commission issue a safety standard applicable to U.F. foam insulation (petition CP 81–5). As discussed below, the Commission has concluded that there is no feasible safety standard that can adequately reduce the risk associated with U.F. foam insulation. Therefore, the Commission has denied the petition.

Canada has already banned U.F. foam insulation. Also, two states (Massachusetts and Connecticut) have enacted statewide bans of U.F. foam insulation. The Massachusetts ban, however, has been vacated on judicial review, and the case is presently on appeal. Colorado has a ban in state-licensed buildings. Other bans exist in Arvada County, Colorado; Dearborn, Michigan; and Euclid, Ohio. Seattle, Washington, has removed this product from its specifications for bids on low cost housing, and the New York City Building Department has removed U.F. foam from its list of approved building materials.

Minnesota has adopted a requirement that prohibits the sale of new residential units with formaldehyde levels above 0.8 ppm. Minnesota also has a requirement that all purchasers of formaldehyde-containing building materials and new housing units be given warnings of potential health effects.

The states of Kentucky, Michigan, Ohio, Pennsylvania, Vermont, and West Virginia have bills pending in their legislatures that, if passed, would ban U.F. foam insulation.

Denver, Colorado, requires homeowners to sign a statement acknowledging that U.F. foam insulation is being installed in their home and that there could be adverse health effects. The states of Maine, New York, New Hampshire, and Rhode Island require that a warning statement on the possible adverse health effects of U.F. foam insulation be given to homeowners before it can be installed.

C. Description of the Product

U.F. foam insulation is a cellular plastic product used as a thermal insulation material. The product is manufactured at the job-site by feeding a gas, generally pressurized air or nitrogen, along with a liquid formaldehyde-base resin and a liquid foaming agent, through a foaming equipment system. The product that results from this reactive mixture has a consistency similar to shaving cream and is usually pumped through relatively small holes into the walls of the standing structure. After the U.F. foam insulation is inside the wall, the insulation should become firm or self-supporting.

The resin and foaming agent ingredients are produced by chemical manufacturers and shipped to company distribution outlets and are then purchased by contractors who manufacture the final product at the job site. The component ingredients are in liquid form at the time of installation, although the contractors can receive these materials in either liquid or dry form. The foaming agent is generally a concentrated liquid that contains a surfactant and an acid catalyst.

D. Description of the Ban as Proposed

The proposal defines the product to be banned as any cellular plastic thermal insulation material which contains, as a component chemical, formaldehyde, formaldehyde polymers, formaldehyde derivatives, or any other chemical from which formaldehyde can be released.

The definition does not include urethane or styrene foam insulation, which are generally rigid in form. Although urethane foam insulation is manufactured from some formaldehyde-based chemicals, such as resoles (phenol alcohols) and isocyanates, the manufactured product is extremely unlikely to release formaldehyde because of the nature of the manufacturing stages and the inherent chemical stability in the polymeric bonding. Styrene foam insulation does not use formaldehyde-based chemicals. In addition, once it is manufactured, styrene foam insulation does not form a polymeric structure that can release formaldehyde.

The proposed ban applied to U.F. foam insulation for use as a consumer product, including U.F. foam insulation that is intended for installation in new homes or residences as well as for retrofit applications in existing homes. As proposed, the ban would also have applied to U.F. foam insulation that is installed in commercial buildings, recreational facilities, schools, and other public buildings. The Commission included non-residential applications within the scope of the proposal since (1) there is no information showing that the product that is installed in non-residences is different than the product installed in residences; (2) there are some reports of acute health problems

associated with non-residential applications of U.F. foam insulation, and (3) there is some degree of risk of cancer to persons exposed to formaldehyde gas released in non-residential applications.

The proposed effective date of the ban was to be within a range of 30 to 180 days after any final ban is published.

The proposal's preamble contained an extensive discussion of technical data concerning the risks associated with U.F. foam insulation and of economic data concerning the expected effects of the proposed ban. Much of these data are repeated in the discussion below in section G of this notice on the comments on the proposal. Except where noted in the remainder of this notice, the Commission reaffirms its discussion of technical and economic data set out in the preamble to the proposal.

E. Changes From the Proposal

The effective date of the final ban is August 10, 1982, or the day after the expiration of the 90 calendar day period of continuing session of Congress following promulgation of the ban, whichever date is later.

Also, the final ban applies only to U.F. foam insulation to be used in schools and in residences, and does not apply to other types of commercial buildings covered by the proposal, such as offices, warehouses, stores, and churches.

The reasons for these changes are explained elsewhere in this Federal Register notice.

F. Statutory Basis for the Ban

This ban is issued under the authority of section 8 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2057. Section 30(d) of the CPSA provides that where a risk of injury could be eliminated or reduced to a sufficient extent by action taken under the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261 et seq., the Commission can take regulatory action under the CPSA only if the Commission, by rulemaking, finds that it is in the public interest to take action under the CPSA. Since under the FHSA, the Commission lacks the authority to cover products installed in non-residential applications such as schools, the Commission concludes that the risk of injury addressed by this ban could not be eliminated or reduced to a sufficient extent by action taken under the FHSA. For this reason, and in order to avoid the need to conduct, duplicative proceedings under the CPSA and FHSA, it is in the public interest to regulate this product under the CPSA. Also, because of the complex and lengthy nature of the rulemaking proceeding that would be required under the FHSA, the Commission believes it would be in the public interest to regulate this product under the CPSA.

G. Response to Comments on the Proposal

In response to the proposal to ban U.F. foam insulation, the Commission received 271 timely written comments and 27 late comments that were considered by the Commission. At the public hearing held on March 20, 1981, 21 interested persons presented data, views, and arguments concerning the proposed ban. In addition, the Commission received 68 comments in response to its request for comment on additional data that was published on November 18, 1981. Included among the commenters were industry representatives, consumers, consumer organizations, consultants, scientists, and Federal, State, and local government agencies.

Nearly all industry representatives who commented opposed a ban.

Most of the consumers who support a ban referred to adverse health effects and economic losses caused by formaldehyde released from U.F. foam insulation. Comments received from consumers that oppose a ban most frequently cited the fear that their property would be devalued and stated that the U.F. form insulation in their homes had not caused them any ill health effects. Alternatives to a ban that were suggested included product standards, licensing and training of installers, warnings to consumers, and particular levels of formaldehyde exposure that should be permitted.

The comments that were received raised issues such as mutagenicity and carcinogenicity, acute effects, including irritation and sensitization, other chronic effects, technical considerations, and economic considerations. The discussion below describes the significant issues raised in the comments that were received and explains the Commission's response to these comments.

1. Comments on Mutagenicity and Carcinogenicity of Formaldehyde

Background

At the time of the proposal, the Commission evaluated considerable data showing that formaldehyde gas is likely to be a human carcinogen.

The Chemical Industry Institute of Toxicology (CIIT) has sponsored a 2-year inhalation study (C–9) [1] to provide information concerning the health effects resulting from formaldehyde exposure. the exposure of rats and mice to 0.0, 2.0, 5.6, and 14.3 ppm of formaldehyde gas for six hours per day for five days per week, was completed in June, 1980. Two hundred forty animals, 120 males and 120 females, were used in each exposure group, out of which 20 animals (at 6 and 12 months) and 40 animals (at 18 months) were selected at random and sacrificed while the study was in progress. At about the 11th month, the rats exposed to 14.3 ppm formaldehyde started developing nasal cancer (squamous cell carcinoma). By the 18th month (Swenberg et al., 1980, C–24; CIIT, C–83), 37 rats exposed to 14.3 ppm of formaldehyde had developed nasal cancer. Other dose-related changes observed in rats at this time were squamous metaplasia and dysplasia of the nasal mucosa.

On October 16, 1979, representatives of the Formaldehyde Institute, an industry trade association, informed the Commission that preliminary results from this study indicated that some rats exposed to 14.3 ppm of formaldehyde gas developed nasal squamous cell carcinoma. On January 17 and 18, 1980, the IRLG (Interagency Regulatory Liaison Group) Task Group on Formaldehyde visited CIIT to obtain additional information concerning the longterm study and to verify the CIIT findings. The Task Group included pathologists from the Commission, the Department of Energy, the Environmental Protection Agency, the National Cancer Institute, and the National Institute of Environmental Health Sciences, as well as other scientists. In a report prepared in February, 1980, the group of pathologists concurred, in general, with the CIIT observations, diagnoses, and interpretations. (C–9)

In order to evaluate the long-term human health implications of exposure to formaldehyde, the Commission and other IRLG agencies, with the cooperation of the National Toxicology Program, established a panel of sixteen senior scientists from various government agencies.[2] The Federal

[1] Record document C–9. In the bibliography at the end of this notice, relevant documents are listed by a letter prefix designating the general subject matter area addressed by the document, followed by the document number within that area. Thus, "C–9" is the ninth document listed under "Chronic Hazard Information." Arrangements to inspect or to obtain copies of these documents may be made through the Commission's Office of the Secretary.

[2] The panel members were: Richard A. Griesemer, D.V.M. Ph.D. Chairman, National Cancer Institute (now with Oak Ridge National Laboratory); Joseph C. Arcos, Ph. D., Environmental Protection Agency; James R. Beall, Ph. D., Department of Energy; Aaron E. Blair, Ph. D., National Cancer Institute; Thomas F.X. Collins, Ph. D., Food and Drug Administration; Frederick J. deSerres, Ph. D., National Institute of

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Panel on Formaldehyde submitted its report to the Commission on November 21, 1980. The panel reviewed available data on formaldehyde in the following five areas: (1) Chemistry and Metabolism; (2) Teratology and Reproduction; (3) Mutagenicity; (4) Carcinogenicity; and (5) Epidemiology. The panel members reviewed and evaluated the available published and unpublished information on the chronic health effects from repeated exposure to formaldehyde and submitted a comprehensive report to the Commission. In their report to the Commission (C–1), the Federal Panel concluded:

(1) The CIIT study is a valid study that demonstrates that formaldehyde is carcinogenic to Fisher 344 rats when inhaled.

(2) The levels of formaldehyde causing cancer in animals are not greatly different from those to which consumers are exposed; nor do there appear to be significant qualitative metabolic differences between rats and humans with regard to formaldehyde.

(3) Formaldehyde may be carcinogenic to species other than the rat, and in tissues other than the nose.

(4) Formaldehyde is mutagenic to a number of different test systems without requiring metabolic activation, and also causes chromsomal aberrations. Formaldehyde also causes malignant transformation of mammalian cultures.

(5) Formaldehyde should be presumed to pose a carcinogenic risk to humans.

(6) The epidemiologic studies presently available are inadequate to permit a direct assessment of the carcinogenicity of formaldehyde to humans.

After the panel completed its review, the data from the 24 month sacrifice were presented at the CIIT conference on November 20–21, 1980. These data showed that, after 24 months of exposure to 15 ppm [3] of formaldehyde began the study had developed nasal cancer. The data also showed that three (later revised to two) rats exposed to 6 ppm of formaldehyde gas developed nasal cancer. In addition, two mice exposed to 15 ppm of formaldehyde gas developed nasal cancer (C–23). At the CIIT conference, Dr. Craig Barrow and Dr. James Swenberg of CIIT indicated that because of a difference in respiratory response between rats and mice, the effective exposure in the mice could be considered to be about half that for the rats. Thus, the cancer incidence in mice at 15 ppm is apparently comparable to that of rats at 6 ppm. The results of the 24 month sacrifice and the observation of 2 cases of nasal cancer in mice, a second species, support the conclusions of the Federal Panel (C–23).

During the course of the CIIT study, a viral infection developed in the laboratory rats. Some observers have raised the possibility that this infection was a significant factor in the nasal tumor development in animals exposed to formaldehyde. However, the Panel concluded that this was unlikely, since at the time the viral outbreak occurred, the first nasal cancers that were detected had already formed. In addition, the signs of infection occurred during a very short portion of the experiments (approximately a week). Further, the finding that the mice in the experiment developed nasal cancer (CIIT Docket #112DO, December 12, 1980; C–23) but were not affected by the viral infection provides a strong indication that the viral infection was an unlikely contributor to the development of carcinogenesis from formaldehyde exposure. Also, rats in a recent study at the New York University (Albert et al., 1982; C–84) have developed nasal cancer after exposure to formaldehyde without being infected by the virus.

The Panel also considered the possibility that the irritant effect of formaldehyde may contribute to its carcinogenicity. Research has indicated that agents used in animal tests may induce epithelial hyperplasia, a specific irritant effect, without carcinogenic or tumor-promoting activity (Saffioti and Shubik, 1963, C–30; Raick and Burdzy, 1973, C–31; Slaga et al., 1975, C–32). Other evidence suggests that agents producing epithelial hyperplasia may play a role in the process of tumor promotion once the induction of the carcinogenic process has been initiated by a carcinogen. (Boutwell, 1964, C–33; Hennings and Boutwell, 1970, C–34; Argyris, 1979, C–35). Based on these observations, the panel concluded that there was no evidence that "irritation," or the induction of epithelial hyperplasia, is sufficient to account for the carcinogenic activity of an agent such as formaldehyde. However, the Panel did recognize that the induction of epithelial hyperplasia may contribute to some extent to cancer activity by enhancing stages of carcinogenesis such as tumor promotion or tumor growth. However, the available information on this subject is inadequate and not necessarily applicable to the carcinogenic effect of formaldehyde on nasal mucosa.

In their reveiw of the literature and scientific experiments concerning the potential long-term health effects of formaldehyde, the Panel found suggestive evidence of formaldehyde's carcinogenicity in additional animal studies, including studies using other routes of exposure and other animal species. (Laskin et al., 1980, C–25; Mueller et al., 1978, C–26; Watanabe et al., 1954, C–27; Watanabe and Sugimoto, 1955, C–28). Some of these studies revealed evidence of carcinogenicity in tissues other than nasal mucosa. (Mueller et al., 1978; Watanabe et al., 1954; Watanabe and Sugimoto, 1955). In addition, the Panel reported that formaldehyde caused the malignant transformation of mouse Balb 3T3 cells *in vitro* (Brusick, et. al., 1980, C–88). The Panel also reported evidence of carcinogenicity in hamsters involving nasal and laryngeal carcinomas resulting from chronic inhalation of acetaldehyde, a short chain aliphatic aldehyde that is closely related to formaldehyde. (Feron and Woutensen, 1980).

The Panel found that formaldehyde is not unusual, when compared to other carcinogens, because of its cytotoxic effects. According to the Panel, most caracinogens have significant cytotoxic effects. The cytotoxic effects of formaldehyde may play a part in its overall carcinogenicity by increasing the number of cells undergoing DNA synthesis and by affecting the process of cell division. Both of these conditions may enhance the rate of tumor promotion. (C–1).

The Panel found that formaldehyde produces gene mutations or chromosomal aberrations in bacteria, yeast, insects, molds, and cultured mammalian cells. (C–1). Formaldehyde can produce these effects without the need for external metabolic activitation. There are similarities between the basic molecular mechanisms by which chemical mutagens and most chemical carcinogens appear to induce genetic effects. (C–8). These positive results noted by the Panel support the

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Environmental Health Sciences; Richard B. Everson, M.D., National Institute of Environmental Health Sciences; John F. Gamble, Ph. D. National Institute for Occupational Safety and Health; David W. Gaylor, Ph. D., National Center for Toxicological Research; David H. Groth, M.D., National Institute for Occupational Safety and Health; Han K. Kang, Dr. P.H., Occupational Safety and Health Administration; Richard A. Keenlyside, M.B., B.S., and M.R.C.P., National Institute for Occupational Safety and Health; J. William Lloyd, Sc.D., Occupational Safety and Health Administration; Paul Nettesheim, M.D., National Cancer Institute; Elizabeth K. Weisburger, Ph. D., National Cancer Institute.

[3] The intended concentrations for this study were 2.0, 6.0, and 15.0 ppm. The concentrations actually achieved were reported in intermediate reports as 2.1, 5.6, and 14.1 ppm. The final CIIT report, dated February 15, 1982, shows that for the overall study, the actual concentrations were 2.0, 5.6, and 14.3 ppm.

carcinogenic potential of formaldehyde. (C–1).

In its report, the Panel also evaluated available epidemiological information. Reports of studies specifically designed to evaluate the carcinogenicity of formaldehyde to human populations were not available to the Panel, although several such studies are in progress. The Panel considered several studies of workers exposed to formaldehyde (and other chemicals). (Moss and Lee, 1974; Bross et al., 1978; Decoufle, 1979; Matanoski, 1960.) In the judgment of the Panel (and the Commission), these studies were not designed to study the carcinogenic effects of formaldehyde and are difficult to interpret because of problems such as the lack of sufficient information caused by the small number of persons studied, the unavailability of data on exposure intensity and duration, and other confounding factors.

Additional support for the conclusion that formaldehyde should be presumed to pose a cancer risk to humans is derived from the fact that formaldehyde has been shown to cause cancer in more than one species of laboratory animal, as demonstrated in results presented at the CIIT Conference on Formaldehyde, November 20–21, 1980.[4] The epidemiological studies presented at the CIIT conference and by the Formaldehyde Institute at a December 5, 1980, meeting with the Commission do not have sufficient information to be considered conclusive because of the small population size, lack of exposure data, and other confounding factors (C–40; C–15; oral testimony of Kang, H., 3/20/81).

In a study conducted at New York University (C–84), 25 rats out of 100 developed nasal squamous cell carcinoma when exposed to a mixture of 14.6 ppm formaldehyde and 10.6 ppm hydrochloric acid. In such a mixture, there was a possibility of formation of bis(chloromethyl)ether a known carcinogen that has produced mainly nerve cell tumors (esthesioneuroepitheliomas) of the nose and squamous cell carcinomas of the lung in rats. Since the concentration of bis(chloromethyl)ether was estimated to be extremely low (less than one part per billion), and since the tumors and the formaldehyde concentration are similar to those in the CIIT study (14.3 ppm in the CIIT study), it is likely that formaldehyde was the primary carcinogen. This has now been confirmed by another study at New York University, in which rats are being exposed to 14.6 ppm formaldehyde with and without 10.6 ppm hydrochloric acid. After 18 months, about 10 rats out of 100 in each group exposed to formaldehyde (with and without hydrochloric acid) have developed nasal cancer, whereas none has been noted in animals exposed only to hydrochloric acid or in control animals. The type of nasal cancer observed is again the same as that found in the CIIT study, as well as in a previous study done at NYU. These results support the finding that formaldehyde causes cancer in animals.

Therefore, there are sufficient data to demonstrate that formaldehyde is carcinogenic in animals. At present, human epodemiology studies are insufficient to assess the carcinogenic risk in humans. However,

1. Formaldehyde can interact with genetic material and cause irreversible changes in several cell systems,

2. Formaldehyde is carcinogenic in animals,

3. There are no significant qualitative differences in the manner in which formaldehyde is metabolized by animals and humans, and

4. All known human carcinogens except arsenic (which is thought to be a tumor promoter) are also animal carcinogens.

Therefore, the Commission concludes that the available evidence indicates that formaldehyde poses a cancer risk to humans.

As with other carcinogens, there is no evidence demonstrating that formaldehyde has a threshold, or an exposure level below which there is no risk of cancer.[5]

Research conducted for the Commission has shown that U.F. foam insulation releases measurable amounts of formaldehyde in the laboratory even after installation under optimum conditions. (E–5, E–18) In addition, increased levels of formaldehyde have been measured in residences where U.F. foam insulation has been installed. (C–5) In some cases, the levels of formaldehyde in these homes are within an order of magnitude of the levels in the CIIT study that produced tumors in rats. (C–3, C–4, C–5, C–41)

The release of formaldehyde gas from U.F. foam insulation may occur over long periods of time, at least up to several years. (A–33) Based on reports by the Federal Panel and Mantel and Schneiderman, the risks to laboratory rats of developing cancer can be considered to apply to humans breathing the same concentrations of formaldehyde (in ppm) as the test animals. (C–1, C–7, C–8). This, together with the current understanding of carcinogenesis and the model recommended by the Panel to predict the degree of risk from formaldehyde, leads to the conclusion that consumers who are exposed to formaldehyde gas released from U.F. foam insulation

[4] The Federal Panel's conclusion that formaldehyde should be presumed to pose a cancer risk to humans, based primarily on animal data, is consistent with positions taken by other government agencies as well as current scientific research concerning cancer caused by chemicals. Based on an extensive review of relevant information, including the literature and testimony of expert witnesses, the Occupational Safety and Health Administration (OSHA) concluded that chemicals that cause cancer in animals should be regarded as being potentially carcinogenic in humans (C–10). In testimony before OSHA, Dr. Arthur Upton stated: (1) Chemicals that cause cancer in humans (with the possible exception of arsenic) cause cancer in animals; (2) most chemicals shown to induce cancer in one mammalian species also induced cancer in other species; (3) the pathological events that cause tumors to develop in animals and humans are similar and (4) the mechanisms for reaction with macromolecules in animals and humans are the same. (C–10). The IRLG document on risk assessment concluded that a close qualitative similarity has been established between the nature of the laboratory response of animals and humans to carcinogenic substances. (C–8). In addition, a report by Dr. David Rall presents data showing that almost all chemicals that cause cancer in humans cause cancer in animals. (C–11). A modified and expanded version of this list is presented by Althouse, Et al. (C–12).

[5] Presently available data do not show that there is a threshold for carcinogenicity, or a level of exposure to a carcinogen below which there would be no additional cancer risk, in animals or humans. The issue of whether there is a threshold for cancer has been explored at length by various government bodies and prominent scientists. Drs. Marvin A. Schnedierman, of Clement Associates and Pierre Decoufle and Charles C. Brown of NCI have stated that there is little or no evidence for the existence of thresholds in human cancer, and that convincing evidence for a threshold is not at hand either from animal or human data. (C–13) The IRLG and OSHA have also reached the same conclusion. (C–8, C–10) Similar conclusions were reached by Dr. Mathew Meselson, Harvard University; Dr. Samuel Epstein, University of Illinois; Dr. David P. Rall, Director NIEHS, Dr. Harold Steward, NIH; Dr. William Nicholson, Mt. Sinai School of Medicine; and Mr. Richard Peto, Oxford University in Testimony before OSHA. (C–10)

Experiments designed to produce data to determine a threshold exposure level which will not produce cancer in laboratory animals would be very difficult to perform, according to Dr. David Rall and Dr. Richard Griesemer. (C–14, C–15) Even if such data were available for animal populations under laboratory conditions, it would be difficult to apply these data with any certainty to the human population. Cancer is a multistage process in which a number of agents may act, and is irreversible once the process is initiated. (C–14, C–10) Since the human population is genetically more diverse than laboratory animals, and since humans, unlike laboratory animals, are exposed to a variety of substances, including carcinogens or substances which possess the ability to promote or enhance the carcinogenic process, humans can be expected to develop cancer from exposure to levels of a carcinogen that are lower than those observed in the laboratory. (C–13)

installed in their homes are subject to a risk of injury from cancer associated with the product.

The Commission's staff has prepared an estimate of this risk to consumers of cancer resulting from the release of formaldehyde gas from U.F. foam insulation installed in their residences. (C–42) Using the data from actual measurements in residences, the Commission's latest risk assessment estimates an upper value of risk of 89 cancers developing among the estimated population of 1.75 million individuals currently exposed in 500,000 U.F. foam insulated homes. This upper estimate of risk can also be expressed as follows: Any individual living in a home with U.F. foam insulation for 9 years after installation would, according to the assessment, have an additional risk of 51 in a million of developing cancer from the formaldehyde released by the insulation. This risk may also be expressed as up to 1.8 additional cases of cancer from every 10,000 residences insulated.

Using a different data base obtained from the Franklin Institute Research Laboratories, ORNL, and CPSC laboratory (E–5, E–18, E–20) to predict levels of formaldehyde in homes, the revised risk assessment projects an upper value of risk of 65 cancers developing among the estimated population of 1.75 million persons in U.F. foam insulated homes. This upper estimate of risk can also be expressed as follows: Any individual living in a home with U.F. foam insulation for 9 years after installation would have up to a 37 in a million additional risk of developing cancer from the formaldehyde released by the insulation. This risk could also be expressed as that up to 1.3 additional cancers could result from every 10,000 installations.

Although these estimates reflect the limitations and uncertainties of the data and the assumptions made, they do provide a measure of the potential magnitude of the problem associated with the levels of formaldehyde to which consumers are exposed from U.F. foam insulation.

In preparing the risk assessment for U.F. foam insulation, the Commission staff relied upon the model used by the Federal Panel to assess the risk of nasal tumors in rats caused by the inhalation of formaldehyde insulation.

The Panel chose a model known as the "multistage" model.[6] This model was chosen by the Panel for predicting the risk of cancer at exposure levels other than those in the CIIT study since it fits the experimental data on formaldehyde and is consistent with prevalent theories on chemical carcinogenicity. Many cancers are thought to develop through a series of stages. At high levels of formaldehyde, the exposure level-response curve from the CIIT study model curves upward, suggesting that formaldehyde affects more than one of these stages. However, because the effects of a carcinogen may be additive to existing processes in the development of cancer, there is a strong argument that at low doses the carcinogenic response is linear with exposure level. Thus, at low levels, a carcinogen may affect only one stage in cancer development. Other agents or other processes to which the human population is generally exposed could cause the further progression to cancer. (C–18) The treatment of the multistage model in the computer program recommended by the Federal Panel on Formaldehyde (Global 79) takes this into account by generating an upper confidence limit which predicts that, at low exposure levels, the rate of cancer induction will be proportional to the formaldehyde level.[7]

In the risk assessment that the Commission's staff had prepared at the time the ban was proposed, it was assumed that the exposure level-response curve was linear at all values lower than the lowest tested level in the CIIT study, 2.1 ppm. In the revised risk assessment which was prepared prior to issuance of the ban, however, the staff used the upper confidence limit generated by the multistage model computer program (Global 79), which determines, within the constraints of the data, the point at which the exposure level-response curve could become linear. Compared to the original assessment used at the time of proposal, this leads to a 2.4-fold reduction of the estimated upper value of risk in the revised assessment at exposure levels below approximately 1 ppm.

Global 79 generates a range of values from the experimental data in predicting cancer risk. The Commission staff has used the upper 95 percent confidence limit of the computer program in calculating the upper estimate of risk for residents of buildings with U.F. foam insulation. The upper estimate is based on the linearity at low exposure level concept described above. The revised risk assessment also calculates a lower estimate of risk (which is essentially zero), which is derived from a mathematical "best fit to the data" ("maximum likelihood" estimate) made by Global 79. This estimate, however, is considered by the Commission to be unlikely since it does not consider the linearity at low exposure level concept.

To provide estimates of the cancer risk to residents of homes with U.F. foam insulation, the risk assessment used both actual measurements of formaldehyde in homes and projected levels from the laboratory experimental data on the release of formaldehyde gas from samples of U.F. foam insulation.

The risk assessment establishes a relationship between the exposure level (dose) of the experimental animals in the CIIT long-term inhalation study and the tumors (responses) which resulted. This dose-response relationship is then applied to the human population exposed to formaldehyde. Differences in duration and concentration of exposure between the animal and human populations are taken into consideration.

The revised risk assessment uses the information from ORNL and the Commission laboratory on the offgassing of formaldehyde from U.F. foam insulation (up to 16 months after foaming of the panels, as compared to the 5 months used in the original risk assessment) that was obtained after the ban was proposed. The revised risk assessment also uses newer data from the CIIT study of cancer induction in test animals from formaldehyde gas (C–43). The new data include the development of nasal cancer in some of the animals tested at the 5.6 ppm formaldehyde level. The revised assessment also incorporates data from non-complaint U.F. foam insulated homes (homes in which there was no report of an adverse health effect) (C–42, App. A) and homes not insulated with U.F. foam. (C–42, App. B). The only data available at the time of the original risk assessment (C–6) were from "complaint" homes (U.F. foam insulated residences reporting an adverse health effect). The revised assessment also uses more data points from complaint homes than did the original assessment (C–42, App. A). Formaldehyde measurements used in the revised assessment are available for almost 9 years after foaming, rather than 7 years in the original assessment. The data

[6] Dr. David Gaylor of the National Center for Toxicological Research has selected the multistage model to provide a quantitative assessment of the dose-response relationship of formaldehyde levels to tumor rates observed in the CIIT study. (C–1) The multistage model is widely used for assessing the cancer risk to humans and has been chosen for general use by the Carcinogen Assessment Group at EPA. The current scientific literature contains extensive support for the selection of this model (C–13, C–16, C–17, C–18, C–19, C–20, C–21).

[7] If the Panel and the Commission staff had instead used the linear model, then the predicted risk would be significantly higher. (C–10).

from non-U.F. foam insulated homes in the revised assessment are used to subtract out a background level of formaldehyde in residences so that the excess risk due only to formaldehyde release from U.F. foam insulation is estimated for all foamed homes.

Comments

a. *Mutagenicity.* Some comments argued that mutagenicity studies are only useful to aid in the selection of chemicals for animal bioassay since, the commenters contend, there is no scientific basis for using mutagenicity studies in support of carcinogenicity studies, especially in projecting such risk to humans.

The Commission believes that positive mutagenicity studies indicate that the test chemical or its metabolites are capable of interacting with or modifying the genetic material of the organism or cells in the test system in such a way as to ultimately produce an irreversible genetic change. This is why such test are useful in the selection of chemicals for animal bioassay.

In the carcinogenic process, it is believed that a chemical or its metabolite(s) can also interact with or modify the genetic material of the affected cells, which is why many carcinogens are also mutagens.

Due to the similarity in the mechanisms involved, positive mutagenicity tests, together with positive animal cancer bioassay results, suggest that the chemical produces cancers in animals by interacting directly with the genetic material, rather than by some other epigenetic mechanism.

In the case of formaldehyde:

(a) Mutagenic changes were produced in viruses, bacteria, insects, and cultured mammalian cells (including human cells), with and without the use of other activating agents;

(b) Genetic changes were produced in yeast, insects, and mammalian cells, *in vivo* and *in vitro;* and

(c) Cancers were produced in two species of rats in different laboratories, as well as in mice.

Therefore, the evidence suggests that formaldehyde and/or its metabolite(s) are capable of interacting with the genetic material to produce cancer in animals. Since there are no qualitative differences in the metabolism of formaldehyde in humans and animals (C–1), these results (animal carcinogenicity and mutagenicity) suggest that formaldehyde should be presumed to pose a risk of cancer in humans, as was concluded by the Federal Panel on Formaldehyde (C–1), the National Institute for Occupational Safety and Health (NIOSH, C–70), Drs. Arthur Upton, Norton Nelson, and Roy Albert (letter dated 8/17/81, C–78), a working group of the International Agency for Research on Cancer (IARC, C–85), and others.

Some commenters state that Ames tests to indicate the mutagenicity of formaldehyde are negative.

While some of the Ames tests that have been conducted were negative (C–1) (Dupont Haskell Laboratories, American Cyanamid Company, and CIIT, others were positive (Sagaki and Ends, 1978, C–74, C–1). In each of the three Ames tests conducted through the National Toxicology Program (C–1), formaldehyde was shown to be mutagenic with and without metabolic activation. These differences in results are probably due to differences in the way the formaldehyde was presented to the test system.

Therefore, the Commission concludes that formaldehyde will be positive in appropriately conducted Ames tests.

b. *Carcinogenicity.* For the reasons explained below, many commenters contended that the evidence for the carcinogenicity of formaldehyde is inadequate to justify the conclusion that formaldehyde poses a carcinogenic risk to humans.

Epidemiological studies. A number of commeters argued that there were studies showing that persons occupationally exposed to formaldehyde did not develop cancer at higher than normal rates. The Commission believes, however, that these studies do not support this conclusion. Both Wong (1980, C–82) and Marsh (1980, C–64) studied workers in the formaldehyde industry, and Walrath and Fraumeni (1980, C–81) examined morticians. In these studies, increases in cancers of the prostrate and brain and Hodgkins disease (Wong, 1980), cancer of the digestive system (Marsh, 1980), and cancer of the skin, brain, and kidney and leukemia (Walrath and Fraumeni, 1980) were noted. Only the increase in skin cancer noted by Walrath and Fraumeni was statistically significant. However, none of these studies included enough deaths among individuals potentially exposed to formaldehyde (146 in Wong, 136 in Marsh, and 1106 in Walrath and Fraumeni) for a meaningful evaluation.

Further, these studies suffer from a number of inadequacies, including:

1. In all three studies, the concentrations and the duration of exposure are not known.

2. In the studies by Marsh and Wong, workers with short durations of exposure (i.e. one year on the job) were included.

3. In all these studies, some workers with insufficient elapsed time since first exposure (to account for the latency period noted with most known carcinogens) were included.

4. In the Walrath and Fraumeni study, morticians who died with an active license were included while those who died in retirement were not.

These factors, in addition to the small number of deaths examined, lead to the conclusion that these studies are not sensitive enough to provide a statistically significant result. Therefore, these studies should be considered inconclusive and not as demonstrating that formaldehyde is not carcinogenic in humans. A similar conclusion was reached by a working group of the International Agency for Research on Cancer (IARC, C–85) in 1981.

There are additional reports suggesting that there may be increases in the cancers of the oral cavity, pharynx, and larynx (Decouflé, 1979, C–38); oral cavity and pharynx (Moss and Lee, 1974, C–36); nasal cavity (Bross et al., 1978, C–37); and liver and lung (Matanoski, 1980, C–39) in occupations where individuals may be exposed to formaldehyde. Finally, in an aldehyde factory, exposure to closely related aldehydes, including acetaldehyde, has been associated with upper respiratory tract cancers (squamous cell carcinomas) in exposed workers (Bittersohl, 1974, C–47). However, the Commission does not conclude that these studies demonstrate a definite link between formaldehyde and human cancer.

Although it is inappropriate to conclude that existing human epidemiological studies show that formaldehyde is or is not carcinogenic, the Commission believes that all of the other available evidence (CIIT study, etc.) indicates that formaldehyde poses a carcinogenic risk to humans.

Risk assessment. A commenter disputed the portion of the CPSC risk assessment that assumed that the risk of cancer at low dose levels of formaldehyde bears a linear relationship to exposure level. The commenter contends that in order for low dose linearity to apply, the following must occur:

1. The test carcinogen and other background carcinogenic processes must act by some common mechanism.

2. The test carcinogen must be direct acting.

3. The test effects with other carcinogenic processes must be additive.

4. The test carcinogen must not have a threshold; to assume that it does not

ignore what is known about DNA repair, detoxification, immunologic rejection mechanisms, and tumor-promoting agents.

The commenter further stated that formaldehyde cannot be subject to the low dose linearity hypothesis since the evidence indicates that formaldehyde acted as a promoter by causing gross pathological damage, inflammation, and irritation.

CPSC does not necessarily accept all of the commenter's preconditions for the applicability of low dose linearity; nevertheless, there is good reason to believe that all the preconditions set out are in fact met by formaldehyde. These reasons are as follows:

1. Formaldehyde, as well as many other carcinogens, is a genotoxic agent.

2. Both the mutagenicity data and the available biochemical data indicating that formaldehyde can react with the genetic material provide support for the hypothesis that formaldehyde is a direct acting carcinogen.

3. Formaldehyde has produced enhanced carcinogenic effects when combined with diethylnitrosamine (Dalbey and Nettesheim, 1980, C–54). In addition, evidence is mounting to show that the effects of some carcinogens may be synergistic, i.e., the combined effect of two carcinogens is greater than an additive effect, such as in the case of asbestos and smoking. Formaldehyde also enhances the mutagenic activity of ultraviolet light, peroxide, and x-rays.

4. Contrary to the comment, there are no biological or biochemical data to indicate a threshold for formaldehyde, because:

(i) In order for a threshold to exist, processes such as DNA repair, etc., must be 100 percent efficient; that is, each and every defect caused by formaldehyde must be corrected. Dr. Arthur Upton (45 FR 5128; January 22, 1980) has stated, "We know of repair mechanisms that operate on the gene, but we know that they do not operate with 100 percent efficiency, so there is always some residual level of damage that is not repaired. We also know that there can be misrepair of damage, and there is some evidence that it is, in fact, the misrepair, the faulty repair, that eventually leads to cancer." Dr. Bertram Dinman has also stated (on the same page in the **Federal Register** cited above). "I do not think there is any biological phenomenon which could be expected to occur 100 percent of the time." The Commission agrees with these statements.

(ii) Further, in order for a threshold to exist, a chemical must not only have a no-effect level by itself, but also it must have a no-effect level in combination with all other carcinogenic processes and with all other carcinogens to which a human may be exposed. Since formaldehyde interacts with peroxides, ultraviolet light, and x-rays (known carcinogens) in producing genotoxic effects, and in view of the enhanced carcinogenic effect observed with diethylnitrosamine, there is good reason to believe that low levels of formaldehyde can contribute to ongoing carcinogenic processes.

The commenter's statement that the low dose linearity hypothesis does not apply since formaldehyde acts as a promoter ignores the evidence of genotoxicity, including cell transformation studies, and the carcinogenicity studies (see above) that clearly demonstrate that formaldehyde is a complete animal carcinogen and not just a promoter.

The commenter also stated that even if the hypothesis is accepted that the dose-response curve is linear at low dose, CPSC may have overestimated the risk from formaldehyde by 59 times in its original risk assessment.

The linear response at low dose hypothesis argues that other agents, as well as formaldehyde, contribute to carcinogenesis. Thus, the progression to a cancerous state, contributed to by formaldehyde, may be furthered by other environmental agents on background processes in the body. The commenter provided a formula which is an attempt to determine if such background carcinogenic processes are indeed sufficient to support the assumption of low dose linearity in the risk assessment model used by CPSC.

The commenter, however, errs in the use of his formula, and his claim that CPSC might have overestimated the risk by 59 times is incorrect for the following reasons:

1. Only background processes leading to nasal cancer were considered. Although only nasal cancer was caused by formaldehyde in rats, there is no reason to conclude that it can cause only nasal cancer in humans, for species differ in their response to carcinogens. (Bis-chloromethly ether, for example, causes nasal and lung cancer in rats and only lung cancer in humans. C–1). The Commission believes that background processes leading to all respiratory cancers need to be considered.

2. The commenter mistakenly used common logarithms where natural logarithms were called for.

3. An infinite number of stages were assumed in the transformation of normal cells to malignancy. To address the methodology used by CPSC, the number of stages predicted by the model, 3, should have been used.

4. A nasal cancer rate of 70 per million in the U.S. population was used, but no reference was cited for this figure. Depending on what years were used in the determination of such rates, and whether incidence or mortality rates were used, the lifetime rate could be from 230 to 450 per million (data from the SEER (Surveillance Epidemiology End Results) and NCI data bases, composite average annual rate of the years 1973–1978, or from the Atlas of Cancer Mortality for U.S. Counties; 1950–1969).

5. The commenter calculated the excess risk (that risk due to formaldehyde) based on the length of time that the rats were exposed in the CIIT study. However, since the CPSC risk assessment addressed the carcinogenic risk due to exposure to formaldehyde released from U.F. foam insulation, the excess risk should be calculated from the length of time that humans, not rats, are exposed. If all these factors are taken into consideration, there is no potential overestimation (based on respiratory cancer rates), or the potential overestimation in the original risk assessment is only by 2.7 to 3.7 times (based only on nasal cancer rates), not the 59-fold overestimation claimed by the commenter.

Another comment stated that CPSC risk assessment model is not based on the "most likely" estimate of risk but on the "upper 95 percent confidence limit" estimate of carcinogenic response and that other models are more appropriate for this purpose.

In the CPSC risk assessment, the use of the "upper 95 percent confidence limit" is derived from the computer program Global 79, which provides an estimate of risk that statistically takes into account the likely biological effect of other environmental carcinogens and ongoing carcinogenic processes in the body. Under these conditions, a doubling of a low dose would lead to a doubling of the risk from that dose. At high doses, formaldehyde could contribute even more to the carcinogenic process which would lead to an upward curvature of the dose-response curve, as seen in the CIIT study.

The "most likely" estimates from the multistage and other models do not consider that formaldehyde can interact with other environmental carcinogens and ongoing carcinogenic processes within the human body. The ability of formaldehyde and many other carcinogens to interact with the genetic material makes it likely that they also interact with ongoing carcinogenic processes within the human body. Thus,

the true risk is probably closer to a predicted risk based on the upper 95 percent confidence limit of Global 79 than to one predicted from any other model. If formaldehyde could not interact with the genetic material, the predicted risk would be low. However, the Commission believes this is unlikely.

One commenter contends that the CPSC staff statement that "the best fit of the data estimate makes no provision to take into account linearity at low dose" is misleading, if not untrue. In support of this argument he notes that the CIIT formaldehyde data show no evidence of a linear dose-response curve.

However, the data from a long-term animal bioassay in a high dose region do not have to show a linear trend for linearity at low dose to apply. In the case of the CIIT study, the region predicted by the upper confidence limit from the computer program Global 79 for a linear dose-response relationship is at lower formaldehyde levels than were used in the CIIT study.

One commenter notes that the multistage model assumes that transition rates for each of the individual stages leading to carcinogenicity are linear with dose. The commenter contends that the animal toxicity data on formaldehyde do not support the theory of the model. To support this contention, he notes that 15 ppm exposure for one week to a rat will destroy the nasal tissues, while a 1 ppm exposure for 7 days a week, 22 hours a day, for 6 months will not result in any cellular changes in the same species of animal. From this, the commenter concludes that since there is no destruction of nasal tissue at the 1 ppm dose, the response is not linear as assumed by the model.

However, the animal toxicity data cited by the commenter are not relevant to the model. The commenter assumes that the physical irritant effect on respiratory epithelial cells noted at the 15 ppm dose is the mechanism that causes the cancer to develop. However, as explained above, this is not the case. The cancers are developed by the effect of formaldehyde on living cells. In the case of the 15 ppm exposure, after the initial destruction of the respiratory epithelium, this cell layer is replaced by a squamous cell layer that is more resistant to the irritant effects of formaldehyde. It is the action of the formaldehyde on these squamous cells that produced most of the cancers observed in the CIIT study. The Commission concludes that if the original respiratory epithelial cells had not been destroyed, the formaldehyde would have had the same effect. This conclusion is supported by the fact that 2 cancers of non-metaplastic cells developed in the CIIT study.

A commenter argued that the model is inappropriate because it assumes that the effects of formaldehyde are irreversible. However, the model does not make this assumption.

The model develops empirical constants based on the bioassay data. These constants could have forward and backward components. For example, formaldehyde could initiate lesions in the genetic material (DNA). Some of these could be reversed by DNA repair, while others would not be. The fact that some are reversed does not invalidate the model. If there were no such process as DNA repair, one might expect the permanent damage to DNA to occur more often. If so, the model constant(s) would be altered.

A commenter stated that the assumption that formaldehyde acts by a genotoxic mechanism is not confirmed in a recent *in vivo* mammalian study which is soon to be submitted. Therefore, the commenter argues, DNA repair mechanisms and other defense mechanisms play a key role; only when they are overwhelmed, as in a 15 ppm exposure for the lifetime of a rat, are chronic effects occurring.

The commenter did not submit the actual data regarding this study, so no specific response can be made until the study is released. Regardless, there is a large amount of other short-term testing data available which show that formaldehyde can act by a genotoxic mechanism, as discussed above.

Furthermore, there is no evidence that exposure to 6 or 15 ppm formaldehyde overwhelms DNA repair and other detoxification mechanisms. A common detoxification mechanism, that of conversion of formaldehyde to carbon dioxide, was discussed by Dr. Gibson of CIIT in a presentation to the CPSC staff (C–83). When rats are exposed to radiolabeled formaldehyde, the *percentage* of radiolable found as labeled carbon dioxide is the same at high exposure levels (approximately 13 ppm) as at low exposure levels (approximately 0.6 ppm). If the detoxification process was overwhelmed, one would expect the percentage of formaldehyde converted to carbon dioxide at 13 ppm to be lower than the percentage converted at 0.6 ppm. Also, there was no increase in the amount of extractable formaldehyde in the nose following inhalation of 13 ppm of formaldehyde.

Also, there is no evidence that any biological process is 100 percent efficient. Thus, there would be no threshold (based on DNA repair, for example) as long as DNA repair does not correct a mistake in each and every case.

A commenter also contends that the assumption that formaldehyde can interact with other environmental carcinogens and carcinogenic processes is not supported by available animal toxicity data. The animal toxicity data referred to by the commenter consists of three studies. Each study will be discussed separately below.

(1) In a study by Nettesheim et al. in 1977 (C–66), hamsters were exposed to benzo(a)pyrene and various concentrations of formadehyde. No grossly visible nasal tumors were observed. The benzo(a)pyrene, however, was injected intratracheally and is known to cause respiratory (distal to the larynx) tract lesions. The formaldehyde was inhaled, and there is no evidence that the two chemicals, by different routes of exposure, reached common targets. Thus the study would not be expected to show an interaction between these carcinogens. Also, the study concentrated on all parts of the respiratory tract distal to the larynx, and nasal tissues were not closely examined. Finally, the incidence of respiratory tract tumors was so high (70–80%) that any potential interactive properties of another chemical might be masked. Thus, it is unlikely that the design of the study would lend itself to the detection of interactive effects.

(2) In a study by Horton et al. in 1963 (C–58), mice were exposed to coal tar aerosol and formaldehyde. No evidence was found for any carcinogenic effects attributable to formaldehyde. However, only the lungs and trachea were histopathologically examined. Nasal tissues were not examined. Also, only 10 mice were alive after 58 weeks, and all mice were dead by 68 weeks. Thus, given the small number of animals and the lack of enough time to allow potential tumors to develop, a negative result is not unexpected.

(3) A study (as yet unpublished) by Dalby and Nettesheim (C–54) exposed hamsters to diethylnitrosamine (DEN) and formaldehyde. An analysis of tumor data indicated that formaldehyde acted as a tumor enhancing agent in the trachea as measured by the multiplicity of tumors, but this study was limited because diethylnitrosamine (DEN) alone produced tumors in a high proportion of the animals. Still, when the number of tumors per tumor-bearing animal was examined, the group receiving formaldehyde prior to each DEN injection had significantly more tumors in the trachea than did the group exposed to DEN alone. The authors

stated that formaldehyde enhanced the carcinogenic effects of DEN.

It is important to realize that while these studies may not show an interactive effect for the number of animals developing cancer, they also are not sufficient to show the lack of such an effect. In fact, the Dalbey and Nettesheim study indicates the possibility of such an effect. There is, also, other information demonstrating that formaldehyde can have an interactive effect. Some of this information (the interaction with x-rays, ultraviolet light, and hydrogen peroxide) is discussed in the Commission's latest risk assessment. More recently, a CIIT study found that in cultured mammalian cell experiments, transformation of such cells to a malignant state could be caused by formaldehyde and promoted, during or following formaldehyde exposure, by phorbol esters. Thus, formaldehyde acts as a classic initiator in its interaction with a known carcinogenic promoter. This study was initially reported by CIIT in November, 1980 (C–23) and recently discussed by Dr. Gibson (C–83).

A commenter stated that preliminary data from an initiator-promoter study which will be published in 1982 indicates that formaldehyde is neither an initiator or promoter of carcinogenicity.

The commenter did not supply any data to verify this claim, so a response to the study cannot be made at this time. However, the results of the recent initiator-promotor study done by CIIT (mentioned above) clearly demonstrate that formaldehyde is able to initiate carcinogenic transformation. This is also shown by the cell transformation study performed by Brusick et al. (1980, C–88).

A commenter stated that, using CPSC's predicted excess cancer rate at 1 ppm, the nasal cancer rate would be predicted to be 1650 cancers per million exposed. This predicted excess is over 20 times higher than the human background rate for nasal cancer.

The 1650 cancers per million cited by the commenter would be predicted from exposure to formaldehyde at a level of 1 ppm for 6 hours per day, 5 days per week, for a little over two-thirds of a lifetime. The only setting where such an exposure might occur to humans is an occupational one, and epidemiological studies are under way to assess this situation. Obviously this type of exposure would not be predicted for persons living in homes insulated with U.F. foam insulation. We note, however, that the cancers expected to be caused in humans by formaldehyde would not necessarily be only nasal cancers.

A commenter argues that CPSC assumes that the administered formaldehyde concentrations in the animal studies are equal to the effective dose, or the actual amount of formaldehyde that reaches the target tissue. The commenter stated that the source of this assumption is only a "mathematician."

However, CPSC did not assume the concept stated by the commenter. What CPSC assumed was that if a rat breathed 1 ppm for life and a human breathed 1 ppm for life, the cancer risks would be similar. This assumption is clearly stated in the CPSC risk assessment and is the most reasonable one to make in the absence of data indicating otherwise. This assumption was recommended by Drs. Schneiderman and Mantel (C–7). Dr. Schneiderman had a long career at the National Cancer Institute as Associate Chief of the Biometry Branch, Associate Director for Field Studies and Statistics, and Associate Director for Science Policy. He is an associate editor of *Cancer Research.* Also, Dr. Richard Griesemer, the former head of the National Cancer Institute's Animal Bioassay Program and former Chairman of the Federal Panel on Formaldehyde as well as one of the nation's leading cancer researchers, supported this concept in his testimony before the Canadian Board on U.F. foam insulation.

A commenter contends that CPSC's adjustment for less than lifetime human exposures contains a mathematical error and states this method is no longer used by EPA.

The "mathematical error" referred to by the commenter is that tumor rates are often related to powers of time and that this was not taken into consideration. CPSC purposely did not arbitrarily assume some power of time adjustment for human exposure. The reason is that the relationship to time most likely involves the ability of the particular carcinogen to affect more than one stage over the period of tumor development. If only one stage is affected by formaldehyde and other stages are affected by other carcinogens or processes (i.e., at low exposure levels), the power of time phenomenon would not necessarily apply. The revised risk assessment clearly states that "this simple proportional relationship (i.e., not a power relationship) is used in the absence of data showing that any other relationship would apply at low exposure levels of formaldehyde." This does not conflict with the methodology used by EPA. EPA adjusts the risks by a power of time adjustment for high dose animal data, if animals had not been exposed to an agent for an entire lifetime. It is true that CPSC did not make such an adjustment on the CIIT animal data. Had CPSC made the adjustment the commenter is referring to (the one used by EPA), the overall estimated risks would have been increased (by a factor of approximately 2).

A commenter argued that an extrapolation model that incorporates time-to-tumor data is desirable.

CPSC agrees that incorporation of time-to-tumor data into a model (which can be done with the model used by CPSC in the revised risk assessment) might give a more precise estimation of the predicted risk. Because time-to-tumor data had not been publicly released by CIIT, the CPSC's revised risk assessment made the assumption that all animals at risk were exposed to formaldehyde for the entire two years of the study. However, many animals, especially those with nasal tumors, died before two years. Therefore, the revised risk assessment probably underestimated the risk based on this aspect, and the estimated risk would probably increase if time-to-tumor data were taken into account.

A commenter disagreed with the Commission's analysis of the New York University (NYU) data that concluded that the cancers in that study were probably caused by genotoxic effects and not by irritation. The results of the NYU study showed no cancers in the animals exposed only to hydrochloric acid (HC1) and no increase in cancers in the rats exposed to both formaldehyde and HC1 compared to the rats exposed only to formaldehyde. The commenter states that this study provides no basis for determining that irritation is not the mechansim for producing the cancers seen in the animals exposed to formaldehyde, because the level of HC1 exposure was too low to produce irritant effects. The commenter contends that the extent to which animals reduce their respiratory rate is an objective criterion for determining how irritating a level of chemical exposure is and that 300 ppm would be needed to reduce the animal's respiratory rate by 50 percent. Thus, the commenter concludes that the 10 ppm exposure to HC1 in the New York University study was far below any irritant effects of that compound.

The commenter quotes Dr. Sellakumar (in the NYU study progress report) as saying "*Striking damage* was seen in the nasal cavities of the exposed rats," and then states that CPSC overlooks this.

However, upon clarification with Dr. Sellakumar, it was found that (1) there was some irritation in animals exposed to 10 ppm HC1 (this refutes the

commenter's contention that there were no effects of HC1), (2) there was more damage in formaldehyde exposed animals, and (3) even more damage occurred in animals exposed to both formaldehyde and HC1, compared to formaldehyde alone. Still, the percentage of formaldehyde exposed animals developing tumors was not enhanced by exposure to HC1. Thus, the tumors produced were unrelated to the degree of irritation, but were related to the presence of formaldehyde.

In criticizing the CPSC staff risk assessment, a commenter stated: "This remarkable risk assessment goes on to state that the upper estimates of risk are based on the assumption that formaldehyde is able to interact with other environmental carcinogens. This assumption is quite unwarranted; * * * indeed, if the formaldehyde were actually to react with carcinogens it does not follow that the reaction products are carcinogenic."

However, "interact" in this context means that the two chemicals can biologically interact with each other in causing carcinogenesis, each being able to affect the cell(s) undergoing transformation. It does not refer to the two individual chemicals chemically reacting with each other (as in a test tube, for example).

A commenter notes that in the revised CPSC risk assessment, the graph of formaldehyde concentration as a function of time implies a figure of roughly 0.06 ppm as an average level in U.F. foam insulated homes. The commenter argues that these figures coincide closely with the University of Iowa average of 0.05 ppm for foamed homes and that there is no statistical difference between the data for U.F. foamed homes and the University of Iowa average of 0.03 ppm for unfoamed homes.

First, the commenter is incorrect in stating that the University of Iowa data from foamed and unfoamed homes show no statistical difference. As explained later in this notice, there is a significant difference in formaldehyde levels in these two types of homes based both on the University of Iowa data only and on other accumulated data.

Secondly, the data in the revised CPSC risk assessment pertain to the formaldehyde level, as related to the age of the foam, in an average U.F. foam insulated home over a 9-year period after installation of the foam. The levels in a U.F. foamed home are initially high and appear to asymptotically approach background levels as the foam ages. If one were to average all of the data over a 2-year period after installation instead of over a 9-year period, the average would be 0.14 ppm, not 0.06 ppm. Similarly, if the average of all of the data was hypothetically taken over a 20-year period after installation instead of a 9-year period, the average formaldehyde level might be less than the average for the first 9 years. Averages of this type, that include mainly older installations, would not fully reflect the fact that for some prolonged time after foaming, but especially during the first 40 weeks or so, the levels of formaldehyde in foamed homes are significantly higher than the levels in unfoamed homes. In the University of Iowa data, the average age of the foam is over 2 years, and the formaldehyde levels therefore would be expected to be lower than those observed during the first year after installation. As stated above, these data still showed a significant difference in formaldehyde levels between foamed and unfoamed homes.

Finally, if one averages the level from the graph in the revised CPSC risk assessment over a 9-year period by the integrative technique by which the average exposure level used to predict the risk is derived, the average is 0.08 not 0.06 ppm as "eyeballed" by the commenter. Thus, the commenter's conclusion that there is no difference between formaldehyde levels in foamed and unfoamed homes, based on data in the revised risk assessment, is incorrect.

A commenter notes that the revised CPSC risk assessment contains the observation that there was no significant difference between formaldehyde levels in complaint versus non-complaint homes. The commenter states that this further confirms the Thun et al. study of New Jersey (A–41) and the low level complaint data from other states and contends that this indicates that the vast majority of complaints do not arise from formaldehyde exposure, but result from the publicity given this subject.

The data in the revised CPSC risk assessment cannot be related to the Thun et al. study since the latter did not distinguish between formaldehyde levels in complaint and non-complaint homes. Additionally, the fact that there is no significant difference between formaldehyde levels in complaint and non-complaint homes does not mean that formaldehyde is not causing adverse health effects. The fact that some persons complain about formaldehyde probably reflects the varying sensitivity of the population to formaldehyde irritation, as well as the varying levels found in different homes.

A commenter stated that 48 Massachusetts readings of 0 and 0.01 ppm were erroneously excluded from the tabulation in the original CPSC risk assessment and that if they had been included, the predicted risk would lower.

These Massachusetts readings were not used in the original risk assessment, since the actual formaldehyde levels were unknown due to a misreporting of these readings when they were first transmitted to CPSC. Clarification of the Massachusetts readings with the State chemist indicated that any reading of "trace" or "less than 0.01 ppm" should really be "less than 0.1 ppm." In each of these cases, some formaldehyde, although not quantified, was present. In the revised risk assessment, these readings were assigned values based on recorded readings from other, comparable samples.

A commenter noted that in the (original) CPSC risk assessment, two offices, one mobile home, and three Draeger tube measurements were used.

This is true. These data points were mistakenly included, and their elimination would lower the calculated risk for complaint homes. It would have virtually no effect, however, on the risk assessment for all U.F. foam insulated homes, since the latter estimate was based on the Franklin Institute Research Laboratory study. (E–5) These measurements are excluded in the revised CPSC risk assessment.

A commenter stated that by using median rather than mean values for formaldehyde levels to estimate the cancer risk, the risk of 290 per million in complaint homes calculated in the original risk assessment would be reduced to 220 per million.

The median is the middle value in a series; it does not take into account the magnitude of the values. For example, in the series *1, 2, 10,* the median is *2,* and it remains *2* regardless of the value of the third series member. Only the mean (4.3) considers that value. Hence, the median is not the appropriate measure to use in a risk assessment. Use of median values would underestimate the contribution to the risk from that segment of the population exposed to high concentrations.

One commenter believes that the original CPSC risk assessment assumes that formaldehyde gas would be released from U.F. foam insulation for 7 years at a constant rate. However, that is not correct. The CPSC risk assessment took into account the data showing that formaldehyde emission from U.F. foam insulation decreases as the U.F. foam insulation ages.

A commenter states that the risk assessment model used by the Commission is not validated by the CIIT

experiment with mice. The commenter contends that if it were, 37 out of the 60 mice remaining should have had nasal tumors.

The commenter overlooks the likelihood that the "effective dose" to mice was much lower than that to rats, due to a difference in the respiratory response to formaldehyde between these species. In fact, the "effective dose" to rats at 6 ppm is similar to that in mice at 15 ppm. The responses at these two levels in the respective species were similar.

A commenter stated that from "background" levels of formaldehyde, the CPSC risk assessment would project that the lifetime "background" risk for the entire U.S population is 68,000 lifetime cancers. The commenter noted that the incidence of nasal cancer in the U.S. population is far below the value predicted by the CPSC risk assessment and argues that the risk assessment therefore overstates the risk.

The background rate in the U.S. population for malignant neoplasms of the nasopharynx and cancer of the nose, nasal cavities, middle ear and nasal sinuses is 1.2 per 100,000 per year (SEER, NCI Monograph 57). Over a lifetime of 70 years to 220,000,000 people, this amounts to about 185,000 cancers. The figure of 68,000 is well within this number. Additionally, if the rates for tracheal, pharyngeal and other upper respiratory tract cancers are considered (significant tracheal changes were observed in the CIIT study), the 68,000 projection becomes an even smaller part of the whole. Therefore, the commenter's argument does not establish that the CPSC risk assessment overestimates the risk of cancer from formaldehyde.

A commenter argued that the CPSC risk assessment ignores the concept of concentration-response dependence and instead assumes that the cumulative formaldehyde exposure is solely responsible for toxicity and carcinogenicity.

The Commission agrees that there is a concentration dependence for toxicity, and that there is a concentration dependence observed for carcinogenic effects *at high exposure levels*, as demonstrated by the CIIT exposure level-response curve.

CPSC's risk assessment takes such a concentration dependence for carcinogenic effects into account; it does not ignore it. However, once the exposures are in the low-dose-linearity region of the dose-response curve, the calculated risks are identiccal whether calculated from cumulative dose or concentration level.

The risk assessment clearly explains how such a concentration dependence at high exposure levels is compatible with the linearity at low exposure level concept, and why such a compatibility is biologically likely.

The Commission does not believe that the concentration dependence observed for cytotoxicity is relevant to the prediction of cancer risk. As previously explained in other comments on this issue, the early destruction (ulceration) of the respiratory epithelium (and resulting cell turnover) has not been demonstrated to be a prerequisite for carcinogenesis due to formaldehyde. The original destroyed cell layer is replaced by squamous cells, which are much more resistent to the irritative effect and cytotoxic capability of formaldehyde. It is the squamous cells, not the destroyed respiratory epithelial cells, from which the large number of carcinomas derive. Additionally, the final report of the CIIT study indicates that two carcinomas appear to have derived from the non-metaplastic cells in rats exposed to 15 ppm.

If cytotoxicity and cell turnover were prerequisites to formaldehyde-induced cancer, one would expect that more cancers would be observed in the New York University study where animals were exposed to formaldehyde and HCl together as compared to formaldehyde alone, since the cellular damage was considerably more extensive in the former compared to the latter. But, this was not the case; the responses were almost identical. Acrolein is another example of a chemical that causes irritation but not cancer.

Another comment contended that the New Jersey study (Thun et al., 1980, A–41) is biased since all symptoms appearing during the month of installation were considered to be "post foam" related.

The Commission staff obtained the raw data from Thun et al. and found that there were 18 such instances. Since it was unclear from these data whether symptoms appeared before or after foam installation, if it is assumed that the pre- and post-installation distribution of complaints is even,[8] nine cases could be subtracted from the Thun et al. total of 108 persons with post-foam symptoms. In that event, there would have been 99 observed new symptoms in the "post foam" population compared to 83 expected. Thus, the Thun et al. study would still show an increase in new symptom acquisition after foaming.

This commenter also states that there is a recall bias in the Thun et al. study. By this, the commenter expresses his belief that persons who know that there may be a connection between the installation of U.F. foam insulation and adverse health effects will tend to remember symptoms occurring after the installation of insulation to a greater degree than they would remember symptoms occurring before the installation.

The recall bias mentioned above is unmeasured and speculative, and, although memory may be an imperfect mechanism for the recall of past events, there is no justification for concluding that any such bias would invalidate the findings of the study. Furthermore, persons who were satisfied with their U.F. foam insulation could tend to disregard the significance of symptoms occuring after its installation.

Another comment stated that CPSC used statistically significant numbers in combination with non-significant ones in its interpretation of the Thun et al. study.

In this sutdy, the rate of acquisition of new symptoms in the control population was higher, but not singificantly, than the acquisition rate among the acqusition rate among the pre-foamed home populatio. The post-foam acquisition rate, however, was significnatly higher than that in the control population. It is not invalid, however, to utilize numbers in combination, if claims for statistical significiance are not made without further analysis.

SPSC included the non-significant increase in its interpreation of the study. If the non-significant adjustment is not made, however, and just the significant data are used, the UFFI homes expected to have a complaint due to UFFI installation would be reduced from 7 percent to 4 percent.

CIIT study. A commenter stated that the CIIT study is flawed because formaldehyde exposure at 15 ppm caused ulceration and acute exudative inflammation, and thus formaldehyde should not be considered an animal carcinogen but an "ulcerogen." The commenter claimed that ulceration and exuddative inflammation present in the noses of animals exposed to 15 ppm of formaldehyde is anlagous to chronic ulcerative colitis wherein mucosal ulcerations persist for months and years and result in ongoing exudative inflammation. He points out that chronic ulcerative colitis and other conditions with similar pathology, such as regional ileitis, chronic gastritis, and fibrocystic disease of the breast, cause cancers in humans. Thus the commenters states that cancers observed from

[8] This is not likely to be a valid assumption, since symptoms often appear immediately after foaming.

formaldehyde exposure are due to ulceration and accompanying exudative inflammation. In addition, the commenter contends that severe pain in exposed animals led to perisistent elevation of corticosteroid levels which in turn led to accelerated cancer development.

This statement has no basis in fact, since none of the patholigists (including the IRLG pathologists) who examined the slides from this study observed "ulcerative inflammatory changes" at any of the scheduled sacrifices (i.e. 6 month, 12 months, 18 month). [This was confirmed by the final report of the CIIT study]. Further, such lesions have not been observed in a similar study currently in progress at New York University where nasal cancers are appearing in rats exposed to formaldehyde.

The results from another CIIT study (C–83) showed that there was ulceration (areas where there was destruction of respiratory epithelium) and acute exudative inflammation of the nasal cavity for the first few days (1–9 days) when rats are exposed to 15 ppm of formaldehyde. However, when exposure to formaldehyde was discontinued for 2 days, as was the case every weekend in the CIIT cancer bioassay, areas which had been frequently ulcerated were now covered by single thin strap cells and were no longer ulcerated. Thereafter, the respiratory epithelial cell layer destroyed during initial exposure to formaldehyde was replaced by layers of seuamous epithelial cells which are considered to be much more resistant to irritation. The histopathology at 6, 12, and 18 months in the chronic CIIT study provided no evidnece of ulceration adn associated effects similar to those present in chronic ulcerative colitis, regional ilietis, chronic gastritis, or fibrocystic disease of the breast. Prlonged ulceration and associated changes ahve also not been observed in the NYU study currently in progress. Thus, the contention that formaldehyde causes cancer because it produces long-standing ulceration and exudative inflammatory changes akin to ulcerative colitis etc., is incorrect. Further, the commenter's analysis did not take the following data into consideration:

(a) Cancers have not been observed in hamsters exposed to formaldehyde (C–66), even though short term ulceration and exudative inflammation similar to that in the rats exposed to 15 ppm of formaldehyde in the CIIT study was present.

(b) Genetic studies (mutagenicity and chromosomal rearrangement) (Cp1) demonstrate that formaldehyde is capable of direct interaction with the genetic material.

(c) Maligant transformation studies at CIIT (C–83) and elsewhere (C–1) indicate that formaldehyde can cause changes in the genetic material to induce cancers.

(d) Studies showing that formaldehyde can react with DNA, proteins, and RNA (C–1).

(e) The NYU study (C–84) in which formaldehyde with or without hydrochloric acid vapor produced similar numbers of cancers, although the degree of inflammation with hydrochloric acid and formaldehyde together was greater than with formaldehyde alone. Further, in rats exposed to hydrochloric acid alone, some inflammatory changes have been noted but cancers have not been observed.

Contrary to the commenter's assertion, formaldehyde has been determined to be an animal carcinogen by a number of scientific grops and individual scientifists. These include the CITT pathologists (C–23); the Federal Panel on Formaldehyde (C–1); the Environmental Carcinogenesis Unit at the Mt. Sinai Medical Center (in a report for the American Cancer Society, C–76); the National Institute for Occupational Safety and Health (C–70;a working group of the Internaional Agency for Reserarch on Cancer (C–85), and Drs. Arthur Upton and Roy Albert of the New York University Medical Center (C–79).

In addition, the heads of several National Research Institutes involved with carcinogenesis issues have publicly stated that formaldehyde is an animal carcinogen (C–87). These include:

- Dr. Vincent Devita, Director, National Cancer Institute;
- Dr. David Rall, Director, National Institute for Environmental Health Sciences, and National Toxicology Program;
- Dr. Ronald Hart, Director, National Center for Toxicological Research;
- Dr. J.D. Miller, Director, National Institute for Occupational Safety and Health.

It is important to note that almost all of these distinguished scientist and scientific groups, including a working group of the International Agency for Research on Cancer (IARC), not only evaluated formaldehyde as an animal carcinogen but concluded that it would be prudent to regard formaldehyde as posing a caracinogenic risk to humans.

Chronic ulcerative colitis, regional ileitis, chronic gastritis, and fibrocystic disease of the breast, along with several other acquired diseases, have been implicated as a predisposing factor in the production of cancer in humans. However, a cause-effect relationship between such chronic diseases and cancer, as espoused by the commenteer, has not been demonstrated. The common link expressed by the commenter is the presence of long-standing ulceration and/or exudativae inflammation. Although there is a lack of conclusive evidence, such long standing sesiions may in fact promote the growtyh of cancer. Any argument that such inflammation *induces* cancer is not supported by the presently available experimental evidence. This is especially true since there are several other conditions in humans in which ulceration and/or exudatiave inflammation occur without an increase of cancer incidende. These include urinary tract infections in women, peptic ulcers, chronic gingivitis, and chronic tonsilitis.

Regarding the elevation of corticosteroids from pain and their effect in accelreating the development of cancer, there are no data to show that there is an actual elevation. If this argument is taken for granted, however, the stressful effects produced by formaldehyde exposure in humans leads to the expectation of a similar corticosteroid elevation and tumor acceleration in humans also.

It was also claimed that the animals used in the CIIT study were sick, and exhibited "green-yellow pus."

This "green-yellow pus" has not been observed either in the CIIT study or in the new New York University study currently in progress. The histopathological term "mucopurulent rhinitis" indicates the presence in the nasal cavity of mucus, cellular debris, and white blood cells but not of "green-yellow pus." For this to be present under the experimental conditions used in the study, ulceration and hemorrhages would have to have been present, and such changes were not observed.

A commenter stated: "There has been a long standing criterion for *in vivo* cancer bioassay tests in animals that the doses used should not cause any important secondary pathologyh, i.e., the maximum doses must be tolerated, meaning that the animals should not be made ill in a manner that might confound the results."

The long standing criterion referred to by the commenter is that maximum doses must be tolerated, i.e., toxic effects due to chemical exposure should not produce severe systemic effects that would alter the results, interfere with the interpretation of the results, or kill substantial numbers of animals (so that

the animals will live long enough to get cancer if the chemical is a carcinogen). It is incorrect to state that the chemical exposure should not cause secondary pathology. Most chemical caracinogens do cause secondary pathology, and the severity of such pathology is usually dose-related. With many carcinogens, the more severe the secondary effects are, the earlier the tumor appears.

There were also comments that the virla epidemic invalidates the CIIT study.

The firal infection occurred during the 12th month of the study, by which time some rats had already developed gross tumors. Thus, tumors had started developing in these animals before the viral infection. The occurrence of nasal tumors in rats in the ongoing New York University study, and in mice in the CITT study (where the viral infections did not occur) further discounts a carcinogenic role for the virus. The Federal Paned on Formaldehyde, the Mt. Sinai Medical Center Panel, and the scientists and scientific groups listed above came to similar conclusions.

A commenter stated that the hypoerplastic and metaplastic changes reported in the CIIT study are reversible, thus indicating that there is a threshold for these effedtrs. The commenter also stated that there is an apparent cytotoxic threshold, implying that carcinogenic effects would not occur until this threshold is reached.

The hyperplastic and metaplastic responses seen in the CIIT bioassay were not completely reversed 6 months after exposure even in the 2 ppm group; there was very little reversal in teh 15 ppm group. As to whether a cytotoxic threshold exists, the commenter's conclusion presumable rests on the Formaldehyde Institute study involving 40 rats, 20 hamster, and 6 monkeys per dose, but this study is really inadequate for such a determination because it is a 6 month exposure study with a rather limited number of animals. It should be noted that there is no reason to assume that the cytotoxic (cell-destroying) effects of formaldehyde are a prerequisite for itws carcinogenic effects. As discussed above, formaldehyde is genotoxic and can interact with other carcinogens. The Federal Panel also reached the same conclusions. Also, other chemicals, acrolein for example, cause many of the same irritation and cytotoxic effects as formaldehyde and yet produce no cancers.

New York University study. Commenters argued that the original New York University study (completed old study) had insufficient controls. They state that BCME (bis chloromethyl ether), a known carcinogen, is formed when formaldehyde and hydrochloric acid are combined as was done in this study.

Rats exposed to BCME developed esthesioneuroepitheliomas of the nose, not squamous cell carcinomas of the nose as seen in both the original and new New York University studies and in the CIIT study. The level of BCME in the exposure chamber was low (1 part per billion) that formaldehyde rather than BCME was felt by the New York University investigators to be the causative agent in the induction of tumors. More recently, in the ongoing New York University study (C–84), rats exposed to formaldehyde with and without hydrochloric acid vapor have developed squamous cell carcinomas of the nose, while no such carcinomas have been observed in controls or in rats exposed only to hydrochloric acid vapor.

Negative Animal Studies. Five negative animal carcinogenicity studies that have been published were cited by commenters to show conflicting evidence.

Of the five studies mentioned by these commenters, two studies are inhalation studies and three others are feeding studies in which hexamethylenetetramine (HMT) was fed to the animals. There are major flaws in both of the inhalation studies since: (a) the noses of the animals involved were not systematically examined for the presence of tumors; (b) the numbers of animals used in these experiments were small, and (c) the duration of one of the studies was too short.

As to the other studies, when HMT is fed, it breaks down to produce ammonia and formaldehyde under acidic conditions such as those usually observed in the stomach and kidneys. In the studies referred to, neither the rate of formaldehyde release, the levels generated, nor the influence of food in the stomach is known, making it difficult to assess the carcinogenic effects of formaldehyde from these experiments.

Validity of animal tests. Commenters contended that exposure of rodents to 4 ppm or more is irrelevant to human exposure at the much lower levels associated with U.F. foam insulation.

These comments are in error for several reasons: (a) Formaldehyde levels of 2 ppm and more have been measured in the home and at work; (b) humans at home have the potential to be exposed to formaldehyde for as much as 16–24 hours per day, 7 days per week, for many years in comparison to rodents exposed for 6 hours per day, 5 days per week, for 2 years; (c) the absence of malignant cancers at 2 ppm does not mean that formaldehyde is not carcinogenic at low levels, since the number of animals tested at 2 ppm may have been too small to detect a carcinogenic response; (d) polypoid adenomas were observed at 2 ppm and appeared to be related to formaldehyde exposure; and (e) rodents were not exposed to any other toxic or carcinogenic substances, while humans are.

Los Angeles vs. San Francisco. It was contended that the comparison of cancer rates in Los Angeles county and San Francisco indicates that air pollution, and specifically formaldehyde, is not a human carcinogen.

The comparison of cancer rates between the city of San Francisco and the county of Los Angeles are not particularly meaningful because of differences in (a) population densities—the city of San Francisco has 16,451 persons per square mile, and Los Angeles county has 1,484 per square mile, (b) population growth—Los Angeles has increased drastically while San Francisco has experienced a slight decrease, (c) demographic composition, (d) ethnic composition, (e) degree of industrialization, (f) exposure to environmental carcinogens, and (g) population turnover. Further, contrary to the commenter's assertions, a National Cancer Institute study showed that Los Angeles has a higher rate of cancer than the national average for upper respiratory tract, mouth, and throat cancers (C–86).

Free formaldehyde in tissues. A commenter stated that a CIIT study measured 0.3 to 4.8 ppm free formaldehyde in tissues and that the presence of these levels indicates that there is a threshold for formaldehyde carcinogenicity.

The commenter did not provide data to support the claim of 0.3 to 4.8 ppm of free formaldehyde in normal nasal tissues. The data from CIIT (Heck et al., 1980) seems to indicate the presence of formaldehyde in nasal tissue. However, as Dr. Gibson of CIIT pointed out in his December 15, 1981, presentation to the Commission, the CIIT assay for tissue formaldehyde cannot distinguish between free and bound formaldehyde. From what is known of formaldehyde metabolism and chemistry, there is no reason to think that there would be detectable levels of free formaldehyde available to react with cellular constituents. The Federal Panel on Formaldehyde reached a similar conclusion.

2. Acute Health Effects and Sensitization

Background

The data concerning adverse acute health effects associated with formaldehyde gas emitted from U.F. foam insulation is described below.

In March, 1980, the National Academy of Sciences (NAS) completed work on a contract with the Commission to determine whether there is a level of formaldehyde that can be tolerated in the air of homes. After gathering the critically evaluating all pertinent scientific literature, the Committee on Toxicology, a panel of expert toxicologists established by NAS, concluded that there is no population threshold for the irritant effects of formaldehyde in humans. The Committee found that information from controlled human studies and complaint-related investigations suggests that, even at concentrations of formaldehyde gas below 0.25 ppm, somewhat less than 20 percent of the population may experience some degree of irritation. The Committee recommended that the levels of formaldehyde in indoor residential air be kept at the lowest practical concentration. (A–1)

Studies of the effects on humans of exposure to formaldehyde have generally been either controlled exposure studies, home exposure studies, or occupational exposure studies. In the controlled exposure studies, healthy young volunteers were subjected to formaldehyde concentrations of 0.03–4.0 ppm. These volunteers experienced, in general, mild to severe discomfort and irritation of the eye, nose, and throat, as well as an increase in eye blinking rate and a decrease in nasal mucous flow rate. (A–2, A–3; Rader, 1974, A–57). The severity of these responses and the percent of subjects affected were dependent on the concentration and duration of exposure. These responses were statistically significant at levels of 0.2 ppm and above.

Under less controlled conditions, case studies of formaldehyde exposure in mobile homes and U.F. foam insulated homes at concentrations ranging from 0.03–10.0 ppm produced an even greater variety of adverse health effects.[9] (A–4, A–5, A–6) In one group of mobile homes where consumers had health complaints, 90 percent of the formaldehyde concentrations measured were below 1 ppm. The reactions included drownsiness, nausea, and headaches, as well as irritation of the eye, nose, and respiratory tract. (A–4)

In a group of homes with U.F. foam insulation with levels less than 0.5 ppm formaldehyde, consumers reported eye irritation, upper respiratory symptoms, headaches, and skin problems. Disturbances of the gastrointestinal tract were also reported. (A–5) In these homes, the likely cause of the adverse health effects is the formaldehyde gas released from U.F. foam insulation since: (1) Symptoms begin sometime after the installation of the U.F. foam insulation; (2) unlike colds and flu, the symptoms persist for an extended period of time; (3) the symptoms are alleviated when the affected individuals leave the home; (4) the symptoms are similar to those reported in the scientific literature for exposure to formaldehyde; (5) formaldehyde levels have been shown to be higher in homes that are insulated with U.F. foam insulation than in those that are not (A–39, C–42); and (7) the concentration of gases released by any other chemicals would not have been expected to increase significantly by following the installation of the insulation, as shown by a Department of Energy study indicating that the installation of insulation has no great effect on the air exchange rate. (E–17).

Persons exposed to formaldehyde in occupational situations have experienced irritation evidenced by tearing, sneezing, coughing, or dry and sore throat, as well as decreased sense of smell and skin irritation (A–8, A–9).

The scientific literature also contains reports of eye, nose, throat, and skin irritation, headaches, dizziness, increased thirst, lethargy, irritability, disturbed sleep, inability to concentrate, moodiness, paranoia, crying without cause, and a crawling sensation of the skin. (A–7, A–10, A–11, A–12, A–14) In addition, asthmatic reactions have been observed following exposure to formaldehyde (A–13, A–15, A–16, A–17, A–18, A–19). Continued exposure for long periods can lead to chronic changes of the respiratory tract, such as hypertrophic, subtrophic, or atrophic rhinitis and pharyngitis. (A–9).

The scientific literature indicates that repeated exposure to formaldehyde liquid and probably vapor can cause sensitization[10] in certain individuals. When exposed to formaldehyde, these sensitized persons may exhibit allergic dermatitis (A–21, A–22, A–23) or mild to severe asthmatic reactions (A–17, A–18). There are indications that some of the sensitized-individuals may develop increasingly severe reactions from continued exposure to formaldehyde (A–23, A–24, A–4). It is estimated that 4.5 to 7.8 percent of the population may be potentially capable of becoming sensitized to formaldehyde based on predictive patch testing performed on healthy adult volunteers. (A–25)

Persons who have a history of allergic or inflammatory diseases are also generally considered to be more prone to the the development of new chemical allergies, including an allergy to formaldehyde. (A–26) Although the causes for this increased sensitivity have not been determined, it could be related to (1) the general process by which allergic reactions occur, (2) genetic factors controlling the allergic process, or (3) the likelihood that one of the allergenic products to which the individual was exposed either contained or produced formaldehyde. Another group which has reported more serious reactions when exposed to formaldehyde consists of persons who have asthma or other respiratory diseases. (A–28, A–30) Finally, there is information that up to 4 percent of patients seen by dermatologists are sensitized to formaldehyde (A–40). Therefore, the groups identified above are likely to experience more serious physical reactions when exposed to formaldehyde gas released from U.F. foam insulation.

The Commission's in-depth investigations of consumer complaints concerning U.F. foam insulation, and the scientific and medical literature discussed above, indicate that exposure to formaldehyde can produce various illnesses in humans. (A–27) The extent and duration of the illnesses can depend on the victim. Brief contact with formaldehyde gas commonly causes symptoms such as nasal irritation and congestion, stuffiness, watering and burning of the eyes, sneezing, sinus pain, coughing, irritation, dryness, and burning of the throat. In addition,

[9] It is rarely possible to determine a conclusive cause-effect relationship in uncontrolled human exposure studies involving the home or work, since there may be some uncontrolled variables, including exposure to other possible causative agents. However, in each of these studies cited the authors concluded that formaldehyde is the cause of the observed symptoms. Although no one of these case studies may, by itself, conclusively show that formaldehyde exposure causes adverse health effects, when they are considered as a group, together with the results from the controlled human exposure studies and animal experiments, it is clear that there is a definitive cause and effect relationship between formaldehyde and adverse health effects. (A–37).

[10] Sensitization is an allergic process caused by repeated exposure to certain substances. Persons who are sensitized have a greatly increased capacity to respond to subsequent exposure of an offending agent. Subsequent exposures may therefore produce severe reactions with little correlation to the amount of allergen involved.

exposures of short duration have produced headaches, dizziness, nosebleeds, and nausea. Some of the symptoms of exposure to formaldehyde are similar to those associated with colds, flu, and allergies, but, unlike the symptoms associated with these latter causes, the symptoms for reaction to formaldehyde continue during exposure and are partially or completely alleviated when the person leaves the site of exposure.

Repetitive exposure to formaldehyde appears to affect primarily the respiratory system. Respiratory illnesses which have been reported to be caused by chronic formaldehyde irritation include: Difficulty in breathing (asthma-like symptoms), chronic rhinitis and pharyngitis, chest pains, persistent cough, and chest congestion. Exposures of sufficiently prolonged duration may markedly aggravate existing pulmonary pathological conditions and could initiate severe pulmonary illnesses. (A–27).

Based on consumer complaints concerning U.F. foam insulation and in-depth investigations of these complaints, the most commonly reported symptoms are eye, nose, and throat irritation, persistent cough, respiratory distress, skin irritation, nausea, headaches and dizziness. The in-depth investigations include reports of hospitalizations following installation of the product. (A–33) The range of severity of reported reactions varies from short-term discomfort to chronic impairment such as the loss of visual acuity, reduction in lung function, and sensitization to formaldehyde in subsequent exposures.

After the ban was proposed, and additional controlled human exposure study of acute reaction to formaldehyde became available (Rader, 1974; A–57). This study supports the findings of the other controlled exposure studies. Other studies reporting the types of health problems associated with exposure to formaldehyde from U.F. foam insulation have also appeared (Anderson et al., 1980, A–67; Harris et al, 1981, C–57; Most et al., 1981, A–68). Finally, the reports of two different committees of the National Academy of Sciences have become available. Both the Committee on Aldehydes and the Committee on Indoor Pollutants discuss the problems associated with formaldehyde exposure in their respective reports and express concerns about the potential consequences of human exposure to this chemical. They also indicated that 10 to 12 percent of the U.S. population may have hyper-reactive airways and thus be more susceptible to the irritant effects of formaldehyde.

Comments

a. *Relationship of reported symptoms to U.F. foam insulation.* Comments on the proposed ban of U.F. foam insulation raised questions about the complaints of acute health effects made to the CPSC and various states. These complaints have been challenged as not identifying a real health problem related to the foam insulation.

The Commission does not agree with this contention. The Commission has defined a complaint as a report where one or more persons linked health problems to previously installed urea-formaldehyde foam insulation. No inquiries, or complaints of odor, without mention of health problems were included in the count of complaints. This definition was applied to all oral and written reports to the Commission, as well as to data supplied by state agencies. Since some of the latter reports did not identify individual health problems, or were not specific as to the product suspected of causing a health problem, the number of reports collected from states exceeds the number counted by the CPSC as complaints.

As of August 25, 1981, this agency has received over 2,200 complaints affecting an estimated 5,700 persons. About half of these problems were reported directly to CPSC, and the rest were forwarded from state agencies or other groups interested in formaldehyde-related health effects. Mobile homes, even those with U.F. foam insulation, have been excluded from the count of cases reported to CPSC because mobile homes are constructed differently from other residences and complaints cannot be as readily attributed to U.F. foam insulation, due to the presence of a number of other formaldehyde-emitting products. From among the more than 1,100 complaints reported directly to this agency, in-depth investigation (IDI) reports are available for 384. In these cases, an investigator interviewed the complainant by phone or in person to obtain details of the product, the installation, the environment, and the health effects reported.

While the Commission cannot be sure that every health problem attributed to U.F. foam insulation in a complaint is actually due to the insulation, the Commission believes that, taken as a whole, the complaints do identify a real problem. Some of the factors which lead to this conclusion are:

(1) Symptoms are often reported by more than one family member, and the outbreak of symptoms appears to implicate a single source of exposure rather than person-to-person transmission. Among 323 reports investigated by CPSC which specified more than 1 person affected by formaldehyde, all household members were affected in 70 percent of the cases. Looking at the data for three affected persons in one household, in more than half of such homes (62 out of 115), the symptoms developed within a week of installation of the U.F. foam insulation. Of the 62 households where three persons were affected and the symptoms appeared within a week of installation, two-thirds of the reports indicate that all three persons reacted within a day of installation. Such a pattern is indicative of single source exposure.

(2) Complainants frequently reported that symptoms diminished or disappeared outside the insulated environment. This was indicated specifically in 153 (40 percent) of the 384 investigated reports, and contraindicated in only 13 (3 percent). The remainder of the investigations did not provide information on this issue.

(3) Some reports indicate symptoms persist for months, and even years, unlike colds or flu.

(4) The symptoms reported in the complaints are similar to known reactions to formaldehyde that are described in the medical literature. Although many of these symptoms are common to other sources of illness, some of the symptoms, such as burning eyes, or combinations of symptoms, such as respiratory problems along with rash (mentioned by 55 persons within complaint households) or respiratory symptoms plus nausea or vomiting (mentioned by 87 persons), are harder to attribute to other illnesses or to exposure to pollutants other than formaldehyde. Symptoms similar to those reported with U.F. foam insulation have been reported to occupants of mobile homes and conventional homes where elevated levels of formaldehyde from other products have been detected.

(5) Doctors and other medical personnel have tentatively or specifically linked their patients' symptoms to formaldehyde. In 66 of the 384 investigated cases, such links were reported. Another 10 reports stated that doctors advised the families to leave their homes.

(6) Formaldehyde levels have been measured in about 30 percent of a group of complaint homes that were assigned for in-depth investigation. These 114 readings were made with several measurement techniques of varying sensitivity and accuracy,[11] and in

[11] Memo from A. G. Ulsamer and K. C. Gupta to H. Cohen, March 28, 1980, A–69.

Commission's technical staff has reviewed the testing methods in 81 of these reports and about half have been judged "high" on a scale representing degree of confidence in the test methodology to yield valid results. Eleven of those homes showed more than 0.5 ppm formaldehyde, while 24 homes tested with a lesser degree of confidence in the methodology showed more than 0.5 ppm formaldehyde. Furthermore, formaldehyde levels over 1.0 ppm were recorded from 7 highly rated measurements and in 20 homes where less reliable test methods were used. While these measurements provide evidence of the presence of formaldehyde at high levels, the importance of the lower concentrations reported is not diminished.

Professional Consultants in Occupational Health (PCOH) also challenges the Commission's conclusion that there is a causal relationship between formaldehyde and the reported symptoms because physicians have not been sufficiently involved in producing and evaluating the data.

However, physicians have been involved at all levels—occupationally, clinically, experimentally, and in the home—in the development of the data relied on by the Commission.

PCOH further claims that the Commission's staff physician was never consulted, but that is untrue. The CPSC medical officer reviewed the complaint file, concluded that a real health problem was present, and wrote a memorandum to that effect (March 26, 1980). Subsequently, he reviewed a great deal of material, including published and unpublished literature reports, professional correspondence, reports of meetings and panels, and CPSC reports. Regarding acute effects, he concluded that, "the basic cause and effect relationship cannot be contested." Regarding other health effects, he wrote (February 12, 1982), "There is considerable medical evidence that exposure to formaldehyde can be directly responsible for a number of serious types of illness."

From the information cited above, the Commission believes the complaints identify a health problem related to an indoor environmental contaminant, that the symptoms reported following installation of urea formaldehyde foam insulation are those commonly associated with exposure to formaldehyde, that other household contaminants are unlikely to have caused the reported symptom,[12] and therefore, that formaldehyde emitted by U.F. foam insulation is the source of most of the reactions reported.

Some consumer groups, state and local government officials, physicians, and scientists provided information indicating that formaldehyde emitted from U.F. foam insulation produced symptoms that included eye, nose, throat, and skin irritation, breathing difficulties, nausea, vomiting, headaches, dizziness, irritability, insomnia, and sensitization.

Several of the commenters stated that systems were alleviated when affected persons were away from home or when, upon medical recommendations, they had vacated the home. Many of the affected persons had formaldehyde levels measured in their homes and have medical verification of their symptoms. Some of the commenters were themselves medical professionals.

Overall, these commenters support the findings of the Commission that formaldehyde emitted from U.F. foam insulation produces irritant and allergic effects.

Other comments stated that there is no scientific literature linking U.F. form insulation and adverse health effects. However, there are at least three reports (Sardinas et al., 1980 (A–5); Harris et al., 1981 (C–57); and Thun et al., 1980 (A–41)) available on this subject. All of them indicate that U.F. foam insulation has produced adverse effects. The first two studies indicated that these adverse effects were related to formaldehyde. Thun et al. (1980, A–41) correlated the presence of odor to an increase in symptoms and found that there was an increase in the rate of new symptom acquisition in homes after U.F. foam insulation was installed. In addition, evidence collected under controlled conditions (Anderson, 1979, A–2; Weber-Tschopp et al., 1977, A–3; Rader, 1974, A–57), in occupational settings (Gamble et al., 1976, A–9; Morrill, 1961, A–11; Bourne and Seffrin, 1959, A–43; and others), and in residences (Garry et al., 1980, A–6; Sardinas et al., 1979, A–5; Harris et al., 1980, C–57) shows that formaldehyde levels emitted by U.F. foam insulation can produce adverse health effects in at least part of the exposed population.

Therefore, there are sufficient data (other than complaint data), to conclude that formaldehyde emitted from U.F. foam insulation can produce adverse health effects.

b. *Dose-response relationship.* A claim was made by some commenters that the failure of the complaint data to demonstrate a dose-response relationship shows the absence of such a relationship. The commenters used tabulations from the "Report on Consumer Complaints—Urea Formaldehyde Foam Insulation" of July 1980 which gives measurements of formaldehyde in some complaint homes and the symptoms reported by persons in these homes, to look for dose-response relationships. To show a dose-response relationship, the nature and severity of the reaction being observed needs to be directly attributable to the dose (exposure). The commenters equated the "dose" to the level of formaldehyde reported and the response to the presence of a symptom. The available data do not, however, lend themselves to such an analysis. The Commission did not use the complaint data on U.F. foam insulation to try to determine if there is a dose-response relationship because:

(a) The complaint data may contain responses from various population subgroups that respond at differing concentrations of formaldehyde, such as allergic individuals, individuals with hyperreactive airways, and healthy adults.

(b) The symptoms reported are not for a particular point in time and may represent the prevalence of the symptoms at any time between installation of the foam and the interview. Any individual symptom may be temporary, constant or intermittent, and of unmeasured severity. Furthermore, any formaldehyde measurements may have been taken at a time when the symptoms were dormant, and therefore the measurements may be unrelated in time to the active symptoms.

(c) The measurement for formaldehyde in the atmosphere is generally based on a one-time air sampling. There is no way of knowing where a particular air sample would fall within the range of levels that may occur in a particular home, and samples taken at a particular time cannot be said to be typical. The formaldehyde concentration in homes is known to vary with, for example, ventilation, temperature, and humidity, factors which are not uniformly maintained, and with the age of the insulation.

(d) To determine a dose-response relationship, it is necessary to know the number of people who responded with symptoms and the number of people who did not experience symptoms. The latter are not reflected in the CPSC complaint data, and the number of persons experiencing symptoms who did not complain directly or indirectly to the

[12] Memo from K. Gupta and M. Cohn to H. Cohen, 9/10/80, p. 3, "* * * the contribution of these pollutants (radon, CO_2, CO, NO_2 NH_3, and SO_2, to the formaldehyde-related health effects is probably minimal." (A–37)

CPSC is unknown. Furthermore, the levels of formaldehye to which these persons were exposed are unknown.

Therefore, the complaint data were not used to demonstrate a dose-response relationship. However, these data still serve as an indicator of the problem associated with U.F. foam insulation.

However, both CPSC and NAS (1980, C–67) used the studies by Anderson (1979, A–2) and Weber-Tschopp et al. (1977, A–3) that were conducted under controlled experimental conditions to establish dose-response relationships. Since then, another similar study by Rader (1974, A–57) has become available. Taken together, these studies demonstrate that healthy young volunteers exposed to formaldehyde for a short period exhibit a statistically significant response at levels as low as 0.2 ppm. These responses were dose related in the number and severity of symptoms at levels of 0.2 ppm and above.

c. *Lack of formaldehyde level measurements.* An industry organization contended that the absence of measurements in some of the complaint data weakens the claim that the reported health problems are related to formaldehyde in U.F. foam insulation. However, the Commission does not believe that this is the case.

Much of the incident data in the Commission's files does include measurements of formaldehyde. Twelve of the states which shared their files of U.F. foam insulation complaints take measurements on request, under certain conditions. Data from the following included measurements for formaldehyde obtained using the chromotropic acid method: [13] The states of Iowa, Kentucky, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, and Ohio and the University of Washington. In addition, Connecticut and Texas provided the results of Drager measurements. Several hundred homes had formaldehyde levels reported by these states.

Some states and local health departments tested complaint homes for formaldehyde, either with or without a modest charge for the service. Residents of states without such service could only engage a private testing laboratory, if one were available, whose fees might be a few hundred dollars. It is not surprising that people would not be inclined to incur such an expense unless they were involved in litigation or some other remedial action. Results of formaldehyde measurements were included in 114, or 30 percent, of the Commission's investigation reports. Some of the other cases stated that air samples had been taken, but the test results were unavailable. Of those reports indicating that litigation was planned or in progress, over 50 percent (14 out of 27) contained measurements.

Many U.F. foam insulated homes with residents reporting severe reactions, and many reporting mild reactions, did have measurements of the formaldehyde levels. The Commission's staff has classified its investigation reports as to the severity of the described reactions. About 40 percent (28 out of 73) of the reports describing severe reactions contained measurement results.

Many reports indicated that families attributed their symptoms to the presence of formaldehyde and vacated their homes to improve their health. Among those investigation reports where someone had to vacate the home or could not move into a home, half (47 out of 94) reported levels of formaldehyde.

In summary, the data in a large proportion of the complaints do contain measurements of formaldehyde. Among the complaints that do not, there are many reports describing severe health problems and the inability to occupy a home for some period of time. The absence of measurements in some complaint reports is most likely the result of the cost of such tests and the inaccessibility of laboratories to perform such a service. Furthermore, a one-time measurement may not accurately reflect the level of exposure that is experienced over a period of time and may not be related in time to the reported symptoms. For the reasons stated above, the validity of the body of complaints is independent of the formaldehyde level that was present in particular homes when a test was made.

d. *Old vs. new installations.* One installer claims that complaints relate to old installations and not to current installations. The complaints that were reported directly to CPSC have been tabulated by installation date. Most of the complaints concerned insulation installed in 1977, 1978, or 1979, but 84 problems have been reported, as of August 1981, from 1980 installations, as have 2 from 1981 installations. Since there can be a lag of up to a few years in reporting complaints, these numbers should only be considered as minimum indications that problems are still occurring.

Rough sales estimates were used to relate the number of complaints to the number of installations. Sales of U.F. foam insulation in 1981 are reported [14] to be about two-thirds less than in 1980, which were substantially reduced by about 40 percent from 1979 sales. The data from 1980 and 1981 have not been fully evaluated, but the number of problems reported to CPSC by August 1981 for 1980 installations was about 30 percent of the previous year's, compared to an estimated number of installations in 1980 equal to 40 percent of the previous year's. These data dispute the claim that all complaints relate to old installations.

Furthermore, as discussed in section G.4 of this notice concerning the feasibility of a product standard for U.F. foam insulation, no one has devised specifications for manufacturing U.F. foam insulation that will adequately and predictably control formaldehyde offgassing from the finished product. Thus, there is no reason to believe that new installations will not present a risk of injury from exposure to formaldehyde gas.

e. *Accuracy of investigation reports.* The Formaldehyde Institute (FI) reviewed the Commission's in-depth investigation reports ("IDIs") that were cited to substantiate certain statements in a March 28, 1980, Commission staff memorandum on U.F. foam insulation. [15] These statements concerned the following issues: severity of reactions, medical link of symptom to formaldehyde, need to vacate insulated buildings, effect of attempts to eliminate the offgassing of formaldehyde, age of foam when symptoms appear, and improvement of health outside the insulated environment. After reviewing the IDIs, the FI categorized 296 of the Commission staff's conclusions concerning the issues mentioned above as "true," 49 as "inconclusive," and 45 as "false," depending on whether they thought the narratives supported particular statements.

The Commission's staff reviewed the 45 reports classified as "false" by the FI evaluation and concluded that 12 pieces of data were improperly classified, but that the remaining 33 were properly classified. Of these 12, two were keypuch or other computer-related errors, five involved the redefinition of how many days constitutes "vacating" a building, and five others involved reinterpretation of the narratives.

These few reclassifications do not affect the basic character of the

[13] See note 11 for an explanation of various procedures used to measure formaldehyde.

[14] Sales estimates reported by industry to the Commission's Directorate of Economics, September 22, 1981.

[15] Memo from Paula Present to Harry Cohen, "Input for Proposed 27(e) Rule for Urea Formaldehyde Foam Insulation."

complaints. At the time of the March 28, 1980, memorandum, only 218 investigation reports were available for review. Currently there are 384 which describe similar health problems and contribute additional evidence for statements characterizing the complaints.

A commenter contends that a reported formaldehyde level of 31.7 ppm in a home containing U.F. foam insulation strongly supports the conclusion that little reliance should be placed on the CPSC in-depth data.

All CPSC in-depth investigations used in the revised risk assessment were throughly evaluated by the Commission's scientific staff to be sure proper testing methodology was utilized. Methodologies such as the Drager tube were eliminated from consideration. The 31.7 ppm measurement was reported, but was not used in any analysis of measurements presented to the Commission by the Commission's Staff. The fact that some unreliable measurements may have been reported to the CPSC would not affect the validity of the other data in these reports or the validity of measurements made by an appropriate method.

One commenter argues that since there are "large differences" in average formaldehyde levels from different data bases, they lack consistency and are flawed. The commenter concludes that the revised risk assessment should not be based on the residential formaldehyde exposure data.

This commenter averaged each data base and did not consider that other factors can affect formaldehyde levels in homes. One of the most important factors, as brought out in the CPSC risk assessment, is the age of the foam at the time of measurement. The average levels of formaldehyde in U.F. foam insulated homes are relatively high over the first 40 weeks after foaming and drop to lower levels after that time. The commenter's statement "that there is no readily apparent distinction to be drawn between data sets on the basis of sample ages" is incorrect. The CPSC in-depth investigations (the high end of the "large difference") are the only data set of those cited by the commenter that had an average age of foam below 40 weeks (35 weeks). By contrast, the data supplied by Dr. Frank of the University of Iowa (near the low end of the "large difference") had an average age of foam of over 2 years. A large difference in average formaldehyde concentrations would therefore be expected between these data sets.

Additionally, there is no apparent reason why the commenter dismisses CPSC's large set of U.F. foam insulated homes but used the single small University of Iowa study, which has an average age of U.F. foam insulation of over 2 years, to conclude that there is no difference between the formaldehyde levels in homes with and without U.F. foam insulation.

f. *Prevalence of symptoms.* Another comment stated that CPSC complaint data should not be used to estimate the prevalence of symptoms.

This is correct, and, in fact, the CPSC has not used the complaint data to estimate the prevalence of symptoms in U.F. foam insulated homes but only to indicate that there is a problem. In order to estimate the prevalence of symptoms, the data would have had to have been derived from randomly selected U.F. foam insulated homes, but the CPSC complaint data do not constitute a random sample. Data in the 1980 study by Thun et al. (A–41) were derived from randomly selected homes and thus were used by CPSC to estimate the acquisition of new symptoms in U.F. foam insulated homes. However, CPSC complaint data, as well as published studies, were used by CPSC as an indicator of the problems associated with U.F. foam insulation.

g. *Hazard of U.F. foam insulation formaldehyde emissions.* A commenter noted that at least 76 percent of the cases in the complaint data which formaldehyde levels were given reported readings of 0.50 ppm or less. The commenter contends that, in his opinion, these figures are sufficiently low that any health effects reported should, in the absence of further evidence, be assumed to have arisen from causes other than formaldehyde.

Other commenters contended that it has not been shown that U.F. foam insulation emits formaldehyde at levels sufficient to cause any symptoms.

Other commenters argued that the symptoms associated with formaldehyde exposure do not occur at the low levels found in the U.F. foam insulation homes or at levels below 3 to 5 ppm.

However, the Commission is persuaded by the large body of evidence that indicates that formaldehyde levels of 0.2 ppm and below would produce adverse health effects. This evidence is described below:

(a) The controlled studies (Anderson, 1979, A–2; Weber-Tschopp et al., 1977, A–3; Rader, 1974, A–57) in which *healthy young adults* exposed for a short period of time to varying concentrations of formaldehyde experienced signs of irritation at 0.2 ppm and above. The volunteers experienced irritation of the eye, nose, and throat, and a decrease in the nasal mucus flow. The severity of the symptoms was dependent on the concentration and duration of exposure. [One commenter indicated that the levels at which these irritant effects are noted are recognition levels for formaldehyde and not the irritant levels. However, there are other controlled studies that demonstrate that recognition occurs at much lower levels. For example, the odor threshold was determined at 0.05–0.07 ppm (Wahren, 1980, A–60; Melekhina, 1964, C–65), while the functional state of the cerebral cortex was affected at 0.08 ppm (Melekhina, 1964, C–65; Feldman and Bonashevskaya, 1971, A–48). The controlled studies evaluated irritation, not recognition of odor.] Additionally, in the residential setting where individuals are exposed for a much longer duration and the affected population contains more sensitive individuals (such as people with allergies, and asthmatics and others with hyper-reactive airways), one would expect more severe health effects and effects at levels lower than 0.2 ppm.

(b) In occupational and residential studies (Gamble et al., 1976, A–9; Schoenberg and Mitchell, 1975, C–75; Kerfoot and Mooney, 1975, C–60; Morrill, 1951, A–11; Bourne and Seffrin, 1959, A–43; Garry et al., 1980, A–6; Sardinas et al., 1980, A–5; Breysee, 1977, A–4; Anderson et al., 1980, A–67), formaldehyde levels of 0.03–4.15 ppm have been associated with health effects such as eye, nose, and throat irritation, nausea, vomiting, diarrhea, headaches, irritability, and skin rashes.

(c) Even 16 months after installation, U.F. foam insulation installed under the best of conditions is estimated to contribute 0.03 to 0.44 ppm of formaldehyde to the room air at 25°C. At 40°C, these levels may be increased up to 13 times over those measured at 23°C. Such temperatures may well occur within wall cavities during summer months. (E–20)

(d) Using data available to the Commission as of April 1981, the average level of formaldehyde measured in homes with U.F. foam insulation (0.12 ppm) was higher than in homes without U.F. foam insulation (0.03 ppm). The data analyzed by CPSC in its revised risk assessment included measurements in U.F. foam insulated homes from a day after installation to 9 years after installation. The highest formaldehyde levels were generally noticed in the first six months after installation. Of 220 U.F. foam insulated homes measured during the first 30 weeks, 34 percent had formaldehyde levels of 0.2 ppm and higher, 12 percent had 0.5 ppm or higher, and 6 percent had 1 ppm or higher.

(e) Further, there are no data to indicate that the symptoms associated with U.F. foam insulation are caused by pollutants other than formaldehyde or by causes (such as colds, flu, etc.) other than U.F. foam insulation.

The above information indicates that U.F. foam insulation emits formaldehyde at levels that can produce the adverse effects noted in the CPSC complaint data and published studies (Sardinas et al., 1980; Harris et al., 1981).

Thus, formaldehyde levels found in U.F. foam insulated homes, even below 0.2 ppm, would be expected to produce adverse health effects in the general population.

In addition, three committees of the National Academy of Sciences have made the following determinations regarding low level exposure to formaldehyde:

(1) The Committee on Toxicology of the National Academy of Sciences (NAS), on the basis of the published controlled studies with healthy young volunteers, estimated that somewhat less than 20 percent of the healthy adult population may respond with irritant effects to formaldehyde levels of less than 0.25 ppm (C–67). The percentage of persons affected by formaldehyde exposure is expected to be higher in the general population, which includes groups more susceptible to the effects of formaldehyde. Further, the Committee concluded that there is no population threshold for the irritant effects of formaldehyde and recommended that formaldehyde levels be kept at the lowest practical concentrations.

(2) The other two committees of the NAS, the Committee on Aldehydes and the Committee on Indoor Pollutants, agreed with the findings of the Committee on Toxicology and estimated that 10 to 12 percent of the U.S. population may have hyper-reactive airways which could make those persons more susceptible to the irritant effects of formaldehyde (C–68, C–69).

With regard to human exposures of 3 ppm or 5 ppm, the NAS Committee on Toxicology predicted severe irritation effects at 1.5–3.0 ppm in 20 percent of the population and less severe reactions in an additional 30 percent or more of the population on the basis of the controlled studies. Also, these concentrations are very similar to the concentrations used in the CIIT study that caused cancers in rats (5.6 ppm), tumors (2.0 ppm), as well as dose-related pathological changes such as squamous cell metaplasia, hyperplasia and dysplasia.

Another commenter argued that the Anderson and Weber-Tschopp studies demonstrate a "general threshold" of 0.8–1.2 ppm.

In these studies (Anderson, 1979, A–2; Weber-Tschopp et al., 1977, A–3) the authors never discuss the concept of a "general threshold."

The Weber-Tschopp study indicated an "average threshold" of 1.2 ppm for the irritant effects of formaldehyde for the study population (i.e., healthy adults) exposed for short duration. Anderson (1979) in his study did not make such an assessment. *"Average threshold"* implies that a large portion of the study group responded to the lower levels tested as noted in the study. Furthermore, the concept of an "average threshold" used in this study is not useful in relation to U.F. foam insulation because:

(a) It is derived for healthy, young adults, whereas in the home there is a diversified population including individuals who may be more susceptible to irritant effects (e.g., children, the elderly, and persons with allergies and hyper-reactive airways).

(b) It is based on exposures of short duration, whereas in homes the duration is longer and exposure is repeated or continuous.

In addition, the studies by Anderson (1979) and Rader (1974), showed that statistically significant responses occur at levels of 0.2 ppm and above. At levels of less than 0.25 ppm, almost 19 percent of the healthy adult volunteers showed mild irritant responses from short-term exposure.

On the basis of these studies (Anderson, 1979; Weber-Tschopp et al., 1977), and in consideration of the presence of subgroups that are more susceptible to the effects of formaldehyde in the general population, the Committee on Toxicology of the NAS concluded, *"there is no population threshold for the irritant effects of formaldehyde."* Therefore, the commenters' conclusion that there is a general threshold of 0.8–1.2 ppm is contradicted by the available data.

Some comments noted that NIOSH has recommended a safe level of 1 ppm for exposure to formaldehyde.

NIOSH recommended a *ceiling level* of 1 ppm for *occupational* exposure to formaldehyde in 1977 (A–70). It should be noted that:

(a) NIOSH did not consider 1 ppm a safe level for all of the population groups exposed since it recommended that individuals sensitive to formaldehyde should not be exposed at all.

(b) The level was for occupational exposure, i.e., 8 hrs/day, 5 days/week; exposure in homes may be for 16 hrs. or more a day, 7 days a week.

(c) NIOSH standards are designed only to protect the working population, which generally lacks the elderly, infirm, and chronically ill and does not include infants.

(d) The level was recommended on the basis of NIOSH's analysis of acute and subchronic exposure data available at that time (1977), and not on the more recent controlled exposure studies or the findings of carcinogenicity.

(e) Recently, after evaluating carcinogenic risk based on recent mutagenicity and carcinogenicity studies, NIOSH has recommended (Current Intelligence Bulletin #34, April 15, 1981) that "formaldehyde be handled as a potential occupational carcinogen and appropriate controls be used to reduce worker exposure."

There was a comment that properly foamed homes would not lead to any adverse health effects. However, the presently available information indicates that this is not the case.

The U.F. foam insulation installed in test panels at the Franklin Institute Research Laboratory (E–5) should represent "proper installations" since the operation was done under controlled laboratory conditions and represented an effort by industry to adhere to the foam manufacturers' recommendations. All of these panels emitted formaldehyde, even after 16 months of aging. The 16 month emission data (ORNL) (E–18) indicate that such "properly" installed U.F. foam insulation could contribute 0.03–0.44 ppm (average of 0.13 ppm) formaldehyde to the room air at 25°C. Additionally, when formaldehyde emissions were measured in similar test panels at 23°C, 33°C, and 40°C by the CPSC Engineering Laboratory (E–20), the emission rate relative to 23°C increased six-fold at 33°C and thirteen-fold at 40°C. Therefore, actual levels in homes would vary with the temperature in the walls and could be substantially higher than 0.03–0.44 ppm, depending on the time of year.

The scientific literature (e.g. Anderson, 1979; Weber-Tschopp et al., 1977; Rader, 1974; Gamble et al., 1976; Schoenberg and Mitchell, 1975; Kerfoot and Mooney, 1975; Garry et al., 1980; Sardinas et al., 1980; and Harris et al., 1981), and its evaluation by NAS (1980, 1981), show that most levels within this range would be expected to produce adverse health effects in at least a part of the exposed population.

A commenter contended that a recent study completed at the University of Iowa showed that U.F. foam insulation did not contribute hazardous levels of formaldehyde to the home. This study

concerned conventional homes without U.F. foam insulation and determined that the average ambient formaldehyde concentration in the unfoamed houses studied was 0.066 ppm, which is identical to the level found in U.F. foam insulated homes (both complaint and non-complaint) that had previously been investigated by the same laboratory.

The data from this recent Iowa study were not supplied in detail, so they cannot be evaluated at this time. The unfoamed homes studied apparently contained enough particle-board, paneling, and plywood to allow the Iowa investigators to make correlations between the surface area of these products and the formaldehyde level, but the number of homes containing these products, and the amounts of these products present in each home, were not supplied by the commenter. Additionally, the homes studied included a brand new unoccupied unfoamed home, which gave the highest reading (0.34 ppm) of formaldehyde and skewed the data significantly toward a high average level for the unfoamed homes. Thus, it is questionable whether this small sample is representative of all U.S. homes without U.F. foam insulation.

In any event, the data should not be compared with data from U.F. foam insulated homes from the earlier Iowa study, especially since the data for homes without U.F. foam insulation from the earlier Iowa study are ignored. At the very least, the data from the new study should be combined with the data for homes without U.F. foam insulation supplied earlier to CPSC by the University of Iowa. If this is done, the average level of formaldehyde in homes without U.F. foam insulation in the data obtained from the University of Iowa is 0.044 ppm. If the later University of Iowa data are combined with the measurements for all the homes without U.F. foam insulation that were used in the revised CPSC risk assessment, the average level for unfoamed homes would be 0.035 ppm. This is not very much different from 0.027 ppm, the average ambient level for non-foamed homes derived in the risk assessment.

Some comments state that the Iowa study of Frank et al. shows that there is no difference in formaldehyde levels between homes with and homes without U.F. foam insulation.

This is incorrect. A Commission staff analysis of the Frank et al. data shows that formaldehyde levels in U.F. foam insulated homes were significantly higher, at about the 95% level of confidence, than the levels outdoors or in homes without U.F. foam insulation. A more recent (April, 1981) analysis of a much larger data base on formaldehyde levels in both homes with and homes without U.F. foam insulation (over 800 measurements vs. 137 in the Iowa study) shows that the levels of formaldehyde in U.F. foam insulated homes are significantly higher (0.12 ppm) than the levels in other homes (0.03 ppm) and outdoors (0.02 ppm), (memo by M. Cohn, 7/31/81, C–73).

A commenter states that earlier DOE and University of Iowa data clearly demonstrate that there is no difference between "properly foamed" conventional homes and homes without U.F. foam insulation.

This statement contains the basic flaw that the commenter identifies as "properly foamed" home by the fact that formaldehyde levels are low. The Commission does not dispute the fact that many U.F. foam insulation homes have relatively low formaldehyde levels. However, as noted elsewhere in this notice, it has not been demonstrated that any particular foaming procedure will ensure that the resulting foam will not contribute substantial amounts of formaldehyde gas to the levels in the home.

After considering the information discussed above, the Commission concludes that increased formaldehyde gas concentrations in the range that has been found in homes with U.F. foam insulation will produce adverse acute health effects in a significant portion of the exposed population.

h. *Symptoms could be from other causes.* Some commenters argued that the symptoms suspected to be caused by U.F. foam insulation are similar to those commonly incurred by members of the general population who do not live in homes with U.F. foam insulation. These commenters conclude that there is therefore no reason to believe that these symptoms are due to U.F. foam insulation.

Some of the symptoms observed in individuals living in homes with U.F. foam insulation are such that they can be seen to some degree in people who do not live in such homes, but who are affected by colds, flu, allergies or other ailments. However, the symptoms attributed to installation of U.F. foam insulation generally involve more than one of the following factors:

(a) They occur after the installation of U.F. foam insulation;

(b) They tend to be relieved when people are away from home;

(c) They persist for long periods of time;

(d) They disappear or abate upon the removal of U.F. foam insulation from the household;

(e) The combination of symptoms is different, in many instances, from those of colds, flu, allergies. etc.

(f) The symptoms have been diagnosed by physicians as due to formaldehyde.

Further, similar adverse health effects have been linked in the literature to formaldehyde emitted by U.F. foam insulation (Harris et al., 1981, C–57; Sardinas et al., 1980, A–5) or to formaldehyde (Garry et al., 1980, A–6; Morrill, 1961, A–11; Bourne and Seffrin, 1959, A–43; Gamble et al., 1976, A–9; among others).

Some commenters note that U.F. foam insulation is nonporous. These commenters argue that this causes the insulation to trap other pollutants in the home and that the symptoms attributed to formaldehyde are caused by these other pollutants.

No data were provided by the commenters, nor does the Commission have any data, to indicate that U.F. foam insulation traps other pollutants in the home to the extent that they may produce adverse health effects. On the contrary, the available information suggests that U.F. foam insulation would not appreciably alter the air infiltration rate of the home and thus would not significantly trap other pollutants. A substantial decrease in air infiltration of U.F. foam insulation homes would not be expected because:

(a) U.F. foam insulation shrinks and cracks after installation. Based on this behavior, its insulating qualities were derated 28 to 40 percent by the Department of Energy and the Department of Housing and Urban Development and over 40 percent by the Canadian Government.

(b) The air infiltration in a home has been estimated to be about 17% through or around doors and windows, 20–30% via heating systems, and 50–60% via structural joints and cracks (LBL study, Krinkle, 1980; E–26). U.F. foam insulation would not be expected to alter the rate of air infiltration for either doors and windows or heating systems. The effect on structural joints and cracks would not be complete even immediately after foaming because U.F. foam insulation, while it may seal some cracks, would not be expected to seal most structural joints. As the U.F. foam insulation shrinks and cracks upon curing, whatever sealing of cracks that might have occurred would be somewhat negated.

(c) In a model home that was subject to near ideal weatherization (sealing cracks, etc.), the air infiltration rate decreased less than 25 percent (LBL study).

Based on the information given above, U.F. foam insulation would not be expected to appreciably alter the air exchange rates of homes in which it is installed, and therefore should not trap other pollutants in the home sufficiently to produce adverse health effects. Additionally, some of the suggested pollutant gases—carbon monoxide, carbon dioxide, and radon—are non-irritating, and thus would not produce formaldehyde-like symptoms at levels normally found in the home. (A–37) Also, the concentrations of the irritant gases nitrogen dioxide and sulphur dioxide found in the home appear to be below levels producing eye, nose, and throat irritation in humans. (A–37) Finally, the available data indicate that U.F. foam insulation emits formaldehyde and that the resulting levels of formaldehyde in residences have produced these symptoms, as shown by occupational, residential, and controlled experimental studies.

For the reasons discussed above, the Commission concludes that the symptoms that have been attributed to formaldehyde gas from U.F. foam insulation are not caused by other indoor pollutants.

i. *Canadian data.* Another commenter stated that formaldehyde level data from Canada should be deleted from the risk assessment as not being representative of U.S. conditions.

However, when the exposure portion of the CPSC risk assessment is recalculated based only on U.S. data, there is no difference in the predicted risk. Furthermore, there is no apparent reason why Canadian homes would be tighter or produce higher formaldehyde measurements than U.S. homes, although it could be argued that lower levels might be measured in Canada since Canada is on the average colder than the U.S. and since the average age of Canadian U.F. foam insulation installations is older than U.S. installations due to the Canadian ban that has been in effect since December, 1980. It is also interesting to note that this commenter had previously supplied the Commission with data from Canada in an attempt to support his contention that the formaldehyde levels in homes with U.F. foam insulation are not significantly different than the levels in unfoamed homes.

In Canada, a number of recent measurements of formaldehyde levels in homes were taken under the National Testing Survey program, and a report on the results of these measurements was released on December 14, 1981 (A–71). One commenter stated that the Canadian data contained in the report of the National Testing Survey indicate that there is no statistically significant difference between the levels of formaldehyde found in unfoamed homes and foamed homes.

However, supplement No. 1 to the Canadian report (A–72) shows that all three groups of Canadian U.F. foam insulated homes examined in that report have significantly higher levels of formaldehyde compared to unfoamed homes. Thus, the commenter's statement is erroneous.

Additionally, most of the homes in the Canadian study were drawn from the Canadian Housing Insulation Project (CHIP), in which the Canadian government sanctioned the use of U.F. foam insulation. The installation of U.F. foam insulation under this program stopped in December, 1980, as a result of the ban of U.F. foam insulation in Canada. Therefore, since measurements by the National Testing Survey were taken in October, 1981, *all* CHIP homes (and indeed, upon checking with Consumer and Corporate Affairs Canada, *all* homes in the survey) had measurements taken at least 40 weeks after installation of the U.F. foam insulation. Thus, the levels of formaldehyde in the Canadian sample of foamed homes agree quite closely with the average measurements for the sample of foamed homes in CPSC's revised risk assessment where the measurements were taken 40 or more weeks after installation. CPSC sees no discrepancy between the two data bases.

Furthermore, the Canadian data bring out another observation that supports the view that there are higher formaldehyde levels in homes with U.F. foam insulation than in homes without. Even in the Canadian study, the percentage of foamed homes having high (greater than 0.1 ppm) levels of formaldehyde is greater than that percentage in unfoamed homes.

In addition, the Oak Ridge National Laboratory (ORNL) study (E–18) of the Franklin Research Center panels has demonstrated that even U.F. foam insulation installed under the best of conditions can result in increased formaldehyde levels in the home.

Thus, CPSC concludes that U.F. foam insulated homes have higher levels of formaldehyde than those found in other homes or outdoors and that U.F. foam insulation is the cause of this increase.

j. *Formaldehyde is found naturally in the body.* Some commenters note that formaldehyde is a normal metabolite, a vital ingredient in the synthesis of essential biochemical substances in humans, and they contend that it therefore should not produce toxic effects at certain levels.

Even though formaldehyde is a normal intermediary metabolite, it is ususally bound to various other chemicals in the body and is not free in the body in any measureable quantities (Federal Panel Report, 1980).

However, when the body is exposed to formaldehyde originating outside the body, the cells and tissues come in direct contact with free formaldehyde for varying periods of time, depending on the route of exposure. For example, when formaldehyde is inhaled, the surface of the respiratory tract is in direct contact with this chemical for the duration of exposure.

Further, the fact that a chemical is normally produced in the body does not imply that other types of exposures are noninjurious. For example, certain hormones that are formed in the body, and that are essential for the normal functioning of the body, produce adverse health effects when present in excess. Some of these, such as estrogens, have been linked to cancer.

k. *PCOH comments on controlled exposure studies.* Professional Consultants in Occupational Health, Inc., (PCOH) [16] analyzed the literature on the irritating effects of formaldehyde and provided a detailed analysis of two controlled human exposure studies (Anderson, 1979 and Weber-Tschopp, 1977). The Commission's response to PCOH's comments on these studies is based on both the articles themselves and on consultations with Drs. Anderson and Weber-Tschopp.

Anderson, 1979 (A–2). PCOH contends that the most crucial control experiment, in which subjects should be exposed to pure air for 8 hours to determine the effects of confinement for such long periods, was not done. In fact, such control experiments were conducted by the author (although not reported in this particular paper), and these control experiments did not show effects such as were observed in experiments with formaldehyde exposure.

PCOH also contends that metal probes inserted in the subject's noses, and the fluoroscopy performed on these subjects, may have caused the discomforts noted. However, in the study, metal probes were not inserted in the nose and the fluoroscopy, which was done only for a maximum period of 30 minutes, did not produce any irritant

[16] PCOH submitted a voluminous comment addressing a wide range if issues associated with the proposed ban. The Commission's detailed response to this comment is contained in Tab C–1 of the "Addendum to the Decision Briefing Package on Urea-Formaldehyde Foam Insulation;" January 29, 1982.

responses such as were observed from formaldehyde exposure.

PCOH argues that the study was further uncontrolled because:

(a) Formaldehyde was introduced when the room was sealed;

(b) Paraformaldehyde particulates were not measured;

(c) The subjects left the room after the first two hours of control exposure to pure air and returned for 5–6 hours of exposure to air containing formaldehyde.

In fact, these arguments have no basis in fact because (a) during the study there was a continuous supply of fresh air or fresh air containing formaldehyde vapor, (b) the formaldehyde generating system specifically did not allow passage of paraformaldehyde particulates, and (c) the subjects did not come out of the chamber after the initial two hour control period but remained in the controlled chamber in which temperature, humidity, and the flow of filtered fresh air were maintained.

PCOH further indicates that the study was biased because of the previous experience of the author and his position in a Danish government agency, and because the students provided the desired responses to please the professor.

No bases were provided for these allegations, and both are incorrect. To begin with, the most important aspect of this study is that it was a double blind study. Neither the students nor the professor knew the levels of exposure to formaldehyde. Therefore, neither the subjects nor the experiments could purposely have biased the study. The author at that time was assistant professor at the University of Aarhus, and only later joined the Danish government agency.

PCOH also claimed that the observed effects were trivial and that a dose-response relationship did not exist.

On the contrary, the results showed a statistically significant response to formaldehyde exposure at 0.25 ppm and above in a dose-related manner. These responses included:

(a) A decrease in nasal mucus flow which indicates a possible ciliotoxic effect and which is confirmed by animal studies, and

(b) Eye, nose, and throat irritation which were observed from exposure to formaldehyde in clean air and would be expected to be more severe in the presence of dust and other contaminants of normal room air. Such enhanced effects have been documented in animal studies (A–29) and are indicated by studies in occupational and residential settings (A–5, A–6, A–9, A–11, A–43, C–57, C–75, among others). Also, these effects were noted in healthy young adults and may be more severe in other segments of the general population. The effects of prolonged eye, nose, and throat irritation should not be termed trivial.

PCOH's suggestion that these "trivial" effects are related to the recognition of the presence of formaldehyde ignores the fact that recognition has been reported at much lower levels without resulting in symptoms. Wahren, 1980 (A–60), showed a 0.05 ppm for odor threshold, but there were no symptoms reported at that level in that study.

Weber-Tschopp et al., 1977 (A–3). PCOH also analyzed the controlled exposure study by Dr. Weber-Tschopp et al. (1977) and concluded that this study did not show a dose-response relationship.

However, both the discontinuous and continuous exposure experiments by Dr. Weber-Tschopp et al. indicate that there are dose-related responses for eye and nose irritation over the range tested (0.03–4.0 ppm of formaldehyde).

PCOH also stated that "not only were interfering variables not sufficiently well controlled, but it appears from a critique of the paper that effects other than that of formaldehyde may have produced the results reported." PCOH believes these other effects include:

(a) The placement of 33 or 48 students at one time in the chamber (30 cubic meters), causing extreme crowding and uncomfortable temperatures and humidity.

(b) Increases in nitrogen being used as a carrier gas for formaldehyde may have caused part of the effects observed.

The originally available translation of the paper from German is unclear as to how many subjects were exposed at any given time. However, the original paper by Dr. Weber-Tschopp clearly stated that subjects in groups of two were placed in the chamber at any given time. This clarification renders meaningless PCOH's comments on chamber air quality and overcrowding.

In this study, the chamber temperature, humidity, and air flow were also controlled. The amount of excess nitrogen introduced into the chamber as a result of its use as a carrier for the formaldehyde is trivial (less than 0.1 percent), since air is already about 79 percent nitrogen. Therefore, the effects observed were due to formaldehyde and not to an increased nitrogen level.

In conclusion, the studies of Anderson (1979) and Weber-Tschopp et al. (1977) show the irritating effects of formaldehyde at low dose levels and can be used to estimate the likely population response. Similar findings were also reported by Rader (1974, A–57). This latter study was also controlled and involved exposure of students to known levels of formaldehyde. Statistically significant irritation responses were noted by Rader at 0.2 ppm and above.

After considering the PCOH comment, the Commission concludes that the Anderson and Weber-Tschopp et al. studies are valid for the purposes for which they have been relied upon by the Commission.

1. *Formaldehyde as a sensitizer.* Formaldehyde has been demonstrated to be a potent sensitizer by the dermal route under controlled experimental conditions in humans (Maibach and Marzulli, 1974, A–25) and guinea pigs (DuPont Haskel Laboratories, 1979, A–73; Maibach, 1978, A–52; Maurer et al., 1975, A–54). Formaldehyde gas can also cause dermal reactions following inhalation (Horsfall, 1934, A–20).

In addition, there is a large body of evidence consisting of clinical reports and controlled studies indicating that formaldehyde is a sensitizer (Horsfall, 1934, A–20; Hovding, 1969, A–22; Marzulli and Maibach, 1977, A–66; O'Quinn and Kennedy, 1965, A–55; Pirila and Kilpio, 1949, A–21; Scheper et al., 1976, A–58; Skogh, 1959, A–24; Marcussen, 1962, A–63; Fisher, 1979, A–64; Wallenstein and Robohle, 1976, A–61; Jordan, 1979, A–51). On the basis of such evidence, physicians specializing in contact allergies and organizations of such physicians (e.g., North American Contact Allergic Dermatitis Group, and its European counterpart, International Contact Dermatitis Research Group), as well as the NAS (1980), recognize formaldehyde as a sensitizing chemical.

One commenter, Professional Consultants in Occupational Health, Inc., (PCOH) provided a detailed analysis of a substantial number of papers on this issue. Important issues raised by PCHO are discussed below.

PCOH claims that allergic, hypersensitive, and idiosyncratic responses from formaldehyde exposure should be considered separately and that CPSC failed to do this.

Contrary to the PCOH assertion, CPSC did differentiate between allergic and hypersensitive responses. CPSC did not, however, distinguish between these responses (allergic/hypersensitive) and idiosyncratic responses since the of the latter phenomenon as related to populations exposed to formaldehyde has not been established.

Further, the differentiation between these responses is not very relevant, since:

(a) All of these groups are likely to suffer from adverse health effects at extremely low levels of formaldehyde, and

(b) All of these groups are present in the general population and may not be aware of their increased susceptibility to this chemical.

Although PCOH claims that hypersensitive and allergic responses are preventable while idiosyncratic ones are not, there is no practical way to identify all of these individuals, who may constitute up to about 8 percent of the population (Marzulli and Maibach, 1974; A–25), and in most instances they would be unaware of their increased susceptibility to formaldehyde. In order to reduce or eliminate the effects of formaldehyde on any of these groups, one has to reduce their exposure to this chemical.

PCOH states that "formaldehyde allergy" in the form of contact dermatitis is not demonstrated by their analysis of the literature because:

(a) The formalin used in such tests contained impurities such as methanol;

(b) Even if concentrations of formalin below 2% elicit results, these results are due to "hyperir-ritable skin" and not due to sensitization.

(c) Patch tests were conducted with 5% solutions of formalin and are invalid since, at that concentration, formalin produces irritant effects.

In arriving at their assertion, PCOH does not consider the experimental evidence from studies conducted under controlled conditions on humans (Marzulli and Maibach, 1974, A-25) and guinea pigs (Maurer et al., 1975, A-54; DuPont Haskell Laboratories, 1978, A-73; Maibach, 1978, A-52). PCOH further ignores more recent clinical literature in which allergic effects on the skin were noted from exposure to as little as 30 ppm of formaldehyde in solutions applied topically (Jordan et al., 1979, A-51).

Formalin does contain "impurities" such as methanol, which is deliberately added to stabilize the formaldehyde and thereby prevent oxidation to formic acid. Methanol has been shown not to cause irritation when tested by itself at a concentration of 1 percent (Horsfall, 1934, A-20). Where methanol, at 12 percent concentration, did produce irritation in some test subjects, the irritation response was clearly distinguishable from the allergic response (Jordan, 1979, A-51). As to methanol as a carrier in the dermal penetration of formaldehyde, it should be noted that formaldehyde alone is capable of penetrating the skin (Jeffcoat, 1980, C-59). Also, methanol at the concentrations found in formalin used for patch testing would not be expected to enhance the penetration of formaldehyde through the skin more than would water alone.

Reactions observed in patients with "hyperirritable" skin can occur at low concentrations of formaldehyde (Kligman, 1978, A–65). These reactions are, however, irritation responses and can be distinguished from allergic reactions by an experienced investigator.

Patch tests conducted with 5 percent formalin may be suspect, since this concentration may produce irritant effects, but there are other reports in which patch tests with as little as 0.01 percent and 0.1 percent have produced similar effects (Jordan, 1979, A–51); Rostenberg et al., 1952, A–66). Again, control subjects that were exposed to formalin solutions of up to 5 percent in some of these studies did not show such effects, whereas sensitized individuals did.

Therefore, the Commission concludes that the existing literature does show the existence of contact dermatitis from formaldehyde.

The more important papers analyzed by PCOH will be examined in detail below.

Horsfall (A–20). The first of these is paper by Horsfall (1934), which deals with a formaldehyde sensitization reaction following intradermal injection of, and skin immersion in, formaldehyde. PCOH states that this paper has reached erroneous conclusions because: (a) Irritation by insertion of a needle could cause a response, (b) blood contains formaldehyde dehydrogenase, so that formaldehyde is not present as such for very long, (c) human bodies may contain milligram amounts of free formaldehyde, so a small amount of injected formaldehyde is unlikely to produce a sensitization-type response, (d) Horsfall probably had a small lack of objectivity, and (e) "formalin is used to make virulent strains of virus suitably antigenic for immunization, but tends to modify or weaken their antigenicity."

However, the Commission staff's analysis of the Horsfall paper shows:

(a) Horsfall used the appropriate controls. All other substances that were injected intradermally, except benzaldehyde, produced no reaction in the same subjects, including control subjects. Thus, it is highly unlikely that the hypodermic needle itself caused the reaction. Additionally, the one percent methanol used in the skin immersion tests never produced a reaction in any subject. This result refutes the contention that it is the methanol in formalin that is responsible for the responses seen.

(b) Neither the injections nor the skin tests involved placing formaldehyde directly in the bloodstream. The delayed contact allergic response is a local response and does not require circulating free formaldehyde in the blood.

(c) Formaldehyde generated within the body is not free but is always complexed to other molecules.

(d) No rationale was given for the statement concerning the alleged lack of objectivity.

(e) Formaldehyde is used to inactivate or kill the virus prior to injection. In doing so, the formaldehyde may modify the proteins and nucleic acids. This, however, has no bearing on the sensitizing properties of formaldehyde.

In his study, Horsfall demonstrated that there are people within the population who are sensitized to formaldehyde and thus respond to very low (much lower than 2%) concentrations of formaldehyde. He found a subject who responded to intradermal injections of a 1:8,000,000 dilution of formaldehyde (0.0000125%). The subject also responded to skin immersion tests at a 1:5,000,000 dilution (0.00002%). Again, the subject did not respond to any other test substance (except benzaldehyde), including methanol. Horsfall finally found that the subject responded positively to intradermal injection of formalized protein, whereas four controls did not respond.

Thus, the Commission concludes that PCOH's criticisms of this study by Horsfall are invalid.

Rostenberg et al. (A–66). PCOH also analyzed a paper by Rostenberg et al. (1952), which is used by PCOH to support its position that formalized protein does not cause a definitive positive reaction in subjects supposedly sensitized to formaldehyde. Such a reaction was reported in the paper by Horsfall, and PCOH uses Rostenberg's failure to find a similar reaction to imply that Horsfall's work is unreliable. PCOH is correct in the specific assertion in that Rostenberg et al. found no allergic response to formalized protein in their study. It should be mentioned, however, that the lack of a reaction by a subject to *formalized protein* does not imply that the subject is not sensitized to formaldehyde. Persons sensitized to formaldehyde may or may not respond to formalized protein.

The Rostenberg et al. paper, however, contains quite a lot of additional relevant information to which PCOH makes no reference. Rostenberg et al.

also did patch tests with dilutions of formaldehyde, not just formalized protein.There was no response to those patch tests by control subjects. However, tests done on five nurses who had developed allergic dermatitis after 2 to 3 months of handling thermometers kept in formalin were all positive to 5% formaldehyde in solution. In addition, two of the nurses responded positively to a 0.5% solution.

Further, Rostenberg et al. injected solutions of formaldehyde intradermally into the subjects. No control showed any reaction at any dilution. However, three of the five nurses responded to a 1:1000 dilution (0.1%) and two responded positively to a 1:10,000 dilution (0.01%). It is unrealistic to conclude that such reactions, appearing only in previously exposed subjects, are due to an irritative mechanism at extremely low concentrations. The most likely conclusion is that the nurses were sensitized by their previous exposure to formalin. Rostenberg et al. conclude that: "A 10% solution is a reasonably potent eczematous sensitizer" and that "formaldehyde sensitivity of the eczematous variety seems to be quite specific."

PCOH drew the following conclusions from these two papers: (1) Horsfall produced a false positive formalin test, and (2) Rostenberg et al. failed to reproduce Horsfall's results. However, PCOH gives no good reason to cause even the slightest suspicion that Horsfall's subject's response was a false positive. The subject responded to formaldehyde by two routes of administration, and the subject did not respond to any other chemical except benzaldehyde. Significantly, the subject did not respond to methanol. The concentrations used were orders of magnitude below the 2% figure cited by PCOH. Although Rostenberg et al. did not reproduce the formalized protein experiment, they did reproduce the finding that sensitized humans do respond to very low concentrations of formaldehyde itself, and that the response is due to the subject being sensitized, not simply to an irritative response. Thus, both these studies support the conclusion that formaldehyde is a sensitizing agent in humans.

Marcussen (A–63). PCOH also submitted an analysis of the paper by Marcussen.

Marcussen was concerned with allergic reactions in people sensitized to formaldehyde. He identified 96 such persons who responded in a patch test with 4% formaldehyde, and, in all but 15, he was able to explain what may have caused their hypersensitivity. Thirty-five of the patients had their hypersensitization attributed to clothing. Of these subjects, Marcussen tested 24 for reactions to pieces of clothing in their possession. Pieces of cloth were examined for formaldehyde content by a non-quantitative screening test which detects both free or polymerized formaldehyde. Among the 24 people, there were 19 positive reactions out of 64 tests with pieces of cloth having a detectable formaldehyde content. These same individuals had no positive reactions to 107 pieces of cloth having no detectable formaldehyde content. Also, none of four controls (i.e. subjects not responding in a 4% formaldehyde patch test) responded to 15 samples of fabric containing formaldehyde. In any event, 64 out of 64 positive reactions in formaldehyde-containing cloth would not be expected since sensitivities can vary, and formaldehyde detected in the non-quantitative screening test may not have been available in some of the pieces of cloth in sufficient quantities to penetrate the skin and cause a reaction.

From the above, it is unreasonable to conclude that formaldehyde is not the causative agent in the reactions observed; the only reactions in the 24 test subjects sensitized to formaldehyde were to formaldehyde-containing fabric. These findings also indicate that methanol (which would not be present in fabrics) is not required for allergic reactions to formaldehyde, as PCOH contends.

PCOH is correct when they say that there is no sharp delineation in the response of hypersensitized individuals and controls after intracutaneous injection of formaldehyde. However, there was a highly significant difference between the two groups. Of 14 hypersensitive subjects (i.e. those that responded to patch tests), 11 responded to a 10^{-4} or greater dilution (one at 10^{-7}), and three to 10^{-3}. Of 21 controls, only one responded to a 10^{-4} dilution, and the other 20 responded to 10^{-3} or 10^{-2}. Thus, the sensitized population and the control population comprise overlapping but distinct classes of subjects. One cannot assume that people who were previously exposed to formaldehyde in textiles respond at much lower concentrations than controls due to a heightened irritative mechanism that just happens to be present in this group. It is more reasonable to conclude that the previously exposed subjects responded at higher dilutions, compared to controls, because of the previous exposure. This implies that sensitization occurred among these people.

PCOH claims that "an intradermal test for formaldehyde will give a positive reaction at a dilution which also gives a positive patch test in allergic persons. This casts grave doubt on the accuracy of formalin patch testing." PCOH's rationale for this statement is that "a false positive reaction on an irritant basis just beneath the epidermis" could be occurring. The data given above, however, indicate that something other than simple irritation is operating in formaldehyde sensitivity cases. PCOH also states that reaction may be due to the patch itself in such tests. This is unlikely, however, since in Marcussen's experiment, none of the "sensitized" persons responded to clothing that did not contain formaldehyde, as detected by the screening method used.

The Commission concludes that the result of Marcussen's work demonstrates that previously exposed persons react at lower dilutions of formaldehyde. The fact that 11 of 14 previously exposed subjects responded at 10^{-4} or greater dilution, while only 1 out of 21 controls responded at the 10^{-4} dilution, would require too much coincidence for simple irritation to be responsible for all reactions (a Fisher exact test shows that the probability is less than 0.00002 that these results happened by chance).

Maibach and Marzulli. PCOH also reviewed the study of Maibach and Marzulli (1974, A–25). The study shows, among other things, that 4.5 to 7.8 percent of the general population is capable of being sensitized by dermal exposure to formaldehyde. In this study, young, healthy adults were exposed to solutions of 0.1 percent, 1 percent, 3 percent, 5 percent, or 10 percent fomalin to induce sensitization. The test for sensitization (challenge) was accomplished with 1 percent formaldehyde in each instance. Formaldehyde was found by the authors to cause sensitization at all induction concentrations except 0.1 percent.

PCOH states that "no significant differences existed in the groups skin tested with less than 1 percent, then 1 percent, 3 percent, 5 percent and 10 percent formalin solutions as compared with controls," and "CPSC and other regulatory groups for some reason have interpreted these non-significant findings as significant."

However, in this study, controls were not necessary and thus were not used, so the statement of PCOH is meaningless. Maibach and Marzulli in actuality compared the challenge results for those groups whose sensitivity had been induced with 1 percent and 3 percent formalin with the challenge results for the groups induced with 5 percent and 10 percent formalin and

found no significant difference in the number of subjects responding to a 1 percent formalin challenge. However, if one compares the groups responding (from induction by 1, 3, 5, or 10 percent) with the non-responding (0.1 percent formalin) group, the comparison is significant. PCOH also seems to confuse the initiating concentration with the challenge concentration in their analysis of this study. It is clear that CPSC and others have not interpreted nonsignificant results as being significant.

PCOH also stated that allergic asthmatic responses induced by exposure to formaldehyde have been observed only in atopic individuals (those exhibiting allergic reactions without previous exposure) or in smokers, and that the concept of late (delayed) asthmatic reaction of allergic nature is only accepted among a small number of allergists and clinicians in Great Britain. Thus, the commenter indicated that formaldehyde does not induce allergic asthmatic responses.

In fact, the existing literature contradicts these assertions. There are several articles that conclude that formaldehyde induces allergic asthmatic responses (Hendrick and Lane, 1975, A–74, 1977, A–19; Popa et al., 1969, A–56; Wallenstein and Rabohle, 1976, A–61; Alenko, 1977, A–42). The first case (Hendrick and Lane, 1975) alleged to be atopic by PCOH cannot be found to be atopic since she did not respond to twelve other common allergens. The case (in Hendrick and Lane, 1977, A–19) characterized by PCOH as a lifelong nonsmoker in fact was a lifelong smoker.

The concept of late asthmatic response of allergic nature is recognized in this country and has been described in the Task Force Report of the National Institute of Allergy and Infectious Diseases on *Asthma and Other Allergic Diseases.* Also, the October 1981, NIH Research Resource Reporter commented on the United States research in this area.

Based on the Commission staff's analysis of these and other papers, the Commission concludes that there is sufficient literature, both clinical and experimental, to show that formaldehyde is a sensitizer.

Size of the allergic population. Some commenters stated that allergic reactions to formaldehyde cannot be used to determine an unreasonable risk of injury because the allergic population is a small segment of the general population.

CPSC has not used the size of the allergic population as the determinant of unreasonable risk of injury. However, it was one of the factors considered by the Commission which lead to the conclusion that UF foam insulation presents a significant health risk.

Allergic persons may respond to extremely low levels of formaldehyde or may have very severe reactions. The exact size of the population that has the potential of becoming allergic has not been defined. On the basis of experimental evidence, the potential size of such a population was estimated to be 4.5 to 7.8 percent of the general population (Marzulli and Maiback, 1974, A–25). Four percent of dermatologic patients also respond positively to formaldehyde patch tests (A–75).

3. Other Chronic Health Effects

In addition to the comments on the carcinogenicity and mutagenicity of formaldehyde, comments were received on other chronic health effects connected with formaldehyde exposure.

Effect of formaldehyde on chronic respiratory disorders. With regard to using the results of studies using young, healthy adults to evaluate risk to the general population, some comments stated that CPSC does not have evidence that persons with asthma or chronic respiratory disorders may experience more severe reactions when exposed to formaldehyde. However, CPSC is aware of such data.

There are studies reporting asthmatic responses in persons exposed to formaldehyde (Ludwig, 1935, A–30; Horsfall, 1934, A–20; Paliard et al., 1949, A–15; Turiar, 1952, A–16; Nova, 1957, A–17; Sakula, 1975, A–18; Hendrick and Lane, 1977, A–19; Popa et al., 1969, A–56; Wallenstein and Rebohle, 1976, A–61; Alanko et al., 1977, A–42; Garry et al., 1980, A–6).

In a report on "Asthma and other Allergic Diseases" prepared by the National Institute of Allergy and Infectious Diseases task force (NIH publication No. 79–387, May 1979), it was indicated that irritants such as formaldehyde can induce episodes of airflow obstruction in subjects who are already asthmatics, and that formaldehyde vapor at very low concentrations can induce severe and prolonged attacks of asthma in a small number of people.

Moreover, asthmatics, persons with some types of chronic respiratory disorders, certain atopics, and others have hyper-reactive airways which make them more susceptible to the effects of irritant gases such as formaldehyde. These groups were also predicted to react more severely to the irritant effects of formaldehyde by the NAS Committee on Aldehydes (1981). The Committee estimated that 10 to 12 percent of the U.S. population may have such hyper-reactive airways.

Neuropathy. One physician stated in his comment that two of his patients developed neuropathy after exposure to formaldehyde from U.F. foam insulation. Preliminary results from a study in which animals were fed formalin indicate that formaldehyde may produce neurological damage. There are indications in the literature (Bonashevskaya, 1973, A–76) that formaldehyde may produce damage to the nervous system. However, the evidence at present is not conclusive. Schenker and Weiss (1981, A–77) have recently reported preliminary findings that suggest that chronic low level exposure to formaldehyde may cause significant neuropsychiatric changes.

Although the results of these studies warrant concern and further investigation, the Commission has not used the risk of possible neuropathic effects of exposure to formaldehyde gas as a basis for its determination that there is an unreasonable risk of injury associated with U.F. foam insulation.

Psychological factors. Several consumers expressed concern about the psychological problems associated with the adverse health effects resulting from formaldehyde gas from U.F. foam insulation. Other commenters were concerned about the psychological impact of a ban on "satisfied" U.F. foam insulation consumers and on installers and manufacturers because of economic factors.

The Commission acknowledges that satisfied U.F. foam insulation consumers, and members of the industry that may lose jobs or businesses, may be affected by stress factors as a result of the ban. Also, U.F. foam insulation consumers could experience stress resulting from the adverse health effects of formaldehyde that would occur in the absence of a ban. While some psychological effects relating to these stress factors could occur, their overall impact cannot be quantified in a meaningful way for making cost and benefit comparisons of the likely effects of the ban. In any event, such factors would not warrant permitting U.F. foam insulation to continue to be installed, thereby increasing the risks of illness caused by formaldehyde gas.

4. Economic Issues

Backgound

Residential installations of U.F. foam insulation from 1975 through 1981 (the years that should account for nearly all installations in this country), according to the ranges of estimates in each of

those years, total about 368,000 to 626,000. The Commission believes the most reasonable estimates show that approximately 435,000 residences have been insulated with U.F. foam from 1975 through 1981.

Retrofit insulation of existing homes, involving all insulation materials, increased greatly in the middle-to-late 1970's, largely in response to increases in energy costs during those years. During part of this period, production capacities of alternative insulation materials, such as cellulose and fiberglass, that are widely used in wall retrofit applications were inadequate to meet the great increase in demand. The combination of an expanding demand for insulation and shortages of alternative materials created an ideal situation for the U.F. foam insulation industry. The data below show the rapid increase in annual residential installations of U.F. foam that led to an industry peak in 1977.

Estimated number of residential installations

Year:	
1975	25,000
1976	45,000
1977	170,000
1978	80,000
1979	75,000
1980	30,000
1981	10,000

Source: CPSC, Division of Economic Program Analysis, "Final Economic Assessment of a Ban on Sales, Urea Formaldehyde Foam Insulation," January 1982, Table 1, Page 3 ("most reasonable estimates").

Overall demand for residential insulation fell in 1978, and some producers of alternative materials reportedly have increased production capacities since 1977. As a result of these changes in market conditions, the supplies of alternative insulating materials in competition with U.F. foam insulation have been adequate to meet the demand, and the conditions present in 1977 that favored the growth of the U.F. foam insulation market are not now present.

In more recent years, public awareness of health problems associated with some installations of U.F. foam insulation have been added to the industry's problems outlined above. This increased awareness has resulted from media accounts of problems encountered by some consumers who have had U.F. foam installed and from reporting of the deliberations and actions of state and local governments, the Canadian government, and federal agencies of the United States, including the Commission.

It appears that the decreased demand for U.F. foam insulation in recent years has greatly reduced the number of firms that manufacture and supply materials to installers of the product. At one time, perhaps 30 or more manufacturers supplied resins to the insulation market, although the ten largest companies supplied 90 percent or more of the material used. Some manufacturers, including two major manufacturers, withdrew from the market before 1980. In a letter to the Commissioners dated December 17, 1980, counsel for the Formaldehyde Institute identified nine manufacturers, seven private labelers of products produced by those companies, and three distributors of imported U.F. resins (EC–9). According to an official of the National Insulation Certification Institute (NICI), the number of active U.F. foam resin manufacturers may have decreased to four by September, 1981, (EC–14) although six firms were identified by that official in January, 1982 (EC–19).

Based on information provided by Battelle Columbus Laboratories in a report to the Commission, there may have been more than 5,000 installers of U.F. foam in 1977 (EC–5). Battelle estimated that the number of installers may have fallen to less than 3,000 in 1978. An industry source advised the Commission staff that there may have been 1,500 to 2,000 U.F. foam installers that still used the product in April, 1980 (EC–20); in January, 1981, he estimated that the number of active U.F. foam installers had fallen to between 600 and 800 (EC–10). Other industry sources estimated the number of active U.F. foam installers to be 200 to 250 in September of 1981.

The number of persons employed by the insulation contractors surveyed by the Commission's staff in September, 1981, averages about 8 to 10 per firm. One-third of these contractors have only one or two full-time employees. The average number of employees that install U.F. foam for contractors currently selling the product is slightly more than four, although 43 percent of the contractors surveyed stated that only two employees install U.F. foam.

Current installers of U.F. foam who were surveyed reportedly obtained an average of 53 percent of total revenues from U.F. foam-related sales in 1980. However, many of the surveyed firms had submitted comments to the Commission and to the Department of Energy on matters relating to the regulation of U.F. foam insulation. Such firms may have had more at stake in the outcome of government deliberations on U.F. foam insulation than generally was the case for installers of the product. Therefore, the average percentage of revenues per installer from U.F. foam insulation sales may have been less than that indicated by the staff's survey.

Other insulation materials than U.F. foam are readily available to consumers who wish to insulate their exterior walls, and, in fact, these materials were used much more frequently than U.F. foam, even during the years in which the greatest numbers of U.F. foam installations took place.

The Commission estimates that the market share for U.F. foam insulation in 1978 was approximately 5 percent. A reasonable estimate of U.F. foam's share of the residential wall retrofit market in 1981 would be approximately 1 percent.

The Commission estimates that few schools have been insulated with U.F. foam.

The economic effects of a ban on sales fall on: (1) U.F. foam chemical manufacturers and suppliers of imported chemicals; (2) U.F. foam insulation contractors; and (3) consumers and the public at large (in the form of foregone energy savings, a reduction in the hazard of exposure to formaldehyde, the avoidance of a reduction in the value of homes that would otherwise have been insulated with U.F. foam, and, it has been suggested, possibly reduced resale values of homes previously insulated with U.F. foam).

In assessing the economic impact of a ban on sales on manufacturers and distributors of imported U.F. foam resins, the major areas of concern are loss of revenues, and reduced employment by those firms. The following discussion addresses these areas.

(1) U.F. foam chemical suppliers would face a loss in material sales corresponding to the value of materials that would be used in installations that would occur if there were no ban. Based on information provided by U.F. foam insulation contractors recently surveyed, the Commission estimates that the average wholesale price per "drumset" of U.F. resin and foaming agent is about $250, although reported prices varied considerably. A typical drumset consists of 55-gallon drums of resin and foaming agent. According to installers surveyed, an average of about 1.2 drumsets are required to insulate a single-family residence. Therefore, for every 10,000 single-family residences that would be insulated with U.F. foam in the absence of a ban, the Commission estimates that revenues received by manufacturers and distributors would total nearly $3 million. The Commission's survey of U.F. foam insulation contractors indicated that

non-residential installations of the product may comprise 10 percent of all applications. Such installations are likely to be larger than the average residential application, and possibly account for 20 percent or more of the total revenues and materials used annually. Therefore, for each 10,000 residential installations, accounting for nearly $3 million in wholesale revenues, about 1,100 nonresidential installations may be done, with a wholesale value of more than $700,000.

The Commission estimates that in 1981 there were 8,000 to 10,000 residential installations of U.F. foam. Since 10 percent of installations are estimated to be in non-residential buildings, the total wholesale value of U.F. foam resin and foaming agent used in 1981 is estimated to have been from about $2.9 million to $3.7 million.

Based on available information, the Commission estimates that fewer than 50 employees are currently involved in the manufacture of U.F. foam insulation resins. If a ban had not been adopted and if market conditions improved for the industry, employment could have risen in the future.

(2) The major impacts of a ban of U.F. foam insulation on installers are expected to be in the form of lost revenues and reduced employment. As previously noted, there are an estimated 200 to 250 contractors still installing U.F. foam. Residential installations of U.F. foam may have totaled 8,000 to 10,000 in 1981. Non-residential installations may comprise 10 percent of all applications, and perhaps 20 percent of total revenues. The installed value of U.F. foam insulation in 1981 may have totaled $7.5 million to $11.3 million from residential applications and $1.9 to $2.8 million from nonresidential applications. Total 1981 revenues from U.F. foam, therefore, may have ranged from about $9.3 million to $14.1 million. Although the ban is limited in scope to residences and schools, it is expected to affect adversely the product's use in other applications, since for many companies these remaining applications may not provide enough income to warrant continuing with U.F. foam insulation installations. Furthermore, installers may wish to avoid the possibility of being subjected to liability claims if health problems occur after installations of U.F. foam insulation in buildings outside the scope of the ban. At the current rate of installation, the Commission estimates that a ban on sales of U.F. foam could result in lost revenues to installers of the product totaling up to $14 million if firms are not able to sell substitute materials. However, most of these lost revenues should be offset by gains in revenue in those portions of the insulation industry that install types of insulation other than U.F. foam.

Assuming that 200 to 250 insulation contractors currently install U.F. foam, total employment by U.F. foam installers may now range from 1,600 to 2,500, of which perhaps 850 to 1,000 may actually install U.F. foam insulation.

Sixty-two percent of U.F. foam installers surveyed by the Commission's Economic Analysis staff stated that U.F. foam accounted for 50 percent or more of their total revenues in 1980; the average was 53 percent for firms contacted. Although reported sales in 1981 were significantly below those for 1980, many of the current U.F. foam installers still received a significant percentage of their total revenues from U.F. foam. Many of the current U.F. foam installers contacted (perhaps 40 percent) indicated that a ban of U.F. foam insulation would put them out of business.

The Commission estimates that annual savings in energy from each 10,000 residences insulated with U.F. foam insulation may be about 383 billion Btu's. The value of these savings at 1981 energy prices is estimated to be $2.7 million.

The walls of most residences now being insulated with U.F. foam could be insulated with alternative insulation materials that have about the same insulating value as U.F. foam. Also, most non-residential buildings can be insulated by other methods with alternative materials. However, perhaps 10 to 15 percent of these residences have narrow wall cavities that could not be insulated with widely available alternative materials. For each 10,000 total residential installations of U.F. foam, perhaps 1,000 to 1,500 would have narrow-cavity walls. The Commission estimates annual energy savings resulting from U.F. foam installed in these residences may range from 9.8 to 14.8 billion Btu's, with a value of $68,000 to $105,000 at 1981 energy prices.

Some of the costs of a ban on sales of U.F. foam insulation are readily quantifiable and some are not. Most of the expected benefits of a ban do not lend themselves easily to quantification. A Commission ban on the future installation of a product for which adequate substitutes are available for most uses invites consideration of the extent to which adverse cost effects on one group may be balanced by gains for others. A further circumstance with regard to U.F. foam insulation is that a substantial number of existing installations of the product, although not subject to the ban, may be affected by perceptions of risk resulting from publicity concerning the risks associated with U.F. foam insulation that follows the Commission's action.

The principal benefits of a ban are reductions in the number of additional cases of cancer and adverse acute health effects associated with future residential installations of U.F. foam. The Commission's staff has prepared an assessment of the risk of cancer resulting from the installation of U.F. foam in the walls of residences. A reasonable upper estimate of the risk of developing cancer from formaldehyde released by U.F. foam was determined to be .000037 for individuals that are exposed over 9 years, according to one set of data, and .000051, according to another set of data. The lower estimate of risk is essentially zero, although this possibility is considered unlikely.

If the risk per 10,000 residential installations is considered, and it is assumed that there are 3.5 persons per residence, perhaps 35,000 persons would be at risk. Based on the upper estimate of risk for 9 years of exposure (.000051), the projected additional cases of cancer as a result of the exposure are 1.8 for the 10,000 installations.

By avoiding the additional cases of cancer, the ban eliminates the medical and social costs of treatment, and possibly, the costs of lives lost. A ban would also eliminate future acute health effects and their attendant medical costs, time lost from work, reduction of property values and/or costs of remedial measures related to future installations of U.F. foam, including costs to remove and replace U.F. foam and, in some cases, costs of temporary alternate housing.

The direct costs of a ban include foregone energy savings, lost sales by installers and U.F. foam resin manufacturers, and the loss of jobs and possible business failures related to these lost sales. The principal indirect costs would be possible reductions in the value of houses resulting from perceived risks for existing installations of U.F. foam, although these installations would not be subject to the ban.

Among the direct costs of the ban, all except foregone energy savings may be compensated, in large part, by gains in sales of other types of insulation or other home improvements. Lost sales to the U.F. foam segment of the insulation industry may total $11 to $14 million, based on 1981 levels, of which about $3 million would be revenues lost to

manufacturers and distributors of the insulation resins.

Some manufacturers of U.F. resins that remain in business still derive a substantial percentage of their total revenues from U.F. foam-related sales. Diverting resin production to other uses may be very difficult, and some firms could go out of business. At the present time, there may be as few as four manufacturers of U.F. foam resins, and these companies utilize perhaps fewer than 50 people in producing the resins. The Commission estimates that 200 to 250 insulation contractors still install U.F. foam. Nearly all of these firms have some ability to compensate for lost revenues that would result from a ban. However, although average revenues to installers from U.F. foam sales have decreased significantly, the product is still important for many firms, and about 40 percent of U.F. foam installers surveyed recently indicated that a ban would cause them to go out of business. If this is representative, the ban could result in as many as 100 insulation contractors going out of business, affecting perhaps 800 employees.

In addition to the ability of firms in the U.F. foam segment of the insulation industry to compensate for lost revenues resulting from a ban, other firms in the insulation industry that have not been involved with U.F. foam insulation may realize increased revenues from insulating residences that otherwise would have been insulated with U.F. foam. Therefore, revenues lost as a result of a ban on sales of U.F. foam may be largely offset by increased sales by other segments of the industry. For this reason, it may be most useful to compare the principal benefit of a ban that can be quantified, a reduction in the risk of cancer, to the principal cost that cannot be recovered, foregone energy savings.

The Commission estimates that the present value of foregone energy savings resulting from the ban of U.F. foam would range from about $531,000 to $1,050,000 if the foregone energy savings for 10 years are considered, and $296,000 to $525,000 if foregone savings over 5 years are considered.

This is based on the assumptions that 85 to 90 percent of those residences could be insulated with other wall insulation materials and that the real price of energy will increase 5 to 10 percent annually.

Comparing these costs to the estimated increased risk of cancer that may result from each 10,000 installations of U.F. foam (1.8 cases), the calculated cost per cancer avoided may be about $164,000 to $292,000.

It should be noted that these ratios are based only on consideration of the reduced risk of cancer. Other benefits to society, including a reduction in adverse health effects caused by the irritant, sensitization, and other toxic effects of formaldehyde, an avoidance of the medical and social costs of treatment for cancer, and, possibly, the costs of lives that would otherwise be lost, would also result from the adoption of a ban of U.F. foam. Also, in some cases, adverse health effects resulting from formaldehyde released by U.F. foam insulation have resulted in costs of remedial measures to attempt to correct problems, including removal of the insulation and replacement with alternative materials. Some inhabitants of U.F. foam-insulated residences have also incurred costs of time lost from work, rental of other residences, and other costs. To the extent that these costs are the result of U.F. foam insulation, and would result from future installations, a ban of sales of U.F. foam would result in the additional future benefits of avoidance of these costs. Information with which these benefits can be quantified with much confidence is not available at this time.

The estimated foregone energy savings have been expressed as the present value of savings over five years. If alternative insulating materials are made available, so that few buildings cannot receive additional insulation because of the absence of U.F. foam, then foregone energy savings from the ban may approach zero.

Consideration of the direct effects of a ban allow some of the costs (mainly foregone energy savings) to be weighed against some of the benefits (mainly cancers avoided). However, it is far more difficult to assess the costs and benefits of the possible secondary effects, such as costs to owners of homes that have already been insulated with U.F. foam. Knowledge of the ban may lead to removal of U.F. foam insulation or other remedial actions in residences that had it installed a number of years ago. These expenses may be incurred without a corresponding reduction in risk, if present formaldehyde emissions in those homes are at extremely low levels. The extent to which these effects may occur is uncertain. It is likely that they will diminish with the passage of time, and that they will not extend to all, or perhaps even a large portion, of the existing installations.

The possible economic impacts of the ban on U.F. foam insulation are discussed in more detail in the Commission staff's Final Economic Assessment (EC–15).

Comments

Many of the more than 270 comments received on the proposed ban of U.F. foam insulation addressed economic issues. These comments are discussed below under the major categories of economic issues into which the comments generally fell. These major categories are impacts on firms in the industry, impacts on energy savings, effective date, scope of the ban, and impacts on resale values of property with U.F. foam insulation.

a. *Impacts on firms in the U.F. foam industry.*

(i) *Installers of U.F. foam insulation.* Many comments were received from U.F. foam insulation installers, chemical suppliers, and others regarding the impact that a ban would have on the industry as well as on their firms. In addition, the Commission's staff conducted a telephone survey of 77 insulation contractors, nearly all of which were current or former installers of U.F. foam insulation. (EC–11, 12)

Information from the survey is consistent with the previous conclusion that U.F. foam insulation experienced rapid growth in the mid-1970's. It appears that about 85 percent of the current or former U.F. foam insulation installers surveyed began using U.F. foam in 1975 or later. This was a period of increased installation of all types of insulation, largely in response to rising energy prices. Many manufacturers of alternative types of insulation materials had insufficient capacity to meet the great increase in demand. These factors resulted in highly favorable conditions for the growth of the U.F. foam segment of the insulation industry.

Since 1977, residential retrofit insulation activity has been reduced considerably. Also, the number of new residences insulated each year has been greatly reduced because of decreases in new construction in recent years. These unfavorable market conditions occurred at a time when there were many more insulation contractors in business than in previous years. Within this context, the Commission concludes that many U.F. foam installers that entered the market without extensive experience and with limited product lines and services would probably have had a great deal of difficulty, even if no controversy had arisen concerning U.F. foam insulation. This statement is probably also true for many insulation contractors who do not install U.F. foam. However, U.F. foam insulation installers have been faced with the additional hardships arising from increased public awareness of possible

health hazards resulting from formaldehyde offgassing. For many of these firms, U.F. foam insulation accounted for the greatest percentage of their revenue.

Based on information provided by Battelle Columbus Laboratories in a report to the Commission (EC–5) there were probably more than 5,000 firms that installed U.F. foam insulation in 1977. Battelle estimated that the number of installers may have fallen to less than 3,000 in 1978. An industry source (EC–20) advised the Commission staff that there probably were 1,500 to 2,000 firms installing U.F. foam insulation in April, 1980. However, he estimated that the number of active U.F. foam insulation installers had fallen to between 600 and 800 by January, 1981 (EC–10). Other industry sources estimated the number of firms selling U.F. foam insulation to be 200 to 250 in September, 1981. Clearly, the industry has been greatly affected by unfavorable market conditions and by increased public awareness of the possible hazards of U.F. foam insulation.

Battelle estimated that in 1977, a year of greatly increased insulation activity and a shortage of alternative materials, there were 170,000 residential installations of U.F. foam insulation. The Commission's staff estimates that installations fell to 80,000 in 1978, 75,000 in 1979, 30,000 in 1980, and 8,000 to 10,000 in 1981.

Many of the current and former U.F. foam insulation installers remaining in business are operating at far lower revenues and greatly decreased numbers of employees than was the case in previous years. Although several contractors surveyed attributed these decreases largely to market conditions other than decreased U.F. foam insulation sales, more contractors attributed the decreases to adverse publicity on U.F. foam insulation.

The staff's telephone survey (EC–11, 12) indicated that contractors who still install U.F. foam insulation have attempted to broaden their operations in response to decreased demand. Of 48 current U.F. foam insulation installers surveyed, all but two had sources of revenue other than U.F. foam insulation. Eighty-one percent of these firms install other types of wall retrofit insulation, such as cellulose, fiberglass, and rock wool, in addition to U.F. foam insulation; 29 percent install more than one of these materials in wall cavities. Most U.F. foam insulation contractors install other insulation materials in attics. Generally, the blowing equipment for those applications can be used to insulate walls. In addition to other insulation work, many current U.F. foam insulation installers have other sources of revenue, such as from the installation of windows, siding, roofing, and ventilation equipment. Nevertheless, many contractors surveyed stated that U.F. foam insulation is still a significant revenue source for them, and many claimed that a ban of U.F. foam insulation would put them out of business.

(ii) *Manufacturers of U.F. resins.* As has been the case with installers of U.F. foam insulation, the manufacturers and suppliers of U.F. foam resins have been severely affected by the decline of the U.F. foam insulation market since 1977. At one time, perhaps 30 or more manufacturers supplied resins to the insulation market, although the ten largest companies supplied 90 percent or more of the material used. Some manufacturers, including two major manufacturers, withdrew from the market before 1980. In a letter to the Commissioners dated December 17, 1980, (EC–9) counsel for the Formaldehyde Institute identified nine manufacturers, seven private labelers of products produced by those companies, and three distributors of imported U.F. resins. According to a NICI official, the number of active U.F. foam resin manufacturers may have decreased to four by September, 1981, (EC–14) although six manufacturers were identified by that official as being in business in January, 1982 (EC–19).

The Commission concludes, based on its telephone survey and other data, that the remaining manufacturers that supply U.F. foam insulation still receive most of their revenues from sales of U.F. foam insulation. One exception is a large foreign chemical company that distributes a product similar to U.F. foam. If the ban had not been adopted, it is likely that future annual sales of U.F. foam insulation would have been far less than in previous years. Still, the Commission believes that, in the absence of a ban, U.F. foam resin manufacturers would continue to derive a substantial percentage of their revenues from sales of U.F. foam insulation. The ban of the product will probably result in some of the companies that are still active going out of business. If companies that specialize in the production of U.F. foam resins remain in business, they will probably operate at far lower revenues than they would have if a ban had not been adopted. Such firms would have a great deal of difficulty in diverting their resin production to other major markets for U.F. resins, such as adhesives for particleboard and plywood. It is unlikely that they would be competitive in those markets. Some manufacturers may attempt to increase their involvement in other energy conservation products. One manufacturer of U.F. foam resins reportedly receives half its revenues from production of cellulose insulation. Expansion into these areas would be very difficult, however.

Based on available information, the number of employees involved in the manufacture of U.F. foam insulation resins is fewer than 50. Based on statistics from the NICI on U.F. foam resin shipments through August, 1981, and estimates made by the Commission's Economic Analysis staff, the Commission estimates that the wholesale value of U.F. foam resin shipment in 1981 for residential applications was nearly $3 million. This is much less than previous years. Battelle estimated that the wholesale value of shipments of U.F. foam resins in 1977 totaled $80 million for residential applications (EC–5).

b. *Energy savings.*

(i) *Savings from U.F. Foam insulation.* At least 36 consumers who had U.F. foam installed in their homes commented that this resulted in significant savings in the energy used to heat or cool their residences. Several installers of U.F. foam and other non-consumers included similar comments. Some commenters provided estimates of the savings realized following installation of U.F. foam; these generally ranged from 20 percent to 60 percent energy savings. A number of consumers with U.F. foam insulation indicated that they were satisfied with the product.

Based on an assumed R-value (a measure of insulating effectiveness) of R–11 for U.F. foam installed in wall cavities of a typical home, the Commission's staff calculates that, compared to an uninsulated home, a reduction of about 17 percent in heating energy consumed could result from the insulation. At hearings before the Senate's Subcommittee on Rural Housing and Development on December 19, 1979, a representative of the Department of Energy's Office of Building and Community Systems stated that research that they have done indicates that the likely saving through wall installation of U.F. foam is in the range of 15 to 20 percent of the home heating energy (EC–21).

Many of the consumers and installers who claimed savings much higher then 20 percent may be including the results of other energy conservation measures taken. Some commenters specifically stated that they had attic insulation installed at the same time as U.F. foam in their walls. It is likely that those persons who install U.F. foam in walls

are very conscious of energy consumption; they may also have reduced thermostat settings on their furnaces and water heaters, installed storm windows, caulked, and taken other measures to achieve energy savings greater than that attributable solely to the installation of U.F. foam in their walls.

(ii) *Comparative energy savings from U.F. foam and alternative materials.* A number of commenters stated that U.F. foam insulation is superior to alternative wall cavity insulation materials in energy savings. The Formaldehyde Institute cited a 1978 report prepared for the Department of Energy by Brookhaven National Laboratory, "An Assessment of Thermal Insulation Materials and Systems for Building Applications," (EC–22) in support of their statement. That report states the R-value of U.F. foam to be 4.2 per inch, compared to R–2.2 for blown glass fiber, R–3.2 to R–3.7 for cellulose, and R–2.9 for blown rock wool. The Brookhaven report stated that the R-value for the insulation material between the frame in walls is approximately R–11 for blown-in mineral fiber, R–12 for cellulose, and R–15 for U.F. foam.

It should be noted that the Brookhaven report stated that the dimensional stability of U.F. foam has been questioned. Although an R-value of 4.2 per inch was given, the authors of the report pointed out that European and Canadian practice was to derate the overall calculated or measured thermal performance of systems containing U.F. foams up to 40 percent in order to allow for factors associated with shrinkage. Also, HUD specifications (Use of Materials Bulletin No. 74) recommends derating to 72 percent of claimed R-value for design purposes.[17]

In the December 21, 1979, Federal Register, the Department of Energy (DOE) proposed requirements for U.F. foam to be installed under its Residential Conservation Service (RCS) Program (EC–23). That proposal required a 40 percent derating of U.F. foam's effective R-value, based on observed shrinkage and investigations into the effect of shrinkage on effective thermal performance by Dynatech R/D Company. DOE stated that its information shows that actual shrinkage is often considerably more than manufacturers claim. An interim final rule for U.F. foam was published by DOE on September 25, 1980 (EC–24).[18] DOE stated that more recent investigations by the National Bureau of Standards and the University of Connecticut showed UF foam shrinkage to be 6 percent. DOE previously had assumed that shrinkage of 8 percent was common. This information resulted in a proposal by DOE to require a derating of 30 percent to calculate the effective R-value of U.F. foam used under its Residential Conservation Service program.

The discussion above is important in considering the effect on energy conservation that may result from a ban of U.F. foam. The accepted practice is to derate the design R-value of U.F. foam to determine the effective thermal performance of the material. In the Commission's calculations of energy savings attributable to U.F. foam, it was assumed that the effective R-value of U.F. foam installed in a conventional 2x4 wall cavity is about R–11. Based on a design R-value of 4.2 per inch, these calculations were based on a derating of about 25 percent, which is quite conservative in relation to the practice of other government agencies.

The effective R-value of U.F. foam should be compared to those of alternative insulation materials in assessing the impact of a ban on energy conservation. Loose fill insulation materials can settle within the wall cavity, and if no vapor barriers are present, condensed moisture can degrade the insulating performance of these materials. The Commission is not aware of any formulas that have been devised for derating the R-values of these materials to account for these factors. The Commission's staff has calculated that a 10 percent settling of these materials results in a reduction of about 10 percent in thermal performance. However, the Commission knows of no studies that have examined average settling of these materials. The Brookhaven report (n. 17, above) stated that loose-fill or blown insulations would still result in a product that meets design specifications if they are installed in accordance with manufacturers' recommended coverage directions. Given the lack of information on settling of blown insulation materials and the effect settling has on actual thermal performance, and considering the rather conservative derating of the R-value of U.F. foam explained above, the Commission concludes that alternative materials should provide about the same insulating effectiveness as U.F. foam in wall cavities.

Some commenters, including some state government officials, agreed that alternative insulation materials are available for most applications. These commenters generally stated that the alternative materials perform at least as well as U.F. foam in conserving energy.

(iii) *Availability of alternative insulation materials.* Several commenters stated that U.F. form is the only insulation that can be installed in existing narrow-cavity walls, such as between brick and block. The Commission agrees that adequate alternatives to U.F. foam in such applications may not be widely available, and the higher energy costs in such uninsulated walls are considered to be the primary cause of foregone energy savings that would result from the absence of U.F. foam from the market.

For the current and former installers of U.F. foam insulation that the Commission surveyed, these narrow-cavity walls comprised slightly more than 10 percent of residential wall retrofit installations of U.F. foam. Nearly one-fourth of the installers surveyed stated that all of their residential installations involved frame walls with the larger cavities for which insulating materials other than U.F. foam may be used.

One current U.F. foam installer (and distributor) that was surveyed stated that his firm does not recommend the installation of U.F. foam in narrow-cavity walls because of what they believe to be the relatively small savings in energy that result from such applications.

Although foregone energy savings would result from a ban if no other types of insulation can be used effectively in narrow-cavity walls, similar savings might be gained by consumers who can take steps, other than insulating walls, to conserve energy. For example, attic insulation could be increased, attic ventilation could be improved, or more energy-efficient windows and doors could be installed with money that would otherwise go towards installation of U.F. foam in the walls.

Although alternative insulation materials for use in narrow-cavity walls may not be widely available at this time, there is a definite possibility that they may become available in the near future. One possible alternative is currently under development by several companies (EC–25). The material is an isocyanate-based foamed-in-place insulation. It is chemically similar to the urethane insulation that has been used in commercial and industrial applications and in some retrofit

[17] An Assessment of Thermal Insulation Materials and Systems for Building Applications, Brookhaven National Laboratory (for the U.S. Department of Energy), June, 1978, pages 90, 92 (EC–22).

[18] DOE has since proposed to withdraw this standard, as it intends to defer to CPSC considerations of the issues associated with the use of UF foam insulation (46 FR 55836; November 12, 1981).

residential applications. It is applied at a lower density which enables it to be installed in wall cavities of frame construction. A company that is supplying the isocyanate component to suppliers that are developing the insulation commercially reports that the material has an R-value of about 3.2 per inch. The company claims that the material does not shrink and that actual thermal performance is superior to U.F. foam insulation. The product reportedly contains no formaldehyde. Gases given off during foaming have been found to contain carbon dioxide, steam, and a small amount of chlorofluorocarbon.

Suppliers field tested the product in 1981. However, one firm that was contacted has already developed a distributor network, and its product was being installed commercially in 1981. Shortages of one component of the system have reportedly been resolved, and that firm expects installations to increase in 1982. The insulation is said to be suitable for narrow-cavity walls and filling cores in concrete blocks (EC–25).

A manufacturer of U.F. foam resins commented that this new product has several disadvantages that make it inappropriate for the retrofit market. On the other hand, a major firm involved in the development of this isocyanate-based insulation has prepared a report contradicting some of the claims of the U.F. foam resin manufacturer. The Commission staff has not evaluated this product.

In addition to this isocyanate-based insulation, other types of insulation may be developed in the future for use in applications for which alternatives to U.F. foam are not widely available now. It is also possible that some U.F. foam insulations would warrant exemptions from a ban in the future. It is reasonable to assume that the foregone energy savings resulting from a ban of U.F. foam insulation would diminish with the passage of time, as alternative materials become available.

The Commission estimates that 1000 to 1500 installations of U.F. foam insulation may be made in homes with narrow-cavity walls for each 10,000 total residential installations. The annual energy savings resulting from U.F. foam installed in these residences should range from 9.8 to 14.8 billion Btu's, with a value of $68,000 to $105,000 at 1981 energy prices.

One comment stated that homes with all wall cavities partially filled by fiberglass batts can now be reinsulated with U.F. foam. In these uses, according to the commenter, other blown-in materials will not completely fill the cavity, whereas U.F. foam does. The commenter believes this use of U.F. foam should be considered in estimating foregone energy savings that would result from a ban of U.F. foam.

HUD's Use of Materials Bulletin No. 74 (EC–27) and the provisional standard for U.F. foam issued by the Canadian Government Specifications Board in 1977 (EC–26) made reference to the effect of shrinkage of U.F. foam on thermal performance in situations where it is installed in wall cavities that already have mineral fiber batt against one wall. It may, therefore, be inferred that such uses of U.F. foam were acceptable to those government bodies. The Canadian standard stated that the effective thermal resistance of the resulting insulation system is 84 percent of the thermal resistance that would be obtained on a laboratory specimen of the U.F. foam of the same thickness as the cavity. HUD stated that the effective thermal resistance of the system was not determined.

Several U.F. foam installers stated that more than 30 percent of their residential retrofit installations involved walls that already had some type of insulation; however, many more stated such jobs were rarely done or comprised 5 percent or fewer of their installations. A few contractors surveyed stated that they were opposed to installing U.F. foam over fiberglass batts, generally because of the little improvement in thermal efficiency, although problems with these installations such as pumping U.F. foam behind the vapor barrier of a fiberglass batt, failure to fill completely the wall cavity, and saturating fiberglass were also cited in opposition to the practice.

Although the exact energy savings resulting from installation of U.F. foam over less than full-thickness batts cannot be calculated at this time, the Commission believes the savings would be relatively small.

c. *Effective date.*

A few consumers and government officials commented that a ban should become effective as soon as possible following issuance of a final rule. The Formaldehyde Institute and others commented that the issuance of a final rule would eliminate any residual demand for the product and that additional time to permit depletion of inventories of materials would be meaningless. Some commenters felt a ban should be retroactive and apply to U.F. foam insulation that was installed before the effective date of a ban.

A retroactive ban was not proposed, and for this procedural reason above, one could not be adopted at this time. Furthermore, such an action would greatly increase the costs associated with a ban, and the Commission cannot conclude, based on the presently available information, that such an action is reasonably necessary.

In its preliminary economic assessment, the Commission discussed the impacts of various effective dates on the ability of firms to deplete inventories of chemicals and to broaden further their operations. However, the Commission concludes that the business decisions of installers in purchasing U.F. resins would be affected even before a final rule becomes effective, as would the purchasing decisions of consumers. Therefore, the Commission concludes that an effective date that is 30 days following issuance of a final rule would not have a significantly greater impact on firms than would a longer period.

However, under section 36 of the Consumer Product Safety Act, Congress may exercise its right to disapprove this ban during the 90 calendar day period of continuing session of Congress following promulgation of the ban. The Commission estimates that interruptions is the continuing session of Congress will extend the 90 days to approximately 120 days.

Therefore, the ban is made effective August 10, 1982, or the day after the time provided for Congress to consider its right to disapprove the rule, whichever is later. The date stated above is 130 days after publication of this notice in the Federal Register. This in effect provides for a 10 day delayed promulgation date and a 120 day period to allow for consideration of a possibility of a congressional veto before the ban would go into effect. In no event, however, will the ban go into effect before the end of the period provided by statute for the possible exercise of a congressional veto.

d. *Scope of the ban.*

Some commenters argued against including non-residential buildings within the scope of the ban, which, as proposed, would have applied to all U.F. foam insulation installations meeting the definition of "consumer product" set forth in section 3(a) of the Consumer Product Safety Act, 15 U.S.C. 2052(a). Among their reasons were that the types of walls in such buildings make it unlikely that formaldehyde would be released to the interior (if the U.F. foam is separated from the interior by concrete block, for instance); that the duration of exposure in most cases is less than in residences; that air-change rates are greater than in residences, thus diluting any offgassing that may occur; and that the Commission has little data on adverse health effects from U.F. foam in non-residential buildings.

Problems with U.F. foam insulation in 21 non-residential buildings have been reported to CPSC. Completed investigations which provide more details on the circumstances of the complaint are available for only 10 of these installations, but some common data elements are known for all the reports. About half of the reports involved an office building with the remainder naming stores, a school, dormitories, a church, a hotel, and a courthouse. The symptoms reported are similar to the complaints in residences, but it is likely that more people were exposed, and on the average a larger number affected, by the formaldehyde in each public structure than would be the case in a residence. Claims that a doctor had diagnosed the reactions as due to formaldehyde were found in 6 of the 21 complaints.

Based on the staff survey of insulation contractors, about 10 percent of the installations of U.F. foam have been in non-residential buildings, the largest share of which were in commercial buildings. Commercial installations were often described as filling the cores of concrete block. Types of commercial buildings mentioned as having been insulated with U.F. foam included grocery and other retail stores, restaurants, and warehouses; a few installers had insulated several farm buildings. The types of public buildings most frequently specified were churches and post offices.

Some contractors surveyed had done a significant percentage of U.F. foam installations in non-residential buildings. For 10 percent of the firms, such buildings comprised more than one-fourth of their U.F. foam installations. However, more than half of the contractors stated that non-residential applications comprised 5 percent or less of their U.F. foam installations, and 12 percent of the U.F. foam contractors surveyed had only used U.F. foam in residences.

It appears that, in many cases, there are alternative insulating materials for use in non-residential buildings. One installer of U.F. foam who commented on the proposed ban stated that it has always been his contention that U.F. foam is not a material well suited for most non-residential applications. He questioned its cost-effectiveness and ease of application in those situations. A former U.F. foam installer who had done 95 percent of his installations in commercial buildings informed the Commission that he now uses urethane for these applications, although he also stated that he thought U.F. foam was a good insulation material for commercial applications. Another current U.F. foam installer who was surveyed stated that, although he uses U.F. foam in residences, he insulates commercial buildings with urethane. In addition to this, several U.F. foam installers surveyed stated that much of their insulation of commercial buildings has involved new construction. It is likely that new construction would present more options for alternative types of insulation for those structures.

Based on the available information, the Commission concludes that U.F. foam may be a useful insulation material for some non-residential applications. However, it is likely that alternative means of insulating these buildings are available.

However, after considering these comments, the Commission has concluded that it does not have sufficient exposure data relating to consumers in non-residential and non-educational applications. Therefore, the Commission has decided to limit the scope of the ban to U.F. foam insulation installed in buildings used for residential and educational purposes. Thus, the ban applies to U.F. foam insulation in houses, apartments, residential hotels, nursing homes, condominium and cooperative residences, schools, dormitories, non-transient boarding houses, and other non-transient residences. The ban will not apply to other types of non-residential commercial buildings, such as offices, hotels, motels, boarding houses, factories, warehouses, or stores. The Commission has decided to limit the scope of the ban, which as proposed would have applied to all uses of U.F. foam insulation, because the residential and educational applications seem to be the ones that are most likely to subject persons, in their roles as consumers and students, to lengthy exposure to formaldehyde gas from U.F. foam insulation, even though workers and occasional consumers may receive significant exposures to formaldehyde from applications that are not subject to the ban.

A few commenters stated that installations of U.F. foam in new residential construction should not be included within the scope of the ban because, at the time of installation, vapor barriers could be installed that would prevent formaldehyde fumes from entering the interior. The Commission does not believe that this approach is a feasible way of preventing harmful levels of formaldehyde in the home. The reasons for this conclusion are discussed below in section G.4 of this notice, "Feasibility of a product standard."

Based on the survey of U.F. foam contractors, it appears that about 10 percent of residential installations have been in new construction. Alternative types of insulation, including wall cavity insulation and insulation boards, are available for such applications.

e. *Impact of a ban on resale values of property with U.F. foam insulation.*

Numerous comments were received concerning the issue of the impact of a ban on resale values of homes with U.F. foam insulation. Most of these comments were from satisfied consumers. The comments ranged from statements that homeowners were concerned that the value of their property would be reduced to statements that the value of homes would be zero. In most cases where specific reductions in property values were mentioned, those estimated reductions ranged from $10,000 to $20,000. An article in *Executive Fitness Newsletter* advising against purchasing a home insulated with U.F. foam was submitted as evidence that a ban would adversely affect property values (EC–28). Although recent adverse publicity regarding U.F. foam may result in reduced resale values, little information was provided in the comments to assess this impact.

Many of the commenters on this issue stated that reduced property values would result unless the U.F. foam was removed. Some commenters believed that the resale values of their homes would be reduced by the amount it would cost to remove the U.F. foam insulation. This reasoning was used in an analysis prepared by the firm of Booz-Allen & Hamilton in a presentation to the Commission in December, 1980 (EC–29). That analysis was submitted as a comment, by reference, by the Formaldehyde Institute. That analysis states that the costs of removing and replacing U.F. foam were estimated by the state of Massachusetts at $20,000 per average home, and that industry sources report values ranging from $10,000 to $20,000 per home. The Booz-Allen analysis concluded that if all the estimated 500,000 to 600,000 U.F. foam-insulated homes are retrofitted, costs up to $10 billion could be incurred. This analysis was available to the public during the comment period of consideration on the proposed ban. It appears that the stated removal costs of $10,000 to $20,000, and its equation to reduced property values, received wide distribution in the press and has been reflected in the comments on the proposed ban.

The Massachusetts Department of Public Health published regulations for the repurchase of U.F. foam insulation on November 6, 1980 (EC–30). In an analysis of comments that was attached to the regulations, the following statement is made: "According to testimony offered at the public hearing, some consumers have already removed U.F. foam insulation and restored their homes at their own expense. The cost of such removal has been substantial in the cases reported (as much as $15,000 or more)." In a submission to the CPSC dated March 19, 1980, the Massachusetts Commissioner of Public Health included a summary of the department's evidence and findings on U.F. foam insulation. The summary (page 105) reports that the National Association of Urea Foam Insulation Manufacturers (NAUFIM), an association that represented major manufacturers of U.F. resins for insulation, estimated foam removal costs of $3,000 per home. However, the summary noted that consumers who testified reported removal costs that were considerably higher; one consumer got an estimate of $19,860; another set the cost at $15,000. To the Commission's knowledge, Massachusetts officials have not estimated removal costs to be $20,000 per home, as stated in the Booz-Allen analysis.

In a limited number of cases, the Commission has learned of actual costs of removal of U.F. foam and replacement with alternative insulating materials. Two Massachusetts homes had U.F. foam removed from the exterior walls of two floors by removal of siding and exterior sheathing. The wall cavities were then treated with ammonia, and cellulose insulation was installed. The costs for these houses were $4,041 and $2,884, respectively. (EC–31.) One consumer informed the CPSC that the cost of removal of U.F. foam by a contractor was $7,720.60, although associated costs such as storage of furniture, financing of the removal, and time taken off work during removal, substantially increased these costs to a total of about $20,000 (EC–32). No information was given on the removal procedure used, although the furniture storage costs indicate removal was done through the interior walls. Wall area affected was not specified. Another consumer reportedly spent $10,000 for removal of U.F. foam in 1978 (EC–33). Although wall area affected was not stated, the Commission's staff believes the house was nearly twice as large as the average home insulated with U.F. foam. A consumer who submitted a comment (no. CC–81–248(L)) to the ban proposal stated that a contractor estimated that removal of U.F. foam from his home would cost $3,500 to $4,000. A U.F. foam insulation contractor interviewed during the telephone survey conducted by the Commission's Economic Analysis staff stated that U.F. foam was removed from the exterior walls of the second floor of a two-story home he had insulated. In that case, another contractor was hired to remove the exterior siding, sheathing, and foam and to replace the foam with fiberglass and install new siding, at a total cost of $3,500 in 1979.

In some cases, U.F. foam removal costs have totaled $20,000 and more. However, based on the limited number of cases where removal costs are known to the Commission, removal has frequently been accomplished at a cost of less than $10,000. At this time, the Commission believes that an assumption of average removal and replacement costs of $10,000 to $20,000 may be overstated, especially at the higher end of that range, and that the likely average cost of removal of the U.F. foam and installation of another type of insulation is likely to be about $6,000.

Removal costs aside, it seems unlikely that the impact of a ban on property values will be equivalent to removal costs. The Massachusetts Office of Consumer Affairs reported that no systematic reduction in property values occurred following the state ban of U.F. foam insulation (EC–34). Representatives of Massachusetts realtors who were contacted by the Commission's staff stated that the values of some properties appear to have been affected, while others have not (EC–35). An employee of the Connecticut Department of Consumer Protection informed the Commission's staff that the Department has not seen evidence that a significant reduction in property values has resulted from the Connecticut ban on U.F. foam insulation (EC–36). However, the situation appears to be different in Canada, where owners of homes with U.F. foam insulation reportedly are having difficulties in selling their homes. An official with Canada's U.F. Foam Insulation Information and Coordination Center stated that the severity of the impact of the ban in that country may largely be attributed to "very alarming publicity" that has occurred (EC–37).

At this time, insufficient information exists to predict the magnitude of decreases, if any, in resale values that would result from publicity about the health risks associated with U.F. foam insulation, whether associated with a ban or not. Such a prediction would be uncertain because of the scarcity of actual resales that could be examined, inability to compare selling prices to those of other homes in the area that were the same except for the presence of U.F. foam insulation, lack of knowledge of the degree of public awareness of the possible hazards of U.F. foam insulation, and other factors. Another difficulty would be the impact of the passage of time on the public's perception of hazards related to U.F. foam insulation. Many consumers installed U.F. foam with the prospects of long-term energy savings, rather than as an improvement to result in increased property value for immediate sale. Therefore, many of the homes with U.F. foam insulation may not be resold until several years following the ban. At the present time, it is impossible to determine what impact, if any, the ban will have on the selling price of homes several years from now.

One commenter stated that if formaldehyde emissions from U.F. foam insulation lessen with time, then five years or more after installation property values should not be greately affected. The Commisson is unable to assess the accuracy of this observation, but it does believe that any effects of a ban on property values will be likely to diminish with the passage of time.

After considering the comments and other available information, the Commission concludes that the available information does not permit reliable predictions of the magnitude or prevalence of the effects of the ban on property values. Many factors could determine the impact of previously installed U.F. foam insulation on property values in individual situations. The impacts could range from no effect, which is perhaps more likely for older installations and residences sold in later years following a ban, to reductions equivalent to the costs of removal and replacement of the foam, which would be more likely to occur for properties sold soon after the publicity attendant to a ban occurred. In issuing the ban, the Commission has considered the possibility that there may be a substantial effect on property values for those homes that had U.F. foam insulation installed before the ban became effective.

However, it should be kept in mind that any drop in value is not a direct result of the ban but rather it is a reaction caused by public knowledge about the risks associated with U.F. foam insulation. As the evidence of these risks mounts, so would the public perception of the risk, and any concomitant adverse effect on property

values would increase, even in the absence of any action by the Commission. On the other hand, even if a ban were not issued, installations of U.F. foam insulation would continue, and the property values of these additional houses, as well as those foamed previously, could be adversely affected by the public perception of the hazards associated with U.F. foam insulation.

5. Feasibility of a Standard

Section 7 of the CPSA, 15 U.S.C. 2056, provides that the Commission may issue consumer product safety standards consisting of requirements expressed in terms of performance requirements, as well as requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements for the form of warnings or instructions. The statute provides that the requirements of a standard must be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with the product.

The Commission has examined existing standards and manufacturers' specifications for U.F. foam insulation, including the standards issued by the Department of Energy (DOE) and the National Insulation Certification Institute (NICI). (E–1, E–2, E–3, E–4, E–6, E–7). None of these standards have been shown to be a reliable way to obtain reduced formaldehyde levels in the home. The Commission also considered possible additional provisions or improvements for existing standards that have been suggested to reduce the release of formaldehyde gas from U.F. foam insulation. However, the existing data do not show that any of these provisions do in fact reduce levels of formaldehyde emissions even when tested in a laboratory. In addition, because of variables in the procedures for installing the product, and variables that are likely to occur at the site where the product is mixed and installed in the walls (for example, the type of construction of the building, temperature, humidity, and moisture content of the building materials), any reduction in formaldehyde release observed in laboratory tests would not necessarily ensure a reduction of actual formaldehyde levels when the product is manufactured in the field. (E–1)

Because U.F. foam insulation is manufactured on the job site as it is mixed and pumped into the walls of a building, it is not possible to apply traditional methods of product control and quality assurance to the manufacturing process. These methods generally rely on having a product with a fixed composition that can be examined or sampled before it is sold to the consumer. However, U.F. foam insulation does not exist as a product until it is foamed into the walls of the building being insulated. The chemical composition of the product can change as equipment fluctuations affect the chemical ratios during the foaming process or as the foam dries (cures).[19] The actual foaming operation is considered to be an art or specific, learned skill. (E–2) Based on the research conducted for the Commission by the Franklin Institute Research Laboratory (E–5), where commercial brands of U.F. foam insulation were tested under optimum conditions, the Commission concludes that all existing types of U.F. foam insulation tested release significant amounts of formaldehyde gas and that it is not currently possible to ensure that U.F. foam insulation can be manufactured at the job site without releasing formaldehyde in amounts that can contribute to excessive formaldehyde levels in the home. (E–2)

The Formaldehyde Institute in its petition for a standard, and several commenters, stated that they believed a product standard was feasible to reduce or eliminate the risk of injury associated with formaldehyde exposure and urged the Commission to undertake development of such a standard. Reference was made to proposed standards by DOE, draft standards by NICI and ASTM, and numerous foreign government standards, both in effect and proposed. The point at issue is whether there is a feasible product standard under the CPSA which would adequately reduce, or eliminate, the offgassing of formaldehyde from U.F. foam insulation.

Experts in the field have variously attributed formaldehyde offgassing to liberation of "free formaldehyde," hydrolysis of improperly cross-linked bonds, chemical degradation, and other theories which could explain some of the formaldehyde release. The plain fact is that no one yet understands why formaldehyde is released or what steps can be taken to reliably prevent its release.

The factors discussed below that may affect the potential for formaldehyde release are only some of the factors that the Commission has identified. There are likely to be additional factors, as yet unidentified, that also contribute to formaldehyde release from the product. A major problem in attempting to control the release of formaldehyde is the fact that the final product may not be homogeneous in structure and chemical linkages.

a. *Analysis of existing standards and manufacturer's specifications.*

The Commission staff has prepared a comprehensive analysis of six existing or proposed standards and twelve manufacturer's specifications for U.F. foam insulation.[20] (E–3) The analysis focused on the following parameters and requirements that have previously been considered to be related to the release of formaldehyde from the product. The staff concluded that none of the standards or specifications could be expected to adequately control the release of formaldehyde.

(i) *Free formaldehyde/aldehyde content in the resin and foam.* This requirement is based on the assumption that reducing the free, or unreacted, amount of formaldehyde/aldehyde content in the resin or foam will reduce the amount of formaldehyde released from the product after installation. However, based on the Franklin Institute Research Laboratory Study (E–5) as well as statements by Dr. Nigel Pratt of Ciba-Geigy, Cambridge, England and Dr. Beat Meyer of the University of Washington at the Commission's April 1980 Technical Workshop on Formaldehyde (E–8), there in no direct relationship between the free formaldehyde content in the resin and the amount of formaldehyde released from the product. Reducing the level of free formaldehyde in the resin will not ensure a reduction in the total amount of formaldehyde released from the product.[21]

Although the free formaldehyde/aldehyde content in the foam may affect the amount of formaldehyde released from U.F. foam insulation shortly after its installation,[22] this parameter does not

[19] During the curing (or polymerization process) which may last for 30 days or more, depending on temperature, the product changes chemically. Since the product changes chemically, a sample foamed into a bucket at the building site for testing purposes might release a different amount of formaldehyde gas than the foam insulation installed in the walls. Part of the difference is caused by the material composition of the wall cavity, although additional factors may be involved. (E–2)

[20] The following standards were examined: Department of Energy Standard (1980); HUD Use of Materials Bulletin No. 74, (1977); Dutch Quality Requirements for U.F. Foam Insulation (1976); British Standards 5617 and 5618 (1978); German Standard DIN 18–159 (Part 2) (1977); Canadian Standards, 51–Cp–24M (1977), 51–CP–22MP (1978).

[21] In the Franklin Research Center study, the resins of 8 different manufacturers were used in manufacturing samples of commercial U.F. foam insulation. Free formaldehyde content in the resins, as determined by the sulfite method, ranged from 0.01 to 0.32 percent by weight. Air samples were collected periodically and analyzed for

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appear to affect the long-term formaldehyde release from the product. (E–3) Other functional groups within the U.F. foam insulation polymer, such as methylol and ethers, contribute to long-term releases of formaldehyde, especially under conditions of high temperature and high humidity. (E–9, E–10).

(ii) *Free formaldehyde in the air.* Several existing standards include recommended or accepted levels of ambient formaldehyde, or free formaldehyde in the air. However, as evidenced by the research conducted at the Franklin Institute Research Laboratory and the Commission staff analysis of that data, because of the characteristics of the product and the large number of potential variables that may affect the rate of release of formaldehyde gas, there is no way of predictably limiting the amount of formaldehyde that is released or ensuring that a certain level is not exceeded in the home. (E–2, E–5) Further, the rate at which formaldehyde is released from the product is affected by changes in temperature and humidity, and therefore can change with daily variations or with the seasons. (E–10) This condition was demonstrated in a Colorado U.F. foam insulated home being monitored for formaldehyde by University of Iowa personnel. As the months of May and June approached, the formaldehyde concentration in the basement bedroom and living room quadrupled as the climate changed from cold to hot. As a result, specifying a limit of free formaldehyde in the air provides no assurance that the actual level will not exceed the level measured at a particular time. In addition, as described earlier, there is some risk of injury from cancer to persons exposed to any level of formaldehyde gas.

(iii) *Shelf-life for resin and foaming agent.* The resin used as a component material in making U.F. foam insulation has a limited shelf-life that is affected by the heat to which the material is exposed. (E–2, E–3, E–11) Using a resin that has degraded over time could decrease the quality of the product and may result in a greater amount of formaldehyde gas released. The shelf-life of the foaming agent has not been shown to affect the quality of the product to the same extent. Nearly all of the existing standards and specifications include provisions concerning resin shelf-life, which generally ranges from 7 to 90 days, and also require the foaming agents to be labeled for their shelf-life, which generally ranges from two days to one year. The Commission has evaluated these provisions and concludes that it is not possible to rely upon general shelf-life limits since the limits depend on the chemical formulation and the thermal history (involving heat and time) of each individual component material. Shelf-life labeling does not address the temperatures the chemicals were actually subjected to before the product is manufactured at the site of installation. Furthermore, even where proper shelf-life limits for a particular product are observed, the resulting foam still offgasses substantial amounts of formaldehyde.

(iv) *Storage temperatures for resin and foaming agent.* Many of the specifications and standards include provisions, such as limits or labeling requirements for the storage temperatures of the resin and foaming agent. Since the shelf-life of the resin can be affected by either hot or cold weather, the storage temperature of the resin could affect the amount of formaldehyde released from the product. However, the specifications and standards contain no reliable mechanism for verifying that these provisions have been met. Furthermore, as evidenced by the results in the Franklin Institute Research Laboratory study, control of this variable is not sufficient to eliminate the release of formaldehyde gas from the product. (E–5)

(v) *Ingredient reaction temperature.* Many manufacturers' specifications, and several of the standards, include recommended temperature ranges for the mixture of ingredients as the product is being manufactured (installed). However, the Commission is not aware of any scientific justification for the specific temperature ranges. (E–3) In addition, the study conducted by the Franklin Institute Research Laboratory (FIRL) showed that samples of commercial U.F. foam insulation that purportedly met the specified temperature ranges nevertheless released formaldehyde. (E–5).

(vi) *Foam wet density.* Although many of the manufacturers' specifications and standards include wet-density ranges, the FIRL study shows that the rate of formaldehyde emission is relatively insensitive to the ratio of resin to foaming agent during the first 30 days after foam preparation. The rate of formaldehyde emission is even less sensitive to this variable at longer periods of time following foam preparation. (E–5) The FIRL study shows that when the air pressure is reduced while the ratio of resin to foaming agent is kept at the optimum level there is a marked increase in formaldehyde emission during the first 30 days. The research does not indicate, however, that careful monitoring of air pressure or conducting a wet-density check would be sufficient to eliminate the potential for formaldehyde release.

(vii) *Water hardness.* Several manufacturers include provisions in their specifications that address water hardness when diluting foaming agent concentrates. Several standards also include water hardness provisions. Those provisions are based on the assumption that proper water hardness assures that the foaming agent will perform properly in producing a quality foam with a desirable cell size, and that "good quality" foam is less likely to release formaldehyde gas. In its research for the Commission, the Franklin Institute Research Laboratory produced two test foam insulation samples where the foaming agent was reconstituted using soft (deionized) water instead of moderately hard water (E–5). The results of this test show that water hardness does not affect the release of formaldehyde gas.

(viii) *Foam installation practice.* Many of the standards and manufacturers' specifications include provisions concerning: (1) Temperature limits for surface temperatures of the cavities into which the insulation is to be pumped; (2) installation of the product in ceilings; attics, floors, partitions, and interior walls, or in below grade applications; and (3) the use of vapor barriers before installation of the product. While some of these variables, especially those concerning the installation of the product in certain locations, could have an effect on the amount of formaldehyde gas released from the products, the FIRL, ORNL, and other data show that strict adherence to these provisions would still result in the release of substantial amounts of formaldehyde gas.

(ix) *Equipment.* The Commission staff has also evaluated the equipment used in the process of manufacturing U.F. foam insulation (E–4, E–12, E–15). Based on the Franklin Institute Research Laboratory (FIRL) study (E–5) and its evaluation, improper use of equipment can adversely affect the quality of the insulation and increase the amount of formaldehyde released. However, the design of the equipment has essentially no effect on the release of formaldehyde

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formaldehyde content using a modified "NIOSH" chromotropic acid method. Some foam samples with low free formaldehyde content released more formaldehyde than other foam samples with higher free formaldehyde/aldehyde content.

[22] After U.F. foam insulation is manufactured at the site of insulation, the product characteristically releases the formaldehyde in the fresh foam. This characteristic is known as the short-term release, or a short-term off-gassing component. However, the product also continues to release formaldehyde over time, as further chemical reactions occur. This characteristic is known as the long-term release, or long-term off-gassing, component. Formaldehyde content in the foam will vary over time. There may be an initial large decrease in the amount of formaldehyde released immediately after installation, followed by a later small increase in the release of formaldehyde (E–9, E–15).

gas from the product. (E–2, E–4) The Commission staff and the FIRL evaluation show that automatic flow control equipment cannot be relied upon to prevent the release of formaldehyde gas, and may in fact cause a greater likelihood of problems because of decreased vigilance by the operator. (E–2, E–4, E–5) The Commission staff has also evaluated what is purportedly the most advanced equipment which controls all three flow parameters; resin, foaming agent, and air. (E–15) Although this equipment may assist the installer in maintaining the correct air flow and air pressure, the equipment will not prevent problems associated with the release of formaldehyde gas from the product. (E–15)

In the Franklin Institute Research Laboratory study (E–5), foam materials from 8 different manufacturers, with approved installers, resins, chemicals, equipment, and foaming guns, were used in foaming the test panels. Therefore, the best equipment, chemicals, and efforts were used in the foaming operations. Sixteen months later, ORNL measurements of 9 of these same test panels showed that the U.F. foam insulation was still releasing formaldehyde gas at a significant level (E–18). When the temperature of other aged (17 months) panels was raised from 23 degrees C (73.4 degrees F) to 33 degrees C (91.4 degrees F) and 40 degrees C (104 degrees F), the formaldehyde concentration values increased on the average by 6 times at 33 degrees C and 13 times at 40 degrees C (E–20). Both temperature environments (91 and 104 degrees F) are obtainable in ambient air during the summer months in unairconditioned houses in several parts of the U.S.A.

A company commented that the ban should not include their particular phenol-containing foam insulation product.

CPSC referred the question concerning this product to Dr. Beat Meyer, Professor of Chemistry, University of Washington, to determine if the product would be expected to behave differently than normal U.F. foam insulation. Dr. Meyer's information from the U.S. Patent Office is documented in a memorandum to J. Fandey, CPSC, dated August 17, 1981. Phenol constitutes less than 2 percent in the product's resin, and a derivative of urea-formaldehyde is still the predominant ingredient. Offgassing of formaldehyde would be expected to develop and perform in a similar manner to the product of the same brand name tested by FIRL, ORNL, and CPSC and reported as the 02 resin system. The company claims that they have improved the product, which now contains 5 percent phenol and resorcinol, but no test data have been presented which show its performance with regard to formaldehyde offgassing or high temperature stability. If such data are developed in the future, the company could use the procedures in § 1306.4 of the ban to request an exemption. After examining the available data on this new product, Dr. Meyer concluded that it too would release formaldehyde during and after installation (E–27). Based on all current information, the Commission believes that this foam will release formaldehyde gas because its major ingredient is urea-formaldehyde in a foam configuration.

b. *Standards issued by the Department of Energy and the National Insulation Certification Institute.*

On September 25, 1980, the U.S. Department of Energy (DOE) published interim final regulations under the National Energy Conservation Policy Act (NECPA) (Public Law 95–619; Nov. 9, 1978; 92 Stat. 3206, as amended, 42 U.S.C. 8211 et seq.) establishing interim material and installation standards for U.F. foam insulation. The material and installation standards issued by DOE contain detailed provisions, including many of the provisions described above, intended to reduce problems associated with the release of formaldehyde gas. Shortly before DOE published its interim final standards, the National Insulation Certification Institute (NICI), an industry trade association, adopted a voluntary standard that closely resembles the DOE standard.

In the preamble to the interim standards, DOE stated that because of the ongoing evaluation of the carcinogenicity of formaldehyde to humans, and the research being conducted by the Franklin Institute Research Laboratory, as well as for other reasons, the effective date of the installation and material standards was stayed until February 24, 1981 (45 FR 63787). DOE also stated that if significant new information arose, DOE would conform its regulations with any legal action taken by the Commission with respect to U.F. foam insulation. DOE recognized that the interim nature of the standard reflects, among other things, the need for further research and also reflects DOE's conclusion that there is insufficient information to respond fully to questions in the preamble to the proposed rule (44 FR 74960) concerning safety issues associated with the release of formaldehyde gas from U.F. foam insulation.

On November 12, 1981, DOE proposed to withdraw their interim standard and to defer to CPSC's consideration of the issues concerning the safety of U.F. foam insulation (46 FR 55836).

The Commission's staff has evaluated the DOE standard (E–6) and the standard submitted by NICI (E–7). Based on these analyses, the provisions of these standards do not adequately control the potential release of formaldehyde gas from the product, for the reasons stated in paragraph (a) above. In research conducted for the Commission by the Franklin Institute Research Laboratory, samples complying with the specific provisions of the DOE standard were tested and found to exhibit offgassing characteristics that could have produced a level of formaldehyde that is equivalent to the levels found in many of the homes measured in the Commission's in-depth investigations and associated with adverse health effects. (E–5)

Some commenters contended that, if all the free formaldehyde in U.F. foam that is allowed by the proposed DOE/industry standards were to be absorbed by drywall, there would still be a 50% absorption capacity available in the drywall.

The commenters contend that, based on free formaldehyde calculations, there should be no problem if maximum free formaldehyde is limited to 0.5% in the resin and equal to or less than 0.3% in the resultant U.F. foam. The following chart from FIRL data lists the free formaldehyde in the nine resin used in foaming 59 test panels (E–5, p. 4–2):

UF resin Identification:	Free formaldehyde (percent)
01	0.11
02	0.01
03	0.11
04	0.04
05	0.32
06	0.16
07	0.22
08	0.08
09	0.22

All nine types of foam would have met the required DOE criteria. If there were merit in the commenter's theory, no formaldehyde gas would have penetrated the drywall and FIRL personnel would have obtained data indicating formaldehyde was not being released through the drywall. Instead, all panels were releasing formaldehyde gas even after 16 months of aging. Therefore, the "free formaldehyde" theory of total absorption lacks technical merit. (E–24)

For the above reasons, the commenters who contend that all cases of high formaldehyde emissions from U.F. foam insulation result from

violations of the DOE standard are either clearly in error or are engaging in unsubstantiated conjecture.

c. *Formaldehyde Institute draft standard.*

On December 17, 1980, the Formaldehyde Institute and twelve U.F. foam insulation manufacturers and private labelers submitted a draft standard presented by Dr. C. W. Frank and Dr. Keith R. Long of the University of Iowa. (E–13) According to Drs. Long and Frank, the draft standard is based on the DOE Interim Final Standard, American Society for Testing and Materials Standards, and the National Insulation Certification Institute standard.

The draft standard includes provisions addressing the transportation and storage of the raw materials and the manufacture and installation of the product. The draft standard also includes provisions concerning certification that the product meets the standard. According to Drs. Long and Frank, the draft standard will reduce formaldehyde emissions from "properly installed" U.F. foam insulation to approximate ambient levels and will be effective in virtually eliminating complaints due to formaldehyde emission. (E–14).

The Commission's staff has evaluated the Formaldehyde Institute draft standard and has met with Formaldehyde Institute representatives, including Drs. Long and Frank, to discuss the draft. (E–15, E–16) The draft standard contains two provisions relating to formaldehyde and the final product: (1) The free formaldehyde content in the resin and the fresh foam and (2) the total formaldehyde in fresh and cured foam.

Based on the analysis of similar provisions in other standards, including the DOE standard (E–3, E–6), the Commission concludes that the provisions concerning the free formaldehyde content in the resin and the fresh foam will not adequately address the problems associated with the release of formaldehyde gas from the product.

The draft standard requires the content of free formaldehyde in the resin to be less than 0.5 percent by weight and is based on the assumption that reducing the amount of free formaldehyde will also reduce the amount of formaldehyde released from the final product. However, all samples in the Franklin Institute Research Laboratory (FIRL) study have less than 0.33 percent free formaldehyde, which indicates that reducing the level of free formaldehyde in the resin to less than 0.5 percent will not ensure a reduction in the total amount of formaldehyde released from the product, compared to presently-used resins. (E–5, E–6, E–15)

In this study, some products with low free formaldehyde content performed worse in terms of formaldehyde offgassing characteristics than others with higher free formaldehyde content. The maximum amount of free formaldehyde that would be allowed under the suggested standard would actually allow manufacturers to increase the amount of free formaldehyde over levels that are in current product formulations. The Commission has also received health complaints involving U.F. foam insulation made from resins that claim to have less than 0.5 percent free formaldehyde. Since the provision concerning free formaldehyde content in the resin can be met by existing U.F. foam insulation ingredients, there is no expectation that this provision would improve the current formulations of the product that have been shown to release formaldehyde gas.

The draft standard also requires the free formaldehyde of the fresh foam to be less than 0.3 percent by weight. This provision may have a beneficial effect on the short-term release of formaldehyde after the product is installed, compared to foams with larger amounts of free formaldehyde (E–3). However, since the resins currently in use contain 0.32 percent or less of free formaldehyde, the dilution inherent in the manufacture of the foam would cause the fresh foam to have mush less than 0.3 percent. The FIRL study has also shown that the free formaldehyde content of the fresh foam does not affect the long-term release of formaldehyde from the product. (E–3) Furthermore, the draft standard would not result in a change in resin composition from the resin compositions currently used by manufacturers.

The draft standard requires the total amount of formaldehyde in the foam to be determined by the manufacturer, and includes a new procedure for measuring total formaldehyde in the foam. The standard requires the testing of individual samples taken from the fresh foam and from the cured foam (after 28 days). This provision is not supported by data or any technical rationale showing that it relates to or will have any effect on the long-term release of formaldehyde gas. (E–15)

Because of the absence of this data and rationale, the provisions of the standard are not sufficient to provide a basis for predicting that the standard, if followed, will result in reduced concentrations of airborne formaldehyde after U.F. foam insulation is installed. (E–15)

d. *Foreign standards.*

Some commenters have stated that U.F. foam insulation has been used successfully in Europe for many years and, therefore, the European standards must be successful.

The degree of success of these standards in Europe has not been demonstrated. In any event, these European standards generally allow installation only in masonry contruction, and these standards are thus inapplicable to typical U.S. (wood frame) construction. One major difference is in the construction of European homes (E–23). The typical contruction method now used in the United States involves the use of sheathing or a tar paper vapor barrier beneath the exterior siding (finish) material. By contrast, in typical British construction, the outer leaf (layer) may consist of brick and building blocks or stone. The inner leaf would be building blocks covered by wooden laths nailed to wooden studs and covered with plaster. These leaves are separated by at least 4 inches. There may also be a vapor barrier and more insulation between the vertical studs and its plaster, but even without the addition of a vapor barrier, formaldehyde would not have restricted flow to the outside.

Each home is inspected and approved prior to the installation of U.F. foam. The U.F. foam is only approved to be installed between the outer and inner leaves where other "site conditions" are also present. These site conditions involve the degree of exposure to winds, sun, moisture, etc. British standards do not approve the installation of U.F. foam in a home using American-type construction with gypsum wallboard and exterior weatherboard sheathing surrounding the framed wall cavity.

Heating systems of newer British homes are mostly hot water baseboard radiators which are water contained and do not provide humidity to the home air. American central hot air heating systems are often fitted with a humidifier which introduces water vapor into the home air. This same water vapor can later pass through the gypsum drywall and condense in the wall cavity. This condensed water vapor in a U.F. foam insulation cavity may hydrolyze the U.F. foam and ultimately increase the offgassing of formaldehyde.

A third point for consideration is that the climate in Europe is more moderate than that in the United States. Air temperatures do not often exceed 100 degrees F for days at a time, such as is common in the southwest and other

parts of the United States. Formaldehyde offgassing from U.F. foam increases rapidly with increasing temperature, and more of the formaldehyde would migrate to the home's interior through the gypsum drywall in a United States home than it would in a European home.

Thus, it can be seen that the European standards are not suited to American conditions or construction. Furthermore, there is no reason to believe that use of these standards, even in Europe, will prevent excess levels of formaldehyde in the home.

e. *Possible provisions for adequately addressing the potential formaldehyde release from U.F. foam insulation.*

The Commission's staff has also examined possible provisions for adequately reducing or eliminating the potential for formaldehyde release from U.F. foam insulation. (E–2) The approach which appears the most promising, based on the evaluations and studies conducted so far, would involve the following provisions: Establishing a set of pass/fail critera and product qualifications for each of the principal components used in making U.F. foam insulation. The criteria would address such factors as resin at the plant; the time-temperature history of the resin after it leaves the plant and before it is foamed; the foaming agent; the equipment; and the actual process of manufacturing (installing) the product.

Before this approach could be determined to be effective for use in a mandatory standard, the following conditions would have to be met:

(1) That an exposure level which will not constitute an unacceptable risk can be set for formaldehyde.

(2) That tests of foam samples can accurately predict performance at the site where the product is manufactured.

(3) That products tested could meet the pass/fail criteria under a set of prescribed conditions.

(4) That component controls could be developed which would then be effective in keeping the product in the walls similar to the product tested by eliminating as many on-site variables as possible.

However, at the present time, (1) a level of formaldehyde exposure in the home that would correspond to an acceptable level of risk has not been established, (2) there is no reliable method to predict the formaldehyde levels that will be produced in the home by U.F. foam insulation based on a laboratory sample of the product, and (3) there are a large number of variables at the manufacturing location that could affect the product's performance, such as, the type of construction, the temperature of the wall cavities, the existing level of formaldehyde loading in the home, and the weather conditions at the site before, during, and after the manufacturing process is complete. Any chemical analysis at the foaming site would be extremely difficult to check for compliance. Foam wet-density as measured at the start of foaming would not necessarily continue throughout the operation. Foam gun nozzles are known to become clogged frequently and the operation must be halted and the gun cleaned. Subsequent start-up operations may not necessarily deliver the same product each time. Given these circumstances, the Commission concludes that pass/fail criteria and provisions for ensuring these criteria, that would adequately and predictably control the release of formaldehyde gas from the product, cannot be developed from available information or within a reasonable time with a reasonable expenditure of resources. (E–2)

f. *Barriers to the flow of formaldehyde gas into the home.*

A number of techniques have been suggested as suitable for reducing the flow of formaldehyde gas from U.F. foam insulation into the home. Also, a number of commenters requested information on how U.F. foam insulation in their homes could be rendered safe. In view of the lack of a safe level of formaldehyde emission, and because the suggested methods have not been tested to determine the degree to which they might reduce the emission levels, the Commission is unable to recommend any means that can be used to make the use of U.F. foam insulation reasonably safe. However, some of the following techniques could be used by homeowners who have previously installed U.F. foam insulation to reduce the level of formaldehyde gas that is transmitted to the interior of the home where complete removal of the U.F. foam insulation is not feasible. (Even complete removal of the foam may leave residual organic compounds trapped within the wooden framing that could produce formaldehyde. A special scrubbing treatment (3% sodium bisulfite) is recommended for all adjacent wood surfaces that were in contact with U.F. foam insulation. This type of cleaning should also include the inner surface of the cellulosic sheath prior to the installation of new insulation and drywall.) For further information, see CPSC staff memorandum, "Engineering Response Concerning 271 Comments on the Proposed Ban of Urea Formaldehyde Foam Insulation," dated October 27, 1981. (E–23)

The U.F. foamed wall should be sealed as much as possible from the living space side. All holes, cracks, or gaps in the wall finish should be repaired by caulking or spackling compounds. Two coats of water vapor barrier paint should be applied as a primer and vinyl wallpaper installed over the painted gypsum drywall to reduce the flow of formaldehyde gas from the U.F. foam insulated wall cavity. Special vinyl wallpaper paste and a good grade of canvas backed vinyl wallpaper should be used. Both the paint and vinyl wallpaper will provide plastic barriers to reduce the transmission of water vapor into the U.F. foam insulation cavity. This barrier may have the added advantage of reducing the flow of water vapor from the inside of the house into the foamed cavity during the cold winter months and thereby could save on fuel bills. Also, water causes U.F. foam insulation to hydrolyze, which results in the liberation of more formaldehyde gas. The reduction of water transport may reduce hydrolysis in the U.F. foam insulated cavity and reduce the transport of formaldehyde gas into the house.

Two other areas must be closed off to keep the formaldehyde gas from entering the living space of the house. Electrical outlet junction boxes may be filled with U.F. foam insulation, even if the foam is installed "properly." A gasket material should be positioned under the cover plate to retard the flow of air and formaldehyde gas into the room. The other, and perhaps most important, location is the junction of the wall and floor, where air can leak into the room. Cartridge sealants, weatherstripping, or special foam-backed tapes reportedly have been successfully applied.

For those U.F. foam insulated walls that are covered with wood products (paneling, plywood, particle board), a sealant can be applied to the wood product surface. Some sealants have been tested with formaldehyde-emitting wood products with varying degrees of success. Some of these sealants are listed below:

(i) Vinyl acetate solution.

(ii) Latex base synthetic emulsions.

(iii) Alcohol and ester base products.

(iv) Clear polyurethane.

(v) Aqueous solution of aminoguanidine-HCl.

Whether the sealants would be effective with drywall and formaldehyde gas is unknown at the present time. Further experiments would be required to evaluate the various types of products. (E–23)

One of the commenters suggested a covering of polyethylene and repaneling all exterior walls. This suggestion may not be appropriate for two reasons:

(i) The new paneling may in itself emit formaldehyde gas because of the urea formaldehyde adhesive used in its laminated construction. With a polyethylene backing, all of the offgassing from the paneling would be to the interior of the house. The Commission has no data on the extent to which room air formaldehyde levels would be affected under these conditions.

(ii) The cost of the construction would be more expensive than the vinyl plastic wall covering.

For greater detail in remedial measures for wood-frame construction, the National Research Council of Canada, Division of Building Research, has published "Building Practice Note No. 23", ISSN 0701–5216, for corrective action for U.F. foam insulated homes. The title is "Problem Identification and Remedial Measures for Wood-Frame Construction" by R. P. Bowen, C. J. Shirtliffe and G. A. Chown, August 1981.

A commenter also suggested that formaldehyde gas emissions could be adequately controlled in new construction applications since a vapor barrier could be installed within the wall to prevent migration of the formaldehyde vapor into the home.

However, the Commission does not believe that this technique would adequately reduce the formaldehyde levels that would be produced in the home by the U.F. foam insulation. The vapor barrier that would be used would probably be a sheet of plastic material such as polyethylene. In order for this to be effective, the plastic sheet would need to be firmly attached to the 2 × 4 wall partition studs. Every penetration by nails or staples would be potential leakage points for formaldehyde gas to escape into the home. Electrical cutouts are required in the plastic sheet for electrical wall outlets and switches, and these would also provide alternate escape routes for the formaldehyde gas. The bottom joint of the wall and floor is an additional leakage path which would by pass the vapor barrier.

Secondly, it is likely that the homeowners will drill holes through the drywall and vapor barrier for anchor bolt installations, wall brackets, curtain rods, drapery hangers, mirrors, etc. that would vent the formaldehyde gases directly into the living space. Therefore, the initial installation of a vapor barrier in new construction would not prevent formaldehyde gas migration into the home.

A commenter notes that the HUD Minimum Property Standards require a 1 perm vapor barrier on the warm side of the exterior wall and argues that this vapor barrier will lower the diffusion rate or the formaldehyde gas through the wall of the building. In addition, a typical dwelling will have painted walls. The commenter also argues that two coats of commercially available paints can serve as an effective vapor barrier and consequently as a barrier to the diffusion of formaldehyde gas. The commenter refers to the Forest Products Laboratory Research Paper, FPL 319, 'Paint as a Vapor Barrier for Walls of Older Homes.' " (E–25)

The specified HUD requirement of 1 perm is considered a minor barrier for the transport of water vapor and also to formaldehyde gas. By contrast, polyethylene plastic film, .004 inch thick, has a permeance rating of 0.08 perm and is considered a vapor barrier. (E–24)

The commenter does not specify how a vapor barrier of 1 perm can be achieved with the type of construction that is likely to be involved in the installation of U.F. foam insulation. However, as explained above, even if this goal were achieved, there would still be substantial migration of formaldehyde gas through joints, receptacles, switches, and other avenues for the formaldehyde gas.

The Forest Products Laboratory (FPL) Research Paper FPL 319 was received from Madison, Wisconsin in early January, 1982, and was reviewed with interest. FPL researchers were investigating the possibility of wood rot when insulation was blown or foamed into the wall cavities of older homes. The added insulation has the effect of moving the zone in which condensation occurs toward the inside face of the wall, which sometimes results in moisture condensing in the insulation. Tests were conducted with different paints on plastered surfaces to determine the moisture content of the sheathing boards and wooden siding.

The term "older homes" refers to structures built prior to 1940, and these were simulated in test panels by plaster walls and wooden laths on wooden studs. Sheathing boards 1 in. thick and 15-pound asphalt impregnated sheathing paper were used on the exterior of the wall studs. Wooden siding was applied over the sheathing. Only plaster walls with oil-base paint were used as control panels in the FPL test house. In addition to the two coats of oil-base paint, two coats of additional paint were applied to the plaster in an effort to retard the transmission of water vapor. It is notable that paint type (except aluminum) did not significantly affect transmission.

The study is interesting in that it shows that even the plaster and the multiple layers of paint do not prevent the accumulation of water in the wall cavity that could be expected to contribute to the hydrolysis of U.F. foam insulation within the wall and the subsequent emission of formaldehyde gas. However, in part because of the unusual nature of the construction in the test house, this study is not relevant to how to prevent formaldehyde gas from U.F. foam insulation from migrating into the types of homes in which it is likely to be installed.

g. *Removal of formaldehyde gas from the air in the house.*

Some methods were suggested for removing formaldehyde gas from the air in the home. It cannot be established that any of these methods will produce a safe level of formaldehyde, but they may reduce existing levels in appropriate cases.

(i) The formaldehyde gas could be removed from the living space air by fumigation and absorption. Ammonia gas reportedly has been used in Europe to reduce formaldehyde levels by 50 to 60 percent. However, ammonia is an irritant and may not be desirable for indoor use. Air purification may be used to reduce the effects of formaldehyde emissions. A chemical concentrate (wick-bottle application) and a water-based gel have been suggested in the HUD document *An Evaluation of Formaldehyde Problems in Residential Mobile Homes* prepared by Geomet, Incorporated and Technology and Economics, Inc. Final Task I Report, April 1980. Both reportedly can reduce formaldehyde fumes, however, the Commission has not tested the efficacy of these products. Another method is to circulate the air through a filter to oxidize the formaldehyde gas. An impregnated activated alumina (Al_2O_3) with potassium permanganate ($KMnO_4$) provides one means to bind formaldehyde within the filter. (E–23)

(ii) The air exchange rate with the outside environment could be increased to reduce the formaldehyde concentration in the living space. Because of the high energy loss due to such venting, it is recommended that a heat recovery exchanger be used to minimize the cost of heating outside air. Nevertheless, any increase in the air change per house will directly affect the home heating costs.

h. *Adequacy of warnings and instructions.*

In the case of many other consumer products, a warning or instruction

requirement can often be attached to the product and can be effective in reducing or preventing injuries after the product is purchased and is being used. However, for U.F. foam insulation, it is not possible to physically attach the warning requirement to the product, since it is pumped into the interior of wall cavities in a building.

Also, the Commission is unable to ensure that subsequent purchasers of residences or other buildings where U.F. foam insulation has been installed would receive the warnings or instructions that have already been given to the person who bought the insulation. Although it may be argued that the original purchasers who receives warnings or instructions may be able to exercise an informed choice concerning the risks associated with the product, a subsequent buyer of the building may be wholly unaware of these risks. Since the product may present a risk of injury from cancer at levels that are lower than those most persons could detect, the subsequent purchaser may have no reason to suspect that such a risk is present.

The Commission concludes that requiring the U.F. foam insulation manufacturer to give the consumer written warnings and instructions would not be effective in addressing the risk of injury associated with the product. Since many sales of the product appear to be based on personal solicitation, the required warning could be mitigated by oral statements by the salesperson. Further, the written statement could be overlooked, or its impact severely diminished, during the purchase transaction. A requirement for warnings or instructions is also not likely to be effective because of the nature of the product. Unlike many other consumer products that can readily be disposed of, such as toasters or hair dryers, the product here is an expensive one with a long product life and is essentially non-returnable and is removable only at great expense and effort. (The process of removing the product involves removing the exterior or interior wall materials of the building and can cost thousands of dollars.) Consumers who for some reason do not read or understand the warnings or instructions before the product is pumped into the wall of their home may have little effective recourse in later addressing the problems of formaldeyhyde release.

Furthermore, as noted above, there can be no assurance that warnings or instructions for consumers would be passed on to subsequent purchasers or renters of the property involved.

For these reasons, the Commission concludes that warnings and instructions are not a feasible means of adequately reducing the risk associated with this product.

As described earlier in this notice, the Commission has proposed a regulation that would have required manufacturers to provide a notice to consumers concerning the release of formaldehyde gas from the product and the acute illness that can result from the release of this gas (45 FR 39438; June 10, 1980). However, the disclosure requirement proposed by the Commission did not include language about the risk of cancer associated with the product. (At the time of the proposal, the Commission had not yet received the report of the Federal Panel concerning the CIIT study on the carcinogenicity of formaldehyde.) Also, several of the comments received on the proposal questioned the adequacy of the scope and effectiveness of the proposed disclosure requirement. These comments raised concerns similar to those discussed above. Since the proposed notice does not include information concerning the risk of injury from cancer, and since the Commission has concluded that a disclosure requirement would not adequately address the risk of acute or chronic injuries, the Commission did not issue a final disclosure requirement.

Since the Commission has determined that warnings and instructions will not provide adequate protection and has decided to ban this product, an additional requirement to provide a notice to purchasers is unnecessary. Therefore, the Commission withdraws the proposed notice requirement.

Furthermore, the Commission does not have a large enough staff to effectively enforce a safety standard for U.F. foam insulation on a nationwide level. Only state or local governing bodies could marshall the local resources needed to effectively monitor the many thousands of new U.F. foam insulation installations that might occur each year.

Based on its analysis of the available engineering information and for the reasons described above, the Commission concludes that none of the existing standards, specifications for the product, or most promising approaches, if issued as a mandatory standard, would be effective in addressing the risk of injury associated with this product. (E–24) The Commission also concludes that since the mechanisms of formaldehyde release are not known, despite the high degree of interest shown in this phenomenon in the last several years, no adequate standard for this product is likely to be able to be developed within a reasonable time and with a reasonable expenditure of resources. Accordingly, the Commission finds, based on the information before it at the present time, that there is no feasible standard that would adequately protect the public from the risk of injury associated with the release of formaldehyde gas from U.F. foam insulation.

In view of this conclusion, petition CP 81–5 from the Formaldehyde Institute, requesting a standard, is denied.

6. *Franklin Institute Research Laboratory report.*

During 1980, the Franklin Institute Research Laboratory (FIRL) constructed sixty-one test panels which represented typical wall construction for American houses. Eight certified or approved independent insulation contractors were used to install U.F. foam insulation in these test panels. Eight different types of guns and foaming equipment were used to provide the best material and installation practice known at that time (March and April 1980).

Details of the testing and sampling, and FIRL's analysis and conclusions, were reported in FIRL document F–C.5316–01 dated January 12, 1981, "Urea Formaldehyde Foam Insulation Study ("the FIRL report")." (E–5)

Many of the comments criticized the FIRL report because of its attempt to measure formaldehyde gas concentrations under dynamic flow conditions in the U.F. foam insulation test panels and then to transfer the relationship to a large room with U.F. foamed walls. These dynamic flow data were in error for two reasons. First, the dynamic flow measurements were not conducted over a long enough period of time to obtain steady state data. Secondly, the sampling time was not long enough to obtain a large enough sample of formaldehyde gas that could be measured with confidence by the NIOSH chromotropic acid method. Therefore, the Commission staff decided to retest the same panels using improved analytical techniques for low formaldehyde gas levels. Oak Ridge National Laboratory (ORNL) repeated the dynamic flow measurements for the Commission on 9 foamed panels and 1 unfoamed panel using the new techniques and found that the FIRL dynamic measurements were in fact in error. (E–18) The ORNL results indicated that an average level of 0.13 ppm would occur in a projected room insulated with U.F. foam with an air change of 0.73 per hour. It should be noted that the dynamic flow information reported by FIRL was not used in the Commission's formaldehyde cancer risk assessment analyses. Static FIRL formaldehyde

concentration data were used by CPSC to develop an empirical relationship with formaldehyde offgassing rates for full size rooms whose walls were foamed with U.F. foam insulation.

Some commenters stated that static data could not be used to calculate formaldehyde room air concentrations and, therefore, risk assessments which used this information were in error.

ORNL performed dynamic flow measurements with all 9 foamed panels. These measurements correspond to a house with a 0.73 air exchange per hour and a corresponding U.F. wall area (meters squared) to room volume (meters cubed) ratio of 0.5. Average test results indicated 0.13 ppm of formaldehyde concentration in the room from aged foam (16 months) at 25 degrees C (77 degrees F). ORNL reported that the dynamic flow measurements correlate to the static measurements with a correlation coefficient (r) of 0.83. The ratio of static data to dynamic measurements ranges from 19 to 66. The mean is 47 and the standard deviation is 19. Therefore, the relationship of static to dynamic data has a reasonable correlation, and the use of the static FIRL data in the initial CPSC risk assessment was proper.

Some commenters disagreed with CPSC's empirical approach of using static data to relate to room concentration estimates, and the commenters proposed alternate models.

Most alternate models proposed by the commenters were based on theoretical assumptions that are not representative of U.F. foam insulation materials.

Copies of several comments were forwarded to Dr. Beat Meyer of the University of Washington and to ORNL for analysis and review of the technical theory and calculations submitted by C. P. Chemical and the Formaldehyde Institute. These analyses determined that the theoretical gaseous diffusion formulae provided by these commenters do not match the formaldehyde emissions measured in actual houses. Dr. Meyer stated:

> The release rate model explicitly states that constant formaldehyde release rates are assumed. This assumption is incorrect and invalidates the model. Formaldehyde release depends on temperature, humidity and ventilation rate, as well as loading." (Note: Loading is defined as the ratio of the wall surface area (meters squared) to the volume of the room (meters cubed) through which the formaldehyde gas is migrating.)

ORNL analyzed both the C. P. Chemical modeling and the Formaldehyde Institute modeling and stated:

> "The models for predicting room concentrations are fairly consistent with each other; however, all of the models require information on the source strength of the U.F. as an input parameter. Unfortunately, such data are not easily modeled and must be based on measurement of formaldehyde generation ability of the UFFI, which in turn is a function of many environmental parameters such as temperature, humidity, and age of the foam. The conclusion is that the models are helpful in determining trends and relative importance of various parameters but require further refinements before they are used for detailed projections of room concentrations". (E–19)

Therefore, the alternative models suggested by the commenters are not superior to the empirical approach used by the Commission's staff to estimate room concentrations.

A commenter argued that the FIRL test panels were not representative of typical retrofit applications.

On the contrary, the FIRL researchers specifically designed the test panels so that the construction would be representative of typical retrofit U.F. foam insulation applications. Although these panels do not duplicate all U.S. housing construction, they represent the majority of retrofit home applications. The Bureau of Census data on Page 743 of Statistical Abstract of the U.S., 1976., demonstrates that most homes being occupied by owners were built since 1940 and are likely typified by construction of the FIRL panels. (E–24)

Homes were constructed during this period with either plaster or drywall. Drywall was faster and cheaper to install, and progressively the demand for plaster diminished except for the more expensive homes. Interior water-based paints were similarly taking over from oil-base paints at that time.

Many homes constructed prior to World War II may have been abandoned or replaced by newer housing. The Commission concludes that the FIRL researchers properly selected the materials for a typical panel.

Some commenters took issue with test panels 15809, 15909 and 200 for alleged construction defects.

The test panel construction irregularities for these panels at FIRL consisted of a simple reversal during construction of the aluminum siding and the cedar siding being installed opposite compartments A and B, respectively. This irregularity did not affect the foam cavity or the location of the ½ inch cellulosic sheathing and would not affect the test results. (E–24)

A commenter complained that "[t]he drywall in the FIRL test panels was painted with latex (porous) paint rather than a paint that would be expected to provide a good barrier to formaldehyde."

The drywall used in all test panels fabricated by FIRL was painted with two coats of interior grade latex paint. This water-based paint has been in common use since World War II and is still the most common interior paint today. Some people have suggested that FIRL should have used oil-based paint instead of the water-based interior paint. This application of oil-base paint is unrealistic in simulating the interior of typical drywall homes (i.e., bedroom, living room, den, etc.). Exterior wood trim products are usually painted with oil-based or other paints with high gloss or semi-gloss finishes, but it is unusual today for interiors to be painted with oil-based paints. As previously stated, the FIRL test panels were not representative of all types of wall construction, but were representative of the majority of homes built without wall cavity insulation. Thus, the test data obtained with these panels is applicable to most homes in which U.F. foam insulation would have been installed.

7. Oak Ridge National Laboratory (ORNL) Report

Commenters also submitted their views on various aspects of the tests at ORNL of the Franklin Institute Research Laboratory (FIRL) test panels.

Some commenters criticized the storage or handling of the FIRL panels between the times they were tested by FIRL and ORNL. One commenter stated:

"Before these test panels were shipped to Oak Ridge, they were stored in an open carport in Philadelphia for a period of approximately nine months. During that period of time, these panels were exposed to extremes of temperature, humidity, and precipitation which are greatly in excess of those to which the foam could reasonably be expected to be exposed to in the wall cavity of a building."

The test panels were stored while covered by polyethylene sheeting. This storage of test panels was maintained for 9 to 12 months from 1980 to 1981 at Elverson, PA. However, the temperature and humidity of the air did vary as the climate fluctuated and as the air exchanged under the plastic sheet. However, this exposure is not much different from that of any house which is left unheated or unairconditioned during the absence of occupants. (E–24)

Moreover, in typical wall insulation applications, U.F. foam insulation is more exposed to thermal and humidity fluctuations due to the thermal gradients developed across it during heating and cooling operations. (See Forest Product

Laboratory Research Paper, FPL 319 for temperature gradients and the discussion below of water deposition in cavity walls during heating season.)

The commenter also noted: "The test panels were shipped from Philadelphia to Oak Ridge by truck. One of the panels was broken open during the trip. Thus, by the time the test panels arrived in Oak Ridge, they had been exposed to environmental conditions of sufficient severity to, at the very least, call into serious question the validity of any data derived from testing these panels."

Two shipments of the FIRL test panels were made from Elverson, PA. One shipment of 10 panels was transported by truck to Oak Ridge, Tennessee, in June 1981, and the second shipment of 51 panels was transported by moving van to CPSC's laboratory at Gaithersburg, Maryland, in July 1981. Of the 10 panels delivered to ORNL, one test panel sustained physical damage. A forklift operator had rammed the blade of his forklift into the lower, "B" cavity of the test panel. Other than that incident, the delivery to ORNL was routine. The static and dynamic formaldehyde gas samples collected from the test panels were from compartments A and C, and thus the physical damage sustained by B compartment was inconsequential with regard to data obtained from Compartment A. (NOTE: A 2x4 stud partition separated the 2 foam compartments. See Figure 1(a), E–22.

If any damage occurred from the shock and vibration of transport from Elverson, Pennsylvania, to ORNL, it could only have served to loosen the mylar seal joints of test compartment "A" and thereby increase the unmeasured leakage of formaldehyde from the test panels during static measurements, with a resulting lower measured value. Dynamic test measurements were not affected because in those tests the test compartment was ventilated to the laboratory environment by 25 1" diameter holes. (E–24)

The second shipment of 51 test panels was transported by moving van to the CPSC laboratory in Gaithersburg, Maryland, and delivered on July 31, 1981. A detailed analysis of the conditions of the panels was presented on pages 9 and 10 of CPSC's Engineering Laboratory report (E–20).

For these reasons, the Commission concludes that the condition of the panels had not changed so as to cast doubt on the test results at ORNL or the CPSC laboratory.

Some commenters maintain that drywall is an excellent formaldehyde barrier.

The ORNL data (E–18) demonstrate that drywall is not a barrier to the transmission of formaldehyde. Drywall is not considered a barrier to *water* vapor and is rated as follows by ASHRAE in Chapter 20, page 20.4, of ASHRAE Handbook, 1977 Fundamentals:

Gypsum wallboard (0.375 in., plain) 50 perm

This means 50 grains (3.2 grams) of water would be transferred through each square foot per hour when under a differential pressure of one inch of mercury. By contrast, polyethylene film (0.006 thick) has an ASHRAE rating of 0.06 perm. (E–24)

ORNL used 0.5 inch drywall and estimated the permeance at 38 perm for water vapor. (E–18, p. 10) Formaldehyde molecules are larger than water molecules and have a slower rate of diffusion. The relationship between the rate of diffusion for formaldehyde gas and water vapor was calculated at 0.77 or 77 percent of the transfer of water vapor (E–18, page 9). A double bell jar experiment was established to determine the rate of transfer of formaldehyde gas through ½ inch thick drywall (E–18, p. 11).

The effects of two coats of flat latex paint on the drywall was also investigated and reported (E–18, p. 16). The net reduction in the transmission was less than 10%.

The final conclusion of the ORNL drywall study (E–18, p. 36) stated:

> Drywall is not a good barrier for transport of formaldehyde. Two coats of flat latex paint provide little additional resistance to diffusion. The permeability of drywall is sufficiently high to make diffusional transport a significant pathway for formaldehyde release into living spaces.

The Franklin Institute Research Laboratories measured formaldehyde in both "A" and "C" compartments of the UFFI test panels for many weeks. Data for sixteen test panels were summarized and presented in Figure 4, E–22, to show the preferential diffusion of formaldehyde gas through the drywall into the living space from U.F. foam aged one month. Also, measurements were made at ORNL which corroborate the preferential diffusion.

Some commenters have said that the concentrations of 300 ppm used in the bell jar experiment to determine the permeability of drywall to formaldehyde were too high and not of the magnitude found behind U.F. foam insulation foamed walls.

This latter statement is true, but a lower concentration of formaldehyde would require a much longer time to attain equilibrium and make gas analyses more difficult to evaluate. The higher concentration of 300 ppm was necessary to have a measurable output on a continuous analytical basis over the short time available for the conduct of the tests. Although the concentrations exceed those associated with U.F. foam insulation, the tests still established that drywall is not a good barrier for the transport of formaldehyde.

A commenter argued that the ORNL study assumed that a room would have neither doors or windows, stating that such rooms are quite rare in actual homes.

The theoretical room used in the ORNL analyses did not involve particular dimensions or features but was characterized by a ratio of formaldehyde-generating surface area to room volume, or the number of square meters of foamed wall divided by the cubic meters of air in the room. Windows or doors are not included in the U.F. foamed area and do not affect the volume of the room. Doors and windows can affect the number of air changes per hour in the room, but the air exchange rate is specified for these experiments. (E–18, p. 4) There are numerous rooms of different shapes and sizes with different configurations of windows or doors that would have the same foamed surface area to volume ratio, and, therefore, the analysis is general and not limited to a particular room.

8. Dissemination of Information

About 40 commenters, mostly consumers, expressed concern about not being properly informed of the hazards associated with U.F. foam insulation, stated that manufacturers and installers misled them, or thought CPSC should have communicated remedies to the public. A number of industry commenters contended that the decline in the number of U.F. foam insulation installations was due in large part to adverse publicity disseminated by the Commission.

The following is a chronological list of material and information that the Commission made available to the public prior to the proposal.

- *September 1977*—a CPSC press release dealing with all types of insulation mentioned U.F. foam.
- *January 1979*—CPSC issued a question and answer booklet concerning U.F. foam insulation.
- *August 1979*—a CPSC Press Release stated that improper installation of U.F. foam insulation may cause the release of formaldehyde gas which could cause adverse health problems.

- *October 1979*—a CPSC Press Release stated that a CIIT study indicated that formaldehyde had caused cancer in laboratory animals.
- *November 1979*—a CPSC Alert Sheet informed consumers of possible health problems associated with formaldehyde offgassed from U.F. foam insulation and the range of health problems reported to CPSC.
- *December 1979*—CPSC conducted a public hearing on U.F. foam insulation in Portland, Oregon, for the purpose of taking testimony from consumers and industry; at the same time, media coverage of the hearing provided other consumers with additional information on U.F. foam insulation.
- *January 1980*—CPSC conducted a second public hearing in Atlanta, Georgia, for the purpose of taking regional testimony on U.F. foam insulation.
- *February 1980*—CPSC conducted another public hearing on U.F. foam insulation in Minneapolis, Minnesota.
- *February 1980*—CPSC issued a press release announcing the formation of a federal panel of experts to help assess health implications of the results of the CIIT study on formaldehyde.
- *February 1980*—CPSC held the fourth public hearing on U.F. foam insulation in Hartford, Connecticut, to take public testimony from New England consumers and industry representatives.
- *March 1980*—a CPSC Press Release reported the recommendation of a committee of the National Academy of Sciences to hold consumer exposure to formaldehyde to the lowest practical level.
- *March 1980*—a CPSC Alert Sheet was prepared on formaldehyde use in consumer products.
- *January 1981*—CPSC issued a press release reporting the Commissioners' decision to propose a ban on UFFI in residential dwellings.

Thus, the Commission believes that its activities were required as part of its duty to inform the public of potential hazards and Commission activities.

In recent years, there have been changes in market conditions that have greatly affected the demand for U.F. foam insulation. Retrofit activity, involving all types of insulation materials, increased greatly in the middle-to-late 1970's, largely in response to increased energy prices. During part of this period, production capacities of insulation materials other than U.F. foam that are widely used in wall retrofit applications were inadequate to meet the great increase in demand. The combination of increased demand and shortages of alternative materials created an ideal situation for the U.F. foam industry, and the number of installations and installers increased greatly to a peak in 1977. Since that time, residential retrofit insulation activity in general has decreased, and supplies of alternatives to U.F. foam have been adequate to meet demand. In 1978, the estimated number of residential installations of U.F. foam insulation fell 53 percent from the previous year. This decrease was mainly due to the changes in the market situation outlined above. At that time, the Commission has not yet begun significant activity regarding U.F. foam insulation.

In more recent years, public awareness of health problems associated with some installations of U.F. foam insulation has been added to the other less favorable market conditions to reduce further the demand for U.F. foam insulation. This increased awareness has resulted from media accounts of problems encountered by some consumers, and the reporting of the deliberations and actions of state and local governments, the Canadian government, and federal agencies of the United States, including the CPSC. However, the information given out by the Commission has been accurate and disseminated in a responsible manner. Statements by commenters that the reduction in demand for U.F. foam insulation is primarily due to the Commission's informational activities are unfounded.

H. Final Regulatory Flexibility Analysis

In accordance with section 604 of the Regulatory Flexibility Act (Pub. L. 96–354) (5 U.S.C. 604, effective January 1, 1981), the Commission has prepared a final regulatory flexibility analysis in connection with this (EC–16). Copies of the final regulatory flexibility analysis are available in the Office of the Secretary of the Commission, 5401 Westbard Avenue, third floor, Bethesda, Maryland 20207 and in the Commission's public reading room at 1111 18th Street, NW., 8th floor, Washington, D.C. 20207. In this notice, the Commission includes a summary of this analysis.

The purpose of the Regulatory Flexibility Act, as stated in section 2(b), 5 U.S.C. 601 note, is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. The act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their action to ensure that such proposals are given serious consideration. The act requires agencies to prepare initial and final regulatory flexibility analyses to accompany the rule.

The ban issued below addresses the need to protect the public against the unreasonable risk of injury associated with the release of formaldehyde gas from the product, in view of the lack of a feasible standard, including labeling, that would adequately protect the public. The reasons for issuing a ban also include a consideration of the potential costs and benefits of the proposed action and a determination that a ban of U.F. foam insulation is in the public interest.

The objective of the rule is to protect the public against the unreasonable risk of injury from the toxicity of formaldehyde gas released from the product. The rule accomplished this objective by eliminating U.F. foam insulation that releases formaldehyde gas from the marketplace. The legal basis for the ban is section 8 of the CPSA, 15 U.S.C. 2057, which authorizes the Commission to issue a regulation declaring a product to be a banned hazardous product if the Commission finds that: (1) A consumer product is being, or will be, distributed in commerce and presents an unreasonable risk of injury; and (2) no feasible consumer product safety standard under the act, including labeling or information disclosure, would adequately protect the public from the unreasonable risk of injury associated with the product.

The final regulatory flexibility analysis includes a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the Commission of such issues, and a statement of any changes made in the proposed rule as a result of such comments. The Commission's views on these issues and the changes to the proposal in response to the comments are explained in section G of this notice, "RESPONSE TO COMMENTS ON THE PROPOSAL."

The final regulatory flexibility analysis also contains a description of each of the significant alternatives to the rule that were considered by the agency in order to attempt to minimize any significant impact of the rule on small entities and also includes the reasons why each of such alternatives were rejected. These items are also explained in section G of this notice.

Since the ban does not contain reporting requirements, the Commission could not minimize the impact of the regulation on small businesses by

altering such requirements. In addition, the Commission could not grant small businesses a blanket exemption from coverage under the regulation while still accomplishing the objectives of the regulation.

The Commission has also considered the possibility that a longer effective date could help small businesses remain in operation while achieving the objectives of the regulation. However, after considering the comments on the proposed ban, the Commission concludes that an effective date of longer than 30 days will not significantly lessen the adverse economic impact of the ban. Nevertheless, for the procedural purposes discussed above, the effective date of the rule will be August 10, 1982, or the day after the expiration of the 90 calendar day period of continuing session of Congress following promulgation of the ban, whichever is later.

I. Environmental Considerations

The Commission staff has made an assessment of the potential environmental impact of a ban (EC–7), as required by the National Environmental Policy Act. The assessment examines the potential for effects of the proposed ban on residential energy consumption, energy consumption for the production of alternative insulation materials, and the effects on indoor air quality and concludes that the ban will not have a significant effect on the environment. The assessment is on file at the Commission's Office of the Secretary.

The environmental impact assessment reaches this conclusion for the following reasons:

(1) Alternative insulation materials, such as cellulose and mineral wool insulation, are available for use in most structures that would be insulated with U.F. foam insulation in the absence of a ban. (E–23) In what is estimated to be a small percentage of installations, such as those with narrower wall cavities, the use of alternative materials may not be possible. In these structures, foregone energy savings (energy losses) would occur as a direct result of a ban. However, the expected foregone energy savings in these structures is estimated to be less than 0.001 percent of the total annual residential consumption of energy for heating. (EC–7) As a result, a ban of this product will not significantly affect the nation's rate of energy consumption, and the use of non-renewable resources.

(2) Energy consumption for the production of alternative insulating materials used as a result of a ban of U.F. foam insulation would be negligible compared to the energy savings that would result from the use of these materials and compared to the total annual consumption for heating residences.

(3) A ban of U.F. foam insulation would eliminate insulation that otherwise would have been installed as a contributor to increased levels of formaldehyde gas in the interior environment. Since formaldehyde can cause adverse health effects, an improvement in indoor air quality should result from the ban. Although installing alternative insulating materials in walls may also contribute to a reduction in the indoor air quality by reducing the air exchange rate of buildings that are insulated, the alternative materials do not release formaldehyde gas and are not themselves thought to significantly reduce indoor air quality. As a result, where alternative insulating materials are used, the indoor air quality should be better than if U.F. foam insulation is used. The Commission has no information showing that these other materials presently pose equal or more serious hazards to the health and safety of consumers than does U.F. foam.

The environmental assessment also discusses alternatives that were considered by the Commission before proposing a ban, and evaluates the potential environmental effects of these alternatives.

The Commission does not foresee significant adverse impacts on the environment resulting from the ban that would counter the beneficial impact of improved indoor air quality, even though the benefits may be small. Upon reviewing these factors, and others, raised in the environmental assessment report, it appears to the Commission that the environmental effects that will result from a ban of U.F. foam insulation are not significant, according to criteria for this determination stated in the Council on Environmental Quality's final regulations (40 CFR Part 1508) and the Commission's procedures for environmental review (16 CFR Part 1021). Since a significant effect on the quality of the human environment is not anticipated from this ban, the Commission concludes that an environmental impact statement is not needed.

J. Statutory Findings

Section 8 of the CPSA, 15 U.S.C. 2057, provides that before issuing a proposed ban for a consumer product, the Commission must find that:

(1) The consumer product is being, or will be, distributed in commerce and presents an unreasonable risk of injury; and

(2) No feasible standard under the Act, including requirements for warnings and instructions, would adequately protect the public from the unreasonable risk of injury associated with the product.

Based on the available data concerning the marketing of U.F. foam insulation, the Commission finds that this product is being, and will be, distributed in commerce as a distinct article for sale to, and use by, consumers.

As a result of the risks of injury associated with the irritant, sensitizing, and carcinogenic potential of formaldehyde gas released from U.F. foam insulation, and in view of the Commission's judgment that the benefits of the proposed regulation bear a reasonable relationship to the costs of the regulation, the Commission finds, based on the information presently available, that the continued manufacture and sale of U.F. foam insulation presents an unreasonable risk of injury to consumers. The Commission's finding is based on the available information concerning the risk of cancer and the risk of other illness from formaldehyde exposure. Earlier in this notice, the Commission has examined existing information concerning the feasibility of a standard and has found that there is no feasible standard, including labeling, that would adequately protect the public. The Commission determines, based on the available information it has considered, that a ban of the product is in the public interest.

Section 9(c) of the Consumer Product Safety Act requires that prior to issuing a consumer product safety rule the Commission shall consider and make appropriate findings for inclusion in the rule on the following matters.

(1) The degree and nature of the risk of injury which the rule is designed to eliminate or reduce;

(2) The approximate number of consumer products, or types or classes thereof, subject to the rule;

(3) The need of the public for the consumer products subject to the rule, and the probable effect of the rule upon the utility, cost, or availability of such products to meet such need;

(4) Any means of achieving the effect of the rule while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety;

(5) That the rule (including its effective date) is reasonably necessary

to eliminate or reduce an unreasonable risk associated with U.F. foam insulation;

(6) That promulgation of the rule is in the public interest; and

(7) That no feasible standard would adequately protect the public from the unreasonable risk of injury associated with U.F. foam insulation (15 U.S.C. 2058(a)(2)).

The Commission has also examined the available information, described earlier in this notice, concerning the potential economic impact of the proposed ban, including its effective date, on industry as well as consumers. The Commission agrees with the information in that section concerning the potential effect of the ban on the cost, utility, and availability of suitable alternative insulating materials for most applications in which U.F. foam insulation is used and concerning the potential marginal contribution to energy conservation by U.F. foam insulation in those situations where it may be presently the only widely available insulating material. The Commission determines that the need of the public for the insulation can be adequately met by the alternative insulating materials or by alternative measures of conservation.

The Commission agrees with the factual analysis stated previously in this notice concerning the potential effect of the regulation on persons who install U.F. foam insulation as well as on manufacturers and importers of raw materials used in manufacturing U.F. foam insulation. The Commission has fully considered the prospective costs and benefits that would result from the ban. After examining the available data, the Commission concludes that the benefits of the proposed regulation bear a reasonable relationship to the costs of the regulation.

Section 9(b) of the Act, 15 U.S.C. 2058(b), requires that in promulgating a consumer product safety rule, the Commission shall also consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by the rule. The Commission has no information showing that elderly or handicapped persons may be adversely affected by a ban of U.F. foam insulation.

K. Applications for Exemptions

Although it has issued this ban, the Commission does not intend to forestall further technological research and development of foamed-in-place insulations that do not present unreasonable risks of injury as a result of the release of formaldehyde. Although at the present time the Commission is not aware of any existing or potential method of manufacturing and installing U.F. foam insulation that adequately addresses the problem of formaldehyde release, such a method may be developed or demonstrated in the future.

The Commission included in the proposed ban a procedure by which interested persons may request the Commission to exempt an individual product from coverage under the ban.[23] One commenter stated that this procedure was vague and did not give adequate criteria for what would be required to qualify for an exemption.

However, § 1306.4 of the regulation, which sets out the exemption procedures, is intended to explain the manner in which exemptions should be applied for and the ultimate conclusion that the Commission will require the persons seeking exemptions to support. This section is not intended to state criteria that would result in an exemption being granted, as this would be tantamount to setting a standard, which the Commission has determined is not feasible based on presently available information.

This commenter also stated that the exemption procedure as proposed would require persons desiring exemptions to show that there was no risk of injury associated with their product. The commenter stated that the Commission should only require that the risk of injury not be unreasonable.

The Commission agrees with this comment and did not intend for the proposal to imply that all risk must be eliminated from a product in order for it to qualify for an exemption. The appropriate editorial changes have been made in § 1306.4 to clarify this point. Section 1306.4 is explained below.

To be considered complete, an exemption request must include test data and analyses showing that:

(1) The procedures used to develop the supporting data are such that the data should be relied upon by the Commission;

(2) The conditions of the test include all reasonably foreseeable conditions of handling, installation, storage, installation equipment performance, resin uniformity (within and between batches), and response to temperature and humidity effects during the life of the product;

(3) The procedures for manufacturing the product can readily be followed by installers in the field;

(4) The procedures, when followed in the field, produce uniform and consistent results; and

(5) Under no condition described above will the product present an unreasonable risk of injury associated with the release of formaldehyde gas.

As a condition for granting an application, the Commission may require the person applying for an exemption to provide assurances that if any installation results in the release of formaldehyde to which consumers may be exposed, the person who has been granted the exemption will take whatever steps are necessary to ensure that the product does not present a risk of injury to the consumer from exposure to formaldehyde gas. These measures may include removing the U.F. foam insulation from the building or purchasing the consumer's home, as well as providing the consumer with suitable alternate housing during the period in which the consumer could be exposed to formaldehyde gas released from the product.

L. Date of Promulgation

Section 9 of the CPSA, 15 U.S.C. 2058, sets forth the administrative procedures applicable to the promulgation of consumer product safety rules and provides guidance concerning the time period for a rule to take effect after the date it has been promulgated by the Commission. However, the CPSA does not define the date of promulgation. In the absence of statutory direction or Commission guidance, therefore, there is an element of uncertainty as to when a rule is considered to be promulgated. Promulgation could take place when the Commission, at a public meeting, votes to issue a rule or when the Federal Register notice announcing the rule is signed by the Commission's Secretary, or at another time.

The uncertainty of the date of promulgation may be important to those who believe they are adversely affected by a rule issued by the Commission. Section 11 of the CPSA, 15 U.S.C. 2060, provides that such persons or groups may petition a U.S. Court of Appeals in the circuit of their residence or principal place of business for judicial review of the rule. In such a case, the Commission is required to respond by filing the record of the rule in the court where the

[23] Of course, interested persons could petition the Commission to amend or revoke the ban, or they could petition the Commission to initiate a standard development proceeding for U.F. foam insulation. If the Commission granted a petition, then the Commission would initiate a rulemaking proceeding.

Persons who seek to petition the Commission should follow the Commission's regulations for petitions at 16 CFR 1110. Petitions must include information establishing the need and technical support for the requested action.

first person or group has filed for judicial review.

Thus, persons or groups who are present or represented at a public meeting where the Commission votes to issue a rule and who believe they are adversely affected by the rule, may properly try to be first to file for judicial review in an appropriate circuit of their choice. Persons or groups unable to be represented at such public meetings, whether for reasons of geographical or financial inconvenience, or otherwise, may also believe they are adversely affected by a Commission decision to issue a rule and yet not have an opportunity to be the first to file for judicial review in a forum of their choice.

The Commission believes it is important to remove the elements of uncertainty and possible unfairness that may occur concerning opportunity for judicial review of a final regulation by promulgating the rule on a date and time certain after its publication. The Commission observes that courts have traditionally approved a great deal of discretion for agencies to determine the manner in which their actions are promulgated. In this regard, courts have deferred to the agency's choice as long as the choice is reasonable. The Commission's practice of designating the time of promulgation has been held to be reasonable. *Southland Mower Company vs. U.S. Consumer Product Safety Commission*, 600 F. 2d 12 (5th Cir. 1979).

Accordingly, in order to provide the maximum amount of guidance possible to the courts and interested persons, the Commission specifies that the final ban shall be promulgated at 12:00 noon, Eastern Standard Time, on April 12, 1982. The Commission believes this choice of promulgation date is reasonable in that it provides sufficient time for interested persons to learn about the rule before a court can be petitioned for judicial review.

M. Conclusion

Based on the foregoing information, the Consumer Product Safety Commission declares U.F. foam insulation used in schools and residences to be a banned hazardous product.

Accordingly, the Commission amends Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations, by adding a new Part 1306, as follows:

PART 1306—BAN OF UREA-FORMALDEHYDE FOAM INSULATION

Sec.

1306.1 Scope and application.
1306.2 Definitions.
1306.3 Findings.
1306.4 Applications for exemptions.

Authority: Secs. 8, 9, 30(d), Pub. L. 79–573, as amended, 90 Stat. 506 (15 U.S.C. 2057, 2058, 2079(d)).

§ 1306.1 Scope and application.

(a) In this part, the Consumer Product Safety Commission declares that the urea-formaldehyde (U.F.) foam insulation specified in paragraph (b) of this section is a banned hazardous product under sections 8 and 9 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2057 and 2058.

(b) This ban applies to all U.F. foam insulation, as defined in § 1306.2(b), that is manufactured after August 10, 1982, or the day after the expiration of the period provided in 15 U.S.C. 2083 for the exercise of a congressional veto of the ban, whichever date is later, for use in schools and buildings used for residences. Thus, the ban applies to U.F. foam insulation used in houses, apartments, residential hotels, nursing homes, residential cooperatives and condominiums, dormitories, and schools, as well as in other residential applications. It does not apply to uses in hotels, motels, or boarding houses intended for transient use or to stores, office buildings, factories, warehouses, or other commercial, non-residential uses.

(c) The Commission has issued this ban because it has found (1) that there is an unreasonable risk of injury due to the acute and chronic toxicity of the formaldehyde gas released from the product, and (2) that no feasible consumer product safety standard under the CPSA would adequately protect the public from this risk.

§ 1306.2 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this Part 1306.

(b) "Urea-formaldehyde (U.F.) foam insulation," also referred to as formaldehyde-based foam insulation, means any cellular plastic thermal insulation material which contains as a component chemical, formaldehyde, formaldehyde polymers, formaldehyde derivatives, or any other chemical from which formaldehyde can be released. This definition does not include urethane foam insulation or styrene foam insulation.

(c) The "manufacturer of U.F. foam insulation" is the installer who combines the component materials and foams the insulation into its permanent location.

§ 1306.3 Findings.

(a) *The degree and nature of risk of injury.* (1) The Commission finds that the risk of injury which this regulation is designed to eliminate or reduce is the risk of cancer and illness from formaldehyde toxicity. U.F. foam insulation releases formaldehyde gas, which can cause cancer. Consumers who are exposed for 16 hours per day for 9 years to typical levels of formaldehyde gas in buildings insulated with U.F. foam insulation have an increased risk of cancer of up to 51 in a million, or up to 1.8 additional cancers for every 10,000 U.F. foam insulated homes.

(2) Formaldehyde gas released from U.F. foam insulation can also cause illness from its irritant, sensitization, and other toxic effects. The most common symptoms of this illness are eye, nose, and throat irritation, persistent cough, respiratory distress, skin irritation, nausea, head-aches and dizziness. The range of severity of reported reactions varies from short term discomfort to chronic impairment. Persons with respiratory problems or allergies may suffer more serious reactions, especially persons who are allergic to formaldehyde, which is a sensitizer. There is no known population threshold level for the irritant effects of formaldehyde.

(b) *Products subject to the ban.* U.F. foam insulation is a cellular plastic thermal insulation material that is generally both purchased by consumers and marketed as a discrete article in commerce. The product is manufactured by mixing a liquid resin and a liquid foaming agent and, generally, pressurized air or nitrogen, through a foam equipment system. The resultant mix has a consistency similar to shaving cream and is usually pumped through relatively small holes into the walls of standing structures. After it is in the wall, the product should cure and become firm or self-supporting.

(c) *Need of the public for the products, and the effects of the rule on their utility, cost, and availability.* U.F. foam insulation is used as a thermal insulation material by the public. In the year previous to the ban, 8,000 to 10,000 residences were insulated with U.F. foam. Of these, about 1,000 to 1,500 were not suitable for proven alternative types of wall-cavity insulation materials that are widely available. Alternative insulation materials and other means of conserving energy are available to adequately meet the need of the public. The ban will remove U.F. foam insulation from the market for buildings used for residential and educational

purposes. The ban will have little or no effect on the cost and availability of substitute insulation products. In about 90 percent of the residential installations, the U.F. foam insulation is sold to consumers and installed in a previously existing home.

(d) *Any means of achieving the objective of the ban while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commerical practices consistent with the public health and safety.* The Commission believes that there will be minimal disruption to the market for thermal insulation materials as a consequence of the ban, and that no further reduction in adverse effects is feasible by other regulatory options, such as a standard or disclosure requirement for the product, or by changing the effective date.

(e)(1) After considering the available data, the Commission finds (i) that this rule, including its effective date, is reasonably necessary to eliminate or reduce the unreasonable risk of injury from formaldehyde gas associated with urea-formaldehyde foam insulation, (ii) that the benefits of the rule bear a reasonable relationship to its costs and the promulgation of the rule is in the public interest, and (iii) that no feasible consumer product safety standard under the Consumer Product Safety Act would adequately protect the public from the unreasonable risk of injury associated with urea-formaldehyde foam insulation.

(2) As noted above, this ban is issued under the authority of section 8 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2057. The Commission also has the authority to partially address this risk of injury by action taken under the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261 et seq. Since the Commission lacks the authority under the FHSA to cover products installed in non-residential applications such as schools, the Commission concludes that the risk of injury addressed by this ban could not be eliminated or reduced to a sufficient extent by action taken under the FHSA. For this reason, and in order to avoid the need to conduct duplicative proceedings under the CPSA and FHSA, it is in the public interest to regulate this product under the CPSA. Also, because of the complex and lengthy nature of the rulemaking proceeding that would be required under the FHSA, the Commission believes it would be in the public interest to regulate this product under the CPSA.

§ 1306.4 Applications for exemptions.

(a) *Purpose and policy.* Interested persons may submit an application for an exemption from this ban. The purpose of this section is to provide procedures and requirements for submitting applications for an exemption.

(b) *Procedural requirements for applications for exemptions.* To be considered an application for an exemption from this ban, a document filed under this section must:

(1) Be mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Third Floor, Bethesda, Maryland 20207.

(2) Be written in the English language.

(3) Contain the name and address of the person applying for an exemption.

(4) Contain an explicit request for an exemption from this ban.

(5) Describe the product for which an exemption is sought, including its complete chemical formulation, and the method and equipment for installing the product. Where a submission fails to meet all of the requirements of this section, the Office of the Secretary shall notify the person submitting it, describe the deficiency, and explain that the application may be resubmitted when the deficiency is corrected.

(c) *Substantive requiremetns for applications for exemptions.* To be considered complete, an exemption request shall include full and complete test data and analyses demonstrating that:

(1) The procedures used to develop the supporting data are such that the data should be relied upon by the Commission.

(2) The conditions of the test include all reasonably foreseeable conditions of handling, installation, storage, installation equipment performance, resin uniformity (within and between batches), and response to temperature and humidity effects during the life of the product;

(3) The procedues for manufacturing the product can readily be followed by installers in the field;

(4) The procedures, when followed in the field, produce uniform and consistent results; and

(5) Under none of the conditions described above will the product present an unreasonable risk of injury associated with the release of formaldehyde gas.

(d) *Advice from the Commission staff concerning applications.* To the extent practicable, the Commission staff will provide applicants with advice in preparing their applications.

(e) *Applications with insufficient or incomplete information.* If an application is submitted that is not complete and does not explain the reason for the absence of the information, the Commission shall afford the person applying for an exemption a reasonable opportunity to provide additional information. If the required information is not submitted to the Commission, or if the person applying for an exemption does not satisfactorily explain the absence of the information within a reasonable time, the application shall be closed if insufficient or incomplete information has been submitted to enable the Commission to evaluate the merits of the exemption request.

(f) *Trade secrets and other confidential information.* Where an application contains material that the applicant believes should be exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552, the applicant shall comply with the requirements of 16 CFR 1015.18, the Commission's regulation under the Freedom of Information Act concerning requests for treatment as exempt material. The Commission shall act upon any request for treatment as exempt material in accordance with the provisions of 16 CFR 1015.18 and 1015.19 and section 6(a) of the Consumer Product Safety Act as amended, 15 U.S.C. 2055(a).

(g) *Granting applications.* Where the Commission determines that an application is justified, the Commission will direct the staff to prepare a written agreement for the signature of the Secretary of the Commission and the person requesting the exemption. After the agreement is signed by both parties, it will be placed in the public file in the Office of the Secretary of the Commission.

(h) *Conditions for exemptions.* The agreement will specify the conditions of the exemption as well as the duration of the exemption. As a condition for an exemption, the Commission may require the applicant to monitor formaldehyde levels before and after the insulation is installed. The Commission may also require the applicant to provide assurances that if any future installation of the product covered by the exemption results in the release of formaldehyde gas to which consumers may be exposed, the person who has been granted the exemption will take whatever steps are necessary to ensure that the product does not present an unreasonable risk of injury to the consumer from exposure to formaldehyde gas. These measures may

include removing the insulation from a building or purchasing a consumer's home, as well as providing the consumer with suitable alternate housing during the period in which the consumer could be exposed to formaldehyde gas released from the product. The Commission will periodically monitor installations and compliance with the terms of the agreement.

(i) *Revocation of exemptions.* If the Commission believes that there is not substantial compliance with the agreement, the Commission shall give the applicant written notice of noncompliance. The applicant shall have an opportunity to request a hearing and to respond to the allegations in the notice within 10 working days after receipt of the notice. If the Commission determines that the applicant has not substantially complied with the terms and conditions of the exemption, the Commission shall revoke the exemption.

(j) *Denying applications.* Where the Commission determines that the information presented in the application does not justify an exemption, the application shall be denied, and the applicant notified in writing of the denial, including a brief statement of the reasons for the denial.

(k) *Effect of filing an application.* The filing of an application under this section shall not have the effect of staying the ban as to the product. Therefore, after the effective date of the ban, the continued manufacture or offering for sale of the product covered by the ban during the Commission's consideration of the application is in violation of the law.

Dated: March 29, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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E–5 Franklin Research Center, *Final Report*, Urea-Formaldehyde Foam Insulation Study, F–C5316–01, January 1981.

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EC–37 Telephone conversation, Charles Smith, CPSC, and Pierre LaLonde, UFFI Information and Coordination Center, Canada, January 8, 1982.

[FR Doc. 82-8840 Filed 4-1-82; 8:45 am]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1405

Urea-Formaldehyde Foam Insulation; Withdrawal of Proposed Notice to Purchasers

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: On June 10, 1980, the Commission proposed to require manufacturers of urea-formaldehyde (U.F.) foam insulation to give information to prospective purchasers to alert them to the possible adverse health effects associated with the release of formaldehyde gas from the product after it is installed in residences (45 FR 39434). Elsewhere in this issue of the **Federal Register**, the Commission has issued a rule declaring U.F. foam insulation for use in residences and schools to be a banned hazardous product. Since, after the effective date of that ban, it will be unlawful to install the product in residences or schools, a requirement to notify prospective purchasers is unnecessary. The Commission's reasons for issuing the ban are fully explained in the preamble to the banning rule. Accordingly, the proposed notification rule has been withdrawn.

FOR FURTHER INFORMATION CONTACT: Harleigh Ewell, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 492–6980.

Dated: March 29, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 82–8841 Filed 4–1–82; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Urea-Formaldehyde Foam Insulation; Denial of Petition To Issue a Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Denial of petition.

SUMMARY: The Commission announces that it has denied a petition (No. CP 81–5) from the Formaldehyde Institute, which requested that the Commission establish a mandatory standard to address the risk of injury due to the release of formaldehyde gas from the product after it is installed. Elsewhere in this issue of the **Federal Register**, the Commission has issued a regulation declaring urea-formaldehyde foam insulation for use in residences and schools to be a banned hazardous product. In the preamble to that regulation, the Commission discusses the reasons why it concluded that no feasible standard under the Consumer Product Safety Act would adequately reduce the risk of injury from this product. Accordingly, the Commission denied the petition of the Formaldehyde Institute to establish a standard.

FOR FURTHER INFORMATION CONTACT: Harleigh Ewell, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 492–6980.

Dated: March 29, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 82–8842 Filed 4–1–82; 8:45 am]

BILLING CODE 6355–01–M

federal register

Friday
April 2, 1982

Part V

Department of Energy

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy of Conservation Program for Consumer Products; Proposed Rulemaking and Public Hearings Regarding Energy Efficiency Standards for Refrigerators and Refrigerator-Freezers, Freezers, Clothes Dryers, Water Heaters, Room Air Conditioners, Kitchen Ranges and Ovens, Central Air Conditioners, and Furnaces.

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, as a general matter requires that the Department of Energy prescribe an energy efficiency standard for each of certain major household appliances, unless it determines, by rule, that a standard will not result in significant conservation of energy, is not technologically feasible, or is not economically justified.

The Department of Energy is proposing to determine that an energy efficiency standard for refrigerators and refrigerator-freezers, freezers, clothes dryers, water heaters, room air conditioners, kitchen ranges and ovens, central air conditioners, or furnaces would not result in a significant conservation of energy or be economically justified. Therefore, the Department is today proposing to amend Title 10, Part 430 of the Code of Federal Regulations to include a determination of no standard for the above-mentioned covered products.

The proposed rule would also add amendments regarding petitions that may be made by States or manufacturers with regard to Federal preemption of State and local efficiency standards.

The purpose of this notice of proposed rulemaking is to provide interested persons an opportunity to comment on the proposed rule, and to invite interested persons to participate in the rulemaking process.

DATES: Written comments on this proposed rule must be received by the Department by June 16, 1982. For an additional 45 days thereafter, DOE will accept comments regarding oral and written comments submitted to DOE prior to June 16, 1982.

Oral views, data, and arguments may be presented at either one or both of the following public hearings:

Public Hearing, Washington, D.C. A public hearing will be held in Washington, D.C., on May 18–21, 1982; requests to speak must be received by the Department no later than 4 p.m., April 27, 1982; speakers will be notified by 4 p.m., May 4, 1982; speakers lists will be available by 4 p.m., May 5, 1982; fifteen copies of the statement of the speaker must be received by the Department no later than 4 p.m., May 11, 1982.

Public Hearing, Chicago, Illinois. A public hearing will be held in Chicago, Illinois, on May 11–12, 1982; requests to speak must be received by the Department no later than 4 p.m., April 20, 1982; speakers will be notified by 4 p.m., April 27, 1982; speakers list will be available by 4 p.m., April 28, 1982; statements of the speakers must be received by the Department no later than 4 p.m., May 4, 1982.

The length of each presentation is limited to 20 minutes.

ADDRESSES: Written comments, statements, requests to speak at the hearing, requests for speakers lists, and requests for copies of the technical support documents are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Energy Efficiency Program for Consumer Products, Docket No. CAS–RM–78–110, Mail Station 6B–025, Room 5F–078, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9319.

The two hearings are to be held at the Auditorium (GE–086), Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., on May 18–21, 1982, at 9 a.m., and Room 204A, Everett McKinley Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois, on May 11–12, 1982, at 9 a.m.

Copies of technical support documents, transcripts of public hearings, and public comments received may be read in the DOE Freedom of Information Reading Room:

U.S. Department of Energy, Freedom of Information, Public Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Building Energy Research and Development, Test and Evaluation Branch, Mail Station CE–113, Room GH–068, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9127

Lona Feldman, Acting Assistant General Counsel for Conservation and Renewable Energy, U.S. Department of Energy, Mail Station GC–33, Room 6B–194, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9507, or

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–33, Room 6B–128, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9510

SUMMARY:

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I. Introduction

a. *Authority.* Part B of Title III of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95–619),[1] creates the Energy Program for Consumer Products Other Than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") are: refrigerators and refrigerator freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment, not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces, as well as any other consumer product classified by the Secretary of Energy, if the product uses a specified minimum amount of energy. *See* section 322. The Secretary has not so classified any additional products.

Under the Act the program consists essentially of three parts: testing, labeling, and mandatory minimum energy efficiency standards. The Department of Energy, in consultation with the National Bureau of Standards, is required to establish test procedures for each of the covered products. Section 323(a)(2). The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products. Section 323(b)(1). All test procedures were required to be adopted not later than May 1, 1978. Section 323(a) (4) and (6). A test procedure was not required if DOE determined by rule that one could not be developed. Section 323(a)(6)(B). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may represent the energy consumption of or the cost of energy consumed by the product except as reflected in a test conducted according to the DOE procedure. Section 323(c). Test procedures have been prescribed relating to all products, but, on the basis of continuing review, certain classes of products do not have currently applicable test procedures.

The Federal Trade Commission (FTC) is required by the Act to prescribe rules governing the labeling of the covered products. Section 324(a). These rules are to require that each particular model of a covered product bear a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). A rule is not required under section 324 if the Secretary of Energy determines that disclosure of estimated annual operating costs on a label is not technologically feasible or if the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. Section 324(c). No labeling rule can be made with respect to a product for which there is no DOE testing procedure. Section 324(b)(3). At the present time there is an FTC rule requiring labels under the Act for the following products: Room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, and refrigerators and refrigerator-freezers.[2]

For each of the covered products, DOE is required to establish mandatory energy efficiency standards that are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(a)(1) and (c). The Act provides, however, that no standard for a product is to be established if there is not test procedure for the product, or if DOE determines by rule either that a standard would not result in significant conservation of energy or that a standard is not technologically feasible or economically justified. Section 325(b). In determining whether a standard is economically justified, the Department is directed to determine whether the benefits of the standard exceed its burdens by weighing six specific factors, as well as any other factors DOE considers relevant. Section 325(d). The factors are:

(1) The economic impact of the standard on the manufacturers and on the consumers of the product subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class), compared to any increase in the price of, or in the initial charges for, or maintenance expenses of the covered products which are likely to result from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, determined in writing by the Attorney General, that is likely to result from the imposition of the standard; and

(6) The need of the Nation to conserve energy.

A rule establishing an energy efficiency standard for a product may set different levels of efficiencies for different classes[3] of that product if they use a different kind of energy or have different capacity or performance related features that justify different levels of efficiencies. Sec. 325(f). When a standard has been established, DOE may exempt a manufacturer whose gross revenues in the preceding year did not exceed $8 million from the effect of the standard for up to two years, if DOE determines, after obtaining the views of the Attorney General, that failure to grant the exemption would likely result in a lessening to competition. Section 325(e).

The Act specifies the priorities and procedures to be followed in adopting efficiency standards. Nine of the 13 covered products are given priority under the Act. Section 325(g). These nine products are: refrigerators and refrigerator-freezers, freezers, clothes dryers, water heaters, room air conditioners, home heating equipment (other than furnaces), kitchen ranges and ovens, central air conditioners, and furnaces. These products are the subject of this rulemaking.[4]

The procedures include a requirement for an advance notice of proposed rulemaking upon which interested persons may make written comments. Section 325(i)(1). Thereafter, there is to be a notice of proposed rulemaking, upon which interested persons may make written and oral comments, including an opportrunity to question those who make such comments with respect to disputed issues of material fact. Section 325(i)(3) and section 336(a)(1).

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Federal rule. Section 327(a). A rule by DOE that an efficiency standard is not technologically feasible, economically justified, or likely to save significant amounts of energy is a rule that supersedes any State standard. *See* section 325(b). If, because there is no federal rule, a State efficiency standard

[1] Part B of Title III of EPCA, as amended by the NECPA, is often referred to in this notice as the "Act."

[2] 44 FR 6486 (November 19, 1979).

[3] Each covered product category may be made up of several classes. *See infra.*

[4] No rule is proposed today for home heating equipment (other than furnaces), electric heat pumps (a class of the product central air conditioners), and electric heat pump water heaters. This is explained in the product-specific discussion, *infra.*

is not superseded, persons subject to it may petition DOE to have it superseded on the basis that there is no significant State or local interest sufficient to justify the regulation and such regulation unduly burdens interstate commerce. Section 327(b)(1). A State whose energy efficiency standard is superseded may petition the Department for a rule that it not be superseded, on the basis that there is a significant State or local interest to justify the standard and the State standard is a stricter standard. However, DOE cannot issue the requested rule if the State standard would unduly burden interstate commerce. Section 327(b)(3).

b. *Background.* The DOE published its first advance notice of proposed rulemaking pursuant to section 325(i)(1) for the nine first priority products on January 2, 1979. 44 FR 29. On December 13, 1979, the DOE published an advance notice of proposed rulemaking for dishwashers, television sets, clothes washers, and humidifiers and dehumidifiers. 44 FR 72276. An advance notice for central air conditioners (heat pumps) was published on January 23, 1980. 45 FR 5602. These advance notices were designed to present a full discussion of the Department's views concerning the standards program and the process for its implementation. DOE also set forth its views concerning the criteria for selecting classes in each product type and the maximum technologically feasible efficiency standard for each class of product. DOE specifically requested comments on all matters presented in the advance notices. Meetings were held throughout 1979 and 1980 to solicit the views of all concerned parties.

After receiving comments on the advance notices, on June 30, 1980, the DOE set forth its first proposed rulemaking for the nine products. 45 FR 43976. (Hereafter referred to as the June 30 proposal). The June 30 proposal set forth the DOE's proposal concerning energy efficiency standards for these covered products.[5] It also proposed procedures for processing petitions by states that sought exemption for regulations subject to the general preemption requirements of section 327(a) of the Act. The June 30 proposal considered comments received in response to the advance notice on these nine products and made changes in the DOE's initial determinations concerning classes for each covered product and the methods for determining energy efficiency standards. The June 30 proposal was based upon five technical support documents which were made available for public review.

In order to encourage public participation in the rulemaking process the DOE held a series of public meetings and hearings, starting in July 1980. Public hearings were conducted in Chicago and Washington in August 1980. As a result of these hearings and the solicitation of written comments, over 1800 comments were received on the June 30 proposal. These comments addressed all aspects of the rulemaking proposal including the establishment of classes in each covered product type, the feasibility of the standards selected for each covered product, the validity of the assumptions made in the technical support documents, the procedure for seeking exemptions for State regulations from preemption by the Federal standard, the effective date of a final regulation, the propriety of standards for small businesses, whether alternatives to regulations were practical, and the proposal for certification and enforcement procedures.

On December 17, 1980, the Department notified the Congress of its inability to make a final determination on the imposition of energy efficiency standards on the nine covered products by the deadline of January 2, 1981. On February 23, 1981, DOE published a notice of its intent not to issue any energy efficiency standard until it fully studied the comments received on the June 30 proposal and made a thorough reassessment of the data supporting the proposal. 46 FR 13517. As stated in the February 23, 1981, notice, DOE has conducted a full reevaluation of the June 30 proposal and both the "Engineering Analysis Document" and "Economic Analysis Document". As more fully set forth herein, DOE has reviewed all of its prior assumptions and conclusions in order to reflect the justified concerns of many of the comments.

II. General Discussion

As indicated in the *Authority* section above, the Act prohibits DOE from promulgating a standard for a product if (1) there is no test procedure for the product, (2) a standard is not technologically feasible, (3) DOE finds a standard would not result in a significant conservation of energy, or (4) DOE finds a standard would not be economically justified. To measure possible savings and economic justification, DOE analyzed three (and in some cases, four) different possible standards for each product or class of product.[6] With respect to each product, various specific design options currently available on existing equipment were analyzed. This process is fully described in the Engineering Analysis Document. *See* Chapters B, C, and D. Computer models were used to predict improvements in efficiency of products and the costs associated with the improvements. From this data, cost/efficiency curves were derived which present the relationship between increases in efficiency and the costs necessary to achieve these increases. The possible standards to be analyzed were chosen from points on these curves, with the highest standard to be analyzed generally corresponding to the most efficient combination of the design options analyzed. Lower standards levels were chosen from points on the curve to provide a spectrum of analysis.

The performance standards chosen for review were generally lower than those proposed in the June 30 proposal. This was due to changes in the engineering analysis largely as a result of public comments on the June 30 proposal. These changes are addressed in the Engineering Analysis Document.

a. *Test Procedures.* While there are existing test procedures for most covered products, for certain classes of product there are no test procedures. These are identified in the product-specific discussion.

b. *Technological Feasibility.* For all products and classes of products, DOE believes the efficiency levels analyzed are technologically feasible. In three cases, however, DOE has determined that increases in efficiency are not technologically feasible: electric cooking tops, electric furnaces, and microwave ovens. They are identified in the product-specific discussion.

c. *Energy Savings.*

1. *Determination of Savings.* DOE quantified the energy savings that would be attributable to a standard imposed at each of the analyzed levels of efficiency for each product. This was done through use of the Oak Ridge National Laboratory Residential Energy End Use Model (ORNL Model). The ORNL Model is fully explained in the Economic Analysis Document, *see especially* Appendix E. This computer model is used to project residential energy use by

[5] DOE is today proposing to adopt several of the definitions set forth in the June 30 proposal. These definitions, at 430.2, generally reiterate the definitions set forth in sections 3 and 321 of the Act.

[6] As used in this preamble, "product" refers to the generic product of each type listed in section 322(a) of EPCA (e.g., furnace or freezer). "Class" means a product subset which has the same primary energy source (i.e., gas, oil or electricity) and the same capacity or performance-related feature which affects the energy efficiency of the unit (e.g., chest freezer, upright freezer with manual defrost and upright freezer with automatic defrost).

a product with and without standards for the period 1987–2005.[7] By comparing the energy used without a standard during the period 1987–2005 to the energy used with a particular standard during the same period, DOE estimated the amount of energy saved during that period due to that standard. The energy saved is expressed in Quads (quadrillion BTUs). With respect to electricity the savings are Quads of source or primary energy; that is, the energy that is necessary to generate and transmit electricity. "Energy use" is defined in the Act as the quantity of energy directly consumed by a consumer product at point of use. This is sometimes referred to as "site" energy, as opposed to source energy. The amount of electrical energy at the site is approximately 29 percent[8] of the amount of source energy required to generate and transmit that site electrical energy. Thus, it is always important to identify whether the amount of energy identified as electricity is source or site energy.

DOE used the same computer model in its June 30 proposal. However, based on comments to that proposal, further analysis, and more recent data, some inputs to the model were changed from those used for the June 30 proposal. These changes are all fully described in the Economic Analysis Document, *see especially* § 2.4 and Appendix E.

The ORNL projections are dependent on many assumptions. Among the most important are responsiveness of household purchases to changes in energy prices and consumer income; future energy prices; future levels of housing construction; and options for improving the energy efficiency of products. As is the case with any complicated computer model simulation, the validity of the outputs is critically dependent on the inputs. Several of the inputs (e.g., energy prices and equipment costs) were tested in sensitivity analyses to determine the effects of varying certain assumptions on the results of the analysis. By such sensitivity analyses one can determine those inputs where change, including possible error, is meaningful to the model's output and those inputs where it is not. *See* Economic Analysis Document, Chapter 5. Moreover, there are certain product-specific questions or limitations in the ORNL model. These are discussed in the product-specific analysis.

The savings attributable to standards are identified for each product in the product-specific analysis. Generally, the level of savings attributable to standards is lower than predicted in the June 30 proposal. This is the result of the changes to the engineering analysis and ORNL Model mentioned above and described at length in the Engineering Analysis Document and Economic Analysis Document.

While no specific analyses have been conducted in this area, DOE believes that the changes that had the greatest impact were probably the lowering of possible standard levels in light of comments received in the June 30 proposal and the use of the most recent energy price forecasts, i.e., use of the NEPP III fuel price projections. The first of these two changes makes the possible standard levels more feasible. Numerous comments were received with respect to virtually every product indicating problems with the means by which DOE derived the standard levels or problems that would be caused by the standard levels. Changes to design options or creation of new product classes were often the appropriate answers, but they reduced potential savings. In the absence of these changes, while projected savings might be higher, the costs and burdens of possible standards would be much greater.

The use in the ORNL Model of the most recent data (e.g., product efficiencies, usage and market penetration) and energy price projections results in the model better approximating what would happen in the marketplace in the absence of standards. This is important because it is only in the last several years that the efficiency of many products increased significantly in terms of shipment weighted efficiency.[9] *See* Economic Analysis Document, Table 3–12. Before 1973, the real price of energy generally declined. Consequently, it is not surprising that manufacturers and consumers did not focus great attention on the energy efficiency of appliances. The increase in the cost of energy in the last ten years, however, has created substantial incentives for manufacturers to make, and consumers to buy, more energy efficient appliances. These incentives to a certain extent have been restrained by regulation of the price of oil and natural gas, which subsidized consumption and discouraged conservation. Nevertheless, many of the covered products have shown significant improvements in shipment weighted energy efficiency in the last eight years. In the years ahead, moreover, with the deregulation of oil and the scheduled deregulation of most natural gas in 1985, market forces are expected to play an increasingly dominant role in the pricing of all energy. Therefore DOE expects that the appliance market will respond swiftly in the level of energy efficiency provided in new appliances. In short, if standards are not adopted, the appliance market can be expected, over the period 1987–2005, to increase the level of shipment-weighted energy efficiency of the average new appliance to levels generally comparable to those that might be required by mandatory standards. *See* Economic Analysis Document, Table 3–12. Thus, we would expect the energy savings *attributable to standards* to be correspondingly small.

By the year 2005, the ORNL Model predicts that in the absence of standards the average efficiency of new models of six of the most energy consumptive appliances will improve 32 percent, on the average, compared to 1978. With standards, the average efficiency of the same new appliances in 2005 will have improved 37 percent. *See* Economic Analysis Document, Table 3–12.[10] Thus, DOE predicts that with respect to these products most of the improvement in efficiency by the year 2005 possible with standards would be achieved without standards. During the period 1987–2005, the ORNL Model predicts that, *in the absence of standards,* improvements in appliance efficiencies will result in savings of 27.6 Quads, compared with what would have been used if appliance efficiencies had been frozen at 1978 levels.[10a] If standards were adopted for all the appliances suject to this rulemaking, the ORNL Model predicts savings during the same period of 32.8

[7] This model was programmed to analyze a single standard level, or no standard, over the entire period. That is, the fact that a standard might be revised or eliminated after intervals of five years, see section 325(h)(1), was not considered by the Model. DOE believes it is not possible to predict what result such five year reviews might have, and therefore it would be too speculative to model any particular result.

[8] This figure is derived from the fraction of the Quads of energy that go into generation of electricity represented by the Quads of energy consumed by end-users as reflected in The National Energy Policy Plan, DOE/S–0008, July 1981 (hereafter referred to as "NEPP III.")

[9] The shipment weighted efficiency of a product equals the sum of the energy factor for each basic model times the volume of shipments for each model, all divided by the total shipments of the product.

[10] These percentages are derived by a simple average of the percentage improvements of each of the products reflected in Table 3–12. These products are: oil and gas furnaces, room air conditioners, central air conditioners, electric and gas water heaters, refrigerator-freezers, and freezers.

[10a] *See* Letter from J. Dexter Peach to Congressman Richard L. Ottinger, December 23, 1981, at Enclosure I, p. 11.

quads. Thus, 84% of the total possible savings from potential appliance efficiency improvements are projected to occur in the base case, without standards. This means that only 16 percent of the possible savings would be *attributable* to standards.

Since the projections of the ORNL Model—or any model forecasting energy use over twenty years—are to a significant degree uncertain, even this relatively small energy saving attributed to standards must be viewed with some skepticism.

Some of the energy savings the ORNL Model attributes to the standards may partially be the result of market imperfections.[11] Such imperfections could include the difficulty in obtaining and the complexity in understanding information concerning the relative efficiencies between models of appliances, the difficulty of comparison shopping on a basis other than initial cost, and third party purchase of some appliances.[12] How much of the difference between the savings in the no-standards and the standards cases might be attributable to such market failure is unknown.

There is a tendency to assume that if a standard were set at the point that would produce the minimum life cycle cost (in the Economic Analysis Document such a standard level is denominated the "nominal level"), then any difference between savings achieved at such a standard level and a no-standard level would have to be attributable to market failure. There are at least two major flaws with such an assumption. First, a uniform, national standard set at the national, average life cycle cost minimum may well constitute a standard that for large numbers of "non-average" persons is too efficient; that is, a less efficient model would have a lower life cycle cost to them. Such a standard would be punitive for such people. This concept is addressed in more detail *infra*, but here it suffices to note that the 16 percent additional savings that the ORNL Model attributes to standards is likely partially at the cost of such "non-average" persons. Second, even the national, average life cycle cost of a product as used in the economic analysis is a projection, not a demonstrable fact. There are many assumptions, including usage rates, fuel prices, equipment prices, and the appropriate discount rates. The assumptions made by DOE are its best estimates and judgments, but if persons in the marketplace have different estimates and judgments, even in an intuitive fashion, this does not mean they are wrong and DOE is right, thereby demonstrating market failure. To the contrary, they may well be right, or, perhaps more likely, have a much better appreciation of their particular circumstances and needs, such that the additional savings predicted by the ORNL Model to be attributable to standards might in part reflect forcing standards on persons whose free choices would have been their most economic choices.

Whatever the degree of market failure that may have been experienced in the past with respect to these appliances, however, DOE expects to diminish greatly as a result of increased consumer awareness and concern over higher energy prices in combination with the Federal Trade Commission's (FTC's) appliance labeling program. Neither FTC nor DOE have evaluated this program to determine its impact. However, the FTC expects to conduct a study of the impacts on consumer purchase decisions of labeling for refrigerators and refrigerator-freezers and clothes washers this year. Moreover, a final rule for labels for central air-conditioners (including heat pumps) has not yet been issued, but is expected in 1982. DOE believes that this program, together with higher energy prices, will substantially reduce any imperfections in the appliance market. There are indications, for example, that home builders are conscious of the sales advantages of an energy efficient home, and such consciousness is likely to mitigate third party effects. Private sector groups (including trade associations, consumer groups, and the media) could play an important role in publicizing the labeling program and actively disseminating facts concerning the relative efficiencies of competing appliances, especially those that are sold more frequently through contractors, where comparison shopping may be more difficult.

One example of the available information concerning the relative efficiencies of appliances is the publication of certification directories by appliance manufacturer associations. At the present, directories are published by the Association of Home Appliance Manufacturers (AHAM) for refrigerators, freezers, and room air-conditioners, and by the Air-Conditioning and Refrigeration Institute (ARI) for central air-conditioners (used extensively by contractors and installers). The Gas Appliance Manufacturers Association (GAMA) will soon begin publishing a directory for gas and oil furnaces and gas and electric water heaters. In addition, the California Energy Commission publishes directories for refrigerators and freezers, room and central air-conditioners, and water heaters. Increasingly, manufacturers themselves are advertising the efficiency of their products.

The ORNL Model characterizes all of the factors influencing the market response to higher energy prices as an implicit discount rate. Moreover, the model is programmed to decrease the implicit discount rate (or market imperfections) as energy prices rise. In this way the model roughly simulates how the market operates. There is a paucity of studies of changes in implicit discount rates generally, and none analyzing the effect of a combination of higher energy prices and a public education program over a number of years.[13] How fast the implicit discount rate decreases is a matter of judgment in the context of this analysis. DOE believes that its method for decreasing the implicit discount rate is reasonable in light of all factors. Indeed, while the ORNL Model is a respected computer model and DOE has made a number of improvements to it since the June 30 proposal, DOE believes that it is likely that the market will respond more quickly and more completely to higher energy prices and increased consumer awareness than the model projects, because the model was not specifically programmed to take account of the FTC's labeling program or innovative private sector activities, some of which are already underway. Consequently, DOE believes that there is a significant probability that the energy savings attributable to standards would be less than those projected by the ORNL Model.

An example of increased incentives for efficiency resulting from market forces is the offer by several utilities to provide cash rebates to consumers (and, in one case, to contractors) who install appliances meeting specified minimum

[11] This assumes that the standards imposed would be the optimal standard from a life cycle cost view. *See infra.*

[12] Some appliances are purchased and installed by the builder before a home is first sold. This kind of third party purchase is not generally regarded as market failure, since components of homes and other consumer durables are usually designed to conform to consumer preferences. However, some evidence suggests that these third party purchases have historically been slower to respond to consumer awareness and concern for higher prices for energy than where the purchaser is actually the person who will pay the fuel bills.

[13] The most closely related study, one examining investments in thermal integrity for new homes, involved circumstances sufficiently dissimilar to render its results inconclusive in the appliance context. *See generally* Economic Analysis Document at § 5.3.2.6.

levels of energy efficiency. For instance, the Dallas Power and Light Company (like other subsidiaries of the Texas Utilities Company) offers such rebates to consumers for replacement and new construction installations of efficient air-conditioners; Northern States Power Company in Minneapolis offers similar rebates for refrigerators, freezers, room and central air-conditioners, and water heaters; and Florida Power Corporation offers rebates to consumers and bonuses to contractors and dealers for replacement of air-conditioners with more efficient units. These actions allow the utilities to gain more control over energy demand during periods of peak use, thus reducing the need for construction of new generating capacity; they also allow consumers to reap the benefits of lower energy costs without paying the full increase in the first cost of more efficient appliances.

2. *Significance of Savings.* Under section 325(b) of EPCA, as amended, DOE is prohibited from adopting a standard for a product if that standard would not result in "significant" energy savings. The statute, however, does not define the term "significant." Such a term is not readily susceptible to precise definition, and DOE believes that Congress used such a term with the intent that DOE would, in the exercise of its informed judgment, determine what level of savings is significant and under what circumstances.

In exercising its judgment, DOE is proposing to consider the significance of energy savings in three different contexts, using three different measures. They are: whether savings of oil and gas are large enough to decrease meaningfully this Nation's reliance on foreign sources of energy; whether savings of electricity are large enough either to reduce significantly new generation requirements or to affect significantly the environment; and, whether a standard would result in a product using 20 percent less energy than it would absent a standard. If the savings attributable to a standard are significant under any one of these tests, DOE is proposing to deem the savings significant under section 325(b).[14]

A. *Oil and Gas Savings.* The first measure for determining significance is the amount of oil and natural gas that would be saved as a result of a standard. DOE believes it is appropriate to focus on savings of these fuels because Congress in enacting NECPA, which amended EPCA to create the existing appliance program, focused on these fuels. The findings enumerated in NECPA are instructive:

(a) FINDINGS.—The Congress finds that—

(1) The United States faces an energy shortage arising from increasing demand for energy, particularly for oil and natural gas, and insufficient domestic supplies of oil and natural gas to satisfy that demand;

(2) Unless effective measures are promptly taken by the Federal Government and other users of energy to reduce the rate of growth of demand for energy, the United States will become increasingly dependent on the world oil market, increasingly vulnerable to interruptions of foreign oil supplies, and unable to provide the energy to meet future needs; and

(3) All sectors of our Nation's economy must begin immediately to significantly reduce the demand for nonrenewable energy resources such as oil and natural gas by implementing and maintaining effective conservation measures for the efficient use of these and other energy sources.

Based upon this language, DOE believes a level of conservation of oil or gas would be significant if it made a significant contribution to reducing this Nation's energy dependence on foreign nations. DOE is tentatively proposing to establish 10,000 barrels-per-day as the oil (or gas) savings that would be deemed significant if a standard for a particular product would result in such savings, but requests comments from the public on whether a different figure is appropriate, and if so, what it should be. This tentative figure is a rough approximation of the per-product oil savings estimated by the Administration that proposed the NECPA amendments to EPCA that would result from adoption of standards.[15] Such a figure for each standard would over all thirteen standards also result in program-wide savings of oil that would be in the same range as other major programs proposed by the Administration that proposed the mandatory appliance standards.[16] A figure smaller than this would mean savings so small as to be difficult to discern in national reports, for 10,000 barrels-per-day is already less than 1/10 of 1 percent of national oil use and less than 3/10 of 1 percent of petroleum imports.

Support for this general range of savings of oil as being "significant" can be found in the history of Congress' rejection of an energy conservation contingency plan for advertising lighting restrictions. That plan was estimated to be able to save only approximately 4,400 barrels of oil per day as a result of reduced electricity usage. *See* S. Rep. No. 96–98, 96th Cong., 1st Sess. 10–11 (1979); H.R. Rep. No. 96–122, 96th Cong., 1st Sess. 4 (1979). This amount of savings was considered by DOE to be small, with little impact on the Nation or on electric utilities. The principal value of the plan was deemed to be its promotion of public awareness. *Id.* Both the Senate Committee on Energy and Natural Resources and the House Committee on Interstate and Foreign Commerce reported unfavorably on the plan because of its failure to provide for significant savings, and the plan was never approved. Several commenters, objecting to the BTU level of savings DOE proposed to deem significant in the June 30 proposal, suggested use of this 4,400 barrel-per-day level. DOE believes that this history is instructive in demonstrating that DOE and the Congress deemed 4,400 barrels-per-day *insignificant.* However, nothing in the record suggests that savings should be considered significant merely because they exceed 4,400 barrels-per-day.

Oil and gas are used directly to power certain covered products or classes of products and are used indirectly, to a greater or lesser degree, through the generation of electricity, as an energy source for most of the products under consideration in this rulemaking. The following table illustrates the current direct and indirect oil and gas usage for each of the products subject to this rulemaking and each product's percentage of the Nation's total oil or gas usage.

[14] In the June 30 proposal DOE proposed that annual *site* energy savings for a product of 0.002867 Quads, or 0.054 Quads over nineteen years, would be deemed significant. This specific BTU savings was intended to represent a 20 percent savings of the minimum amount of site energy a product must use before it can be considered for standards under section 325(a)(2). Commenters suggested that this level of savings was too low to be deemed significant. DOE agrees. Such a level of savings is so small as to be non-measurable in national reports. Moreover, this amount is less than 20 percent of the site energy savings that would have been achieved in a conservation contingency plan rejected by both houses of Congress because it saved an insignificant amount of energy. *See infra.*

[15] The gas savings projected were of the same magnitude.

[16] President Carter's proposed Mandatory Weekend Closings of gasoline stations was estimated to be able to save 120,000–270,000 barrels-per-day; enforcement of the 55 mph speed limit was said to be able to save 200,000 barrels-per-day; and President Carter's oil import fee to reduce gasoline consumption, overturned both by the courts and Congress, was supposed to save 100,000–250,000 barrels-per-day.

1980 OIL AND GAS USAGE

[10 ^{15} Btu]

Appliance [1]	Direct		Indirect [2]		Percent of total usage [3]	
	Oil	Gas	Oil	Gas	Oil	Gas
Central space heater	1.82	2.62	.16	.14	4.1	14.0
Room space heater	.20	.74	.10	.09	.8	4.2
Air conditioner:						
Room			.06	.05	.2	.3
Central			.24	.21	.6	1.1
Water heater	.12	.85	.22	.19	.9	5.3
Refrigerator			.19	.17	.5	.9
Freezer			.07	.06	.2	.3
Range		.31	.09	.08	.2	2.0
Clothes dryer		.07	.07	.06	.2	.7
Total	2.14	4.59	1.20	1.05	8.7	28.8

[1] These estimates are based on results of the ORNL model. Since the ORNL model does not calculate indirect usage, DOE calculated indirect oil and gas usage based on national oil and gas usage for generating electricity.
[2] Percentages: 16.3 pct., oil; 14.2 pct., gas. *See* 1980 EIA Annual Report to Congress Vol. 3: Forecasts, DOE/EIA-0173(80)13, at 68.
[3] 1980 EIA Annual Report, p. 28. Total Usage: Oil—38.6 quads, gas—19.7 quads.

Each product-specific analysis identifies the direct and indirect oil and gas savings and assesses their significance.

B. *Electricity Savings.* The significance of energy savings, however, probably should not be measured solely in terms of savings of oil and gas, or even non-renewable fuels, notwithstanding the findings of NECPA. There are positive social benefits from saving electricity, besides saving oil and gas. For example, saving electricity can reduce both environmental problems and the need for additional generating capacity, thereby freeing scarce capital for other productive uses. Therefore, DOE believes that a "significant" conservation of energy would include electricity savings that would have a significant impact on the environment or significantly reduce the need for additional generating capacity.

DOE cannot identify a specific number of kilowatts or Quads of savings that would have such impacts. Nevertheless, in its Environmental Assessment of the June 30 proposal, DOE concluded that the standards proposed there, taken together, would not have a significant effect on the environment. Because the standards proposed in the June 30 proposal were predicted to create greater energy savings than the standards analyzed in this proposal, DOE believes that no single standard considered in today's proposal could have a significant effect on the environment. That environmental assessment did not specifically address the issue of the effect of standards on new generating capacity. Because the relative need for new capacity differs substantially among different regions of the Nation, DOE believes a national savings of electricity would at least have to exceed 1 percent of national usage over the period of analysis in order to have an effect on the need for new generating capacity, which at the utility level is distinguishable from other factors.

The table below shows electricity use for each of the products subject to this rulemaking and its percentage of national electricity usage.

1980 ELECTRICITY USAGE

Appliance	Electric usage in quads [1]	Percent of total electric usage [2]
Central space heater	0.96	3.8
Room space heater	0.62	2.5
Air conditioner room	0.38	1.5
Air Conditioner central	1.47	5.9
Water heater	1.35	5.4
Refrigerator	1.17	4.7
Freezer	0.44	1.8
Range	0.54	2.1
Clothes dryer	0.45	1.8

[1] Source: ORNL Residential Energy End Use Model.
[2] Total electricity source energy in 1980 was 24.8 Quads. NEPP III.

In each product-specific analysis, the electricity savings are identified and discussed.

C. *20 Percent Savings.* The above measures of the significance of particular energy savings related the savings to their impact at the national level. This is probably the most natural measurement of the significance of a proposed or possible national program, becasue, if the program is national in scope and character, its impact would normally be judged by its effect on the Nation. Nevertheless, such a measurement is not the only possible test of significance. Moreover, such a measurement has a built-in bias toward products that use a great deal of energy in the first instance. That is, a relatively small improvement in energy efficiency attributable to a standard in a product that uses a great deal of energy could meet the above tests of significance, while a product that uses relatively little energy (e.g., clothes dryers) would have to show an improvement in efficiency of an extraordinary level in order to save the requisite oil, gas,or electricity.

Another way to measure the significance of energy savings attributable to a standard for a given product over a period of time is in relation to the energy that would have been used by that product in the absence of a standard over that period of time. Thus, if a standard for a particular product resulted in a significant amount of energy being saved in relation to what would have been used by that product in the absence of the standard, the standard could be deemed to have resulted in a significant conservation of energy. Such a measurement of significance would not be biased in favor of the products that are the relatively large energy users, because the energy savings attributable to a standard for the product would be meaured only against the energy that otherwise would have been used by that product.

Because the other measurements of significance are biased in favor of large energy users, this measurement would most likely result in a determination of significance with respect to a standard for a small energy user. Consequently, DOE believes it is appropriate to establish a level of significance at a percentage level that would be meaningful even if the product used relatively small amounts of energy. DOE is proposing, therefore, that the energy saved as a result of a standard, as measured by the ORNL Model, be 20 percent of the energy that would be used by the product in the no-standard base case in order for the savings to be deemed significant.

DOE finds support for a 20 percent level in the former section 325 of the Act. Prior of the NECPA amendments, section 325 required voluntary energy efficiency targets for ten products that would, if followed, result in an aggregate increase in energy efficiency of 20 percent. Only if one of these targets were not met would DOE be required to establish an efficiency standard for the product. The 20 percent increase in energy efficiency is not the same as a 20 percent energy savings as a result of a standard, and the legislative history of the present section 325 does not discuss any relationship between this prior provision's use of 20 percent and the present section's use of the term "significant" conservation of energy. Nevertheless, DOE believes that Congress's use of a 20 percent level as a minumim level in relation to standards suggest that such a percentage level of savings is a reasonable basis for deeming a level of conservation

significant and thereby meeting the present Section 325's criterion.

D. *Economic Justification.* Section 325(b) also in effect prohibits an appliance efficiency standard, if that standard is not economically justified. Section 325(d) states that a standard can be economically justified only if DOE determines that the benefits of the standard exceed its burdens. In other words, even if a standard saved "significant" amounts of energy, if the benefits of that standard did not outweigh its burdens, the standard would not be "economically justified." In determining whether a particular standard's benefits exceed the burdens, to the greatest extent practicable DOE is to weigh six specific factors as well as any other factors DOE deems appropriate. *See* section 325(d)(1)–(7). These factors are separately addressed below.

Certain of these factors can be quantified, albeit through projections and computer models; others are not quantifiable. Congress recognized this and indicated that greater weight should not be given to a factor merely because it was quantifiable. *See* H.R. Rep. No. 95–1751, 95th Cong., 2d Sess. 116 (1978).

1. Economic Impact on Manufacturers and Consumers (Sec. 325(d)(1)). The engineering analysis identified improvements in efficiency and the associated costs for each class of product to large and medium-sized manufacturers. These costs would constitute the increased per unit cost to manufacturers to achieve energy efficiency levels equivalent to those achieved in the design options. Consumer prices will increase further as a result of mark-ups in the distribution chain. The average price of current models in the class is derived from industry data, as shown in the Engineering Analysis Document. These costs are identified in the product-specific discussion. These increased costs to manfacturers and consumers, however, cannot be said necessarily to be the result of standards. That is, to the extent that manufacturers choose voluntarily to make appliance efficiency improvements, their costs and the purchase costs to consumers would increase by roughly the same amount as they would if the same improvements were made as a result of standards (except for that portion of the cost that is attributable to the certification and enforcement expenses unique to standards, see Engineering Analysis Document at C–7).

To assess certain other impacts on manufacturers that would result from standards, DOE used a computer model that simulated hypothetical firms in the appliance industry to determine the effects of standards on different-sized firms. This model, the Financial Impacts Model (FIM), is fully explained in the Economic Analysis Document. *See especially* Appendix A. In general, the FIM compared the projected financial records of prototypical firms of different sizes over a twelve year period—1980–1991—under a base case and two standards cases (levels 2 and 3). The FIM then provides four outputs: the increased risk to a prototypical firm of not making a profit in the manufacture and sale of a given product subject to a given standard compared to the "base case," and the relative profitability, debt/equity and "quick" [17] ratios of prototypical firms in the "base case" and with standards.[18] *See* § 4.5, Economic Analysis Document. The product-specific analysis identifies these outputs for prototypical small, medium, and large firms making that product.

With respect to increased business risk, the FIM projects an increased business risk to small or medium firms for all products analyzed (except furnaces) at almost all standards levels analyzed. *See* Economic Analysis Document, Table 4–28.[19] Similarly, the level of profitability for small and medium firms diminishes for all products analyzed at almost all standard levels analyzed. *Id.*, Table 4–29. Generally, the debt/equity ratio of firms deteriorates; in two instances the level of debt becomes greater than the value of all assets, rendering the net worth negative.[20] *Id.*, Table 4–30. Generally, all firms become less liquid with standards. *Id.*, Table 4–31. The conclusion suggested by these data is that standards generally would have a negative impact on the financial health of appliance firms, with specific and significant harm suffered by small- or medium-sized firms making certain appliances. These impacts are addressed in the product-specific discussion where applicable. DOE believes that the combination of increased business risk, reduced profitability, and the need for greater investment to comply with standards increases the likelihood that small and medium firms would leave the particular appliance market through withdrawal or failure, or would merge with another firm in the appliance industry. DOE believes that the withdrawal or failure of large firms, because of their greater financial strength generally and their diversification, would be much less dependent on the existence of standards.

For consumers, another measure of economic impact is the life cycle cost of a product, because it takes account of both the increased first cost, any increased maintenance costs, and the reduced fuel costs resulting from the product's greater efficiency. Under section 325, such an analysis is a separate factor, *see infra.*

While the above are the quantifiable impacts of standards, which are identified in each product-specific analysis, there are a number of less quantifiable impacts (not addressed in any of the computer models) on both manufacturers and consumers resulting from increased manufacturing costs and purchase prices. For manufacturers, for example, any money spent on energy efficiency improvements to appliances is money not invested in other areas. Thus, to the extent that expenditures by manufacturers on energy efficiency improvements to appliances are dictated by standards rather than economics, more appropriate investments may be

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[17] The quick ratio is a measure of a firm's ability to withstand short-term downturns in business activity. Also called the acid test ratio, it is defined as:

$$\text{Quick Ratio} = \frac{\text{Current Assets—Inventory}}{\text{Current Liabilities}}$$

[18] For the period analyzed under the base case, levels of investment by the firm are derived from historical investment levels. Under the two standards cases, the base case levels of investment are increased by the amount of investment necessary to produce the product to the required efficiency level (as indicated in the engineering analysis). This methodology would accurately measure the impacts associated with those investment and efficiency levels if the manufacturer had not already made investments in energy efficiency improvements by that time. If the manufacturer had made some of the necessary investments to improve appliance efficiency as part of his historical level of investment, however, to add the full amount indicated in the engineering analysis would be inaccurate, because some of that necessary investment would already have been made. Because the ORNL Model predicts that appliance efficiency improvements will be made by the market without standards and that some improvements relative to 1978 will be made by the time standards would be imposed, it is reasonable to expect that many, if not most, firms will have made at least some investments in appliance efficiency improvements prior to the time any standard would be imposed. Thus, the financial impact of a standard would be less for these firms than for the firm that had made no such investment. In the product-specific discussion, DOE estimates, on the basis of the increase in efficiency of the product between 1978 and 1987, the order of magnitude by which the impacts predicted by the FIM may be overstated for the average firm.

[19] DOE conducted a sensitivity analysis of the risk analysis of the FIM to determine how changing certain variables would affect the output. It was determined that changing the level of products shipped had a substantial impact on the model's output of increased risk. Because of the importance of this variable and its impact on the results, where appropriate, it is addressed in the product specific analysis.

[20] The two instances occur at level 3 for medium-size manufacturers of refrigerator-freezers and small manufacturers of freezers.

foregone. DOE believes that this could result in reduced productivity, reduced energy efficiency in the manufacturing sector, or the forgoing of possible new utility or performance features in a product. This is nothing more than a result of the inherent diseconomies of governmental regulatory interference in the marketplace, for a regulation of general applicability—even if crafted to minimize unnecessary costs—necessarily cannot take account of all particular circumstances. DOE solicits comments on this subject, especially from potentially affected manufacturers.

Increased first costs to consumers resulting from standards can affect different consumers in different ways. The various computer models utilized by DOE do not distinguish between different consumer purchasing patterns. Rather, they assume an average consumer. DOE believes, and several commentors on the June 30 proposal stated, that for lower income consumers increases in first costs for a particular product can have the effect of precluding the purchase of a new model of that product. As a result, some consumers may retain products past their useful life or purchase older used appliances. These older products are generally less efficient than newer models to begin with, and DOE believes that for some appliances initial efficiencies are likely to deteriorate if they are retained beyond their useful life. Thus, these consumers might, because of standards, be forced to live with less efficient products and thus use more energy. However, if no standards were adopted, consumers of all income levels would be able to choose from a range of products with varying energy efficiencies and prices, and it would be possible for a lower income person to purchase a new product with a higher efficiency than the model it was replacing, albeit at an efficiency less than would be required under standards, but also at a purchase price less than would be available under standards. DOE believes that this impact of standards on lower income persons is important even if the number of such persons disadvantaged is relatively small compared to the total number of persons affected by standards. This is so because lower income persons are the least able to endure economic disadvantage resulting from governmental regulatory action.

2. *Life Cycle Cost and Net Present Value (Sec. 325(d)(2)).* The life cycle cost (LCC) analysis, *see* Economic Analysis Document, calculates the total cost of ownership for consumers for each class of product. Comparison of the life-cycle cost of 1978 baseline models with models at each of the standards levels analyzed allows DOE to determine the changes in total cost of ownership.

If the life cycle cost at a particular standard level is greater than the life cycle cost of the 1978 model, this demonstrates that it is not economically beneficial for the average consumer to purchase a product built to the analyzed standard level compared to current "average" models. That is, the increased first costs of obtaining a particular efficiency are not offset by fuel savings over the life of the product.

DOE has placed substantial weight on the failure of a possible standard to achieve an improved life cycle cost. Moreover, if a particular standard level, while showing a decreased life cycle cost from the 1978 shipment weighted efficiency, would have the effect of banning from the market an existing product with a lower life cycle cost, DOE also considers this a substantial burden. In both cases, the effects of selecting that particular standard level would be to penalize consumers, by requiring them to pay greater life cycle costs than necessary and to take actions that would be contrary to their own self-interest.

The life cycle cost analysis, therefore, is useful in identifying those energy efficiency levels that correspond to life cycle cost minima, *see especially* Economic Analysis Document, Appendix G, for it is at these levels of energy efficiency that the average consumer's economic benefits are maximized and his burdens minimized. Moreover, where these LCC minima do not correspond to the most energy efficient level, the more energy efficient level (with higher life cycle costs) generally saves only very marginal increased amounts of energy.

While the life cycle cost analysis indicates for most products at most standard levels a decrease in life cycle costs compared to those of 1978 shipments, this decrease should not be totally attributed to the adoption of standards. In the previous section it was noted that increased first costs to manufacturers and consumers resulting from appliance efficiency improvements could not necessarily be attributed to the effect of standards, because market-induced efficiency improvements would result in similar per-unit first cost increases. So also here, market-induced efficiency improvements between 1978 and 1987 will result in similar decreases in life cycle costs. Data provided in Appendix G of the Economic Analysis Document leads DOE to believe that the decreases in life cycle costs identified for the appliances at issue here, determined by comparing certain levels of efficiency to actual 1978 average efficiencies, would largely be enjoyed even in the absence of standards, as a result of market improvements in appliance efficiency. In other words, the life cycle cost analysis conducted by DOE merely compared the relative life cycle costs of products at different levels of efficiencies; DOE did not compare, predict, or project differences in life cycle costs of products under standards as opposed to a base case without standards.

In order to assess the differential economic impacts on consumers that would occur generally from the adoption of standards, compared to a base case with no standards but with market-induced efficiency improvements, DOE conducted a net present value (NPV) analysis, *see* Economic Analysis Document, § 4.2. The ORNL Model calculates the total cost for each product (discounted total value of energy consumption from 1987 through the last year of use for those products purchased through the year 2005, plus the total discounted equipment costs for equipment purchased from 1987 through 2005) with and without standards. The difference between these two is the NPV attributable to standards. A positive NPV for a product at a given standard level indicates that, if that standard were adopted, consumers of that product as a whole would save that much more money in fuel costs, discounted to the present, than they would pay in increased first cost for more efficient products, discounted to the present, compared to the situation where no standard is adopted.[21] A positive NPV does not mean that the economy as whole benefits (as opposed to consumers of that product). The NPV analysis only compares consumer fuel cost savings against increases in product prices to consumers. For example, the government costs in maintaining and enforcing a particular product standard are not subtracted from the net present value. The NPV analysis is similar to the LCC analysis, and the greatest NPV generally should occur at the standard level set at the LCC minimum for the product.[22] The NPV for each product at the different

[21] All NPV's in the analysis overstate the benefit of standards to some degree because the base case analysis did not subtract manufacturer compliance costs, e.g., certification and testing, from the base case product prices. This overstatement, however, is minor.

[22] Because the NPV analysis is done using the ORNL Model and the LCC analysis is done through its own model, this direct correlation may not exist between the two models' data.

standard levels is identified in the product-specific analysis.

Several commenters on the June 30 proposal identified a potential problem in the use of averages, such as average usage rates and average fuel prices, to determine life cycle costs and net present values. The life cycle cost analysis was used to determine life cycle cost minima, which for the "average" consumer should be the optimal efficiency level. Where a consumer is not average, however, that level is not necessarily optimal. If the consumer has higher than average fuel prices or higher than average usage rates, there may be a more optimal efficiency level for that consumer, but the consumer is not penalized because the market is able to provide such a model. If, however, the consumer has lower than average fuel prices or lower than average usage rates, the consumer may be penalized by having to purchase a product whose efficiency level was required by a Federal standard that assumed higher prices or higher usage than is true for that consumer.

Because of these comments, and especially those of the Regulatory Analysis Review Group (RARG) of the former Administration, which questioned the premise of setting standards at the average consumer's LCC minimum, DOE undertook several sensitivity studies of the LCC analysis to determine whether the potential, theoretical problems mentioned above, in fact, would occur if standards at LCC minima were adopted. With the exception of certain classes of central and room air conditioners, the sensitivity analysis indicated that generally the level of efficiency that had the lowest LCC for the average consumer was the LCC minimum for a consumer with less than average usage or fuel prices. *See* Economic Analysis Document, § 5.4. The sensitivity analysis, however, is subject to several limitations. First, it only considered reductions of less than 5 percent from the average fuel price. This is a critical limitation, because some States' average electricity prices are as much as 80 percent less than the national average electricity price. Second, the reductions in usage measured were only those that would be normally expected, not extreme reductions that still might be representative of some people. Third, the sensitivity analysis did not test any combination of below average usage *and* below average fuel prices. Fourth, it did not consider the effect of reduced usage for a number of products (dryers, freezers, and ranges and ovens), some of which may be more sensitive to reductions in usage. Nevertheless, while the LCC sensitivity analysis cannot rule out the problems or burdens identified by commenters and the RARG, with the exception of air conditioners it suggests that only in the more extreme cases might persons suffer those burdens. DOE requests that interested persons comment on the LCC analysis and sensitivity study.

3. *Energy Savings (Sec. 325(d)(3)).* While the significant conservation of energy is a separate statutory requirement for imposing an energy efficiency standard, the total projected savings directly resulting from standards is also one factor to be considered in weighing the burdens and benefits under section 325(d). The ORNL Model results, discussed above, were utilized for this factor. In each product-specific analysis the savings are specified.

4. *Lessening of Utility or Performance of Products (Sec. 325(d)(4)).* This factor cannot be quantified. In establishing classes of products and design options, DOE attempted to eliminate any degradation of utility or performance in existing covered products. That is, to the extent that comments or our own research indicated that a product included a utility or performance-related feature that affected energy efficiency, a class was created for the product with a lower standard. In this way DOE attempted to minimize the impact of this factor as a result of the standards analyzed. DOE solicits comments on whether its attempts have been successful.

However, even were DOE able to eliminate any lessening of utility or performance in existing products as a result of standards, DOE believes it is not possible to eliminate all impacts of standards that might lessen the utility or performance of future products. This is true for two reasons. First, as indicated above with respect to impacts on manufacturers, DOE believes that the effect of requiring investments on the basis of regulations rather than fundamental business considerations may result in manufacturers forgoing some investments that would have been made in the absence of the regulatory requirements. These investments might be in improvements in utility or performance of a product.

Second, while separate classes of products have been established for this rulemaking in light of their different performance features, there is no specific mechanism in the statute for recognizing new performance features after a final rule is adopted. That is, were a final rule adopted with specific standards for different classes of products, it would have the effect of freezing those classes in the regulation. A manufacturer would be prohibited from distributing in commerce any covered product with a new performance feature, if that feature would have the effect of reducing the product's energy efficiency below the standard level as measured by an applicable DOE test procedure, unless and until the rule were amended to create a new class or a new standard in light of such a new performance feature. The delay and uncertainty associated with this process could create a disincentive to manufacturers from developing the feature in the first instance.

While this possible disincentive to the development of more energy intensive performance features cannot be quantified, it could create a risk that some performance features that might otherwise be developed would not be. Given the importance of many past performance features that reduce the energy efficiency of a product, such as self-cleaning ovens and automatic defrosting refrigerator-freezers, which, if standards had been imposed before their development, may have resulted in the new product failing the standard, DOE believes that any risk created by such a disincentive constitutes a burden to be considered in weighing the burdens and benefits of possible standards. DOE requests comments on this issue.

5. *Impact of Lessening Competition (Sec. 325(d)(5)).* Under Section 325, the determination of the impact of lessened competition likely to result from standards is to be made in writing by the Attorney General. In order to provide sufficient information to the Attorney General that he may make such a determination, DOE conducted a study of the affected appliance industry to determine its existing concentration, level of competitiveness, and financial performance. *See* § 3.4, Economic Analysis Document.

Moreover, the FIM was discussed above as providing information concerning certain impacts of standards on manufacturers. While the FIM does not relate directly to competition, its suggested impacts of standards can be used to aid in the assessment of whether standards will lessen competition in the appliance industry.

DOE has requsted that the Justice Department review the economic analysis and determine the impact of standards on competition.

6. *Need of the Nation to Conserve Energy (Sec. 325(d)(6)).* Although the

Nation's need to conserve energy must be balanced against other factors to determine the net burdens or benefits of an efficiency standard, Congress did not define what the Nation's need to conserve energy was.

The statute itself, however, provides clear evidence that Congress did not consider the need to save energy to be absolute. First, in defining "energy use," section 321(a)(4) measures the quantity of energy consumed at the point of use, thereby avoiding the calculation of inefficiencies of generating and transmitting electricity. The effect of this definition is to forgo any appliance standard that would be based on the source energy efficiency of the appliance. Thus, under the appliance program, an electric furnace is more efficient than an oil furnace, even though the electric furnace required more BTUs to generate its electricity than are used by the oil furnace's oil, effectively limiting the possible energy savings that might be achievable. Second, section 325(f) authorizes DOE to establish higher or lower standards for classes of product in the same product type that use different sources of energy. Thus, for example, DOE could set a lower standard for oil furnaces than electic furnaces, again effectively limiting possible energy savings. Third, section 325(f) also authorizes DOE to establish higher or lower standards for different classes of product in the same product type if they have different utility or performance-related features. Thus, an automatic-defrost refrigerator-freezer, which inherently uses more energy than a manually defrosting refrigerator-freezer, can have a lower standard; or a larger capacity refrigerator-freezer could have a different standard than a smaller capacity refrigerator-freezer. Because each of these effects of the law reduces the potential savings that could be obtained from standards, each recognizes that saving energy must be balanced with other considerations. By including these provisions, Congress recognized that a standard that might save the greatest amount of energy could effectively ban appliances using certain types of fuel (because of their relative inefficiency compared to the same product using a different source of energy) or having useful performance features. The statute is clear, DOE believes, in providing that such a result should not be the consequence of standards. These provisions indicate that the statute itself recognizes that the importance of saving energy is relative, not absolute.

As discussed in a previous section, NECPA's findings and purposes singled out oil and gas as the two energy sources of particular concern and for which the greatest need to save could be inferred. Yet, since the passage of NECPA, this Nation's imports of crude oil have declined over 20 percent.[23]

To the extent that a source of energy other than oil and gas is involved, DOE believes the relative need to conserve energy is less. Electrical generation capacity is generally adequate. After a number of years of large growth in new demand, the industry is now seeing new demand increase at only 1 percent per year. Problems with the supply of electricity at the present time and for the foreseeable future are localized in nature, depending on specific circumstances. Such problems are generally better dealt with in light of the specific circumstances, not by means of a Federal, nationwide solution.

The above discussion is not intended to indicate that DOE does not value highly the benefits of conservation in the use of all energy. Rather, it is intended merely to recognize that the degree of the Nation's need to save energy depends on the fuel involved and can change over time. To the extent that the market and government initiatives to remove regulatory disincentives to conservation and energy production result in a healthier national energy situation, the need for additional, Federally-mandated conservation of energy is decreased. Because of the across-the-board improvements in the national energy picture of the past few years and its projected continuation into the future [24]—without regard to the appliance program—the need of the Nation to conserve marginal increased amounts of energy through a particular appliance efficiency standard is diminished. The ORNL Model's predictions of energy usage with and without standards illustrate this situation. As noted earlier, compared to 1978 appliance energy usage, DOE believes that efficiency improvements as a result of market activity would account for 84 percent of the total possible energy savings that would occur in the time period if all standards were adopted. Only the marginal 16 percent would be attributable to standards, and it is only the need for this marginal 16 percent that could be used in calculating the economic justification for standards.

In addition to the electrical energy requirements of covered products, the timing of the demand also may be important, particularly with respect to room and central air conditioners. Both products demand electricity during summer periods, contributing to the summer peak demand for electricity. To meet this summer peak demand, utilities install peaking power plants, 65 percent of which currently use oil or natural gas.[25] As a result, an increase in the efficiency of air conditioners might produce greater savings of oil and natural gas today than increases in the efficiencies of other products.

DOE expects this relationship between the efficiency of air conditioners and the use of oil and natural gas to be less significant in the future for a number of reasons. The nation's utilities forecast that the growth in peak demand, which occurred at an average annual rate of 4.1 percent from 1976 to 1980, will decline to a 3.5 percent annual increase during the 1981–1990 period. The percentage of peak demand met by power plants using oil and natural gas also is expected to decline. In any case, where utilities or regions experience difficulty meeting peak demands, the remedies could be more effectively met through State and local actions than through a national program.

7. *Other Factors.* Section 325(d)(7) requires DOE to include in the process of weighing the burdens and benefits of a standard any other factors the Secretary considers relevant.

A. *Regulatory Flexibility.* The Regulatory Flexibility Act requires agencies, when proposing a rule that is likely to have a significant economic impact on a substantial number of small entities, to prepare an initial regulatory flexibility analysis. Because the rule proposed today—that is, a determination that no standard should be adopted for the eight covered products—would not likely have a significant economic impact, if adopted, the Regulatory Flexibility Act's requirement for a regulatory flexibility analysis technically does not apply. Nevertheless, DOE has considered the potential impacts of standards on small businesses in the weighing of the burdens and benefits of standards, and, because these impacts are almost uniformly negative and potentially severe, DOE has given substantial weight to this factor in weighing these benefits and burdens.

As previously mentioned in the context of economic impacts on manufacturers, the Financial Impacts Model (FIM) presents four outputs,

[23] Monthly Energy Review, December 1981, DOE/EIA–0035 (81/12), at 8, 14.

[24] See generally NEPP III.

[25] Cost and Quality of Fuels for Electric Utility Plants, 1980 annual, DOE/EIA–0191(80).

bearing on firms' business risk, profitability, debt/equity ratios, and "quick" ratios. DOE concluded that standards, by increasing business risk, reducing profitability, increasing the volume of debt, and decreasing liquidity, would increase the likelihood that small and medium-sized firms would leave the market place. DOE believes, however, that these negative impacts on small business may be understated in the FIM relative to the impacts projected for large and medium-size prototypical manufacturers.

First, the FIM uses as the input for the increased cost to a manufacturer the result of the engineering analysis. *See* Economic Analysis Document, § 2.3.4. However, the engineering analysis did *not* simulate or derive the increased cost to a small manufacturer, *see* Engineering Analysis Document, Chapter C. DOE believes that in most cases small manufacturers would incur *greater* increased per unit costs in order to comply with standards than their large or medium-sized competitors. This would be the result of numerous factors, including smaller economies of scale and higher per-unit increased fixed costs, such as certification and testing for compliance. Because the FIM utilized the likely lower cost figures of medium-sized firms for small firms, DOE believes thast the FIM may understate the negative impact on small firms relative to other size firms.

Second, the FIM relied upon publicly available financial reports of firms, *see* Economic Analysis Document, § 2.3.4. These reports are required for firms whose shares are publicly traded, firms that are likely to be larger than privately held firms. Thus, to the extent that the FIM's "prototypical" small firm is limited to the prototypical, publicly-held small firm, its outputs are not necessarily valid for the privately-held firms. If these latter firms are smaller and less capitalized than the publicly-held firms, they would probably suffer greater impacts.

Congress, in enacting the Regulatory Flexibility Act, intended to reduce burdens on small business, so that small business would suffer relatively less negative impacts from regulations than larger firms. Agencies are to attempt to mitigate regulatory burdens on small businesses consistent with the underlying statutory regulatory requirements. Under section 325 there are two possible ways that small businesses could be given special treatment. First, certification, reporting, and record-keeping requirements could be lessened. This technique is specifically mentioned in the Regulatory Flexibility Act. Second, section 325(e) provides that firms whose gross revenues are less than $8 million may receive a 2-year deferral from the effect of standards, *if* the Attorney General makes a written finding that the failure to grant such deferral would likely result in a lessening of competition. There are several difficulties with this provision. The level of gross revenues is very low; a 2-year deferral is of marginal benefit; and it may be nearly impossible for the Attorney General to make a finding that failure to grant deferral would "likely" result in lessening competition. Even if it could be said with certainty that all these small firms would be forced out of the market, that by itself would not establish a lessening of competition. Consequently, were standards established there is little under the terms of section 325 that DOE could do to reduce the negative impact on small businesses, and DOE believes the likely result of standards would be the opposite result of what Congress desired in the Regulatory Flexibility Act, because there might be a disproportionate impact on small business.

Because of the inability to give meaningful effect to the goals and purposes of the Regulatory Flexibility Act if standards were adopted, DOE believes it is appropriate to consider the inflexibility of section 325 with respect to small businesses and the negative impact of standards on small businesses as substantial burdens in the weighing process required by section 325(d).

B. *Request for Comments.* The Department requests comments from interested persons as to what other factors, not hitherto considered, should be considered relevant in weighing the burdens and benefits of standards.

8. *Weighing of Factors.* The above discussion of the factors to be weighed in determining the burdens and benefits of possible standards is intended to identify the factors and explain their bases. Some of the burdens discussed above are not dependent on a particular product-specific standard, but on the existence of any standard at all. The existence of these generic burdens does not, in itself, disqualify a particular standard or standards. It is not possible to make a general determination whether standards in the aggregate are beneficial, much less whether, in the aggregate, they meet the statutory criteria. Each product's potential standard must be judged on its own merits and demerits, weighing the burdens and benefits arising from it.

III. Product-Specific Discussion

a. *Refrigerators and Refrigerator-Freezers.*—1. *Selection of Classes.* As defined in the DOE test procedures, refrigerators are refrigeration products with a compartment for refrigerated storage of food at temperatures above 32°F, which may have a compartment for the frozen storage of food at temperatures below 32°F and above 8°F. Refrigerator-freezers are refrigeration products with compartments for refrigerated storage of food at temperatures above 32°F and a compartment for frozen food storage at temperatures below 8°F. Since frozen food can be stored for longer periods of time at temperatures below 8°F than at temperatures above 8°F, DOE concluded that lower freezer compartment temperature provides utility to the consumer, but lowering the freezer temperature increases heat leakage to the freezer and increases the energy consumption of the refrigeration system. Consequently, DOE made classes for refrigerators separate from classes of refrigerator-freezers.

Refrigerator-freezers that do not require any consumer action to accomplish defrosting of the freezer provide utility to the consumer. Since automatic-defrost products consume additional energy to melt the frost when performing a defrost cycle, and to remove the defrost heat from the cabinet in order to maintain compartment temperatures, DOE established separate classes for automatic-defrost products.

Automatic-defrost refrigerator-freezer configurations have been further segregated according to the location of the freezer compartment. DOE determined that products with bottom-mount or side-mounted freezers provide utility to consumers because the more frequently used fresh-food section is more accessible since it is located at eye level. Automatic-defrost refrigerator freezers with side-mounted freezers provide utility to consumers because of the opportunity for users to more conveniently locate items placed in both the fresh-food and freezer compartments. Units with bottom-mounted freezers characteristically have the highest energy consumption, and units with side-mounted freezers characteristically have higher energy consumption than top-mounts. Because each of these features provide utility to the consumer, DOE proposed separate classes for automatic-defrost refrigerator-freezers with bottom-mounted, side-mounted, and top-mounted freezers.

In addition, certain models of top-mounted and side-mounted refrigerator-freezers incorporate dispensing services which provide chilled liquids, water and ice without opening the door. The models with through-the-door service characteristically consume more energy than the other models. DOE determined that the convenience associated with such dispenser designs constitutes a distinct utility to the consumer, and separate classes have been established for refrigerator-freezer design configurations that provide these services.

DOE received comments that the standard levels proposed June 30, 1980 were likely to result in the elimination of compact refrigerators. They stated that compact units (9 cubic feet or less) have a different utility than standard size units and that the 1987 proposed final levels are not attainable without a resulting loss of utility. DOE has reviewed these comments. Consequently, DOE has established a new class for compact refrigerators. DOE does not have sufficient data on these units to perform the engineering and economic analyses for the class.

The separate classes specified by DOE for refrigerators and refrigerator-freezers are listed at Table 3–1, *infra*.

2. *Design Options Evaluated.* The specific design options analyzed were:

(1) *Foam Insulation Substitution in Doors.* Fiberglass insulation is replaced with polyurethane foam insulation.

(2) *Increased Door Insulation Thickness.* Foam door insulation is increased to a nominal thickness of 2 inches.

(3) *High Efficiency Compressor Substitution.* A high efficiency compressor replaced a conventional design.

(4) *Double Door Gasket.* An additional inner door seal gasket is added.

(5) *Anti-Sweat Heater Switch.* A switch is installed to permit, in a dry environment, shutting off the cabinet heaters, which prevent condensation on the cabinet exterior in high humidity.

(6) *Increased Cabinet Insulation Thickness.* Foam cabinet insulation is increased to a nominal of 2 inches.

(7) *Reduced Heat Load of Through-the-Door Feature.* Improved insulation can be used to decrease the heat leak and additional power consumption attributable to the through-the-door service feature (ice, water, etc.).

(8) *Increase Evaporator Surface Area.* Increased heat exchanger surface area in the evaporator provides for more efficient operation of the refrigeration system.

The design options and public comment thereon are more fully discussed in the Engineering Analysis Document, Chapters D–1 and E–1.

3. *Efficiency Levels Analyzed.* Table 3–1 presents the efficiency levels selected for analysis for 1987. Alternate levels were selected to generate a range of impacts for analysis. The initial level selected, level 3, corresponds to the highest efficiency level considered in the engineering analysis. It was felt that manufacturers could produce products at this efficiency, and these products would not have any safety or reliability problems. Levels 1 and 2 correspond to efficiencies lower than that of level 3. While these levels were not discretely analyzed in the engineering analysis, DOE believes the costs are proportional to the efficiency levels considered.

The levels considered in today's analysis are generally lower than those considered for standards in the June 30 proposal. This reflects changes made in the engineering analysis.

TABLE 3–1.—ALTERNATIVE EFFICIENCY LEVELS FOR 1987 FOR REFRIGERATORS AND REFRIGERATOR-FREEZERS (ENERGY FACTOR, EF, $FT^3/KWH/24$ HRS)

Product class	Volume (ft^3)	Level analyzed		
		1	2	3
1. Electric refrigerator, manual defrost	13	9.2	10.2	11.3
2. Electric refrigerator-freezer, manual defrost freezer	14	7.4	8.4	9.4
3. Electric refrigerator-freezer, automatic defrost with top freezer	17	6.1	7.1	8.1
4. Electric refrigerator-freezer, automatic defrost with side freezer	22	6.5	7.2	7.9
5. Electric refrigerator-freezer, automatic defrost with bottom freezer	19	6.4	7.4	8.4
6. Electric refrigerator-freezer, automatic defrost with top freezer and through-the-door ice or liquid service	20	5.8	6.8	7.8
7. Electric refrigerator-freezer, automatic defrost with side freezer and through-the-door ice or liquid service	22	5.0	5.5	6.0
8. Compact refrigerator	(1)	(1)	(1)	(1)

[1] Not analyzed.

Significance of Energy Savings

By the year 2005 the weighted average efficiency of new refrigerators and refrigerator-freezers developed in the absence of standards is projected to be over 99 percent of the efficiency of new refrigerators and refrigerator-freezers developed with standards. *See* Economic Analysis Document, Table 3–12. This would represent an 86 percent improvement in the efficiency of new models without standards since 1978. *Id.* Were an efficiency standard imposed, the ORNL Model predicts that over the entire period 1987–2005 the following additional savings would be attributable to the standard:

Level 1—0 Quads

Level 2—0 Quads

Level 3—0.16 Quads.

Moreover, if consumer awareness of and concern with appliance efficiency increases more than predicted in the ORNL Model, the Model projects that the market would achieve *all* the savings predicted for standards and more. *See* Economic Analysis Document, § 5.3.3.

Oil and Gas Savings

A savings of 0.16 Quads of electricity would save approximately 0.004 Quads of oil and 0.01 Quads of natural gas over the 19 year period.[26] At most, this averages to less than 8 percent of the 4400 barrels per day of oil savings that the Congress found to be an insignificant level of savings in rejecting an emergency conservation plan.[27] *See supra.*

Electricity Savings

The maximum savings attributable to standards would constitute a mere .02 percent of the electricity used in the Nation over the 19-year period.[28] DOE believes this additional .02 percent is so small as to have no measurable effect on the environment or the need for new generating capacity.

20 Percent Savings

Over the period 1987–2005 the highest level of savings attributable to standards would constitute less than 1 percent of the energy that would have been consumed by refrigerators and refrigerator-freezers over that period in the absence of standards. *See* Economic Analysis Document, Table 3–18.

Conclusion

On the basis of the above, DOE believes that standards for refrigerators and refrigerator-freezers would not result in a significant conservation of energy.[29]

[26] This assumes that oil constitutes 2.65 percent and gas 6.15 percent of the energy used to generate electricity over this time period. These percentages are the average of the projected proportions for the years 1990 and 1995. In the absence of specific data for each of the years 1987–2005, DOE used these years, which it believes is a conservative choice. *See* 1981Annual Report to Congress, Volume 3: Forecasts, DOE/EIA 0173(81)/3, February 1982.

[27] Four thousand, four hundred barrels of oil per day equal .18 Quads over 19 years.

[28] Electricity usage over the period 1987–2005 is estimated to be about 700 Quads. This number is derived from NEPP III.

[29] Although DOE created a separate class of products for compact refrigerators that has not been specifically considered in the engineering analysis, Life Cycle Cost analysis, or FIM analysis, the class of compact refrigerators is included in the product type refrigerators and refrigerator-freezers for purposes of the ORNL Model, which determined energy savings. Accordingly, DOE believes that the

Continued

Economic Justification

a. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 3 efficiency ranges from $8.21 for an automatic-defrost refrigerator-freezer with a side freezer made by a large manufacturer to $21.09 for a manual-defrost refrigerator made by a small manufacturer. The cost for the most prevalent class of product (automatic-defrost refrigerator-freezer with top mounted freezer) increases less than $10 or 5 percent. *See* Engineering Analysis Document, Table 1.15 and Table 1.16.

The increased price to the consumer ranges from $19.10 for an automatic-defrost refrigerator-freezer with a side freezer to $31.20 for a manual-defrost refrigerator. The price to the consumer increases less than $25 or 5 percent for the most prevalent class of product.[30] While the increased price to consumers is generally modest, it should be noted that the greatest *absolute* price increases are in the lowest priced classes of products, *see* Engineering Analysis Document, Table 1.16, reaching almost as high as a 10 percent increase in price. Thus, DOE believes that this increase in first cost could make it substantially more difficult for some lower income consumers to purchase new refrigerators.

The FIM predicts that a prototypical medium-sized manufactured would suffer a 10 percent increase in business risk at the only efficiency level that would save energy as a result of standards. *See* Economic Analysis Document, Table A–4–1. The sensitivity analysis, however, indicates that business risk is highly sensitive to unanticipated revenue reductions. For example, if shipments decrease 15 percent from the anticipated level, the effects of standards would be to increase business risk to 25 percent for a prototypical large firm, to 50 percent for a prototypical medium-sized firm, and to 30 percent for a prototypical small firm. *See Id.,* Table 5–14. By 1991 (the last year of analysis) the FIM predicts that the prototypical medium-sized manufacturer will have been losing increasing amounts of money each year for three years; the small manufacturer will have a 12 percent decrease in profitability. *See Id.,* Table A–4–2. At the only standard level that would save energy, the prototypical medium-sized firm's net worth becomes negative, and the small firm's debt/equity ratio deteriorates by almost 40 percent. *See Id.,* Table A–4–9.[31]

In addition to the above mentioned quantified impacts on manufacturers, an effect of a standard, as indicated in the General Discussion section, would be to require certain investments to be made that might not otherwise have been made. These required investments would likely result in the forgoing of certain other investments which would be more beneficial to the manufacturer.

b. *Life Cycle Cost and Net Present Value.* The LCC analysis indicates that the possible standard level with the lowest life cycle cost is the only standard level that the ORNL Model projects would save energy compared to the base case. *See* Economic Analysis Document, Tables 4–1—4–3. This indicates that the standard level would not cause any economic burden on the "average" consumer.

The NPV analysis indicates that if a standard were adopted at the level that would save 0.16 Quads, there would be a net present value of $250 million dollars from energy savings over the period 1987–2024. If the net present value of this standard were spread across the Nation, the resulting benefits would come to less than 10 cents a year per household.

c. *Energy Savings.* As indicated above, the maximum savings attributable to standards would be 0.16 Quads of electricity. If however, consumer awareness of and concern with appliance efficiency increases greater than has been projected, the ORNL Model projects no savings attributable to standards. *See supra.*

d. *Lessening of Utility or Performance of Products.* As indicated above, DOE established new classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of refrigerators and refrigerator-freezers. As indicated in the General Discussion section, however, there is no assurance that future utility or performance of refrigerators and refrigerator-freezers would not be lessened as a result of disincentives caused by standards to investments in energy-using new features.

e. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

f. *Need to Save Energy.* Refrigerators and refrigerator-freezers use electricity exclusively as their energy source. While almost five percent of the Nation's electricity powers refrigerators and refrigerator-freezers, less than one percent of that five percent would be saved by standards for this product. In balancing the benefits of a standard against its burdens, no weight need be given to savings of electricity that are so small.

g. *Other Factors.* Above, under impacts on manufacturers, the impacts projected by the FIM on the prototypical small manufacturer of refrigerators and refrigerator-freezers were presented. In the General Discussion section, however, it was explained that DOE believes the FIM understates the negative impact of standards on small businesses relative to other size businesses. Thus, DOE believes that the negative impacts shown in the FIM for the prototypical small manufacturer of refrigerators and refrigerator-freezers are likewise understated. DOE solicits comments on this, especially from small manufacturers of refrigerators and refrigerator-freezers.

Conclusion

The benefits of a level 3 standard are, compared to the base case of no standards, that it would save energy and have a positive net present value. The benefits at best, however, are minimal in amount.

The burdens of a level 3 standard are that: (1) It would adversely affect the financial well-being of small and medium-sized firms making refrigerators and refrigerator-freezers, in some cases

conclusion that a standard would not result in a significant conservation of energy can be applied to the entire product type.

[30] These prices to consumers are the prices reflected in the engineering analysis only for products made by large manufacturers. The engineering analysis indicates *higher* prices for the products made by medium-size manufacturers, because of their higher costs. The economic analysis, however, indicates that the large manufacturers are the price leaders in the industry. Therefore, medium-size manufacturers will not be able to obtain the higher price reflected for their product, but instead will have to forgo the difference.

[31] As indicated in the General Discussion section, these impacts are fully accurate only to the extent that the prototypical firm did not make investments in improving appliance efficiency as part of its historically indicated investments. Otherwise, not all of the investment indicated by the engineering analysis would be required to be made in order to produce appliances to meet the required standard level. DOE believes that a measurement of the increased shipment weighted efficiency of a product between 1978–1987 will bear an order of magnitude relation to the decreased investment required of an average firm to meet a standard level. Moreover, DOE believes that the decreased investment requirement would likely have a similar order of magnitude effect on the FIM's projected impacts attributable to standards. In the case of refrigerators and refrigerator-freezers, the ORNL Model indicates that the shipment weighted efficiency will increase about 7% percent between 1978 and 1987 in the absence of any standard. Consequently, DOE believes that the negative impacts actually attributable to standards for refrigerators and refrigerator-freezers may only be one quarter of those projected by the FIM. This conclusion, however, applies only to the "average" (in terms of the shipment weighted efficiency of its product), prototypical firm. The negative impacts suffered by a firm that had made limited or no investments in improved product efficiency would still approach or be those reflected by the FIM.

causing a significant threat to their continued existence; (2) it could adversely affect lower income consumers by increasing purchase prices of new models; (3) it could lessen the utility or performance of this product in the future by creating a disincentive to the development of energy-using new features; and (4) it could cause investment resources by manufacturers of these products to be allocated in a manner that is not the most beneficial to the manufacturer.

The need of the Nation to save this marginal increment of electricity is not sufficient to justify any of the above burdens.

In light of all the factors discussed here and in the general discussion, on balance, DOE believes that the burdens of an efficiency standard for the product refrigerators and refrigerator-freezers outweigh the benefits.[32]

f. *Freezers.* 1. *Selection of Classes.* As defined in the DOE test procedures, "freezer" means a cabinet designed as a unit for the storage of food at temperatures of 0° F or below, having the ability to freeze food and having a source of refrigeration requiring an electrical energy input only.

Utility and performance considerations dictate five separate products classes. Three of these result from:

Type of freezer defrost system (manual or automatic)

Configuration (chest or upright) Two result from the inherent inefficiency of compact units.

The configuration of the unit (i.e., chest or upright) provides utility which affects efficiency. Upright freezers offer greater accessibility to the freezer contents and more efficient use of floor space than chest freezers. Consequently, DOE has grouped these products into separate classes.

Another performance-related feature that affects utility and efficiency is the type of defrost system, which determines the extent of consumer action needed to accomplish defrosting. Automatic-defrost units do not requrie any consumer action to accomplish defrosting, and thus provide the consumer with utility not provided by manual-defrost units. Since there are no chest freezers that offer the automatic-defrost feature, a separate class was established only for automatic defrost upright freezers.

In light of manufacturers' comments noting the inherent inefficiency of compact freezers as well as their utility, DOE has designated separate classes for compact chest and upright freezers.

The separate classes specified by DOE for freezers are listed in Table 3–2, *infra.*

2. *Design Options Evaluated.* The specific design options analyzed were:

(1) *Foam Insulation Substitution in Cabinet.* Fiberglass cabinet insulation is replaced with polyurethane foam.

(2) *Foam Insulation Substitution in Door.* Fiberglass insulation in the freezer door is replaced with polyurethane foam insulation.

(3) *Increase Cabinet Insulation Thickness.* Foam cabinet insulation is increased to a nominal 2½ inches (chest freezers only).

(4) *Increase Door Insulation Thickness.* Foam door insulation is increased to a nominal thickness of 2 inches (chest freezers only).

(5) *High Efficiency Compressor Substitution.* A high efficiency compressor replaces a conventional design.

The design options and public comment thereon are more fully discussed in the Engineering Analysis Document.

3. *Efficiency Levels Analyzed.* Table 3–2 presents the efficiency levels selected for analysis for 1987. Alternate levels were selected to generate a range of impact for analysis. The initial-level selected, level 3, corresponds to the highest efficiency level considered in the engineering analysis. It was felt that manufacturers could produce products at this efficiency, and these products would not have any safety or reliability problems. Levels 1 and 2 correspond to efficiencies lower than that of level 3. While these levels were not discreetly analyzed in the engineering analysis, DOE believes the costs are proportional to the efficiency levels considered.

The levels considered in today's analysis are generally lower than those considered for standards in the June 30 proposal. These reflect changes made in the engineering analysis.

DOE does not have sufficient data on compact chest and upright freezers to perform the engineering and economic analyses for these classes.

TABLE 3–2.—ALTERNATIVE EFFICIENCY LEVELS FOR 1987 FOR FREEZERS (ENERGY FACTOR, EF, FT^3/KWH/24)

Product class	Volume (ft^3)	Level analyzed		
		1	2	3
1. Chest freezer, manual defrost	15	13.7	15.7	17.7
2. Upright freezer, manual defrost	16	12.4	13.9	15.4
3. Upright freezer, automatic defrost	16	7.3	8.8	10.3
4. Chest freezer, compact	[1]	[1]	[1]	[1]
5. Upright freezer, compact	[1]	[1]	[1]	[1]

[1] Not analyzed.

Significance of Energy Savings

By the year 2005 the shipment weighted efficiency of new freezers developed in the absence of efficiency standards is projected to be over 92 percent of the efficiency of new freezers developed with a mandatory standard. *See* Economic Analysis Document, Table 3–12. This would represent a 46 percent improvement in the efficiency of new models without standards since 1978. *Id.* Were an efficiency standard imposed, the ORNL Model predicts that over the entire period 1987–2005 the following additional savings would be attributable to the standard:

Level 1—0.05 Quads
Level 2—0.16 Quads
Level 3—0.33 Quads

Moreover, if consumer awareness of and concern with appliance efficiency brings more efficient products into the market than predicted in the ORNL Model, the model projects that the market response would achieve *all* the savings predicted for standards. *See* Economic Analysis Document, § 5.3.3.

Oil and Gas Savings

A savings of 0.33 Quads of electricity would save approximately 0.009 Quads of oil and 0.02 Quads of natural gas over the 19-year period.[33] At most, this averages to less than 17 percent of the 4400 barrels per day of oil savings that Congress considered insignificant in rejecting an emergency conservation plan.[34] *See supra.*

Electricity Savings

The maximum savings attributable to standards would constitute less than .05 percent of the electricity used in the Nation over the 19-year period.[35] This percentage is so small as to have no

[32] Although DOE created a separate class of products for compact refrigerators that has not been specifically considered in the engineering analysis, Life Cycle Cost analysis, or FIM analysis, DOE believes that the amount of energy that could be saved by a standard for this class is extremely small, *see supra.* Consequently, DOE believes that such savings, compared to the likely burdens that would result from a standard imposed on but one class of a product, and that class one of the smaller in numbers of units, dollars of sales, or energy used, indicate that the burdens of a standard for this class outweigh its benefits.

[33] This assumes that oil constitutes 2.65 percent and gas 6.15 percent of the energy used to generate electricity over this time period. These percentages are the average of the projected proportions the years 1990 and 1995. *See supra.*

[34] Four thousand, four hundred barrels of oil per day equal .18 Quads over 19 years.

[35] Electricity usage over the period 1987–2005 is estimated to be 700 Quads. *See* NEPP III.

measurable effect on the environment or the need for new generating capacity.

20 Percent Savings

Over the period 1987–2005 the highest level of savings attributable to standards would constitute less than 4 percent of the energy that would have been consumed by freezers in the absence of standards. *See* Economic Analysis Document, Table 3–18.

Conclusion

On the basis of the above, DOE believes that standards for freezers would not result in a signficant conservation of energy.[36]

Economic Justification

a. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufactuers to meet the level 3 efficiency ranges from $9.05 for a chest freezer, manual defrost, made by a large manufacturer to $23.85 for an upright auto defrost freezer made by a medium-sized manufacturer. At level 2, the increased per unit cost ranges from $5.79 for the chest freezer made by a large firm to $20.84 for a manual defrost upright made by a medium-size manufacturer. The cost increases for manual defrost chest freezers, the most prevalent class of product, range between $9 and $12 (about 7 percent) at level 3, from $5.79 to $7.07 (about 4 percent) at level 2, and from $2.10 to $3.03 (about 2 percent) at level 1. *See* Engineering Analysis Document, Table 2.11 and Table 2.12.

The increased price to the consumer if a standard were set at level 3 ranges from $21 (7 percent) for the most prevalent class of product (chest freezer) to $36 (8 percent) for an upright automatic-defrost freezer. The increased price at this level for an upright manual-defrost freezer, which constitutes over 31 percent of the market, is $35 (over 10 percent). At level 2 the price increases for the two most prevalent classes would be approximately $13.50 (4 percent) and $29.70 (9 percent), respectively.[37] *See* Engineering Analysis Document, Table 2.12.

While these price increases are relatively modest, DOE believes they would result in some low income persons foregoing purchases of freezers, especially because consumer response to price increases in freezers is more price elastic than for most appliances. *See* Economic Analysis Document, Table 3–24.

The FIM predicts that a prototypical medium-sized manufacturer would suffer a 10 percent increase in business risk and a small manufacturer a 65 percent increase in business risk at the efficiency levels that would save the two highest amounts of energy as a result of standards (levels 2 and 3). *See* Economic Analysis Document, Table A–4–1. If shipments decrease 15 percent from anticipated levels, the effects of a level 3 standard on a small firm would be to impose an increased business risk of 75 percent. *See Id.,* Table 5–14. By 1991 (the last year of analysis) the FIM predicts that the prototypical small-sized manufacturer will have been losing increasing amounts of money five out of the last six years at level 3 and for the last three years at level 2. At level 3 the prototypical medium-size firm's profitability decreases over 25 percent in the years following imposition of a standard. *See Id.,* Table A–4–3. At the standard level that would save the most energy, the prototypical small sized firm's net worth becomes negative. The medium firm's debt/equity ratio deteriorates by almost 200 percent at level 3 and 100 percent at level 2. *See Id.,* Table A–4–9. At both levels 2 and 3 the "quick" ratio of the prototypical small manufacturer of freezers deteriorates almost 50 percent. *See Id.,* Table 4–31.[38]

In addition to the above mentioned quantified impacts on manufacturers, an effect of a standard, as indicated in the General Discussion section, would be to require certain investments to be made that might not otherwise have been made. These required investments woud likely result in the foregoing of certain other investments which would be more beneficial to the manufacturer.

b. *Life Cycle Cost and Net Present Value.* The LCC analysis indicates that the possible standard level with the lowest life cyle cost is the standard level that the ORNL Model projects would save the most energy compared to the base case. *See* Economic Analysis Document, Tables 4–1—4–3. This indicates that the standard level would not cause any economic burden on the "average" consumer.

The NPV analysis indicates that if a standard were adopted at the level that would save 0.33 Quads, there would be a net present value of $720 million from energy savings over the period 1987–2026. If the net present value of this standard were spread across the Nation, the resulting benefits would come to less than 23 cents a year per household.

c. *Energy Savings.* As indicated above, the maximum savings attributable to standards would be 0.33 Quads of electricity.

d. *Lessening of Utility or Performance of Products.* As indicated above, DOE established new classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of freezers. As indicated in the General Discussion section, however, there is no assurance that future utility or performance of freezers would not be lessened as a result of disincentives caused by standards to investments in energy-using new features.

e. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

f. *Need to Save Energy.* Freezers use electricity exclusively as their energy source. While almost two percent of the Nation's electricity powers freezers, less than four percent of that two percent would be saved by standards for this product. In balancing the benefits of a standard against its burdens, no weight need be given to savings of electricity that are so small.

g. *Other Factors.* The negative impacts on small businesses of a

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[36] Although DOE created separate classes of products for compact chest and upright freezers that have not been specifically considered in the engineering analysis, Life Cycle Cost analysis, or FIM analysis, the classes of compact chest and upright freezers are included in the product type freezers for purposes of the ORNL Model, which determined energy savings. Accordingly, DOE believes that the conclusion that a standard would not result in a significant conservation of energy can be applied to the entire product type.

[37] These prices to consumers are the prices reflected in the engineering analysis only for products made by large manufacturers. The engineering analysis indicates *higher* prices for the products made by medium-size manufacturers, because of their higher costs. The economic analysis, however, indicates that the large manufacturers are the price leaders in the industry. Therefore, medium-size manufacturers will not be able to obtain the higher price reflected for their product, but instead will have to forgo the difference.

[38] As indicated in the General Discussion section, these impacts are fully accurate only to the extent that the prototypical firm did not make investments in improving appliance efficiency as part of its historically-indicated investments. Otherwise, not all of the investment indicated by the engineering analysis would be required to be made in order to produce appliances to meet the required standard level. DOE believes that a measurement of the increased shipment weighted efficiency of a product between 1978–1987 will bear an order of magnitude relation to the decreased investment required of an average firm to meet a standard level. Moreover, DOE believes that the decreased investment requirement would likely have a similar order of magnitude effect on the FIM's projected impacts attributable to standards. In the case of freezers, the ORNL Model indicates that the shipment weighted efficiency will increase about 21 percent between 1978 and 1987 in the absence of any standard. Consequently, DOE believes that the negative impacts actually attributable to standards would likely be about four-fifths of those projected by the FIM. This conclusion, however, applies only to the "average," prototypical firm. The negative impacts suffered by a firm that had made limited or no investments in improved product efficiency would still approach or be those reflected by the FIM.

standard for this product have been described above. The analysis shows that imposition of standards would significantly increase the probability that small firms would not make a profit in the manufacture of new equipment. They would lose increasing amounts of money, and their net worth would become negative. In the General Discussion section, DOE's belief that the FIM understates the negative impact of standards on small business relative to other size firms was explained. Thus, DOE believes that the negative impacts shown in the FIM for the prototypical small manufacturer of freezers is likewise understated. DOE solicits comments on this subject.

Conclusion

The benefits of a standard are, compard to the base case of no standards, that it would save energy and have a positive net present value. These benefits, however, are minimal in amount.

The burdens of a standard are that: (1) It would adversely affect the financial well-being of small and medium-size firms making freezers, in the case of small manufacturers causing a significant threat to their continued existence; (2) it could lessen the utility or performance of this product in the future by creating a disincentive to the development of energy-using new features; (3) it could cause less than optimal allocation of investment resources by manufacturers of these products; and (4) it could preclude some lower income persons from purchasing new freezers.

The need of the Nation to save this marginal increment of electicity is not sufficient to justify any of the above burdens.

In light of all the factors discussed here and in the general discussion, on balance, DOE believes that the burdens of an efficiency standard for freezers outweigh the benefits.[39]

c. *Clothes Dryers.* 1. *Selection of Classes.* A clothes dryer is defined as a cabinet-like appliance designed to dry fabrics in a tumble-type drum with forced-air circulation. The heat source may either be electric or gas. Compact clothes dryers have a drum capacity of less than 4.4 cu. ft., and standard clothers dryers have a capacity of 4.4 cu. ft. or greater.

Four classes of cothes dryers are specified by DOE. These product classes are distinguished by different energy sources and by performance-related features. Gas and electricity are the energy sources. Performance-related features are drum capacity and application voltage.

Standard electric dryers use 240 volts. DOE does not know of any standard electric dryer that works on 120 volts. Because compact dryers provide added utility by being suitable for placing in small spaces, while being less energy efficient, a separate class is established for compact electric dryers. Further, separate product classes are established for compact electric dryer based on appliance voltage. The 120-volt dryers tends to dry clothes at lower temperatures and for longer time periods than the 240-volt dryer. The 240-volt compact electric dryer provides added utility to some consumers but is less energy efficient. Two product classes for compact electric dryers are accordingly established. The four product classes for clothes dryers established by DOE are listed in Table 3–3, *infra.*

2. *Design Options Evaluated.* Three design options were evaluated for improving the efficiency of clothes dryers. These were:

(1) *Automatic termination by moisture sensing.* Reduces the energy used by ensuring that a dryer is turned off as soon as the moisture is removed from the clothes.

(2) *Automatic termination by temperature sensing.* Reduces energy consumption by ensuring that a dryer is turned off as soon as the temperature of the existing air reaches a predetermined temperature.

(3) *Insulation.* During the drying cycle, some areas of the dryer cabinet are at temperatures above room temperature. This results in standby losses, which can be reduced by the use of insulation.

The design options and public comment thereon are more fully discussed in the Engineering Analysis Document, Chapter D–5 and E–5.

3. *Efficiency Levels Analyzed.* Table 3–3 presents the efficiency levels selected for analysis for 1987. Alternate levels were selected to generate a range of impacts for analysis. Level 4 for gas and standard electric clothes dryers and level 3 for compact electric clothes dryers correspond to the highest efficiency levels considered in the engineering analysis. It was felt that manufacturers could produce products at this efficiency, and these products would not have any safety or reliability problems. Lower efficiency levels were not discreetly analyzed in the engineering analysis, but DOE believes the costs are proportional to the efficiency levels considered.

The levels considered in today's analysis are generally lower than those considered for standards in the June 30 proposal. This reflects changes made in the engineering analysis.

TABLE 3–3.—EFFICIENCY LEVELS FOR 1987 FOR CLOTHES DRYERS (ENERGY FACTOR, EF, LB/KWH)

Product class	Volume (ft)	Level analyzed			
		1	2	3	4
1. Electric standard size	6.5	2.7	2.8	2.9	3.0
2. Electric, compact size, 120 Volts	3.4	2.7	2.85	3.0	.....
3. Electric, compact size, 240 Volts	3.4	2.4	2.5	2.6	.....
4. Gas	6.5	2.4	2.5	2.6	2.7

Significance of Energy Savings

Were an efficiency standard imposed, the ORNL Model predicts that over the entire period 1987–2005 the following savings would be attributable to the imposition of a standard:

Electric

Level 1—0 Quads
Level 2—0 Quads
Level 3—0.04 Quads
Level 4—0.19 Quads

Gas

Level 1—0 Quads
Level 2—0 Quads
Level 3—0 Quads
Level 4—0.02 Quads

Oil and Gas Savings

At level 4, the savings consist of 0.19 Quads of electricity and 0.02 Quads of gas. Economic Analysis Document, Table 4–22. The 0.19 Quads savings of electricity would save 0.005 Quads of oil and 0.01 Quads of gas over the period 1987–2005.[40] Thus, at most, standards would save 0.005 Quads of oil and 0.03 Quads of gas. The gas savings are less than 18 percent of the 4400 barrels per day of oil that Congress found insignificant, and the oil savings are less than 3 percent.[41]

[39] Although DOE created separate classes of products for compact chest and upright freezers that have not been specifically considered in the engineering analysis, Life Cycle Cost analysis, or FIM analysis, DOE believes that the amount of energy that could be saved by standards for these classes is extremly small, *see supra.* Consequently, DOE believes that such savings, compard to the likely burdens that would result from standards being imposed on two classes of a product, and these classes being smaller in numbers of units, dollars of sales, or energy used, indicate that the burdens of standards for these classes outweigh their benefits.

[40] This assumes that oil constitutes 2.65 percent and gas 6.15 percent of the energy used to generate electricity over this time period. These percentages are the average of the projected proportions for the years 1990 and 1995. *See supra.*

[41] Four thousand, four hundred barrels of oil per day equal .18 Quads over 19 years.

Electricity Savings

The cumulative electricity savings attributable to the highest standard level would constitute less than .03 percent of the electricity used in the Nation during the period 1987–2005.[42] These savings are so small as to have no measurable effect on the environment or the need for new generating capacity.

20 Percent Savings

During the period 1987–2005 the maximum energy savings attributable to standards for clothes dryers would constitute less than 2 percent of the energy used for clothes dryers during that period without standards. *See* Economic Analysis Document, Table 3–18.

Conclusion

On the basis of the above, DOE believes that standards for clothes dryers would not result in a significant conservation of energy.

Economic Justification

a. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the highest level of efficiency ranges from $3.72 for a large manufacturer of a 240 volt compact dryer to $14.88 for a small manufacturer of a standard electric dryer. Engineering Analysis Document, Table 5.10. The increased price to the consumer at this level ranges from over $34 for the standard electric dryer to less than $9 for a 240 volt compact dryer. *Id.*, Table 5.11. This increase in price of the standard electric dryer is over 15 percent, and this class constitutes over 70 percent of all clothes dryer sales.[43] *Id.* and Table C–4. A 15 percent increase in price would likely have the result of precluding some lower income persons from purchasing a dryer, especially since consumer response to price increases in dryers is more price elastic than for most other appliances. *See* Economic Analysis Document, Table 3–24.

Because of the minimal energy savings attributable to standards for clothes dryers, DOE did not analyze the impacts on manufacturers of dryers through the FIM model. As indicated in the General Discussion section, an effect of a standard would be to require certain investments to be made that might not otherwise have been made. These required investments would likely result in the forgoing of certain other investments which would be more beneficial to the manufacturer.

b. *Life Cycle Cost and Net Present Value.* At either of the levels of efficiency that would save energy (levels 3 and 4), the life cycle cost *increases* for the two classes of dryers that together make up over 93 percent of all dryer sales, compared to the life cycle cost in 1978. Thus, whatever energy would be saved as a result of standards would be as a direct result of penalizing the average consumer by requiring him to purchase a dryer with a higher life cycle cost than is now available. Of course, below average users and those with below average fuel prices would likely be harmed even more.

The NPV analysis indicates that if a standard were adopted at level 3, there would be a net present value of $70 million from energy savings over the period 1987–2024. If the net present value of this standard were spread across the Nation, the resulting benefits would come to about 3 cents a year per house hold. At the higher efficiency level, the NPV would be only $60 million, $70 million from electric dryers offset by a negative $10 million occurring in gas dryers.

c. *Energy Savings.* As indicated above, the maximum savings attributable to standards would be 0.21 Quads.

d. *Lessening of Utility or Performance of Products.* The classes established by DOE assure that the standards analyzed would not lessen the existing utility or performance of clothes dryers. As indicated in the General Discussion section, however, there is no assurance that future utility or performance of clothes dryers would not be lessened as a result of disincentives caused by standards to investments in energy-using new features.

e. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

f. *Need to Save Energy.* In the absence of standards, in 1990 only 0.06 Quads of gas annually will be directly used for clothes drying, and in 2005 half that amount. Economic Analysis Document, Table 3–16. While dryers use almost two percent of the electricity in the Nation the highest standard would save less than two percent of that two percent. In balancing the benefits of a standard against its burdens, no weight need be given to savings of energy that are so small.

g. *Other Factors.* Because the FIM was not used to assess the impacts on dryer manufacturers, DOE is unable to estimate the impact of a standard for dryers on small manufacturers of dryers. DOE solicits comments from such manufacturers on the likely impact of a standard.

Conclusion

The benefits of a standard are, compared to the base case of no standards, that it would save energy and have a positive net present value. The benefits, however, are minuscule in amount.

The burdens of a standard are that: (1) Life cycle costs to the average consumer would increase for over 90 percent of the dryers purchased; (2) increased first costs for the most prevalent dryer are high enough to preclude new dryer purchases by some lower income persons; (3) the future utility or performance of dryers might be lessened; and (4) manufacturers of dryers might forgo investments that are more beneficial to them.

The need of the Nation to save this marginal increment of gas or electricity is not sufficient to justify any of the above burdens.

In light of all the factors discussed here and in the general discussion, on balance, DOE believes that the burdens of an efficiency standard for clothes dryers outweigh the benefits.

d. *Water Heaters.* 1. *Selection of classes.* Included in this product type are all residential water heaters operating at a temperature of less than 180°F which have the following characteristics:

Electric water heaters with a storage volume of not less than 20 gallons nor more than 120 gallons, with an input rating of 12 KW or less at a voltage no greater than 250 volts; gas water heaters with a storage volume of not less than 20 gallons nor more than 100 gallons, with an input rating of 75,000 BTU/HR or less; oil water heaters with a storage capacity of 50 gallons or less and an input rating of 103,875 BTU/HR or less.

Five classes of water heaters are specified by DOE. Four of these product classes are distinguished by different energy sources (electric, electric heat pump, gas, and oil).

Several manufacturers felt that electric table top water heaters are significantly different from other electric water heaters and proposed a separate product class. A main reason for the separate classification was that these table-top water heaters provide a unique

[42] Electricity usage over the period 1987–2005 is estimated to be about 700 Quads. *See supra.*

[43] These prices to consumers are the prices reflected in the engineering analysis only for products made by large manufacturers. The engineering analysis indicates *higher* prices for the products made by medium-size manufacturers, because of their higher costs. The economic analysis, however, indicates that the large manufacturers are the price leaders in the industry. Therefore, medium-size manufacturers will not be able to obtain the higher price reflected for their product, but instead will have to forgo the difference.

utility for consumers by being used as countertops in kitchens where space is at a premium but because of their size are less efficient. Therefore, a separate class, electric table-top water heaters, has been proposed.

The separate classes of water heaters specified by DOE are listed at Table 3–4, *infra.*

2. *Design Options Evaluated.* The major design options analyzed were:

(1) *Improved Insulation.* Improved insulation involves using thicker fiberglass insulation, denser fiberglass insulation, or substituting polyurethane foam insulation for fiberglass.

(2) *Increase Flue Heat Transfer and Reduce Main Burner Rate.* These two design options are coupled since increasing the flue heat transfer requires reducing the main burner firing rate in order to maintain acceptable pressure drops through the system.

(3) *Retool Jacket Top.* Jackets in some models are attached to the top of the tank, resulting in heat loss due to a fin effect and limiting the insulation thickness on the top. This design option calls for retooling the jacket top and holding it on by attaching it to the jacket side.

(4) *Heat Traps.* Heat traps are used on the water inlet and outlet pipes to reduce natural convection losses.

The design options and public comment thereon are more fully discussed in the Engineering Analysis Document, Chapters D–3 and E–3.

3. *Efficiency Levels Analyzed.* Table 3–4 presents the efficiency levels selected for analysis for 1987. Alternate levels were selected to generate a range of impacts for analysis. Level 3 corresponds to the highest efficiency level considered in the engineering analysis which is technologically feasible based on the design options considered. It was felt that manufacturers could produce products at this efficiency, and these products would not have any safety or reliability problems. Levels 1 and 2 correspond to efficiencies lower than that of level 3. While these levels were not discreetly analyzed in the engineering analysis, DOE believes the costs are proportional to the efficiency levels considered.

The levels considered in today's analysis are generally lower than those considered for standards in the June 30 proposal. This reflects changes made in the engineering analysis.

DOE does not have sufficient data on electric table-top units to perform the engineering and economic analyses for the class. No levels were analyzed for oil water heaters because of the small quantities being produced and their replacement by gas or electric water heaters. DOE determined that the water heater test procedure is not valid for heat pump water heaters. Section 325(b) of the Act states that no standard shall be prescribed if no test procedure has been prescribed with respect to the class.

TABLE 3–4.—ALTERNATIVE EFFICIENCY LEVELS FOR 1987 FOR WATER HEATERS (ENERGY FACTOR, EF) [1]

Product class	Volume (gal)	Level analyzed		
		1	2	3
1. Gas	40	56.9	58.7	60.7
2. Electric	52	85.6	88.9	92.1
3. Electric table top	(2)	(2)	(2)	(2)
4. Oil	(2)	(2)	(2)	(2)
5. Heat pump	(2)	(2)	(2)	(2)

[1] The Energy Factor for water heaters is the quotient of the energy content in the average daily hot water usage divided by the average daily energy input to water heaters.
[2] Not analyzed.

Significance of Energy Savings

By the year 2005 the average efficiency of new water heaters that would be developed in the absence of standards is projected to be over 97 percent of the efficiency of new water heaters developed with standards. Economic Analysis Document, Table 3–12. This would constitute a 23 percent increase in the efficiency of new model gas water heaters since 1978 without standards and an 11 percent increase for new model electric water heaters. *id.*

Were an efficiency standard imposed, the ORNL Model predicts that over the entire period 1987–2005 the following additional savings would be attributable to the standard:

	Electric	Gas
Level 1	0.28 Quads	0.04 Quads.
Level 2	1.05 Quads	0.08 Quads.
Level 3	2.07 Quads	0.08 Quads.

There is a particular variable in the ORNL Model whose value is peculiar in the case of water heaters such that DOE believes that the savings projected may be overstated. The implicit discount rate calculated for water heaters for the base year (1978), using manufacturers 1978 shipment data, is much higher than it is for other appliances with similar characteristics, for instance, furnances and central air conditioners. It ranges from 3 to 27 times greater than that used for these products. For water heaters, the analysis shows an implicit discount rate of 163 percent for electric and 457 percent for gas. For furnances and central air conditioners, the rate does not exceed 54 percent. Economic Analysis Document, Table 3–6. Despite some effort, DOE has been unable to explain this anomalously high implicit discount rate for water heaters, and DOE requests comments from interested persons on this issue. The effect of a high implicit discount rate in the ORNL Model is to lessen the responsiveness of the market to demand more efficient appliances as a result of higher energy prices. *See generally* Economic Analysis Document, § 3.2. Decreasing the implicit discount rate of water heaters to that of gas furnances decreases the energy savings to *zero* for the nominal standards case, i.e., level 3 for electric water heaters and level 2 for gas water heaters. *See* Economic Analysis Document, Table 5–2. Thus, if the implicit discount rate used for water heaters is too high, the savings attributable to standards may be vastly overstated.

Oil and Gas Savings

The maximum savings over the 19 year period of 2.07 Quads of electricity amounts to 0.05 Quads of oil and 0.13 Quads of gas.[44] Thus, the maximum oil and gas savings would be 0.05 Quads of oil and 0.21 Quads of gas. While the gas savings exceed the 4,400 barrels per day level that the Congress found to be an insignificant level of savings in rejecting an emergency conservation plan,[45] there is no indication that any excess over 4,400 barrels per day should be considered significant. *See supra.* Indeed, they only slightly exceed one-half of the 10,000 barrels per day level DOE believes would be significant.

Electricity Savings

The maximum savings attributable to standards over the period 1987–2005 would constitute less than .3 percent of the electricity used in the Nation over that period.[46]

20 Percent Savings

Over the period 1987–2005 the highest level of savings attributable to standards would constitute less than 3 percent of the energy that would have been consumed by water heaters in the absence of standards. *See* Economic Analysis Document, Table 3–18.

Conclusion

On the basis of the above, DOE believes that standards for water

[44] This assumes that oil constitutes 2.65 percent and gas 6.15 percent of the energy used to generate electricity over this time period. These percentages are the average of the projected proportions for the years 1990 and 1995. *See supra.*

[45] Four thousands, four hundred barrel of oil per day equal .18 Quads over 19 years.

[46] Electricity usage over the period 1987–2005 is estimated to be about 700 Quads. *See supra.*

heaters would not result in a significant conservation of energy.[47]

Economic Justification

a. *Costs to Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 3 efficiency for water heaters ranges from $13.65 for a gas water heater made by a large manufacturer to $14.85 for an electric water heater made by a medium-size manufacturer. *See* Engineering Analysis Document, Table 3.11.

The increased price to the consumer for a water heater meeting a level 3 standard ranges from $31.30, or a 19 percent increase, for an electric water heater to $29.90, or a 15 percent increase, for a gas water heater. The price to the consumer of a level 2 gas water heater increases about $18, or 9 percent, and the price of a level 2 electric water heater increases about $20, or 12 percent.[48] At level 1, price increases are minimal. *See* Engineering Analysis Document, Table 3.12. DOE believes that the price increase at the higher levels of efficiency would likely preclude some lower income persons from purchasing new water heaters.

The FIM predicts that a prototypical medium-size manufacturer would suffer a 15 percent increase in business risk at all standard levels analyzed, and that prototypical large and small firms would incur a 10 percent increase at level 3, with large firms incurring a 15 percent increase in business risk at level 2. *See* Economic Analysis Document, Table 4–28. If shipments decrease 15 percent from manufacturers' anticipated levels, the effects of a level 3 standard for electric water heaters and a level 2 standard for gas water heaters would be to increase business risk to 20 percent for large firms, to 30 percent for medium-size firms, and to 20 percent for small firms. *See* Economic Analysis Document, Table 5–14. By 1991 (the last year of analysis) the FIM predicts that the prototypical large-size manufacturer will have been losing increasing amounts of money the last two years at level 3 and the last three years at level 2. For the four years following the year that standards would be imposed, medium manufacturers would average a 27 percent decrease in profitability at level 2 and a 23 percent decrease at leval 3. For small firms the comparable figures are a 12 percent decrease and a 19 percent decrease. *See* Economic Analysis Document, Table A–4–9.[49]

In addition to the abovementioned quantified impacts on manufacturers, an effect of a standard, as indicated in the General Discussion section, would be to require certain investments to be made that might not otherwise have been made. These required investments would likely result in the forgoing of certain other investments which would be more beneficial to the manufacturer.

b. *Life Cycle Cost and Net Present Value.* An anlysis of the life cycle cost results shows that for water heaters, the most efficient model studied had the lowest life cycle cost. The results of the sensitivity analysis regarding usage rates show that the minimum LCC falls at the most efficient model studied. The minimum LCC is always at a greater efficiency than the analyzed levels. *See* Economic Analysis Document, Table 5–10.

The net present value for each of the efficiency levels studied is:

	Electric	Gas
Level 1	$490 million	$40 million.
Level 2	1.65 billion	70 million.
Level 3	2.65 billion	180 million.

If the level 3 net present value was spread across the Nation, the benefits would amount to about $1.10 per year per household.

As noted above, DOE has doubts concerning the base year (1978) implicit discount rate for water heaters. Above it was demonstrated how a change in that implicit discount rate to a level representative of products purchased in similar situations would eliminate all savings of gas and electricity attributable to a standard. A similarly dramatic result occurs to the net present value if the base year implicit discount rate for water heaters is reduced to that of gas furnaces. For gas water heaters, the NPV becomes zero, while for electric water heaters the NPV becomes a *negative* $40 million. Economic Analysis Document, Table 5–3.

c. *Energy Savings.* As indicated above, the maximum savings attributable to standards would be 2.15 Quads during the period 1987–2005.

d. *Lessening of Utility or Performance of Products.* As indicated above, DOE established a new class of products in order to assure that the standards analyzed would not lessen the existing utility or performance of water heaters. As indicated in the general discussion, however, there is no assurance that future utility or performance of water heaters would not be lessened by standards.

e. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

f. *Need to Save Energy.* More energy is used to power electric water heaters than gas water heaters. The maximum amount of electricity that would be saved by standards for water heaters amounts to less than .3 percent of the electricity used in the Nation during this time period. Similarly, the maximum gas savings attributable to standards for water heaters would account for about .06 percent of natural gas use during the same period.[50] In balancing the benefits of a standard against its burdens, no

[47] DOE created separate classes of products for electric table top, oil and heat pump water heaters that were not specifically analysed in several of the analyses. The sales volume of electric table top water heaters, however, is very small, *see* Engineering Analysis Document, Table C–3, and the energy use by oil water heaters, small to begin with, decreases rapidly during the period 1987–2005 in the absence of standards, *see* Economic Analysis Document, Table 3–16. Consequently, DOE believes that the determination that a standard for water heaters would not result in a significant conservation of energy applies to these two product classes as well. Because heat pump water heaters are very new, because there is no test procedure for them, and because they have a potential for significant market penetration, DOE is reserving a determination as to the significance of savings of heat pump water heaters.

[48] These prices to consumers are the prices reflected in the engineering analysis only for products made by large manufacturers. The engineering analysis indicates *higher* prices for the products made by medium-size manufacturers, because of their higher costs. The economic analysis, however, indicates that the large manufacturers are the price leaders in the industry. Therefore, medium-size manufacturers will not be able to obtain the higher price reflected for their product, but instead will have to forgo the difference.

[49] As indicated in the General Discussion section, as well as the other product-specific discussions, these impacts are fully accurate only to the extent that the prototypical firm did not make investments in improving appliance efficiency as part of its historically indicated investments. Improvements in efficiency projected between 1978 and 1987, however, likely reflect such historical investments and should reflect an order of magnitude decrease in the impacts projected by the FIM. Gas water heaters increase in efficiency 70 percent between 1978 and 1987, while electric water heaters increase in efficiency only 20 percent, indicating more historical investment in gas than electric water heater efficiency improvements. Because most firms making water heaters make both gas and electric water heaters, however, these percentages do not necessarily reflect the decrease in FIM impacts for a prototypical firm. Because it is projected that gas water heater sales will decrease from a majority of all water heater sales in 1978 to just a quarter of sales in 1990, DOE believes a standard for water heaters will have its greatest impact on the manufacture of electric water heaters, where the least investments were made. This leads DOE to believe that the projected FIM impacts on the "average" (in terms of shipment weighted efficiency of its products), prototypical firm would be decreased by a percentage closer to 20 percent than 70 percent. Of course, to the extent that a firm was not "average," but had invested little or no money in efficiency improvements prior to a standard being imposed, the FIM projections would remain accurate.

[50] Natural gas usage during the period 1987–2005 is estimated to be about 380 Quads. This figure is derived from NEPP III.

weight need be given to savings of energy that are so small.

g. *Other Factors.* Above, under impacts on manufacturers, the impacts projected by the FIM on the prototypical small manufacturer of water heaters were presented. The negative impacts on small manufacturers were projected to be *less* than the negative impacts on large and medium manufacturers. In the General Discussion section, however, it was explained that DOE believes the FIM understates the negative impact of standards on small businesses relative to other size firms. Thus, DOE believes that the negative impacts shown in the FIM for the prototypical small manufacturer of water heaters are likewise understated. DOE solicits comments on this, especially from small manufacturers of water heaters.

Conclusion

The benefits of a standard for water heaters are that, compared to the base case of no standards, it might save energy and might have a positive net present value. The sensitivity analysis indicates, however, that if the anomalous base year implicit discount rate for water heaters is too high, the benefits attributable to standards could be entirely eliminated.

The burdens of a standard are that: (1) It would adversely affect the financial well-being of all firms making water heaters, with potentially serious impacts on some size firms at certain levels; (2) it could result in some lower income persons being precluded from purchasing new water heaters, if a standard were set at one of the higher levels; (3) it could lessen the utility or performance of this product in the future by creating a disincentive to the development of energy-using new features; and (4) manufacturers of water heaters might forgo investments that are more beneficial to them.

The need of the Nation to save this marginal increment of electricity or natural gas is not sufficient to justify any of the above burdens.

In light of all the factors discussed here and in the general discussion, on balance, DOE believes that the burdens of an efficiency standard for water heaters outweigh the benefits.[51]

e. *Room Air Conditioners.*—1. *Selection of Classes.* "Room air conditioner" means a consumer product which is powered by a single phase electric current, which is an encased assembly designed as a unit for mounting in a window or through the wall for the purpose of providing delivery of conditioned air to an enclosed space, which is not a "packaged terminal air conditioner." [52] It includes a prime source of refrigeration and may include a means for ventilating and heating.

DOE has reviewed the comments regarding reverse cycle units and agrees that these units have a distinct utility by having the capability of providing heat. The efficiency of a reverse cycle room air conditioner is decreased because of losses in efficiency associated with the reversing valve. Therefore, DOE is establishing a separate class for these units.

DOE has reviewed the comments regarding units 8,000 Btu/hr and less and agrees that certain units, such as casement type room air conditioners, have a distinct utility due to their dimensions. Also, 8,000 Btu/hr room air conditioners are typically used in bedrooms as are 6,000 Btu/hr and less units. Therefore, the upper limit of the 6,000 Btu/hr and less class has been raised to 8,000 Btu/hr.

DOE has established two new classes for those units with outdoor side louvers and capacity greater than 8,000 Btu/hr but less than 20,000 Btu/hr. This revision was based upon DOE's review of comments regarding the appropriateness of using a single baseline unit to represent the entire capacity range of units greater than 6,000 Btu/hr but less than 20,000 Btu/hr. Since DOE has revised the analysis to use the largest capacity unit in each class as the baseline unit, the potential improvements in efficiency of the smaller capacity units would be underestimated if a single class were used for this capacity range. Therefore, the two new classes for room air conditioners with outdoor side louvers are those with a capacity greater than 8,000 Btu/hr but less than 14,000 Btu/hr and those with a capacity of 14,000 Btu/hr or greater but less than 20,000 Btu/hr.

DOE has established two separate classes for those room air conditioners without outdoor side louvers, those with a capacity of 8,000 Btu/hr or less and those with a capacity greater than 8,000 Btu/hr. These classes were based upon DOE's analysis of comments in which DOE determined that, as in the case of those room air conditioners with outdoor side louvers, 8,000 Btr/hr or less units are usually used in bedrooms and that improvements in efficiency are limited by cabinet sizes.

The product classes for the room air conditioner category are listed in Table 3–5, *infra.*

2. *Design Options Evaluated.* Design options employed in the analysis of the room air conditioner consisted of increased heat-transfer surface area, sometimes accompanied by a decreased compressor size, and fan motor improvement or replacement wherever possible.

The heat exchanger surface area is generally increased. In come cases, an increase in the heat exchanger depth increases the efficiency slightly; however, this is partially offset by increased air system losses. As the heat-transfer surface is increased the compressor displacement must be reduced to maintain the desired unit capacity.

Along with the change in pump displacement the manufacturer would change the compressor motor as well. Often, the reduced capacity compressor for the highest efficiency design is already available as the next logical increment a compressor manufacturer offers.

The design options and public comment thereon are more fully discussed in the Engineering Analysis Document, Chapters D–9 and E–9.

3. *Efficiency Levels Analyzed.* Table 3–5 presents the efficiency levels selected for analysis for 1987. Alternate levels were selected to generate a range of impacts for analysis. With the exception of class 1, level 4 corresponds to the highest efficiency analyzed in the engineering analysis. Levels 1, 2, and 3 correspond to efficiencies lower than that of level 4. While not all of these levels were discreetly analyzed in the engineering analysis, DOE believes the costs are proportional to the efficiency levels considered.

The highest potential standard level analysed for class 1 (small room air conditioners with outdoor side louvers) was less than the highest efficiency attainable in the engineering analysis because it would not be possible to achieve the highest efficiency for that class within the existing appliance's case. The cost reflected in the engineering analysis to achieve the highest efficiency would not necessarily be accurate because the engineering analysis assumed a metal cabinet,

[51] As noted above, DOE created separate classes of products for electric tabletop, oil, and heat pump water heaters that were not specifically considered in several of the analyses. For the reasons indicated above, DOE is reserving a determination as to the economic justification for a standard for heat pump water heaters. Also for the reasons indicated above, however, DOE believes that standards for the other two classes, which demonstrably use small amounts of fuel, would not be economically justified.

[52] "Packaged terminal air conditioner" means a wall sleeve and a separate unencased builder specified combination of heating and cooling assemblies intended for mounting through the wall. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builders choice of hot water, steam or electricity.

which would cost less to modify than the plastic cabinet that many models in this class have.

The levels considered in today's analysis are generally lower than those considered for standards in the June 30 proposal. This reflects changes made in the engineering analysis.

DOE does not have sufficient data on the reverse cycle units to perform the engineering and economic analyses for the class.

TABLE 3-5.—ALTERNATIVE EFFICIENCY LEVELS FOR 1987 FOR ROOM AIR CONDITIONERS (ENERGY EFFICIENCY RATIO, EER, BTU/WATT-HR)

Product class	Levels analyzed			
	1	2	3	4
1. With outdoor side louvers; capacity of 8,000 Btu/hr or less	7.4	7.6	7.9	8.7
2. With outdoor side louvers; capacity greater than 8,000 Btu/hr but less than 14,000 Btu/hr	8.6	8.9	9.1	10.2
3. With outdoor side louvers; capacity of 14,000 Btu/hr but less than 20,000 Btu/hr	7.6	7.9	8.1	9.7
4. With outdoor side louvers; capacity of 20,000 Btu/hr or greater	8.0	8.2	8.4	8.4
5. No outdoor side louvers; capacity of 8,000 Btu/hr or less	7.5	8.1	8.7	9.6
6. No outdoor side louvers; capacity greater than 8,000 Btu/hr	7.0	7.3	7.5	7.8
7. Reverse cycle	(1)	(1)	(1)	(1)

[1] Not analyzed.

Significance of Energy Savings

By the year 2005 the average efficiency of new room air conditioners developed in the absence of standards is projected to be 95 percent of the efficiency of new room air conditioners developed with standards. *See* Economic Analysis Document, Table 3-12. this would represent a 13 percent improvement since 1978 in the efficiency in new models without standards. Were an efficiency standard imposed, the ORNL Model predicts that over the entire period 1987–2005 the following additional savings would be attributable to the standard:

Level 1—0.24 Quads
Level 2—0.30 Quads
Level 3—0.34 Quads
Level 4—0.64 Quads.

Oil and Gas Savings

As indicated in the product-specific discussion of central air conditioners, air conditioners are more likely to be found and to be heavily used in the southern parts of the Nation. Air conditioners are also more heavily used in the summer than at other times of the year. As is also discussed later, however, differences in the source fuel for generating electricity among regions are generally not great enough to make national average proportions inappropriate figures to assess the order of magnitude impact on oil or electricity savings attributable to standards for air conditioners.[53] This is even more true of room air conditioners than central air conditioners, because room air conditioners use only 20 percent of the energy used by central air conditioners, *see* Economic Analysis Document, Table 3-15, and the maximum energy that could be saved as a result of standards for room air conditioners is less than 15 percent of the energy that might be saved by standards for central air conditioners.

Using the national average proportions of oil and gas used to generate electricity, the maximum savings of oil and gas attributable to standards would be 0.013 Quads of oil and 0.046 Quads of gas over the period 1987–2005.[54] The larger figure is only about 25 percent of the 4,400 barrels of oil per day savings that the Congress found to be an insignificant level of savings.[55] *See supra.*

Electricity Savings

The maximum savings attributable to standards would constitute less than .1 percent of the electricity used in the Nation.[56] This additional percent is so small as to have no measurable effect on the environment or the need for new generating capacity.

20 Percent Savings

Over the period 1987–2005 the highest level of savings attributable to standards would constitute only 8 percent of the energy that would have been consumed by room air conditioners in the absence of standards. *See* Economic Analysis Document, Table 3-18.

Conclusion

On the basis of the above, DOE believes that standards for room air conditioners would not result in a significant conservation of energy.[57]

Economic Justification

a. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to a manufacturer to meet the level 4 efficiency for the most prevalent class of room air conditioner—the below 8000 Btu/hr with outdoor side louvers, with 44 percent of the market—is a mere $6.13, or less than 5 percent. However, all the rest of the classes of room air conditioners, making up 56 percent of the market, have significant increased first costs, ranging from 15 to 50 percent increases. Also, it is noteworthy that medium-sized manufacturers have increased costs 15 to 20 percent higher than the large firms. Engineering Analysis Document, Table 9.16 and Table 9.17.

The increased price to the consumer at a level 4 standard reflects the same trend, with the most prevalent class of room air conditioner increasing in price only $18. The price increases of all the other classes, however, are significant, with the next two most prevalent classes (8–14 and 14–20 thousand Btu/hr, with outdoor side louvers) having price increases of 25 percent, and the currently least expensive class having the largest percent increase, over 45 percent.[58] *See* Engineering Analysis Document, Table 9.17.

At lower standard levels the increased first costs and prices are substantially reduced. For example, at level 3 the price increases for the second and third most prevalent classes and the least expensive class are all less than 10 percent. *Id.* DOE believes that these increased prices will result in some

[53] As is discussed under central air conditioners, there are reasons to believe that national average proportions of gas used to generate electricity might be more inaccurate. Because DOE does not have any basis for projections of future proportions except on a national basis, however, a national average is used for gas as well. Because available data indicates gas is a higher proportion of the energy used to generate electricity in the summer and oil is a lower percentage, DOE has increased the projected annual national average proportion by 17 percent for gas and decreased the projected proportion for oil by 19 percent in assessing savings for standards on air conditioners. *See infra.*

[54] This assumes that oil constitutes 2.15 percent and gas 7.2 percent of the energy used to generate electricity over this time period. The oil percentage is the average of the projected proportions for the years 1990 and 1995, decreased by 19 percent. The gas percentage is the average of the projected proportions for the years 1990 and 1995, increased by 17 percent. *See supra.*

[55] Four thousand and four hundred barrels of oil per day equal .18 Quads over 19 years.

[56] Electricity usage over the period 1987–2005 is estimated to be about 700 Quads. *See supra.*

[57] Although DOE created a separate class of products for reverse cycle room air conditioners that has not been specifically considered in the engineering analysis, Life Cycle Cost analysis, or FIM analysis, the class of reverse cycle room air conditioners is included in the product type room air conditioners for purposes of the ORNL Model, which determined energy savings. Accordingly, DOE believes that the conclusion that a standard would not result in a significant conservation of energy can be applied to the entire product type.

[58] These prices to consumers are the prices reflected in the engineering analysis only for products made by large manufacturers. The engineering analysis indicates *higher* prices for the products made by medium-size manufacturers, because of their higher costs. The economic analysis, however, indicates that the large manufacturers are the price leaders in the industry. Therefore, medium-size manufacturers will not be able to obtain the higher price reflected for their product, but instead will have to forgo the difference.

lower income households forgoing room air conditioner purchases.

The FIM predicts that at level 4 a prototypical medium-sized manufacturer of room air conditioners would have a 25 percent increased business risk and a large manufacturer would have a 10 percent increased business risk compared to the base case without standards. At level 3 the medium-sized manufacturer has a 10 percent increased business risk. Economic Analysis Document, Table A–4–1. The sensitivity analysis indicates that business risk is highly sensitive to unanticipated revenue reductions. For example, if shipments decrease 15 percent from the anticipated level, the effects of a level 3 standard (the only level tested in the sensitivity analysis) would be to increase business risk to 45 percent for the medium-size manufacturer and to 35 percent for the large manufacturer. Economic Analysis Document, Table 5–14.

The FIM also indicates that by the year 1991 (the last year of analysis) profitability deteriorates for all sizes of firms at all standards levels analyzed. For example, at level 4, the medium-size firm has a 47 percent decrease in profitability compared to the base case with no standards, and a small firm has a 27 percent decrease. Economic Analysis Document, Table A–4–7. At all standards levels, the debt/equity ratio of all sizes of firms deteriorates. For the medium-size firm the deterioration is extreme. Economic Analysis Document, Table A–4–8.[59]

b. *Life Cycle Cost and Net Present Value.* A standard set at level 4 would require efficiencies for four of the six product classes at a level higher than the average consumer's LCC minimum. One would be so high as to result in an *increase* in life cycle cost compared to the 1978 average model of that class. Level 4 for one class—the largest capacity room air conditioner with outdoor side louvers—is set at the LCC minimum for that class. For the most prevalent class of room air conditioner, level 4 is slightly below the LCC minimum.

At level 3, four of the classes are at their LCC minimum, and two are below it. Moreover, for one of the classes at level 3 that is below the average consumer's LCC minimum, the level is the LCC minimum for consumers whose usage is that likely to be found in the northern parts of the Nation.[60] At levels 2 and 1 all standards would be set well below the LCC minima for all classes.

The net present value of standards for room air conditioners increases with the stringency of the standard, from $420 million to $730 million over the period 1987–2020. Spread over the Nation's 80 million households, this would equate to at most less than 27 cents per household per year.

c. *Energy Savings.* As indicated above, the maximum savings attributable to standards would be 0.64 Quads of electricity.

d. *Lessening of Utility or Performance of Products.* As indicated above, DOE established new classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of room air conditioners. As indicated in the General Discussion section, however, there is no assurance that future utility or performance of room air conditioners would not be lessened as a result of disincentives caused by standards to investments in energy-using new features.

e. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

f. *Need To Save Energy.* As is also indicated in the product-specific discussion of central air-conditioners, the greater part of the additional energy saved by standards on air conditioners will be concentrated in certain parts of the Nation and will be concentrated during summer peak load periods for utilities. As is also indicated in the discussion of central air conditioners, while peak load savings are more valuable to utilities than normal load savings, the nature of the peak load and its relative cost are highly regional in character. Thus, although savings of electricity associated with air conditioners are potentially more valuable than other forms of electricity savings, the need for those savings is more regionally specific than is the case for other electricity savings.

g. *Other Factors.* Above, under impacts on manufacturers, the impacts projected by the FIM on the prototypical small manufacturer of room air conditioners were presented. Except with respect to reduced profitability with standards, the impacts were not significant. In the General Discussion section, however, it was explained that DOE believes the FIM understates the negative impact of standards on small businesses relative to other size businesses. Thus, DOE believes that the negative impacts shown in the FIM for the prototypical small manufacturer of room air conditioners are understated relative to the impacts reflected for medium-size firms. DOE solicits comments on this, especially from small manufacturers of room air conditioners.

Conclusion

The benefits of a standard for room air conditioners are, compared to the base case of no standards, that it would save energy and have a positive net present value. These benefits, however, are small in amount even at the strictest standard level. The benefits become less at lower levels of mandated efficiency.

The burdens of any standard for room air conditioners are: (1) It will likely preclude some lower income persons from purchasing new room air conditioners; (2) it will have a negative impact on manufacturers' profitability and debt/equity ratio, especially harmful to medium-size manufacturers, but DOE believes the negative impact on small businesses is understated relative to other size firms; (3) it might lessen the utility or performance of future room air conditioners; and (4) it may require manufacturers to forgo more beneficial investments.

At level 3, and especially at level 4, all of the above burdens are increased. In addition, at level 4: The efficiency required for four of the six classes of room air conditioner is higher than the average consumer's LCC minimum; medium-size and large manufacturers suffer an increase in business risk of 25 and 10 percent, respectively; and the costs to manufacturers and the prices to consumers of five of the six classes of product increase from 15 to 50 percent. At level 3: The increased business risk for a medium-size firm attributable to the standard would be 10 percent, which

[59] As indicated in the General Discussion section, these impacts are fully accurate only to the extent that the prototypical firm did not make investments in improving appliance efficiency as part of its historically indicated investments. Otherwise, not all of the investment indicated by the engineering analysis would be required to be made in order to produce appliances to meet the required standard level. DOE believes that a measurement of the increased shipment weighted efficiency of a product between 1978–1987 will bear an order of magnitude relation to the decreased investment required of an average firm to meet a standard level. Moreover, DOE believes that the decreased investment requirement would likely have a similar order of magnitude effect on the FIM's projected impacts attributable to standards. In the case of room air conditioners, the ORNL Model indicates that the shipment weighted efficiency will increase about 22 percent between 1978 and 1987 in the absence of any standard. Consequently, DOE believes that the negative impacts actually attributable to standards would be almost four-fifths of those projected by the FIM. This conclusion, however, applies only to the "average," prototypical firm. The negative impacts suffered by a firm that had made limited or no investments in improved product efficiency would still approach or be those reflected by the FIM.

[60] This class—14–20 thousand Btu/hr with outdoor side louvers—is the only class of room air conditioner whose LCC minimum is different at lower than average usage. *See* Economic Analysis Document, Table 5–9.

would increase to 45 percent if shipments decreased by 15 percent.

The need to save the energy that would be saved by a national standard for room air conditioners is more regional than national in nature.

In light of all the factors discussed here and in the General Discussion section, on balance, DOE believes that the burdens of an efficiency standard for room air conditioners outweigh the benefits.[61]

f. *Home Heating Equipment (Not Including Furnaces).* The Department of Energy is not proposing a rule with respect to the product home heating equipment (not including furnaces) (hereafter referred to as "home heating equipment"). At the present time, there is no test procedure applicable to unvented oil or gas home heating equipment. Thus, a standard would be precluded for this class, even though it probably is the largest growing class in the product type. Moreover, it does not appear likely that it would be technologically feasible to improve the efficiency of electric resistance home heating equipment for the same reasons described with respect to electric furnaces, *see infra.* Finally, DOE intends to propose modifications to the existing test procedures relating to vented home heating equipment in light of their burden on manufacturers as well as concerns raised with respect to the failure of the existing procedure to measure the effects of thermal stack dampers on energy efficiency.

In light of the above, DOE believes it would be premature to propose any rule at the present time with regard to home heating equipment.

g. *Kitchen Ranges and Ovens.*—1. *Selection of Classes.* This product type includes consumer products that are used as the major household cooking appliance. They are designed to cook or to heat different types of food using gas or electricity. Electricity may be used for resistance or microwave heating. The product type includes horizontal cooking surfaces and either conventional or microwave ovens or combinations of these product classes.

Nine classes of kitchen ranges and ovens are specified by DOE. These product classes are distinguished by: (1) The kind of energy used for cooking, (2) the function, (3) the types of oven cleaning system and (4) utility features.

Product classifications are established for appliances that use different energy sources. These energy sources are gas and electric. Three product classes are based on the function of the appliance. Ovens have a different intended function than cooking tops. The different method used in transferring heat to the food results in the cooking top being inherently more efficient; thus, separate product classes are established. A separate product class is provided for microwave ovens because these ovens provide a particular utility to consumers and are inherently more efficient than conventional electric ovens.

The type of oven cleaning system is a performance-related feature that affects utility. The three types of oven cleaning systems are the standard, the continuous cleaning, and the self-cleaning system. The standard, or non-cleaning, system requires consumer effort for cleaning the oven and uses no electricity. The continuous cleaning system is a catalytic process where grease is soaked up on to the oven surface coated with an oxidizing catalyst. The self-cleaning system is a pyrolytic process where grease is oxidized during a special self-cleaning cycle. These ovens have added insulation because they operate at higher temperatures during the cleaning cycle than for cooking. Even though the continuous cleaning oven has greater utility than the standard oven, one product class is established for both continuous cleaning and standard ovens because both types of ovens tend to use the same amounts of energy. Many consumers prefer the self-cleaning oven. As the self-cleaning oven uses electricity during the cleaning cycle and is better insulated, its energy consumption is different from the standard and continuous cleaning ovens. Since the self-cleaning oven provides a utility to the consumer, a separate product class for this oven is established.

Gas ranges and ovens with pilot lights provide unique utility since they can be used in homes without the need to provide electric service to the range and oven. However, ranges and ovens with pilot lights are less energy efficient than identical products with electronic ignition. DOE recognized the utility of pilot lights in situations where an electric outlet is not located near the range. As a result, gas ranges and ovens have been partitioned into classes with and without electric power supplied.

The nine product classes for kitchen ranges and ovens established by DOE are listed at Table 3–7, *infra.*

2. *Design Options Evaluated.* The specific design options analyzed were:

(1) *Improved Insulation.* Denser fiberglass insulation is used to reduce losses. Increased insulation thickness was not considered a viable option as it requires a reduction in cavity size and a corresponding reduction in consumer utility.

(2) *Reduced Vent Size.* Vent rate in standard ovens is reduced to the rate of self-cleaning ovens by either reducing the vent tube size or adding a baffle.

(3) *Reduced Conduction Losses.* Standard oven suspension has been upgraded to the level of self-cleaning ovens. This includes modifications at the door including an additional thermal break, an improved gasket and a modified inner panel.

(4) *Improved Contact Conductance.* This applies to sheath-type electrical resistance cooking tops. Their efficiency is improved by designing them to maintain better thermal contact with cooking utensils.

The design options and public comment thereto are more fully discussed in the Engineering Analysis Document, Chapters D–7 and E–7.

DOE has determined that it is not technologically feasible to establish an energy efficiency standard for microwave ovens and electric cook tops.

3. *Efficiency Levels Analyzed.* Table 3–7 presents the efficiency levels selected for analysis for 1987. Alternate levels were selected to generate a range of impacts for analysis. The initial level selected for gas and electric ovens, level 4, corresponds to the highest efficiency level considered in the engineering analysis. It was felt that manufacturers could produce products at this efficiency, and these products would not have any safety or reliability problems. Levels 1, 2 and 3 correspond to efficiencies lower than that of level 4. While these levels were not all discreetly analyzed in the engineering analysis, DOE believes the costs are proportional to the efficiency levels considered. The initial level selected for gas cook tops, level 3, corresponds to the efficiency of the engineering analysis's baseline unit. Engineering Analysis Document, Table 7.1. Thus, the highest level analyzed as a possible standard for gas cook tops would not involve any "improvements." The levels considered in today's analysis are generally lower than those considered for standards in the June 30 proposal. This reflects changes made in the engineering analysis.

[61] Although DOE created a seperate class of products for reverse cycle room air conditioners, that has not been specifically considered in the engineering analysis, Life Cycle Cost analysis, or FIM analysis, DOE believes that the amount of energy that could be saved by a standard for this class is extremely small, *see supra.* Consequently, DOE believes that such savings, compared to the likely burdens that would result from a standard imposed on but one class of a product, and that class one of the smaller in number of units, dollars of sales, or energy used, indicate that the burdens of a standard for this class outweigh its benefits.

TABLE 3-7.—ALTERNATIVE EFFICIENCY LEVELS FOR 1987 FOR KITCHEN RANGES AND OVENS (ENERGY FACTOR, EF, PERCENT)

Product class	Levels analyzed			
	1	2	3	4
1. Microwave oven	[1]	[1]	[1]	[1]
2. Electric cooking top	[1]	[1]	[1]	[1]
3. Electric oven	12.7	13.0	13.3	13.6
4. Electric oven, self-cleaning	11.7	12.0	12.3	12.6
5. Gas cooking top, without electric power cord	.....	.....	22	.....
6. Gas cooking top, with electric power cord	45	50	56.5	.....
7. Gas oven, standard without electric power cord	3.1	3.4	3.7	3.8
8. Gas oven, standard, with electric power cord	4.7	5.0	5.3	5.6
9. Gas oven, self-cleaning	4.6	4.9	5.2	5.3

[1] Not analyzed.

Significance of Energy Savings

Were an energy efficiency standard imposed, the ORNL Model projects that over the entire periods 1987–2005 the savings attributable to a standard would be:

Electric (quads)	Gas (quads)
Level 1—0.02	0
Level 2—0.04	0
Level 3—(0.24)	0.22
Level 4—(0.33)	0.28

As may be seen, the projected effect of a standard for electric ovens at levels 3 or 4 would be to *decrease* energy savings from what they would have been in the absence of standards.

a. *Oil and Gas Savings.* The maximum gas savings attributable to a standard—0.28 Quads—over the period 1987–2005 equals 6884 barrels per day of oil. This represents less than .08 percent of the national use of natural gas over the same period of time.[62] At level 3 the savings attributable to a standard—0.22 Quads—over the period 1987–2005 equals 5409 barrels per day of oil.[63] This represents less than .06 percent of the national use of natural gas over the same period. At levels 1 and 2 the savings are only of electricity, and they are so small that the amounts of oil and gas that would be indirectly saved would be minuscule.

b. *Electricity Savings.* At levels 3 and 4 no electricity is saved by a standard. The maximum electricity that could be saved by a standard would be 0.04 Quads at level 2. This is less than .006 percent of the electricity used during the period of the savings.[64]

c. *20 Percent Savings.* Over the period 1987–2005 the greatest savings of electricity attributable to standards for electric ranges and ovens is less than one percent of the electricity used for ranges and ovens during that period. Savings of gas attributable to standards for gas ranges and ovens are less than 10 percent of the gas used in gas ranges and ovens during the same period. *See* Economic Analysis Document, Table 3–18.

Conclusion

On the basis of the above, DOE believes that energy efficiency standards for ranges and ovens would not save significant amounts of energy.

Economic Justification

a. *Impacts on Manufacturers and Consumers.* The per unit increased cost to a manufacturer to meet a standard at the highest efficiency level ranges from a high of $12.31 for a medium-sized manufacturer of gas ranges without a power cord to a low of $3.71 for a large manufacturer of self-cleaning electric ovens. Engineering Analysis Document, Table 7.14. The increased price to the consumer ranges from $26.90 for a gas oven without a power cord to $8.60 for a self-cleaning electric oven. Engineering Analysis Document, Table 7.15. The price of the most prevalent product—standard electric ovens—increases 11.5 percent. The price of the most prevalent gas oven increases less than 5 percent.[65]

Because ORNL Model trial runs indicated little or no energy savings associated with ranges and ovens, DOE did not perform an FIM analysis for this product.

In addition to the above mentioned quantified impacts on manufacturers, an effect of a standard as indicated in the General Discussion section would be to require certain investments to be made that might not otherwise have been made. These required investments would likely result in the forgoing of certain other investments which would be more beneficial to the manufacturer.

b. *Life Cycle Cost and Net Present Value.* At the only two levels of efficiency that would save electricity, the standard would be set higher than the average consumer's LCC minimum. Therefore, a standard at this level would penalize the average and below average consumers by banning their optimal oven from the market. The net present value attributable to standards for electric ranges and ovens is zero.

At the two levels of efficiency that would save gas (levels 3 and 4), the standards for gas ovens would be set higher than the average consumer's LCC minimum. Therefore, a standard at these levels would penalize the average and below average consumers by banning their optimal oven from the market. For some classes of oven, the life cycle cost is *increased* by standards from the 1978 average. The net present value attributable to a standard for gas ranges and ovens at either level 3 of 4 is *negative.* This demonstrates that consumers as a whole would suffer economically from imposition of a standard.

c. *Energy Savings.* As indicated above, the maximum electricity savings over the period 1987–2005 attributable to a standard for ranges and ovens is 0.04 Quads, and the maximum gas savings over that time is 0.28 Quads.

d. *Lessening of Utility or Performance of Products.* The classes established by DOE were intended to assure that the standards analyzed would not lessen the existing utility or performance of ranges and ovens. As indicated in the General Discussion section, however, there is no assurance that future utility or performance of ranges and ovens would not be lessened as a result of disincentives caused by standards to investments in energy-using new features.

e. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

f. *Need to Save Energy.* The electricity that might be saved by standards for ranges and ovens is minimal. The gas that might be saved is less than .08 percent of the natural gas used during the period 1987–2005. In balancing the benefits of a standard against its burdens, no weight need be given to savings of energy that are so small.

g. *Other Factors.* Because no FIM analysis was made with respect to ranges and ovens, DOE is unable to assess the impact of possible standards for ranges and ovens on small manufacturers.

[62] Natural gas usage over the period 1987–2005 is estimated to be about 380 Quads. *See supra.*

[63] While these savings exceed the 4,400 barrel per day level that has been considered insignificant, *see supra,* as noted in the General Discussion section there is no indication that any excess of 4,400 barrels per day should be considered significant. These savings are well below the 10,000 barrels per day level that DOE believes may be significant.

[64] Electricity usage during the period 1987–2005 is estimated to be about 700 Quads. *See supra.*

[65] These prices to consumers are the prices reflected in the engineering analysis only for products made by large manufacturers. The engineering analysis indicates *higher* prices for the products made by medium-size manufacturers, because of their higher costs. The economic analysis, however, indicates that the large manufacturers are the price leaders in the industry. Therefore, medium-size manufacturers will not be able to obtain the higher price reflected for their product, but instead will have to forgo the difference.

Conclusion

The benefits of a standard are, compared to the base case of no standards, that it would save energy. The electrical energy saved, however, would be miniscule. The gas saved would be a small amount.

The burdens of a standard are that: (1) The net present value is either zero or negative; (2) in order to save energy the standards would almost always have to be set higher than the life cycle cost minimum for the average consumer; (3) for some classes of product, the life cycle cost of an appliance meeting the standard would actually increase from the 1978 average life cycle cost for that class; (4) the future utility or performance of ranges and ovens might be lessened; and (5) manufacturers of ranges and ovens might forgo investments that are more beneficial to them.

The need of the Nation to save this marginal increment of gas or electricity is not sufficient to justify any of the above burdens.

In light of all the factors discussed here and in the General Discussion section, on balance, DOE believes that the burdens of an efficiency standard for ranges and ovens outweigh the benefits.

h. *Central Air Conditioners.*—1. *Selection of Classes.* A central air conditioner is a consumer product that is powered by single phase electric current, has a capacity under 65,000 Btu/hr and is not contained in a furnace whose rated capacity is above 250,000 Btu/hr.

Eight classes have been established for central air conditioners. These classes are distinguished by different performance features and capacities which affect both efficiency and utility. Central air conditioners are divided between units which provide only cooling and units which may also provide heating (heat pumps).

From a utility standpoint, four product classes for cooling only were identified. They are:

(1) Split systems—cooling only—39,000 Btu/hr and below.

(2) Single packaged units—cooling only—39,000 Btu/hr and below.

(3) Split systems—cooling only—above 39,000 Btu/hr.

(4) Single packaged units—cooling only—above 39,000 Btu/hr.

A separate class was established because of restrictions in design caused by having the furnace in the same enclosure:

(5) Single package, all year with gas furnace.

The classes for those units which may also provide heating are:

(6) Air source, split system, heat pump.

(7) Air source, single package, heat pump.

(8) Air source, split system, heating only heat pump.

2. *Design Options Evaluated.* Design options employed in the analysis of central air conditioners consist of the following:

(1) *Increased Condenser and Evaporator Heat Exchanger Surface Area.* Both the condenser and evaporator are assumed to be copper tube and aluminum corrugated fin. The frontal area of the heat exchanger and its depth (rows) are increased. Increased fan power to maintain the proper air velocity through the heat exchanger was included. Increased heat exchanger size also requires enlarged chassis and cabinet construction. Evaporator size was limited by available space within the home. Evaporator coil area for units below 39,000 Btu/hr was limited to five square feet. Units above 39,000 Btu/hr had a maximum evaporator face area of seven square feet. In addition, the overall evaporator heat transfer coefficient was limited so as to provide adequate latent capacity.

(2) *Decreased Compressor Size.* In conjunction with number (1) above, the compressor size must be reduced in order to maintain the baseline unit rated capacity. This was accomplished by reducing the piston.

(3) *Change Fan/Motor.* As the fan power requirements change with pressure and flowrate, the fan motor was changed.

(4) *Increased Fan/Motor Efficiency.* 60–81 percent permanent split capacitor motors were replaced with 70 percent permanent split capacitor motors.

The design options and public comment thereon are more fully discussed in the Engineering Analysis Document, Chapters D–8 and E–8.

3. *Efficiency Levels Analyzed.* Table 3–8 presents the efficiency levels selected for analysis for 1987. Alternate levels were selected to generate a range of impacts for analysis. The initial level selected, level 4, corresponds to the highest efficiency level considered in the engineering analysis. It was felt that manufacturers could produce products at this efficiency, and these products would not have any safety or reliability problems. Levels 1, 2, and 3 correspond to efficiencies lower than that of level 4.

While not all of these levels were discreetly analyzed in the engineering analysis, DOE believes the costs are proportional to the efficiency levels considered.

The levels considered in today's analysis are generally lower than those considered for standards in the June 30 proposal. This reflects changes made in the engineering analysis.

DOE does not have sufficient data on heat pumps and single package central air conditioners, all year with gas furnace, to perform the engineering and economic analyses for these classes.

TABLE 3–8—ALTERNATIVE EFFICIENCY LEVELS FOR 1987 FOR CENTRAL AIR CONDITIONERS (SEASONAL ENERGY EFFICIENCY RATIO, STEER, BTU/WATT-HOUR)

Product class	Levels analyzed			
	1	2	3	4
1. Split system, cooling only, 39,000 Btu/hr and below	9.1	9.5	9.9	10.4
2. Single package, cooling only, 39,000 Btu/hr and below	9.3	9.8	10.4	11.2
3. Split system, cooling only, over 39,000 Btu/hr	9.1	9.5	9.8	10.2
4. Single package, cooling only, over 39,000 Btu/hr	9.1	9.8	10.4	11.1
5. Single package, all year with gas furnace	(1)	(1)	(1)	(1)
6. Air source, split system, heat pump	(1)	(1)	(1)	(1)
7. Air source, single package, heat pump	(1)	(1)	(1)	(1)
8. Air source, split system, heating only heat pump	(1)	(1)	(1)	(1)

(1) Not analyzed.

Significance of Energy Savings

By the year 2005 the weighted average efficiency of new central air conditioners that would be developed without standards is projected to be over 90 percent of the efficiency of new central air conditioners developed with standards. Economic Analysis Document, Table 3–12. This would represent an increase in the efficiency of central air conditioners of over 20 percent since 1978 without standards. *Id.* Were an efficiency standard imposed at one of the following levels, the ORNL Model projects that over the entire period 1987–2005 the following savings would be attributable to a standard:

Level 1—2.13 Quads.

Level 2—2.90 Quads.

Level 3—3.66 Quads.

Level 4—4.52 Quads.

There are, however, certain aspects of the ORNL Model, which are peculiar to or have their greatest impact on central air conditioners, that DOE believes may result in these savings being overstated. First, the ORNL Model estimates real income growth at 2.4 percent annually, which is higher than the recent past and some forecasts. Since the purchase of central air conditioners is more sensitive to income estimates than the purchase of other covered products, an overestimate of real income would produce an overestimate of new sales and, thus, an overestimate of energy savings.

Second, the ORNL Model does not distinguish between central air conditioners and heat pumps that provide central cooling in its analysis. By counting and calculating these heat pumps as cental air conditioners that could be subject to the standard levels analyzed, whereas in fact they would not be, the model likely overestimates the savings for central air conditioners that would be attributable to standards. The amount of overestimation would depend on the share of the central cooling market that heat pumps would occupy during the period 1987–2005. DOE does not currently have that information. As of 1978, heat pumps appeared to have approximately 13 percent of the central cooling market.

Third, the ORNL Model overestimates the saturation level of central air conditioners in the multi-family housing market. That is, the estimated saturation level for multi-family homes includes central heating or cooling systems that are not specific to a household unit but service the entire building. *See* Economic Analysis Document, Table E–17. In many, if not most, of these cases the central air cooling system would not be a "consumer product" as defined in section 321(a)(1) of the Act. Including such systems in the ORNL analysis would result in the savings attributable to standards being overestimated. Again, however, DOE does not have data to determine the magnitude of this overestimation.

Because DOE does not have data or a quantitative basis to determine the amount of overestimation that may exist, for purposes of this proposed rulemaking the analysis has proceeded based upon the savings projected by the ORNL Model. DOE solicits comments that would provide a basis for determining the amount of overestimation that the ORNL Model may make with respect to energy savings attributable to standards for central air conditioners.

Oil and Gas Savings

It may be presumed that central air conditioners are more likely found and more heavily used in the southern parts of the United States. It may also be presumed that central air conditioners are used more heavily in the summer than at other times of the year.

The oil and gas proportions of the sources for the generation of electricity differ substantially among states, and to a lesser degree depending on the season of year. In the sun belt, however, with the exception of California and Florida, the states generally use less than the national average proportion of oil to generate electricity. Thus, there is not a clear regional bias. Moreover, DOE does not have specific information relating to future years upon which DOE could reasonably rely in order to find a substitute for a national average. Consequently, DOE believes a national average proportion is an appropriate measure of the oil that would be saved as a result of electricity savings attributable to a standard for air conditioners. Seasonally, however, there is a clear decrease both absolutely and proportionally in the use of oil for the generation of electricity in the summer compared to the winter or the average for the entire year. *See generally* Electric Power Monthly. In 1981 summer use of oil was 81 percent of the yearly average use. *Id.* Therefore, DOE is decreasing the otherwise projected national average use by 19 percent in order to determine the oil savings that might result from electricity savings attributable to a standard for air conditioners. With these assumptions and limitations, at each of the levels, the oil savings over the period 1987–2005 would be:

Level 1—0.05 Quads or 1226 Bpd.
Level 2—0.06 Quads or 1471 Bpd.
Level 3—0.08 Quads or 1961 Bpd.
Level 4—0.10 Quads or 2451 Bpd.[66]

The situation with respect to natural gas is somewhat different. Use of gas as a source for generating electricity in the summer increases both absolutely and in its proportion of total electrical generation. This increase would appear to be primarily the result of air conditioning load. Of course, only a portion of this air conditioning load is caused by residential central or room air conditioners. Most of this increase in gas use, however, is concentrated in four states—Texas, Oklahoma, Louisiana, and California. Lacking more specific information for future years, however, DOE is forced to use national average proportions of gas as a source of electrical generation to assess possible indirect gas savings from electricity savings. To take account of the apparent increased proportion of gas used for air conditioning load, however, DOE is increasing by 17 percent the otherwise projected gas proportion.[67] With these assumptions and limitations, the gas savings over the period 1987–2005 would be:

Level 1—0.15 Quads or 3677 Bpd (equivalent).
Level 2—0.21 Quads or 5148 Bpd (equivalent).
Level 3—0.26 Quads or 6373 Bpd (equivalent).
Level 4—0.33 Quads or 8089 Bpd (equivalent).

Based upon the above information, DOE believes that the savings of oil and gas that would be attributable to a standard for central air conditioners would not be sufficient to constitute a significant conservation of energy.[68]

Electricity Savings

The saving attributable to standards for central air conditioners predicted by the ORNL Model are savings in electricity. The highest level of savings, however, is less than .7 percent of national electricity usuage over the period 1987–2005.[69] Even if the southern portions of the nation benefited disproportionately from this savings because of greater central air conditioner use there, such a level of savings is not sufficiently large when spread over almost half the nation and its utilities to have a significant impact on the environment or measurably affect the need for new generating capacity.

20 Percent Savings

Over the period 1987–2005 the highest level of savings attributable to standards would constitute about 11 percent of the energy that would be consumed by central air conditioners over that period without standards. *See* Economic Analysis Document, Table 3–18. Thus, even at the strictest standard analyzed, a standard for central air conditioners would not result in a savings of 20 percent of the energy that would be used by central air conditioners without standards.

Conclusion

On the basis of the above, DOE believes that a standard for central air conditioners would not result in a significant conservation of energy.

Economic Justification

a. *Cost to Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the highest

[66] In these computations, DOE uses 2.15 percent as the national average proportion, which is 81 percent of the average of 1990 and 1995's projected proportions. *See supra.*

[67] In these computations, DOE uses 7.2 percent as the national average proportion which is 1.17 times the average of 1990 and 1995's projected proportions. *See supra.* The 17 percent increase is derived from the percent increased use of natural gas for the generation of electricity in the summer of 1981 compared to the year's average.

[68] While the gas savings at levels 2, 3, and 4 would exceed the 4,400 barrels per day level that has been considered insignificant, as noted in the general discussion there is no suggestion that any excess over 4,400 barrels per day is significant. The maximum figure of 8089 barrels per day is less than .2 percent of petroleum imports and is less than the 10,000 barrels per day that DOE would deem significant.

[69] Electricity usage over the period 1987–2005 is estimated to be about 700 Quads. *See supra.*

level of efficiency ranges from a low of $261 for a large manufacturer making a large split system to a high of $400 for a small manufacturer making a small package system. Most classes of the product have cost increases in excess of $300 or over 50 percent to achieve the highest level of efficiency. *See* Engineering Analysis Document, Table 8.14 and Table 8.15.

The increased price to the consumer if a standard were set at the highest level ranges from $716 for the large split system to $989 for the small package system. Most classes of product have price increases in excess of $850 or 75 percent. The lowest percent increase in price is 36 percent, for the most expensive class, while the largest *absolute* increase in price—$989—is for the previously least expensive class, a 97 percent increase in price.[70] A standard set at level 3 also would result in substantial price increases, ranging from $411 for a large split system to $524 for a large package system. The price increase for the small split system, with 62 percent of the market, is over $400 or 37 percent. At levels 2 and 1, the price increases decline only slightly. *See* Engineering Analysis Document, Table 8.15.

While lower income persons are the least likely to purchase central air conditioners today, a standard requiring first cost increases of such a magnitude would likely price not only lower income persons but many middle income persons out of the market for central air conditioners.

Despite the large increases in manufacturers' costs the FIM predicts only moderate impacts on central air conditioner manufacturers, *see* Economic Analysis Document, § 4.5. A prototypical medium-sized manufacturer faces a 10 percent increased business risk. *See id.*, Table 4–28. Profitability for the prototypical large firm improves very slightly; profitability for the medium-size firm is reduced 10 percent, with the prototypical small firm suffering 10–15 percent declines in profitability as the strigency of the efficiency level increases. *Id.*, Table 4–29.

The sensitivity analysis, however, indicates that business risk is extremely sensitive to unanticipated reductions in revenues. For example, a 15-percent reduction in shipments from anticipated levels escalates the increased business risk attributable to a standard at level 3 (the only level tested in the sensitivity analysis) for the prototypical large firm from 0 to 30 percent, for the prototypical medium-size firm from 10 to 60 percent, and for the prototypical small firm from 5 to 20 percent.[71] *See* Economic Analysis Document, Table 5–14.

Because of the substantial investment by manufacturers necessary to meet standards, DOE believes there is a substantial likelihood that other investments by central air conditioner manufacturers will be forgone, investments that might be more beneficial to the manufacturer. DOE solicits comments on this possible impact of standards on manufacturers of central air conditioners.

b. *Life Cycle Cost and Net Present Value.* A standard set at level 4 would require a level of efficiency that would be too high from an LCC perspective. Rather than being set at the LCC minimum, level 4 is set at a higher efficiency, ranging from 104–112 percent of the LCC minimum level. For two of the classes this results in an *increase* in life cycle costs from the 1978 average efficiency. Such a standard would penalize the "average" central air conditioner consumer for all classes by banning his optimally efficient air conditioner from the market, forcing him to incur unnecessarily high life cycle costs.

A standard set at level 3 would equal the LCC minimum for three of the four classes of central air conditioners. The fourth class would still be too efficient, at 105 percent of the LCC minimum, and, therefore, even "average" consumers of this class of central air conditioners would have their optimal central air conditioner banned. The sensitivityanalysis, however, indicates that persons with low usage rates (rates that in fact may be average in the northern part of the Nation) have a different LCC minimum from persons at the national average usage rate for two classes of central air conditioners. *See* Economic Analysis Document. Table 5–9. The result of a standard set at level 3, therefore, would be to ban the central air conditioner in two classes of that product that would be most economic for large portions of the Nation and large numbers of persons. These areas and persons would be penalized by having to pay unnecessarily high life cycle costs for efficiencies they do not need in those classes of central air conditioners. One of the two classes constitutes over 60 percent of the entire central air conditioner market.

A standard set at level 2 would be below the average consumer's LCC minimum, for all classes, but still would be higher than the LCC minimum of persons in the northern part of the Nation for the same two classes of central air conditioners. Thus, while this level would lessen the number of people disadvantaged and lessen the dollar disadvantage of those who remain disadvantaged, by reducing the national mandatory efficiency level, this level would continue to place an unnecessary burden on large portions of the central air conditioner consumer population.

Level 1 is still lower but exhibits the same characteristics as level 2. That is, the minimum allowed efficiency for two classes of central air conditioners exceeds the LCC minimum for usage at a rate that is average for large portions of the Nation.

The net present value for each of the levels of efficiencies is:

Level 1—$1.23 billion
Level 2—$1.27 billion
Level 3—$1.00 billion
Level 4—$.10 billion

Unlike almost every other product analyzed, the net present value does not increase as the standard becomes more strict, and the barely positive NPV at level 4 indicates that large numbers of persons would suffer negative net present values. While the maximum NPV is relatively large in absolute terms compared to other products (although shared among the 80 million households over the period involved it is less than 85 cents per year, per household), it should be noted that the ratio between the NPV and energy saved is the *lowest*

[70] These prices to the consumer are only the prices reflected in the engineering analysis for central air conditioners made by large manufacturers. The analysis indicates *higher* prices for products made by medium-size manufacturers, reflecting their higher costs. The economic analysis, however, indicates that large manufacturers are price leaders in the industry; therefore, medium-size manufacturers will not be able to obtain the prices reflected for their products, but instead will have to forgo the difference.

[71] As indicated in the General Discussion section, these impacts are fully accurate only to the extent that the prototypical firm did not make investments in improving appliance efficiency as part of its historically indicated investments. Otherwise, not all of the investment indicated by the engineering analysis would be required to be made in order to produce appliances to meet the required standard level. DOE believes that a measurement of the increased shipment weighted efficiency of a product between 1978–1987 will bear an order of magnitude relation to the decreased investment required of an average firm to meet a standard level. Moreover, DOE believes that the decreased investment requirement would likely have a similar order of magnitude effect on the FIM's projected impacts attributable to standards. In the case of central air conditioners, the ORNL Model indicates that the shipment weighted efficiency will increase about 22 percent between 1978 and 1987 in the absence of any standard. Consequently, DOE believes that the negative impacts actually attributable to standards would likely be about four-fifths of those projected by the FIM. This conclusion, however, applies only to the "average" (in terms of the shipment weighted efficiency of its product), prototypical firm. The negative impacts suffered by a firm that had made limited or no investments in improved product efficiency would still approach or be those reflected by the FIM.

of all the products with a positive NPV. This means that it costs consumers more to save equivalent amounts of energy through standards on central air conditioners than through standards on any other product. Finally, as noted in the General Discussion section, merely because the NPV is positive does not mean that all consumers obtain a positive benefit compared to the no-standards case. Rather, as is indicated by the results of the LCC sensitivity analysis, the positive NPV for central air conditioners is what remains of the positive present values enjoyed by some consumers as a result of standards, after subtracting the negative present values suffered by others.

Much of the above discussion highlights the problems created by a single national standard level when usage and the relative optimal efficiencies are highly regional in character. In the June 30 proposal, this led some commenters to suggest that DOE adopt regional, rather than national, standards. After a thorough review of the Act, DOE has concluded that the Act does not permit the adoption of regional standards. Moreover, as other commenters to the June 30 proposal noted, there are substantial practical problems associated with regional standards that create other types of burdens.

c. *Energy Savings.* As indicated above, the cumulative energy savings attributable to standards for central air conditioners during the period 1987–2005 are projected to be:

Level 1—2.13 Quads
Level 2—2.90 Quads
Level 3—3.66 Quads
Level 4—4.52 Quads

As noted above, there are elements of the ORNL Model that lead DOE to believe that these savings are likely overestimated.

d. *Lessening of Utility or Performance of Products.* As indicated in the General Discussion section, DOE established new classes of products in order to eliminate any lessening of the existing utility or performance of central air conditioners. As was also indicated in the General Discussion section, however, there is no assurance that as a result of standards disincentives to investment in new performance or utility features that might reduce efficiency would not lessen the utility or performance of future products. This is especially true where manufacturers will have already been required to make large investments merely to comply with standards.

e. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

f. *Need to Save Energy.* As indicated in the General Discussion, generally the relative need to save electricity is less than the need to save oil and gas. Moreover, while standards for central air conditioners are projected to be able to save a greater amount of energy than a astandard for any other product, the amount of electricity saved is less than 1 percent of the electricity used in the Nation.

There are two peculiarities with respect to central air conditioners that affect these general considerations. First, the greater part of the energy saved by standards will be concentrated in certain parts of the Nation, rather than spread more or less equally over the whole Nation.[72] Second, air conditioner use is generally associated with summer peak load for utilities. Generally, savings of peak load energy is more valuable to utilities because the cost of generating incremental amounts of electricity at peak load is higher than average costs. Thus, there is a greater economic utility in saving peak-load electricity (i.e., that often used by air conditioners) than in saving average load electricity (i.e., that which is characteristic of what is used by most other electric products). Nevertheless, the nature of the peak load and its relative cost are highly regional in character. Thus, although savings of electricity associated with air conditioners are potentially more valuable than other forms of electricity savings, the need for those savings saved as a result of standards for central air conditioners is even more regionally specific than is the case generally for electricity savings.

g. *Other Factors.* Above it was indicated that the FIM's projected negative impacts on small manufacturers were modest, except where there was an unanticipated shorfall in revenues. As noted in the General Discussion section, however, DOE believes that the FIM understates the impact of standards on small businesses relative to other size firms. Thus, it is possible that small businesses might suffer severe impacts as a result of the large investments that standards for central air conditioners would require. DOE solicits comments on these views from small manufacturers of central air conditioners, especially in terms of what impacts on their business they would foresee as a result of the costs reflected in the engineering anaylsis.

Conclusion

The benefits of a standard for central air conditioners are that it would save energy and would provide a positive net present value.

The burdens of a standard for central air conditioners are that (1) it would have a negative impact on small and medium-size firms; (2) it would increase the price of central air conditioners to such an extent that large numbers of persons might not be able to afford them; (3) because of the size of the investment required of a manufacturer to meet a standard, it is likely that other investments that might be more beneficial to the manufacturer would be foregone; (4) at all standards levels, large numbers of persons are disadvantaged by having a national, Federal minimum efficiency level set at a level higher than is most beneficial for them, requiring these persons to pay a higher than necessary life cycle cost; (5) it might create a disincentive to the development of energy-using new features; and (6) it might have a significant negative impact on small businesses.

The need to save the energy that would be saved by a national standard for central air conditioners is more regional than national in nature. That is, standards would benefit certain regions at the expense of other regions.

In light of all the factors discussed here and in the General Discussion, on balance, DOE believes that burdens of an efficiency standard for central air conditioners outweigh the benefits.[73]

i. *Furnaces—1. Selection of Classes.* A "furnace" is defined as a device designed to be the principal heating source for the living space of a residence, having a heat input rate (according to the established DOE test procedures) less than 300,000 Btu/hr for electric boilers and low pressure steam or hot water boilers, or 225,000 Btu/hr for forced-air central furnaces, gravity central furnaces and electric central furnaces.

[72] While intuitively one would expect the savings to be concentrated in the South, this may not be so because, depending on the local electricity price, free-market induced efficiency improvements may be concentrated in the high usage regions, and the savings attributable to standards would not include savings that result from free-market activity.

[73] As indicated earlier, heat pumps, which constitute several classes of the product central air conditioner, are not included in this rulemaking. Hence, the rule proposed today with respect to central air conditioners does not apply to heat pumps. Single package units with gas furnaces have not been analyzed. However, this product class is included in the product central air conditioner for purposes of the ORNL Model. Accordingly, DOE believes that the conclusion that a standard would not save a significant amount of energy is valid for this class. Moreover, because of its small energy use and savings, DOE believes the burden of a standard as this class of product would outweigh its benefits.

Within this product type, a distinction is made between "furnaces", where the heating medium is air, and "boilers" where the hearing medium is water or steam. Furnaces and boilers can be electrically powered, gas-fired or oil-fired.

Eleven classes of furnaces are specified by DOE. These classes are distinguished either by the type of fuel consumed or by performance-related features, which affect utility and efficiency.

Basic models of furnaces are segregated according to whether they use electricity, gas, or oil. The energy efficiencies of electric, gas, or oil furnaces are inherently different. Electricity is converted to heat with 100 percent efficiency in a furnace using electrical resistance heating. Both gas and oil furnaces have efficiencies less than 100 percent because of their flue losses. Failure to establish separate classes according to the type of fuel used may result in the elimination of models using a certain type of fuel.

One performance-related feature which affects utility is the method of heat distribution to the household. Included in this product type are furnaces which distribute heat by either low-pressure steam (15 psig or less steam pressure) or hot water. The heat-transfer process from the hot combustion products to air is inherently different from heat transfer to water or steam, leading to lower fuel use efficiences for furnaces. Furnaces and boilers are separated into different classes because of their inherently different efficiencies.

Forced-air furnaces offer the utility of being suitable for use with central air conditioners, central humidifiers, and central air cleaners. Hot water or steam boilers offer the utility of having a distribution system which requires less space than air distribution system, i.e., pipes required less space than air ducts.

Gas furnaces use air circulation systems driven either by buoyancy (gravity) or by a blower (forced air). Gravity-type systems offer the utility of operating without an electrical connection. The efficiency of gravity gas furnace tends to be lower than the efficiency of forced-air gas furnaces, so a separate class has been established for gravity gas furnaces. A class of oil furnaces using gravity to circulate hot air is not specified because DOE is not aware of any such units distributed in commerce.

Another distinct performance-related feature which affects utility is whether the furnace is installed indoors or outdoors.

Another performance-related feature which affects utility is the horizontal configuration of outdoor forced-air gas furnaces. This horizontal configuration has the utility of being uniquely adaptable to attics and crawl spaces. Such spaces is considered an outdoor installation in the DOE test procedures because it is not in a conditioned space. Since they are installed indoors in unheated spaces, they must be insulated but need not be weatherized. A separate class of gas, outdoor, nonweatherproof, horizontal furnaces is proposed to prevent the possible elimination of this type of configuration. Outdoor units, either vertical or horizontal, with weatherproof cabinets, have fewer size constraints than the nonweatherproof, horizontal units discussed above. However, no significant difference in efficiency is evident for weatherized, horizontal units when compared to any other outdoor unit. DOE has determined that there exists no utility associated with horizontal units when installed indoors. Thus, only outdoor, nonweatherproof, horizontal gas furnaces are identified as those having justifiable reduced performance.

The separate classes specified by DOE for furnaces are listed at Table 3–9, *infra*.

2. *Design Options Evaluated.* The specific design options evaluated were:

(1) *Increased Heat Exchanger Surface Area.* This design option involves increasing the size of the heat exchanger to improve heat recovery. It can be utilized in both gas fired and oil fired furnaces and boilers.

(2) *Intermittent Ignition Device (IID).* Intermittent ignition devices are used in gas fired furnaces in place of pilots. The IID's require electrical hook-up.

(3) *Stack Damper.* Stack dampers are used to reduce losses during the standby period. The stack damper is electrically powered and wired into the control system so that it opens prior to the firing of the furnace or boiler and closes after the firing period is terminated.

(4) *Power Burner or Power Vent.* This design option applies to gas-fired units. It involves using a power blower on the inlet or exit side of the unit to promote flow of the combustion products through the heat exchanger. This option permits higher combustion efficiency and reduced standby losses.

(5) *Increased Insulation.* On outdoor units, jacket losses are reduced by adding insulation. This design option replaces existing insulation with a denser fiberglass having the same thickness as the original insulation.

The design options and public comment thereon are more fully discussed in the Engineering Analysis Document, Chapters D–4 and E–4.

3. *Efficiency Levels Analyzed.* Table 3–9 presents the efficiency levels selected for analysis for 1987. Alternate levels were selected to generate a range of impacts for analysis. The initial level selected, Level 3, corresponds to the highest efficiency level considered in the engineering analysis. It was felt that manufacturers could produce products at this efficiency, and these products would not have any safety or reliability problems. Levels 1 and 2 correspond to efficiencies lower than that of level 3. While these levels were not discreetly analyzed in the engineering analysis, DOE believes the costs are proportional to the efficiency levels considered.

The levels considered in today's analysis are generally the same as those considered for standards in the June 30 proposal.

No energy efficiency levels were analyzed for gas gravity, gas boiler, outdoor, and oil boiler, outdoor, classes of furnaces because of the small quantities being produced. No analysis was conducted for electric furnaces because they operate near 100 percent efficiency since all the electric energy is transferred into the conditioned space. Losses due to inefficient motors and improvements achieved by added insulation are taken into account because the test procedures assume that all standby losses are usable heat for the dwelling. Thus, DOE believes that it is not technologically feasible to propose energy efficiency standards for this class of furnaces.

TABLE 3–9.—ALTERNATIVE EFFICIENCY LEVELS FOR 1987 FOR FURNACES (ANNUAL FUEL UTILIZATION EFFICIENCY, AFUE, PERCENT

Product class	Level analyzed		
	1	2	3
1. Electric	(1)	(1)	(1)
2. Gas gravity	(1)	(1)	(1)
3. Gas, forced air, indoor	76	79	81
4. Gas, forced air, outdoor, nonweatherproof horizontal	59	66	74
5. Gas, forced air, outdoor, other than nonweatherproof	71	74	76
6. Gas boiler, indoor	75	77	79
7. Gas boiler, outdoor	(1)	(1)	(1)
8. Oil, forced air, indoor	75	78	80
9. Oil, forced air, outdoor	73	76	78
10. Oil boiler, indoor	78	81	81
11. Oil boiler, outdoor	(1)	(1)	(1)

[1] Not analyzed.

Significance of Energy Savings

The ORNL Model predicts that by 1990 in the absence of any standards the average new gas and oil furnaces will be as efficient as what the strictest standard would require. Economic Analysis Document, Table 3–12. This

would represent a 28 percent improvement for gas furnaces and a 14 percent improvement for oil furnaces compared to their 1978 efficiency levels. *Id.*

Were an efficiency standard imposed, the ORNL Model predicts that there would be no savings during the period 1987–2005 attributable to the standard.

Oil and Gas Savings

There would be no oil and gas savings attributable to a standard.

Electricity Savings

No electricity is saved by the imposition of standards at any of the levels analyzed.

20 Percent Savings

Zero percent savings would be attributable to standards.

Conclusion

On the basis of the above, DOE believes that standards for furnaces would not result in a significant conservation of energy.[74]

Economic Justification

a. *Economic Impacts on Manufacturers and Consumers.* Of the seven classes of furnaces analyzed, gas forced-air indoor furnaces, the least expensive class of furnace, constitute two-thirds of the market. The increased per unit cost to meet the lowest efficiency level for such furnaces is over $60 and to meet the highest level efficiency is over $100. *See* Engineering Analysis Document, Table 4.19.

The price to the consumer to purchase the gas forced-air indoor furnace that meets the lowest standard increases $136, or over 30 percent, while the price of a furnace meeting the highest standard increases $220, or over 50 percent. Consequently, DOE believes that the imposition of an efficiency standard for furnaces would create a significant threat to the ability of low income persons to purchase new furnaces.[75] *See* Engineering Analysis Document, Table 4.20.

The FIM predicts that a prototypical medium-sized manufacturer would suffer a 5 percent increase in business risk at efficiency levels 2 and 3. Economic Analysis, Table 4–28. Such a percent increase is not considered statistically significant. If shipments decrease 15 percent from a manufacturer's anticipated level, however, the effects of standards would be to increase business risk to 20 percent for large firms, to 55 percent for medium-sized firms, and to 10 percent for small firms. *See Id.*, Table 5–14. The FIM predicts that standards would increase the profitability of the prototypical large firm while decreasing the profitability of the prototypical small and medium-size firm. At the lowest level of standards analyzed, compared to the base case of no standards, the medium and small manufacturer have the same or reduced profitability in each year beginning with the imposition of standards, with the prototypical medium-size manufacturer averaging a 36 percent decrease and the small manufacturer averaging a 13 percent decrease in profitability in the years 1988–1991, compared to a no-standards case. *See* Economic Analysis Document, Table A–4–6. At the lowest level analyzed, a medium-size manufacturer's debt/equity ratio deteriorates by 35 percent and a small firm's by almost 30 percent. *See Id.*, Table A–4–9.[76]

b. *Life Cycle Cost and Net Present Value.* An analysis of the life cycle cost results shows that for furnaces the most eficient model studied had the lowest life cycle cost.

The NPV analysis indicates that if a standard were adopted for gas furnaces at any level studied, there would be a *negative* net present value to the Nation ranging from $20 million to $30 million over the period 1987–2028. At a level 3 standard for oil furnaces, the analysis indicates that there would be a positive net present value of $20 million. DOE believes these figures are so small as to be not statistically significant.

c. *Energy Savings.* As indicated above, there would be zero energy savings resulting from standards.

d. *Lessening of Utility or Performance of Products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of furnaces. As indicated in the general discussion, however, there is no assurance that future utility or performance of furnaces would not be lessened by standards.

e. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

f. *Need to Save Energy.* There are no savings of energy associated with standards for furnaces.

g. *Other Factors.* As indicated in the General Discussion section, DOE believes the impacts on small businesses are underestimated relative to other size firms. Consequently, DOE believes the negative impacts described above with respect to small businesses are understated relative to the impacts described for other size firms.

Conclusion

There are no benefits resulting from a standard being set at any of the levels analyzed.

The burdens of a standard are that: (1) It could adversely affect the financial well-being of some medium and small size furnace manufacturers; (2) it would adversely affect lower income consumers by increasing purchase prices of new models; (3) it could lessen the utility or performance of this product in the future by creating a disincentive to the development of energy-using new features; and (4) manufacturers of furnaces might forego investments that are more beneficial to them.

In light of all the factors discussed here and in the General Discussion section, on balance, DOE believes that the burdens of an efficiency standard for furnaces outweigh the benefits.[78]

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[74] Although DOE created separate classes of products for gas gravity, gas boiler, outdoor, and oil boiler, outdoor, furnaces that have not been specifically considered in the engineering analysis, Life Cycle Cost analysis, or FIM analysis, these classes of furnaces are included in the product type for purposes of the ORNL Model, which determined energy savings. Accordingly, DOE believes that the conclusion that a standard would not result in a significant conservation of energy can be applied to the entire product type.

[75] These prices to consumers are the prices reflected in the engineering analysis only for products made by large manufacturers. The engineering analysis indicates *higher* prices for the products made by medium-size manufacturers, because of their higher costs. The economic analysis, however, indicates that the large manufacturers are the price leaders in the industry. Therefore, medium-size manufacturers will not be able to obtain the higher price reflected for their product, but instead will have to forgo the difference.

[76] As indicated in the General Discussion section, these impacts are fully accurate only to the extent that the prototypical firm did not make investments in improving appliance efficiency as part of its historically indicated investments. Otherwise, not all of the investment indicated by the engineering analysis would have to be made in order to produce appliances to meet the required efficiency level. DOE believes that a measurement of the increased shipment weighted efficiency of a product between 1978 and 1987 will bear an order of magnitude relation to the decreased investment required of an average firm to meet a standard level. Moreover, DOE believes that the decreased investment required would likely have a similar order of magnitude effect on the FIM's projected impacts attributable to standards. In the case of furnaces, because the ORNL Model projects that the shipment weighted efficiency in the absence of any standard will reach the highest standard level by 1987, there should be no negative impact on the "average" (in terms of the shipment weighted efficiency of its product), prototypical firm attributable to standards. Of course, if a particular firm had failed to invest in improved product eficiency, such that its product's shipment weighted efficiency had not so improved, then that firm would likely suffer negative impacts as suggested in the FIM.

[78] Although DOE created separate classes of products for gas gravity, gas boiler, outdoor, and oil boiler, outdoor, furnaces that have not been

Continued

IV. Preemption of State Regulations

As part of today's proposal, DOE is proposing to establish varying effective dates for its proposed rule not to impose any energy efficiency standards for the eight covered products. DOE is also setting forth regulations to implement section 327(b)(3) of the Act, and to revise the regulations that currently implement section 327(b)(1) of the Act. These proposed regulations are required to give both States (section 327(b)(3)) and other persons (section 327(b)(1)) an opportunity to petition the agency for a review of State or local efficiency standards or other requirements with respect to energy efficiency or energy use of a covered product (the standards). In the past, some State and local governments have implemented appliance energy efficiency standards. If DOE adopts the rule proposed today not to adopt energy efficiency standards with regard to each of the eight products, any State and local appliance efficiency standards that may cover those products would be superseded pursuant to section 327(a)(2) of the Act. Any State or local appliance efficiency standard with respect to these products adopted after the effective date of this rule also would be preempted.[79]

State governments may, however, petiiton the Department pursuant to section 327(b)(3) of the Act either to maintain or to implement State or local energy efficiency standards for particular covered products.[80] In addition, section 327(b)(1) of the Act, permits any person subject to a State or local efficiency standard, including standards for products not covered in this proceeding, to petition the Department to prescribe a rule that supersedes the State or local standard.

Previously DOE had established at 10 CFR Part 430, Subpart D, procedural regulations for petitions by entities that wished to have rules prescribed to supersede a State or local appliance efficiency standard. 42 FR 54264 (October 5, 1977). The DOE later proposed to amend the rule to include a State petition for a rule that a State or local energy efficiency standard not be preempted. 45 FR 43976, at 44026 (June 30, 1980). The June 30 proposal included burdensome requirements for information, a discretionary hearing procedure and a petition for reconsideration process that was mandatory for exhaustion of administration remedies. As discussed below, the rule proposed today simplifies many of the provisions set forth in the June 30 proposal.

As part of this proposed rulemaking, the DOE has reviewed the question of the time of preemption of State or local efficiency standards by the Federal rule.

Section 327(a)(2) of the Act provides that :

> This part supersedes any State regulation insofar as such State regulation may now or hereafter provide for—
>
> * * * * *
>
> (2) any energy efficiency standards or other requirement with respect to energy efficiency or energy use of a covered product.

After a review of this provision and other portions of the Act the DOE has concluded that the supersession of the State regulation occurs on the effective date of the Federal final rule, and DOE has so provided in proposed § 430.33.

The effective date of the rule for the eight covered products is proposed to occur generally 180 days after the date of the final rule's publication in the **Federal Register.** *See* section 325(i)(4) of the Act. However, if a State government petitions the DOE for a rulemaking under section 327(b)(3) of the Act, the DOE proposes to delay the effective date of the rule for that State for the covered products involved in the proceeding until the Secretary reaches a final determination on the petition. *See* proposed § 430.34. This will ensure that no State or local appliance efficiency standards will be terminated until the State has had a full opportunity to present its case to the agency.

The procedural rules set forth in Part 430, Subpart D, however, will be effective 30 days after their publication in final form in the **Federal Register.** These procedural rules, unlike the rules proposed today that prescribe no Federal energy standard for the eight covered products, are not constrained by the provisions of section 325(i)(4). That provision prohibits rules establishing energy efficiency standards from taking effect less than 180 days from their publication in the **Federal Register.** Procedural rules, such as those set forth in proposed Subpart D, must only adhere to the provision set forth in the Administrative Procedure Act, 5 U.S.C. 553(d).

The Department will review State petitions to maintain existing or implement new State regulations pursuant to the three statutory standards set forth in section 327(b)(3) of the Act. The Department must make two findings: that there is a significant State or local interest to justify the State regulation; and that the State regulation contains a more stringent energy efficiency standard than the Federal standard. However, no rule may be prescribed if the Department finds that the State regulation would unduly burden interstate commerce.[81]

The Department must, of course, treat such petitions as requests for rulemaking and must adhere to general rulemaking procedures. The DOE must conduct an environmental review pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, to determine whether or not the adoption of the proposed rule will be a major Federal action having a significant impact on the quality of the environment. The DOE must also consider the impact of the proposed regulation on small businesses pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Finally, under Executive Order 12291 (46 FR 1393, February 19, 1981), the DOE would be required to prepare a regulatory impact analysis if DOE determines that the propsed rule is a major rule, as that term is defined in the Order. These reviews, however, in most cases will likely result in findings of no major impact.

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specifically considered in the engineering analysis, Life Cycle Cost anlysis, or FIM analysis, DOE believes that the amount of energy that could be saved by a standard for these classes is extemely small, *see supra.* Consequently, DOE believes that such savings, compared to the likely burdens that would result from a standard imposed on but three classes of a product, and those classes being smaller in numbers of units, dollars of sales, or energy used, indicate that the burdens of a standard for these classes outweigh their benefits.

[79] It is DOE's opinion that the preemption of State and local energy efficiency standards by section 327(a)(2) of the Act would include the preemption of State or local standards that adopted appliance efficiency requirements included in the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) Standard 90. Similarly, section 327(a)(2) of the Act would supersede a State or local efficiency standard requireing intermittent ignition devices on gas burning appliances. It should be noted, however, that this general preemption of State and local energy efficiency standards would occur even if DOE adopted energy efficiency standards for covered products, if the State and local standards were not the same as the Federal standard. DOE invites comments on the types of State and local standards which may be preempted by today's proposed rule and the impacts of such preemption.

[80] Under section 3 of the Act, "State" means "a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States." Section 327(d) of the Act, defines the term "State regulation" as "a law or regulation of a State or political subdivision thereof." Thus, under section 327(b)(3) of the Act, a State government may petition the Secretary requesting a rule that a State or local energy efficiency standard or other requirement with respect to energy efficiency or energy use of a covered product, not be superseded by the Federal rule. However, a local government may not submit such a petition.

[81] Similarly, in responding to a manufacturer's petition pursuant to section 327(b)(1) of the Act, the Department may prescribe a rule preempting in whole or in part a State regulation if it finds no significant State or local interest sufficient to justify such a regulation and that the State regulation unduly burdens interstate commerce. *See* § 430.47.

In its petition for rulemaking, a State must present information which would appear on its face to show that the State's regulation is more stringent than the Federal standard and that there is a significant State or local interest in issuance of the State's regulation. The State is not required to provide information concerning the State regulation's impact upon interstate commerce. A person opposing the State's petition should present information which would appear on its face to show that the State's proposed rule would place an undue burden on interstate commerce. Such a person may also present information to rebut the State's initial submission. Information presented by both the State and opposing persons would be open for comment and rebuttal.

Similarly, in a petition submitted under section 327(b)(1) of the Act, the petitioner must provide information which would appear on its face to show that there is no State or local interest in the contested regulation and that the State's rule unduly burdens interstate commerce. This presentation would be subject to comment and rebuttal by any parties supporting or opposing the petition.

In review petitions submitted under sections 327(b)(1) and (b)(3) of the Act, the DOE will evaluate and analyze all factual and legal materials presented by the petitioners and all other interested or opposing parties. It is DOE's intention in applying section 327 to determine whether a State standard *unduly* burdens interstate commerce by balancing ths significant State interest in having a standard with the burden on interstate commerce created by the standard. In assessing the burdens of a standard, DOE will be guided by the principles of E.O. 12291 and the Regulatory Flexibility Act.

Because of the requirement in section 327(b)(3) that DOE find a significant State or local interest in a State effficent standard before DOE can issue a rule exempting the State standard preemption, it does not appear possible to issue a rule tht would make a blanket deterination for all States with respect to the same efficiency standard.

It should be noted that the Department has proposed to review only State regulations that are appliance *efficiency* standards. The Department is proposing to not review State or local regulations that have only a peripheral effect on the energy efficiency of a covered product. The statute at section 327(a)(2) clearly provides that only those regulations which provide for *"any energy standard or other requirement with respect to energy efficiency or energy use* of a covered product" will be superseded. (Emphasis added). Thus, a rule that established the energy efficiency of a particular appliance would be superseded by the Federal rule and would be subject to review upon the petition of the State. A rule whose purpose is other than energy efficiency such as a law on fire safety, would not appear to be preempted by the Federal rule, even if it has a secondary and incidental effect of improving the efficiency of a covered product.

In addition to the specific proposed provisions discussed above, Subpart d includes the following provisions. Proposed § 430.42 sets forth filing requirements for petitions submitted under section 327(b)(1) and (b)(3) of the Act. This rule includes the requirement as F 430.42(b)9) that each State serve all affected manufacturers of covered products with its petition. Such a requirement, however, could be onerous if many firms manufacture a particular covered product. The DOE seeks comments on whether such a requirement is needed to assure that all affected parties receive notice of a State's petition, or whether the burden of the requirement on the State would outweigh its benefits to the affected firms. The DOE proposes, as an alternative to proposed § 430.42(b)(2), to deem service on affected manufacturers to be accomplished by a notice of the petition published in the **Federal Register**. The DOE requests comments from manufacturers concerning the feasibility of such a proposal.

Proposed § 430.43 indicates the notice requirements for each petition. Proposed § 430.44 includes the requirements for both States and those subject to a State regulation with respect to their submission of petitions for supersession. As previously noted, these requirements have been significantly reduced from the June 30 proposal. Instead of the complex economic analysis required by the June 30 proposal, today's proposal requires only information needed to satisfy the statutory criteria set forth at section 327 of the Act. Hence, this proposed rule is substantially easier for a petitioner to utilize.

Sectin 430.45 proposes to allow DOE to consolidate any or all matters at issue in two or more proceedings pending before the agency. Thus, for example, petitions submitted by both a State wishing to retain or make effective a standard, and a manufacturer wishing to have that standard superseded could be considered in a single proceeding. Section 430.46 requires the Secretary to hold public hearings to afford interested parties an opportunity to present their views as required by section 336(a)(1) of the Act.

As discussed above, § 430.47 proposes the criteria for evaluating petitions, as set forth in section 327(b)(1) and 327(b)(3) of the Act.

Section 430.48 proposes procedures for the disposition of petitions, similar to those proposed on June 30. The DOE has proposed at § 430.49 to make the Secretary's decision on a petition final agency action for purposes of judicial review.

As this brief description indicates, the procedural rules proposed today are both simpler and much less burdensome than those proposed on June 30, 1980.

V. Environmental, Regulatory Impact, and Small Entity Impact Reviews

The Department has reviewed today's proposed action in accordance with the Department's obligations under:

- The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality regulations implementing the procedural provisions of NEPA (40 CFR Part 1500 *et seq.*) and the Department's own NEPA regulations (10 CFR Part 1021);
- Executive Order 12291 (46 FR 13193, February 19, 1981) which pertains to agency review of the impact of Federal regulations; and
- The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) which requires, in part, that an agency prepare an initial regulatory flexibility analysis for any proposed rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the **Federal Register.**

The Department's proposed action does not contemplate the imposition of Federal energy efficiency standards on any of the products which are the subject of today's notice. The rule would, moreover, supersede any substantive State standards for these products unless the Department, upon State petition, issued a rule which permitted a State to have an energy efficiency standard or standards.

Therefore, the Department believes that implementation of today's proposal would result in few, if any, differential impacts upon the environment or the economy, including the economic affairs of "small entities" as that term is used in the Regulatory Flexibility Act.

The Department, moreover, expects to consider relevant environmental and

economic factors in taking action on petitions to preserve or supersede State standards under section 327(b) of the Act. Consistent with this, the Department today is proposing that petitioners provide relevant environmental and economic information. Interested persons would also have an opportunity to provide information on these matters and to comment on petitioners' submissions, in the context of the proposed rulemakings initiated by petitions.

A. Environmental Review

The Department proposes to establish no energy efficiency standards for 8 types of consumer products, pursuant to its authority under section 325 of the act. Further, by operation of the Act, all State energy efficiency standards would be preempted except those for which States petition and receive from the Department, a rule which exempts them in accordance with section 327(b)(3) of the Act. Thus, the proposed action potentially has three elements: (1) No establishment of energy efficiency standards in those States that do not now have standards in effect; (2) Federal approval of certain State standards (i.e., exemption from Federal preemption); and (3) Federal "supersession" of certain existing State standards.

The first element clearly would not be environmentally significant since it is simply a continuation of the *status quo*.

As for the second element, in all cases where DOE is requested to approve State standards DOE will conduct an appropriate NEPA review on a case-by-case basis. It is anticipated that the vast majority of these cases will be adequately covered by the Environmental Assessment (EA) (DOE/EA-0113) and the Addendum to the EA which the Department prepared and issued on the impact of setting and implemented energy efficiency standards for all 13 types of consumer products identified in section 322(a)(1)–(13) of the Act. A Finding of No Significant Impact and Notice of Availability of that EA were published with the June 30 proposed rule for minimum energy efficiency standards for eight of the products (45 FR 44086). Copies of that Environmental Assessment and addendum may be obtained from the address indicated at the beginning of this notice.

It is possible that a State with existing standards will not seek exemption from preemption or will be denied an exemption from preemption. The Department has reviewed this potential third element of the proposal and determined on the basis of information contained in the above-mentioned EA that any impacts associated with preempting existing State standards would not have significant environmental impacts.

The Department has accordingly determined that the proposed action would not be a major Federal action significantly effecting the quality of the human environment and that an Environmental Impact Statement is not required under the NEPA.

B. Regulatory Impact Review

In light of the foregoing analysis of the effect of the proposed action, DOE has concluded that the rule is not a "major rule" for purposes of Executive Order 12291 because it 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 with foreign-based enterprises in domestic or export markets. Therefore, in accordance with section 3(c)(3) of the Executive Order, which applies to rules other than major rules, the proposed rule was submitted to OMB for review without a regulatory impact analysis.

Although the proposed rule is not a "major rule" as defined in Executive Order 12291, DOE has followed the philosophy set forth in the Executive Order. Thus, regulatory alternatives were considered in the process of formulating the proposal and the potential costs and benefits of the proposal were extensively analyzed.

Finally, as mentioned above, the Department intends to consider the regulatory impacts, consistent with Executive Order 12291, of all rules proposed in response to petitions to preserve or supersede State standards under section 327(b) of the Act.

C. Small Entity Impact Review

In light of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that the proposal, if promulgated will not have a "significant economic impact on a substantial number of small entities."

Although the Department has concluded that no formal regulatory flexibility analysis need be prepared, the spirit of the Regulatory Flexibility Act is fully evident in the extensive cost-benefit analyses, examination of alternatives, and other work undertaken in preparation of the proposed rulemaking. The impacts on small businesses which are appliance manufacturers were assessed very closely together with other relevant factors. Indeed, under section 325(d)(7), the Department specifically added the possible impact on small businesses to the factors considered in weighing the benefits and burdens of possible standards. For purposes of assessing these impacts, the term "small business" was defined in consultation with the Small Business Administration.

In addition, as mentioned above, the Department will consider, as appropriate, any significant economic impact on small entities in deciding petitions to preserve or supersede State standards under section 327(b) of the Act.

VI. Public Comment Procedures

a. *Participation in Rulemaking.* DOE encourages the maximum level of public participation possible in this rulemaking. Following publication of the advance notice of proposed rulemaking, DOE held a total of seven public meetings to acquaint the public with the issues relating to this particular rulemaking and invited public participation in the rulemaking process; following publication of the June 30, 1980, notice of proposed rulemaking, DOE held five public meetings and two public hearings. There were also opportunities for the public to submit written comments on the advance notice and the latter notice of proposed rulemaking.

The Department again encourages interested persons to participate in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers' associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal. The Department also encourages interested persons to participate in the public hearings to be held in Washington, D.C., and Chicago, Illinois, at the times and places indicated at the beginning of this notice.

Two technical support documents have been prepared in connection with this proposed rule and are often referenced above in the text of this preamble. They are the Engineering Analysis Document and the Economic Analysis Document. Copies of these documents may be found in the DOE Freedom of Information Reading Room. Interested persons may obtain copies of either or both of these documents by writing to the address specified at the beginning of this notice.

The DOE has established an initial comment period of 75 days following publication of this notice, for persons to comment upon this proposal. Upon completion of this 75-day comment period, all comments including the determinations made by the Attorney General pursuant to section 325(d)(5) of the Act and transcripts of all hearings will be available for review in the DOE Freedom of Information Reading Room. Comments on comments received will be accepted during the following 45-day period. The DOE believes that this additional 45-day period will enable interested parties an opportunity to review other submissions and present information relevant to them.

b. *Written Comment Procedures.* Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below. It is requested that, wherever reasonably possible, comments for each product type be addressed separately and that comments regarding the generic sections of the rule, such as petitions to exempt State regulations from supersession, be addressed separately from the product specific comments.

Comments should be labeled both on the envelope and on the documents, "Appliances (Docket No. CAS–RM–78–110)," and must be received by the date specified at the beginning of this notice, in order to insure full consideration. Fifteen copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed regulation. The initial comment period will extend over a period of 75 days. Comments on the comments submitted to DOE during the initial 75-day period will be accepted for an additional 45 days following the close of the initial comment period.

All written comments received on the proposed rule will be available for public inspection at the Freedom of Information Reading Room as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which is believed to be confidential and exempt by law from public disclosure, should submit one complete copy of the document, and 15 copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. *Public Hearings.*

1. *Procedure for Submitting Requests to Speak.* In order to have the benefit of a broad range of public viewpoints in this rulemaking, DOE will hold two public hearings. Listed at the beginning of this notice are the dates, addresses, and DOE contracts for these hearings. Any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, may make a written request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, "Appliances (Docket No. CAS–RM–78–110)," and should be sent to the address and must be received by the time specified at the beginning of this notice.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Each person requesting an opportunity to speak should give a concise summary of the proposed oral presentation. Each person selected to be heard will be so notified by DOE by the date specified at the beginning of this notice.

Each person selected to be heard is requested to submit 15 copies of the statement by the date given at the beginning of this notice. In the event any persons wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

Lists of the persons selected to be heard at the hearings will be available upon request from the Office of Hearings and Dockets at the address and after dates specified at the beginning of this notice. The lists will also be available for inspection in the DOE Freedom of Information Reading Room as specified at the beginning of this notice.

2. *Conduct of Hearing.* DOE reserves the right to select the persons to be heard at this hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statements will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit to the presiding official written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question, with respect to disputed issues of material fact, other interested persons who have made oral presentations, as well as Federal employees who have made written or oral presentations, relating to the proposed rule. This opportunity will be afforded after any rebuttal statements, to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of disputed issues of material fact. If the time provided is sufficient or inconvenient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including

why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of each hearing will be made, and the entire record of this rulemaking, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

In consideration of the foregoing, it is proposed to amend Part 430 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., March 29, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. Section 430.2 is revised to read as follows:

§ 430.2 Definitions.

"Act" means the Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619).

"Consumer product" means any article (other than an automobile, as defined in section 501(1) of the Motor Vehicle Information and Cost Savings Act) of a type:

(a) Which in operation consumes, or is designed to consume, energy; and

(b) Which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual.

"Covered product" means a consumer product of a type specified in section 322 of the Act.

"Energy efficiency standard" means a performance standard:

(a) Which prescribes a minimum level of energy efficiency for a covered product, determined in accordance with test procedures prescribed under section 323 of the Act, and

(b) Which includes any other requirements which the Secretary may prescribe under section 325(c) of the Act.

"Manufacturer" means any person who manufactures a consumer product.

"Person" includes any individual, corporation, company, association, firm, partnership, society, trust, joint venture or joint stock company, the government and any agency of the United States or any state or political subdivision thereof.

"Secretary" means the Secretary of Energy.

"State" means a state, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

"State regulation" means a law or regulation of a State or political subdivision thereof.

2. Subpart C of Part 430 is revised to read as follows:

Subpart C—Energy Efficiency Standards

430.31 Purpose and scope.
430.32 Final energy efficiency standards.
430.33 Preemption of state regulations.
430.34 Effective date.

Authority: Energy Policy and Conservation Act, Pub. L. 94–163, as amended by Pub. L. 95–619, Federal Energy Administration Act of 1974, Pub. L. 93–275, as amended by Pub. L. 94–385; Department of Energy Organization Act, Pub. L. 95–91; E.O. 12009, 42 FR 46267.

Subpart C—Energy Efficiency Standard.

§ 430.31 Purpose and scope.

This subpart contains any energy efficiency standards for classes of covered products that are required to be promulgated by the Department of Energy pursuant to the energy conservation program for consumer products other than automobiles under the Energy Policy and Conservation Act, as amended (42 U.S.C. 6291 *et seq.*).

§ 430.32 Final energy efficiency standards.

The final energy efficiency standards for each class of covered products are:

(a) Refrigerators and refrigerator-freezers: No standard for all classes.

(b) Freezers: No standard for all classes.

(c) Dishwashers: [Reserved].

(d) Clothes dryers: No standard for all classes.

(e) Water heaters:

(1) For the classes gas, electric, electric table top and oil: No standard;

(2) For the class heat pump water heater: [Reserved].

(f) Room air conditioners: No standard for all classes.

(g) Home heating equipment, not including furnaces: [Reserved].

(h) Television sets: [Reserved].

(i) Kitchen ranges and ovens: No standard for all classes.

(j) Clothes washers: [Reserved].

(k) Humidifiers and dehumidifiers: [Reserved].

(l) Central air conditioners:

(1) For the classes which include all split systems and single package units which do not operate with a heat pump: No standard.

(2) For the classes which operate with a heat pump: [Reserved].

(m) Furnaces: No standard for all classes.

§ 430.33 Preemption of state regulations.

Any state regulation providing for any energy efficiency standard, or other requirement with respect to the energy efficiency or energy use, of a covered product that is not identical to a federal standard (including a determination of no standard) in effect under this subpart is preempted by that standard.

§ 430.34 Effective date.

The effective date of a final energy efficiency standard (including a determination of no standard) in § 430.32 shall be the later of:

(a) 180 days after publication of that standard in the **Federal Register**; or

(b) With respect to a covered product in a particular state for which that state has filed a petition under section 327(b)(3) of the Act prior to the effective date of a standard under § 430.32, the date upon which the Secretary issues or denies a final rule concerning that petition.

3. Subpart D of Part 430 is revised to read as follows:

Subpart D—General Procedural Regulations

Sec.
430.41 Petition for prescription of a rule.
430.42 Filing requirements.
430.43 Notice of petition.
430.44 Contents.
430.45 Consolidation of proceedings.
430.46 Hearings and comments of interested persons.
430.47 Evaluation of petition.
430.48 Disposition of petition.
430.49 Judicial review.

Authority: Energy Policy and Conservation Act, Pub. L. 94–163 as amended by Pub. L. 95–619, Federal Energy Administration Act of 1974, Pub. L. 93–275, as amended by Pub. L. 94–385; Department of Energy Organization Act, Pub. L. 95–91; E.O. 12009, 42 FR 46267.

Subpart D—General Procedural Regulation

§ 430.41 Petition for prescription of a rule.

(a) Pursuant to section 327(b)(1) of the Act, any person subject to a state regulation may petition the Secretary for a rule to supersede in whole or in part that state regulation prescribing an energy efficiency standard or other requirement respecting energy use or

energy efficiency of a type (or class) of covered products.

(b) Pursuant to secton 327(b)(3) of the Act, any state may petition the Secretary for a rule that a state regulation prescribing an energy efficiency standard or other requirement respecting energy use or energy efficiency for a type (or class) of covered products not be superseded.

§ 430.42 Filing requirements.

(a) A petition for a rule under this section shall be submitted in triplicate to: U.S. Department of Energy, "Section 327 Petition—Energy Efficiency Program for Consumer Products", 1000 Independence Avenue SW., Washington, D.C. 20585.

(b)(1) A petition for a rule to supersede a state or local regulation and all related submissions shall be served upon each state agency, department, or instrumentality whose regulation the petitioner seeks to supersede.

(2) A petition for a rule not to supersede a state or local regulation and all related submissions shall be served on each manufacturer of a covered product who, to the best of the petitioner's knowledge, would be affected by the state regulation which the petitioner seeks to sustain.

(3) All materials required to be served under this Part shall be served personally or by registered or certified mail. Service upon a person's duly authorized representative shall constitute service upon that person. Service by registered or certified mail is complete upon mailing.

(c) If the DOE determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the DOE may deny the petition without prejudice. The Secretary shall publish notice of such a denial in the **Federal Register** and the reason for such a denial.

(d) If a petitioner or other party to a petition wishes to claim confidential treatment pursuant to 5 U.S.C. 552 or 18 U.S.C. 1905, for any information contained in the petition or other document submitted prior to the issuance of a final decision, that person shall submit together with the original document, a copy of the document in triplicate, from which has been deleted the information for which such person wishes to claim confidential treatment. The person shall indicate in the original document that it is confidential or contains confidential information and shall file a statement specifying the justification for non-disclosure of the information for which confidential treatment is claimed. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, such person shall include a statement specifying why such information is privileged or confidential. If the person filing a document does not submit a second copy of the document with the confidential information deleted, the DOE may assume that there is no objection to public disclosure of the document in its entirety. The DOE retains the right to make its own determination with regard to any claim of confidentiality. Notice of the decision by the DOE to deny such claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than five days prior to its public disclosure.

§ 430.43 Notice of petition.

Promptly after receipt of a petition, notice of such petition shall be published in the **Federal Register**. The notice shall set forth the availability for public review of all data and information available, and shall solicit comments, data and information with respect to the petition. Each notice shall contain a summary of the state or local regulation at issue and either (1) the petitioner's reasons for a rule to supersede the state or local regulation, or (2) the petitioner's reasons for a rule not to supersede the regulation. Except as may otherwise be specified, the period for public comment shall be 60 days after the notice appears in the **Federal Register**.

§ 430.44 Contents.

(a) A petition to supersede a state regulation under section 327(b)(1) of the Act shall include:

(1) The name, addresses and telephone number of the petitioner;

(2) A statement of the interest of the petitioner for which a superseding rule is sought;

(3) A copy of the law or regulation for which supersession is sought;

(4) Specification of each type or class of product for which a superseding rule is sought;

(5) Information which would show why such regulation unduly burdens interstate commerce;

(6) Information which would show that there is no significant state or local interest sufficient to justify the state regulation in issue;

(7) Any other information that the petitioner considers relevant or that the Secretary may require.

(b) A petition from a state for a rule for exemption from supersession of a state regulation under section 327(b)(3) of the Act shall include:

(1) The name, address and telephone number of the petitioner;

(2) A statement of the petitioner's authority to represent the governmental entity in this proceeding;

(3) A copy of the law or regulation which the state or local entity requests not be superseded;

(4) Specification of each type or class of product covered by the regulation;

(5) A description of the significant state or local interest justifying such state regulation;

(6) Any other information that the petitioner considers relevant or that the Secretary may require.

(c) All petitions and comments by interested persons shall be made available for public review.

§ 430.45 Consolidation of proceedings.

DOE may consolidate any or all matters at issue in two or more proceedings docketed where there exist common questions of fact and law, and where such consolidation would expedite or simplify consideration of the issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

§ 430.46 Hearings and comments of interested persons.

(a) The Secretary shall hold a public hearing to afford interested persons a reasonable opportunity to present oral data, views, and arguments with respect to the proposed rule, and publish notice in the **Federal Register** of the date and location of the hearing.

(b) The Secretary shall accept written comments from interested persons with respect to the proposed rule.

§ 430.47 Evaluation of petition.

(a) In evaluating a petition submitted pursuant to section 327(b)(1) of the Act, the Secretary shall issue a requested rule only if the Secretary determines:

(1) There is no significant state or local interest sufficient to justify such regulation; or

(2) Such state or local regulation unduly burdens interstate commerce.

(b) In evaluating a petition submitted pursuant to section 327(b)(3) of the Act, the Secretary shall issue the requested rule only if the Secretary determines:

(1) There is a significant state or local interest to justify such regulation; and

(2) Such state or local regulation contains a more stringent energy efficiency standard that such federal standard; except that the Secretary may not prescribe such rule if he finds that

such state or local regulation would unduly burden interstate commerce.

§ 430.48 Disposition of petition.

(a) The Secretary shall prescribe a final rule or deny the petition within 6 months after the date the petition is filed, except that the Secretary may publish a notice in the **Federal Register** extending such period to a date certain. Such notice shall include the reasons for the delay.

(b) The final rule issued by the Secretary or a determination to deny the petition by the Secretary shall include a written statement setting forth the factual and legal basis for the decision. A copy of the Secretary's decision shall be sent to either (1) the petitioner and the affected state or local agency if the petition is for a rule to supersede a state regulation, or (2) the petitioner and all persons subject to the state regulation who have submitted comments if the petition is for a rule not to supersede a state regulation. The Secretary shall publish in the **Federal Register** a notice of the final rule or a notice of the denial of the petition and the factual and legal basis for the decision.

§ 430.49 Judicial review.

The decision issued by the Secretary concerning a petition filed under this subpart shall be a final determination of the DOE of which any adversely affected person may seek judicial review.

[FR Doc. 82-6844 Filed 4-1-82; 8:45 am]

BILLING CODE 6450-01-M

federal register

Friday
April 2, 1982

Part VI

Department of Health and Human Services

Food and Drug Administration

Policy for Regulating Carcinogenic Chemicals in Food and Color Additives; Advance Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 81N-0281]

Policy for Regulating Carcinogenic Chemicals in Food and Color Additives; Advance Notice of Proposed Rulemaking

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is considering proposing a new policy for use in assuring the safe use of food additives and color additives that contain minor amounts of carcinogenic chemicals. This policy would replace the current case-by-case approach to regulating such additives with an approach that applies consistent standards. This advance notice describes the scientific and regulatory problems confronting the agency with respect to such additives and explains the need to consider a change in FDA's present approach. This advance notice also discusses the alternatives that the agency is considering.

FDA is publishing this advance notice so that the agency will have the benefit of a broad range of views early in the rulemaking process, and so that interested persons will have an opportunity to express their opinions. Detailed regulations for implementing any policy that the agency may adopt will be proposed in a future issue of the **Federal Register** after consideration of comments received in response to this advance notice.

Elsewhere in this issue of the **Federal Register**, the agency is publishing a final rule listing D&C Green No. 6 for use in externally applied drugs and cosmetics. That rule further explains and illustrates how FDA has applied the approach set forth in this advance notice of proposed rulemaking. This document also discusses alternative theories for implementing the approach that the agency applied in the decision on D&C Green No. 6.

DATE: Comments by July 1, 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: For information relating to the policy under consideration and regulations to be proposed: Terry C. Troxell, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

For information relating to risk assessment procedures: Alan M. Rulis, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION:

I. Background

Like all chemicals, no food additive or color additive can be produced absolutely pure. Each additive, even a highly purified one, consists of an array of chemical entities, both functional and nonfunctional. For example, a color additive may contain one primary and a number of secondary colors, all of which are somewhat functional in the final additive. A polymer resin used in food packaging may contain a continuum of chemicals from monomer and dimer to high molecular weight polymers, only some of which are functional. Finally, all chemical substances, including those used as additives, contain numerous impurities such as residual reactants, intermediates, manufacturing aids, and products of side reactions and degradation.

In the early 1950's Congress became concerned about the safety of the chemicals being used in increasing amounts in foods. Under the adulteration provisions of the law, in order to prevent the use of such chemicals in food, FDA was required to prove in court that a food bore or contained a poisonous or deleterious substance which may render it injurious to health (21 U.S.C. 342(a)(1)). This process was cumbersome and time-consuming. More important, it did not adequately protect the consumer, because FDA had the burden of proving that the substance used in food had some potential for causing injury. Manufacturers also disliked the system because it prohibited the use of any amount of a chemical substance if that chemical had the potential for causing injury.

Accordingly, in response to these mounting concerns from consumers and manufacturers alike, Congress passed the Food Additives Amendment to the Federal Food, Drug, and Cosmetic Act (the act) in 1958. (21 U.S.C. 321(s) and 348.) That amendment set up a premarketing safety clearance system requiring that a food additive be shown to be safe for its intended use by the sponsor and be approved by FDA before it is used in food. The legislation also established safety standards to apply to the evaluation of the additive.

The Food Additives Amendment defines a food additive as:

> * * * any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use) * * *

21 U.S.C. 321(s).

Thus, the amendment covers both direct additives (substances intended for direct use in foods) and indirect additives (substances that through use in food packaging or for other food-contact purposes might become or might reasonably be expected to become components of food).

The legislative history makes it clear that Congress intended the amendment to protect consumers from unsafe food additives while at the same time permitting manufacturers to use food additives at safe levels (H.R. Report No. 2284, 85th Cong., 2d Sess. (1958)). This intent is reflected in the standard for approval called the "general safety clause," that Congress inserted into the law:

> No such regulation shall issue if a fair evaluation of the data before the Secretary–
>
> (A) fails to establish that the proposed use of the food additive, under the conditions of use to be specified in the regulation, will be safe * * *

U.S.C. 348(c)(3)(A).

The safety of a food additive must be demonstrated by properly conducted and evaluated scientific tests, but the additive need not be shown to be absolutely safe. Congress recognized the impossibility of proving the safety of an additive beyond any doubt and under any conditions of use. Reflecting the viewpoint of the various scientists who testified in support of a reasonable standard for the safety of an additive, the House of Representatives Report on the amendment states:

> The concept of safety used in this legislation involves the question of whether a substance is hazardous to the health of man or animal. Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance * * *

H.R. Report No. 2284, 85th Cong., 2d Sess. 1, 1958.

FDA regulations governing the safety assessment of food additives have incorporated that language. Under 21 CFR 170.3(i), safety of a food additive 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.

Because of particular concerns about cancer, Congress added the anticancer clause, or Delaney Clause, to the Food Additives Amendment. This Clause establishes a flat rule "[t]hat no additive shall be deemed be safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal * * *" (21 U.S.C. 348(c)(3)).

Although the Department of Health, Education, and Welfare (HEW) (now the Department of Health and Human Services) did not object to the inclusion of the Delaney Clause in the act, the Assistant Secretary for Health made it clear that, in the view of HEW and FDA, "the (food additives amendment) reads and means the same with or without the inclusion of the (Delaney) clause * * *." H.R. Rept. No. 2422, 85th Cong., 2d Sess., pp. 10–11. The Department held this view because of the prevalent scientific conviction in 1958 that the state of the art would not permit scientists to establish a tolerance for a carcinogen. Thus, it was impossible to determine reliably a level of exposure to a carcinogen below which one can be assured that three is no significant increase in the risk of developing cancer. In other words, scientists lacked the technology to assess adequately the risk presented by a particular chemical. (See Food Additives: Bills to Amend the Federal Food, Drug, and Cosmetic Act with Respect to Chemical Additives in Food: Hearings Before the Subcomm. of the House Comm. on Interstate and Foreign Commerce, 85th Cong., 1st Sess., 369, 1957 (statement of W.C. Heuper, M.D.).)

The Color Additive Amendments of 1960 (21 U.S.C. 321(t) and 376) establish standards for the safety of a color additive that are virtually identical to those set forth in the food additive provisions except that they contain a slightly different version of the Delaney Clause for noningested color additives (21 U.S.C. 376(b)(5)(B)). In addition, the Color Additive Amendments provide for the premarket approval of color additives in drugs, devices, and cosmetics as well as food through a mechanism called listing. For a discussion of the Color Additive Amendments, see the final rule published elsewhere in this issue of the Federal Register listing D&C Green No. 6 for use in externally applied drugs and cosmetics.

II. Regulatory History

During the two decades that FDA has administered the food and color additive provisions, the agency has, with a few exceptions, interperted the food and Color Additive Amendments to ban the use of any additive that was found to contain or was suspected of containing minor amounts of carcinogenic chemicals, even if the additive as a whole had not been found to cause cancer (noncarcinogenic additives).

For example, FDA terminated the provisional listings of carbon black (41 FR 41857; September 23, 1976) and graphite (42 FR 60734; November 29, 1977) because the agency suspected that these colors could contain polynuclear aromatic hydrocarbons (PNA's), some of which are carcinogenic. The agency removed Ext. D&C Yellow No. 1 from the provisional list (42 FR 62478; December 13, 1977) because of the possibility that it might contain as impurities 4-aminobiphenyl and benzidine, both of which have been shown to be carcinogenic in humans. FDA terminated the provisional listing of D&C Red Nos. 10, 11, 12, and 13 because the agency suspected that they might contain low levels of -naphthylamine, a known human carcinogen (42 FR 62475; December 13, 1977).

The agency has also proposed to restrict the uses of polyvinyl chloride (PVC) materials in contact with food (40 FR 40529; September 3, 1975) because of a finding that vinyl chloride monomer, a known human carcinogen, could migrate in small amounts into food from PVC bottles.

The agency has approved the use of food and color additives that contain or may contain minor amounts of lead and arsenic, proven carcinogens. Those chemicals are ubiquitous environmental contaminants, routinely found in food and water as well as in chemicals used to manufacture food and color addities. Their pervasiveness is such that no food or color additive can realistically be manufactured without the possibility of some lead or arsenic contamination. Thus, because the alternative would be to prohibit the use of all additives, the agency has minimized the amount of the chemicals and thus the risk attendant to the use of such additives by setting specifications for lead and arsenic in many food and color additive regulations. FDA does not regard these exceptional situations as constituting a true departure from its traditional regulatory approach described in the examples listed above. In sum, the agency has generally concluded that a safe level could not be established for a carcinogenic chemical in a food or color additive and has consistently taken regulatory action against additives that contain carcinogenic chemicals.

In an early administrative interpretation shortly after the enactment of the Color Additive Amendments, the agency construed the Delaney Clause as being triggered only if tests of the color additive as a whole revealed that the color caused cancer. (Discussion of Sec. 8.36, Digest of Objections to January 24, 1961, proposed color additive regulations.) See the final rule published elsewhere in this issue of the Federal Register listing D&C Green No. 6 for use in externally applied drugs and cosmetics. It is not clear, however, to what extent, if any, this interpretation was applied in subsequent agency decisions on specific color additives.

III. Context in which Regulatory Alternatives are Presented

Recent scientific and legal developments have convinced FDA that it may now be necessary and appropriate for the agency to reconsider how it determines whether there has been an adequate demonstration of the safety of a food additive or color additive that contains a carcinogenic constituent but that is not itself carcinogenic.

Over the past 20 years, there have been rapid developments in analytical capabilities that make it possible to decrease by orders of magnitude the levels at which the components of a substance such as a food additive or color additive are detectable and identifiable. Many chemicals now can be identified and quantified at levels around one part per billion.

Coupled with this development has been a large increase in the number of substances that have been studied for carcinogenicity in animal bioassays. For example, Tomatis has reported that 828 chemical substances were under test for cancer throughout the world in 1975 (Ref. 1). Many of these bioassays have resulted in positive findings for carcinogenesis.[1] The Occupational Safety and Health Administration has reported (Ref. 2) that about 17 percent of 7,000 test chemicals on a Public Health Service list are tumorigenic. Griesmer and Cueto have reported that 52 percent of the chemicals that have been studied in the National Cancer Institute (NCI)

[1] The percentage of positive bioassay results in the reports cited is high partly because the chemicals selected for evalution are often those that are suspected of being carcinogenic. Scientists select these chemicals on the basis of available information, such as molecular structure-activity relationships, genotoxicity studies, and epidemiological evidence.

bioassay program are carcinogenic (Ref. 3). A National Toxicology Program report indicated that 41 percent of 95 tests completed showed that the tested substances are carcinogenic (Ref. 4).

As the number of chemicals that are found to cause cancer in animals has grown, and as scientists' ability to detect the components of a substance has become more acute, the chances that a food additive or color additive will be found to contain a carcinogenic chemical entity increase. It is the agency's frank expectation that a growing number of additives will be found to contain a carcinogenic chemical in future years. If FDA continues to implement the regulatory approach that it has followed in recent years, it will be forced to refuse to approve or to terminate the approval of the use of each of these additives, even though they themselves may be safe.

However, the agency believes that there are alternatives to its current policy that will adequately protect the public health. Not all of the additives that have been or will be found to contain carcinogenic chemicals will themselves be shown to induce cancer in appropriate tests (e.g., D&C Green No. 6). The agency believes that a distinction can be drawn between additives that contain a carcinogenic chemical but that have not themselves been shown to be carcinogenic. Two recent developments support the agency's belief that such a distinction is appropriate.

One development was the 1979 decision by the United States Court of Appeals for the District of Columbia in *Monsanto* v. *Kennedy*, 613 F. 2d 947 (D.C. Cir. 1979). In discussing whether a substance that migrates into food is a food additive, that court expressed the view that there is "administrative discretion, inherent in the statutory scheme, to deal appropriately with *de minimis* situations." *Id.* at 955. If FDA has discretion to disregard low-level migration into food of substances in indirect additives because the migration of the particular additive presents no public health concern, then the agency may also disregard, after appropriate tests, a carcinogenic chemical in a noncarcinogenic food additive or color additive, if FDA determines that there is a reasonable certainty of no harm from the chemical.

Second, the agency is now confident that it possesses the capacity, through the use of extrapolation procedures, to assess adequately the upper level of risk presented by the use of a noncarcinogenic additive that contains a carcinogenic chemical. FDA has been reluctant to use these procedures for regulatory decisionmaking. Many theoretical models have been developed to extrapolate from animal experimental data to the relatively low levels of possible human exposure, but they can vary widely in the risk values that they predict. Thus, knowledge of the true risk at relatively low exposures is elusive.

Nevertheless, even though there is an inadequate scientific basis for confidence in the accuracy of predictions of actual risk by these procedures, there has been a growing recognition in the scientific community that by using certain conservative extrapolation models it is possible to estimate an upper limit of risk. (See e.g., "Chemical Compounds in Food-Producing Animals" (44 FR 17070; March 20, 1979) and FDA's decision on lead acetate (45 FR 72112; Ocober 31, 1980 and 46 FR 15500; March 6, 1981).) The estimate of the risk may be exaggerated by these conservative extrapolation models. Because the estimated risk will not be understated, however, such risk assessment techniques can be used with confidence to determine whether, under the general safety clause, there is a reasonable certainty that no harm will result from the intended use of an additive.

IV. Regulatory Approach

A. Introduction

In the decision on D&C Green No. 6 published elsewhere in this issue of the **Federal Register**, FDA is approving a color additive that has not been shown to be a carcinogen in appropriate tests, even though it contains a carcinogenic impurity. In this advance notice of proposed rulemaking, FDA is announcing its intent to formally adopt the principles on which that decision is based as the general policy of the agency. Therefore, FDA is soliciting comments on whether it should do so, or whether it should adopt some other approach to the problem. To facilitate such comments, the remainder of this document will describe the general policy that FDA is considering.

The policy consist of three elements:

1. Clarifying exactly what an "additive" is;

2. Interpreting the Delaney Clause to apply only when the additive itself has been shown to cause cancer; and

3. Using risk assessment as one of the tools for determining whether the additive is safe under the general safety clause.

FDA believes that the act and its legislative history, as well as subsequent judicial and administrative interpretations, support such a general policy.

B. Construction of the Term "Additive"

Conceivably, each chemical in the complex mixture that constitutes a food additive could itself be considered to be a food additive. Each of these chemicals in some sense becomes a component of the Food of which the additive is a part.

For example, in the case of an indirect food additive used in food packaging or the like, any chemical impurity that migrates from the indirect additive into food could be considered to be an additive. In the *Monsanto* case, the agency argued that the food additive definition applied to the residual acrylonitrile monomer used to fabricate the final bottle, as well as to the bottle itself, because the monomer was intended for use and was used to manufacture the copolymer bottle. (Government's Brief, pp. 63, 67.) However, the *Monsanto* court held that the statute does not compel the Commissioner of Food and Drugs to declare that each chemical in an additive is itself an additive. *Monsanto*, id. at 954, 955.

FDA has reexamined the issue of when a chemical should be considered to be a food or color additive, and has developed three alternative but not mutually exclusive interpretations to address the problem. Each of these interpretations is presented here. FDA has worked out the first of these, the constituents approach, more extensively than the others, but the agency wishes to emphasize that, at this time, it does not view any legal theory as being preeminent. Indeed, FDA may conclude that one, all, or some other combination of approaches may be appropriate. The overall risk assessment policy outlined in this notice, however, would be the same under each interpretaton.

1. *The constituents approach.* This approach distinguishes between the additive as a whole and its constituents for the purpose of determining when the Delaney Clause is triggered. Using this approach, the food additive would be the substance that is actually intended for use in food or for food contact. All nonfunctonal chemicals present in that substance would be called the "constituents" of the additive. Similarly, the term "color additive" would mean only those substances intended for use as a dye, pigment, or other substance that is capable of imparting color. (See 21 U.S.C. 321(t).) Any other chemical present in a color additive but not intended for use as described above would be a constituent of the color additive. The constituents would include residual reactants, intermediates, and manufacturing aids, as well as products

of side reactions and chemical degradation. A constituent, although part of the additive as a whole, would not itself be considered to be an additive for regulatory purposes because it is not intended for use in food or for food contact, or for imparting color in food, drugs, devices, or cosmetics. In fact, no one wants such a constituent to be present in the final additive. In an ideal world all chemical reactions invariably would run to completion, and troublesome side reactions or chemical degradation or decomposition could be avoided. Unfortunately, chemical synthesis does not operate that way, and these constituents, although they can probably be reduced, simply cannot be eliminated under current scientific techniques.

In the case of a direct food additive, the identity of the additive is unambiguous: it is the substance including all its constituents that the food processor deliberately puts into the food. Similarly for color additives the additive is the dye, pigment, or other substance including all its constituents that the manufacturer deliberately incorporates into the food, drug, device, or cosmetic for the purpose of imparting the intended color.

Some examples may clarify how various substances in direct food additives or color additives would be classified under the constituents approach. A substance intended for use in the processing of any food would be considered a food additive even though that substance may essentially be removed from the food in subsequent processing steps. Thus, extraction solvents employed in food processing would continue to be food additives because they are intended for use in a food. Such products are distinguishable from the residual reaction products such as *p*-toluidine present in D&C Green No. 6, because *p*-toluidine is not intended for use in the final color additive but only in the manufacture of the additive.

In the case of an indirect food additive, the constituents approach would regulate as indirect food additives only those substances actually intended for use in food contact. All other chemicals present in the indirect food additive would be treated as constituents.

Food packaging materials are examples of indirect additives that are complex and that often contain a number of substances, each of which is intended to have a specific physical or technical effect. For example, one type of plastic food wrap contains slip agents and antioxidants that are blended with polyolefin resin and incorporated into the final polyolefin film. All three of these substances would be considered to be additives, because they are all intended for use in the final food-contact preparation. Conversely, a chemical used in the manufacture of the polyolefin resin and remaining in the additive as an impurity resulting from an incomplete chemical reaction would be treated as a constituent.

The constituents approach takes into account the state of the art of scientific detection techniques. Although it generally is possible to detect or predict migration to food of at least one constituent from an additive used in a food-contact surface and although the number of migrating constituents which are detectable continually increases with advances in analytical methods, it is not currently possible to identify completely all the constituents that become components of food as a result of the use of an indirect additive. The detection, or prediction by sound scientific methods, of migration of one or more constituents of an intended substance is an indication that all of its ingredients may become components of food to some extent, however slight.

The constituents approach also recognizes that the only practical way for the agency to ensure that constituents of the indirect additive, which become components of food, do not exceed safe limits, is to issue a regulation that prescribes safe conditions of use for the indirect food additive as a whole, not merely for the migrating portions.

Two additives intentionally blended together for use in food, for food contact, or for imparting color, would remain additives; the physical mixing would not change one of the component additives into a constituent.

The focus under the constituents approach, as in *Monsanto,* is on the safety of the additive as a whole. FDA believes that, although it differs in construct from the *de minimis* migration approach discussed below, the constituents approach is supported by the reasoning in *Monsanto.*

2. *De minimis migration approach.* A second approach, somewhat different from the constituents approach, is based directly on the *Monsanto* decision. The court, recognizing the difficulties posed by a strict literal interpretation of the statute, declared that "there is latitude inherent in the statutory scheme [of the Federal Food, Drug, and Cosmetic Act] to avoid literal application of the statutory definition of 'food additive' in those *de minimis* situations that, in the informed judgment of the Commissioner, clearly present no public health or safety concern." *Id.* at 954.

The *Monsanto* decision permits the Commissioner to exempt from treatment as indirect food additives chemicals that migrate at low levels into food, if the migration of that particular chemical at the level in question poses no threat to the public health. Under this decision, it appears that the Commissioner may also take the position that the Delany Clause is not triggered by the presence of a carcinogenic chemical that occurs in a noncarcinogenic direct food additive or color additive, if the agency can conclude that there is a reasonable certainty of no harm from the presence of the chemical. Under this narrow reading of *Monsanto,* called here for convenience the *de minimis* migration approach, FDA would set a fixed upper limit on the absolute amount of a carcinogenic chemical that could be present.The existence of "reasonable certaintly of no harm" from the presence of that chemical is predicated on the fact that only a minute amount of it is present. That is, the risk from the *de minimis* migration of carcinogenic chemicals into food from an indirect additive (or the *de minimis* presence of such chemicals in a direct additive) is trivial because the amount of the chemical is so low, and the resulting potential human exposure to it is thus trivial.

A policy based on the *de minimis* migration approach as set forth here would be narrower than one based on the constituents approach. It would not permit the agency to approve the marketing of additives containing carcinogenic chemicals that are present in food in more than trivial amounts, even though the risk from the use of the additive falls below an acceptable upper limit as determined by an appropriate risk assessment evaluation. If the fixed upper limit of exposure to a compound (based on its concentration in a particular additive and its prevalence in other additives) is set relatively low, as *Monsanto* suggests it should be, then this policy would permit the continued use of very few additives with carcinogenic constituents and would result in few regulatory decisions that would differ from those that could be reached under the present policy.

3. *Sensitivity of the method (SOM) approach.* FDA believes that an approach analogous to that proposed for use in regulating the residues of carcinogenic drugs administered to food-producing animals may also justify a policy for regulating carcinogenic chemicals present in minor amounts in food additives and color additives that are not themselves carcinogenic.

A proviso in the Delaney Clause for chemical compounds administered to food-producing animals (21 U.S.C. 348(c)(3)(A), 360b(d)(1)(H), 376(b)(5)(B)) allows the use in such animals of a chemical that is a carcinogen, provided that no residue of the chemical is found in edible portions by methods prescribed or approved by FDA. If a compound for use in food-producing animals is a carcinogen, the agency has proposed procedures referred to as the SOM (see 44 FR 17070; March 20, 1979) governing the collection of data showing whether the proviso has been complied with; i.e., capable of showing what residues may safely be allowed to go undetected.

Applied to food additives and color additives, a policy based on the SOM approach would permit the Commissioner to decline to classify as an additive a carcinogenic chemical thought to be present in the additive, but undetectable by a specified method, as long as the risk of cancer posed by that concentration of the carcinogen fell below a certain "acceptable" or "insignificant" level. That is, the detection of a carcinogenic chemical becomes the ultimate inquiry. If the chemical cannot be detected and if its hypothetical presence below the detection level does not exceed an acceptable risk of cancer, the chemical need not be regulated as an additive.

The SOM approach is the narrowest of the three approaches described and would result in the least change from current policy.

C. Interpretation of the Delaney Clause

The Delaney Clause requires the disapproval of any food additive that has been shown to be a carcinogen in appropriate testing. It states:

> That no additive shall be deemed to be safe if it [the additive] is found to induce cancer when ingested by man or animal, or if it [the additive] is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal * * *
>
> 21 U.S.C. 348(c)(3)(A).

However, it does not state that an additive shall not be deemed safe if the additive "or any of the chemicals present in the additive" is found to induce cancer. Addition of the quoted language to 21 U.S.C. 348(c)(3)(A) would change the meaning of this provision. A natural reading of the language that does appear in the statute establishes that the Delaney Clause does not apply to a carcinogenic chemical in a food additive absent a finding, after appropriate tests, that the additive as a whole induces cancer. Similar reasoning would apply to the Delaney Clause in the color additive provisions of the act. (21 U.S.C. 376.)

The legislative histories of the Food Additives Amendment and Color Additive Amendments are silent on this question. However, the agency's contemporaneous interpretation of the Color Additive Amendments supports the interpretation of the Delaney Clause set forth above, as explained in the preamble to the D&C Green No. 6 regulation.

D. Proof of Safety Under the General Safety Clause

As discussed in Section III above, FDA believes that risk assessment may be appropriately used to determine whether, under the general safety clause, there is a reasonable certainty that no harm will result from the proposed use of the additive. The risk assessment techniques under consideration are similar to those used by the agency and discussed in its evaluation of the safety of D&C Green No. 6 published elsewhere in this issue of the **Federal Register.** Interested persons are referred to that discussion for an example of how a safety determination using risk assessment would proceed.

Because carcinogens vary widely in potency, and because human exposure to carcinogens usually occurs at levels several orders of magnitude below that at which compound-related human tumor incidence can be detected by scientific studies, it has been necessary for scientists to develop quantitative extrapolation procedures to estimate the levels of risk to humans of exposure to carcinogens at very low levels. Several quantitative risk assessment models such as the one-hit model (Ref. 5), the Crump modified multistage model (Ref. 6), and the linear proportional model (Ref. 7) are available to extrapolate animal bioassay data to human exposure. Any one of these models can be used to estimate the upper limits of potential risk created by exposure to the chemical. The agency has not determined which extrapolation model is the most appropriate one to use, and requests comments on this issue.

After relevant animal data have been generated and analyzed, an appropriate risk assessment procedure would then calculate an acceptable maximum exposure level to the chemical based on a suitable risk standard. This level would be calculated by extrapolating from an upper confidence limit of bioassay data, using procedures that would include an evaluation of pharmacodynamic data, including any human studies available, epidemiological evidence, and studies of the mechanism of action of the carcinogen. FDA is requesting comments on what risk standard would be appropriate for use in implementing the policy.

Once FDA has determined a maximum acceptable level of exposure to a carcinogenic chemical, the agency would then consider whether the amount of actual exposure to the chemical from food additives and color additives is within the acceptable level. If necessary, the agency would develop specifications for such chemicals in individual additive regulations, taking into account total estimated exposures.

Under the general safety clause, an additive must meet the agency's toxicological requirements for food additives and color additives. The risk assessment procedures discussed in this advance notice would not modify currently applied requirements under the general safety clause other than to provide a procedure for determining whether a noncarcinogenic additive that contains minor amounts of a proven carcinogenic chemical is safe. The risk assessment procedure would provide a method for estimating the levels of such chemicals that meet the general safety clause standard of safety. The upper limit of acceptable exposure would be determined by carcinogen potency and risk extrapolation by the best current scientific methods available. FDA believes that any risk assessment procedure should yield such low acceptable levels that nothing but minor levels of carcinogenic chemicals would be able to pass the screen.

Risk assessment of carcinogens is currently not completely rigorous from a biological viewpoint, but it does provide, at minimum, a scientifically based means to evaluate the health concerns of a series of chemicals. Its weakness stems from the substantial assumptions which are employed. However many of these same assumptions are endemic to toxicology evaluations in general. In order to calculate a given risk level, a dose-response relationship is extrapolated to doses several orders of magnitude lower than the tested dose. Furthermore, the risk assessment assumes that humans will be no more sensitive to the carcinogen than were the most sensitive animals tested (Ref. 8).

If the policy is implemented, it is FDA's current view that the risk assessment procedure should be conservative to compensate for the weakness in scientific rigor, should use a model that is likely to overestimate the

risk, and should contain a low risk standard.

FDA believes that this general policy is a sensible, scientific means of limiting the circumstances in which it will be necessary for the government to act to ban the use of a food additive or color additive, without compromising the public health protection afforded by the act. This policy, if finally adopted, is intended to be implemented solely in those instances (e.g., in the case of D&C Green No. 6) where data demonstrate that there is a reasonable certainty that no harm will result from the use of an additive that contains a carcinogenic chemical.

E. Alternative Policies

As this advance notice explains, FDA is considering formalizing an approach that will assure the safe use of food additives and color additives that contain minor amounts of carcinogenic chemicals, and requests comments on that approach. In considering how best to develop a policy on this issue, the agency has followed the line of reasoning set forth in this notice. The agency recognizes, however, that a number of different approaches might also deal with the problem, and requests that interested persons submit any alternative policies to FDA as comments.

FDA is also aware that the three approaches (constituents, *de minimis* migration, and sensitivity of the method (SOM)) discussed above support regulatory decisions of varying breadth. In general, if used alone the constituents approach would be the broadest, and the SOM approach would be the narrowest. The agency requests comments on which of the three approaches or combination of approaches would be the most workable from a legal, scientific, and procedural perspective. Further, FDA is interested in receiving comments on any other approaches—either based on, or different from, the three that are discussed in this advance notice.

Finally, FDA would like to receive comments on whether an across-the-board rule incorporating the suggested approaches should be issued or whether, instead, the agency should continue handling carcinogenic chemicals in food and color additives on a case-by-case basis.

An agency is free to choose between evolving an approach to a regulatory problem through a series of individual decisions, on the one hand, and issuing a general regulation to be applied in specific cases, on the other. Both methods have advantages and disadvantages, and the choice of which to use is generally within the discretion of the agency. See *Securities and Exchange Comm.* v. *Chenery Corp.*, 332 U.S. 194 (1947); *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 294 (1974); *Chisholm* v. *FCC*, 538 F.2d 349, 364–366, *cert. denied*, 429 U.S. 890 (1976). In this advance notice, FDA requests comments on how its discretion should be exercised in developing an approach to the handling of carcinogenic chemicals in food and color additives. The agency has a number of such issues before it in addition to D&C Green No. 6, on which there is a pressing need to take action. The agency does not view the existence of an ongoing rulemaking proceeding as posing any bar to specific regulatory actions. The agency emphasizes that it will continue to make regulatory decisions on the food and color additives that come before it in the ordinary course of business. In making such decisions, the agency may use one or more of the approaches discussed herein, as appropriate.

V. Economic and Environmental Impact

The risk assessment policy under consideration may have economic consequences for individual industries. In some cases, the policy should produce positive economic benefits that would result from preventing a ban of an additive containing a carcinogenic constituent. The agency is not aware of any significant negative economic effects of this policy. If proposed regulations are to be issued after FDA considers the comments received on this advance notice, then FDA will be required by Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354) to access the economic consequences. However, the agency does not now possess the data that would permit a detailed assessment of the economic impact. Therefore, the agency requests that interested persons submit information that will aid the agency in making an economic impact assessment.

FDA also is required to consider the potential environmental effects of the actions to be proposed. The agency believes that issuance of any regulations as a result of this advance notice would not significantly affect the quality of the human environment. FDA requests comments on the potential environmental consequences of implementing the policy discussed in this notice.

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The following information has been placed on display in the Dockets Management Branch, Food and Drug Administration, and may be seen from 9 a.m. to 4 p.m., Monday through Friday.

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2. Occupational Safety and Health Administration, Final rule to add 29 CFR Part 1990, "Identification, Classification, and Regulation of Potential Occupational Carcinogens," **Federal Register**, January 22, 1980 (45 FR 5001).

3. Griesemer, R. A. and C. Cueto, Jr., "Toward a Classification Scheme for Degrees of Experimental Evidence for the Carcinogenicity of Chemicals for Animals," *in* "Molecular and Cellular Aspects of Carcinogen Screening Tests," Edited by Montesano, R., et al., International Agency for Research on Cancer, Lyon, France, pp. 259–281, 1980.

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6a. Crump, K. S., "An Improved Procedure for Low-Dose Carcinogenic Risk Assessment From Animal Data," *Journal of Environmental Pathology and Toxicology*, in press.

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7a. Hoel, D. G., et al., "Estimation of Risks of Irreversible, Delayed Toxicity," *Journal of Toxicology and Environmental Health*, 1:133–151, 1975.

b. Food and Drug Administration, Proposal to amend 21 CFR Parts 70, 500, 514 and 571, "Chemical Compounds in Food-Producing Animals," **Federal Register**, March 20, 1979 (44 FR 17070).

c. Gaylor, D. W. and R. L. Kodell, "Linear Interpolation Algorithm for Low Dose Risk Assessment of Toxic Substances," *Journal of Environmental Pathology and Toxicology*, 4:305–312, 1980.

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b. National Academy of Sciences, "Pest Control: An Assessment of Present and Alternative Technologies," Contemporary Pest Control Practices and Prospects, Vol. I, pp. 54–101, 1975.

c. Crouch, E. and R. Wilson, "Interspecies Comparison of Carcinogenic Potency," *Journal of Toxicology and Environmental Health*, 5:1095–1118, 1979.

Interested persons may, on or before July 1, 1982, submit to the Dockets

Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. 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 office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 2, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Dated: March 26, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 82–8887 Filed 3–31–82; 8:45 am]

BILLING CODE 4160–01–M

federal register

Friday
April 2, 1982

Part VII

Department of the Interior

Fish and Wildlife Service

Proposals to Amend the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Proposals To Amend the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of potential United States proposals.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animals and plant species which are listed in appendices to this treaty. The Conference of the Parties to CITES resolved, at a meeting in New Delhi, India, that the status of listed species should be periodically reviewed. The first such review is to be concluded in 1983 at the next meeting of the Parties.

The Service has reviewed the status of animal and plant species in Appendices I and II that are native to the United States. This notice announces preliminary results of the review for plants. Results for animals were announced in an earlier separate notice (47 FR 7190; February 17, 1982). The Service requests further information and comments from the public, including information on environmental and economic impacts, effects on small entities that would result from the proposal, and information on possible alternatives to the proposal. All information and comments received will be considered in determining whether the United States should submit these plant proposals for consideration by CITES Party nations at their next regular meeting.

DATE: The Service will consider all comments received by August 31, 1982, in determining whether it should submit proposals to the CITES Secretariat for circulation to the Parties.

ADDRESS: Please send correspondence concerning this notice to the Office of the Scientific Authority, U.S. Fish and Wildlife, Washington, D.C. 20240. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, in room 536, 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Joseph J. Dowhan, Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (202) 653–5948.

SUPPLEMENTARY INFORMATION:

Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control. Such listings frequently are required because of difficulty in distinguishing specimens of currently or potentially threatened species from other species at ports of entry. Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which its needs cooperation of other Parties in controlling trade.

At the Third Meeting of the Conference of the Parties to CITES, held on February 25 to March 8, 1981, at New Delhi, India, the Parties resolved to conduct a "Ten Year Review of the Appendices" (see 46 FR 33534, June 30, 1981). The resolution (Conf. 3.20) called for regional reviews of species in Appendices I and II. A central committee, composed primarily of representatives from various Parties, is to meet between April and June 1982 to appraise and coordinate regional reviews.

The purpose of this notice is to anounce preliminary results of the Service's review of listed plant species in North America. This review is being conducted in coordination with the Canadian Wildlife Service and the Mexican Department of Agriculture and Hydraulic Resources (Secretaria de Agricultura y Recursos Hidraulicos). The Service will consider comments and information received in response to this notice and views of the central committee in determining if proposals described below should be submitted to the CITES Secretariat for consideration by Parties at their fourth meeting in 1983.

Comments Received

In response to the Federal Register notice of June 30, 1981, the Service received comments from the Natural Resources Defense Council (NRDC) and TRAFFIC (USA) in which both organizations urged that the Service consider transferring from Appendix II to Appendix I all species of native cacti and orchids currently listed as Endangered or Threatened under the Endangered Species Act, as well as those candidate species appearing in the Service's Federal Register notice of review (December 15, 1980) that are threatened by trade, in order that these taxa might be protected from excessive legal or illegal trade. Both the NRDC and TRAFFIC, along with the Florida Audubon Society, were opposed to any delistings by the Service of the higher taxa listings of Orchidaceae and Cactaceae on Appendix II on the grounds that the plant trade data currently available are not adequate to meet the Berne delisting criteria and that there are considerable enforcement difficulties surrounding "look-alike" species.

The Mexican Cactus Society (Sociedad Mexicana de Cactologia, A.C.) submitted a list of native Mexican cactus species which they believe are rare or potentially threatened with extinction largely as a result of commercial trade. This list is essentially in agreement with a similar list of species provided by the Mexican Department of Agriculture and Hydraulic Resources (Secretaria de Agricultura y Recursos Hidraulicos) in response to an earlier request for such a list by the U.S. Department of Agriculture.

The State of Indiana, Department of Natural Resources, sent a list of endangered and threatened orchids in Indiana, adding that certain species of *Cypripedium* were potentially threatened by commerce, though no trade data or specific information were provided.

The State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, strongly urged that the Service delist cultivated or commercially grown ginseng (*Panax quinquefolius*) on the grounds that there was no need for such a requirement in order to protect the native wild plant.

Dr. James Lackey, of PPQ, APHIS, U.S. Department of Agriculture, commented that, in his opinion, the blanket listings of Orchidaceae, Cactaceae, succulent *Euphorbia* species, Cyathaceae, Dicksoniaceae, Cycadaceae, Stangeriaceae, and Zamiaceae were inappropriate in the appendices and should be changed to include only listings of species that are actually harmed by trade. Furthermore, Lackey felt that the U.S. should consider taking a reservation on all future blanket listings of plants. He also urged that general exception under CITES be given for scientific purposes.

Dr. Calaway Dodson, Director of Research of the Marie Selby Botanical Gardens in Sarasota, Florida, commented that, in his opinion, CITES has hindered the scientific inventory of and research on tropical plants. Because of this, he recommended that the U.S. should withdraw from the treaty or, if withdrawal is not feasible, then all "blanket listings" be removed and proper listings initiated.

Potential Proposals

The Service has thoroughly reviewed and considered all comments and information received and otherwise available to it during this regional review of the appendices to CITES.

As a result of this 10-year review, the Service proposes to recommend transfer from Appendix II to Appendix I 21 taxa (species, subspecies or varieties) of native U.S. cacti listed as Endangered or Threatened under the Endangered Species Act and 51 candidate taxa of cacti on the grounds that these taxa appear to be actually or potentially threatened with extinction by commercial trade.

For the same reasons, and because of comments by the Mexican Cactus Society and the Mexican Department of Agriculture and Hydraulic Resources, the Service is also including in the same proposal the transfer of 47 taxa of native Mexican cacti to Appendix I. Current information suggests that all other taxa of native North American cacti should remain in Apendix II in order to prevent their commercial overexploitation through international trade and to enable such trade to be monitored.

A similar review by the Service, in conjunction with the Canadian Wildlife Service, of native orchids of the U.S. and Canada (Mexico has not yet provided any comments on this group) has indicated that, in the absence of further information, these taxa should remain on Appendix II and that the transfer of any of these taxa to Appendix I is not presently warranted. It is the Service's opinion, and that of the Canadian Wildlife Service, that none of the native North American orchids (north of Mexico) is potentially threatened with extinction as a direct result of trade, though information is inadequate to support their delisting under the criteria adopted by the CITES Parties at Berne in 1976.

The taxa which the Service proposes to transfer from Appendix II to Appendix I of CITES are:

Ancistrocactus tobuschii Marsh. ex Backbg.
Ariocarpus kotschoubeyanus (Lemaire) K. Schum.
A. trigonus (Weber) K. Schum.
Backebergia militaris (Audot) Bravo ex Sanchez-Mejorada
Cereus eriophorus Pofeiffer & Otto var. *fragrans* (Sm.) L. Bens.
C. gracilis P. Mill. var. *aboriginum* (Sm.) L. Bens.
C. portoricensis (Britt.) Urban
C. quadricostatus Bello
C. robinii (Lemaire) L. Bens.
Cochemiea halei (Brandegee) Walton
C. maritima Lindsay
C. pondii (Greene) Walton
C. setispina (Coulter) Walton
Coryphantha dasyacantha (Engelm.) Orcutt var. *varicolor* (Tigel) L. Bens.
C. duncanii (Hester) L. Bens.
C. hesteri Y. Wright
C. minima Baird
C. missouriensis (Sweet) B. & R. var. *marstonii* (Clover) L. Bens.
C. ramillosa Cutak
C. recurvata (Engelm.) B. & R.
C. robbinsorum (W. H. Earle) A. D. Zimmerman
C. scheeri (Kuntz) L. Bens. var. *robustispina* (Schott) L. Bens.
C. scheeri var. *uncinata* L. Bens.
C. sneedii (B. & R.) Berger var. *leei* (Rose ex Bod.) L. Bens.
C. sneedii var. *sneedii*
C. strobiliformis (Poselger) Orcutt var. *durispina* (Quehl) L. Bens.
C. sulcata (Engelm.) B. & R. var. *nickelsiae* (Brandegee) L. Bens.
C. vivipara (Nutt.) B. & R. var. *alversonii* (Coult.) L. Bens.
C. vivipara var. *buoflama* Fischer
C. werdermannii Bod.
Echinocactus horizonthalonius Lemaire var. *nicholii* L. Bens.
Echinocereus blankii (Poselger) F. Palmer var. *augusticeps* (Clover) L. Bens.
E. chloranthus (Engelm.) Engelm. ex Rumpler var. *neocapillus* Weniger
E. engelmannii (Parry) Lemaire var. *howei* L. Bens.
E. engelmannii var. *munzii* (Parish) Pierce & Fosberg
E. engelmannii var. *purpureus* L. Bens.
E. kuenzleri Castetter, Pierce & Schwerin
E. ledingii Peebles
E. lloydii B. & R.
E. reichenbachii (Terscheck) Haage f. var. *albertii* L. Bens.
E. reichenbachii var. *chisosensis* (W. T. Marsh.) L. Bens.
E. reichenbachii var. *fitchii* (B. & R.) L. Bens.
E. russanthus Weniger
E. triglochidiatus Engelm. var. *arizonicus* (Rose ex Orcutt) L. Bens.
E. triglochidiatus var. *inermis* (Schum.) Arp
E. viridiflorus Engelm. var. *correllii* L. Bens.
E. viridiflorus var. *davisii* (A. D. Houghton) W. T. Marsh.
Echinofossulocactus boedekerianus (Berger) Croizat
E. tetraxiphus (Otto) Oehme
E. vaupelianus (Werd.) Tieg. & Oehme
Epithelantha bokei L. Bens.
Ferocactus acanthodes (Lemaire) B. & R. var. *acanthodes*
F. crassihamatus (Weber) B. & R.
F. peninsulae (Engelm. ex Weber) B. & R. var. *viscainensis* (Gates) Lindsay
F. rectispinus (Engelm.) B. & R.
F. townsendianus B. & R. var. *santa-maria* (B. & R.) Lindsay
F. townsendianus B. & R. var. *townsendianus*
F. viridescens (Nutt.) B. & R.
Leuchtenbergia principis Hooker
Lobeira macdougallii Alex.
Machaerocereus eruca (Brandegee) B. & R.
Mammillaria aureiceps Lemaire
M. coahuilensis (Bod.) Moran
M. crucigera Martius
M. erectacantha Foerster
M. hahniana Werd.
M. herrerae Werd.
M. humboldtii Ehrenberg
M. lenta Brandegee
M. napina J. A. Purpus
M. plumosa Weber
M. solisioides Backbg.
M. thornberi Orcutt
Marenopuntia marenae (S. H. Parsons) Backbg.
Neolloydia erectocentra (Coulter) L. Bens. var. *acunensis* (Marsh.) L. Bens.
N. erectocentra var. *erectocentra*
N. gautii L. Bens.
N. mariposensis (Hester) L. Bens.
N. warnockii L. Bens.
Opuntia areanaria Engelm.
O. basilaris Engelm. & Bigelow var. *brachyclada* (Griffiths) Munz
O. basilaris var. *treleasei* (Coulter) Toumey
O. bigelovii Engelm. var. *hoffmannii* Fosberg
O. munzii C. B. Wolf
O. parryi Engelm. var. *serpentina* (Engelm.) L. Bens.
O. santamaria (Baxter) Wiggins
O. strigel Engelm. var. *flexospina* (Griffiths) L. Bens.
Pediocactus bradyi L. Bens.
P. despainii Welsh & Goodrich
P. knowltonii L. Bens.
P. papyracanthus (Engelm.) L. Bens.
P. paradinei B. W. Benson
P. peeblesianus (Croizat) L. Bens. var. *fickeiseniae* (Backbg.) L. Bens.
P. peeblesianus var. *peeblesianus*
P. sileri (Engelm.) L. Bens.
P. winkleri Heil
Peniocereus greggii (Engelm.) B. & R.
Schlerocactus glaucus (J. A. Purpus) L. Bens.
S. mesae-verdae (Boiss. & Davidson) L. Bens.
S. polyancistris (Engelm. & Bigelow) B. & R.
S. pubispinus (Engelm.) L. Bens.
S. wipplei (Engelm. & Bigelow) B. & R. var. *heilii* Castetter, Pierce & Schwerin
S. wrightiae L. Bens.
Solisia pectinata (B. Stein) B. & R.
Strombocactus disciformis (DC.) B. & R.
Thelocactus bicolor (Galeotti) B. & R. var. *flavidispinus* Backbg.
Turbinicarpus lauii Gl. & Foster
T. lophophoroides (Werd.) Buxbaum & Backbg.
T. pseudomacrochele (Backbg.) Buxbaum & Backbg. (includes vars. *krainzianus* (Frank) Gl. & Foster and *pseudomacrochele*)
T. pseudopectinatus (Backbg.) Gl. & Foster
T. schmiedickeanus (Bod.) Buxbaum & Backbog. var. *flaviflorus* (Frank & Lau) Gl. & Foster
T. s. var. *gracilis* (Gl. & Foster) Gl. & Foster
T. s. var. *klinkeranus* (Backbg. & Jacobsen) Gl. & Foster
T. s. var. *macrochele* (Werd.) Gl. & Foster
T. s. var. *schmiedickeanus*

T. s. var. *schwarzii* (Shurly) Gl. & Foster
T. valdezianus (Moller) Gl. & Foster
Wilcoxia schmollii (Weingart) Knuth
W. tomentosa Bravo

Copies of this proposal, which includes the common names of the species listed above, are available upon request from the Office of the Scientific Authority at the above address.

Other Species

The Service has determined not to propose other changes in listings of North American species of Appendix I or II plants at this time. For many species, the best available information either indicates that present listings are appropriate, or else information is inadequate to justify a change. This would include the removal of blanket or higher taxa listings recommended by Dodson and Lackey.

In response to comments from the State of Wisconsin, artificially propagated or cultivated ginseng is presently exempt from the regulations of Article IV of CITES. Certificates of exemption are issued for cultivated ginseng roots in order to differentiate such shipments from wild-collected ginseng roots.

With regard to a general exemption for scientific purposes, Article VII(6) of CITES already provides for noncommercial loans, donations, or exchanges of legally obtained museum, herbarium or live plant specimens of species listed under CITES between scientific institutions registered by a Management Authority of their country. CITIES allows no other blanket exceptions solely for scientific specimens.

Future Actions

The Service plans to publish a further **Federal Register** notice announcing its decisions on the species proposals discussed above, prior to submitting U.S. proposals to the CITES Secretariat for consideration at the Fourth Meeting of the Conference of the Parties. The date of that meeting has not been set, but it is expected to occur around April 1983. Notice of the Service's decisions is planned for publication in September 1982.

Persons having current information about species included in the draft proposal prepared by the Service are invited to contact the Service's Office of the Scientific Authority at the above address. The Service also requests information on environmental and economic impacts of the proposed action and potential effects on State and local governments, persons, businesses, and organizations. This information will aid the Service in complying with requirements of the National Environmental Policy Act, the Regulatory Flexibility Act, and Executive Order 12291, and in preparing required analyses of effect.

This notice was prepared by Joseph J. Dowham, Office of the Scientific Authority.

Dated: March 26, 1982.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-8946 Filed 4-1-82; 8:45 am]
BILLING CODE 4310-55-M

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Friday, April 2, 1982

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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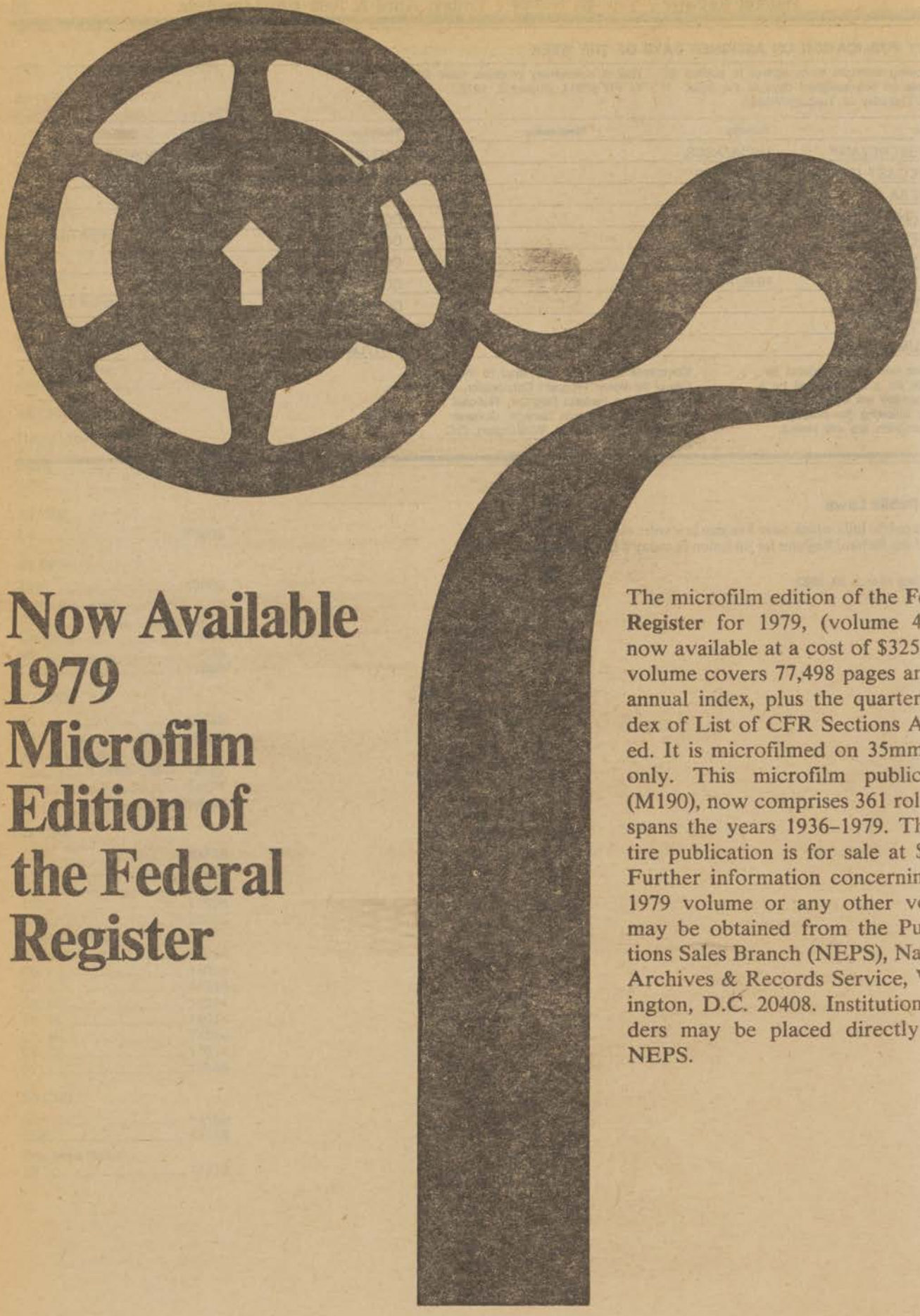

Now Available 1979 Microfilm Edition of the Federal Register

The microfilm edition of the **Federal Register** for 1979, (volume 44), is now available at a cost of $325. This volume covers 77,498 pages and the annual index, plus the quarterly index of List of CFR Sections Affected. It is microfilmed on 35mm rolls only. This microfilm publication, (M190), now comprises 361 rolls and spans the years 1936–1979. The entire publication is for sale at $4693. Further information concerning the 1979 volume or any other volume may be obtained from the Publications Sales Branch (NEPS), National Archives & Records Service, Washington, D.C. 20408. Institutional orders may be placed directly with NEPS.