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6-4-82
Vol. 47 No. 108
Pages 24251-24538

federal register

Friday
June 4, 1982

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Animal Feeds
Food and Drug Administration

Banks, Banking
Federal Reserve System

Chemicals
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Color Additives
Food and Drug Administration

Flood Insurance
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Fruit Juices
Food and Drug Administration

Hazardous Materials
Environmental Protection Agency

Health Records
Occupational Safety and Health Administration

Historic Preservation
Historic Preservation, Advisory Council

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

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 362]

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 June 6–12, 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: The regulation becomes effective June 6, 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 June 1, 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 910.662 is added as follows:

§ 910.662 Lemon Regulation 362.

The quantity of lemons grown in California and Arizona which may be handled during the period June 6, 1982, through June 12, 1982, is established at 275,000 cartons.

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

Dated: June 3, 1982.

D. S. Kuryloski,

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

[FR Doc. 82–15419 Filed 6–3–82; 11:59 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1701

[Bulletin 345–57]

Public Information; Appendix A—REA Bulletins PE–63, Specification for Microwave Radio Equipment

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: REA hereby amends Appendix A by issuing a revised Bulletin 345–57, REA Specification for Microwave Radio Equipment, PE–63. The last issue of this specification was in June 1969. Since that date technology in the electronics industry and in the design of telephony electronics has undergone significant advances. Many of the improvements have already received widespread acceptance by manufacturers and users of telephony electronics. There is a need to update the REA Specification for Microwave Radio Equipment to reflect these improvements so that REA telephone borrowers will continue to provide their subscribers with the most modern and efficient telephone service.

EFFECTIVE DATE: May 28, 1982.

FOR FURTHER INFORMATION CONTACT: C. F. Buster, Jr., Chief, Transmission Branch, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1367, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–8665. The Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA hereby amends Appendix A by issuing a revised Bulletin 345–57. This action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as not major. A Regulatory Flexibility Analysis is not required and an OMB Circular A–95 review is not applicable to this action.

This document was last revised in 1969, and there have been significant advances in technology since that time.

The existing document is not applicable to much of the new technology, so that its continuation would have forced REA borrowers to use outmoded less cost-effective technology. If the existing specification was withdrawn rather than revised there would be no REA radio equipment specification which manufacturers would be required to meet. Unacceptable radio equipment could be sold to REA borrowers which would result in the loss of telephone system effectiveness and a threat to REA loan security. As a result, revision of the document along these lines was considered to be in the best interest of the program.

This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees.

A Notice of Proposed Rulemaking was published in the **Federal Register** on January 29, 1982. No public comments were received as a result of this notice.

List of Subjects, 7 CFR Part 1701

Administrative practice and procedure, Loan programs—communications, Telecommunications, Telephone.

Dated: May 28, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-15253 Filed 6-3-82; 8:45 am]

BILLING CODE 3410-15-M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R-0408]

Interest on Deposits; Temporary Supension of Early Withdrawal Penalty

AGENCY: Federal Reserve System.

ACTION: Temporary suspension of early withdrawal penalty.

SUMMARY: The Board of Governors, acting through its Secretary, pursuant to delegated authority, has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by severe storms and flooding in Wichita County, Texas.

EFFECTIVE DATE: May 25, 1982.

FOR FURTHER INFORMATION CONTACT: Daniel L. Rhoads, attorney (202/452-3711) or Beverly A. Belcamino, Attorney (202/452-3623).

SUPPLEMENTARY INFORMATION: On May 25, 1982, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order 12148 of July 15, 1979, the President, acting through the Director of the Federal Emergency Management Agency, designated Wichita County, Texas, a major disaster area. The Board regards the President's action as recognition by the Federal government that a disaster of major proportions had occurred. The President's designation enables victims of the disaster to quality for special emergency financial assistance. The Board believes it appropriate to provide an additional measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty (12 CFR 217.4(d)). The Board's action permits a member bank wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the disaster area as a result of the severe storms and flooding beginning on or about May 12, 1982. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to May 25, 1982, and will remain in effect until 12 midnight, November 25, 1982.

List of Subjects in 12 CFR Part 217

Advertising, Banks, banking, Federal Reserve System, Foreign banking.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons in Wichita County, Texas, directly affected by the severe storms and flooding, good cause exists for dispensing with the notice and public participation provisions in section 553(b) of Title 5 of the United States Code with respect to this action. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make this action effective immediate.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority, May 28, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-15121 Filed 6-3-82; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563b

[No. 82-390]

Conversion From Mutual to Stock Form; Technical Amendments

Dated: May 28, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), is amending its Conversion Regulations to extend for one year, to May 5, 1983, the former three-year restriction on the post-conversion acquisition of more than ten percent of the stock of an institution which had converted from the mutual to the stock form of organization prior to May 5, 1982. The board also is extending the delegation of authority granted to the General Counsel to approve applications for conversion. This document corrects two inadvertent omissions to the amendments to Part 563b published at 47 FR 19673, May 7, 1982.

EFFECTIVE DATE: May 28, 1982.

FOR FURTHER INFORMATION CONTACT: Harry M. Zimmerman, Jr., (202-377-6459), Director, Division of Securities and Corporate Analysis, or J. Larry Fleck, (202-377-6413), Deputy Director, Division of Securities and Corporate Analysis, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: By Resolution No. 82-311, effective May 5, 1982 (47 FR 19672; May 7, 1982), the Board adopted extensive amendments to Part 563b of the Rules and Regulations of the Federal Savings and Loan Insurance Corporation, 12 CFR Part 563b ("Conversion Regulations"). Among the amendments were the redesignation of § 563b.9(d) as § 563b.3(i)(3), and the revision of redesignated § 563.3(i)(3) to reduce from three years to one year the period during which no person without the prior written consent of the Corporation may offer to acquire or acquire more than ten percent of the stock of an institution which had converted to the stock form under the Conversion Regulations. Also in Resolution 82-311, the Board adopted new § 563b.3(i)(6), which permits converting institutions to adopt an optional charter provision which prohibits for a three-year period following conversion the acquisition by any person or more than ten percent of the equity securities of the converted institution.

The Board did not intend new § 563b.3(i)(3) to be applicable to institutions which had completed their conversions before the effective date of the amendment. However, the Board recognizes that because its amended

regulations do not have an explicit savings clause with respect to former § 563b.9(d), that intent may not be clear.

Having further considered the issue of the application of § 563b.3(i)(3), the Board has determined to redesignate certain paragraphs of § 563b.3(i), and to add new § 563b.3(i)(4), which provides that the provisions of former § 563b.9(d) shall continue to be applicable until May 5, 1983. This one-year period will enable recently converted institutions to assess their positions concerning the post-conversion acquisition of their equity securities, and to propose to their stockholders the adoption of the § 563b.(3)(i)(6) charter provision if they believe that it would be in the best interests of their stockholders.

In new § 563.8(w)(2) of the Conversion Regulations, the Board delegated to the General Counsel or his designee the authority to approve but not to deny applications for conversion, and to exercise any other authority of the Corporation under the Conversion Regulations, subject to certain specified exceptions. Through inadvertence the Board did not specifically delegate to the General Counsel or his designee the authority to approve but not to deny certain related applications that are an integral part of a conversion application, *i.e.*, applications for approval of security forms under § 563.1, applications for approval of charter and bylaws amendments affecting securities under § 563.1, and applications for approval of federal charter and bylaw amendments under §§ 544.1, 544.5 and 552.2 of the Rules and Regulations for the Federal Savings and Loan System. Therefore, the Board is amending 563b.8(w)(2) to extend the General Counsel's delegated authority to approve these related applications when filed with an application for conversion.

Because these amendments constitute technical revisions to the Board's Conversion Regulations, the Board has determined that the notice and comment procedures of 5 U.S.C. 522(b) and 12 CFR 508.11, and the 30-day delayed effective date imposed by 5 U.S.C. 552(d) and 12 CFR 508.14, are unnecessary and not in the public interest.

List of Subjects in 12 CFR Part 563b

Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 563b, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

PART 563b— CONVERSION FROM MUTUAL TO STOCK FORM

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

1. Amend § 563b.3 by redesignating paragraphs (i)(4) through (i)(8) as paragraphs (i)(5) through (i)(9), respectively; adding new paragraph (i)(4); and revising redesignated paragraphs (i)(5) (ii) and (iii), and redesignated paragraph (i)(6); to read as follows:

§ 563b.3 General principles for conversions.

* * * * *

(i) *Acquisition of the securities of converting and converted insured institutions.*

* * * * *

(4) *Savings clause for institutions that had converted prior to May 5, 1982.* Until May 5, 1983, no person for a period of 3 years following the date of the completion of the conversion shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of equity securities of an insured institution converted in accordance with the provision of this Part 563b, without the prior written approval of the corporation.

(5) *Exceptions.*

* * * * *

(ii) Paragraphs (i) (2), (3), and (4) of this section shall not apply to any offer with a view toward public resale made exclusively to the association or underwriters or selling group acting on its behalf.

(iii) Unless made applicable by the Corporation by prior advice in writing, the prohibitions contained in paragraphs (i) (3) and (4) of this section shall not apply to any offer or announcement of an offer which if consummated would result in the acquisition by a person, together with all other acquisitions by the person of the same class of securities during the preceding 12-month period, of not more than 1 percent of the class of securities.

(6) *Criteria for denial.* The Corporation shall not approve an application involving an offer for, or an announcement thereof, or an acquisition of any security of a converted association submitted under paragraphs (i) (3) or (4) of this section if it finds that such offer frustrates the purpose of the provisions of this Part 563b, is manipulative or deceptive, subverts the fairness of the conversion, is likely to result in injury to the association, is not consistent with economical home financing, or is otherwise violative of law or regulation.

* * * * *

2. Amend § 563b.8 by revising paragraph (w)(2) to read as follows:

§ 563b.8 Procedural requirements.

* * * * *

(w) *Delegation of authority.*

(1) * * *

(2) *Approval of applications for conversion.* The Corporation delegates to the General Counsel or his designee the authority to approve but not to deny applications for conversion pursuant to the standards and restrictions set forth in this Part 563b, and to exercise any other authority of the Corporation under this Part 563b, excepting (i) the authority to waive any provision of this Part 563b pursuant to § 563b.1(a); (ii) the authority to approve other equitable provisions in the plan of conversion under § 563b.3(d)(13); (iii) the authority to approve any application for conversion in regard to which an objection has been filed pursuant to § 563b.4(b)(1); (iv) the authority to approve or deny an application for approval to offer to acquire or to acquire more than 10 percent of the stock of a converted insured institution under § 563b.3(i)(3); (v) the authority to approve or deny applications for conversion pursuant to § 563b.9; and (vi) the authority to approve or deny applications for conversion pursuant to § 563b.10. The Board also delegates to the General Counsel or his designee, in connection with the approval of an application for conversion under this Part 563b, the authority to approve but not to deny applications for approval of security forms, charter amendments, and bylaw amendments under § 563.1 of this Subchapter, and §§ 544.1, 544.5, and 555.2 of this Chapter.

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended. 12 U.S.C. 1725, 1726, 1730; Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-15199 Filed 6-3-82; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 157, 284 and 375

[Docket No. RM81-19-000; Order No. 234]

Interstate Pipeline Certificates for Routine Transactions

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is issuing final regulations amending Parts 157 and 375 of its regulations to provide procedures for the issuance of "blanket" certificates of public convenience and necessity under section 7 of the Natural Gas Act. Specifically, Part 157 is amended by adding Subpart F (§§ 157.201 through 157.218) to provide for a one-time certificate to be issued by the Commission to interstate pipelines. By accepting a blanket certificate, an interstate pipeline is authorized to undertake certain activities, subject to particular conditions and procedures. Some activities are automatically authorized without prior notification to the Commission, while other activities are authorized only after the Commission is notified and interested persons are provided the opportunity to file a protest. The activities covered by this final rule are (1) construction, acquisition, operation, and miscellaneous rearrangement of facilities, (2) construction and operation of sales taps, (3) changes in delivery points, (4) storage services, (5) an increase in storage capacity, (6) underground storage testing and development, (7) abandonment, (8) changes in rate schedule, and (9) changes in a customer's name. Other activities which may expand the blanket certificate program, such as transportation and off-system sales, are being considered in Docket No. RM81-29, (46 FR 24585, April 27, 1981). Section 375.307 of the Commission's regulations is amended to authorize the Director of the Office of Pipeline and Producer Regulation to perform certain activities consistent with the blanket certificate program. In addition, § 284.201 is amended to extend the Order No. 30 program through the ninetieth day following the effective date of the final rule in Docket No. RM81-29.

DATES: Effective July 6, 1982.

FOR FURTHER INFORMATION CONTACT: Thomas P. Gross, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426; (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Issued: May 28, 1982.

The Federal Energy Regulatory Commission (Commission) is issuing final regulations as part of Parts 157 and 375 of its regulations to provide procedures for the issuance of blanket certificates of public convenience and necessity under section 7(c) of the Natural Gas Act. Specifically, Part 157 is amended by adding Subpart F (§§ 157.201 through 157.218) to provide for interstate pipeline blanket certificate and abandonment authorization for certain activities. Sections 157.209 and 157.210 are reserved for Docket No. RM81-29 in which final regulations will be considered for, among other things, transportation and off-system sales. Section 375.307 of the Commission's regulations is amended to authorize the Director of the Office of Pipeline and Producer Regulation to perform certain activities consistent with the blanket certificate program. In addition, § 284.201 is amended to extend the Order No. 30 program through the ninetieth day following the effective date of a final rule in Docket No. RM81-29.

I. Background

Section 7 of the Natural Gas Act, 15 U.S.C. 717f, provides that no natural gas company may engage in the transportation and sale of natural gas in interstate commerce for resale, the construction of facilities to be used in those activities, or the abandonment of any jurisdictional service or facilities, without first obtaining prior Commission approval for such activities. To fulfill this statutory responsibility, the Commission has implemented a number of different certificate programs. Some of these programs involve various generic determinations of public convenience and necessity and provide for the issuance of so-called "blanket certificates" (18 CFR 284.221 and 284.222) or "budget-type certificates" (18 CFR 157.7(b)-(g)) which permit interstate pipelines to undertake specific activities that fall within parameters established generically. Actions covered by section 7 which do not fall within these blanket or budget certificate programs must be authorized by certificates granted on a case-by-case basis.

In an effort to make the certificate process more efficient, the Commission has delegated a number of its activities to the Director of the Office of Pipeline and Producer Regulation (18 CFR 375.307). Nevertheless, the authorization of each activity which has been delegated requires significant time and effort by the pipeline companies and Commission staff. The Commission has also provided for expedited hearings by the full Commission of uncontested, routine applications (18 CFR 1.32 and 157.11). In addition, 18 CFR 157.7(a) provides for abbreviated applications when special information is not required or already has been filed with the Commission. Despite these efforts to expedite the process of considering and disposing of applications for certificates of public convenience and necessity and abandonments, the Commission is of the opinion that substantial opportunities for regulatory reform remain.

The Commission has issued two Notices of Proposed Rulemaking which would modify its procedures under the Natural Gas Act for issuing certificates of public convenience and necessity to jurisdictional natural gas companies. In the first notice issued March 10, 1981, the Commission proposed to reform the certificate procedure by initiating an integrated blanket certificate program. (Notice of Proposed Rulemaking, Docket No. RM81-19 issued March 10, 1981; 46 FR 16903, March 16, 1981.) The rule proposed procedures for automatically authorizing certain routine activities while establishing a notice and protest procedure for certain other routine activities. Certificates for activities not subject to the blanket certificate would continue to be issued on a case-specific basis. As proposed, those activities which could be authorized under a blanket certificate included construction and operation of facilities, transportation, construction and operation of sales taps, storage services, underground storage testing and development, and abandonments. Certain non-routine activities that the Commission believed should be included in the blanket certificate program were reserved for a second proposal.

On April 27, 1981, the Commission issued the second Notice of Proposed Rulemaking in which it proposed, among other things, additional activities that could be authorized under the blanket certificate program proposed in Docket No. RM81-19. (Notice of Proposed Rulemaking, "Sales and Transportation by Interstate Pipelines and Distributors," Docket No. RM81-29, issued April 27, 1981; 46 FR 24585, May 1, 1981.) That notice proposed to include certain sales for resale under the blanket certificate and to revise the Commission's regulations implementing section 311 of the Natural Gas Policy

Act of 1978 (NGPA). These proposals were excluded from Docket No. RM81–19 because it was expected that they would raise more difficult issues than those proposed in Docket No. RM81–19 and possibly would require more time to analyze. The Commission received written comments and held public hearings in both dockets.[1]

On July 1, 1981, the Commission issued a notice that staff's Environmental Assessment of its two proposals was available to the public and that written comments on its assessment would be received. 46 FR 35529, July 9, 1981.

By this rule, the Commission is issuing the first phase of final regulations implementing its blanket certificate program. The regulations provide procedures for issuing blanket certificates of public convenience and necessity under section 7(c) of the Natural Gas Act and, except for § 157.209 dealing with transportation, these regulations implement, with modifications, the proposed rules in Docket No. RM81–19. Activities covered by this rule include, among other things, construction and operation of facilities and sales taps, storage services, underground storage testing and development, and abandonments. Because staff is studying, among other issues, ways for treating revenues received from transportation services, § 157.209 dealing with such transportation is not included in this docket. When the Commission issues the second phase of its blanket certificate program in Docket No. RM81–29, it will address § 157.209 in that docket.[2] Because the Commission is still examining its transportation policies and will address those policies in Docket No. RM81–29, § 284.201(e) is amended by this rule to extend the Order No. 30 program until 90 days after the effective date of the final rule in Docket No. RM81–29. It is estimated that full implementation of the blanket certificate program will reduce regulatory burden on industry by approximately 25,000 hours per year.

II. Discussion

As proposed in Docket No. RM81–19, the blanket certificate is a one-time certificate issued by the Commission to interstate pipelines. Upon issuance of a blanket certificate, the certificate holder is authorized to undertake certain activities subject only to reporting requirements and, in somes cases, certain notice procedures.

The Commission expects the blanket certificate program to replace the case-specific authorization currently used for many projects. While acceptance of a blanket certificate by an interstate pipeline does not preclude the certificate holder from filing for case-specific authorization, the Commission expects the blanket certificate authority to be used for the activities which may be authorized under it. In reviewing and processing applications for case-specific authorization, the Commission will consider whether the proposed activity could have been authorized under a blanket certificate. Applications for proposed activities which are outside the scope of the blanket certificate program will be assigned, for the most part, a higher priority than applications for activities which could have been conducted under the blanket certificate. By assigning a higher priority to such applications, the Commission intends to encourage certificate holders to use the blanket certificate authorization.

As proposed in Docket No. RM81–19, the final regulations divide the various actions that the Commission certificates into several categories. The first category applies to certain activities performed by interstate pipelines that either have relatively little impact on ratepayers, or little effect on pipeline operations. This first category also includes minor investments in facilities which are so well understood as an established industry practice that little scrutiny is required to determine their compatibility with the public convenience and necessity. The second category of activities provides for a notice and protest procedure and comprises certain activities in which various interested parties might have a concern. In such cases there is a need to provide an opportunity for a greater degree of review and to provide for possible adjudication of controversial aspects. Activities not authorized under the blanket certificate are those activities which may have a major potential impact on ratepayers, or which propose such important considerations that close scrutiny and case-specific deliberation by the Commission is warranted prior to the issuance of a certificate.

The Commission received numerous comments in response to its proposals in Docket No. RM81–19. Many commenters supported the Commission's efforts to streamline and to expedite the granting of certificate applications. However, some commenters also added that the proposed regulatory reform did not go far enough, and, in some cases, urged that the recommendations of the Subcommittee on the Review of the Decisional Process of the Commission's Advisory Committee on Revision of Rules of Practice and Procedure (hereinafter the Subcommittee) be adopted. Specifically, they requested that the Commission adopt some variation of an "optional notice procedure" described in an appendix to the Subcommittee's report and prepared by a committee of the Interstate Natural Gas Association of America. Under this optional notice procedure, all projects could be authorized under abbreviated procedures unless they were protested, and the Commission would be required to issue a separate certificate for each authorized project. Unlike the optional notice procedure, the blanket certificate procedure would apply only to certain activities and would not require a separate certificate for each authorized project.

The Commission has carefully reviewed those comments and the recommendations of the Subcommittee and believes that the final regulations adopted in this rulemaking provide steamlined procedures which increase flexibility and reduce regulatory burden. While all the recommendations of the Subcommittee are not adopted in these final regulations, many of those proposals have formed the basis for these revised procedures and are incorporated into the final regulations with modifications. The Commission believes that the blanket certificate procedures adopted in this rule are administratively more manageable than the optional notice procedure because only certain types of activities are authorized under the blanket certificate. Moreover, this approach reduces paperwork because individual certificates are not issued for each project authorized under the blanket certificate. The Commission believes that these aspects make the blanket certificate procedures preferable to the optional notice procedure.

Several commenters expressed concern over who may apply for a blanket certificate. Under the proposed regulations, only interstate pipelines who previously had received a certificate under section 7 of the Natural Gas Act would be permitted to apply for a blanket certificate. Two of the commenters, not currently interstate pipelines, stated that they intend to construct and operate interstate facilities, and that under proposed § 157.204(a), they would not be permitted to apply for a blanket

[1] The public hearings for Docket Nos. RM81–19 and RM81–29 were held May 4, 1981 and June 5, 1981, respectively.

[2] The final rules in that docket will also address other amendments to the blanket certificate program, including § 157.210 for off-system sales by interstate pipelines.

certificate. They argue that by limiting the blanket certificate program to presently certificated interstate pipelines, and by requiring new entrants to obtain a case-specific determination, the Commission would delay the construction of new entrants' projects for periods up to six months and thereby place them at a competitive disadvantage with interstate pipelines able to construct comparable facilities under a blanket certificate.

In developing the final regulations implementing the blanket certificate program, the Commission has carefully considered who should be eligible for a blanket certificate, the nature of the activities which should be authorized under the certificate, and the reporting and notice requirements. In some cases, the authorization under the blanket certificate is predicated upon previous findings and filings in which jurisdictional entities would have been involved, such as specific rate determinations made in separate rate proceedings. The blanket certificate program is not designed to make such initial findings or filings, but presumes that the certificate holder will have established some previous jurisdictional and informational base with the Commission concerning such matters as rates, system supplies and certificated customers. Only natural gas companies which have been issued a certificate under section 7 of the Natural Gas Act (other than a limited-jurisdiction certificate) and had rates accepted by the Commission will have established this informational base with the Commission. The Commission believes that the blanket certificate should be limited to those entities because the blanket certificate permits the certificate holder to undertake all activities subject to the blanket certificate, including those which are predicated upon previous filings and findings.[3] Section 157.204(a) has been changed to reflect this limitation, and a new requirement has been added at § 157.204(d)(1) requiring the applicant for a blanket certificate to state the certificate proceeding in which it was found to be a natural gas company. The Commission notes that once a new entrant has been issued a certificate under section 7(c) of the Natural Gas Act and had rates accepted by the Commission, it will be eligible to apply for a blanket certificate.

[3] Moreover, the facilities which the two commenters intend to construct and operate would be their main line facilities, and would therefore be outside the scope of eligible facilities authorized under § 157.208.

1. Notice and Protest Procedure

Under the proposed regulations, certain activities would be either automatically authorized or subject to a notice and protest procedure prior to authorization. Some commenters, especially those supporting the optional notice procedure, urged the Commission to adopt a procedure in which certificate holders could elect to use the notice and protest procedure for activities which otherwise would be automatically authorized. They stated that an election procedure would add flexibility to the blanket certificate procedure and permit projects which could not be automatically authorized because of the annual cost limitation to be authorized under the notice procedure.

The Commission has reviewed the activities which are subject to automatic authorization and believes it would be inconsistent with the purposes of the blanket certificate program to permit such an election procedure. Administratively, it is more burdensome for the certificate holder to file, and the Commission to process, and application for the notice procedure than for the self-implementing procedure. If the proposed activity can be automatically authorized, the Commission does not believe that the additional administrative costs which would result from an election procedure can be justified. Moreover, as discussed elsewhere in this rule, the Commission is eliminating the annual cost limitations for projects subject to authorization under § 157.208.

If the activity is one of those listed in § 157.205(a), then it is subject to all the requirements of the notice procedure in § 157.205. A new paragraph has been added at § 157.205(c) to permit the Director of the Office of Pipeline and Producer Regulation (OPPR) to reject at any time a request which patently fails to comply with the filing requirements of § 157.205(b). Notice of all requests not so rejected by the Director of OPPR will be published in the **Federal Register.** Section 157.205(d), formerly proposed § 157.205(c), has been amended to require protests to be filed within 45 days after the date of issuance of the notice. If no protests are filed within the prescribed time, the application is finally authorized pursuant to § 157.205(h)(1), formerly § 157.205(f).

As proposed, § 157.205(d) now § 157.205(e), required that protests be served not only to the Secretary of the Commission and the certificate holder, but also to any intervenor or other party protesting the requested authorization. Because the service list will not be completed until after the protest period, the requirement that the protest be served on any intervenor and other protestors is deleted.

Many comments stated that the proposed rules should provide for a reconciliation period after a protest had been filed. Otherwise, a single protest, regardless of its merits, would remove an application from the blanket certificate procedures and subject it to full adjudication. The Commission agrees with this suggestion and believes that a reconciliation period will provide certificate holders an effective means to resolve minor differences which should not subject a proposed project to the full procedure of case-specific determination. To this end, § 157.205(f), formerly § 157.205(e), has been changed to provide for "a reconciliation period" of 30 days from the deadline for filing protests (45 days from the date of issuance of the notice of the request). This period of time should be sufficient for the certificate holder to resolve protests based on minor misunderstandings or the need for additional information. The Commission expects the parties to make a good faith effort to resolve the protest during the reconciliation period. The Director of OPPR, or his designee, may convene informal conferences during the reconciliation period after notifying the certificate holder, all protestors and all intervenors.

When protests are resolved during the 30-day reconciliation period, the protestor must submit a notice of withdrawal to the Secretary pursuant to § 157.205(g) within the reconciliation period. The withdrawal must state that the certificate holder, the protestor and all intervenors and staff concur in the withdrawal. Withdrawal of the protest must be served on the certificate holder, any intervenors and any other party requesting service.[4]

Section 157.205(h)(2) has been added to provide for final authorization of applications for which one or more protests have been filed, but subsequently withdrawn pursuant to § 157.205(g).

2. Standard Conditions and Reporting Requirements

Sections 157.206 and 157.207 impose certain conditions and reporting requirements on all interstate pipelines

[4] Several commenters stated that because of delays associated with printing and delivery of the **Federal Register**, they have experienced difficulties in meeting deadlines noticed through the **Federal Register.** The Commission believes that the above procedure and service requirements will provide sufficient time for affected persons to receive notice and file timely responses.

that accept a blanket certificate. Section 157.206(a), as proposed, stated that the Commission reserves the right to revoke any blanket certificate on 60-day's notice. Several commenters asserted that this provision violates due process requirements and requested that the Commission (1) publish guidelines for such revocation, (2) be required to state the reasons for revocation in the notice of revocation, and (3) permit the pipeline to respond to the notice of revocation.

The Commission believes that it has the authority to revoke any certificate, including a blanket certificate, under appropriate circumstances. However, rather than delay implementation of the blanket certificate program to formulate guidelines and procedures for such revocation, the Commission believes it more expeditious to delete the proposed special condition and rely upon existing authority. Such deletion does not affect the Commission's revocation authority. If the Commission undertakes to revoke a blanket certificate, it intends to comply with the applicable laws and due process requirements.

Section 157.206(b) provides that a certificate holder who proposes to recover in its rates any production-related costs incurred by it to compress, process, treat, or gather natural gas purchased or transported by it may be required to prove that the activities which engendered those costs were prudent. Many commenters objected to this condition because the Commission's policy on production-related costs is currently being contested in Opinion No. 90 and Order No. 94, and it will reduce the attractiveness of a blanket certificate. Several commenters argued that the condition unlawfully places pipelines at risk because they will not be able to ascertain in advance whether particular activities will be deemed prudent.

The Commission does not agree with this comment. The blanket certificate program will be effective only if specific rate disputes are deferred to an individual pipeline's rate case. Section 157.206(b) only requires that the certificate holder may be required to prove that production-related costs were prudently incurred. This condition eliminates any possible implication that issuance of the blanket certificate represents Commission approval that any production-related costs incurred from activities authorized under the blanket certificate were prudently incurred. Including § 157.206(b) in the blanket certificate conforms the blanket certificate to the Commission's existing policy on production-related costs. Accordingly, this condition is retained in the final rule.

Some commenters also requested that § 157.206(c) providing for the allocation of costs between the transportation of natural gas and liquids and liquefiable hydrocarbons be deleted. It is the Commission's practice to incorporate the text of § 157.206(c) into all certificates for facilities used to transport natural gas along with other substances. The purpose of the condition is to defer the allocation issue to the individual pipeline rate cases where the Commission can consider the overall operations of each particular pipeline. The Commission does not believe such issues can be handled on a generic basis in the blanket certificate proceeding without substantially reducing the effectiveness of a blanket certificate. Accordingly, § 157.206(c) has been retained in the final rule but is revised to reflect the Commission's current policy on liquids and liquefiables established in *Trunkline Gas Company, et al.*, Docket No. CP78–340 (issued March 4, 1981), 14 FERC ¶61,222.

Section 157.206(e) as proposed, would require the certificate holder to surrender any effective budget-type certificates upon acceptance of a blanket certificate. Moreover, the Commission will not accept any new applications for budget-type certificates. It is expected that the blanket certificate enventually will replace the budget-type certificate.

One commenter stated that authorization under the budget-type certificate should be permitted to continue in effect for projects which were started before the date of acceptance of the blanket certificate. This would enable a smooth transition between the two types of authorization.

The Commission agrees that projects which were initiated under a budget-type certificate should not become subject to the terms and conditions of the blanket certificate. However, the Commission does not deem the surrender of the budget-type certificate at time of acceptance of the blanket certificate as revocation of the budget-type certificate authorization for previously undertaken projects. Accordingly, projects commenced under the budget-type certificate, but not completed at the time of accepting the blanket certificate, will be treated as authorized under the budget-type certificate. In cases where the certificate holder has been issued a three-year storage field test certificate under a budget-type certificate pursuant to § 157.7(d), such testing will also be treated as authorized under that budget-type certificate and subject to the procedures and reporting requirements of § 157.7(d). Issuance of the blanket certificate will not extend the three-year period beyond the date on which it would have expired under the budget-type certificate. In order to distinguish between storage field testing performed under the budget-type certificate and such testing performed under the blanket certificate, § 157.204(d)(5) has been added to require an applicant for a blanket certificate to list in its application all on-going storage field tests which were commenced under a budget-type certificate. Finally, one change has been made in § 157.206(e) to clarify that this paragraph applies to currently effective budget-type certificates and that they must be surrendered effective upon acceptance of the blanket certificate.

Section 157.206(f), as proposed, required certain authorized activities to be completed and in actual operation or, in other cases, to be actually undertaken, within one year of the deadline for filing protests. Because the certificate holder will not begin the project until it is finally authorized, this paragraph is changed to provide that the commencement of the one-year period begins on the date the activity is finally authorized pursuant to § 157.205(h). In response to several commenters, a new sentence has added to § 157.206(f) to permit the certificate holder to apply for an extension of this deadline.

Section 157.206(g), as proposed, would have established conditions for the treatment of revenues received from transportation (including storage service). Because a final regulation for transportation and revenues derived from transportation will be considered in Docket No. RM81–29, this paragraph is deleted. Until the final regulations in Docket No. RM81–29 are effective, treatment of revenues from storage services authorized under § 157.213 will be subject to the treatment accorded such revenues under the pipeline's currently effective rates or rate settlement.

Section 157.207 establishes certain general reporting requirements applicable to all certificate holders. Proposed § 157.207(a) would have required an annual report on March 1 of each year of the previous calendar year's transactions. Several commenters requested that this date be changed to May 1 to give certificate holders sufficient time to gather the necessary data and to prepare the required report. Accordingly, § 157.207(a) is changed in the final regulations to require the

certificate holder to file the annual report on or before May 1.

Section 157.207(a) (1) through (7) requires the certificate holder to report certain information depending upon the activities which were undertaken for the previous calendar year. A new paragraph has been added at § 157.207(a)(8) to require the certificate holder to report the activities in § 157.207(a) (1) through (7) which were not undertaken, *e.g.* if no sales taps were authorized, the annual report should so indicate. This requirement will assure that no activities required to be reported will be inadvertently omitted from the annual report. In view of this addition, proposed § 157.208(e)(10) requiring a statement that no construction took place under the blanket certificate is deleted.

Some commenters interpreted proposed § 157.208(e) as requiring the certificate holder to file a separate annual report for activities authorized under § 157.208 in addition to the annual report required by § 157.207. This would be unnecessary, they state, because § 157.207(a)(1) requires the information listed in § 157.208(e) to be included in the annual report. They further assert that the filing requirements in proposed § 157.208(f)(1) are burdensome and unnecessary in view of the information that is filed in the annual report.

The Commission does not intend that the information required to be filed pursuant to § 157.208(e) be included in a separate annual report, but that it be filed as part of the annual report required by § 157.207. Section 157.208(e) is changed accordingly.

Proposed § 157.208(f)(1) required the certificate holder to file with the Commission statements during construction and after construction was completed indicating the actual construction date, the status of the construction, the actual date the facilities are placed in service, and the actual cost of the facilities. Because much of this information is already required to be filed in the certificate holder's annual report, the Commission believes it is unnecessary for the certificate holder to submit the information other than in the annual report. Accordingly, proposed § 157.208(f)(1) is deleted.

One comment stated that the Commission should require that the annual reports be served on the customers of the certificate holder and any state commission having regulatory authority over any such customer. The Commission recognizes that the annual report may contain some information which is useful to the certificate holder's customers or state commissions. However, the procedures under the blanket certificate are intended to be no more burdensome than the procedures under the abbreviated application procedure in § 157.7. Insofar as those procedures do not require any such comparable service, the Commission does not believe that the blanket certificate procedures should require such service. Because the annual report will be on file at the Commission, interested persons have access to it through the Division of Public Information or may request a copy from the certificate holder.

3. Construction, Acquisition and Operation of Facilities.

Under the proposed rule in § 157.208, the certificate holder would be authorized to construct and operate any minor facility or gas supply facility, subject to certain annual and per-project cost limitations. Many commenters stated that the proposed definitions of "minor facility," "gas supply facility," and "main line" were confusing and ambiguous and suggested, among other things, including "miscellaneous rearrangements of facilities" in, and excluding "sales taps" from, the definition of "minor facility." Some commenters suggested deleting the definitions of "minor facility" and "main line" in their entirely.

The Commission believes that there are certain types of activities which should be eligible for the streamlined procedures of a blanket certificate. The definitions of "minor facility," "gas supply facility" and "main line" were intended to determine the boundaries of those activities eligible for authorization under the § 157.208 procedures. However, the Commission agrees that these definitions can be clarified.

In the final regulations, § 157.208 has been revised to authorize the certificate holder (1) to make miscellaneous rearrangements of any facility or (2) to acquire, construct, or operate any eligible facility. A new paragraph has been added at § 157.202(b)(6) to define "miscellaneous rearrangement of any facility" as a rearrangement not resulting in any change of service rendered by those facilities. "Eligible facility" is defined in new § 157.202(b)(2)(i), subject to the exclusions in new § 157.202(b)(2)(ii), and is either a facility subject to Natural Gas Act jurisdiction necessary to provide service within existing certificated volumes or a gas supply facility. A "gas supply facility" is defined in § 157.202(b)(4) and, except for minor changes conforming the definition to the blanket certificate program, is the definition in § 157.7(b)(4)(i) under the Commission's abbreviated application procedures.

Section 157.202(b)(2)(ii) (A) through (H) lists exclusions from the definition of "eligible facilities."[5] Section 157.202(b)(2)(ii)(D) excludes facilities required to test, develop, or utilize an underground storage field. This change is intended to eliminate any overlap between §§ 157.208 and 157.215 regarding facilities required for testing or developing storage fields. If the facilities are required for utilization of the storage field, then the Commission believes that such facilities may have a significant impact on ratepayers, and such facilities should not be authorized under the blanket certificate procedures.

Because sales taps are authorized under the procedures in § 157.211, sales taps are excluded from the definition of "eligible facility" in § 157.202(b)(2)(ii)(E) and hence, from the authorization procedures in § 157.208.

Section 157.202(b)(2)(ii)(F) excludes facilities which cross state lines and are constructed for the primary purpose of transporting gas which is also transported by an intrastate pipeline under section 311(a)(2) of the NGPA. This exclusion affords the Commission the opportunity to identify interstate pipeline facilities intended to connect to existing or extended intrastate systems, such as the facilities in *Red River Pipeline*, Docket No. ST82-95 (February 22, 1982). Facilities to be constructed, operated, or acquired for this purpose must continue to be authorized under the case-specific procedures.

Section 157.202(b)(2)(ii)(G) also excludes from the definition of "eligible facility," facilities constructed to effect the purchase of gas from plants manufacturing synthetic gas or from plants gasifying liquefied natural gas. Because such facilities may have a significant impact on ratepayers, the Commission believes they should not be authorized under a blanket certificate, but should be subjected instead to the scrutiny of a case-specific determination.

Two commenters requested clarification of the meaning of "acquisition of facilities." The Commission intends that "acquisition of facilities" shall include facilities acquired not only by purchase, but also by lease. Lease arrangements are subject to the per-project cost limitations of Table I and will satisfy

[5] Section 157.202(b)(2)(ii)(C) excludes facilities, including compression and looping, which alters the capacity of a main line system. The Commission may consider expanding the blanket certificate program to include facilities altering main line capacity at a future date.

those limitations provided that the total lease charge (annual lease charge multiplied by the number of years of the lease) does not exceed the per-project cost limitations. A special condition has been added at § 157.208(f)(1) to this effect.

As proposed, § 157.208 required that the total cost of all facilities authorized during any calendar year under that section not exceed certain annual limits. The proposed regulations also set project cost limitations of $3.5 million for projects subject to automatic authorization, and $10 million for projects subject to the notice procedures.

Many commenters stated that the annual limits were unnecessary because the per-project cost limitation would serve to restrict the construction to routine facilities. Some commenters stated that the Subcommittee's recommendations did not include any cost limitations, and that both the annual and per-project cost limitations should be eliminated. Other commenters stated that the project cost limitation of $3.5 million for projects qualifying for automatic authorization was too low, and that project limits between $4 million and $5 million would be more realistic.

The Commission believes that the per-project cost limitations should be retained in the final regulations because they provide some basis for judging whether a proposed activity is sufficiently routine and will have a sufficiently small impact on ratepayers, so that it should be approved under the streamlined procedures of the blanket certificate regulations. However, the Commission also believes these project cost limitations should be revised. The proposed $3.5 million dollar figure was based on the existing project limitation under the budget-type certificates in § 157.7(b) for offshore construction. That figure was established on November 1, 1979 by Order No. 56 (Docket Nos. RM79–37 and RM79–43, issued November 1, 1979). In order to adjust this figure to account for increased construction costs, the final regulations for projects subject to the automatic authorization procedure revise the $3.5 million figure to $4.2 million by applying the "GNP implicit price deflator" for the period from 1979 through 1981. In order to reflect these increased construction costs for the projects subject to the notice and protest procedure, the $10 million dollar amount similarly is adjusted upward to $12 million dollars.

Under the proposed regulations, the project limits in Table I would be adjusted annually by the "GNP implicit price deflator." Many commenters argued against the use of the "GNP implicit price deflator" for adjusting these limits and recommended using the Handy-Whitman Index, a pricing index of various utility and utility-type equipment, updated semi-annually, for this purpose. The Commission believes that it is preferable to use the "GNP implicit price deflator" instead of an index based on a private collection of data not easily susceptible to governmental verification.[5a] Accordingly, the final regulations retain the use of the "GNP implicit price deflator."

In some cases, the estimated cost of a project may fall within the per-project limitations in Table I of the regulations, but the actual costs may exceed those limitations. In such cases, a new paragraph at § 157.208(g) requires the certificate holder to apply to the Director of OPPR for a waiver of the per-project cost limitations. The reasons for the cost overruns will be examined and appropriate action taken at that time. The Commission expects the certificate holder to carefully and accurately estimate the project cost so that a waiver request will be filed only in unusual cases.

With respect to the annual cost limitations, the Commission agrees with the comments that, provided the activities sought to be approved under the blanket certificate comply with the other requirements of the blanket certificate program, there should not be an annual limit on the number of eligible transactions approved under the blanket certificate.[6] Given the high costs of purchased gas relative to the customer's total gas bill, it is unlikely that the cumulative effect of the activities approved under this section will have any significant effect on ratepayers. Moreover, because the cost of activities approved under this section is essentially the same for all certificate holders, elimination of annual cost limits will permit all certificate holders to participate in the benefits of these procedures to the same extent, regardless of their assets. Therefore, § 157.208(a) and Table I have been changed to eliminate the annual cost limitations, but retain the per-project cost limitations.

Several commenters stated that the filing requirements for prior notice proceedings in proposed § 157.208(c) (1) through (10) were excessive, and that the filing requirements for the optional notice procedure proposed by the Subcommittee would only require information necessary to inform interested persons and staff of the proposal and permit an informal judgment on the application. They state that the information required to be filed should not exceed that which is required to be filed under § 157.7(a) of the Commission's current regulations for applications.

The Commission has reviewed the filing requirements in § 157.208(c) and does not believe them to be excessive or burdensome. The information required to be filed is the minimum information necessary to adequately describe the proposal and for staff and other interested persons to evaluate the proposal's impact. Moreover, if the filing requirements were reduced, the Commission expects that more protests would be filed for the purpose of obtaining this information. It is likely that the increased administrative costs of processing and withdrawing these protests would be greater than the costs of having the information filed with the application.

The final regulations include several other changes to § 157.208 from the proposed regulations. Section 157.208(c) sets forth the information which must be included in the certificate holder's application for a project to be authorized under § 157.208(b). Both proposed and final § 157.208(c)(1) require the certificate holder to state the purpose of the facilities to be authorized under the notice procedure. In order to evaluate the effect that the project will have on the certificate holder's other existing or planned facilities, § 157.208(c)(1) has been changed also to require that the certificate holder describe that relationship.

Section 157.208(c)(3) requires the certificate holder to file a U.S. Geological Survey map of 7½ minute series, or equivalent. Some commenters requested that this requirement be deleted, or that maps should be required only when requested. Another commenter stated that a 7½ minute map may not provide sufficient detail to accurately delineate the sensitive environmental areas that must be shown on the map.

The Commission believes that the map is necessary to accurately identify the location of projects in relation to sensitive environmental areas. In most instances, a 7½ minute map will provide sufficient detail for interested persons to identify the sensitive environmental areas. However, in those cases where

[5a] The "GNP implicit price deflator" is used to adjust periodically the maximum lawful prices under Title I of the NGPA.

[6] The Environmental Assessment concluded that elimination of the annual cost limits would not significantly affect environmental quality. Environmental Assessment of Blanket Certification of Routine Gas Pipeline Transactions, July 1981, at 36.

greater detail is needed, the certificate holder should file a map of higher resolution. Because it would be difficult to indicate all sensitive environmental areas on the map, § 157.208(c)(3) has been changed to require the certificate holder to indicate only those sensitive environmental areas within one-quarter mile of any project-related construction activity.

Section 157.208(c)(5) requires the certificate holder to include in its application a flow-diagram or comparative study showing daily design capacity, daily maximum capacity and operating pressures with and without the proposed facilities for that part of the system affected by the proposed project. Because the maximum operating pressure (a function of pipeline length, diameter and wall thickness) is essential to evaluating capacity and system operation but is not required to be reported in § 157.208(c)(5), § 157.208(c)(2) is changed to require the certificate holder also to state the maximum operating pressure in its application.

A new paragraph at § 157.208(c)(10) has been added for requests regarding acquisition of facilities. Section 157.208(c)(10)(i) requires the certificate holder to state the date of issuance, docket number and title of the proceeding of any certificate authorizing those facilities. This information will permit the Commission to maintain current records in those dockets previously authorizing those facilities. Section 157.208(c)(10)(ii) requires the certificate holder to state the amounts recorded in the accounts of the seller or lessor that apply to the facilities proposed to be acquired and the accumulated provisions for depreciation, depletion and amortization. This data will ensure that the acquisition price is within the project cost limitation and is determined to be consistent with the public convenience and necessity.

Proposed § 157.208(e)(2) requires the certificate holder to state in its annual report the location of the facilities. For purposes of monitoring compliance, this subparagraph has been changed to require the certificate holder also to report the purpose and the completion date of the facilities.

Proposed § 157.208(e)(8) required the certificate holder to state whether the annual report is for a full year or a partial year if it is for the certificate holder's first blanket certificate year. Because the annual cost limitations are eliminated from the final rule, this statement is no longer needed and is also eliminated.

Finally, § 157.208(f)(2) requires that the certificate holder not operate any facility authorized under the blanket certificate at a pressure exceeding the maximum operating pressure. This proposed paragraph stated that changes in the maximum operating pressure may be requested by filing a petition for amendment of the authorization under the blanket certificate. The final regulations clarify that changes in the maximum operating pressure should be filed pursuant to the notice procedure of § 157.205(b). Because of the need for safety and reliability of service, the Commission believes that the notice procedure is appropriate for changes in the maximum operating pressures.

4. Construction and Operation of Sales Taps

Under proposed § 157.211, sales taps for the delivery of gas to a "right-of-way grantor" and to an end user who is served from the certificate holder's general system supply are authorized under the blanket certificate. The Commission received many comments stating that the proposed definition of "right-of-way grantor" in § 157.202(i), now § 157.202(b)(9), is too narrow. They request that it be expanded to include any person or his successor in title who has granted a right-of-way easement to a certificate holder, regardless of whether such service was expressly made a condition of the written agreement granting the easement. Other commenters suggested that sales taps should be authorized for agricultural users who require natural gas for farm residential use, irrigation pumping, crop drying or raising animals where the land is traversed by a gathering system or pipeline right-of-way. Only two comments opposed expanding the definition, arguing that the restriction is necessary to insure that interstate pipelines do not use the blanket certificate to serve industrial loads located in the certificated service area of an intrastate distribution company.

After reviewing these comments, the Commission believes that the definition of "right-of-way grantor" should be changed to mean a person who grants a right-of-way easement to the certificate holder or any successor to an interest which is subject to the easement. The proposed definition was consistent with the Commission's policy which it has followed since 1976 to limit these taps to customers who granted easements in reliance upon obtaining gas service. *See,* for example, Opinion No. 773, issued August 13, 1976, in Docket No. CP75–333, 56 FPC 987. Based upon the comments, this definition is too narrow, and is changed accordingly. In short, it is not expected that the additional sales taps serving small loads which will result from service which was not expressly made a condition of a written agreement granting an easement will have any significant effect on the pipeline's existing customers.

Section 157.211(b)(1) as proposed, would permit sales taps pursuant to the notice procedure if, among other things, the gas is consumed by an end-user currently served directly or indirectly from the general system supply of the certificate holder. As proposed, this paragraph was intended to permit sales taps to consumers who not only are currently served, but also will be served directly or indirectly from the general system supply of the certificate holder. The final regulations include this clarification.

5. Changes in Delivery Points

Section 157.212 authorizes the certificate holder, subject to the notice procedure, to add new delivery points for a customer or to reassign volumes of gas to be delivered between delivery points, subject to certain conditions in § 157.212(a) (1) through (3). A number of comments requested that changes in delivery points be subject to automatic authorization so long as the parties agree and the total entitlement is not exceeded. One comment stated that the preamble in the Notice of Proposed Rulemaking, Docket No. RM81–19, stated that the notice procedure is required for changes in delivery points between rate zones, implying that a change within the same rate zone would be automatically authorized.

By requiring changes in delivery points to be subject to the notice procedure, the Commission intends that any change in delivery points, whether between rate zones or within a rate zone, will not be authorized unless the notice procedure of § 157.205 is followed. The notice procedure is necessary for changes in delivery points because such changes may result in the shifting of large volumes of gas to different delivery points. Such shifting may ultimately affect the certificate holder's load factor and result in rate implications for its customers.

6. Storage Services

As proposed, § 157.213 would provide for authorization of certain storage services under either automatic authorization or the notice procedure, depending on whether the service was for periods in excess of two years. That proposal is included in the final regulations with minor modifications. For compliance purposes, § 157.204(d)(4)

has been added to require an applicant for a blanket certificate to list in its application any currently effective storage service rate schedules which would apply to services performed under § 157.213 and an explanation of the treatment of revenues under such rate schedule. Section 157.213(c)(5) has also been added to require the certificate holder to cite the rate schedule applying to the storage service and to explain the treatment of revenues under that schedule.

As previously stated, regulations for transportation under a blanket certificate were proposed in Docket No. RM81–19, but are not included in these final regulations because staff is reviewing, among other things, appropriate ways of treating revenues derived from such transportation. When the Commission issues final regulations for transportation in Docket No. RM81–29, it will also address the manner in which such revenues should be treated. Such treatment may also apply prospectively to revenues derived from storage services performed under a blanket certificate. Until the final regulations for transportation in Docket No. RM81–29 become effective, however, revenues derived from storage services performed pursuant to § 157.213 are to be treated in accordance with the certificate holder's currently effective rates. This approach comports with current Commission practice in individual section 7(c) proceedings.

7. Underground Storage Testing and Development

Section 157.215 provides for automatic authorization, subject to certain conditions, for the construction and operation of natural gas pipeline and compression facilities to be used for the testing and development of underground reservoirs for the possible storage of gas. One of the proposed conditions in § 157.215(a)(5) would require that the total expenditure does not exeed $1,000,000 per calendar year. This amount was based on the existing limitation under the budget-type certificate in § 157.7(d). That figure was established on August 12, 1964, by Order No. 285, (Docket No. R–254 issued August 12, 1964). In order to reflect increased costs since the issuance of the limitation in 1964, the limitation has been adjusted in the final regulations by the "GNP implicit price deflator" from 1964 through 1981 to $2.7 million. The final regulation provides that this figure be adjusted each calendar year to reflect the "GNP implicit price deflator."

One commenter questioned an apparent contradiction between the preamble in the Notice of Proposed Rulemaking in Docket No. RM81–19 which stated that the three-year limitation from § 157.7(d) of the Commission's regulations would not be incorporated into the blanket certificate regulations, and proposed § 157.215(a)(1) which imposed such restriction.

By stating that the three-year limitation imposed by § 157.7(d) would be dropped, the Commission intended that the blanket certificate would not expire even though the three-year limitation on a particular storage project had expired. This aspect of the blanket certificate does not eliminate the requirement that the testing and development of a particular storage project must be completed within the three-year period. Accordingly, this requirement is retained in the final regulations at § 157.215(a)(1).

The same commenter stated that it was not clear what period of time applied to the total and single field injection quantities imposed by § 157.215(a)(2). This paragraph has been changed to clarify that, under the blanket certificate, the total quantity of gas injected into the storage fields should not exceed 10,000,000 Mcf at any time in all fields. Similarly, the total quantity of gas injected into a single field should not exceed 2,000,000 Mcf. Although the proposed regulation measured these quantities in MMBtu, the final regulation measures these quantities in Mcf because the volume of gas injected into the storage fields is more relevant than the Btu content of the gas.

8. Abandonment

Section 157.216(a) automatically authorizes certificate holders to abandon gas supply facilities if the supplier has been authorized to abandon its sale, or if no abandonment of the supplier's sale is required under section 7(b) of the Natural Gas Act by operation of section 601(a)(1) of the NGPA. Several commenters requested that if a seller does not apply for Commission authorization to abandon a facility, even though deliveries through the facility have ceased and the gas purchase contract has expired, the interstate pipeline should be permitted to treat such facilities as abandoned under § 157.216(a).

The Commission does not accept this suggestion. Under the Commission's current regulations, suppliers are required to initiate abandonment proceedings and to justify the abandonment in terms of the public convenience and necessity. If the supplier has not filed for abandonment of its service, the certificate holder may file a regular section 7(b) application for abandonment of its own facilities with a full explanation of the circumstances. This situation is outside the scope of activities contemplated by the blanket certificate.

9. Changes in Rate Schedules

Section 157.217 automatically authorizes the certificate holder to permit an existing customer to change from one rate schedule to another if the combined volumetric limitations on deliveries to the customer under both rate schedules are not increased, and the changes are consistent with the terms of effective tariffs. Several commenters requested that such changes be permitted only if the change in rate schedule was assented to by both the buyer and the seller.

The Commission agrees that both the certificate holder and the customer should agree with the change in rate schedule. The final regulation, as was the proposed regulation, is intended to apply only to changes in rate schedules which have been requested by a certificate holder's customer. This clarification is made in the regulation.

III. Environmental Compliance

On July 1, 1981, the staff issued a notice of the availability of its Environmental Assessment for Docket Nos. RM81–19 and RM81–29 (46 FR 35529, July 9, 1981). The Environmental Assessment concluded that implementation of the proposals in Docket Nos. RM81–19 and RM81–29 would not constitute a major Federal action significantly affecting the quality of the human environment. While stating that the conditions in § 157.206 would reduce the potential for adverse environmental impact to acceptable levels, it also recommended several clarifications and modifications to the proposals.

The Commission agrees with the conclusion of the Environmental Assessment that these rules do not constitute a major Federal action significantly affecting the quality of the human environment and herein adopts that conclusion. Most of the recommendations of the Environmental Assessment are incorporated into the final rule.

Section 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1536, requires Federal agencies to insure that any action authorized by them is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of the critical habitat of such species. That section also requires Federal agencies to

confer with either the Secretary of the U.S. Department of the Interior or the Department of Commerce, as appropriate, if the action is likely to jeopardize the continued existence of any species proposed to be listed under 16 U.S.C. 1533 or to result in the destruction or adverse modification of a critical habitat proposed to be designated for such species. The Environmental Assessment proposed that the Commission satisfy these requirements by designating the certificate holder as the Commission's non-Federal representative for purposes of informal consultations with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS).

The Commission adopts, with modification, the proposal in the Environmental Assessment as the means for complying with the Endangered Species Act. A new paragraph has been added at § 157.206(d)(7) to require each certificate holder, upon accepting the blanket certificate, to act as the Commission's non-Federal representative for purposes of complying with the Endangered Species Act. A new paragraph has also been added at § 157.206(d)(3)(i) stating that the certificate holder shall be deemed in compliance with § 157.206(d)(2)(vii) only if it complies with the procedures in Appendix I of Subpart F of Part 157.

Pursuant to the procedures in Appendix I, each certificate holder will be required to conduct informal consultation with the FWS or NMFS. As a result of consultation with either or both of these agencies, the consulted agency may either agree (1) that neither listed nor proposed species or their habitats are present; (2) that listed or proposed species or their habitats are present but would not be affected by the project; or (3) that a proposed species or its habitat may be affected. In such cases, the Commission's obligations under the Endangered Species Act would be statisfied and the certificate holder would be deemed in compliance with § 157.206(d)(2)(vii) of the Commission's regulations. If, however, the consulted agency (1) agrees that a listed species or its habitat may be affected, or (2) does not agree with the certificate holder's position on these issues, then the project shall not be authorized under the blanket certificate and the certificate holder shall not proceed with the proposed project under the blanket certificate.

Section 106 of the National Historic Preservation Act of 1966 (NHPA), (16 U.S.C. 470f) requires the head of any independent agency having authority to license any undertaking to take into account, prior to approving any undertaking, the effect of the undertaking on any district, site, building, structure, or object that is included in, or eligible for inclusion in, the National Register of Historic Places. Federal agencies are required to provide the Advisory Council on Historic Preservation (Advisory Council) a reasonable opportunity to comment with regard to such undertaking. The Environmental Assessment suggested that the Commission comply with section 106 of the NHPA by entering into a Programmatic Memorandum of Agreement with the Advisory Council pursuant to its regulations.

Although a Programmatic Memorandum of Agreement is one way for the Commission to satisfy its statutory obligations under the National Historic Preservation Act, the Commission believes that if the certificate holder complies with the procedures in Appendix II of this rule, the Commission will have statisfied its obligations. The type of transaction that may be authorized under the blanket certificate generally is not the type that will affect the environmental concerns protected by the NHPA. By accepting the blanket certificate, the certificate holder agrees to the conditions in § 157.206, including § 157.206(d)(2)(iv) and § 157.206(d)(3)(ii) which require compliance with the procedures in Appendix II. For those activities that the certificate holder complies with the procedures of Appendix II, the Commission finds that its obligations under NHPA are satisfied.

Under those procedures, a certificate holder is required to identify or cause to be identified listed properties, and unlisted properties that satisfy the National Register Criteria for Evaluation, that are located within the area of the project's potential environmental impact and may be affected by the undertaking. A project may proceed under the blanket certificate if, as a result of following the Appendix II procedures, the certificate holder and the appropriate State Historic Preservation Officer (SHPO) agree that listed or unlisted properties that satisfy the National Register Criteria for Evaluation either (1) do not occur in the area of the project's potential environmental impact, (2) do occur but will not be affected, or (3) will not be affected if the project is relocated. However, in those cases where the SHPO or the certificate holder finds that the project will affect listed properties, or unlisted properties satisfying the National Register Criteria for Evaluation, and the effect cannot be avoided by relocation, then the project shall not be authorized under the blanket certificate. The certificate holder may seek authorization for the project under a case-specific determination in which mitigation and minimization of the effect will be considered.

Section 157.206(d)(2)(vi) requires that all activities authorized by the blanket certificate shall be consistent with the Coastal Zone Management Act of 1972 (CZMA) (16 U.S.C. 1451, *et seq.*) as amended, and its regulations or compliance plans. Under the CZMA, administered by the U.S. Department of Commerce, all states with approved coastal management programs must be allowed to review all construction programs within their defined coastal zone before any Federal authorization is issued.

In order to be in compliance with CZMA, the certificate holder must obtain a determination from the state's designated agency that the proposed construction complies with the state's approved program. If such a determination could not be obtained, § 157.206(d)(2)(vi) of the Commission's regulations would not be satisfied and the project would not be authorized under the blanket certificate.[7] In those instances where the state waives its right to review the certificate holder's proposed project, the proposed project shall be deemed to be in compliance with § 157.206(d)(2)(vi). Section § 157.206(d)(3)(iii) has been added to this effect.

This Environmental Assessment recommended that the definition of "gas supply facility" be clarified to exclude facilities constructed to effect the purchase of gas from plants manufacturing synthetic gas, natural gas conditioning plants, or from plants gasifying liquefied natural gas. Provided this clarification is adopted, the Environmental Assessement stated that the Commission should state that "the construction of taps, meters, and regulating facilities within an existing

[7] If the activity is not in compliance with the state's approved program, the project may be prohibited by the CZMA unless, as section 307(c)(3)(A) of the CZMA (16 U.S.C. 1456(c)(3)(A)) states, in part, "the Secretary (of Commerce), on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security." Such an appeal would involve the Commission and would only be undertaken in a case-specific determination under section 7 of the Natural Gas Act.

right-of-way where the land use of the vicinity has not changed since the original facilities were installed" is excluded from the requirements of the National Historic Preservation Act of 1974, the Coastal Zone Management Act of 1972, and the Endangered Species Act of 1973.

As explained elsewhere in the preamble, the definitions of "gas supply facility" and "minor facility" have been combined into the definition of "eligible facility," subject to certain exclusions in § 157.202(b)(2)(ii). These exclusions include facilities constructed to effect the purchase of gas from plants manufacturing synthetic gas or from plants gasifying liquefied natural gas. However, the Environmental Assessment's recommendation that certain types of construction be excluded from the environmental requirements of the above statutes is not included in the final regulations. In Docket No. RM79–69, the Commission proposed to adopt as its policy the objectives and aims of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347.[8] However, because certain categories of actions normally are not major Federal actions significantly affecting the quality of the human environment, the Commission also proposed in that rulemaking to exclude certain categories of actions. One of those actions was the "approval of taps, meters, and regulating facilities located within an existing right-of-way where the land use of the vicinity has not changed since the original facilities were installed." Because the Environmental Assessment's proposal is under consideration in another proposed rulemaking, the final decision to adopt that suggestion will be made when final regulations are issued in Docket No. RM79–69.

The Environmental Assessment recommended that the Director of OPPR be delegated authority to authorize transactions which comply with all aspects of the blanket certificate program except the environmental conditions of § 157.206(d) if appropriate mitigation measures subsequently had been developed to resolve the environmental problems.

The final regulations do not include such a delegation provision for environmental compliance. The requirements of the blanket certificate program are intended to establish the limits for which approval of certain activities is appropriate under the streamlined procedures of the blanket certificate and are consistent with the Commission's statutory obligations under the Natural Gas Act and environmental statutes. Such delegations would alter those limits and essentially open the blanket certificate program to all activities, which for one reason or another, fail to comply with the specific requirements. These regulations do include a delegation provision for projects authorized under § 157.208 whose actual costs exceed the pre-project cost limitations. However, this provision is necessary because cost overruns due to unforeseen events realistically may occur. The Commission does not believe a similar situation exists with respect to environmental compliance.[9]

Section 157.206(d)(1), as proposed, required all transactions authorized by the blanket certificate to be in full compliance with § 2.69 of the Commission's regulations; that section provides guidelines for planning, locating, clearing, and maintaining right-of-way and construction of above-ground facilities. The language in this subparagraph has been changed to more closely track the language in § 157.14(a)(6–c) of the Commission's regulations applying to applications for certificates of public convenience and necessity. Besides requiring the certificate holder to adopt the guidelines of § 2.69, it requires the certificate holder to issue the relevant portions of the guidelines to construction personnel, and instruct them to use the guidelines.

Section 157.206(d)(2) requires that all transactions be consistent with the provisions, regulations, and compliance plans of certain specified statutes and Executive Orders. One commenter stated that the list was not all-inclusive and that certain statutes which affect lands under the jurisdiction of the U.S. Department of the Interior should be added to the list.[10]

The Commission expects certificate holders to be in compliance with all applicable law. The list in § 157.206(d)(2) is intended to include the most applicable and significant environmental law but is not intended to be exhaustive. If a proposed activity does not comply with one of the requirements in § 157.206(d)(2), the Commission believes that the activity should be subject to the scrutiny of a case-specific determination. To the extent that other statutes apply to a transaction authorized under the blanket certificate, however, the certificate holder is still required to comply with those requirements, *e.g.*, the requirement that certificate holders secure a right-of-way grant from the U.S. Department of the Interior for appropriate transactions. The Commission expects that the U.S. Department of the Interior will require compliance with its statutory responsibilities.

One commenter suggested that the regulations provide some site selection criteria for projects approved under a blanket certificate. The Commission notes that § 157.206(d)(1) requires the certificate holder to adopt the guidelines in § 2.69 of the Commission's regulations.

One commenter stated that the definition of "senstitive environmental area" in proposed § 157.202(k) and the list of statutes and Executive Orders in § 157.206(d)(2) were redundant because compliance with the statutes and Executive Orders in § 157.206(d)(2) will insure that environmentally sensitive areas will not be significantly or adversely affected.

The Commission has defined the term "sensitive environmental area" in § 157.202(k), now § 157.202(b)(11), not only for the purpose of requiring that transactions not significantly impact or adversely affect such areas, but also for the purpose of requiring that such areas be identified as part of the filing requirements in §§ 157.208(c)(3) and 157.208(c)(11), formerly § 157.208(c)(10). The list of statutes and Executive Orders in § 157.206(d)(2) is included for the purpose of identifying significant environmental law which, if not complied with, will subject the activity to the scrutiny of a case-specific determination. Therefore, to the extent these sections overlap, such overlap is necessary because these sections serve different purposes.

Section 157.202(k)(5), now § 157.202(b)(11)(v), proposed to define a "sensitive environmental area" as a designated or proposed wilderness area or a national or a state wild and scenic river, wildlife refuge, or preserve. This definition has been changed, for the purpose of making it more technically correct, to apply to management areas and sanctuaries rather than preserves. Also, a new paragraph at

[8] Notice of Proposed Rulemaking, "Regulations Implementing the National Environmental Policy Act of 1969," Docket No. RM79–69, issued August 20, 1979 (44 FR 50052, August 27, 1979).

[9] The Commission notes that no such delegation provision for environmental compliance exists for the Commission's budget-type certificate programs.

[10] The additional statutes recommended to be included in § 157.206(d)(2) are: Mineral Lands Leasing Act, as amended; Federal Land Policy and Management Act of 1976; National Trails System Act, as amended; Land and Water Conservation Fund Act of 1965, as amended; Urban Park and Recreation Recovery Act of 1978; Federal Surplus Lands for Parks and Recreation Act of 1970; Archeological Resources Protection Act of 1979; American Indian Religious Freedom Act; National Wildlife Refuge System Administration Act of 1966.

§ 157.202(b)(11)(vii) has been added to comply with the policy of the American Indian Religious Freedom Act, 42 U.S.C. 1996, to include within the definition of "sensitive environmental areas," sites subject to use by American Indians and other Native Americans for religious purposes.

As proposed, § 157.206(d)(3), now § 157.206(d)(4), states that any transaction shall not significantly impact, or adversely affect: (i) an endangered or threatened species under the Endangered Species Act, or (ii) a sensitive environmental area. Because § 157.206(d)(2)(vii) requires the certificate holder to comply with the Endangered Species Act (pursuant to the procedure in Appendix I of Subpart F of Part 157), the requirement in former § 157.206(d)(3)(i) is unnecessary and is deleted from the final regulations.

Under the proposed rule, § 157.206(d)(4), now § 157.206(d)(5) required that any compressor installed pursuant to the blanket certificate not increase the ambient noise levels at nearby existing residences above a mean level (L_{dn}) of 55 dB(A). Several commenters opposed this limitation, claiming it is unreasonable and imposes an unnecessary financial burden on certificate holders.

The Commission has reviewed these comments and the discussion about noise levels in the Environmental Assessment, and agrees with the Environmental Assessment that an L_{dn} of 55 dB(A) is an appropriate maximum value for compressor facility noise under the blanket certificate. In the absence of a case-specific determination, this level will ensure that compressor noise will not significantly interfere with speech or other outdoor activities and will adequately protect the indoor noise environment. Several commenters noted that if the existing noise levels exceed an L_{dn} of 55 dB(A), then proposed § 157.206(d)(4), now § 157.206(d)(5), would not allow the installation of a compressor. The final regulations permit the necessary flexibility by allowing compressor facility noise to cause certain limited increases in ambient noise levels.

The new rule in § 157.206(d)(5) permits a compressor to be authorized under the blanket certificate provided the noise attributable to the compressor facility does not exceed a day-night sound level (L_{dn}) of 55 dB(A) at nearby noise-sensitive areas, such as schools, hospitals and residences. Under this rule, the ambient noise without compressor noise is irrelevant because only the compressor facility noise at the nearby noise sensitive area must not exceed an L_{dn} of 55 dB(A). For example, if the ambient noise level at nearby noise-sensitive areas without the compressor facility noise were an L_{dn} of 45 dB(A), then adding compressor facility noise with an L_{dn} of 55 dB(A) at the noise-sensitive area would result in an ambient noise level at an L_{dn} of 55.4 dB(A).[11] Similarly, if the ambient noise level at a nearby noise-sensitive area without compressor facility noise were at an L_{dn} of 60 dB(A), then adding a compressor facility with a noise level of an L_{dn} of 45 dB(A) at the noise sensitive area would result in an ambient noise level at an L_{dn} of 61.2 dB(A). Although the impact of the compressor facility on the ambient noise level at the noise-sensitive area would differ in these two cases, the certificate holder would be in compliance with § 157.206(d)(5) because the compressor facility noise at the noise sensitive area would not exceed 55 dB(A).[12] The Commission believes that this approach will add the necessary flexibility for installing a compressor facility, but will protect nearby noise-sensitive areas from experiencing an unacceptable involuntary increase in noise levels. If the noise-sensitive area was established after facility construction then those residents would have voluntarily accepted the existing noise levels, and the restrictions in new § 157.206(d)(5) should not apply. The final regulation is clarified in this respect.

The Commission emphasizes that the noise condition applies only to authorization under the blanket certificate and will identify projects involving long-term changes in noise levels which may have potentially significant adverse noise impact. Even if installation of a particular compressor facility is not authorized under a blanket certificate because of these restrictions, authorization would not necessarily be precluded under a case-specific determination where specific noise abatement techniques could be considered.

The Nuclear Regulatory Commission filed a comment stating its concern that activities authorized under §§ 157.208 and 157.215 might be undertaken in proximity to nuclear power reactor facilities without proper review and analysis of potential impact. They request that activities otherwise authorized under § 157.208 which are within 0.5 mile, or in the case of activities otherwise authorized under § 157.215 which are within 2.0 miles, of a nuclear power plant which is either operating or under construction, or for which a construction permit has been filed with the Nuclear Regulatory Commission, be subject to the scrutiny of a case-specific determination. Section 157.206(d)(6), has been added to comply with this request.

IV. Summary of the Rule

The Commission is issuing final regulations at Subpart F of Part 157 establishing a procedure by which an interstate pipeline may obtain a blanket certificate under which certain routine activities would be authorized. Applications for a blanket certificate are to be filed in accordance with the procedures of § 157.204. Only interstate pipelines which previously have been issued a certificate under section 7 of the Natural Gas Act (other than a limited-jurisdiction certificate) are eligible to apply for a blanket certificate.

Upon being issued a blanket certificate, the certificate holder is authorized, pursuant to § 157.203, to engage in any of the activities specified in §§ 157.208 through 157.218.[13] The activities listed in § 157.203(b) are subject to automatic authorization while the transactions listed in § 157.203(c) are subject to the notice procedure of § 157.205.

Under the notice procedure of § 157.205, the Director of OPPR may reject requests which patently fail to comply with the filing requirements of § 157.205(b). Provided the request is not rejected, the Secretary shall publish notice of the request as soon as practicable. Protests and interventions must be filed within 45 days of the date of issuance of the notice.

After the deadline for filing protests and interventions has occurred, § 157.205(f) provides that the certificate holder, all protestors and intervenors, and staff shall have 30 days to resolve the protest. If the protest is not withdrawn pursuant to § 157.205(g) during this reconciliation period, the transaction shall not be authorized by the blanket certificate. Section § 157.205(h) provides for final authorization of transactions (1) which have not been protested, or (2) which have been protested but for which all protests have been withdrawn.

[11] Because decibels add logarithmically, the resultant sound level will not increase by 55dB(A).

[12] As the ambient noise level without the compressor facility increases, the incremental increase in the ambient noise level attributable to the compressor facility at the noise-sensitive area decreases.

[13] Section 157.201(d) provides that nothing in Subpart F of Part 157 shall preclude an interstate pipeline from proceeding under any other provision of the Commission's regulations. Certificate holders who need to obtain a temporary certificate of public convenience and necessity should use the procedures in § 157.17.

Section 157.206 establishes certain standard conditions which are automatically incorporated into every blanket certificate and applicable to every certificate holder. This section includes conditions for the treatment of production-related costs, the apportionment of costs for the treatment and handling of liquids and liquefiables, environmental compliance, the surrender of budget-type certificates, commencement of the authorized transaction, and the filing of reports. Appendices I and II provide procedures for complying with the Endangered Species Act and the National Historic Preservation Act. The certificate holder is deemed in compliance with § 157.206(d)(2) (vii) and (iv) if he complies with those procedures.

Section 157.207 establishes general reporting requirements. Such requirements include an annual report to be filed on or before May 1, that lists, among other things, self-implementing activities authorized under the blanket certificate.

Sections 157.208 through 157.218 are the activities which may be authorized under a blanket certificate. These sections specify conditions which must be satisfied in order for the activity to be authorized, the contents of a request subject to the notice procedure, reporting requirements and other such conditions.[14] Section 157.209 proposed in Docket No. RM81–19 for transportation activities and § 157.210 proposed in Docket No. RM81–29 for off-system sales have been reserved and will be considered in Docket No. RM81–29.

Section 157.208 authorizes the certificate holder (1) to make miscellaneous rearrangements of any facility, or (2) to acquire, construct, and operate any eligible facility. Projects costing $4.2 million or less are subject to automatic authorization while projects costing more than $4.2 million, but less than $12 million, are subject to the notice procedure of § 157.205.

Section 157.211 provides for authorization of sales taps. The construction and operation of sales taps are automatically authorized if the natural gas is ultimately delivered to and consumed by a right-of-way grantor, and no more than 200 MMBtu of gas per day are delivered to the right-of-way grantor. Other sales taps are subject to the notice procedure if the natural gas is consumed by an end-user served from the certificate holder's general system supply, the volumes are within the customers' certificated entitlements, and the certificate holder's tariffs do not prohibit the addition of new delivery points.

Section 157.212 authorizes the certificate holder to add new delivery points for a customer, or to reassign volumes of gas which would be delivered to one of its delivery points to another delivery point, if the conditions in § 157.212(a) (1) through (3) are satisfied. These conditions assure that the customer does not receive an increase in volumes, the change is not prohibited by an existing tariff of the certificate holder, and the change in delivery points will not disadvantage the certificate holder's other customers.

Section 157.213 provides for the authorization of storage services under the blanket certificate. The storage services and any incidental transportation are automatically authorized if the storage service is within the certificated storage capacity of the certificate holder, the term of the service does not exceed two years, and the rate for the service is covered by an effective rate schedule. Any such storage arrangement which exceeds two years may be authorized under the blanket certificate, but is subject to the notice procedure.

Section 157.214 authorizes the certificate holder to provide for the storage of additional volumes of natural gas so long as the original certificate authorized the operation of a storage field, and the additional storage will not exceed the physical limitation of the facility and will not require the construction of additional facilities. Such authorization is subject to the notice procedure. Most problems which arise with respect to the storage of additional volumes in an existing facility concern the safety of providing such additional storage. Therefore, in requesting authorization for additional storage, the certificate holder must submit information which reflects the facility's ability to safely store additional volumes. In addition, the certificate holder must submit semi-annual reports containing information pertinent to the safety of the storage facilities until the storage inventory volume has approximately reached the maximum specified in the request. Thereafter, the reports shall continue on a semi-annual basis for a period of one year.

Section 157.215 provides for the automatic authorization of the construction and operation of natural gas pipeline and compression facilities for testing or developing underground reservoirs for storing gas. Total expenditures for such facilities are not to exceed $2.7 million per calendar year. This figure will be adjusted annually to reflect the "GNP implicit price deflator." Moreover, the cumulative volumes of gas injected into such prospective storage fields is not to exceed a total of 10,000,000 Mcf at any time and the cumulative volumes injected into any single field is not to exceed 2,000,000 Mcf over the term of the project.

Section 157.216 authorizes abandonment of gas supply facilities and service if the supplier has been authorized to abandon the sale, or the sale has ceased and has been removed from the Commission's abandonment jurisdiction by operation of section 601(a)(1) of the NGPA. The authority to abandon these facilities is automatic under the blanket certificate. Sales taps or lateral lines and related facilities and services may be abandoned subject to the notice procedure if all customers currently served through the tap or lateral line consent to the abandonment. The term "customers currently served" is used so that only customers remaining in business must concur in the abandonment. Consent is not necessary from customers who no longer exist.

Section 157.217 automatically authorizes the certificate holder to shift purchases of an existing customer from one rate schedule to another. Such changes are authorized if they do not change the total volumetric limitations on deliveries for that customer and are consistent with the terms of effective tariffs.

Section 157.218 automatically authorizes amendments in outstanding certificates to reflect the change in the name of an existing customer if the name change is a result of corporate reorganization or acquisition. Because the Secretary of the Commission is already authorized to change the name of a certificate holder under § 375.302(a), no corresponding authority is needed under the blanket certificate.

Section 284.201(e) is amended to extend the Order No. 30 program until 90 days after the effective date of a final rule in Docket No. RM81–29. This extension is necessary because the Order No. 30 program is due to expire 90 days after the effective date of this rule. Written comments on the extension and incorporation of the Order No. 30 program were received in this docket. However, because the Commission's transportation policies, including the Order No. 30 program, will be reviewed in Docket No. RM81–29, it is necessary to extend the program until 90 days after the effective date of the final rule to be issued in Docket No. RM81–29.

[14] Fees and annual charges for such transactions are determined pursuant to 18 CFR Part 159 and in the case of transactions automatically authorized, should accompany the filing of the annual report.

Finally, § 375.307 is amended to authorize the Director of OPPR or his designee to perform certain actions consistent with the blanket certificate program. Section 375.307(a) (15) and (16) permit the Director to pass on applications for blanket certificates (including the waiver of project cost limitations and the convening of informal conferences during the 30-day reconciliation period) and to reject requests that patently fail to comply with the filing requirements in § 157.205(b) of the notice procedure, respectively. Section 375.307(t) authorizes the Director to compute and publish the project limits in Table I and Table II each calendar year.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act[15] requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The purpose of the blanket certificate program implemented by this rulemaking is to make the certificate process more efficient by streamlining and expediting the Commission review of routine certificate applications. This blanket certificate program is specifically designed to reduce the regulatory burdens of the certificate process on all entities, large and small, who ultimately may be affected by the process, either directly or indirectly.

In the Notice of Proposed Rulemaking in this docket, the Commission certified that this rulemaking would not have a significant impact on a substantial number of small entities. This certification was based upon the nature of the blanket certificate program and the characteristics of the entities subject to the program.

One commenter disagreed with this certification, stating that the Commission did not consider the economic effects on some small entities such as farmers seeking sales taps for essential agricultural purposes. As stated elsewhere in the preamble, the Commission agrees with that comment, and other comments, that sales taps to right-of-way grantors should be automatically authorized regardless of whether the service was made an express condition of the written agreement granting the easement. Accordingly, the final rule broadens the definition of "right-of-way grantor" to reduce the burden of authorizing such sales taps.

[15] 50 U.S.C. 601–612 (Pub. L. 96–354, September 19, 1980).

Therefore, in view of the nature of the blanket certificate program implemented by this rulemaking which reduces regulatory burdens, direct and indirect, large and small entities, and in view of the changes in the final rule to eliminate impacts raised by the comments, the Commission finds that the rule does not impose any regulatory or administrative burdens on a significant number of small entities and that it does not require an expense of resources by such entities. Accordingly, the Commission certifies that the rule does not have a significant economic impact on a substantial number of small entities.

VI. Effective Date

The regulations in this Final Rule will be effective July 6, 1982.

(Natural Gas Act, 15 U.S.C. 717–717w; Natural Gas Policy Act, 15 U.S.C. 3301–3432; Department of Energy Organization Act; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 142)

List of Subjects in 18 CFR

Part 157

Natural gas.

Part 284

Continental shelf, Natural gas, Reporting requirements.

Part 375

Authority delegations (Government agencies).

In consideration of the foregoing, the Commission amends Parts 157, 284 and 375 of Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Part 157 is amended in the Table of Contents by adding Subpart F to read as follows:

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

* * * * *

Subpart F—Interstate Pipeline Blanket Certificates and Authorization Under Section 7 of the Natural Gas Act for Certain Transactions and Abandonment

Sec.
157.201 Applicability.
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157.204 Application procedures.
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157.206 Standard conditions.
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157.208 Construction, acquisition, operation, and miscellaneous rearrangement of facilities.
157.209 Transportation. [Reserved.]
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157.212 Changes in delivery points.
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157.214 Increase in storage capacity.
157.215 Underground storage testing and development.
157.216 Abandonment.
157.217 Changes in rate schedules.
157.218 Changes in customer name.
Appendix I Procedures for compliance with the Endangered Species Act of 1973 under § 157.206(d)(3)(i).
Appendix II Procedures for compliance with the National Historic Preservation Act of 1964 under § 157.206(d)(3)(ii).

2. Part 157 is amended by adding a new Subpart F and accompanying appendices to read as follows:

Subpart F—Interstate Pipeline Blanket Certificates and Authorization Under Section 7 of the Natural Gas Act for Certain Transactions and Abandonment

§ 157.201 Applicability.

(a) *Scope.* This subpart establishes a procedure whereby an interstate pipeline may obtain a blanket certificate authorizing certain construction and operation of facilities, transportation, sales arrangements and certain certificate amendments and abandonment under section 7 of the Natural Gas Act.

(b) *Who may apply.* This procedure is only applicable to interstate pipelines.

(c) *Cross-references.* For other blanket certificate authorizations applicable to interstate pipelines see Subpart G of Part 284 of this chapter.

(d) *Availability of case-specific certificates.* Nothing in this subpart shall preclude an interstate pipeline from proceeding under any other provision of the Commission's regulations to obtain Commission approval of abandonments or a temporary or permanent certificate of public convenience and necessity.

§ 157.202 Definitions.

(a) *General rule.* Terms defined in the Natural Gas Policy Act of 1978 (NGPA) shall have the same meaning for the purposes of this subpart as they have under the Natural Gas Policy Act of 1978.

(b) *Subpart F definitions.* For purposes of this subpart:

(1) "Certificate holder" means any interstate pipeline with an effective blanket certificate issued pursuant to this subpart.

(2)(i) "Eligible facility" means, except as provided in paragraph (b)(2)(ii), a facility subject to the Natural Gas Act jurisdiction of the Commission necessary to provide service within existing certificated volumes, or a gas supply facility.

(ii) *Exclusions:* "Eligible facility" does not include:

(A) A main line of a transmission system;

(B) An extension of a main line;

(C) A facility, including compression and looping, that alters the capacity of a main line;

(D) A facility required to test, develop or utilize an underground storage field or to store gas above ground in either a gaseous or liquefied state;

(E) Sales taps;

(F) A facility that crosses a state line and is constructed for the primary purpose of transporting gas which is also transported by an intrastate pipeline under section 311(a)(2) of the NGPA;

(G) A facility constructed to effect the purchase of gas from plants manufacturing synthetic gas or from plants gasifying liquefied natural gas.

(3) "Facility" does not include the items described in section 2.55 of this chapter.

(4) "Gas supply facility" means a facility subject to the Natural Gas Act jurisdiction of this Commission which is necessary to connect the system of a certificate holder, or the system of a pipeline (including the certificate holder) authorized to transport gas for or exchange gas with an interstate pipeline company, to natural gas supplies destined for the system supply of an interstate pipeline company.

(5) "Main line" means the principal transmission facilities of a pipeline system extending from supply areas to market areas and does not include small-diameter lateral or gathering lines.

(6) "Miscellaneous rearrangement of any facility" means any rearrangement of a facility that does not result in any change of service rendered by means of the facilities involved, e.g., changes in existing field operations or relocation of existing sales or transportation facilities when required by highway construction, dam construction or similar reasons.

(7) "Project" means a unit of improvement or construction which, upon completion, is used and useful without any further construction of facilities.

(8) "Project cost" means the total actual cost of constructing the jurisdictional portions of a project. In the case of a project constructed jointly by more than one interstate pipeline, the project cost is the total cost, irrespective of the amount paid by each pipeline.

(9) "Right-of-way grantor" means (i) a person who grants a right-of-way easement to the certificate holder; or (ii) any successor to an interest which is subject to the easement.

(10) "Sales tap" means metering and appurtenant facilities necessary to enable the certificate holder to deliver gas to a distribution customer or an end-user.

(11) "Sensitive environmental area" means:

(i) The habitats of species which have been identified as endangered or threatened under the Endangered Species Act (Pub. L. 93–205, as amended);

(ii) National or State Forests or Parks;

(iii) Properties listed on, or eligible for inclusion in, the National Register of Historic Places, or the National Register of Natural Landmarks;

(iv) Floodplains and wetlands;

(v) Designated or proposed wilderness areas, national or state wild and scenic rivers, wildlife refuges and management areas and sanctuaries;

(vi) Prime agricultural lands, designated by the Department of Agriculture; or

(vii) Sites which are subject to use by American Indians and other Native Americans for religious purposes.

(12) "Storage service" means the receipt of natural gas for injection into storage and the subsequent withdrawal of an equivalent volume (less any fuel or unaccounted for volumes) at a later date.

§ 157.203 Blanket certification.

(a) *Effect.* A blanket certificate issued pursuant to this subpart authorizes the certificate holder, in accordance with the provisions of this subpart, to engage in any of the activities specified in § 157.208 through § 157.218 (as may be amended from time to time).

(b) *Automatic authorization.* A blanket certificate issued pursuant to this subpart authorizes the certificate holder to engage in transactions described in §§ 157.208(a), 157.211(a), 157.213(a), 157.215, 157.216(a), 157.217 or 157.218 without further Commission approval.

(c) *Prior notice required.* A blanket certificate issued pursuant to this subpart authorizes the certificate holder to engage in activities described in §§ 157.208(b), 157.211(b), 157.212, 157.213(b), 157.214, or 157.216(b), if the requirements of § 157.205 have been fulfilled.

§ 157.204 Application procedure.

(a) *Who may apply.* Any interstate pipeline which has been issued a certificate, other than a limited-jurisdiction certificate, pursuant to section 7 of the Natural Gas Act and had rates accepted by the Commission may apply for a blanket certificate under this subpart.

(b) *Hearing procedure.* Upon receiving an application for a blanket certificate under this subpart, the Commission will conduct a hearing pursuant to section 7(c) of the Natural Gas Act and §§ 1.32 and 157.11 of this chapter.

(c) *Issuance.* If required by the present or future public convenience and necessity, the Commission will issue a blanket certificate to the applicant.

(d) *Application contents.* Applications for blanket certificates shall contain:

(1) Information indicating the exact legal name of the applicant; its principal place of business; whether the applicant is an individual, partnership, corporation or otherwise; citation to the certificate proceeding in which the applicant was found to be a natural gas company; the state under the laws of which the applicant is organized or authorized to do business; and the name, title, and mailing address and telephone number of the person or persons to whom communications concerning the application are to be addressed;

(2) A list of outstanding budget-type certificates issued to the applicant pursuant to § 157.7;

(3) A statement that the applicant will comply with the terms, conditions and procedures specified in this subpart;

(4) A list of any currently effective storage service rate schedules which would apply to service authorized by § 157.213 and an explanation of the treatment of revenues under such rate schedules; and

(5) A list of all on-going storage field tests which were commenced under a budget-type certificate issued under § 157.7(d).

§ 157.205 Notice procedure.

(a) *Applicability.* No activity described in §§ 157.208(b), 157.211(b), 157.212, 157.213(b), 157.214, or 157.216(b) is authorized by a blanket certificate issued under this subpart unless, prior to undertaking such activity:

(1) The notice requirements have been fulfilled in accordance with the provisions of this section; and

(2) Either (i) no protest has been filed pursuant to paragraph (e) of this section or, (ii) if a protest has been filed, it has been withdrawn pursuant to paragraph (g) of this section.

(b) *Contents.* For any activity subject to the requirements of this section, the certificate holder shall file with the Secretary of the Commission an original and fifteen copies of a request for authorization under the notice procedure of this section that contains:

(1) The exact legal name of the certificate holder and mailing address and telephone number of the person or persons to whom communications concerning the request are to be addressed;

(2) The docket number in which its blanket certificate was issued;

(3) Any information required in § 157.208 through § 157.218 for the particular activity;

(4) A verified statement that the proposed activity complies with the requirements of this subpart; and

(5) A form of notice suitable for publication in the **Federal Register** which briefly summarizes the facts contained in the request with sufficient particularity so as to notify the public of its scope and purpose.

(c) *Rejection of request.* The Director of the Office of Pipeline and Producer Regulation may reject at any time a request which patently fails to comply with the provisions of paragraph (b) of this section.

(d) *Publication of notice of request.* Unless the request has been rejected pursuant to paragraph (c) of this section, the Secretary of the Commission shall publish a notice of the request in the **Federal Register** as soon as it is practicable. The notice shall designate a deadline for filing protests or interventions to the request. The deadline shall be 45 days after the date of issuance of the notice of the request.

(e) *Protests.* (1) Any person or the Commission's staff may file a protest prior to the deadline. Copies of the protest must be served on the Secretary of the Commission and the certificate holder.

(2) Protests shall be filed in the following form:

UNITED STATES OF AMERICA BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

[Name of pipeline holding blanket certificate] Docket No. [Include both docket no. of the blanket certificate and the prior notice transaction]

Protest To Proposed Blanket Certificate Activity

(Name of Protestor) hereby protests the request filed by (Name of pipeline) to conduct a (sale, transportation, construction of facilities, abandonment, etc.) under § 157.— of the Commission's regulations. Protestor seeks to have this request processed as a separate application.

(Include a brief statement of Protestor's interest in the activity and the grounds for the objection and whether the protestor seeks to be an intervenor.)

(f) *Effect of protest.* If a protest is filed in accordance with paragraph (e) of this section, then the certificate holder, the person who filed the protest, any intervenors, and staff shall have 30 days from the deadline determined in accordance with paragraph (d) of this section, to resolve the protest, and to file a withdrawal of the protest pursuant to paragraph (g) of this section. Informal settlement conferences may be convened by the Director of the Office of Pipeline and Producer Regulation or his designee. If a protest is not withdrawn pursuant to paragraph (g) of this section, the activity shall not be deemed authorized by the blanket certificate. Instead, the request filed by the certificate holder shall be treated as an application for section 7 authorization for the particular activity. The **Federal Register** notice of the request shall be deemed to be notice of the section 7 application sufficient to fulfill the notice requirement of §§ 157.9 and 157.10.

(g) *Withdrawal of Protests.* The protestor may withdraw a protest within the 30-day period following the deadline determined in accordance with paragraph (d) of this section by submitting written notice of withdrawal to the Secretary of the Commission and serving a copy to the certificate holder, any intervenors and any other party requesting service. The withdrawal must state that the certificate holder, the protestor, all intervenors and staff concur in the withdrawal.

(h) *Final authorization.* (1) If no protest is filed within the deadline prescribed by the Secretary, the certificate holder shall be deemed to be authorized to conduct the activity under its blanket certificate, effective upon the day after the deadline established by the Secretary.

(2) If one or more protests are filed within the deadline but subsequently withdrawn pursuant to paragraph (g) of this section, the certificate holder shall be deemed to be authorized to conduct the activity under its blanket certificate, effective upon the day after the withdrawal of all protests.

§ 157.206 Standard conditions.

Any activity authorized under a blanket certificate issued pursuant to this subpart shall be subject to the following conditions:

(a) *Revisions.* (1) The Commission reserves the right to amend the requirements of this subpart from time to time.

(2) The blanket certificate is not transferable in any manner and shall be effective only so long as the certificate holder continues the activities authorized by the order issuing such certificate and does so in accordance with the provisions of the Natural Gas Act, as well as applicable rules, regulations, and orders of the Commission.

(b) *Production-related costs.* At such time as the certificate holder proposes to recover in its rates any costs incurred by it to compress, process, treat, or gather natural gas purchased or transported by it, the certificate holder may be required to prove that the activity which engendered those costs was prudent. In determining prudence, the Commission will apply the statement of policy set out under § 2.102 of this chapter.

(c) *Liquids, liquefiable hydrocarbons and non-hydrocarbon constituents.* To the extent that the certificate holder transports liquids and liquefiable hydrocarbons or non-hydrocarbon constituents other than natural gas which are ultimately removed from the natural gas stream pursuant to the blanket certificate, or uses facilities authorized by the blanket certificate for the transportation of such substances, the issuance of the blanket certificate is without prejudice to a determination of the proper apportionment of costs between:

(1) The transportation and handling of liquids and liquefiable hydrocarbons or non-hydrocarbon constituents which are ultimately removed from the gas stream; and

(2) The transportation and handling of natural gas; at the time that the certificate holder files to include in its natural gas rates the costs associated with the facilities or the activities authorized herein, or in any proceeding where the apportionment of the certificate holder's costs to liquids and liquefiable hydrocarbons or non-hydrocarbon constituents is at issue.

(d) *Environmental compliance.* (1) The certificate holder shall adopt the guidelines set forth in § 2.69 of this chapter for all activities authorized by the blanket certificate and shall issue the relevant portions thereof to construction personnel, instructing them to use these guidelines.

(2) All activities shall be consistent with all applicable law including the provisions of the following statutues and regulations or compliance plans developed to implement these statutes:

(i) Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) and the National Pollution Discharge Elimination System Program, 40 CFR Part 122 *et seq.*;

(ii) Clean Air Act, as amended (42 U.S.C. 1801 *et seq.*) and air quality regulations and state implementation plans adopted pursuant to 40 CFR Parts 50–99;

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*);

(v) Archeological and Historic Preservation Act of 1974 (Pub. L. No. 93–291);

(vi) Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*);

(vii) Endangered Species Act of 1973, Pub. L. No. 93–205, as amended (16 U.S.C. 1531 *et seq.*);

(viii) Executive Order 11,988, May 24, 1977 requiring Federal agencies to evaluate the potential effects of any actions it may take on a floodplain;

(ix) Executive Order 11,990, May 24, 1977 requiring an evaluation of the potential effects of construction on wetland;

(x) Wild and Scenic Rivers Act (16 U.S.C. 1274 *et seq.*);

(xi) National Wilderness Act (16 U.S.C. 1133 *et seq.*);

(xii) National Parks and Recreation Act of 1978 (16 U.S.C. 1 and 230 *et seq.*).

(3) The certificate holder shall be deemed in compliance with:

(i) Paragraph (d)(2)(vii) of this section only if it adheres to the procedures in Appendix I of this subpart in which case the Commission finds that endangered species and their critical habitat are protected in accordance with 16 U.S.C. 1536;

(ii) Paragraph (d)(2)(iv) of this section only if it adheres to the procedures in Appendix II of this subpart in which case the Commission finds that there is no effect on any property protected by 16 U.S.C. 470f;

(iii) Paragraph (d)(2)(vi) of this section only if the appropriate state agency designated to administer the state's coastal zone management plan, prior to construction of the project, waives its right of review or determines that the project complies with the state's coastal zone managment plan.

(4) Any transaction authorized under a blanket certificate shall not significantly impact or adversely affect a sensitive environmental area.

(5) The noise attributable to any compressor facility installed pursuant to the blanket certificate shall not exceed a day-night sound level (L_{dn}) of 55 dB (A) at any noise-sensitive area unless the noise-sensitive areas (such as schools, hospitals, or residences) are established after facility construction.

(6) (i) Any activity otherwise subject to authorization under § 157.208 shall not be authorized if the activity is located within 0.5 mile of a nuclear power plant which is either operating or under construction, or for which a construction permit has been filed with the Nuclear Regulatory Commission.

(ii) Any activity otherwise subject to authorization under § 157.215 shall not be authorized if the activity is located within 2.0 miles of a nuclear power plant which is either operating or under construction, or for which a construction permit has been filed with the Nuclear Regulatory Commission.

(7) The certificate holder shall act as the Commission's non-Federal representative upon acceptance of the blanket certificate for purposes of complying with the Endangered Species Act of 1973.

(e) *Budget-type certificates.* Upon the acceptance of a certificate issued pursuant to this subpart, the certificate holder shall surrender any currently effective budget-type certificate issued pursuant to § 157.7 of this Part.

(f) *Commencement.* Any authorized construction, extension, or acquisition shall be completed and in actual operation by the certificate holder and any authorized operation, service or sale shall be actually undertaken within one year of the date the activity is authorized pursuant to § 157.205(h). The certificate holder may apply to the Director of the Office of Pipeline and Producer Regulation for an extension of this deadline.

(g) *Reports.* The certificate holder shall file reports as required by this subpart.

§ 157.207 General reporting requirements.

(a) *Annual report.* On or before May 1 or each year, the certificate holder shall file an annual report, under oath, and signed by a senior official of the company, listing for the previous calendar year:

(1) For each new facility authorized by § 157.208, the information specified by § 157.208(e);

(2) For each sales tap authorized pursuant to § 157.211(a), the information required by § 157.211(d);

(3) For each storage service authorized pursuant to § 157.213(a), the information specified in § 157.213(c);

(4) For each storage project tested or develeped pursuant to § 157.215, the information specified by § 157.215(b)(1);

(5) For each abandonment authorized pursuant to § 157.216(a), the information specified by § 157.216(d);

(6) For each change in rate schedule authorized pursuant to § 157.217, the information specified in § 157.217(b);

(7) For each change in customer name authorized pursuant to § 157.218, the information specified in § 157.218(b); and

(8) If any activity required to be reported under paragraphs (a) (1) through (7) of this paragraph was not undertaken, a statement to that effect.

(b) *Subsequent reports.* If any significant change occurs with respect to the information filed under this section, the certificate holder shall file with the Commission within 30 days, under oath, appropriate amendments to its annual report, signed by a senior official of the company.

(c) *Final reports.* Within thirty days after the termination of any arrangement authorized under § 157.213, the certificate holder shall file with the Commission a report, under oath, signed by a senior official of the company, stating:

(1) The identity of the certificate holder;

(2) The identity of all parties to the transaction;

(3) The dates of commencement and termination of the arrangement;

(4) Actual total and maximum daily volumes of natural gas transported/stored pursuant to the arrangement;

(5) Total revenues received and a complete statement of the manner in which the revenues were treated; and

(6) A brief explanation of the activity.

(d) *Other reports.* For other reporting requirements, see §§ 157.208 through 157.218.

§ 157.208 Construction, acquisition, operation, and miscellaneous rearrangement of facilities.

(a) *Automatic authorization.* If the project cost does not exceed the cost limitations set forth in column 1 of Table I, under paragraph (d) of this section, the certificate holder is authorized to (1) make miscellaneous rearrangements of any facility, or (2) acquire, construct, or operate any eligible facility.

(b) *Prior notice.* If the project cost is greater than the amount specified in column 1 of Table I, but less than the amount specified in column 2 of Table I, the certificate holder is authorized to (1) make miscellaneous rearrangements of any facility, or (2) acquire, construct, or operate any eligible facility.

(c) *Contents of request.* In addition to the requirements of § 157.205(b), requests filed for activities described under paragraph (b) of this section shall contain:

(1) A description of the purpose of the proposed facilities including their relationship to other existing or planned facilities;

(2) A detailed description of the proposed facilities specifying length,

diameter, wall thickness and maximum operating pressure for pipeline; and for compressors, the size, type, and number of compressor units, horsepower required, horsepower existing and proposed, volume of fuel gas, suction and discharge pressure and compression ratio;

(3) A USGS 7½ minute series (scale 1:24000) topographic map (or map of equivalent or greater detail, as appropriate) showing the location of the proposed facilities, and indicating the location of any sensitive environmental areas within one-quarter mile of project-related construction activities;

(4) A map showing the relationship of the proposed facilities to the applicant's existing facilities;

(5) A flow diagram or comparative study showing daily design capacity, daily maximum capacity and operating pressures with and without the proposed facilities for that portion of the certificate holder's system affected by the proposal;

(6) Gas supply and market data or studies, or other circumstances, supporting the need for the proposed facilities;

(7) The estimated cost and method of financing the proposed facilities;

(8) A statement clearly showing the effect on the certificate holder's operating revenues and operating expenses of the estimated revenues and expenses related to the proposed facilities;

(9) A statement explaining how the public convenience and necessity requires the approval of the project;

(10) For acquisitions of facilities:

(i) A statement referencing the date of issuance, docket number and title of the proceeding for any certificate issued by the Commission authorizing the facilities proposed to be acquired; and

(ii) The amounts recorded in the accounts of the vendor (seller or lessor) that apply to the facilities proposed to be acquired and the accumulated provisions for depreciation, depletion, and amortization;

(11) A concise analysis discussing the relevant issues outlined in Appendix B of Part 2 of this chapter. The analysis shall identify the existing environmental conditions and the expected significant impacts that the proposed action, including proposed mitigation measures, will cause to the quality of the human environment, including impact expected to occur to sensitive environmental areas. When compressor facilities are proposed, the analysis shall also describe how the proposed action will be made to comply with applicable State Implementation Plans developed under the Clean Air Act. The analysis shall also include a description of the contacts made, reports produced, and results of consultations which took place to ensure compliance with the Endangered Species Act, National Historic Preservation Act and the Coastal Zone Management Act.

(d) *Limits and inflation adjustment.* The limits specified in Tables I and II shall be adjusted each calendar year to reflect the "GNP implicit price deflator" published by the Department of Commerce for the previous calendar year. The Director of the Office of Pipeline and Producer Regulation is authorized to compute and publish limits for future calendar years as a part of Tables I and II, pursuant to § 375.307(t) of this chapter.

TABLE I

Year	Limit	
	Automatic project cost limit	Notice project cost limit
	(Column 1)	(Column 2)
1982	$4,200,000	$12,000,000

(e) *Reporting requirements.* For each facility completed during a calendar year pursuant to this section, the certificate holder shall file as part of the required annual report under § 157.207(a) the following information:

(1) A description of the facilities installed pursuant to this section, including a description of the length and size of pipelines, compressor horsepower, metering facilities, taps, valves, and any other facilities constructed;

(2) The specific purpose, location, and completion date of the facilities installed, and, if applicable, a statement indicating the extent to which the facilities were jointly constructed;

(3) The actual installed cost of each facility item listed pursuant to paragraph (e)(1), separately stating the cost of materials and labor as well as other costs allocable to the facilities;

(4) The estimated gas supply in Mcf at 14.73 psia made available to the certificate holder by means of the described facilities;

(5) The names of the fields connected;

(6) The specific location of the supply source or well attached if the attachment is for gas owned or produced by the certificate holder;

(7) The names of the independent producers, other sellers or intrastate pipelines from whom the gas is being purchased or received, together with the respective dates of their gas sales or transportation contracts and any FERC authorization or gas rate schedule designations if the facility is to receive gas purchased by the applicant;

(8) A description of the contacts made, reports produced, and results of consultations which took place to ensure compliance with the Endangered Species Act, the National Historic Preservation Act and the Coastal Zone Management Act;

(9) For acquisitions of facilities:

(i) A statement referencing the date of issuance, docket number and title of the proceeding for any certificate issued by the Commission authorizing the facilities acquired; and

(ii) The amounts recorded in the accounts of the vendor (seller or lessor) that apply to the facilities acquired and the accumulated provisions for depreciation, depletion, and amortization.

(f) *Special conditions.* (1) For purposes of comparing the project cost of leased facilities with the per-project cost limitations in Table I of this section, the project cost of leased facilities shall be the annual lease charge multiplied by the number of years of the lease.

(2) In the interest of safety and reliability of service, facilities authorized by the certificate shall not be operated at pressures exceeding the maximum operating pressure set forth in the request. In the event the certificate holder thereafter wishes to change such maximum operating pressure it shall file an appropriate request pursuant to the procedures set forth in § 157.205(b). Such request shall include the reasons for the proposed change. Nothing contained herein authorizes the certificate holder to operate any facility at a pressure above the maximum prescribed by state law, if such law requires a lower pressure than authorized hereby.

(g) If the actual cost of the project exceeds the per-project cost authorized under a blanket certificate in Table I of this section, the certificate holder shall apply to the Director of the Office of Pipeline and Producer Regulation for a waiver of those project cost limits.

§ 157.209 Transportation. [Reserved]

§ 157.210 Sales for resale. [Reserved]

§ 157.211 Construction and operation of sales taps.

(a) *Automatic authorization.* The certificate holder is authorized to construct and operate sales taps for the delivery of gas to an end user if:

(1) The natural gas is ultimately delivered to and consumed by a right-of-way grantor; and

(2) No more than 200 MMBtu of natural gas per day are to be delivered to the right-of-way grantor.

(b) *Prior notice.* Subject to the notice procedure of § 157.205, the certificate holder is authorized to construct and operate sales taps for service to other end-users if:

(1) The natural gas is ultimately consumed by an end-user who is, or will be, served directly or indirectly from the general system supply of the certificate holder;

(2) The volumes delivered are within the certificated entitlements of the customer; and

(3) The certificate holder's tariffs do not prohibit the addition of new delivery points.

(c) *Contents of request.* In addition to the requirements of § 157.205(b), requests for activities described under paragraph (b) should contain:

(1) The name of the distributor and/or the end-user and the location of all proposed sales taps;

(2) The authority for the current sale to the distributor and end-user;

(3) The quantity of gas to be sold through the proposed facility and its end-use; and

(4) The rate or rate schedule applicable to the sale made through the proposed tap.

(d) *Reporting requirements.* As part of the certificate holder's annual report of projects authorized under paragraph (a) of this section, the certificate holder shall report:

(1) The name of the end-user;

(2) The maximum daily volumes to be sold; and

(3) The actual cost of the sales tap and date placed in service.

(e) *Indirect customers.* The authorization in paragraphs (a) and (b) shall apply irrespective of whether the certificate holder sells the natural gas directly to the end-user or the natural gas is delivered to the end-user for the account of a local distribution company.

§ 157.212 Changes in delivery points.

(a) *Prior notice.* Subject to the notice requirements of § 157.205, the certificate holder is authorized to add new delivery points for a customer or to reassign volumes of gas to be delivered from one of the customer's delivery points to another, if:

(1) The total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request;

(2) The change is not prohibited by an existing tariff of the certificate holder; and

(3) The certificate holder has sufficient capacity to accomplish the deliveries specified under the amendment without detriment or disadvantage to the certificate holder's other customers.

(b) *Contents of request.* In addition to the requirements of § 157.205(b), requests filed for activities described under paragraph (a) shall contain:

(1) The name of the customer;

(2) The location of the delivery points; and

(3) The present and proposed quantities of natural gas to be delivered at each of the affected delivery points.

§ 157.213 Storage services.

(a) *Automatic authorization.* The certificate holder is authorized to provide contract storage services and any incidental transportation on behalf of any person, if:

(1) The storage service is within the certificated capacity of the certificate holder's existing storage facilities;

(2) The storage arrangement does not exceed a period of two years;

(3) The rates charged for the storage and transportation service are covered by a currently effective rate schedule; and

(4) The contract for the storage service provides that the service under the contract shall be subject to the availability of capacity sufficient to provide the service without detriment or disadvantage to the certificate holder's existing customers who are dependent upon the certificate holder's general system supply.

(b) *Prior notice.* Subject to the notice requirements of § 157.205, the certificate holder is authorized to provide transportation and storage services specified in paragraph (a) for periods in excess of two years.

(c) *Contents of request and reporting requirements.* In any annual report filed for transactions under paragraph (a), and in any request for services authorized under paragraph (b), the certificate holder shall provide, in addition to the requirements of § 157.207(a) and § 157.205(b), the following information:

(1) The name of the customer;

(2) A copy of the storage service agreement;

(3) The location of the storage facility proposed to be used;

(4) The amount of storage capacity in the facility rendered under the contract, and the amount of uncommitted storage capacity remaining after executing the storage service agreement; and

(5) Citation to the rate schedule applying to the storage service and a statement explaining the treatment of revenues under that rate schedule.

§ 157.214 Increase in storage capacity.

(a) *Prior notice.* Subject to the notice requirements of § 157.205, the certificate holder is authorized to increase the maximum volume of natural gas authorized to be stored in a storage field to the extent that geological data and operating experience have demonstrated that a volume of natural gas greater than that currently certificated may be safely stored without the construction of additional facilities.

(b) *Contents of request.* In addition to the requirements of § 157.205(b), requests filed for activities described in paragraph (a) shall contain:

(1) Current and requested maximum storage capacity;

(2) Current and requested maximum storage pressure;

(3) Average depth of the storage formation;

(4) Copies of any geological or engineering studies that demonstrate the feasibility of the increase in storage volume; and

(5) A statement setting forth the purpose of the proposed increased capacity.

(c) *Reporting requirements.* For any storage facility whose capacity is increased pursuant to this section, the certificate holder shall submit semi-annual reports (to coincide with the termination of the injection and withdrawal cycles) containing the information listed in subdivisions (1) through (8) of this paragraph. The certificate holder shall continue to file semi-annual reports until the storage inventory volume has reached, or closely approximates, the maximum specified in the request. Thereafter, the reports shall continue on a semi-annual basis for a period of one year. The filing of reports shall be discontinued thereafter unless otherwise ordered by the Commission. (Volumes shall be stated at 14.73 psia and 60° F, and pressures shall be stated in psia.)

(1) The daily volume of natural gas injected into and withdrawn from the storage reservoir.

(2) The volume of natural gas in the reservoir at the end of the reporting period.

(3) The maximum daily injection or withdrawal rate experienced during the reporting period and the average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured.

(4) Results of any tracer program by which the leakage of injected gas may

be determined. If the leakage of gas exists, the report should show the estimated total volume of gas leakage, the volume of recycled gas and the remaining inventory of gas in the reservoir at the end of the reporting period.

(5) Any surveys of pressures in gas wells, water levels in observation wells, pump test results for the aquifer-type reservoirs, and the results of back-pressure tests conducted during the reporting period.

(6) The latest revised structure and isopachous contour maps showing the location of the wells, the location and extent of the gas bubble in the storage reservoir for aquifer-type reservoirs and in any other reservoirs of the project in which gas bubbles are known to exist. This map need not be filed if there is no material change from the map previously filed.

(7) Discussion of current operating problems and conclusions.

(8) Such other data or reports which may aid the Commission in the evaluation of the storage project.

§ 157.215 Underground storage testing and development.

(a) *Automatic authorization.* The certificate holder is authorized to construct and operate natural gas pipeline and compression facilities for the testing or development of underground reservoirs for the possible storage of gas, if:

(1) The testing and development of a particular storage project will be completed within a three-year-period;

(2) The quantity of natural gas injected into the prospective storage fields pursuant to the blanket certificate does not exceed a total of 10,000,000 Mcf at any time in all fields with no more than 2,000,000 Mcf injected into any single field;

(3) Gas will be injected for testing purposes only during off-peak periods;

(4) The storage field developed pursuant to this section will not be utilized to render service without further authorization from the Commission, except that gas may be withdrawn on occasion for testing purposes; and

(5) The total expenditures per calendar year pursuant to this section do not exceed the amount specified in Table II as adjusted pursuant to § 157.208(d). These costs shall include expenditures for leases, wells, pipeline, compressors, and related facilities, but shall exclude the cost of the natural gas to be used for testing purposes.

TABLE II

Year	Limits
1982	$2,700,000

(b) *Reporting requirements*—(1) *Annual reports.* For any storage project tested or developed pursuant to this section, the certificate holder shall file as part of the annual report required under § 157.207(a) the following information:

(i) A description of the facilities constructed and the type of storage reservoir, i.e., gas expansion or dry gas, water-drive or aquifer;

(ii) The location of the facilities;

(iii) The cost of such facilities and date placed in service;

(iv) The monthly volumes of gas injected into and withdrawn from each reservoir;

(v) An estimate of the storage capacity and daily deliverability of each project; and

(vi) A description of the contacts made, reports produced, and results of consultations which took place to ensure compliance with the Endangered Species Act, the National Historic Preservation Act and the Coastal Zone Management Act.

(2) *Quarterly reports.* If the reservoir to be tested and developed is an aquifer-type reservoir, the certificate holder shall file, unless otherwise ordered by the commission, for each such project quarterly reports, under oath, until the project is either certificated for regular service or abandoned. The quarterly report shall contain the following information in addition to the data required by paragraph (b)(1) of this section:

(i) The daily volumes of natural gas injected into and withdrawn from the aquifer during the quarter and the volume of gas in the aquifer at the end of each month;

(ii) The maximum daily injection or withdrawal rate experienced during the quarter and the average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured;

(iii) Results of any tracer program by which leakage of gas may be determined;

(iv) Any pressure surveys of gas wells and water levels in observation wells conducted during the quarter by individual well, and copies of any core analyses, gamma ray, neutron or other electric log surveys and back-pressure tests taken during the quarter;

(v) A map of the storage project showing the location of the wells, the latest revised structure contours, and the location and extent of the gas bubble. This map need not be filed if there is no material change from the map previously filed; and

(vi) Such other data or reports which may aid the Commission in the evaluation of the project.

(c) *Accounting.* The cost of any project ultimately determined to be infeasible for storage shall be charged to Account No. 822 of Part 201, Underground Storage Exploration and Development Expenses.

§ 157.216 Abandonment.

(a) *Automatic authorization.* The certificate holder is authorized pursuant to section 7(b) of the Natural Gas Act to abandon gas supply facilities, if:

(1) The supplier has been authorized to abandon its sale; or

(2) No abandonment of the supplier's sale is required under the Natural Gas Act by operation of section 601(a)(1) of the NGPA.

(b) *Prior notice.* Subject to the notice requirements of § 157.205, the certificate holder is authorized pursuant to section 7(b) of the Natural Gas Act to abandon any sales tap or lateral line and related facilities and service if all of the customers currently served through the sales tap or lateral line consent in writing to the abandonment.

(c) *Contents of request.* In addition to the requirements of § 157.205(b), requests filed for activities described under paragraph (b) shall describe:

(1) The location of the subject facilities;

(2) The docket authorizing the construction and operation of the facilities to be abandoned;

(3) An oath statement that all of the customers served by the subject facilities have consented to the abandonment, or an explanation of why the customers' consent is not available; and

(4) A proposed accounting treatment of any facilities to be abandoned.

(d) *Reporting requirements.* The annual report filed by the certificate holder shall contain, for each abandonment authorized under paragraph (a) of this section:

(1) The name of the supplier;

(2) The docket numbers of the certificates authorizing the sale of gas and the construction and operation of the facilities to be abandoned;

(3) The accounting treatment of the facilities abandoned; and

(4) The date the facilities were actually abandoned.

§ 157.217 Changes in rate schedules.

(a) *Automatic authorization.* The certificate holder is authorized to permit an existing customer, at the customer's request, to change from one rate schedule to another, if:

(1) The combined volumetric limitations on deliveries to the customer under both rate schedules are not increased, for either annual or peak day limitations; and

(2) The changes are consistent with the terms of effective tariffs on file with the Commission.

(b) *Reporting requirements.* In the annual report for any year in which the certificate holder has permitted an existing customer to change from one rate schedule to another pursuant to this section, the certificate holder shall state:

(1) The name of the customer;

(2) The rate schedules involved; and

(3) The effective date of the change.

§ 157.218 Changes in customer name.

(a) *Automatic authorization.* The effective certificates of the certificate holder may be amended to the extent necessary to reflect the change in the name of an existing customer, if:

(1) The change in customer name is the result of a corporate reorganization or acquisition;

(2) The certificate holder has filed any necessary conforming changes in its tariffs; and

(3) The customer's use of gas will not be affected.

(b) *Reporting requirements.* For each customer name change authorized during a calendar year, the certificate holder shall include as a part of its annual report:

(1) The old and new names of the customer; and

(2) A brief explanation of the reason for the name change.

Appendix I—Procedures for Compliance With the Endangered Species Act of 1973 Under § 157.206(d)(3)(i)

The following procedures apply to any certificate holder which undertakes a project to be authorized under a blanket certificate issued pursuant to Subpart F of Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations.

Pursuant to § 157.206(d)(7) of the Commission's regulations, the certificate holder shall, upon acceptance of its blanket certificate, be designated as the Commission's non-Federal representative to the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) in order to conduct informal consultations with those agencies. For purposes of this appendix, "listed species" and "critical habitat" shall have the same meanings as set forth in 50 CFR 402.02. The certificate holder shall be deemed in compliance with § 157.206(d)(2)(vii) of the Commission's regulations only if, prior to constructing facilities or abandoning facilities by removal under the blanket certificate, it complies with the following procedures:

1. The certificate holder shall contact the appropriate regional office of either the FWS or the NMFS (or both the FWS and the NMFS, if appropriate) as determined pursuant to 50 CFR 402.01 for the purpose of initiating informal consultations.

2. The certificate holder shall be deemed in compliance with § 157.206(d)(2)(vii) of the Commission's regulations if the consulted agency (either the FWS or NMFS, or both if appropriate) initially determines, pursuant to the informal consultations:

(a) That no listed species or its critical habitat occur in the project area; and

(b) That no species proposed to be listed under 16 U.S.C. 1533 or its critical habitat occur in the project area.

3. If the consulted agency, pursuant to the informal consultations, initially determines that any species proposed to be listed under 16 U.S.C. 1533 or its critical habitat occur in the project area, then the certificate holder shall confer with the consulted agency on how potential impact can be avoided or reduced. Upon completion of the conference and the implementation of any mitigating measures the certificate holder elects to implement, and compliance with paragraph 4 of this Appendix, if applicable, the certificate holder shall be deemed in compliance with § 157.206(d)(2)(vii) of the Commission's regulations.

4. (a) If the consulted agency initially determines, pursuant to the informal consultations, that a listed species or its critical habitat may occur in the project area, then the certificate holder shall continue informal consultation with the consulted agency to determine if the proposed project may affect such species or habitat. Continued informal consultations may include discussions with experts (including experts provided by the consulted agency), field surveys, biological assessments, and formulation of mitigation measures.

(b) The certificate holder shall be deemed in compliance with § 157.206(d)(2)(vii) of the Commission's regulations if the consulted agency agrees with the certificate holder's determination resulting from the continued informal consultations, that the proposed project will not affect the listed species or its critical habitat.

(c) If the consulted agency does not agree with such determination by the certificate holder, or if the certificate holder concludes that the proposed project may affect listed species or the critical habitat of such species, then the certificate holder may not proceed with the proposed project under the blanket certificate.

Appendix II—Procedures for Compliance With the National Historic Preservation Act of 1966 Under § 157.206(d)(3)(ii)

The following procedures apply to any certificate holder which undertakes a project under the authority of a blanket certificate issued pursuant to Subpart F of Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations. For the purposes of this appendix, the following definitions apply:

(a) "Listed property" means any district, site, building, structure or object which is listed (1) on the National Register of Historic Places, or (2) in the **Federal Register** as a property determined to be eligible for inclusion on the National Register.

(b) "SHPO" means the State Historic Preservation Officer or any alternative person duly designated to advise on cultural resource matters.

(c) "Unlisted property" means any district, site, building, structure or object which is not a listed property.

The certificate holder shall be deemed to be in compliance with § 157.206(d)(2)(iv) of the Commission's regulations only if, prior to constructing facilities or abandoning facilities by removal under the blanket certificate, it complies with the following procedures:

(1)(a) If Federally administered land would be directly affected by the project, then the procedures used by the appropriate Federal land managing agency to comply with section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f, shall take precedence over these procedures. The procedures in this appendix apply to state and private lands, and Federal lands for which there are no other Federal procedures.

(b) If there is no SHPO or if the SHPO declines to consult with the certificate holder, the certificate holder shall so inform the Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, of the Commission, and shall not proceed with these procedures or the project until an alternate consultant has been duly designated.

(2) It shall be the certificate holder's responsibility to identify or cause to be identified listed properties and unlisted properties that satisfy the National Register Criteria for Evaluation (36 CFR 1202.6), that are located within the area of the project's potential environmental impact and that may be affected by the undertaking.

(3) The certificate holder shall:

(a) Check the National Register of Historic Places and consult with the SHPO to identify all listed properties within the area of the project's potential environmental impact;

(b) Consult with the SHPO, and to the extent deemed appropriate by the SHPO, check public records and consult with other individuals and organizations with historical and cultural expertise, to determine whether unlisted properties that satisfy the National Register Criteria for Evaluation are known or likely to occur within the area of the project's potential environmental impact; and

(c) Consult with the SHPO to determine the need for surveys to identify unknown unlisted properties. The certificate holder shall evaluate the eligibility of any known unlisted properties located within the area of the project's potential environmental impact according to the National Register Criteria for Evaluation.

(4) The certificate holder shall be deemed in compliance with § 157.206(d)(2)(iv) of the Commission's regulations if the SHPO agrees with the certificate holder that no survey is required, and that no listed properties or unlisted properties that satisfy the National Register Criteria for Evaluation occur in the

area of the project's potential environmental impact.

(5) If the SHPO determines that surveys are required to ensure that no listed properties, or unlisted properties that satisfy the National Register Criteria for Evaluation, occur within the area of the project's potential environmental impact, the certificate holder shall perform surveys deemed by the SHPO to be of sufficient scope and intensity to identify and evaluate such properties. The certificate holder shall submit the results of the surveys including a statement as to which unlisted properties satisfy the National Register Criteria for Evaluation, to the SHPO and solict comments on the surveys and the conclusions.

(6) The certificate holder shall be deemed in compliance with § 157.206(d)(2)(iv) of the Commission's regulations if, upon conclusion of the surveys, the certificate holder and the SHPO agree that no listed properties, and no unlisted properties which satisfy the National Register Criteria for Evaluation, occur in the area of the project's potential environmental impact.

(7) For each listed property, and each unlisted property which satisfies the National Register Criteria for Evaluation, which is located within the area of the project's potential environmental impact, the certificate holder, in consultation with the SHPO, shall apply the Criteria of Effect (36 CFR 800.3(a)) to determine whether the project will have an effect upon the historical, architectural, archeological, or cultural characteristics of the property that qualified it to meet National Register Criteria for Evaluation. The certificate holder shall be deemed in compliance with § 157.206(d)(2)(iv) of the Commission's regulations if the certificate holder and the SHPO agree that the project will not affect these characteristics.

(8) If either the certificate holder or the SHPO finds that the project may affect a listed property or an unlisted property which satisfies the National Register Criteria for Evaluation, located within the area of the project's potential environmental impact, then the project shall not be authorized under the blanket certificate unless such properties can be avoided by relocation of the project to an area where the SHPO agrees that no listed properties or unlisted properties that satisfy the National Register Criteria for Evaluation occur. The certificate holder shall be deemed in compliance with § 157.206(d)(2)(iv) of the Commission's regulations if the project is relocated as described above.

(9) If the certificate holder and the SHPO are unable to agree upon the need for a survey, the adequacy of a survey, or the results of application of the Criteria for Evaluation to an unlisted property, the project shall not be authorized under the blanket certificate.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. Section 284.201 is amended by revising paragraph (e) to read:

§ 284.201 Definitions.

* * * * *

(e) "Fuel Shortage emergency period" means the period starting May 13, 1979, and ending at 11:59 p.m. on the ninetieth (90th) day following the effective date in the final rule in Docket No. RM81–29.

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PART 375—THE COMMISSION

4. Section 375.307 is amended by adding new paragraphs (a)(15), (a)(16), and (t), to read as follows:

§ 375.307 Delegations to the Director of the Office of Pipeline and Producer Regulation.

The Commission authorizes the Director of the Office of Pipeline and Producer Regulation or the Director's designee to:

(a) Pass upon the following types of uncontested applications or uncontested amendments to applications:

* * * * *

(15) Applications for blanket certificates of public convenience and necessity pursuant to Subpart F of Part 157, including the waiver of the project cost limitation in § 157.208, and the convening of informal conferences during the 30-day reconciliation period pursuant to the procedures in § 157.205(f) and

(16) Requests which patently fail to comply with the provisions of § 157.205(b).

* * * * *

(t) Compute, for each calendar year, the project limits specified in Table I of § 157.208 and Table II of § 157.215(a) of this chapter, adjusted for inflation, and to publish such limits as soon as possible thereafter in the **Federal Register.**

[FR Doc. 82–15143 Filed 6–3–82; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

Supplemental Security Income for the Aged, Blind, and Disabled; Deeming of Income and Resources

AGENCY: Social Security Administration, HHS.

ACTION: Interim rules with comment period.

SUMMARY: These rules address the problem of certain beneficiaries of supplemental security income (SSI) payments who remain unnecessarily institutionalized because returning home for less costly medical treatment would result in loss of Medicaid eligibility. The rules provide that the Secretary, in appropriate circumstances, will not apply the ordinary SSI rules for deeming certain family members' income and resources to a noninstitutionalized individual. This is a temporary policy that will deal with this concern while States develop appropriate programs of home and community-based services under their Medicaid programs.

DATES: These rules are effective June 4, 1982. Comments may be submitted by August 3, 1982.

ADDRESS: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203. Comments received may be inspected during regular business hours by making arrangements with the contact person identified in the following paragraph.

FOR FURTHER INFORMATION CONTACT: Timothy D. Roberson, Department of Health and Human Services, Room 656–G Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, (202) 245–7187.

SUPPLEMENTARY INFORMATION: Title XVI of the Social Security Act ("the Act") establishes a program of supplemental security income (SSI) for aged, blind, and disabled individuals. Under SSI, qualified needy individuals are entitled to cash payments. Under section 1902(a)(10)(A) of the Act, beneficiaries of SSI payments are in turn eligible for Medicaid in most States. (In 15 States, however, Medicaid eligibility for the aged, blind, and disabled is determined not by receipt of SSI payments, but rather, under section 1902(f) of the Act, by reference to those categories of individuals who were eligible in the States in 1972.)

An individual is eligible for SSI payments only if his or her income and resources fall below established limits. The method for determining the amount of an individual's income and resources is outlined in detail in sections 1612–1614 of the Act and the Department's regulations (20 CFR Part 416, Subparts K and L). An aspect of this income and resource determination is the statutory provision requiring, under certain circumstances, that income and resources of certain persons in the individual's family be considered in determining whether the individual is eligible to receive SSI payments. These provisions concerning the "deeming" of

income and resources appear in section 1614(f) of the Act.

Under section 1614(f)(1), the income and resources of an individual are deemed to include the income and resources of the individual's ineligible spouse if the spouse is living in the same household. Similarly, section 1614(f)(2) provides that the income and resources of a child under age 18 are deemed to include the income and resources of the child's parents, if they are living in the same household. In either case, income and resources of these family members is not to be considered "to the extent determined by the Secretary to be inequitable under the circumstances."

As noted above, in most States there is a direct connection between SSI eligibility and Medicaid eligibility and our implementation of the SSI deeming rules therefore affects eligibility for Medicaid. As those rules are currently implemented, they result, in some circumstances, in the unnecessary institutionalization of patients with consequent higher costs to State and Federal governments. Similar situations may exist where Medicaid eligibility is based on an individual's receipt of Federally administered State supplementary payments under section 1616 of the Act, since the SSI deeming rules are also used in those programs. Unnecessary institutionalization is fostered by the provision in section 1614(f) of the Act, which applies the deeming rules only to individuals living in the same household as their parents or spouse. Under current regulations, an institutionalized individual is considered not to be living in the same household as the individual's family, and as a result, family income is not deemed to the individual. The institutionalized individual may therefore be eligible for SSI payments (and hence in most States for Medicaid), even in cases where application of the deeming rules would make the individual ineligible if living at home. To retain SSI and Medicaid eligibility, some patients remain institutionalized even though their medical needs could be met at lower costs if they were living at home.

President Reagan drew attention to one such case in November 1981 involving a child who continued to be hospitalized despite the fact that her medical conditions could be treated at home at substantially less expense. As a disabled individual, the child was eligible for SSI in the hospital, and hence in her State for Medicaid, but she would have lost SSI and Medicaid eligibility had she moved home, because her parents' income would have been deemed to her and the income would have exceeded SSI eligibility limits. In light of substantial cost savings that would result to the Federal Government from the child's living at home, the Secretary of Health and Human Services exercised his authority under section 1614(f) of the Act and determined that it would be inequitable under the circumstances to apply the normal deeming rules in determining her eligibility. She was therefore able to move home, retain her SSI and Medicaid eligibility, and continue to receive medical treatment at a substantial savings to the Medicaid program.

There are a number of other currently institutionalized patients who also could be satisfactorily treated at home at less cost to the government but who remain institutionalized to avoid losing Medicaid eligibility through operation of the SSI deeming rules. In this document we are adopting two approaches to resolving this problem. An interim approach involves exercising the Secretary's discretion in particular cases, as was done in the case described above, not to apply the ordinary SSI deeming rules. The other, longer-term approach is to allow the States to take advantage of the flexibility under section 1915(c) of the Act to create appropriate programs to deal with these patients.

Long-Term Solution

The issue of inappropriate institutionalization of patients is not confined to cases where SSI eligibility rules discourage patients from living at home, but involves many other circumstances. In section 2176 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) Congress addressed this problem. New section 1915(c) was added to the Social Security Act authorizing the States, under a Secretarial waiver, to offer a wide array of home and community-based services that an individual may need to avoid institutionalization. The purpose of this legislation was to bring about cost savings and other benefits of deinstitutionalization. Interim final regulations implementing this new authority were issued in the **Federal Register** of October 1, 1981 (46 FR 48532).

Under section 1915(c)(1), a State Medicaid plan may provide approved home and community-based services to individuals who would otherwise require the level of care provided in a skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State Medicaid plan. This provision allows a State to provide home and community-based services under its Medicaid plan to individuals who, in the absence of such services, would require institutional care and would be eligible for Medicaid if institutionalized. Accordingly, under a section 1915(c) waiver, States may furnish approved home and community-based services to individuals who would be Medicaid-eligible if institutionalized, even if they would be ineligible for Medicaid while living at home because of the SSI deeming rules, or some other reason. States can implement this new authority to prevent unnecessary institutionalization by providing medical services at home and in the community.

Interim Solution

Since it will take time for States to develop and obtain approval of plans for home and community-based services, we are also adopting an interim approach. The Secretary has established a board within the Department that will, in appropriate cases, determine whether or not the normal SSI deeming rules should be applied. The facts of each case will be individually examined to determine whether, under section 1614(f) of the Act, it would be inequitable under the circumstances to consider family income and resources in determining an individual's eligibility for SSI payments.

The board will apply two basic principles in every case. First, a determination not to apply the SSI deeming rules must prospectively result in savings to the Medicaid program. This requirement would be met, for example, by showing that a currently institutionalized Medicaid patient who would otherwise remain in the institution could be treated less expensively at home and that Medicaid expenses would therefore be less.

Second, in each case it must be shown to the satisfaction of the board that the quality of medical care provided to the patient will be maintained after deinstitutionalization. This question may be of concern particularly in States whose Medicaid programs do not offer extensive medical services for patients living at home. Ordinarily the board would be satisfied by appropriate assurances of the attending physician or institution, subject to requests by the board for further information.

In addition to these two basic requirements, the board may impose additional requirements or standards in particular cases depending on the facts presented. We are adopting a case-by-case approach, rather than establishing firm rules for application across the board, because we are uncertain about the range of circumstances that may exist and about the need for additional

restrictions to prevent abuse. For example, an individual who is presently being cared for at home without Medicaid assistance might be institutionalized and thereby become eligible for Medicaid simply for the purpose of then being able to show that maintaining Medicaid eligibility after deinstitutionalization would result in savings to the government. In such a case, the board might well conclude that it would not be inequitable under the circumstances to apply the normal SSI deeming rules.

No specific method of application for a board determination is being prescribed except that all applications must be made on behalf of the individual by a State Medicaid agency, which must recommend that the SSI deeming rules not be applied. We believe that involving the State Medicaid agency will insure that we are acting on the best possible information about the circumstances of the particular patient, the savings that will result, and the medical services that would be available to the patient at home. A State agency's application should set forth information about the case sufficient to show that the basic criteria are met and that it would otherwise be inequitable under the circumstances to apply the SSI deeming rules. Further information may be requested by the board before acting on the application. Information on where to submit applications will be provided directly to the State Medicaid agencies.

Where the board determines not to apply the usual SSI deeming rules, it will ordinarily do so in a manner that maintains SSI eligibility, but does not result in unnecessary SSI program expenditures. Thus, the board will typically apply the deeming rules to the extent necessary to result in a minimal SSI or Federally administered State optional supplementary payment. That minimal payment would be sufficient to maintain Medicaid eligibility, which is the purpose of the board's action. All determinations by the board would be subject to revision based on new information or changed circumstances. The board would consider only application of the SSI deeming rules. All other aspects of determining SSI eligibility would be handled by the Social Security Administration under existing policies and procedures.

The board would also accept applications from States that do not link Medicaid eligibility to the receipt of SSI payments but instead determine Medicaid eligibility under section 1902(f) of the Act. If such a State uses SSI's normal deeming rules governing the amount of permissible income and resources, the State could also take advantage of the board's authority not to apply those rules. Board determinations would be based on the same criteria and procedures as for other States.

As noted above, the policy of individual deeming determinations is being utilized on an interim basis only, pending development by the States of appropriate programs under the new statutory authority allowing waivers for home and community-based services. The regulations provide that the board will continue case-by-case evaluation only through April 30, 1983, unless extended. That period of time should be sufficient for the States to develop appropriate programs of home and community-based services. Determinations made by the board would continue in effect after April 30, 1983, but would be subject to change. It is anticipated that determinations could be terminated for individuals residing in States that have adopted programs of home and community-based services.

We do not believe that case-by-case consideration of the SSI deeming rules is an appropriate long-term solution. State Medicaid programs may not currently provide home medical services that would permit an individual to be treated at home successfully. In such cases, deinstitutionalization depends on the State's developing an appropriate Medicaid program, which it can do under authority of section 1915(c) of the Act. Moreover, the States are in a better position to develop the appropriate approaches to avoiding institutionalization, which may require a variety of methods tailored to particular circumstances.

Waiver of Proposed Rulemaking

These regulations allow for action that will both reduce government expenditures and benefit patients who can be treated at home but are financially unable to do so because deinstitutionalization would result in the loss of Medicaid eligibility. In light of the benefit to all parties, we find use of notice and public procedure would be contrary to the public interest because it would delay these benefits for the time sufficient to conduct a rulemaking proceeding (5 U.S.C. 553(b)(B)).

Impact Analysis

Executive Order 12291

The Secretary has determined that the regulations do not meet the criteria for a "major rule," as defined by section 1(b) of Executive Order 12291. That is these regulations will not—

—Have an annual effect on the economy of $100 million or more;

—Result in a major increase in costs or prices for consumers, any industries, any government agencies or any geographic regions; or

—Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or import markets.

These rules simply reduce the cost of governmental expense for medical care. Because of the relatively small number of cases at issue, the savings are expected to be substantially less than the $100 million threshold.

Regulatory Flexibility Act

Section 604 of Pub. L. 96–354 (the Regulatory Flexibility Act of 1980) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis on certain regulations. The regulatory flexibility analysis is intended to explain what effect regulatory actions by agencies would have on small businesses and other small entities.

By allowing deinstitutionalization, these rules are expected to have the same impact as for the basic program of home and communtity-based services, which was previously determined not to meet the criteria for perparation of a regulatory flexibility analysis. (46 FR 48538–39). Accordingly, the Secretary certifies, under section 605(b) of the Regulatory Flexibility Act, that the regulations will not have a significant economic impact on a substantial number of small entities.

Comments

Although we are making these rules effective immediately, we invite the submission of comments on them. We will revise the rules if appropriate based on the comments received.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program.)

List of Subjects in 20 CFR 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental Security Income (SSI).

Dated: May 6, 1982.

John A. Svahn,

Commissioner of Social Security.

Approved: May 6, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

Subpart K—Income

1. The authority citation for Subpart K of Part 416 reads as follows:

Authority: Secs. 1102, 1611, 1612, 1613, 1614, and 1631 of the Social Security Act as amended; Sec. 211 of Pub. L. 93–66; 49 Stat. 647 as amended, 86 Stat. 1466, 86 Stat. 1468; 86 Stat. 1470, 86 Stat. 1471, 86 Stat. 1475, 87 Stat. 154; 42 U.S.C. 1302, 1382, 1382a, 1382b, 1382c, and 1383.

2. Section 416.1161a is added to read as follows:

§ 416.1161a Income for deeming purposes where Medicaid eligibility is affected.

(a) *General.* In many States, an individual who is eligible for SSI or a Federally administered State optional supplementary payment is in turn eligible for Medicaid. In these States, in extraordinary cases, the Department will not apply the usual rules on deeming of income where those rules would result in an individual's being ineligible for SSI (or a Federally administered State optional supplementary payment) and Medicaid. Any determination made under this section may at any time be revised based on new information or changed circumstances.

(b) *When special deeming rules apply.* (1) The Department will consider not applying the usual deeming rules only upon application by a State Medicaid agency (requirement approved under OMB No. 09600304) and on condition that the agency must show:

(i) Deeming would result in lack of Medicaid eligibility for the individual

(ii) Medicaid eligibility would, prospectively, result in savings to the Medicaid program; and

(iii) The quality of medical care necessary for the individual would be maintained under the arrangements contemplated.

(2) The Department may also in particular cases require that additional facts be demonstrated, or that other criteria or standards be met, before it determines not to apply the usual deeming rules.

(c) *Amount of income to be deemed.* If the usual rules of deeming do not apply, the Department will determine an amount, if any, to be deemed.

(d) *Temporary effect of special deeming rules.* This provision is temporary and will be continued only through April 30, 1983, unless extended. Determinations made under this section will nevertheless remain in effect unless they are revised based on changed circumstances (including establishment in the State of a Medicaid program of home and community-based services) or new information.

Subpart L—Resources and Exclusions

3. The authority citation for Subpart L of Part 416 reads as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614(f), and 1631(d), of the Social Security Act, as amended, 49 Stat. 647 as amended, 86 Stat. 1465, 1466, 1468, 1470, and 1473; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1382c(f), and 1383(d), unless otherwise noted.

4. Section 416.1204a is added to read as follows:

§ 416.1204a Deeming or resources where Medicaid eligibility is affected.

Section 416.1161a of this part describes certain circumstances affecting Medicaid eligibility in which the Department will not deem family income to an individual. The Department will follow the same standards, procedures, and limitations set forth in that section with respect to deeming of resources.

[FR Doc. 82–15102 Filed 6–3–82; 8:45 am]

BILLING CODE 4190–11–M

Food and Drug Administration

21 CFR Part 20

[Docket No. 81N–0043]

Freedom of Information Files

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the FDA regulation on record retention of files on freedom of information requests. The amendment will allow for a reasonable record retention and destruction plan and relieve FDA of the burden of keeping these files indefinitely.

EFFECTIVE DATE: June 4, 1982.

FOR FURTHER INFORMATION CONTACT: Gerald Deighton, Freedom of Information Staff (HFI–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1813.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1982 (47 FR 162), FDA published a proposal to amend the FDA regulation on record retention of files on freedom of information requests. The proposal allowed for the filing of comments by March 8, 1982.

Two comments were received. One comment, from the Acting Assistant Archivist for Federal Records Centers, General Services Administration (GSA), stated that the GSA General Records Schedule (GRS) 14 is mandatory and any deviation from the GRS standards that FDA might wish to make on the basis of comments received on the proposal must be approved by the archivist of the United States.

The amendments set forth in the January 5, 1982 proposal and as adopted below bring FDA's regulation into conformance with the GRS standards.

The other comment, from an individual, supported the proposal, but stated that the regulation should be simpler, shorter, and clearer.

The agency has carefully considered the comment, but has concluded that the amendments should be adopted as proposed.

List of Subjects in 21 CFR Part 20

Freedom of information.

PART 20—PUBLIC INFORMATION

Accordingly, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 20 is amended by revising § 20.31, to read as follows:

§ 20.31 Retention schedule of requests for Food and Drug Administration records.

(a) Unless unusual circumstances dictate otherwise, the Food and Drug Administration shall maintain and dispose of files of requests and reponses furnished thereto within the time limits authorized by GSA General Records Schedule 14, FPMR 101–11–4, January 10, 1977, as follows:

(1) Files created by the receipt of and response to freedom of information requests, except denials and/or appeals, may be destroyed 2 years from date of final response.

(2) Files created by a freedom of information request which was wholly or partially denied may be destroyed 5 years after the denial letter was issued.

(3) Files created by a freedom of information request which was wholly or partially denied and which denial

was subsequently appealed to the Department of Health and Human Services may be destroyed 4 years after final determination by FDA or 3 years after final adjudication by courts, whichever is later.

(b) This destruction schedule will automatically be revised whenever the time limits pertaining to these records are revised by the GSA General Records Schedule.

Effective date. June 4, 1982.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: May 28, 1982.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-15129 Filed 6-3-82; 8:45 am]

BILLING CODE 4160-01-M

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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; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of May 4, 1982, for a final rule that amended the color additive regulations by "permanently" listing D&C Green No. 6 for use in externally applied drugs and cosmetics. That document also provided for the depletion of existing stocks of D&C Green No. 6 for all uses involving ingestion of the color additive.

DATE: Effective date confirmed: May 4, 1982.

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

SUPPLEMENTARY INFORMATION: FDA published a final rule in the **Federal Register** of April 2, 1982 (47 FR 14138) that amended the color additive regulations by "permanently" listing D&C Green No. 6 for use in externally applied drugs and cosmetics. That document also provided for the depletion of existing stocks of D&C Green No. 6 for all uses involving ingestion of the color additive.

Interested persons were given until May 3, 1982, to file objections. FDA received no objections on the final rule. Therefore, the agency concludes that the final rule published on April 2, 1982, for D&C Green No. 6 should be confirmed.

List of Subjects in 21 CFR Parts 74, 81, 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), notice is given that no objections or requests for a hearing were filed in response to the final rule of April 2, 1982. Accordingly, the amendments promulgated thereby became effective on May 4, 1982.

Dated: May 27, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-14964 Filed 5-28-82; 11:30 am]

BILLING CODE 4160-01-M

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21 CFR Parts 74, 81, and 82

[Docket No. 76C-0045]

D&C Green No. 5

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is "permanently" listing D&C Green No. 5 for use in drugs and cosmetics excluding use in the area of the eye. This action is in response to a petition filed by the Cosmetic, Toiletry, and Fragrance Association, Inc., the Pharmaceutical Manufacturers Association, and the Certified Color Manufacturers Association, Inc. This rule will remove D&C Green No. 5 from the provisional list of color additives for use in drugs and cosmetics.

DATES: Effective July 7, 1982; objections by July 6, 1982.

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: Rudolph Harris, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

For information relating to the safety evaluation of D&C Green No. 5: 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. 5 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 concluded that D&C Green No. 5 is safe for use in ingested and externally applied drugs and cosmetics. FDA is therefore listing D&C Green No. 5 for such uses.

II. Regulatory History of D&C Green No. 5

D&C Green No. 5 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 8C0084) for the listing of D&C Green No. 5 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, Inc. (CTFA)); the Pharmaceutical Manufacturers Association (PMA); and the Certified Color Industry Committee (now the Certified Color Manufacturers

Association, Inc.), c/o Hazelton 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 for this petition to include the additional use of D&C Green No. 5 in cosmetics intended for use in the area of the eye. This latter use is not addressed in this final regulation but will be the subject of a later agency decision following receipt of appropriate data on this use.

Regulations published in the **Federal Register** of February 4, 1977 (42 FR 6991), required new chronic toxicity studies for D&C Green No. 5 as a condition of its continued provisional listing for ingested uses. Additional studies were not required for use of this color additive 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. Although the agency had intended to issue a rule on D&C Green No. 5 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. 5 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 established a new closing date of May 30, 1982, for the completion of the chronic toxicity studies and the submission of data to FDA on a prescribed schedule. The provisional listing in § 81.1(b) of D&C Green No. 5 will be removed when this order becomes effective on July 7, 1982, unless this order is stayed by the timely filing of objections. Published elsewhere in this issue of the **Federal Register** is an order extending the closing date for D&C Green No. 5 until August 3, 1982, to provide time for the submission and receipt of objections.

D&C Green No. 5 is currently listed as a color additive in nylon 66 and nylon 6 nonabsorbable surgical sutures (21 CFR 74.1205). The specifications published in this regulation for ingested and externally applied D&C Green No. 5 differ from those currently established for D&C Green No. 5 for use in coloring sutures. FDA is listing the color additive with two sets of specifications and will propose in the near future to remove the specifications for D&C Green No. 5 for use in coloring sutures. At the present time either set of specifications may be used for sutures.

III. Description of D&C Green No. 5

D&C Green No. 5 is principally the disodium salt of 2,2'-((9,10-dihydro-9,10-dioxo-1,4-anthracenediyl)diimino)bis-(5-methylbenzesulfonic acid) (CAS Reg. No. 4403–90–1). The manufacture of D&C Green No. 5 is accomplished by the sulfonation of D&C Green No. 6 with fuming sulfuric acid. Because D&C Green No. 6 is the starting material in this manufacturing process, the possibility exists that the chemicals used in the synthesis of D&C Green No. 6 may be present in minor amounts in D&C Green No. 5. In the preamble of the April 2, 1982 final regulation permanently listing D&C Green No. 6 (47 FR 14138), FDA explained that D&C Green No. 6 is formed by chemically reacting one molecule of quinizarin with two molecules of *p*-toluidine. The significance of these components is that Weisburger, et al., have demonstrated that *p*-toluidine is a carcinogen in mice.[1]

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 analytical evidence that *p*-toluidine actually is present in D&C Green No. 5. FDA did not detect *p*-toluidine in D&C Green No. 5 using a gravity elution chromatography method, an analytical procedure for uncombined intermediates. FDA considers the sensitivity of this method for *p*-toluidine to be at least 250 ppm. Because 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 D&C Green No. 5.

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. 5. Shiseido's method uses high performance liquid chromatography (HPLC) separation with fluorescence detection. The reported limit of detection for this method is 0.1 ppm. Reproducibility and recovery data that were provided for a D&C Green No. 5 sample spiked with 3 ppm of *p*-toluidine were very good. FDA considers this method to be a valid analytical method for the determination of residual *p*-toluidine levels in D&C Green No. 5 at least to 3 ppm and probably lower. In addition, a HPLC method for detecting *p*-toluidine with a sensitivity of less than 10 ppm has been developed at FDA.

Using the HPLC method, Shiseido analyzed the residual *p*-toluidine in three commerical samples of D&C Green No. 5 manufactured in the U.S. The *p*-toluidine levels reported by Shiseido for these samples were 0.57, 1.49, and 2.54 ppm. FDA has examined seven additional batches of D&C Green No. 5. The largest response the agency observed was an apparent 2.5 ppm. Based on these analytical results, FDA expects that the average *p*-toluidine level in certified D&C Green No. 5 prepared in accordance with current good manufacturing practice will not exceed 5 ppm.

The *p*-toluidine found in D&C Green No. 5 is utilized in the first step in the synthesis process, the preparation of D&C Green No. 6, and is substantially removed by subsequent reaction with fuming sulfuric acid and purification.

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[1] In a 1978 paper, Weisburger, et al., Journal of Environmental Pathology and Toxicology, 2:325 (1978), 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.

Residual *p*-toluidine is not intended to and does not contribute any color to D&C Green No. 5, nor does it impart any color to drugs, cosmetic, or the human body. Consequently, FDA concludes that, although a small amount of *p*-toluidine is added to drugs and cosmetics with the addition of D&C Green No. 5, this chemical is not a color additive within the meaning of 21 U.S.C. 321(t) but is merely an impurity in D&C Green No. 5.

IV. Evaluation Of The Safety Of D&C Green No. 5 For Drugs 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 Additive 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)), which provides that a color additive like D&C Green No. 5 shall be deemed to be unsafe "if, the additive is found by the Secretary to induce cancer when ingested by man or animal" (21 U.S.C. 376(b)(5)(B)(i)).

B. *Prior Action by FDA.* In the past, FDA has terminated the provisional listing of several color additives that contained or were expected 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 expected 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 -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.[2]

However, FDA no longer believes that it must refuse to list a color additive simply because it contains or is expected 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. Although 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 exposure 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.

Recently, the agency has examined the risk associated with external drug and cosmetic use of D&C Green No. 6 that contains minor amounts of *p*-toluidine (47 FR 14138; April 2, 1981). Based on the estimate of risk, the agency concluded that the exposure to the residual impurity *p*-toluidine from use of drugs and cosmetics containing D&C Green No. 6 was sufficiently low to be considered safe.

Relying on these developments, FDA has proceeded to evaluate the safety of D&C Green No. 5.

C. *Use of D&C Green No. 5.* D&C Green No. 5 is a water soluble, oil insoluble color additive, the primary use

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

of which is in externally applied cosmetics, with minor use in ingested drugs (known use is approximately 100 pounds per year) and apparently trivial use in ingested cosmetics. D&C Green No. 5, a certifiable color, had an average yearly certified poundage of 6,711 pounds between 1970 and 1981. During that period, no lakes of D&C Green No. 5 were certified.

Many cosmetic manufacturers submit Cosmetic Product Ingredient Statements (formulations) to the FDA under the Voluntary Cosmetic Regulatory Program (21 CFR 720). This program provides information on the specific types of cosmetic products in which D&C Green No. 5 is used. Additionally, CTFA has provided data on maximum use levels in cosmetics based on a 1981 survey of manufacturers.

As of December, 1981, FDA's Voluntary Cosmetic Regulatory Program computer file contained 311 formulations that listed D&C Green No. 5 as an ingredient. Of these, 28 percent were noncoloring hair preparations (primarily shampoos and conditioners); 22 percent were fragrance preparations (e.g., colognes and perfumes); 21 percent were skin care preparations (e.g., creams and lotions); and, 12.5 percent were shaving preparations (primarily aftershave lotion). Based on the color intensity (absorptivity) of D&C Green No. 5, a fairly strong coloring effect would be obtained at 100 ppm in typical transparent cosmetic products. This is consistent with CTFA's 1981 survey where they reported that the maximum level of use of D&C Green No. 5 is less than 100 ppm in most products.

The use of D&C Green No. 5 in ingested cosmetics over the past 10 years was reported only in the category mouthwashes/breath fresheners (2 formulations in FDA's computer file) representing only 0.64 percent of total reported formulations. The 1981 CTFA survey indicated that there were no ingested cosmetic products, including lipsticks, that used D&C Green No. 5.

D&C Green No. 5 is used in coloring ingested drugs. The data in the original food additive petition (1968) indicated that D&C Green No. 5 was used to color 22 pharmaceutical products, including 21 for ingested use. Data from a 1976 PMA survey indicated that usage of D&C Green No. 5 had dropped to 14 ingested drugs. The drugs included three over-the-counter (OTC) preparations and seven drugs for long-term use (over 6 weeks), including one long-term pediatric drug. Of the 1,354 pounds of D&C Green No. 5 reported as used in these preparations, 1,250 pounds was used in one elixir product, which has since been discontinued. The daily dose of D&C Green No. 5 in current known drug products varies from 0.012 milligram per day to 2.28 miligrams per day.

Although the fraction of D&C Green No. 5 used in ingested drugs apparently is minor at this time, use in ingested drugs as provided in this rule represents the greatest potential internal exposure for individuals to this color additive. FDA estimates that D&C Green No. 5 may be used in a particular drug at a maximum level that could result in consumption of 50 mg per day of the color additive. However, the agency believes that lifetime averaged exposure from use of drugs containing D&C Green No. 5 would be a small fraction of the maximum exposure that might occur in a day. As a result, considering probable drug use and all other probable applications in compliance with these regulations, the lifetime-averaged individual exposure (internal and external) to D&C Green No. 5 is not likely to exceed 10 mg per day. Lifetime-averaged individual internal exposure, based on all known uses, would not likely exceed several tenths of a mg per day.

D. *Safety Studies on D&C Green No. 5.* To establish that D&C Green No. 5 is safe for use in ingested and externally applied drugs and cosmetics, the petitioners submitted reports on a number of animal toxicology studies on D&C Green No. 5. Among these studies were a lifetime oral feeding study in rats, a 2-year feeding study in dogs, and a three generation reproduction study in rats. There were no significant compound-related adverse effects observed in these studies.

FDA, however, concluded that the sensitivity (or power) of these chronic feeding toxicity studies was insufficient under current standards to provide the requisite demonstration of safety for ingested use. As a result, CTFA sponsored additional chronic feeding studies on D&C Green No. 5. The studies were conducted by Hazleton Laboratories America, Inc., Vienna, VA, and included a long-term feeding study on D&C Green No. 5 in rats exposed in utero and a long-term feeding study in mice. On May 29, 1981, the agency received the final reports on these studies from CTFA.

In the CTFA-sponsored studies in rats, D&C Green No. 5 was fed to Sprague-Dawley CD–1 rats exposed in utero at dietary levels of 0, 0.10, 0.25, and 1.0 percent for 130 weeks. Seventy males and seventy females were used for each dietary level. The agency concluded that the data from the in utero phase did not reveal any treatment-related differences in the reproduction indices of the treated groups when compared to the controls. The data in the study did indicate that body weight gains were lower in all treated animals during the gestation and lactation period when compared to the controls. In the long-term study there were increases in testicular weight and tests/body ratios. However, there were no reported histological alterations in the testes that could be attributed to treatment. There were no compound-related effects on survival or clinical signs, and no evidence of carcinogenicity in Sprague-Dawley rats.

In the long-term mouse study, D&C Green No. 5 was fed to albino mice (HaM/ICR Swiss) at dietary levels of 0.0, 0.05, 0.50, and 2.0 percent for 88 weeks in males and 97 weeks in females. Sixty males and sixty females were used for each dietary level and in each of two control groups. The toxicological findings in the female mice fed D&C Green No. 5 were comparable to the control group. There were no gross or histopathological changes that could be considered to be treatment related.

In male mice there were more liver neoplasms (hepatocellular adenomas and hepatocellular carcinomas) in the high dose group than in the controls, while their survival was less than that of other dose groups. The number of liver neoplasms in the low dose group was less than the controls, and the number in the intermediate dose group was similar to the controls. The findings were confounded, however, because following the test protocol, only the livers of mice in the control and high dose groups were subject to complete histopathological examination. Those in the low- and mid-dose groups that were grossly normal were not subjected to histopathological examination. The testing laboratory, on the basis of pairwise comparisons between the high dose group and the control groups, using a Fisher's exact statistical test, concluded that there was no significant evidence of a compound-related increase in liver neoplasms, and therefore that there was no need to look at other dosage groups. However, the agency concluded, on the basis of the data initially submitted, and on the assumption that all male mice liver neoplasms had been identified, that early mortality in the high dose group indicated the need for a survival adjusted statistical analysis. The incidental death survival adjusted analysis gave a p-value that was considered statistically significant for combined carcinomas and adenomas.

However, several factors that can be termed "biological" caused the agency to question whether the results of the

statistical analysis established that D&C Green No. 5 is a carcinogen. Historical data document that many strains of mice display a fairly high and variable incidence of spontaneous hepatocellular neoplasms. The agency believed that the incidence of neoplasms found in the high dose group could be within the range of historical spontaneous incidence of hepatocellular neoplasms in this strain of mice for this laboratory. Also, there was no evidence of metastatic disease in any of the treated groups. The presence of this disease might have supported a conclusion that the neoplasms were treatment related. Further, the proportion of livers judged to be normal by gross pathology was virtually identical in treated and control groups. In order to observe more carefully and in greater depth the condition of these livers, FDA requested additional microslides of the livers from male mice in the low- and mid-dose groups, along with the existing slides, for review by agency pathologists, as well as historical data on the incidence of spontaneous hepatocellular neoplasms.

Because of the apparent disparate conclusions the agency reached when it considered biological as opposed to mathematical factors, FDA arranged for external review of the data by the Board of Scientific Counselors (the Board) of the National Toxicology Program (NTP). A notice published in the **Federal Register** of February 19, 1982 (47 FR 7500) announced that the Board would meet to review these data on March 9, 1982 in Conference Rm. 425–403A, Hubert H. Humphrey Bldg., Department of Health and Human Services, 330 Independence Ave. SW., Washington, DC. The Board included the following members:

Dr. Norman Breslow, Department of Biostatistics SC–32, University of Washington, Seattle, WA 98195

Dr. Margaret Hitchcock, Associate Fellow, John B. Pierce Foundation Laboratories, New Haven, CT 06519

Dr. Marjorie G. Horning, Professor of Biochemistry, Institute for Lipid Research, Texas Medical Center, Houston, TX 77030

Dr. Mortimer L. Mendelsohn, Associate Director, Biomedical and Environmental, Lawrence Livermore Laboratory, University of California, Livermore, CA 95550

Dr. Norton Nelson, Director, Institute of Environmental Medicine, New York University Medical Center, 550 First Ave., New York, NY 10016

Dr. Stan D. Vesselinovitch, Professor, Department of Radiology and Pathology, University of Chicago, Chicago, IL 60637

Dr. Alice S. Whittemore, Adjunct Professor, Department of Family Community, and Preventive Medicine, School of Medicine, Stanford University, Stanford, CA 94305.

After considering the data, the Board concluded that the data are "indirect" and "equivocal," and that the statistical evidence is only "limited or suggestive" for carcinogenicity, in spite of the relatively low *p*-values obtained using the trend analysis.

From the data presented to them, the members of the Board could not unequivocally conclude that D&C Green No. 5 was not carcinogenic under the conditions of the test. However, the NTP summary minutes of the Board's meeting indicates that the members of the Board leaned strongly toward such a conclusion. The minutes report that Dr. Mendelsohn stated that "* * * when one considers the lack of toxicity in all the species and sexes looked at, he had to be skeptical as to whether the findings in male mice were significant. He said, at best, the effects were equivocal. Dr. Vesselinovitch agreed and reiterated his views as to the lack of biological significance to the findings."

Dr. Breslow indicated that in his opinion "* * * the most important caveat (to the statistically significant dose-related trend) was that these results take no account of the likely presence of extraneous sources of variation * * *." Based upon his assessment, Dr. Breslow suggested that the agency perform an analysis of variance on the spontaneous incidence of liver neoplasms in male mice of the CD–1 strain at Hazelton Laboratories and in the other studies on color additives currently on the provisional list. The purpose of this analysis would be to determine whether the incidence of hepatocellular tumors in the high dose male group treated with D&C Green No. 5 was significantly higher than the spontaneous background incidence.

FDA conducted the analysis of variance suggested by Dr. Breslow. This analysis indicated that the incidence of liver neoplasms in the high dose male mouse group is not outside the normal range of background spontaneous incidence observed in the historical controls (as defined by two standard deviations).

Traditionally, biologists have considered differences in animal response that are within two standard deviations from the normal variation observed to be of no biological significance. This result of the analysis of variance, therefore, serves to mitigate the significance of the low *p*-values that were calculated based on the use of only the concurrent control groups of animals.

As the agency prepared for the meeting of the Board and in the days following that meeting, as it considered further the results of its analysis of the microslides of the mouse livers, FDA became convinced that the data from the studies were not consistent with the data that would be produced by a carcinogen. The course of hepatocellular neoplastic disease in mice is progressive and is characterized by lesions with different identifiable morphologies and various degrees of size and malignancy. In ascending order, the progression of lesions are: foci of cellular alteration, adenoma, carcinoma, and metastatic carcinoma. A treatment-related production of liver neoplasia can be established not only by an increase in tumor incidence but also by a demonstration that the disease progressed further towards malignancy in treated groups than in the control groups.

The progress of liver cancer can be monitored by comparing the proportion of progressive lesions found in the treated group to that found in the control group. This comparison is actually an indirect measurement of the latency period of carcinogenesis. A shortening of this period is considered to be one of the primary indicators of an induced carcinogenic event, and studies with many bona fide carcinogens have indicated a more dramatic relationship between latency period and treatment than between tumor incidence and treatment.

In the test of D&C Green No. 5, the extent of liver involvement, as measured by the size and type of liver neoplasms, was similar in the treated and control groups. This result suggested to FDA that the small increased incidence of liver tumors in the high dose group was a spurious and nonreproducible occurrence.

In addition, none of the evidence available to the agency provided any basis upon which to expect that the liver is in any way a target organ for D&C Green No. 5. No non-neoplastic pathological changes in the liver were observed, and no enlargement or organ weight differences were noticed. In short, other than the observed higher incidence of liver tumors, there were no indications from pathology observations that the liver was a target organ.

Furthermore, D&C Green No. 5 itself is not mutagenic to several tester strains of *S. typhimurium* with or without activation with liver homogenates.

Finally, even though the trend test produced statistical "significance" for

the male mouse liver data, the apparent dose-response is unlike any observed for compound induced liver neoplasia in the National Cancer Institute (NCI) sponsored bioassay program. If a dose-response curve is constructed using the data, the slope of the curve is much shallower than that observed for chemicals shown to induce carcinogenic effects in the NCI bioassays. This curve does not reflect what the agency considers to be a biologically valid dose-response.

Therefore, collectively there exists a significant body of "biological" evidence that strongly supports the conclusion that D&C Green No. 5 is not a carcinogen. FDA finds that this evidence, when considered in conjunction with the results of the analysis of variance conducted by the agency, refutes any inference from the low *p*-values found in the statistical analysis of the data on D&C Green No. 5 that this color additive is a carcinogen.

Thus, in acceptable carcinogenicity bioassays in two species where numerous tissues were examined in both sexes, a slightly higher number of neoplasms was observed in only one site (the liver), one dose group of one sex and in one species. While two statistical measures (dose-related trend test and pairwise comparison) commonly used in the evaluation of bioassays indicated that this slightly higher number of liver tumors in the high dose group of male mice was statistically significant, all other evidence indicates that the effect was unlikely to be related to treatment with D&C Green No. 5. Evidence supporting the noncarcinogenicity of D&C Green No. 5 includes: (1) the fact that the incidence in the high dose group is within the normal range of background spontaneous incidence; (2) the absence of evidence of progressiveness that would be expected from a carcinogen; (3) the absence of observable non-neoplastic disease in the mouse liver; (4) the negative findings on testing D&C Green No. 5 for mutagenic activity; and (5) the atypical form of the apparent dose-response data. In conclusion, the evidence as a whole, convinces the agency that D&C Green No. 5 is noncarcinogenic (and nontumorigenic) under the conditions of the tests.

E. *Application of risk assessment in this rulemaking.* Because *p*-toluidine is present in D&C Green No. 5 in minor amounts, use of D&C Green No. 5 as authorized by this regulation will likely result in exposure to very small amounts of *p*-toluidine. In determining whether a color additive can be regulated, the terms of the Delaney Clause and the general safety clause must be addressed.

The Delaney Clause requires the disapproval of any color additive that has been shown to be a carcinogen in appropriate testing. However, the agency has concluded that the Delaney Clause applies only when the color additive as a whole is found to cause cancer and does not apply to individual impurity constituents of the color additive. As stated above, the agency finds no basis for concluding that D&C Green No. 5 itself is a carcinogen. The inapplicability of the Delaney Clause in a similar case, D&C Green No. 6, was discussed in the **Federal Register** of April 2, 1982 (47 FR 14138).

FDA does not suggest, however, that the presence of *p*-toluidine in D&C Green No. 5 should be ignored. On the contrary, it should be evaluated under the general safety standards of section 706 of the act, which require that the data establish that the color additive is safe for the regulated use, i.e., there is a reasonable certainty of no harm from the use of the color additive.

As in the D&C Green No. 6 rulemaking, the agency concludes that risk assessment procedures are appropriate to provide a basis for deciding whether there is a reasonable certainty of no harm from the use of D&C Green No. 5 in ingested and externally applied drugs and cosmetics.

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. 5 in ingested and 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.

1. *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.

Of the two estimates, the total population exposure to *p*-toluidine can be more accurately calculated because the certified poundage of D&C Green No. 5 is known. If the average annual certification of D&C Green No. 5 containing 5 ppm of *p*-toluidine (the observed average is less than 3 ppm) is 10,000 pounds, then the average lifetime exposure to *p*-toluidine would be less than 0.27 nanograms (ng) per day per person, or if all of these products were consumed by only 10 percent of the population, 2.7 ng 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.

In section IV C, the agency discussed the principal types of products in which D&C Green No. 5 is used and estimated that lifetime-averaged individual exposure to D&C Green No. 5 (internal or external) would not likely exceed 10 mg per day from the applications (mainly used in ingested drugs) that would be permitted by this regulation. If 5 ppm *p*-toluidine is present in an average sample of D&C Green No. 5, an individual exposed to 10 mg per day of D&C Green No. 5 would have a lifetime-average exposure of 50 nanograms (ng) per day *p*-toluidine. Current known uses of D&C Green No. 5, however, result in a much lower exposure to the color additive. Internal exposure is estimated not to exceed several tenths mg per day (lifetime-averaged). If 5 ppm *p*-toluidine is present in an average sample of D&C Green No. 5, an individual exposed to several tenths mg per day (e.g., 0.5 mg per day) would have a lifetime-averaged exposure of 2.5 ng per day.

2. *Extrapolation of risk.* The second part of the evaluation of the risk presented by *p*-toluidine in D&C Green No. 5 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 rat (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 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. 5.

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 50 ng per day *p*-toluidine is 1 in 30 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 300 million.

Because the lifetime-averaged individual exposure to *p*-toluidine from the use of D&C Green No. 5 in internal and externally applied drugs and cosmetics would not likely exceed 50 ng 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. 5.

In arriving at the conclusion that exposure to *p*-toluidine from the use of D&C Green No. 5 is safe, FDA considered the possibility of exposure to minor amounts of *p*-toluidine impurities as a result of the synthetic process of manufacturing several related color additives. Regulations for three color additives now contain specifications on the maximum amount of *p*-toluidine permitted in the additive. D&C Green No. 6 (21 CFR 74.1206, 74.2206, and 82.1206)—0.1 percent *p*-toluidine, Ext. D&C Violet No. 2 (21 CFR 74.2602a)—0.1 percent *p*-toluidine, and D&C Violet No. 2 (21 CFR 74.1602, 74.2602, and 82.1602)—0.2 percent *p*-toluidine.

Certain other color additives might contain small amounts of *p*-toluidine. A preliminary review of the manufacturing processes of these color additives indicates that the level of *p*-toluidine would be far less than the level found in D&C Green No. 6 (approximately 400 ppm *p*-toluidine was found in D&C Green No. 6). In a recent **Federal Register** document (47 FR 14138; April 2, 1982) FDA assessed the upper limit risk from exposure to *p*-toluidine as a result of use of D&C Green No. 6 to be less than 1 in 15 million to 1 in 150 million in a lifetime and concluded that such exposure was safe. The agency will review thoroughly each of the other *p*-toluidine containing color additives and, if necessary to protect the public health, will propose regulatory action to limit further the cumulative exposure to *p*-toluidine from use of color additives. Regardless of the findings of these reviews, the agency considers the combined risk from exposure to *p*-toluidine from use of D&C Green No. 5 and D&C Green No. 6 to be sufficiently low that the additional exposure to *p*-toluidine from the other color additives would not affect its evaluation that the use of D&C Green No. 5 and D&C Green No. 6 is safe.

In section III, the agency stated that the average *p*-toluidine level in D&C Green No. 5 manufactured in accordance with current good manufacturing practice will not likely exceed 5 ppm. This level was employed in the risk analysis above. In order to ensure that the average level does not exceed 5 ppm, a regulatory specification of 15 pm is being established for the maximum amount of *p*-toluidine that can be present in a certified lot.

V. Conclusion

The agency, following evaluation of available data, concludes that D&C Green No. 5 is safe under the conditions of use set forth below for general use in drugs and cosmetics, and that certification is necessary for the protection of the public health.

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.

List of Subjects in 21 CFR Parts 74, 81, and 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 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. Part 74 is amended:

a. By revising § 74.1205, to read as follows:

§ 74.1205 D&C Green No. 5.

(a) *Identity.* (1) The color additive D&C Green No. 5 is principally the disodium salt of 2,2'-(9,10-dihydro-9,10-dioxo-1,4-anthracenediyl)diimino) bis-(5-methylbenzenesulfonic acid) (CAS Reg. No. 4403–90–1).

(2) Color additive mixtures for use in drugs made with D&C Green No. 5 may contain only those diluents that are suitable and those that are listed in Part 73 of this chapter for use in color additive mixtures for coloring drugs.

(b) *Specifications.* (1) D&C Green No. 5 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 impurities may be avoided by current good manufacturing practice:

Sum of volatile matter (at 135° C) and chlorides and sulfates (calculated as sodium salts), not more than 20 percent.
Water insoluble matter, not more than 0.2 percent.
1,4-Dihydroxyanthraquinone, not more than 0.2 percent.
2-Amino-*m*-toluenesulfonic acid, not more than 0.2 percent.
Subsidiary colors, not more than 5 percent.
Lead (as Pb), not more than 10 parts per million.
Arsenic (as As), not more than 3 parts per million.
Total color, not less than 80 percent.

(2) D&C Green No. 5 for use in coloring 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 current good manufacturing practice:

Sum of volatile matter (at 135° C) and chlorides and sulfates (calculated as sodium salts), not more than 20 percent.
Water-insoluble matter, not more than 0.2 percent.
1,4-Dihydroxyanthraquinone, not more than 0.2 percent.
Sulfonated toluidines, total not more than 0.2 percent.
p-Toluidine, not more than 0.0015 percent.
Sum of monosulfonated D&C Green No. 6 and Ext. D&C Violet No. 2, not more than 3 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 80 percent.

(c) *Use and restrictions.* (1) D&C Green No. 5 may be safely used to color nylon 66 (the copolymer of adipic acid and hexamethylenediamine) and/or nylon 6 (poly-(*e*-caprolactam)) nonabsorbable surgical sutures for use in general surgery, subject to the following restrictions:

(i) The quantity of color additive does not exceed 0.6 percent by weight of the suture.

(ii) When the sutures are used for the purposes specified in their labeling, there is no migration of the color additive to the surrounding tissue.

(iii) If the suture is a new drug, an approved new drug application, under section 505 of the act, is in effect for it.

(2) D&C Green No. 5 may be safely used for coloring drugs generally in amounts consistent with current good manufacturing practice.

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

(e) *Certification.* All batches of D&C Green No. 5 shall be certified in accordance with regulations in Part 80 of this chapter.

b. By adding new § 74.2205, to read as follows:

§ 74.2205 D&C Green No. 5.

(a) *Identity and specifications.* The color additive D&C Green No. 5 shall conform in identity and specifications to the requirements of § 74.1205 (a)(1) and (b)(2).

(b) *Uses and restrictions.* D&C Green No. 5 may be safely used for color cosmetics generally except in the area of the eye in amounts consistent with current 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. 5 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. Part 81 is amended:

§ 81.1 [Amended]

a. In § 81.1 *Provisional lists of color additives* in paragraph (b) by removing the entry "D&C Green No. 5" from the table.

§ 81.27 [Amended]

b. In § 81.27 *Conditions of provisional listing* in paragraph (d) by removing the entry "D&C Green No. 5" from the table.

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

3. Part 82 is amended by revising § 82.1205, to read as follows:

§ 82.1205 D&C Green No. 5.

The color additive D&C Green No. 5 shall conform in identity and specifications to the requirements of § 74.1205(a)(1) and (b)(2) of this chapter.

Any person who will be adversely affected by the foregoing final rule may at any time on or before July 6, 1982, submit to the Dockets Management Branch (address above), written objections thereto. Objections shall show how the person filing will be adversely affected by the final rule, specify with particularity the provisions of the final rule 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 issue 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 document. Any objections received in response to the final rule may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This final rule shall become effective July 7, 1982, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the **Federal Register.**

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

Dated: May 27, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82–14966 Filed 5–28–82; 11:32 am]

BILLING CODE 4160–01–M

21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of D&C Green No. 5; 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. 5 for use as a color additive in internally ingested and externally applied drugs and cosmetics. A new closing date for D&C Green No. 5 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. 5 for these uses. The regulation that lists D&C Green No. 5 is published elsewhere in this issue of the **Federal Register.**

DATES: Effective May 27, 1982, the new closing date of D&C Green No. 5 will be September 2, 1982.

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

SUPPLEMENTARY INFORMATION: The current closing date of May 30, 1982, for the provisional listing of D&C Green No. 5 was established by notice published in the **Federal Register** of March 27, 1981 (46 FR 18958). The May 30, 1982 closing date for D&C Green No. 5 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. 5.

After reviewing and evaluating the data, the agency has concluded that D&C Green No. 5 is safe for these uses. Therefore, elsewhere in this issue of the **Federal Register**, FDA is publishing a regulation that lists D&C Green No. 5.

The regulation set forth below will postpone the May 30, 1982 closing date for the provisional listing of that color additive until September 2, 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. 5 for use in internally ingested and externally applied drugs and cosmetics.

Because of the shortness of time until the May 30, 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. 5 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 September 2, 1982. To prevent any interruption in the provisional listings of D&C Green No. 5 and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective on May 27, 1982.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

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

§ 81.1 [Amended]

Therefore, under the Transitional Provisions of the Color Additive 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. 5" in paragraph (b) to read "September 2, 1982."

Effective date. This regulation is effective May 27, 1982.

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

Dated: May 27, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–14965 Filed 5–28–82; 11:32 am]

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21 CFR Part 146

[Docket No. 78N–0236]

Grapefruit Juice; Establishment of Standards of Identity and Fill of Container; Confirmation of Effective Date and Further Amendment; Stay of One Provision

AGENCY: Food and Drug Administration.

ACTION: Final rule; further amendment and confirmation and stay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for compliance with the provisions of the final regulation establishing standards of identity and fill of container for grapefruit juice, except for the minimum 9-percent soluble solids requirement for "grapefruit juice from concentrate", the effective date of which is stayed pending determination of whether any issues raised by objections require a public hearing. FDA also is revising the "correction for acidity" requirement, providing for grape-fruit hybrids, and removing the alternative name "reconstituted grapefruit juice."

DATES: The effective date of the minimum 9-percent soluble solids requirement for "grapefruit juice from concentrate" (21 CFR 146.132(a)(1) seventh sentence) is stayed.

EFFECTIVE DATE: Compliance with the provisions being revised herein may begin August 3, 1982. Effective July 1, 1983 for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date.

Objections to the provisions being revised herein by July 6, 1982.

Compliance with the final regulation, except for 21 CFR 146.132(a)(1) and (3)(i)(*b*) being herein revised, including any labeling changes, may have begun February 27, 1981, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1983, shall fully comply.

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

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

SUPPLEMENTARY INFORMATION: A final regulation was published in the **Federal Register** of January 27, 1981 (46 FR 8462) establishing standards of identity and fill of container for grapefruit juice in consideration of the Codex Alimentarius Commission's "Recommended International Standard for Grapefruit Juice Preserved Exclusively by Physical Means," and the U.S. Department of Agriculture's "United States Standards for Grades of Grapefruit Juice." The final regulation provided for the addition of concentrated grapefruit juice to grapefruit juice in an amount not to exceed 15 percent by weight of the grapefruit juice soluble solids, permitted the adjustment of grapefruit pulp, grapefruit oil, and grapefruit essence content (components derived from grapefruit) in accordance with good manufacturing practice, permitted the addition of specified dry nutritive carbohydrate sweeteners to grapefruit juice, established a minimum grapefruit juice soluble solids requirement of 9 percent by weight for the product "grapefruit juice from concentrate," and permitted the use of special liquid or dry sweeteners when concentrated juice is used in the preparation of "grapefruit juice from concentrate."

Interested persons who would be adversely affected were given to February 26, 1981, to file written objections to the final regulation and request a hearing on specific provisions to which there were objections. Five objections and requests for a hearing were filed jointly by the State of Florida, Department of Citrus, the Florida Citrus Commission, the Florida Citrus Processors Association, and the Florida Citrus Mutual. The Florida Farm Bureau Federation filed a letter in support of these objections.

Objections and Requests for a Hearing

1. An objection and request for a hearing was filed to the correction for acidity in § 146.132(a)(1) on the basis that the correction is made to the soluble solids content (exclusive of added sweeteners) rather than the degrees Brix. The objectors pointed out that the correction should be added to the refractive sucrose value to obtain the true degrees Brix (exclusive of added sweeteners.) This procedure is accepted by the grapefruit and orange industries for worldwide use and produces results comparable to those obtained by the Brix hydrometer.

The agency agrees and § 146.132(a)(1) is revised accordingly.

2. An objection and request for a hearing was filed relative to § 146.132(a)(3)(i)(*b*) which permits the alternative name "reconstituted grapefruit juice" to be used as the name of the food on the basis that the common or usual name is "grapefruit juice from concentrate" and that the use of any alternative name will be confusing to and contrary to the best interest of consumers.

The agency agrees and § 146.132(a)(3)(i)(*b*) is revised accordingly.

3. An objection and request for a hearing was filed to require in § 146.132(a)(3) that if any nutritive sweetener is added, the principal display panel of the label shall bear the statement "Sweetener added"; or if no sweetener is added, the word "unsweetened" may immediately precede or follow the words "Grapefruit Juice" or "Grapefruit Juice from Concentrate."

This requirement was inadvertently omitted from the final regulation which was thereafter corrected by adding this suggested requirement in a notice published in the Federal Register of April 10, 1981 (46 FR 21359).

4. An objection and request for a hearing was filed relative to § 146.132(a)(1) which requires the grapefruit from which the grapefruit juice is manufactured to conform to the characteristics of *Citrus Paradisi* Macfadyen. It requested that the paragraph be amended to allow up to 10 percent by volume of the unfermented juice obtained from mature hybrids of grapefruit on the basis that: (1) The quantitative limitation on the addition of citrus hybrids in citrus juices has been established by FDA in the definitions and standards of identity for many orange juice products; (2) hybrids of grapefruit have been used for a number of years in the production of grapefruit juice, concentrated grapefruit juice, and grapefruit juice from concentrate; and (3) Economic waste will result if the limited use of grapefruit hybrids is not allowed in grapefruit juice.

FDA agrees and § 146.132(a)(1) is revised accordingly.

5. An objection and request for a hearing was filed relative to the 9-percent minimum soluble solids requirement for "grapefruit juice from concentrate" in § 146.132(a)(1) on the basis that: (1) The average soluble solids of grapefruit in Florida, during the most recent 10 seasons has been 10.2 percent; (2) the average soluble solids of grapefruit in the other states within which grapefruit is grown probably exceeds 10 percent; (3) there is no technical difficulty in producing "grapefruit juice from concentrate" containing 10 percent soluble solids, rather than 9 percent; (4) the USDA voluntary grade standards and the Florida State Grades for "grapefruit juice from concentrate" provide that the minimum soluble solids level shall be not less than 10 percent; (5) the effect of a 9-percent minimum soluble solids requirement for "grapefruit juice from concentrate," in most instances, will be to dilute the finished product to a level substantially below that of the fruit from which the concentrated juice was made.

FDA is staying the effective date of the provisions of § 146.132(a)(1) that would establish a 9-percent minimum soluble solids requirement for grapefruit juice from concentrate while it determines whether the objectors have raised a genuine and substantial issue of fact that must be resolved at a public hearing, as provided for in 21 CFR 12.24.

The objectors have requested the issuance of an order establishing a minimum 9-percent soluble solids for grapefruit juice from concentrate for the duration of the stay. The agency advises that it does not have the authority to establish an interim minimum soluble solids requirement for "grapefruit juice from concentrate." However, pending resolution of the minimum soluble solids issue, FDA will not object to "grapefruit juice from concentrate" at a soluble solids of 9 percent.

Stay of Minimum Soluble Solids Requirement

Under section 701(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)) and § 12.23 (21 CFR 12.23), FDA hereby announces a stay of the effective date of those portions of § 146.132(a)(1) regarding the minimum 9 percent grapefruit soluble solids requirement of "grapefruit juice from concentrate" to which objections and requests for a hearing were received under § 12.22 (21 CFR 12.22) pending resolution of whether a public hearing is required.

List of Subjects in 21 CFR Part 146

Canned fruit juice; Food standards; Fruit juices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), notice is given that the effective date for complying with the January 27, 1981 final regulation (§ 146.132) as corrected April 10, 1981, and May 12, 1981, is July 1, 1983, with the following exceptions: In § 146.132(a)(1), the effective date for the minimum 9-percent soluble solids requirement for grapefruit juice from concentrate is stayed by the filing of proper objections and requests for a hearing, pending resolution of whether a public hearing is required. In addition: *it is ordered*, That § 146.132(a)(1) and (3)(i)(*b*) be revised to read as follows:

PART 146—CANNED FRUIT JUICES

§ 146.132 Grapefruit juice.

(a) *Identity*—(1) *Description.* Grapefruit juice is the unfermented juice, intended for direct consumption, obtained by mechanical process from sound, mature grapefruit (*Citrus paradisi* Macfadyen) from which seeds and peel (except embryonic seeds and small fragments of seeds and peel which cannot be separated by good manufacturing practice) and excess pulp are removed and to which may be added not more than 10 percent by volume of the unfermented juice obtained from mature hybrids of grapefruit. The juice may be adjusted by the addition of the optional concentrated grapefruit juice ingredients specified in paragraph (a)(2) of this section, but the quantity of such concentrated grapefruit juice ingredient added shall not contribute more than 15 percent of the grapefruit juice soluble solids in the finished food. The grapefruit pulp, grapefruit oil, and grapefuit essence (components derived from grapefruit) content may be adjusted in accordance with good manufacturing practice. The juice may have been concentrated and later reconstituted with water suitable for the purpose of maintaining essential composition and quality factors of the juice. It may be sweetened with the dry nutritive sweeteners referred to in paragraph (a)(2)(iii) of this section. If the grapefruit juice is prepared from concentrate, such sweeteners, in liquid form, referred to in paragraph (a)(2)(iii) of this section, also may be used. When prepared from concentrated grapefruit juice, exclusive of added sweeteners, the finished food contains not less than 9 percent, by weight, of soluble solids taken as the refractometric sucrose value (of the filtrate), corrected to 20° C, and corrected for acidity by adding $(0.012+0.193x-0.0004x^2)$, where x equals the percent anhydrous citric acid in the sample, to the refractometrically obtained sucrose value by the first method prescribed in "Correction of Refractometer Sucrose Readings for Citric Acid Content for Lemonade," by Yeatman, Senzel, and Springer," Journal of the Association of Official Analytical Chemists," vol. 59 p. 368 (1976). Copies are available from the Association of Official Analytical Chemists, 1111 N. 19th St., Suite 210, Arlington, VA 22209, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. The food may contain one or any combination of the optional ingredients specified in paragraph (a)(2) of this section. Grapefruit juice, as defined in this paragraph, may be preserved by heat sterlization (canning), refrigeration, or freezing. When sealed in a container to be held at ambient temperatures, it is so processed by heat, before or after sealing, as to prevent spoilage.

* * * * *

(3) * * * (i) * * *

(*b*) "Grapefruit juice from concentrate" (*1*) if the food is prepared from concentrated grapefruit juice and water and/or grapefruit juice; or (*2*) if the food is prepared from grapefuit juice from concentrate and grapefruit juice. The words "from concentrate" shall be

shown in letters not less than one-half the height of the letters in the words "grapefruit juice."

* * * * *

Any person who will be adversely affected by the foregoing amendments to the final regulation as set forth above may at any time on or before July 6, 1982, submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specified factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date. Except as to the amendments that may be stayed by the filing of proper objections, compliance with these amendments to the final regulation may begin August 3, 1982. Accordingly, except that the effective date of the provision establishing the 9-percent minimum grapefruit juice soluble solids requirement in § 146.132(a)(1) is stayed and except as to those provisions being herein revised, the effective date of § 146.132 (a) and (c) as published in the **Federal Register** of January 27, 1981, and as corrected in the **Federal Register** of April 10, and May 12, 1981 is confirmed as follows: Compliance with this regulation, including any required labeling changes, may have begun of February 27, 1981, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1983, shall fully comply.

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

Dated: May 25, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-14809 Filed 5-28-82; 12:24 pm]

BILLING CODE 4160-01-M

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21 CFR Part 177

[Docket No. 80F-0401]

Indirect Food Additives: Polymers; Ethylene-1,4-Cyclohexylene Dimethylene Terephthalate Copolymer

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the extended safe use of ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer as articles or components of articles intended for use in contact with food. This action is in response to a petition filed by Eastman Chemicals Division, Eastman Kodak Co., Kingsport, TN 37662.

DATES: Effective June 4, 1982; objections by July 6, 1982.

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

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

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 17, 1980 (45 FR 69043), FDA announced that a petition (FAP 0B3523) had been filed by Eastman Chemicals Division, Eastman Kodak Co., Kingsport, TN 37662, proposing that § 177.1315 (21 CFR 177.1315) be amended to broaden the mole percentages of ethylene glycol and 1,4-cyclohexanedimethanol to 66-99 and 1-34, respectively, in the mixture used as a reactant with dimethyl terephthalate in the production of ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer intended for use in contact with food. In a second notice published in the **Federal Register** of November 20, 1981 (46 FR 57135), FDA announced that in addition, Eastman Kodak had submitted an amendment to the original petition that the regulation also provide for the safe use of a molecularly oriented ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer in contact with certain foods including nonalcoholic carbonated beverages.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below. In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this regulation as announced in the notice of filing published in the **Federal Register.** No new information or comments have been received that would alter the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

The format of the amended regulation is different from that of § 177.1315 as currently set forth in the Code of Federal Regulations. FDA has modified the form in which the specific limitations on the use of these ingredients are presented. This change has no substantive effect but is made merely for clarity.

List of Subjects in 21 CFR Part 177

Food additives; Polymeric food packaging.

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 177 is amended in § 177.1315 by revising paragraphs (a) and (b), by removing paragraphs (c) and (e), and by redesignating paragraph (d) as paragraph (c), as follows:

§ 177.1315 Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer.

* * * * *

(a) *Identity.* For the purposes of this section ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers (1,4-benzene dicarboxylic acid, dimethyl ester, polymerized with 1,4-cyclohexanedimethanol and 1,2-ethanediol) (CAS Reg. No. 25640-14-6) are basic copolymers meeting the

specification prescribed in paragraph (b) of this section, to which may have been added certain optional substances required in their production or added to impart desired physical or technical properties.

(b) *Specifications:*

Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers	Inherent viscosity	Maximum extractable fractions of the copolymer in the finished form at specified temperatures and times (expressed in micrograms of the terephthaloyl moieties/square centimeter of food-contact surface)	Test for orientability	Conditions of use
1. *Non-oriented* ethylene 1,4-cyclohexylene dimethylene terephthalate copolymer is the reaction product of dimethyl terephthalate with a mixture containing 99 to 66 mole percent of ethylene glycol and 1 to 34 mole percent of 1,4-cyclohexanedimethanol (70 percent *trans* isomer, 30 percent *cis* isomer).	Inherent viscosity of a 0.50 percent solution of the copolymer in phenoltetrachloroethane (60:40 ratio wt/wt) solvent is not less than 0.669 as determined by using a Wagner viscometer (or equivalent) and calculated from the following equation: Inherent viscosity = (Natural logarithm of $(N_r)/(c)$ where: N_r = Ratio of flow time of the polymer solution to that of the solvent, and c = concentration of the test solution expressed in grams per 100 milliliters.	(1) 0.23 microgram per square centimeter (1.5) micrograms per square inch) of food-contact surface when extracted with water added at 180° F (82.2° C) and allowed to cool to 120° F (48.9° C) in contact with the food-contact article. (2) 0.23 microgram per square centimeter 91.5 micrograms per square inch) of food-contact surface when with 3 percent (by volume) aqueous acetic acid added at 180° F (82.2° C) and allowed to cool to 120° F (48.9° C) in contact with the food-contact article. (3) 0.08 microgram per square centimeter (0.5 microgram per square inch) of food-contact surface when extracted for 2 hours with *n*-heptane at 120° F (48.9° C). The heptane extractable results are to be divided by a factor of 5.	No test required	In contact with non-alcoholic foods excluding carbonated beverages: Conditions of hot fill not exceeding 180° F (82.2° C), storage at temperatures not in excess of 120° F (48.9° C). No thermal treatment in the container.
2. *Non-oriented* ethylene 1,4-cyclohexylene dimethylene terephthalate copolymer is the reaction product of dimethyl terephthalate with a mixture containing 69±3 mole percent of ethylene glycol and 31±3 mole percent of 1,4-cyclohexanedimethanol (70 percent *trans* isomer, 30 percent *cis* isomer).	do	(1) 0.23 microgram per square centimeter (1.5 micrograms per square inch) of food-contact surface when extracted with water added at 180° F (82.2° C) and allowed to cool to 120° F (48.9° C) in contact with the food-contact article. (2) 0.23 microgram per square centimeter (1.5 micrograms per square inch) of food-contact surface when extracted with 3 percent (by volume) aqueous acetic acid added at 180° F (82.2° C) and allowed to cool to 120° F (48.9° C) in contact with the food-contact article.. (3) 0.08 microgram per square centimeter (0.5 microgram per square inch) of food-contact surface when extracted for 2 hours with *n*-heptane at 120° F (48.9° C). The heptane extractable results are to be divided by a factor of 5.. (4) 0.16 microgram per square centimeter (1.0 microgram per square inch) of food-contact surface when extracted for 24 hours with 8 percent (by volume) aqueous ethanol at 120° F (48.9° C).	No test required	In contact with food, including foods containing not more than 8 percent alcohol excluding carbonated beverages and beer. Conditions of fill and storage not exceeding 120° F (48.9° C). No thermal treatment in the container.
3. *Oriented* ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer is the reaction product of dimethyl terephthalate with a mixture containing 99 to 85 mole percent ethylene glycol and 1 to 15 mole percent of 1,4-cyclohexanedimethanol (70 percent *trans* isomer, 30 percent *cis* isomer).	do	(1) 0.23 microgram per square centimeter (1.5 micrograms per square inch) of food-contact surface of the oriented copolymer when extracted with water added at 190° F (87.8° C) and allowed to cool to 120° F (48.9° C) in contact with the food-contact article. (2) 0.23 microgram per square centimeter (1.5 micrograms per square inch) of food-contact surface of oriented copolymer when extracted with 3 percent (by volume) aqueous acetic acid added at 190° F (87.8° C) and allowed to cool to 120° F (48.9° C) in contact with the food-contact article..	When extracted with heptane at 150° F (65.6° C) for 2 hours: terephthaloyl moieties do not exceed 0.09 microgram per square centimeter (0.60 microgram per square inch) of food-contact surface.	In contact with non-alcoholic foods including carbonated beverages. Conditions of hot fill not exceeding 190° F (87.89° C), storage at temperatures not in excess of 120° F (48.9° C). No thermal treatment in the container.

Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers	Inherent viscosity	Maximum extractable fractions of the copolymer in the finished form at specified temperatures and times (expressed in micrograms of the terephthaloyl moieties/square centimeter of food-contact surface)	Test for orientability	Conditions of use
		(3) 0.08 microgram per square centimeter (0.5 microgram per square inch) of food-contact surface of oriented copolymer when extracted for 2 hours with *n*-heptane at 120° F (48.9° C). The heptane extractable results are to be divided by a factor of 5.		

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 6, 1982 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective June 4, 1982.

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

Dated: May 21, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-15130 Filed 6-3-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 544

Oligosaccharide Certifiable Antibiotic Drugs for Animal Use; Dihydrostreptomycin Sulfate Infection, Sterile

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 John D. Copanos & Co., Inc., providing revised labeling for use of dihydrostreptomycin sulfate injection to treat leptospirosis in dogs, horses, cattle, and swine.

EFFECTIVE DATE: June 4, 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: John D. Copanos & Co., Inc., 6110 Robinwood Rd., Baltimore, MD 21225, is sponsor of NADA 65–120 for Veticare Sterile Dihydrostreptomycin Sulfate Injection (500 milligrams per milliliter) originally approved October 28, 1963. This product is similar to certain other injectable drugs containing dihydrostreptomycin and/or streptomycin which were subject of a National Academy of Sciences/National Research Council (NAS/NRC) review published in the **Federal Register** of July 1, 1970 (35 FR 10698). The NAS/NRC, review concluded, and FDA concurred, that the products are probably effective for treating certain diseases in cattle, horses, swine, dogs, cats, and turkeys, when such disease conditions are caused by pathogens sensitive to dihydrostreptomycin and/or streptomycin. The NAS/NRC review listed several labeling recommendations, required adequate documentation to support the labeling used, and requested that each sponsor of an NADA effective before October 10, 1962 update the NADA regarding drug components and composition, manufacturing methods, facilities, and controls, as required by section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

John D. Copanos & Co., Inc., submitted data and information and revised labeling to support use of the drug for dogs, horses, cattle, and swine for treatment of leptospirosis using deep intramuscular injection at 5 milligrams per pound of body weight every 12 hours for 3 to 5 days. This use of the drug conformed to the conclusions of the followup notice and opportunity for hearing for dihydrostreptomycin injectable animal drugs that was published in the **Federal Register** of June 27, 1978 (43 FR 27894). In the June 27, 1978 notice, the Bureau of Veterinary Medicine concluded that, when dihydrostreptomycin injection is administered by or under the order of a veterinarian, it is safe and effective for treating leptospirosis in dogs, horses, cattle, and swine if labeled for use as recommended in the notice and in § 544.274 (21 CFR 544.274). The revised labeling for NADA 65–120 provided for these recommendations. The supplemental NADA is approved and the regulations are amended to reflect the approval.

Because the revised claims represent a restricted use of the drug within previously approved uses, this approval poses no increase in the frequency of human exposure to residues of dihydrostreptomycin. Because no residues of the drug were detectable by an acceptable analytical method in the milk of dairy cattle when the animals were treated under conditions of use prescribed, recommended, or suggested in the proposed labeling, approval of this supplement poses no increased human risk of exposure to residues of the drug. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64376; December 23, 1977), this supplemental NADA has been treated as a Category II supplement which does not require a review of the human safety data supporting the parent application.

In addition to approval of the supplemental NADA, this final rule also establishes new § 544.275 (21 CFR 544.275). Current § 544.274 provides for several forms of streptomycin and dihydrostreptomycin injections. To eliminate confusion between these various drugs, § 544.274 is revised by removing paragraph (c), which reflects a

recently approved NADA similar to this approval, and new § 544.275 is established, setting forth the requirements for certification, tests and methods of assay, and conditions of marketing both NADA's for dihydrostreptomycin sulfate injection, sterile. This change is editorial in nature only and is not intended to affect any outstanding approvals.

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 544

Animal drugs; Antibiotics, oligosaccharide.

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), Part 544 is amended as follows:

PART 544—OLIGOSACCHARIDE CERTIFIABLE ANTIBIOTIC DRUGS FOR ANIMAL USE

§ 544.274 [Amended]

1. In § 544.274 *Streptomycin sulfate/dihydrostreptomycin sulfate/crystalline dihydrostreptomycin sulfate injectable* by removing paragraph (c).

2. By adding new § 544.275, to read as follows:

§ 544.275 Dihydrostreptomycin sulfate injection, sterile.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Dihydrostreptomycin sulfate injection, sterile, is an aqueous solution of dihydrostreptomycin sulfate. It contains one or more suitable and harmless preservatives and buffer substances. Each milliliter contains dihydrostreptomycin sulfate equivalent to 500 milligrams of dihydrostreptomycin. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the labeled amount of dihydrostreptomycin. It is sterile. It is nonpyrogenic. It contains no depressor substances. This test may be omitted if the dihydrostreptomycin sulfate used in making the batch was tested. Its pH is not less than 5.0 and not more than 8.0. The dihydrostreptomycin sulfate used in making the batch conforms to the requirements of § 444.10a(a) of this chapter.

(2) *Labeling.* It shall be labeled in accordance with the requirements of paragraph (c) of this section and § 510.55 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 514.50 of this chapter, each such request shall contain:

(i) The results of tests and assays on:

(*a*) The dihydrostreptomycin sulfate used in making the batch for potency, safety, depressor substances, loss on drying, pH, streptomycin content, and identity.

(*b*) The batch for potency, sterility, pyrogens, depressor substances, except that if the dihydrostreptomycin sulfate used has been tested for depressor substances this test may be omitted, and pH.

(ii) Samples required:

(*a*) The dihydrostreptomycin sulfate used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch: (*1*) For all tests except sterility: A minimum of 5 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Using a suitable hypodermic needle and syringe, remove an accurately measured representative portion of the sample and dilute with sterile distilled water to give a stock solution of convenient concentration. Further dilute an aliquot of the stock solution to the reference concentration of 30 micrograms of dihydrostreptomycin per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32 of this chapter, using a solution containing 10 milligrams of dihydrostreptomycin per milliliter.

(4) *Depressor substances.* Proceed as directed in § 436.35 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

(c) *Conditions of marketing*—(1) *Specifications.* The product conforms to the requirements of paragraph (a) of this section.

(2) *Sponsor.* See No. 010719 in § 510.600(c) of this chapter for use as in paragraph (c)(4)(i), (ii), and (iii)(*a*) of this section; see No. 010271 for use in paragraph (c)(4)(i), (ii), and (iii)(*b*) of this section.

(3) *NAS/NRC status.* These conditions are NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter but may require bioequivalency and safety information.

(4) *Conditions of use*—(i) *Amount.* 5 milligrams per pound of body weight every 12 hours.

(ii) *Indications for use:* Treatment of leptospirosis in dogs and horses due to *Leptospira canicola, L. Icterohemorrhagiae,* and *L. pomona;* in cattle due to *L. pomona;* and in swine due to *L. pomana* and *L. grippotyphosa.*

(iii) *Limitations.* (*a*) Administer by deep intramuscular injection only. Treatment should be continued for 3 to 5 days or until the urine is free of leptospira for at least 72 hours as measured by darkfield microscopic examination. Treatment with subtherapeutic dosages, excessive duration of therapy, or inappropriate use of this antibiotic may lead to the emergence of streptomycin or dihydrostreptomycin resistant organisms. The use of this drug must be discontinued for 30 days before treated animals are slaughtered for food. The drug is not for use in animals producing milk because use of the drug will result in contamination of the milk. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(*b*) Administer by deep intramuscular injection only. Treatment should be continued for 3 to 5 days or until the urine is free of leptospira for at last 72 hours as measured by darkfield microscopic examination. Treatment with subtherapeutic dosages, excessive duration of therapy, or inappropriate use of this antibiotic may lead to the emergence of streptomycin or dihydrostreptomycin resistant

organisms. The use of this drug must be discontinued for 30 days before treated animals are slaughtered for food. Milk taken from animals during treatment and for 48 hours (4 milkings) after latest treatment must not be used for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. June 4, 1982.

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

Dated: May 25, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82–15009 Filed 6–3–82; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 573

[Docket No. 81F–0157]

Food Additives Permitted in the Feed and Drinking Water of Animals; Selenium

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of selenium at a level not to exceed 0.3 part per million (ppm) in prestarter ration and starter ration for swine. A food additive petition providing for this use was filed by the Ralston Purina Co.

DATES: Effective June 4, 1982; objections by July 6, 1982.

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

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: In the **Federal Register** of June 9, 1981 (46 FR 30568), a notice was published to reflect the filing of a food additive petition (FAP–2185) by the Ralston Co., Checkerboard Square, St. Louis, MO 63188, proposing that Part 573 (21 CFR Part 573) be amended to provide for the safe use of selenium at a level not to exceed 0.3 ppm in prestarter ration and starter ration for swine. Selenium is currently approved for use at not more than 0.1 ppm in the complete feed of swine as a nutrient. Information was submitted indicating higher mortality and other postweaning problems attributed to selenium deficiency occurring generally within 2 weeks postweaning. Data were submitted indicating a higher dietary level in weaned pigs may reduced onset of the deficiency condition. FDA has evaluated the data submitted in the petition and other relevant material and concluded that Part 573 should be amended to provide for the safe use of selenium as set forth below.

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Veterinary Medicine (address above) by appointment with the information contact person listed above. As provided in 21 CFR 571.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment. Therefore, an environmental impact statement will not be prepared. The agency's finding of no significant impact and the evidence supporting this finding as required by 21 CFR 25.1(f)(1)(iv) may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

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 that Order.

List of Subjects in 21 CFR Part 573

Animal feeds; Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 348)) 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 573 is amended in § 573.920 by revising paragraphs (b)(2) and (c)(1) and by adding new paragraph (c)(5) to read as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

§ 573.920 Selenium.

* * * * *

(b) * * *

(2) Swine:

(i) In complete feed (except prestarter ration and starter ration) at a level not to exceed 0.1 part per million.

(ii) In prestarter ration and starter ration at a level not to exceed 0.3 part per million.

* * * * *

(c) * * *

(1) It shall be incorporated into each ton of the complete feed of chickens, swine (except prestarter ration and starter ration), sheep, beef cattle, dairy cattle, and ducks by a premix containing no more than 90.8 milligrams of added selenium and weighing not less than 1 pound.

* * * * *

(5) It shall be incorporated into each ton of prestarter ration and starter ration of swine by a premix containing no more than 272.4 milligrams of added selenium and weighing not less than 3 pounds.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 6, 1982 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and shall specify with particularity the provisions of the regulation to which objection is made. Each objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each objection shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Two copies of all documents shall be submitted except individuals may submit single copies and each shall be identified with the Docket No. 81F–0157. Objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. June 4, 1982.

(Sec. 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 348).)

Dated: May 27, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–15108 Filed 6–3–82; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF STATE

22 CFR Part 41

[Dept. Reg. 108.820]

Nonimmigrant Classification of Students

Correction

In FR Doc. 82-13812 on page 21776 in the issue of Thursday, May 20, 1982, make the following correction.

On page 21776, third column, the table at the bottom of the page should read as follows:

Class	Citation	Symbol to be inserted in visa
Vocational or other recognized nonacademic student.	101(A)(15)(M); 95 Stat. 1611.	M-1.
Spouse or minor child of alien classified M-1.	95 Stat. 1611	M-2.

BILLING CODE 1505-01-M

Bureau of Consular Affairs

22 CFR Part 41

[Dept. Reg. 108.820]

Nonimmigrant Classification of Students; Correction

AGENCY: Department of State.

ACTION: Final rule; corrections.

SUMMARY: This document corrects the final rule on nonimmigrant classification of students which appeared at page 21776 in the **Federal Register** of Thursday, May 20, 1982 (47 FR 21776).

This action is necessary to correct editorial errors in the language of the regulations.

FOR FURTHER INFORMATION:

Gerald M. Brown, Chief, Legislation and Regulations Division, Visa Services, Bureau of Consular Affairs. (202) 632-1900.

SUPPLEMENTARY INFORMATION:

§ 41.45 and § 41.68 [Corrected]

Accordingly, lines 13 (thirteen) through 15 (fifteen) of subparagraph (1), § 41.45(a) (FR page 21777), are corrected to read "signed by the alien and by a designated school official (the Form I-20A, when" and line 10 (ten) of column 3 (three) on FR page 21777 is corrected by deleting the words "of the accepting institution".

Dated: June 2, 1982.

Gerald M. Brown,

Chief, Legislation and Regulations Division, Visa Services.

[FR Doc. 82-15290 Filed 6-2-82; 11:55 am]

BILLING CODE 4710-06-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 868

[Docket No. R-82-909]

Comprehensive Improvement Assistance Program; Low-Income Housing

Correction

In FR Doc. 82-13898, appearing as Part II, at page 22312, in the issue of Friday, May 21, 1982, make the following change:

On page 22316, in the first column, in § 868.3, the definition "Special purpose modernization", the 16th line change "FFY 1982" to "FFY 1981".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-105; Re: Notice No. 388]

Establishment of the Hudson River Region Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in New York State known as the "Hudson River Region." The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: July 6, 1982.

FOR FURTHER INFORMATION CONTACT:

John A. Linthicum, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7602).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Mr. Allan W. MacKinnon, proprietor of Cottage Vineyards located in Marlboro-on-the-Hudson, New York, petitioned ATF for the establishment of a viticultural area in southeastern New York State to be known as "Hudson River Region." In response to this petition, ATF published a notice of proposed rulemaking (Notice No. 388) in the **Federal Register** on October 21, 1981 (46 FR 51619) proposing the establishment of the Hudson River Region viticultural area.

Current and Historical Viticultural Development

The Hudson River Region consists of approximately 3,500 square miles encompassing all of Columbia, Dutchess, and Putnam Counties, the eastern portions of Ulster and Sullivan Counties, nearly all of Orange County and the northern portions of Rockland and Westchester Counties.

There are nearly 1,000 acres of grapevines growing in the proposed area, with more than 90% of this located in Columbia and Ulster Counties.

There are 13 wineries in the proposed area, including 9 wineries which were established after a 1976 New York State law liberalized the qualification procedures for small wineries.

Wine has been made continously in the Hudson River Region for over 300 years, since French Huguenots first settled at New Paltz, NY in 1677. The first commercial winery was established in 1827 on Croton Point in Westchester County. The oldest active winery in the

United States was established in 1839 at Washingtonville, NY.

On January 8, 1974, one winery in the area received permission from ATF to use the words "Hudson River Region" on its labels. Since then, most wineries in the area have been using that designation.

The region has been recognized as a significant wine producing region in several articles in *The New York Times, The New York Daily News,* and *The Long Island Newsday.*

Leon Adams in *The Wines of America* refers to the area as the "oldest wine growing district in the United States."

In *Grapes of New York,* considered by the petitioner to be "the definitive tome on the subject of viticulture in the State of New York," written by U. P. Hedrick as the report of the New York Agricultural Experiment Station for the year 1907, the Hudson River District is defined as one of the four commercial grape districts in the State.

Geographical Features

The Hudson River Region has been referred to as one of the most complex geological regions in the world. The grape lands in the area are in a geological division known at the Taconic Province. Glacial deposits of shale, slate, schist and limestone form the soil throughout the region.

Climatography publications of New York and the United States show that the mean annual precipitation is approximately 44 inches. The mean date of the last freeze in spring is May 10, and the mean date of the first freeze in autumn is October 10. The mean growing season is approximately 153 days.

Comments

ATF received six comments in response to the notice of proposed rulemaking. The commenters were one government agency, Columbia County Environmental Management Council, and five vineyards located in the proposed area: Benmarl Wine Co., Cascade Mountain Vineyards, Cottage Vineyards (the petitioner), Clinton Vineyards, Inc., and North Salem Vineyards, Inc. All comments were in favor of establishment of the Hudson River Region viticultural area. None of the comments took issue with the proposed boundary. Therefore, the boundary is adopted as proposed.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, the Bureau has determined that this final regulation is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

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

Drafting Information

The principal author of this document is John A. Linthicum, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

Authority and Issuance

This regulation is issued under the authority of 27 U.S.C. 205. Accordingly, 27 CFR Part 9 is amended as follows:

PART 9— AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.47. As amended, the table of sections reads as follows:

Sec.
9.47 Hudson River Region.

Par. 2. Subpart C is amended by adding § 9.47. As amended, Subpart C reads as follows:

§ 9.47 Hudson River Region.

(a) *Name.* The name of the viticultural area described in this section is "Hudson River Region."

(b) *Approved maps.* The approved maps for determining the boundaries of Hudson River Region viticultural area are four U.S.G.S. maps, as follows:

(1) Albany (NK 18–6), scale of 1:250,000 series;

(2) Hartford (NK 18–9), scale of 1:250,000 series;

(3) Scranton (NK 18–8), scale of 1:250,000 series;

(4) Binghamton (NK 18–5), scale of 1:250,000 series.

(c) *Boundary.* The Hudson River Region viticultural area is located in New York State. The boundary is as follows:

(1) The beginning point is the point where N.Y. Route 15 (Merritt Parkway) crosses the New York-Connecticut state line.

(2) The boundary proceeds northerly along the New York-Connecticut state line and the New York-Massachusetts state line to the northeast corner of Columbia County, New York.

(3) The boundary proceeds westerly along the Columbia County-Rensselaer County line to the Columbia County-Greene County line in the Hudson River.

(4) The boundary proceeds southerly along the Columbia County-Greene County line in the Hudson River to the northeast corner of Ulster County.

(5) The boundary proceeds westerly along the Ulster County-Greene County line to N.Y. Route 214.

(6) The boundary proceeds southerly along the eastern side of N.Y. Route 214 to the junction with N.Y. Route 28 in Phoenicia.

(7) The boundary proceeds southerly along the eastern side of N.Y. Route 28 to the junction with N.Y. Route 28A.

(8) The boundary proceeds southerly along the eastern side of N.Y. Route 28A to the intersection with the secondary, hard surface, southbound road leading toward Samsonville.

(9) The boundary proceeds southerly along the eastern side of this southbound road through Samsonville, Tabasco, Mombaccus, Fantinekill, and Pataukunk to the junction with U.S. Route 209.

(10) The boundary proceeds southerly along the eastern side of U.S. Route 209 to the New York-Pennsylvania state line in the Delaware River.

(11) The boundary proceeds easterly along the Delaware River to the New York-New Jersey state line.

(12) The boundary proceeds easterly along the New York-New Jersey state line to N.Y. Route 17.

(13) The boundary proceeds northerly along the western side of N.Y. Route 17 to the junction with Interstate Route 287.

(14) The boundary proceeds easterly along the northern side of Interstate

Route 287 to the junction with N.Y. Route 15.

(15) The boundary proceeds easterly along the northern side of N.Y. Route 15 to the beginning point.

Signed: April 22, 1982.

Stephen E. Higgins,

Acting Director.

Approved: May 13, 1982.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 82-15079 Filed 6-3-82; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[T.D. ATF-106; Ref: Notice Nos. 352 and 387]

Establishment of the Lime Kiln Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule establishes the Lime Kiln Valley viticultural area in San Benito County, California. The viticultural area, as established by this rule, differs from the proposed area of the petitioner, Enz Vineyards of Hollister, California. The original area covered approximately 9,500 acres while the approved area covers approximately 2,300 acres.

The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Lime Kiln Valley as a viticultural area and its subsequent use as an appellation of origin on wine labeling and in advertising will allow local wineries to better designate their specific grape-growing area and will enable consumers to better identify the wines they purchase.

EFFECTIVE DATE: July 6, 1982.

FOR FURTHER INFORMATION CONTACT: Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37671, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin in wine labeling and advertising.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR for the listing of approved viticultural areas.

Section 9.11, Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

ATF was petitioned to establish a viticultural area in San Benito County to be named "Lime Kiln Valley." The petitioner, in describing the climatic characteristics of the proposed area, stated that the western end of the proposed area, which is mountainous, received an average of 40 inches of rainfall per year, while the eastern end, being the valley floor, received an average of 16 inches a year.

Subsequently, ATF issued Notice No. 352, published in the **Federal Register** on October 27, 1980 (45 FR 70913), proposing the establishment of Lime Kiln Valley as a viticultural area. The boundaries of the proposed area were described by summits of peaks and generally followed the area's watershed boundary.

A public hearing concerning the establishment of Lime Kiln Valley was held in Hollister, California, on January 21, 1981. The testimony at the hearing supported the establishment of a viticultural area, but a problem arose concerning the amount of rainfall within the proposed boundaries.

The petitioner stated that the variation in the rainfall would affect any grapes grown in the mountainous area differently than the grapes grown on the valley floor. Witnesses state that no grapes were grown in the mountainous area and no plantings were anticipated. Vineyard expansions planned are in the area included within the amended boundaries of the viticultural area. After evaluating the entire record concerning the climate of the area, ATF believed the boundaries of the proposed Lime Kiln Valley should be amended to exclude the mountainous areas. This change would limit the proposed viticultural area to one which exhibits uniform climatic characteristics. To accomplish this, ATF published Notice No. 387 (46 FR 49599, October 7, 1981) which proposed an amended boundary based primarily on the 1,400-foot contour line and Cienega Road. With this amended boundary, Lime Kiln Valley qualifies as a distinct grape-growing region.

Included within the viticultural area is one winery, approximately 80 acres cultivated by two growers (one being the petitioner), and planned expansion by Enz Vineyards of another 100 acres.

Evidence Relating to the Name

The area derived its name from a number of lime kilns built in the area. Many of the kilns were in operation prior to 1910. Witnesses testified that this particular valley, although a portion of the larger Cienega Valley, has always been distinct and known as Lime Kiln Valley. Furthermore, on September 6, 1977, the County Board of Supervisors unanimously adopted a resolution which formally named the area "Lime Kiln Valley." Vineyards were planted in this area in 1887, and the history of San Benito County relates to vine cuttings brought from France and obtained by the Spanish padres in the area. The Enz Vineyards and winery has been producing and marketing wine referring to a Lime Kiln Valley appellation since the early 1970's.

One commenter stated the name "Lime Kiln Valley" is not an historical name for the area and noted that the name "Lime Kiln Valley" does not appear on any U.S.G.S. maps of the area.

After evaluating the information contained in the petition and the comments received, ATF believes the historical and current evidence does support the name "Lime Kiln Valley" as a distinct viticultural area.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish it from surrounding areas.

With the amended boundaries, the area averages about 16 inches of rainfall a year. Witnesses stated this amount is slightly higher than the surrounding areas, which average about 15 inches per year.

Winter temperatures average well below freezing, while the summer temperatures vary from 85–95 degrees during the day and drop to about 45–50 degrees at night. Witnesses further stated that these temperatures are cooler in the winter and warmer in the summer than the surrounding areas.

The soil in Lime Kiln Valley is basically a sandy and gravelly loam overlying bedrock of dolomite and limestone.

One commenter stated that the climate, topography, and soil of the proposed "Lime Kiln Valley" viticultural area was not distinct from the larger Cienega Valley. In addition, this commenter stated that the proposed area was too small to be of any consequence and its approval as a

viticultural area would create a de facto monopoly.

Based on the evidence discussed earlier, ATF believes the written and oral testimony supports the fact that the Lime Kiln Valley exhibits distinct geophysical and climatic characteristics and is distinguishable as a separate valley from the larger, more generally defined, Cienega Valley. The size of an area and whether or not it creates a de facto monopoly are not criteria in determining the distinctiveness of a proposed area. Therefore, ATF is establishing the Lime Kiln Valley as a viticultural area.

Boundaries

As discussed earlier, Notice No. 387 was issued to amend the boundaries as originally proposed. ATF believes the boundaries now used delineate an area which exhibits similar characteristics, but differ from surrounding areas. The boundaries are described by primarily Cienega Road and the 1,400-foot contour line.

While ATF believes that viticultural area boundaries based solely on man-made features are inappropriate, where such features closely approximate natural features, or where they provide a demarcation line from grape-growing areas as opposed to areas not suitable for grape-growing, or where they provide a line to delineate a climatic feature, it is acceptable to use these man-made features in describing boundaries.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it will not have a significant impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 604) for a final regulatory flexibility analysis shall not apply to this final rule.

Disclosure

Copies of the petition, the maps, comments, notices, the hearing proceedings, and the final rule are available for inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4405, 12th and Pennsylvania Avenue, NW, Washington, DC.

Miscellaneous

ATF is approving this area as being viticulturally distinct from surrounding areas. By approving the area, wine producers are allowed to claim a distinction on wine labels. Any commercial advantage gained can only be substantiated by consumer acceptance of Lime Kiln Valley wines.

Drafting Information

The principal author of this document is Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices participated in the preparation of this document, both in matters of substance and style.

Federal Register Index Terms

27 CFR Part 9; Administrative Practice and Procedure; Consumer Protection; Wine.

Authority

Accordingly, under the authority contained in Section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.27. As amended, the table of sections reads as follows:

Sec.
9.27 Lime Kiln Valley.

Par. 2. Subpart C is amended by adding § 9.27. As amended, Subpart C reads as follows:

§ 9.27 Lime Kiln Valley.

(a) *Name.* The name of the viticultural area described in this section is "Lime Kiln Valley."

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Lime Kiln Valley viticultural area are two U.S.G.S. maps entitled:

(1) "Mount Harlan Quadrangle, California," 7.5 minute series; and

(2) "Paicines Quadrangle, California," 7.5 minute series.

(c) *Boundaries.* The Lime Kiln Valley viticultural area is located in San Benito County, California. From the beginning point at the intersection of Thompson Creek and Cienega Road, the boundary proceeds, in a straight line to the summit of an unnamed peak (1,288 feet) in the northwest quarter of Section 28, T.14 S./R.6 E.;

(1) Thence in a straight line from the summit of the unnamed peak (1,288 feet) to a point where it intersects the 1,400-foot contour line, by the elevation marker, in the southwest quarter of T.14 S./R.6 E, Section 28;

(2) Thence following the 1,400-foot contour line through the following sections; Sections 28, 29, and 30, T.14 S./R.6 E.; Section 25, T.14 S./R.5 E.; Sections 30, 19, 20, and returning to 19, T.14 S./R.6 E., to a point where the 1,400-foot contour line intersects with the section line between Sections 19 and 18, T.14 S./R.6 E.;

(3) Thence in a straight line to the Cienega School Building along Cienega Road;

(4) Thence along Cienega Road to the point of beginning.

Signed: April 8, 1982.

G. R. Dickerson,

Director.

Approved: May 11, 1982.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 82-15078 Filed 6-3-82; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

Office of the Secretary

29 CFR Part 5

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule; correction.

SUMMARY: This document corrects the words of issuance contained in the final regulations for labor standards that appeared at page 23664 in the Federal

Register of Friday, May 28, 1982. This action is necessary to make it clear that Subpart B was not being eliminated.

EFFECTIVE DATE: July 27, 1982.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Administrator Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, D.C. 20219. Telephone: 202–523–8305.

SUPPLEMENTARY INFORMATION: On Friday, May 28, 1982, published at 47 FR 23658, the Department issued final regulations for labor standards applicable to contracts for federally financed and assisted construction subject to the Davis-Bacon and Related Acts and contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA). The preamble to that document clearly stated that only Subpart A of Part 5 was being amended. However, through inadvertence, the words of issuance failed to make that clear. This document corrects that error and makes it clear that Subpart B of Part 5 remains in effect. Accordingly, the words of issuance (appearing on page 23664 at the bottom of column three) which now read "Accordingly, 29 CFR Part 5 is revised as set forth below" is corrected to read "Accordingly, 29 CFR Part 5, Subpart A, is revised as set forth below."

Signed at Washington, D.C., on this 28th day of May 1982.

Raymond J. Donovan,

Secretary of Labor.

Robert B. Collyer,

Deputy Under Secretary for Employment Standards.

William M. Otter,

Administrator, Wage and Hour Division.

[FR Doc. 82–15070 Filed 6–3–82; 8:45 am]

BILLING CODE 4510–27–M

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29 CFR Part 5

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule; correction.

SUMMARY: This document corrects a citation to a regulation contained in the dates of applicability section of the preamble of the final regulations that appeared at page 23664 in the **Federal Register** of Friday, May 28, 1982. This action is necessary in order to clarify the applicability of the revision concerning submission of a weekly "Statement of Compliance", contained in § 5.5(a)(3)(ii).

EFFECTIVE DATE: July 27, 1982.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: 202–523–8305.

SUPPLEMENTARY INFORMATION: On Friday, May 28, 1982, published at 47 FR 23658, the Department issued final regulations for labor standards applicable to contracts for federally financed and assisted construction subject to the Davis-Bacon and Related Acts and contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA). Through inadvertence, the preamble to that document contained an error in the citations to § 5.5(a)(3)(ii) in the paragraph entitled "Dates of Applicability". The reference was to the revision concerning submission of a weekly "Statement of Compliance". This document corrects that error.

Accordingly, the citation (appearing three times in column three on page 23664 under "Dates of Applicability") which now reads "§ 5.5(a)(1)(ii)" is corrected to read "§ 5.5(a)(3)(ii)".

Signed at Washington, D.C. on this 1st day of June 1982.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 82–15198 Filed 6–3–82; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF DEFENSE

32 CFR Part 242b

General Procedures and Delegations of the Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Uniformed Services University of the Health Sciences, DoDD.

ACTION: Final Rule.

SUMMARY: This document amends the General Procedures and delegations of the Uniformed Services to add one officer reporting to the President of the University.

EFFECTIVE DATE: June 4, 1982.

ADDRESS: Legal Counsel, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20014.

FOR FURTHER INFORMATION CONTACT: Merel Glaubiger, Legal Counsel, 202/295–3028.

SUPPLEMENTARY INFORMATION: In FR Doc 77–36169 published in the **Federal Register** on December 20, 1977 (42 FR 63775) the Uniformed Services University of the Health Sciences published General Procedures and Delegations of the Board of Regents of the Uniformed Services University of the Health Sciences. This was amended in FR Doc 78–28367 published in the **Federal Register** on October 10, 1978 (43 FR 46531) to alter the number and responsibilities of officers reporting to the Dean of the University (President), and in FR Doc 81–8774 published in the **Federal Register** on March 23, 1981 (46 FR 18024) to realign certain functions of officers reporting to the Dean of the University (President). The purpose of this amendment is to add one officer reporting to the President of the University. The rule establishes the office of Vice President of the University.

Because this rule relates solely to matters of University organization and procedure, notice of proposed rulemaking and public participation in the rulemaking are not required by Section 553 of Title 5 of the United States Code.

List Of Subjects in 32 CFR Part 242b

Medical and dental schools, Uniformed services.

PART 242b—GENERAL PROCEDURES AND DELEGATIONS OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Accordingly, pursuant to the Uniformed Services Health Professions Revitalization Act, Sections 552 and 553 of Title 5 of the United States Code, and § 242b.8(a) of Title 32, Code of Federal Regulations, the Board of Regents of the Uniformed Services University of the Health Sciences, amends Part 242b, Chapter I, Title 32, Code of Federal Regulations by revising § 242b.7 (a)(7) and (b)(1)—(4) and by adding new paragraph (b)(5) to read as follows:

§ 242b.7 Officers of the University.

(a) * * *

(7) To assist in the performance of his or her duties, the President with the approval of the Board, shall appoint, to act under the President's authority and direction, officers as follows:

(i) Vice President of the University

(ii) Dean of the School of Medicine

(iii) Associate Dean

(iv) Associate Dean for Operations

(v) Associate Dean for Academic Affairs

* * * * *

(b) * * *

(1) Vice President of the University.

(i) The Vice President of the University will assist the President and will perform such duties as may be directed from time to time by the President.

(ii) In the absence of the President, the Vice President shall act for the President.

(2) Dean of the School of Medicine. (i) The Dean of the School of Medicine shall be responsible for planning, directing, and managing the activities of the School of Medicine.

(ii) He or she shall recommend to the President and to the Board, personnel for faculty appointments and will perform such duties as may be directed from time to time by the Board or the President.

(iii) He shall recommend to the President persons for appointment as the Associate Dean of the School of Medicine, Associate Dean for Operations, Associate Dean for Academic Affairs and such other administrative positions as he deems proper.

(3) Associate Dean of the School of Medicine. (i) The Associate Dean shall assist the Dean of the School of Medicine in planning, developing, and directing the activities and functions of the School of Medicine.

(ii) In the absence of the Dean, he or she shall act for the Dean.

(4) Associate Dean for Operations. (i) The Associate Dean for Operations shall be responsible for the support of the educational and research activities of the University including but not limited to:

(A) Financial Management;

(B) Building Services and Materiel Acquisition;

(C) Grants Management;

(D) Personnel/Manpower;

(E) Instructional and Research Support;

(F) Learning Resources Center; and

(G) Computer Operations.

(ii) He or she shall be responsible for the preparation of the University budget estimates and program submission presentations for the approval of the Board.

(iii) He or she shall make all books, records or vouchers available for the inspection of any member of the Board and shall report at each meeting of the Administrative Affairs Committee.

(iv) In the absence of the Dean and the Associate Dean, he or she shall act for the Dean.

(5) Associate Dean for Academic Affairs. (i) The Associate Dean for Academic Affairs shall be responsible for the overall management and supervision of the University's Basic Sciences Departments, Clinical Sciences Departments, and the Academic Sections including but not limited to:

(A) Operational and Emergency Medicine;

(B) Medical Education; and

(C) Medical History.

Dated: May 25, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82-15200 Filed 6-3-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CRF Part 7

Cuyahoga Valley National Recreation Area; Alcoholic Beverages

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service is amending its special regulations by establishing restrictions on the consumption of beer and alcoholic beverages in the Cuyahoga Valley National Recreation Area. The restrictions are necessary to reduce the adverse impact on the park resources and to ensure the safety of park visitors.

EFFECTIVE DATE: June 4, 1982.

FOR FURTHER INFORMATION CONTACT: Lewis S. Albert, Superintendent, Cuyahoga Valley National Recreation Area, Telephone: (216) 650-4414.

SUPPLEMENTARY INFORMATION:

Background

This regulation is designed to provide greater resource and visitor protection. Cuyahoga Valley National Recreation Area was established to preserve the scenic, cultural, natural, and historic qualities of the Cuyahoga River Valley for all times and for the benefit and enjoyment of the people. Visitors from throughout the country come to rediscover the beauty of nature, the peace of the countryside, the substance of the past, relax in the open space set aside for recreation, and enjoy the cultural experiences available in the park.

During the thirty day public review and comment period, the National Park Service received a total of 19 written comments by individuals. All of the individual comments supported the proposed rule. No individual comment was received that opposed the regulation. The National Park Service also received five group comments. Four group comments with over 90 signatures, favored the regulation as written. One petition with 35 signatures opposed the rule.

Persons visiting Cuyahoga Valley NRA to enjoy the natural, cultural, and scenic features and setting are finding with increasing regularity that park areas are dominated by people who come to the park primarily to consume alcohol. These persons congregate in the parking lots and project a party-like atmosphere. This use adversely impacts the vegetation around the lots and discourages use of the recreation area by persons who wish to enjoy the natural and historic features. These visitors often see the crowds in the parking lots and leave the area.

This situation is generated by the fact that Cuyahoga Valley NRA is the only public park area in the region where the consumption of alcoholic beverages is permitted. Such consumption is prohibited in State and local park areas, and the prohibition is vigorously enforced by appropriate authorities.

Additionally, the consumption of alcohol has frequently led to disruptive behavior which conflicts with other uses and users of the park. Violators of liquor laws and related incidents constitute a major portion of the park's caseload, and these problems are increasing. In 1979, there were 414 alcohol violations handled in the Virginia Kendall Unit, also, that year rangers handled six disorderly conduct cases. The first seven months of 1981 produced 736 alcohol violations and 62 disorderly conduct cases. Traffic offenses also increased as did felony drug abuse. Vandalism, including broken bottles and property damage, increased proportionally.

Alcohol-related offenses are increasing. The factors influencing this increase have not been fully identified; however, there is clearly a correlation between alcohol consumption and offenses such as alcohol possession, drunk driving, public intoxication, and disorderly conduct. The relationship between alcohol consumption and other incidents such as driving violations and drug offenses is not documented;

however, many persons involved in such incidents either had consumed or possessed alcohol at the time of the incident.

The majority of the visitors contacted for alcohol-related incidents at the Virginia Kendall Unit were under 23 years of age, and visitors in this age group seldom make complaints about alcohol-related incidents in the park. Others do complain about the activities and conduct of those who have consumed significant amounts of alcohol. For example, in 1981, approximately 35 persons made specific complaints about alcohol consumption, party-like atmospheres, and disorderly behavior in the Kendall area.

Failure to implement this regulation means that the park would continue to be the only public outdoor recreation facility in northeast Ohio where alcohol is permitted.

Promulgation of this regulation is expected to result in a decrease in alcohol-related offenses.

These restrictions will primarily affect youths who visit the park for the principal purpose of consuming alcoholic beverages. Further, it is expected that the implementation of this regulation, coupled with routine patrol activities, will diminish public intoxication and drunk driving and reduce disorderly conduct and drug offenses. This effect will be perceived as adverse by the youths who have engaged in drinking activities but will be seen as beneficial by others. Ultimately, park rangers who have committed a considerable portion of their time to alcohol-related incidents will be free during peak use periods to engage in activities more useful and beneficial to the general public.

Implementation of this regulation will have a beneficial effect on the natural appearance of public use areas and trails. Presently, even with extensive litter pickup, significant numbers of bottles and cans are in evidence in use areas and along trails. These not only blight natural areas, but are safety hazards as well.

Prohibition of alcohol will also affect those who enjoy the moderate use of alcohol in an outdoor recreational setting and those who use it without infringing upon the reasonable use and enjoyment of the area by others.

Present regulations and their full enforcement have been inadequate in dealing with the problem so that the visiting public has not been afforded a reasonable opportunity to enjoy the resource in the manner intended. This new regulation will act as a preventive measure and help protect the basic resources for which the national recreation area was established, provide reasonable safety for persons visiting or residing in the park area, and better protect the experience of visitors to the park.

The exception contained in the regulation is intended to permit the consumption of alcoholic beverages and the possession of open containers of such beverages in residences.

In view of the approaching heavy public use season, it is deemed in the best interest of the public to make this regulation effective immediately.

A typographical error occurred in the printing of the proposed rule that is minor and has been corrected. The final rule should read "(2) Definition—Alcoholic beverages. Any liquid containing ½ of 1 percent or more of alcohol by weight." The proposed rule erroneously read "½ to 1 percent". This correction presents the final rule as submitted.

Drafting Information

The following persons participated in the writing of this regulation: Brian J. Heffugh, Chief, Resource Management and Visitor Protection; Robert J. Byrne, Chief Ranger; Gordon Wissinger, Park Ranger; and Judith L. Chavan, Resource Management Technician.

Compliance With Other Laws

Pursuant to the National Environmental Policy Act, 42 U.S.C. 4332, the Service has prepared an Environmental Assessment. Copies of the Environmental Assessment and the Finding of No Significant Impact are available for public review and comment in the Office of the Park Superintendent.

This rulemaking contains no provisions that would entail the collection of information in such a manner as would be subject to the Paperwork Reduction Act, 94 Stat. 2812, 44 U.S.C. 3501 *et seq.*

The Service has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193, (February 19, 1981). It has also determined that this rulemaking would not have a "significant economic effect on a substantial number of small entities", nor will it require the preparation of a regulatory analysis within the meaning of the Flexibility Act, 94 Stat. 1184, 5 U.S.C. 601 *et seq.* This finding is based on the fact that this regulation will result in an estimated annual $1,000 decrease in local sales of alcoholic beverages. This is considered a very slight effect on local businesses selling these beverages. Additionally, this rule may have a slight positive effect on businesses selling picnic supplies since more families may be attracted to Cuyahoga Valley National Recreation Area.

Authority

Section 3 of the Act of August 25, 1916, 39 Stat. 535, as amended (16 U.S.C. 3).

List of Subjects in 36 CFR Part 7

National Parks.

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

In consideration of the foregoing, Part 7 of Title 36 of the Code of Federal Regulations is amended by the addition of a new § 7.17 as follows:

§ 7.17 Cuyohoga Valley National Recreation Area.

(a) *Alcoholic beverages.*—(1) *Possession.* The possession or consumption of a bottle, can, or other receptacle containing an alcoholic beverage which has been opened, a seal broken, or the contents of which have been partially removed is prohibited, except in residences or other areas specifically authorized by the superintendent as to time and place.

(2) Definition—Alcoholic beverages. Any liquid beverage containing ½ of 1 percent or more of alcohol by weight.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-15086 Filed 6-3-82; 8:45 am]

BILLING CODE 4310-70-M

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36 CFR Part 50

National Capital Parks Regulations; Camping

AGENCY: National Park Service, Interior.

ACTION: Final Rule and policy statement.

SUMMARY: This document specifies the types of activities considered by the National Park Service to be camping which must be confined to designated camping areas. An Administrative Policy Statement explains the administration of this regulation. A recent court opinion has made it necessary to specify the types of activities considered to be camping.

EFFECTIVE DATE: June 4, 1982.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs, National Capital Region, National Park Service, 1100 Ohio Drive SW., Washington, D.C. 20242, telephone: 202-426-6700; Richard G. Robbins, Assistant Solicitor, National

Capital Parks, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240, telephone: 202–343–4338.

SUPPLEMENTARY INFORMATION: The following persons participated in the writing of this regulation: Richard G. Robbins and Dianne H. Kelly, Office of the Solicitor.

I. Background

On November 13, 1981, an administrative policy statement and amendments to the National Park Service regulations governing demonstrations and special events in Washington, D.C. and its environs were published in the **Federal Register**, 46 FR 55959, November 13, 1981. In *Community for Creative Non-Violence v. Watt*, —— F.2d ——, slip op. 81–2381 (Decided January 22, 1982), the United States Court of Appeals for the District of Columbia Circuit held that sleeping by demonstrators in connection with the conduct of their First Amendment activities did not constitute camping as interpreted by the National Park Service in its administrative policy statement accompanying the recent revision of 36 CFR 50.19 (46 FR 55959). The National Park Service thus finds it necessary to specify the types of activities considered to be camping which must be confined to designated camping areas.

II. Effective Date

The Director of the National Park Service finds that good cause exists for suspending the 30-day delay of effectiveness of final regulations provided for in 5 U.S.C. 553(d).

III. Analysis of Comments

The American Civil Liberties Union submitted comments critical of the prohibition on sleeping in symbolic campsites, alleging, among other things, that the Park Service had violated the terms of the settlement agreement which it negotiated with the ACLU in *Women Strike for Peace v. Andrus* (now *Women Strike for Peace v. Watt*), Civ. No. 74–1303 (D.D.C.). The settlement produced revised regulations and an administrative policy statement which clarified long-standing Park Service policy that temporary structures could be erected as a symbolic campsite provided that the structures were not used for living accommodations. (46 FR 55959, November 13, 1981). The articulation of this principle in the policy statement involved no change of position by the Park Service; it merely served as explicit recognition of previous practice and policy. Further, the inclusion of the paragraph on symbolic campsites evolved from the good faith efforts of the Park Service to clarify a number of issues of concern to the ACLU which were not raised or addressed in the litigation. Finally, it must be emphasized that discussions about symbolic campsites were always based on the understanding between the Park Service and the ACLU that any structures erected for such a purpose would not be used for living accommodation activities such as overnight sleeping. The ACLU's claim in its comments that the Park Service failed to abide by its own policy statement in opposing overnight sleeping in campsites (*Community for Creative Non-Violence v. Watt*) appears to be a repudiation of the understanding on the uses of such campsites agreed to by the Park Service and the ACLU. The Park Service must accordingly reject that portion of the ACLU's comments.

The ACLU also asserted that the Park Service proposes to treat demonstrators differently from non-demonstrators, since napping in parks by office workers and the breaking of ground and building of fires in an event such as the Christmas Pageant of Peace are not prohibited. The Park Service wishes to make clear that sleeping and other activities listed as prohibited in the administrative policy statement and rule are prohibited if a reasonable person, viewing the totality of the circumstances, would conclude that the participants, in conducting these activities, were using the site as a living accommodation. In response to this concern expressed by the ACLU, the Park Service is adding to the third paragraph of the policy statement and to § 50.19(e)(8) a statement to read as follows:

> The above-listed activities are prohibited outside designated campgrounds when it reasonably appears in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging.

Agreeing that camping *primarily* for living accommodation should not be permitted in undesignated parks, the ACLU suggested that camping which is incidental and integral to demonstration activity should be permitted. Such a distinction would put the Park Service in a position of having to scrutinize the content of every demonstration's message to determine when camping is or is not "incidental and integral" to a demonstration. This determination would have to turn not on the practical question of whether people are in fact living at a site, but rather on the nature and degree of the relationship between the content of the expression and the camping activities proposed. Were the Park Service to undertake this responsibility, it would be forced to exercise exactly the same type of content-based discretionary decision-making consistently condemned by the courts. Since the assertion of a nexus between content and camping would result in the provision of free, convenient living space for persons pursuing speech activities, it is reasonable to assume that the frequency of such claims would greatly multiply if the ACLU suggestion were adopted. Therefore, the Park Service believes that fair administration of its regulations requires the prohibition of use of park land for living accommodations for all park users, whether or not conducting demonstration activities.

The Washington Legal Foundation, Chamber of Commerce, and several other commentators, while supporting the ban on use of parks for living accommodations, submitted broader suggestions to restrict the erection and use of temporary structures in park areas. The Washington Legal Foundation presented a petition for rule-making reflecting the comments which it also submitted on the proposed rules. Their petition urged the Park Service to determine the appropriateness of structures based on each park's size and location, to regulate the size and aesthetic quality of temporary structures, to allow such structures in only a small percentage of park areas, and to ban structures within a three hundred yard radius of the White House.

As a result of the court decision in *Women Strike for Peace v. Morton*, 472 F. 2d 1273, the Park Service is required to allow the erection of structures by demonstrators to the same extent that it participates in or sponsors the erection of structures itself. Under current regulations, the Director of the National Capital Region has the authority to impose reasonable restrictions on the structures permitted in the interest of protecting the park areas involved, traffic and public safety considerations, and other legitimate park value concerns. 36 CFR 50.19(e)(8)(iii). The Park Service believes that the first three proposals of the Washington Legal Foundation, the Chamber of Commerce, and other commentators are already adequately addressed in these existing regulations. Furthermore, the use of temporary structures for living accommodations has been an isolated, temporary situation which should be corrected by the proposed regulations dealing with the specific harm caused by such use.

There is also no indication that allowing temporary structures within three hundred yards of the White House poses any danger which regulations should address. Courts have consistently held that regulations governing First Amendment activity must be drawn as narrowly as possible in furtherance of a legitimate government interest. In the absence of an identifiable threat, the existence of a legitimate government interest appears too tenuous to support more restrictive regulations.

The Park Service has previously considered the necessity of maintaining selected park areas as places of quiet reflection where demonstrations are not permitted. The result of such consideration has been the barring of demonstration activities at portions of historic monuments such as the Lincoln and Jefferson Memorials and the Washington Monument. In *Washington Free Community v. Wilson*, 334 F. Supp. 77 (1971), however, the court indicated that the hustle and bustle of some National Capital Region parks such as Lafayette Park preclude attempts to restrict demonstration activities to foster serenity which is not attainable in the midst of a downtown business district.

Comments by the Community for Creative Non-Violence and counsel for the group asserted that the proposed regulations were unconstitutional since they furthered no legitimate government interest and violated court rulings. The Park Service believes that a substantial government interest is involved in the prevention of use of the National Capital Parks as campgrounds for those wishing to express a point of view or, indeed, for any park visitors. The regulations banning the use of parks for living accommodations are designed not to stifle First Amendment expression, but to protect undesignated parks from activities for which they are not suited and the impacts of which they cannot sustain. Short-time, casual sleeping which does not occur in the context of using the park for living accommodations will not be affected by these regulations.

The Park Service also believes that the regulations are drawn in accord with relevant court decisions. The only case which found sleeping to be sufficiently expressive in nature to implicate a threshold First Amendment scrutiny was confined to the peculiar facts of the case and the particular regulation involved, which the court found provided too much open-ended discretion to the Park Service. The court explicitly stated that an across-the-board ban on sleeping outside official campgrounds might well be constitutionally acceptable if duly promulgated and even-handedly enforced. *United States v. Abney*, 534 F.2d 984 (D.C. Cir. 1976). Even when an activity might provoke initial First Amendment consideration, a legitimate government interest expressed in the most narrowly drawn restrictions possible is not an unconstitutional burden on free expression. The Park Service believes that preventing the use as public campgrounds of the Memorial Core and other park areas in the national capital constitutes such a legitimate government interest.

IV. Regulatory Changes

The decision by the United States Court of Appeals for the District of Columbia Circuit in *Community for Creative Non-Violence v. Watt*, which interpreted current regulations to allow sleeping by demonstrators in connection with First Amendment activity, has necessitated the addition of a definitional sentence to § 50.27 to avoid the use of the Memorial Core and other park areas of the nation's capital as a camping ground. Experience with administering the court's decision allowing sleeping has revealed that sleeping activity by demonstrators expands to include other aspects of living accommodations such as the storage of personal belongings and the performance of necessary functions which have converted the sleeping area into actual campsites. Since the urban and nationally significant nature of the national capital parks render them unsuitable for camping and incapable of sustaining the impacts from that type of activity, the National Park Service wishes to make clear that activities normally associated with camping, such as sleeping, which occur in the context of living accommodations, are not permitted outside designated campgrounds. This clarification will occur through the addition of a sentence to § 50.27 specifically defining the types of activities which the Park Service believes generate the adverse impacts of camping.

Reference to Prefatory Statement

In order to aid readers in understanding the administrative policies which have been developed to implement the revised regulations, a citation to the applicable **Federal Register** reference will appear at the conclusion of 36 CFR 50.27.

V. Administrative Policy Statement

Structures and Campsites

Because of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Community for Creative Non-Violence v. Watt*, —— F.2d —— (D.C. Cir. 1982), slip. op. 81–2381, the National Park Service finds it necessary to clarify the definition of symbolic campsites and the extent to which temporary structures are permitted in connection with First Amendment activities.

It has been the long-standing administrative policy and practice of the National Park Service to allow demonstrators to erect temporary structures reasonably necessary for the conduct of their demonstration, including the provision of logistical support. The requirement that the erection of temporary structures be permitted arose out of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Women Strike for Peace v. Morton*, 472 F.2d 1273 (D.C. Cir. 1972). Following this decision, it became the policy of the National Park Service to allow tents to be erected as temporary structures in connection with permitted demonstrations. Tents may be erected as a means of symbolizing the message of demonstrating groups or of providing support and logistical services. Examples of activities where the Park Service has permitted the erection of tents in connection with demonstration activities include: a demonstration by the Community for Creative Non-Violence in which a number of tents symbolized the need for housing for the homeless; demonstrations by anti-war veterans groups where the tents symbolized conditions in Vietnam; Indian teepees by Indian rights groups to symbolize the plight of Indians; and numerous other demonstrations where support service tents were used for first aid facilities, for lost children areas, and to shelter electrical and other sensitive equipment or displays.

Although it is the policy of the National Park Service to permit tents as temporary structures for the above purposes in connection with permitted demonstration activities, the Park Service does not permit camping or the erection of tents for camping in connection with demonstration activities in other than formally designated and maintained campgrounds. Camping is defined as the use of park land for living accommodation activities such as sleeping, or making preparations to sleep (including the laying down of

bedding for the purpose of sleeping), or storing personal belongings or making any fire, or using any tent or shelter or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. This policy is not intended to prohibit eating, cooking, and other traditional picnicking activities in areas designated for picnicking pursuant to 36 CFR 50.14.

The National Park Service emphatically believes that the Memorial Core area of the nation's capital is an especially unsuitable location for camping activities. The Memorial Core includes the Mall area, the Washington Monument grounds, the White House area, the Ellipse, Lafayette Park, East and West Potomac Park, the Jefferson and Lincoln Memorials, and the Kennedy Center. Were camping permitted in this area, other park visitors, including demonstrating park visitors, would be deprived of use of this nationally significant space. Camping could cause significant damage to park resources, create serious sanitation problems, and seriously tax law enforcement resources. It is probable that the cumulative impact of permitting any camping activities in the Memorial Core and other National Capital Park areas would cause the National Park Service to incur additional costs for park restoration, sanitary facilities and extra park personnel, including law enforcement personnel. Even though camping is now prohibited, the Park Service nevertheless receives several requests each year for camping in connection with demonstration activities. It is believed that these requests would increase dramatically were camping permitted because it would offer free, convenient living space for persons pursuing speech activities. Such use of park space would amount to a federal subsidy of the living costs of demonstrating park visitors and would create pressure from non-demonstrating visitors for similar accommodations.

It is the opinion of the National Park Service that allowing participants in any activity to live at the site of their activity would create unacceptable adverse impacts to park areas, deprive other visitors of use of the park area and create law enforcement confrontations arising from attempts to confine activities within specific parameters. In fact, experience with administering the court's decision in *Community for Creative Non-Violence v. Watt* revealed that activities by demonstrators expanded into a campground situation with serious adverse effects on Lafayette Park.

The National Park Service is mindful of the need to provide camping facilities in park areas within the Washington, D.C. metropolitan area. Fully equipped and maintained campgrounds are located in parks which can sustain the impacts from camping activities and which are within reasonable proximity to the capital. Demonstrating park visitors are free to avail themselves of these facilities.

Impact Analysis

The National Park Service has determined that this document is not a major rule requiring preparation of a Regulatory Impact Analysis under Executive Order 12291 and does not require a small entity flexibility analysis under Pub. L. 96–354. The rule is designed only to specify the types of activities considered by the National Park Service to be camping which must be confined to designated camping areas. People wishing to camp in the Washington, D.C. metropolitan area will continue to have access to park areas designated as public campgrounds. The rule will have no substantial impact on any aspect of the economy.

List of Subjects in 36 CFR Part 50

District of Columbia, National Parks, National Capital Parks.

Date Approved: May 11, 1982.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks.

PART 50—NATIONAL CAPITAL PARKS REGULATIONS

In consideration of the foregoing, § 50.27 of Title 36 of the Code of Federal Regulations is accordingly amended:

1. The authority citation for Part 50 reads as follows:

Authority: Sec. 6, 30 Stat. 571, secs. 1–3, 39 Stat. 535, as amended, sec. 16, 43 Stat. 1126 as amended, 62 Stat. 81, secs. 1, 2, 67 Stat. 495–496; 8 D.C. Code 143, 16 U.S.C. 1, 16, 1c, 2, 2; 40 D.C. Code 613.

§ 50.27 [Amended]

2. By revising § 50.27(a) to read as follows:

(a) Camping is defined as the use of park land for living accommodation purposes such as sleeping activities, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or using any tents or shelter or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Camping is permitted only in areas designated by the Superintendent who may establish limitations of time allowed for camping in any public camping ground. Upon the posting of such limitations in the campground no person shall camp for a period longer than that specified for the particular campground.

* * * * *

3. By amending § 50.27 to add paragraph (h) to read as follows:

* * * * *

(h) Further information on administering these regulations can be found at 47 FR 24302 (June 4, 1982).

[FR Doc. 82–15254 Filed 6–3–82; 8:45 am]

BILLING CODE 4310–70–M

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36 CFR Part 50

National Capital Parks Regulations; Camping

AGENCY: National Park Service, Interior.

ACTION: Final rule and policy statement.

SUMMARY: This final rule contains amendments to the National Park Service regulations governing demonstrations and special events in Washington, D.C. and its environs. An Administrative Policy Statement explains the administration of this regulation. These amendments and statement clarify the definition of symbolic campsites and the extent to which temporary structures are permitted in connection with First Amendment activities.

EFFECTIVE DATE: June 4, 1982.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs, National Capital Region, National Park Service, 1100 Ohio Drive, S.W., Washington, D.C. 20242, telephone: 202–426–6700; Richard G. Robbins, Assistant Solicitor, National Capital Parks, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240, telephone: 202–343–4338.

SUPPLEMENTARY INFORMATION: The following persons participated in the writing of this regulation: Richard G. Robbins and Dianne H. Kelly, Office of the Solicitor.

I. Background

On November 13, 1981, an administrative policy statement and amendments to the National Park Service regulations governing demonstrations and special events in Washington, D.C. and its environs were published in the **Federal Register**, 46 FR 55959. Since that time, the United States Court of Appeals for the District of Columbia Circuit has interpreted that policy statement and those amended regulations as permission granted by the National Park Service to demonstrators to use as sleeping accommodations temporary structures such as tents erected for the purpose of symbolizing a message or providing logistical support. *Community for Creative Non-Violence* v. *Watt*, —— F.2d —— (D.C. Cir. 1982), slip. op. 81–2381. The National Park Service thus finds it necessary to clarify the definition of symbolic campsites and the extent to which temporary structures are permitted in connection with First Amendment activities.

In addition, experience with attempts to administer the amended regulations in the wake of the court decision has led to a change in the circumstances under which the erection of temporary structures will be permitted.

II. Effective Date

The Director of the National Park Service finds that good cause exists for suspending the 30-day delay of effectiveness of final regulations provided for in 5 U.S.C. 53(d).

III. Analysis of Comments

The American Civil Liberties Union submitted comments critical of the prohibition on sleeping in symbolic campsites, alleging, among other things, that the Park Service had violated the terms of the settlement agreement which it negotiated with the ACLU in *Women Strike for Peace* v. *Andrus* (now *Women Strike for Peace* v. *Watt*), Civ. No. 74–1303 (D.D.C.). The settlement produced revised regulations and an administrative policy statement which clarified long-standing Park Service policy that temporary structures could be erected as a symbolic campsite provided that the structures were not used for living accommodations. 46 FR 55959 (November 13, 1981). The articulation of this principle in the policy statement involved no change of position by the Park Service; it merely served as explicit recognition of previous practice and policy. Further, the inclusion of the paragraph on symbolic campsites evolved from the good faith efforts of the Park Service to clarify a number of issues of concern to the ACLU which were not raised or addressed in the litigation. Finally, it must be emphasized that discussions about symbolic campsites were always based on the understanding between the Park Service and the ACLU that any structures erected for such a purpose would not be used for living accommodation activities such as overnight sleeping. The ACLU's claim in its comments that the Park Service failed to abide by its own policy statement in opposing overnight sleeping in campsites (*Community for Creative Non-Violence* v. *Watt*) appears to be a repudiation of the understanding on the uses of such campsites agreed to by the Park Service and the ACLU. The Park Service must accordingly reject that portion of the ACLU's comments.

The ACLU also asserted that the Park Service proposes to treat demonstrators differently from non-demonstrators, since napping in parks by office workers and the breaking of ground and building of fires in an event such as the Christmas Pageant of Peace are not prohibited. The Park Service wishes to make clear that sleeping and other activities listed as prohibited in the administrative policy statement and rule are prohibited if a reasonable person, viewing the totality of the circumstances, would conclude that the participants, in conducting these activities, were using the site as a living accommodation. In response to this concern expressed by the ACLU, the Park Service is adding to the third paragraph of the policy statement and to § 50.19(e)(8) a statement to read as follows:

"The above-listed activities are prohibited outside designated campgrounds when it reasonably appears in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging."

Agreeing that camping primarily for living accommodation should not be permitted in undesignated parks, the ACLU suggested that camping which is incidental and integral to demonstration activity should be permitted. Such a distinction would put the Park Service in a position of having to scrutinize the content of every demonstration's message to determine when camping is or is not "incidental and integral" to a demonstration. This determination would have to turn not on the practical question of whether people are in fact living at a site, but rather on the nature and degree of the relationship between the content of the expression and the camping activities proposed. Were the Park Service to undertake this responsibility, it would be forced to exercise exactly the same type of content-based discretionary decision-making consistently condemned by the courts. Since the assertion of a nexus between content and camping would result in the provision of free, convenient living space for persons pursuing speech activities, it is reasonable to assume that the frequency of such claims would greatly multiply if the ACLU suggestion were adopted. Therefore the Park Service believes that fair administration of its regulations requires the prohibition of use of park land for living accommodations for all park users, whether or not conducting demonstration activities.

The Washington Legal Foundation, Chamber of Commerce, and several other commentators, while supporting the ban on use of parks for living accommodations, submitted broader suggestions to restrict the erection and use of temporary structures in park areas. The Washington Legal Foundation presented a petition for rule-making reflecting the comments which it also submitted on the proposed rules. Their petition urged the Park Service to determine the appropriateness of structures based on each park's size and location, to regulate the size and aesthetic quality of temporary structures, to allow such structures in only a small percentage of park areas, and to ban structures within a three hundred yard radius of the White House.

As a result of the court decision in *Women Strike for Peace v. Morton*, 472 F.2d 1273, the Park Service is required to allow the erection of structures by demonstrators to the same extent that it participates in or sponsors the erection of structures itself. Under current regulations, the Director of the National Capital Region has the authority to impose reasonable restrictions on the structures permitted in the interest of protecting the park areas involved, traffic and public safety considerations, and other legitimate park value concerns. 36 CFR 50.19(e)(8)(iii). The Park Service believes that the first three proposals of the Washington Legal Foundation, the Chamber of Commerce, and other commentators are already adequately addressed in these existing regulations. Furthermore, the use of temporary structures for living

accommodations has been an isolated, temporary situation which should be corrected by the proposed regulations dealing with the specific harm caused by such use.

There is also no indication that allowing temporary structures within three hundred yards of the White House poses any danger which regulations should address. Courts have consistently held that regulations governing First Amendment activity must be drawn as narrowly as possible in furtherance of a legitimate government interest. In the absence of an identifiable threat, the existence of a legitimate government interest appears too tenuous to support more restrictive regulations.

The Park Service has previously considered the necessity of maintaining selected park areas as places of quiet reflection where demonstrations are not permitted. The result of such consideration has been the barring of demonstration activities at portions of historic monuments such as the Lincoln and Jefferson Memorials and the Washington Monument. In *Washington Free Community v. Wilson,* 334 F. Supp. 77 (1971), however, the court indicated that the hustle and bustle of some National Capital Region parks such as Lafayette Park preclude attempts to restrict demonstration activities to foster serenity which is not attainable in the midst of a downtown business district.

Comments by the Community for Creative Non-Violence and counsel for the group asserted that the proposed regulations were unconstitutional since they furthered no legitimate government interest and violated court rulings. The Park Service believes that a substantial government interest is involved in the prevention of use of the National Capital Parks as campgrounds for those wishing to express a point of view or, indeed, for any park visitors. The regulations banning the use of parks for living accommodations are designed not to stifle First Amendment expression, but to protect undesignated parks from activities for which they are not suited and the impacts of which they cannot sustain. Short-time, casual sleeping which does not occur in the context of using the park for living accommodations will not be affected by these regulations.

The Park Service also believes that the regulations are drawn in accord with relevant court decisions. The only case which found sleeping to be sufficiently expressive in nature to implicate a threshold First Amendment scrutiny was confined to the peculiar facts of the case and the particular regulation involved, which the court found provided too much open-ended discretion to the Park Service. The court explicitly stated that an across-the-board ban on sleeping outside official campgrounds might well be constitutionally acceptable if duly promulgated and even-handedly enforced. *United States v. Abney,* 534 F.2d 984 (D.C. Cir. 1976). Even when an activity might provoke initial First Amendment consideration, a legitimate government interest expressed in the most narrowly drawn restrictions possible is not an unconstitutional burden on free expression. The Park Service believes that preventing the use as public campgrounds of the Memorial Core and other park areas in the national capital constitutes such a legitimate government interest.

IV. Regulatory Changes

Structures and Campsites

In order to clarify the long-standing policy and practice of the National Park Service on the nature and use of temporary structures in connection with demonstration activities, the National Park Service is amending §50.19(e)(8) to forbid specifically the use of any such structures, including tents, for the purpose of conducting any living accommodation activity. The decision by the United States Court of Appeals for the District of Columbia Circuit in *Community for Creative Non-Violence v. Watt,*——F.2d——, slip. op. 81-2381 (Decided January 22, 1982), which interpreted the current regulation and policy statement to allow sleeping by demonstrators in temporary structures, has necessitated this clarification to avoid the use of the Memorial Core and other park areas of the nation's capital as a camping ground. Experience with administering the court's decision permitting sleeping has also confirmed the belief of the Park Service that activity by demonstrators would expand to include other aspects of living accommodations such as the storage of personal belongings and the performance of necessary sanitary functions, which have occurred in conjunction with the court-approved sleeping activities. The revised rule makes it clear that structures are permitted for symbolic or logistical purposes, but not for living accommodation types of activity.

In addition, the exemption in §50.19(b)(1) of groups of 25 or less from the permit requirement imposed on larger groups has led to the proliferation of tents and other structures erected by individuals in close proximity to each other. The increasing numbers of these structures, erected without prior knowledge of the Park Service, have imposed a significant cumulative impact on park resources and personnel and have resulted in uncontrolled and continuous pre-emption of substantial park areas by spontaneously erected structures. Accordingly, the Park Service is amending §50.19(e)(8) further to provide that the erection of structures other than lecterns or small speakers platforms is prohibited unless a demonstration permit is obtained.

Reference to Prefatory Statement

In order to aid readers in understanding the administrative policies which have been developed to implement the revised regulations, a citation to the applicable Federal Register reference will be included at the conclusion of 36 CFR 50.19.

Administrative Policy Statement

Structures and Campsites

Because of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Community for Creative Non-Violence v. Watt,* —— F.2d —— (D.C. Cir. 1982), slip. op. 81-2381, the National Park Service finds it necessary to clarify the definition of symbolic campsites and the extent to which temporary structures are permitted in connection with First Amendment activities.

It has been the long-standing administrative policy and practice of the National Park Service to allow demonstrators to erect temporary structures reasonably necessary for the conduct of their demonstration, including the provision of logistical support. The requirement that the erection of temporary structures be permitted arose out of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Women Strike for Peace v. Morton,* 472 F.2d 1273 (D.C. Cir. 1972). Following this decision, it became the policy of the National Park Service to allow tents to be erected as temporary structures in connection with permitted demonstrations. Tents may be erected as a means of symbolizing the message of demonstrating groups or of providing support and logistical services. Examples of activities where the Park Service has permitted the erection of tents in connection with demonstration activities include: a demonstration by the Community for Creative Non-Violence in which a number of tents symbolized the need for housing for the homeless; demonstrations by anti-war veterans groups where the tents symbolized conditions in Vietnam;

Indian teepees by Indian rights groups to symbolize the plight of Indians; and numerous other demonstrations where support services tents were used for first aid facilities, for lost children areas, and to shelter electrical and other sensitive equipment or displays.

Although it is the policy of the National Park Service to permit tents as temporary structures for the above purposes in connection with permitted demonstration activities, the Park Service does not permit camping or the erection of tents for camping in connection with demonstration activities in other than formally designated and maintained campgrounds. Camping is defined as the use of park land for living accommodation purposes such as sleeping activities, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings or making any fire, or using any tent or shelter or other structure or vehicle for the purpose of sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. This policy is not intended to prohibit eating, cooking, and other traditional picnicking activities in areas designated for picnicking pursuant to 36 CFR 50.14.

The National Park Service emphatically believes that the Memorial Core area of the nation's capital is an especially unsuitable location for camping activities. The Memorial Core includes the Mall area, the Washington Monument grounds, the White House area, the Ellipse, Lafayette Park, East and West Potomac Park, the Jefferson and Lincoln Memorials, and the Kennedy Center. Were camping permitted in this area, other park visitors, including demonstrating park visitors, would be deprived of use of this nationally significant space. Camping could cause significant damage to park resources, create serious sanitation problems, and seriously tax law enforcement resources. It is probable that the cumulative impact of permitting any camping activities in the Memorial Core and other National Capital Parks areas would cause the National Park Service to incur additional costs for park restoration, sanitary facilities and extra park personnel, including law enforcement personnel. Even though camping is now prohibited, the Park Service nevertheless receives several requests each year for camping in connection with demonstration activities. It is believed that these requests would increase dramatically were camping permitted because it would offer free, convenient living space for persons pursuing speech activities. Such use of park space would amount to a federal subsidy of the living costs of demonstrating park visitors and would create pressure from non-demonstrating visitors for similar accommodations.

It is the opinion of the National Park Service that allowing participants in any activity to live at the site of their activity would create unacceptable adverse impacts to park areas, deprive other visitors of use of the park area and create law enforcement confrontations arising from attempts to confine activities within specific parameters. In fact, experience with administering the court's decision in *Community for Creative Non-Violence v. Watt* allowing sleeping revealed that activities by demonstrators expanded into a campground situation with serious adverse effects on Lafayette Park.

The National Park Service is mindful of the need to provide camping facilities in park areas within the metropolitan Washington, D.C. area. Fully equipped and maintained campgrounds are located in parks which can sustain the impacts from camping activities and which are within reasonable proximity to the capital. Demonstrating park visitors are free to avail themselves of these facilities.

The information collection system contained in § 50.19 has been previously approved by the Office of Management and Budget and assigned OMB Approval No. 1024–0021.

Impact Analysis

The National Park Service has determined that this document is not a major rule requiring preparation of a Regulatory Impact Analysis under Executive Order 12291 and does not require a small entity flexibility analysis under Pub. L. 96–354. The rule is designed only to clarify the circumstances and conditions under which temporary structures may be permitted in connection with demonstration activities. People wishing to camp in the Washington, D.C. metropolitan area will continue to have access to park areas designated as public campgrounds. The rule will have no substantial impact on any aspect of the economy.

List of Subjects in 36 CFR Part 50

District of Columbia; National Parks; National Capital Parks.

Date approved: May 11, 1982.

J. Craig Potter,

Assistant Secretary, Fish, Wildlife and Parks

In consideration of the foregoing § 50.19 of title 36 of the Code of Federal Regulations is accordingly amended as follows:

PART 50—NATIONAL CAPITAL PARKS REGULATIONS

1. The authority citation for § 50.19 reads as follows:

(Sec. 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3); 245 DM 1 (44 FR 23384); Act of Aug. 6, 1956 (70 Stat. 1049) as amended; Act of Jan. 30, 1968 (82 Stat. 4); D.C. Code A. Section 8–108 (1973); and National Park Service Order No. 77 (38 FR 7478), as amended)

§ 50.19 [Amended]

2. By amending § 50.19(e)(8) by revising the introductory text and adding (e)(8)(v) to read as follows:

(e) * * *

(8) In connection with permitted demonstrations or special events, temporary structures, may be erected for the purpose of symbolizing a message or meeting logistical needs such as first aid facilities, lost children areas or the provision of shelter for electrical and other sensitive equipment or displays. Temporary structures may not be used outside designated camping areas for living accommodation activities such as sleeping, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Temporary structures are permitted to the extent described above, provided prior notice has been given to the Director, except that:

(i) * * *

(ii) * * *

(iii) * * *

(iv) * * *

(v) Individuals or groups of 25 persons or less demonstrating under the small group permit exemption of § 50.19(b)(1) shall not be permitted to erect

temporary structures other than small lecterns or speakers platforms, This provision is not intended to restrict the use of portable signs or banners.

3. By revising § 50.19(h) to read as follows:

(h) Further information on administering these regulations can be found at 47 FR 24299 (June 4, 1982).

[FR Doc. 82-15101 Filed 6-3-82; 8:45 am]

BILLING CODE 4310-70-M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 800

Protection of Historic and Cultural Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Temporary suspension of certain regulations with request for comments.

SUMMARY: The Advisory Council on Historic Preservation temporarily suspends three sections of its regulations relating to protection of historic and cultural properties. The purpose of this suspension is to relieve agencies from certain paperwork requirements and time constraints which have been found to constitute an unnecessary regulatory burden.

DATE: These suspensions are effective on July 6, 1982. The Council invites comments during this 30-day period. The Council will consider any comments received before the effective date of this suspension and, if appropriate, modify the suspensions.

ADDRESS: Comments may be mailed to the Advisory Council on Historic Preservation, 1522 K Street, NW., Suite 430, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: John Fowler, General Counsel, 202-254-3967.

SUPPLEMENTARY INFORMATION: Since the Council published its regulations at 36 CFR Part 800 (44 FR 6068, January 30, 1979), Congress and the President have instituted several measures directing federal agencies to reduce the paperwork burdens, time delays and other unnecessary constraints of their regulations. The Council has undertaken an extensive review of its regulations, initiated in June, 1981. While permanent amendments embodying fundamental changes in the Section 106 process are currently under consideration, the Council has identified certain areas where regulatory burdens can be alleviated until the amendment process is completed. The Council temporarily suspends three portions of its regulations which impose paperwork burdens and time constraints that the Council has found to be unnecessary. The suspension will be in effect until the Council completes amendment of its regulations or until further notice.

Section 800.4(a)(4) currently requires the Agency Official to seek from the Secretary of the Interior a formal determination of the eligibility of a property for inclusion in the National Register of Historic Places prior to completing the process set forth in the Council's regulations. The Department of the Interior is currently considering a modification to the determination of eligibility process that would streamline determinations when the State Historic Preservation Officer and an Agency Official agree a property is eligible. The Council has identified the requirements of Section 800.4(a)(4) as hindering this modification. The Council is suspending this regulation to coincide with the Department's intended reform and eliminate an existing regulatory burden.

Section 800.6(c)(1) sets out directions for the preparation of Memoranda of Agreement. In the Council's experience, this provision has served to draw out the Memorandum of Agreement process by creating an overly rigid procedure for preparation of documents. The Council is suspending this section to allow more flexibility, and hence greater expediency, in the preparation of Memoranda of Agreement. The Council intends to issue guidance for the preparation of Memoranda of Agreement in lieu of the suspended regulations. This guidance will provide suggestions for efficient and thorough preparation of Memoranda of Agreement without imposing procedural strictures that could delay the process.

Section 800.6(d)(2)(ii) requires a minimum 60-day waiting period for full Council review of an undertaking except in exceptional cases. In the Council's experience, the 60-day waiting period has proved to be an unnecessary delay and has usually been waived as specified in the regulations. The Council is suspending this provision to eliminate this delay and to allow the Council to consider an undertaking at the time best suited to all the participants in the process.

The Council has determined that each of these suspensions will relieve a burden on complying agencies and that none of these suspensions effect any substantive rights of any party to the section 106 process or the public. None of these sections are mandated by statute. The suspensions are consistent with the policies set forth in Section 2 of Executive Order 12291.

The Council has determined that this document is not a major rule under Executive Order 12291 and does not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act of 1980 (Pub. L 96-354).

The Council has determined that these suspensions do not have a significant effect on the quality of the human environment under the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*, and that an environmental impact statement is not required.

The Council invites the public's comments on these temporary suspensions.

List of Subjects in 36 CFR Part 800

Historic preservation, Administrative practice and procedure.

Notice of Suspended Regulations

PART 800—PROTECTION OF HISTORICAL AND CULTURAL PROPERTIES

§ 800.4 and § 800.6 [Amended]

The regulations set forth in 36 CFR 800.4(a)(4), 800.6(c)(1), and 800.6(d)(2)(ii) are suspended until further notice.

Dated: May 28, 1982.

John Fowler,

Acting Executive Director

[FR Doc. 82-15175 Filed 6-3-82; 8:45 am]

BILLING CODE 4310-10-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL 2072-4]

Approval and Promulgation of Implementation Plans; San Diego, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On February 4, 1981, EPA published a notice of proposed rulemaking concerning a portion of the San Diego Air Basin non-attainment area plan (NAP) submitted by the State of California. That notice proposed to approve with conditions certain volatile organic compound (VOC) rules. Today's notice takes final action under the Clean Air Act to conditionally approve the San Diego VOC rules. This notice also corrects a clerical error made in a previous notice.

DATE: This action is effective July 6, 1982.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Acting Director, Air Management Division, Region 9, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Attn: Douglas Grano (415) 974–8222.

ADDRESS: A copy of today's revision to the California State Implementation Plan (SIP) is located at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408, Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 1979, the California Air Resources Board (ARB) submitted the San Diego Air Basin NAP, including VOC rules, as a revision to the California SIP. On October 4, 1979 (44 FR 57109), EPA published a notice of proposed rulemaking on the NAP.

On October 15 and 25, 1979 and July 25 and December 15, 1980, ARB submitted additional VOC rules which supersede rules previously submitted and discussed in the October 4, 1979 notice.

On February 4, 1981 (45 FR 10570), EPA published a notice of proposed rulemaking for the San Diego VOC rules submitted in 1979 and 1980. That notice should be used as a reference in reviewing today's notice. The February 4, 1981 notice provides a description of the proposed SIP revisions, summarizes the applicable Part D requirements, compares the revisions to these requirements, identifies issues in the proposed revisions, and suggests corrections. That notice proposed to approve the VOC rules with conditions.

EPA published an additional **Federal Register** notice on March 20, 1981 (45 FR 17790) for the purpose of extending the public comment period to April 6, 1981.

Correction

On April 14, 1981, EPA published a final rulemaking notice (46 FR 21749) which approved, with conditions, portions of the San Diego NAP. The April 14 notice incorrectly approved San Diego County Air Pollution Control District (APCD) rule 20.7, "Standards for Authority to Construct: Significant Deterioration." It was and is EPA's intent to defer action on the above rule. Therefore today's notice rescinds the previous approval of rule 20.7.

Supplemental Revisions

After EPA's review, which appears in the February 4, 1981 proposal notice, the State submitted revisions to the NAP which corrected some of the deficiencies noticed by EPA. These revisions are discussed below.

On October 23, 1981, the State submitted amended San Diego County Rule 67.4, "Can and Coil Coating Operations", and Rule 67.6, "Solvent Cleaning Operations", as rule revisions. Rule 67.4 has been amended by specifying the VOC limits which a coating may contain. This amendment satisfies one of the conditions of approval recommended in EPA's notice of proposed rulemaking. Rule 67.6 has been amended to apply to all organic solvent cleaning operations. This amendment satisfies EPA's proposed condition of approval regarding this rule.

EPA has determined that "good cause" (see Administrative Procedure Act, 5 U.S.C. 5536(b)) exists to approve these revisions without providing further notice and opportunity to comment. EPA has already provided opportunity to comment on the substance of these rules and the proposed deficiencies in the February 4, 1981 proposal notice. Additional comment would serve no practical purpose since these revisions merely correct those deficiencies.

Public Comments

During the public comment period EPA received comments from the General Dynamics Corporation, the National Steel and Ship Building Company, Solar Turbines International, the San Diego County APCD, and the ARB. A document containing the summarization of substantive comments and the full EPA response to each, entitled "EPA Public Comment Technical Support Document", has been mailed to the five commenters and is also available for public inspection as a part of Document File NAP–CA–23 at the EPA Library in Washington D.C., at EPA Region IX office in San Francisco, CA and at the other Document File locations. EPA's final actions are based on the proposed rulemaking notice, and public comments received by EPA.

EPA Actions

EPA is taking final action under Section 172 of the Clean Air Act to approve all the following rules since they provide for reasonably available control technology (RACT): Rules 61.0, 61.1, 61.2, 61.3, 67.4, 67.5, 67.6 and 67.7.

EPA is taking final action under Section 110 of the Clean Air Act to approve rules 61.4 and 67.2 since they represent control measures necessary to attain the air quality standards.

EPA is also approving Rule 67.3, *Miscellaneous Metal Parts and Products*, with the following condition: By September 2, 1982, the State must provide either (1) an adequate demonstration that the rule represents RACT, (2) amend the rule so that it is consistent with the control techniques guideline (CTG), or (3) demonstrate that the regulation will result in VOC emission reductions which are within five percent of the reductions which would be achieved through the implementation of the CTG recommendations.

Under Executive Order 12291, EPA must judge whether a rulemaking action is "major." Further, under the Regulatory Flexibility Act, EPA must assess the effect of the rulemaking action on "small entities". This regulation is not "major" because it approves state and local actions and imposes no new requirements. I hereby certify that the action will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 12291, this regulation was submitted to the Office of Management and Budget for review.

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1981.

(Sections 110, 129, 171–178, and 301(a) of the Clean Air Act, as amended (42 U.S.C. § 7410, 7429, 7501 to 7508, and 7601(a)))

List of Subjects in 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Date: May 10, 1982.

Anne M. Gorsuch,

Administrator.

Subpart F of Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. Section 52.220 is amended by adding paragraphs (c)(52) (xvii), (85)(iv), (100), and (103)(ii), and by correcting paragraph (64)(i)(A) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(52) * * *

(xvii) San Diego County APCD.

(A) New or amended Rule 67.7 and 67.2.

* * * * *

(64) * * *

(i) * * *

(A) Rules 20.1, 20.2, 20.3, 20.4, 20.5 and 20.6.

* * * * *

(85) * * *

(iv) San Diego County APCD.

(A) New or amended Rules 61.0, 61.0 (n) and (o), 61.1, 61.1(a)(1) (i) and (h), 61.2, 61.2(a), 61.3 and 61.4

* * * * *

(100) Revised regulations for the following APCDs submitted on October 25, 1979, by the Governor's designee.

(i) San Diego County APCD.

(A) New or amended Rules 67.3 and 67.5.

* * * * *

(103) * * *

(ii) San Diego County APCD.

(A) New or amended Rule 67.4 and 67.6.

* * * * *

2. Section 52.232 is amended by adding paragraph (a)(4)(v) to read as follows:

§ 52.232 Part D conditional approval.

(a) * * *

(4) * * *

(v) For ozone:

(A) By September 2, 1982, the State must provide either (1) an adequate demonstration that Rule 67.3 represents RACT, or (2) Amend the rule so it is consistent with the CTG, or (3) Demonstrate that the rule will result in VOC emission reductions which are within five percent of the reductions which would be achieved through the implementation of the CTG recommendations.

* * * * *

3. Section 52.253 is amended by revising paragraph (b)(5) to read as follows:

§ 52.253 Metal surface coating thinner and reducer.

* * * * *

(b) * * *

(5) In the San Diego Intrastate Region, this section is rescinded:

(i) This section is rescinded for metal parts and products coaters which are subject to and in full compliance with San Diego APCD Rule 67.3, submitted on October 25, 1979.

* * * * *

[FR Doc. 82-15202 Filed 6-3-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 723

[OPTS-50028B; TSH-FRL 2105-2]

Premanufacture Notification; Exemption for Chemicals Used in or for the Manufacture or Processing of Instant Photographic and Peel-Apart Film Articles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA exempts manufacturers of instant photographic and peel-apart film articles who manufacture and process new chemical substances used in or for the manufacture or processing of these articles from the premanufacture notice requirements of the Toxic Substances Control Act (TSCA) section 5. EPA is promulgating this rule in response to a petition for an exemption under TSCA section 5(h)(4) from the Polaroid Corporation. These companies may manufacture and process a new chemical substance for use in or for these articles, if they comply with certain restrictions on exposure and release, immediately upon submission of an exemption notice. Distribution in commerce of the peel-apart film article is not permitted until the manufacturer has complied with the premanufacture notification provisions of section 5(a)(1)(A) of the Act and the review period has ended without EPA taking action to prevent distribution or use of the new chemical substance.

DATE: These regulations will take effect on July 6, 1982.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, DC., 20460 Toll-free: (800-424-9065), In Washington, DC.: (554-1404), Outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

This rule is promulgated under the authority of section 5(h)(4) of the Toxic Substances Control Act (90 Stat. 2003; 15 U.S.C. 2601 *et seq.*) (TSCA).

Under section 5(a) of TSCA, any person who intends to manufacture or import a new chemical substance must notify EPA 90 days before manufacture or import begins. A new chemical substance is any chemical substance that is not on the Chemical Substance Inventory compiled by EPA under section 8(b) of TSCA. The requirement to submit premanufacture notices for new chemical substances became effective on July 1, 1979, 30 days after publication of the Initial Inventory. EPA proposed Premanufacture Notification Requirements and Review Procedures in the **Federal Register** of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 49964). EPA is operating under statements of Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) and November 7, 1980 (45 FR 74378) until those rules are promulgated.

Section 5(h)(4) of TSCA allows the Administrator, upon application and by rule, to grant an exemption from any requirement of section 5 if the Administrator determines that the manufacture, processing, distribution, use, or disposal of a chemical substance will not present an unreasonable risk of injury to health or the environment. To grant a section 5(h)(4) exemption, the Agency must follow the rulemaking procedures set out in sections 6(c) (2) and (3) of TSCA.

EPA received the first application for a section 5(h)(4) exemption from the Polaroid Corporation. Notice of receipt of this application was published in the **Federal Register** of February 19, 1981 (46 FR 13037). The proposed rule was published in the **Federal Register** of November 3, 1981 (46 FR 54585). The 30-day public comment period ended on December 3, 1981. A public hearing on the proposal was requested by the Natural Resources Defense Council and was held on December 15, 1981 in Washington, D.C. EPA received ten comments in response to the notice of proposed rulemaking from trade associations, chemical manufacturers, and an environmental organization. EPA has summarized its response to the major public comments received during this rulemaking. This summary is included in the public record.

The Agency is currently evaluating other applications for section 5(h)(4) exemptions. This final rule represents only one approach to exemptions under section 5(h)(4); other exemptions may use different approaches.

B. The Polaroid Application

The Polaroid Corporation applied for an exemption from the premanufacture notification requirements of section 5 of TSCA. The request was based on Polaroid's intention to maintain exposure safeguards and engineering controls during the manufacture and processing of new chemical substances used to manufacture the SX-70 instant film article. Polaroid proposed that, after certifying compliance with specified engineering controls, exposure limits,

and other exposure safeguards, it could manufacture and process the new chemical substance as soon as it submitted a premanufacture notice (PMN) instead of waiting until the end of the statutory 90-day notice review period. The use of exposure controls and safeguards would be supervised by Polaroid's corporate Chemical Health Committee. Polaroid would maintain the exposure safeguards throughout the notice review period. During this time, EPA would retain the right to regulate the chemical substance under sections 5(e) and 5(f) of TSCA. At the end of the review period, in the absence of regulatory action, EPA would add the chemical substance to the TSCA Chemical Substance Inventory and the exposure safeguard requirements would expire.

C. Alternatives Proposed

The November 3, 1981 proposals described four alternative approaches to this exemption rule which EPA considered. Under Alternative 1, EPA would have denied Polaroid's exemption application. However, the Agency believes that the manufacture and processing of new chemical substances used in or for the manufacturing and processing of instant photographic or peel-apart film articles will not present an unreasonable risk of injury to health or the environment when manufactured, processed, distributed, used, or disposed of under the provisions of this rule. For this reason, the Agency did not adopt Alternative 1.

Alternative 2 would have permitted the manufacturer to apply controls and safeguards based on the manufacturer's evaluation of the risk associated with the manufacture and processing of each new chemical substance. However, the use of discretionary controls would result in a broad range of exposures for the manufacturing and processing operations. The controls might or might not be appropriate for the substance's toxic or physical-chemical properties. Without restrictions on toxicity or the minimal controls and safeguards required by Alternative 4, it would be difficult for EPA to make the finding of no unreasonable risk. Furthermore, enforcement of the rule would be difficult and manufacturers would be uncertain of their compliance. For these reasons, the Agency did not adopt Alternative 2.

Alternative 3 would have required the mandatory use of specific controls and safeguards at all stages of a new chemical substance's manufacture, processing, distribution, use, and disposal. However, EPA believes that the nature of the photographic chemical substances included in this category and the circumstances of manufacture, processing, consumer use, and disposal make the imposition of specific mandatory controls unnecessary. Furthermore, it would be difficult for EPA to define specific controls and procedures for all the chemical substances that might be manufactured under the exemption. Mandatory controls at all stages would be expensive to implement and would be unnecessary for some new chemical substances. For these reasons, the Agency did not adopt Alternative 3.

This rule adopts the approach described in Alternative 4 of the proposal. It establishes workplace exposure limits and control guidelines for manufacturers of instant photographic and peel-apart film articles who manufacture and process new chemical substances for use in or for these articles. The final rule and the Agency's reasons for adopting this approach are described below.

II. The Final Exemption Rule

A. Summary of the Rule

The final rule exempts eligible manufacturers of instant photographic or peel-apart film articles from certain premanufacture notification requirements of section 5 of TSCA. Under this rule, manufacturers of instant photographic or peel-apart film articles are eligible for the exemption if they manufacture and process the new chemical substances used in or for the manufacture or processing of the film articles and they comply with the requirements of the rule. Eligible manufacturers do not have to submit a PMN 90 days before the start of manufacture of the new chemical substance.

Under this rule, the manufacturer of instant photographic film articles or peel-apart film articles may manufacture and process a new chemical substance used in such articles immediately upon submitting an exemption notice. However, distribution in commerce of the peel-apart film article is not permitted until the manufacturer complies with the premanufacture notification requirements of TSCA section 5(a)(1)(A) and the review period has ended without EPA taking action to prevent distribution or use.

The requirements of the rule were extensively discussed in the preamble of the proposed rule published in the **Federal Register** of November 3, 1981 (46 FR 54585). The rule requires that certain manufacturing, processing, and use operations involving the new chemical substances take place in a demarcated special production area. In the special production area, exposure must be limited to certain levels by engineering controls and personal safeguards. The risk of significant workplace exposure is further limited by the requirement that appropriate work practices, labeling, and appropriate programs of training and hygiene be followed. The rule also requires the manufacturer to control releases to land, water, and air appropriately.

The manufacturer must maintain records of each new chemical substance manufactured and processed under this exemption and must provide EPA an informational notice at the time manufacture begins. EPA has the authority to prohibit use of the exemption if the Agency determines that the manufacture, processing, distribution in commerce, use, or disposal of a specific new chemical substance under the terms of the exemption may present an unreasonable risk to health or the environment. Under these circumstances, the manufacturer would be required to cease production and submit a PMN.

B. Comparison of the Final Rule To The Proposal

The final rule adopts most of the provisions of the proposed rule published on November 3, 1981. This section of the preamble describes the major differences between the final rule and the proposal.

1. *Exemption category and peel-apart film articles.* The proposed rule would have applied only to new chemical substances used in or for the manufacture or processing of instant photographic film articles, such as Polaroid's SX-70 film article. New chemical substances used in or for the manufacture or processing of peel-apart film articles were not included under the proposed rule. However, in the proposal EPA solicited comment on whether such chemicals should be included in the exemption category.

After reviewing the comments, EPA has decided to include the manufacture and processing of new chemicals used in or for the manufacture and processing of peel-apart film articles in the final rule. Therefore, the exemption category in § 723.175(c) includes all new chemical substances used in or for instant photographic and peel-apart film articles. However, the distribution in commerce of peel-apart film articles containing the new chemical substances is limited by § 723.175(d)(2) of the rule. The peel-apart film article may not be distributed in commerce until the manufacturer has complied with the

PMN requirements of section 5(a)(1)(A) of the Act and the review period has ended without EPA action to prevent distribution or use. The final rule adopts TSCA's statutory definitions of "distribute in commerce" and "distribution in commerce." The Agency's reasons for expanding the category to include new chemical substances used in or for peel-apart film articles are discussed under IV.A. and IV.C. of this preamble.

2. *Applicability.* The proposed rule would have applied to all manufacturers of new chemical substances used in or for the manufacture or processing of instant photographic film articles. However, § 723.175(d) of the final rule limits the applicability of the exemption to companies that manufacture the instant photographic or peel-apart film articles. This change responds to comments that the exemption should not be available to manufacturers who have not demonstrated an ability to comply with the rule's terms. The Agency's reasons for limiting the applicability of this exemption are discussed under IV.B. of this preamble.

3. *Discharge to water.* The proposed rule placed limits on the concentration of new chemical substances in effluent streams released to a publicly-owned treatment works (POTW). No quantitative limit would have been placed on effluents released directly to the environment. However, in such circumstances, manufacturers would have been required to use appropriate methods of treatment and maintain records of the treatment methods used. The final rule does not place a quantitative limit on release to a POTW. Instead, § 723.175(h)(2) of the final rule requires that manufacturers use appropriate methods of pretreatment before discharging to a POTW or any receiving body of water. Section 723.175(i)(1)(viii) requires that the manufacturer summarize its treatment strategy in the exemption notice submitted to EPA when manufacture of the new chemical substance begins. The Agency's reasons for this change are discussed under IV.F. of this preamble.

4. *Prohibiting use of the exemption.* In the proposal, the Agency stated its intention to prohibit use of the exemption for any new chemical substance that may present an unreasonable risk. EPA might take such an action on the basis of information in the exemption notice. Some commenters suggested that the final rule be more explicit in its description of this authority.

Section 723.175(m) of the final rule gives EPA the authority to prohibit use of the exemption for a particular new chemical substance if the Agency determines that the manufacture, processing, distribution in commerce, use, or disposal of the new chemical substance under the terms of the exemption may present an unreasonable risk of injury to health or the environment. Prohibition does not require a separate rulemaking, nor does it require an affirmative demonstration that the new chemical substance will present an unreasonable risk. If EPA prohibits use of the exemption for a new chemical substance, the new chemical substance must undergo PMN review before further manufacture, processing, distribution, use, or disposal of the new chemical substance. Based on its experience with instant photographic chemicals in the PMN program, EPA believes that the use of this authority will be necessary only in exceptional circumstances.

5. *Areas immediately adjacent to the special production area.* The proposal required that the ambient air concentration of a new chemical substance in areas immediately adjacent to the special production area not exceed certain levels permitted inside the special production area. However, EPA does not believe that the approach taken in the proposal provided adequate protection for persons who may be exposed in areas adjacent to the special production areas. Therefore, the final rule has been changed. In areas immediately adjacent to the special production area, the ambient air concentration may not exceed the permissible exposure limits required for waiver of the respirator requirement inside the special production area. Manufacturers are required to periodically monitor those immediately adjacent areas where a risk of inhalation exposure is reasonably anticipated.

EPA does not expect that there will be a substantial risk of exposure to workers outside the special production area. However, this section of the rule recognizes that a clear-cut demarcation of the area of risk is difficult. It requires manufacturers to use reasonable judgment to limit the risk of employee exposure. The Agency believes this is a reasonable approach which is consistent with the other requirements of the exemption.

III. Regulatory Analysis

EPA performed a regulatory analysis to support this rule. This section summarizes EPA's analysis of the rule and explains the basis for the Agency's finding of no unreasonable risk.

A. Summary of Risk Assessment

To support this rulemaking, EPA originally analyzed the risks associated with exposure to a group of surrogate chemical substances of known carcinogenic risk at the proposed exposure limits. Carcinogenic risk was selected as an appropriate indicator of toxicity because it is a toxic effect, known to manifest itself at low levels of exposure, for which quantitative risk estimates can be derived by standard methods. This analysis demonstrated that the proposal's exposure limit for particulates (5 ug/m^3) would provide protection for particulates of relatively high carcinogenic potential. The proposed limit for gases and vapors (1 ppm) would provide similar protection for substances of moderate carcinogenic potential. However, the assessment indicated that gases and vapors from highly potent carcinogens could present a significant risk at 1 ppm. In the preamble to the proposal, the Agency expressed concern that the limit of 1 ppm for vapors and gases might not provide adequate protection.

EPA has decided that several factors mitigate its original concern about exposure to gases and vapors. The Agency's past experience with PMN chemicals indicates that most new chemical substances used in these processes are solids in wet cake or powdered crystalline form. The remaining chemical substances were relatively low vapor pressure liquids. This result is to be expected, because chemical substances of high volatility are generally unsuitable for instant photographic film applications. For these reasons, the Agency expects that very few new chemical substances manufactured for use in or for the manufacture and processing of instant photographic or peel-apart film articles will possess sufficiently high vapor pressure to present a substantial risk of inhalation exposure. Therefore, EPA has concluded that the physical nature of the new chemical substances will substantially limit exposure.

In addition, an Agency review of PMN data submitted for new chemical substances used in or for the manufacture or processing of photographic film articles suggests that its original quantitative risk assessment (which was based on chemicals of relatively high potency) was quite conservative. EPA's review indicated that only two of the eighty PMN chemicals considered raised any concern of potential carcinogenicity and that the evidence suggesting the possible carcinogenicity of these two chemical

substances was weak. As previously noted, the Agency expects that most of the new chemical substances manufactured under this exemption will have low volatility and that the exposure limits for particulates (5 ug/m^3) will provide protection against particulates of relatively high carcinogenic potency. Considering both the low expectation of carcinogenic concerns and the likely particulate nature of new chemical substances manufactured under this exemption, the Agency believes that compliance with the exposure limits of the exemption will ensure low risk in nearly all cases. However, to ensure against cases where a new chemical substance might have the potential to present a significant risk despite the exposure limits, EPA will review all exemption notices and will prohibit use of the exemption if the Agency determines that the new chemical substance may pose an unreasonable risk.

B. Economics

1. *Summary.* EPA does not know the identity or quantity of new chemical substances that will be manufactured and processed under this final rule. Therefore, EPA has been unable to develop a quantitative analysis of the rule's costs and benefits. The actual cost-benefit balance of the rule will depend on the toxicological and physical-chemical properties of the new chemical substances as well as variable factors such as each chemical substance's specific use and production volume. However, the Agency believes that the risk will be limited because of the nature of the instant photographic film articles, the requirement that new chemical substances used in peel-apart film articles be reviewed by the Agency prior to distribution of the article, the technical cpability of the industry, and the other controls and safeguards imposed by the rule. EPA believes that the benefits derived from this rule will outweigh the associated costs.

The exposure limits and requirements of the rule will limit the risk associated with the new chemical substances included in the category. Any increase in cost associated with the use of controls will be balanced by relief from the 90-day PMN review delay. In an economic analysis submitted in support of its application, Polaroid argued that relief from the 90-day PMN review period was the critical benefit derived from this exemption and that the increased cost of controls and safeguards would have only a limited economic effect.

An immediate benefit of the rule is the elimination of delay in the introduction of new chemical substances used in or for instant photographic film articles and a reduction in the delay associated with using new chemical substances in or for peel-apart film articles. EPA expects that this elimination of delay will have a net positive effect on the industry. This rule will also allow EPA to allocate its resources to the review of other new chemical substances which may be of greater concern. A more complete economic analysis of this rule appears in the next section of this preamble.

After qualitatively balancing the potential risk presented by new chemical substances when manufactured and processed under the conditions of the exemption, the costs of compliance, and the benefits derived from exempting the new chemical substances, the Agency has made a determination that this rule provides substantial benefits with relatively low costs.

2. *Polaroid's economic analysis.* EPA's Economic Impact Analysis of this rule is contained in the public record of this rulemaking and is available for public inspection. The argument supporting the cost-effectiveness of Polaroid's section 5(h)(4) exemption request is also made in the document provided by Polaroid, "An Economic Assessment of Polaroid Corporation's Exemption Proposal Under Section 5(h)(4) of the Toxic Substances Control Act," by Christopher DeMuth. This document is included in the public record. Polaroid's analysis concludes that its exemption proposal is a highly cost-effective alternative to the 90-day PMN requirement, given the importance of innovation to Polaroid and the relatively low cost of implementing and enforcing strict workplace controls. Polaroid estimates that the maximum capital costs of meeting the requirements of the rule are between $600,000 and $1,200,000. The analysis calculates that this represents per-chemical capital costs of $125,000 for the first new chemical substance, $50,000 for the second, and less for each thereafter, approaching zero capital cost by the sixth chemical substance. Additional constant operating costs of $10,000 for each 90 days of workplace controls raise the total cost of safeguards to $135,000 for the first new chemical substance, $60,000 for the second, declining to $10,000 per 90 days for each chemical substance after the sixth chemical substance.

Polaroid believes that the benefits of avoiding the delay associated with PMN review will greatly exceed the increased costs of the workplace controls and safeguards proposed in their application. However, Polaroid's analysis does not quantify the cost of the 90-day delay, since this requires a number of assumptions about the value of future innovations. Instead, it estimates that the cost of the 90-day delay, with projected sales over the same period of 35 million film packs, is worth $229 million in revenues. The $125,000 spent for workplace controls on the first, most costly new chemical substance therefore represents 0.06 percent of revenues over 90 days, and 0.6 percent of the estimate of operating profit on those revenues. To make the exemption cost-effective for the first new chemical substance introduced, the value of the film to both consumers and Polaroid would have to increase by only 0.2¢. This amount would decrease to 0.014¢ once safeguard costs reach a constant level of $10,000 per innovation, a small amount in comparison to the estimated value of the innovation. The analysis also argues that because of Polaroid's past record of constant and rapid innovation in the composition of the SX–70 film article, the 90-day PMN requirement is almost certain to delay many small incremental improvements which the company considers crucial to market position, effective internal operations, and corporate morale.

The Agency has identified and addressed two economic issues raised by the proposed rule but not addressed in Polaroid's analysis: (i) Differences in costs between the exemption proposed by Polaroid and that proposed by EPA, and (ii) the competitive advantage the rule may provide to Polaroid Corporation. These are discussed below.

3. *Costs and economic benefits.* There are two major differences between the exemption analyzed by Polaroid and the rule proposed by EPA. First, the exemption analyzed by Polaroid required workplace safeguards only during the 90-day PMN review period. However, the final rule requires workplace controls to be in place at all times for new chemical substances used in or for the manufacture and processing of instant photographic film articles. EPA believes that the annual operating costs under this rule may be higher than the worst-case estimates of the Polaroid analysis, which estimated operating costs for 90 days only. The magnitude of the difference will depend on the number of production facilities converted to special production areas, the number of chemical substances introduced under the exemption, and the commerical life of those chemical substances. However, the manufacturer is free to submit a PMN at any time for

any new chemical substance. At the end of the notice review period, in the absence of action by EPA, the manufacturer would not be bound by the conditions of the exemption but would be free to use the discretionary control methods described in the PMN.

Second, although the costs of controls may be higher under the final rule than under the circumstances analyzed by Polaroid, a manufacturer will not have to file a PMN for the new chemical substance, except where the chemical substance will be used in or for a peel-apart film article. Therefore, reporting costs will be reduced.

4. *Competitive advantage accruing to Polaroid.* The ability of a company to realize benefits from this exemption rule is a function of its ability to comply with the exposure controls required by the rule. Firms such as Polaroid will be exempt from 90-day delays and will have a marketing advantage over firms which are unable to meet the terms of the exemption and therefore still have to file a PMN on each of their new chemical substances.

EPA is aware of only one other company, Eastman Kodak, which competes with Polaroid in the instant photographic film market. Polaroid controls two-thirds of the instant photographic film market, leaving Kodak with the other third. Since Polaroid is able to spread its costs over twice the number of film units, the impact of control costs on Kodak may be greater than on Polaroid. If the control costs to the two firms are similar, and the price and profit margins of the two firms' products are also similar, the analysis suggests that the estimated cost would not prohibit Kodak from taking advantage of the exemption, assuming that the benefits of the exemption are similar for the two firms.

C. Finding of No Unreasonable Risk

To grant an exemption under TSCA section 5(h)(4), the Administrator must find that a new chemical substance will not present an unreasonable risk of injury to health or the environment. Congress has not defined the term "unreasonable risk." (H.R. REP. NO. 1341, 94th Cong., 2nd sess. 35, (1976), reprinted in HOUSE COMM. ON INTERSTATE AND FOREIGN COMMERCE, LEGISLATIVE HISTORY OF THE TOXIC SUBSTANCES CONTROL ACT, 1976, at 422 (1976).) However, the legislative history of the term and overall Congressional policy on the purposes of premanufacture review of new chemical substances indicate that a determination of unreasonable risk of injury to health or the environment involves a balancing of a number of relevant considerations.

The Agency's decision to require exposure limits and controls as a condition of this exemption is based on a balancing of the risks of manufacture, processing, distribution, use, and disposal of the new chemical substance and the benefits that each of the rule's conditions will provide. EPA has determined that new chemical substances used in or for the manufacture and processing of instant photographic or peel-apart film articles will not present an unreasonable risk of injury to health or the environment under the conditions of this exemption rule. In making the finding, the Agency considered the information provided by Polaroid in its application, the PMNs submitted for new chemical substances used in or for the manufacture and processing of instant photographic and peel-apart film articles, and the comments received in response to the notice of proposed rulemaking.

1. *Manufacturing and processing.* The potential for exposure to the new chemical substances included in the exemption category is greatest for workers involved in the manufacture and processing of these new chemical substances. The likelihood of exposure is a function of the chemical's physical state and the nature of the manufacturing or processing operation. Exposure controls are extensively used in the instant photographic chemical industry to protect the worker and to ensure the purity and quality of the final product. PMN data indicate that new chemical substances manufactured and processed in this industry are generally produced in small volumes and incorporated into the final photographic film article in small amounts by processes that limit worker exposure.

Nevertheless, these conditions cannot guarantee that exposure will always be low in these operations. Therefore, the rule requires that manufacturers designate special production areas and comply with the rule's exposure limits for manufacturing and processing operations that may present significant potential for direct inhalation exposure. As explained in IV.D. of this preamble, EPA believes that these levels will ensure low risks in nearly all cases. However, to ensure against cases where a new chemical substance might have the potential to pose a significant risk despite the exposure limits, EPA will review the suitability of the exposure limits for each chemical substance manufactured under the exemption. The Agency will be able to halt production of a new chemical substance if it determines that the exposure might result in an unreasonable risk of injury. Because the major workplace concerns are likely to be for chronic effects manifesting themselves as a result of long-term, low-level exposure, this provision will significantly reduce the possibility of risk. While these requirements do not guarantee a situation of no risk, together they will ensure no unreasonable risk from the new chemical substances manufactured under the exemption.

EPA believes that the exposure limits are achievable through existing engineering controls in the instant photographic industry, supplemented by personal safeguards and work practices. The rule's requirement that manufactures use work practices and personal safeguards appropriate for the specific chemicals will effectively limit exposure and supplement the protection afforded by engineering controls. This overall approach will protect workers from exposure to the new chemical substance by limiting release of the chemical substance and the opportunity for exposure.

EPA believes that training programs, as required by the rule, will contribute to the effective control of exposure. The rule's requirement that signs identify the special production area and that labels identify the new chemical substance will also limit the risk of exposure by informing workers of the need for implementing safeguards and controls.

Based on the information submitted by Polaroid, EPA believes there will be no difference in the exposure to new chemical substances during the manufacture and processing of the new chemical substances used in or for instant photographic film articles and those used in or for peel-apart film articles when they are manufactured and processed under the rule's controls and safeguards.

2. *Distribution and use.* Under normal conditions, the construction of instant photographic film articles and the nature of their use will prevent any significant exposure to workers and consumers. These instant photographic film articles contain very small quantities and low concentrations of new chemical substances. They are designed so that the new chemical substance will remain sealed in the inert envelope of the article during normal distribution, use, and disposal. Therefore, EPA believes that even if the instant photographic film article is misused by consumers, there will be little human or environmental exposure to the new chemical substances.

The Agency recognizes that the nature, distribution, and use of peel-apart film articles are significantly different from instant photographic film articles such as Polaroid's SX–70 film article. While the rule's workplace controls and safeguards will be appropriate for the new chemical substances used in the manufacture and processing of peel-apart film articles, the distribution and consumer use of the peel-apart film articles increase the risk of human exposure. Therefore, the rule requires that chemicals used in or for peel-apart film articles complete premanufacture review before the peel-apart film articles are distributed in commerce.

3. *Environmental release and disposal.* Typically, the production volumes of the chemical substances in the exemption category are low, and the Agency believes that the practices currently followed in the industry can limit release to acceptable levels. Therefore, EPA has not set specific standards or limitations on release; rather, it believes that a general requirement that companies use appropriate controls (considering the toxicity and physical-chemical properties of the chemical) will effectively reduce risks to acceptable levels.

However, because the toxicological properties and production volumes of new chemical substances manufactured and processed under this exemption may vary, EPA believes that the manufacturers should not have total discretion to determine appropriate measures for controlling release. Therefore, in the exemption notice, they must provide information on the methods used to control or limit the discharge to water for each new chemical substance manufactured and processed under the exemption. EPA will review this information and prohibit further manufacture where it finds release may present an unreasonable risk. Because EPA expects that release rates and the volume of release will generally be low, the Agency will have adequate time to respond to any unusual situation before irreparable harm occurs. The final rule also requires that process waste from the special production area containing the new chemical substance be treated as hazardous waste and disposed of in accordance with the requirements of the Resource Conservation and Recovery Act (RCRA). The Agency believes that this approach is reasonable for the category of chemical substances and the industry segment covered by this rule.

Because the developed photograph is retained, there will be little consumer disposal of the instant photographic film article. The release of a new chemical substance to the environment due to consumer disposal is expected to occur at an extremely slow rate, in extremely low volumes, and at widely dispersed sites. The Agency believes that the small amount of new chemical substance contained in each instant photographic film article and the limited opportunity for human exposure and environmental release support the finding that these new chemical substances will not present an unreasonable risk of injury to health and the environment due to disposal by the consumer.

4. *Summary.* There is considerable judgment involved in making a finding of no unreasonable risk. The Agency has based its determination that this exemption category will not present an unreasonable risk of injury to health or the environment on a qualitative balancing of factors. The rule does not guarantee a situation of no risk. However, the Agency believes that the controls and limits of this rule will adequately limit exposure to new chemical substances in the exemption categories.

EPA has reviewed over 80 PMNs for photographic chemical substances. None of these chemical substances presented a high hazard concern. If the same types of chemical substances are manufactured under the conditions and limits of this rule, they are unlikely to present a risk of injury to humans or the environment. As an added safeguard, the rule allows EPA to review each new chemical substance manufactured under the rule and to prohibit use of the exemption for any new chemical substance which, in spite of the controls and limits of the rule, may present an unreasonable risk of injury to health or the environment.

The new chemical substances produced under the exemption will benefit both industry and consumers, because instant photography has consumer and industrial applications. These new chemical substances are likely to represent improvements in instant photography technology which will improve product quality and increase efficiency. Comparing these benefits with the low risk of injury from these new chemical substances when manufactured, processed, distributed, used, and disposed of under this rule, the Agency has concluded that these low risks are not unreasonable. To further limit risks from these substances would require more extensive and expensive controls. EPA believes that these additional controls would greatly increase the cost of the resulting products with only a marginal reduction of the risk where a risk existed. The Agency believes that the controls and limits of this rule will adequately protect against risks while retaining the benefits of the instant photographic products involved.

This finding of no unreasonable risk is not a statement of general Agency policy concerning the appropriate conditions for a section 5(h)(4) exemption. Rather, this final rule represents only one possible approach to a finding of no unreasonable risk.

IV. Major Issues

A. The Category

Under section 26(c) of TSCA, any action EPA may take on a single chemical substance, it may also take on a category of chemical substances. Polaroid Corporation's original proposal would have limited the exemption to new chemical substances manufactured and processed by Polaroid Corporation and used in or for its SX–70 instant photographic film article. Based on the information in Polaroid's application and comments received in response to the notice of receipt of the application, EPA determined that the terms and conditions of the exemption would result in no unreasonable risk if applied to a broader category of new chemical substances. Therefore, EPA originally proposed to define the exemption category to include all new chemical substances used in or for the manufacture and processing of instant photographic film articles, including intermediates.

In the proposal, the Agency raised the possibility of including chemical substances used in or for the manufacture and processing of peel-apart film articles in the final exemption rule and solicited comment on this issue. Some commenters urged EPA to expand the category to include these new chemical substances. As explained below, EPA has concluded that it is appropriate to expand the exemption category to include these chemical substances because the manufacture and processing of such chemical substances are substantially similar to those operations involving instant photographic film articles. The exemption category of the final rule therefore includes all new chemical substances used in or for the manufacture and processing of instant photographic or peel-apart film articles which are manufactured, processed,

distributed, used, and disposed of under the terms of this exemption. The exemption category is not based on the physical-chemical or toxicological properties of particular chemical substances in the category. Instead, the category is based on the likelihood of limited exposure throughout each chemical substance's life cycle.

Some commenters urged EPA to expand the category to include all new chemical substances used in or for all sensitized photographic articles. However, the Agency does not have sufficient information on the manufacture, processing, distribution, use, and disposal of these chemical substances in the record to make the necessary finding.

B. Applicability of the Exemption

The proposed rule would have applied to any manufacturer of new chemical substances used in or for the manufacture and processing of instant photographic film articles. The Agency has limited the applicability of this final rule to manufacturers of instant photographic or peel-apart film articles who manufacture and process new chemical substances used in or for the manufacture and processing of these film articles. This change responds to comments that the Agency should not grant exemptions to manufacturers unless EPA has a reasonable basis to conclude that they could comply with terms of the rule. The Agency is aware of only two manufacturers of instant photographic and peel-apart film articles, Kodak and Polaroid, who manufacture and process new chemical substances used in or for these film articles. EPA is familiar with the manufacturing practices and policies of these manufacturers. The Agency's review of PMNs submitted by these manufacturers has demonstrated that these manufacturers are capable of complying with the rule's conditions.

C. Peel-Aparts

The Polaroid Corporation asked EPA to expand the definition of instant photographic film article to include peel-apart film articles. To support this request, Polaroid submitted a risk assessment document. The Agency reviewed this document and included it in the public record of this rulemaking.

Peel-apart film articles are used and disposed of differently than instant photographic film articles. While the instant photographic film articles remain sealed during distribution and use, portions of the peel-apart film article—such as the developed photosensitive component, the reagent pod, and the reagent trap—are removed and discarded by the user after the photographic image is formed. The design of the peel-apart film article could lead to dermal exposure of consumers and environmental release of new chemical substances contained in the peel-apart film article.

However, EPA believes that the rule's exposure limits and safeguards for manufacture and processing will be appropriate for the new instant photographic chemicals, whether they are used in or for the manufacture and processing of peel-apart film articles or in or for instant photographic film articles. Based on the information currently available, EPA expects that the new chemical substances used in the two types of film article are likely to be similar, if not identical. Therefore, EPA believes that the manufacture and processing of chemicals for peel-apart film articles under the terms of this exemption will not present an unreasonable risk of injury to health or the environment.

For the above reasons, the final rule distinguishes between instant photographic and peel-apart film articles. The rule permits eligible manufacturers to manufacture and process new chemical substances used in or for instant photographic or peel-apart film articles. However, before the peel-apart film article containing a new chemical substance may be distributed in commerce, the manufacturer must comply with the requirements of section 5(a)(1) of TSCA, and a PMN for the new chemical substance must complete PMN review without the Agency taking action to limit distribution or use.

This is similar to the exemption provisions Polaroid originally proposed for their SX–70 film article. This provision will provide an economic benefit to the manufacturer because it will reduce the costs associated with PMN delay. The rule's controls and safeguards will ensure that there is no unreasonable risk of injury to human health or the environment from the manufacture, processing, or industrial disposal of the new chemical substance.

D. Exposure Limits

The proposed rule sets limits on exposure for manufacturing operations in the special production area. Commenters criticized these exposure limits as being unsupported. Some commenters stated that the exposure limits would not be appropriate for all new chemical substances.

In the proposal, EPA recognized that the exposure limits may not be appropriate for the exceptional situation where a new chemical substance is extremely toxic. However, the exposure limits are not intended to ensure that the new chemical substances will present no risk to the employee. The limits are objective performance standards, intended only to limit the risk associated with the manufacture and processing of new chemical substances of unknown toxicity. The exposure limits compare favorably with recognized permissible exposure limits for highly toxic chemical substances like carbon disulfide (vapor) and lead and cadmium (particulates).

As discussed earlier, EPA will have the opportunity to review new chemicals manufactured under this exemption and will be able to halt the production of chemical substances that may present an unreasonable risk. EPA's review of photographic chemicals in the PMN files, mentioned earlier, indicates that few new photographic chemicals are likely to raise significant levels of concern and require such action. Therefore, the Agency believes that the rule's exposure limits are conservative limits and are suitable for the new chemical substances that are likely to be manufactured under this exemption. The manufacturer may file a PMN for the exempt new chemical substance if it wishes to discontinue use of the exposure limits. If EPA takes no action during the PMN review period, the manufacturer may reply on the controls and safeguards described in the PMN. The final rule retains the exposure limits contained in the proposed rule.

E. Respirators

The proposed rule required workers to use a continuous flow air-line respirator or a pressure demand self-contained breathing apparatus while in the special production area. Some commenters criticized this requirement as unnecessary. One commenter suggested that the rule permit the use of cannister-type respirators.

The final rule retains the proposal's requirement that under some circumstances, workers in the special production area must use respiratory protection. However, unlike the proposed rule, which would have required use of an air-line respirator or pressure demand breathing apparatus, the final rule allows the manufacturer to determine the appropriate type of respirator protection. Air-line respirators and pressure demand breathing apparatus are effective against toxic or irritating vapors. However, EPA is concerned about exposure to particulates as well as vapors. The current National Institute of Occupational Safety and Health (NIOSH) certified equipment list cited in the rule details the respirators that are

appropriate for various conditions and circumstances of exposure. All of the particulate respirators are adequate to provide the level of protection required by this rule. EPA believes that the final rule's respirator requirement is less restrictive than the proposal's provision but still provides a considerable margin of safety for vapors and particulates of unknown toxicity.

F. Environmental Release and Disposal

1. *Release to land.* The proposed rule would have required manufacturers to evaluate and dispose of all process waste in accordance with the requirements of the Resource Conservation and Recovery Act (RCRA). The small generator exemption in 40 CFR 261.5 would not have applied.

EPA has revised somewhat the requirements for control of process wastes. Section 723.175(h)(1) of the final rule requires that all process waste from the manufacture and processing of the new chemical substance in the special production area be treated as hazardous waste, regardless of whether it meets the criteria for hazardous waste in current RCRA regulations. The Agency adopted this approach because of the potential risks that may be associated with new chemical substances of unknown chronic toxic potential. These new chemical substances may not possess the specific properties that are used to determine whether a waste is hazardous under existing regulations, yet they may have chronic toxic potential. (Because RCRA standards focus on the presence of specific chemicals known to be toxic, or on properties such as ignitability or corrosivity, these standards may not adequately address the potential toxicity of new, uncharacterized chemicals.)

The approach in this rule ensures that process waste containing a new chemical substance will be disposed of in a fashion that will not present an unreasonable risk of injury to health or the environment. The Agency believes that this is a reasonable approach to limit the risk associated with disposal of the new chemical substances manufactured and processed under the terms of this exemption.

Some commenters believed that the Agency's reliance on RCRA standards is inappropriate or unnecessary. Therefore, EPA considered requiring several different disposal control methods, including imposing a volume limit on the amount of new chemical substance that could be disposed of to land, rather than using the RCRA standards. However, the Agency decided that reliance on RCRA standards will afford adequate disposal safeguards while limiting the burden on manufacturers.

2. *Release to air.* The proposed rule required that process emissions to air be vented through control devices appropriate for the new chemical substances. In the proposal, EPA solicited comment on whether there should be a limit on the release to air of new chemical substances and whether alternative methods of controlling air release are available. EPA received very little comment on this particular issue. No commenters suggested an alternative method, although some commenters stated that limits were unnecessary. EPA considered imposing a limit on the amount of each new chemical substance released to air or a limit on air release from each site. The Agency did not adopt this strategy because it believes that the likelihood of significant exposure due to air release will be low. In addition, specific limits would be difficult to develop and would involve difficulties in compliance monitoring. The final rule retains the proposal's approach to air release and requires the use of appropriate controls.

3. *Release to water.* The proposed rule would have placed a limit on the concentration of each new chemical substance in the effluent streams released to a POTW. Appropriate methods of treatment, selected by the manufacturer, would have been used to control direct release. One commenter opposed this approach, arguing that the limits would not be adequate for highly toxic substances and that the provision placed too much reliance on the manufacturer's good faith discretion. Other commenters suggested that the limits on release to POTWs were unnecessary and would not be appropriate for all new chemical substances manufactured and processed under the exemption.

EPA considered the arguments raised by the comments, the available information on the environmental release of photographic chemicals, and its experience in the review of PMN chemicals in this category. In general, EPA believes that release of new photographic chemicals to POTWs will be low and that available methods of pretreatment are adequate, given the likely toxicity of these chemicals. Therefore, the final rule does not set specific standards for release to a POTW, but does require that the manufacturer use appropriate pretreatment methods before discharge to a POTW or any receiving water body. The pretreatment method must be adequate to prevent structural damage to, obstruction of, or interference with the operation of the POTW. In the case of direct release, the treatment method must be appropriate for the new chemical substance's physical-chemical properties and potential toxicity. The rule also requires that the exemption notice submitted for each new chemical substance summarize the methods of treatment that the manufacturer will use. EPA will review the methods and ensure that they are indeed appropriate for the specific new chemical substance.

EPA believes that this revision of the rule addresses the concerns of the commenters. It recognizes the utility of a case-by-case determination of discharge controls and limits while avoiding unnecessary restrictions. Manufacturers are still subject to existing standards of regulations. If the Agency determines that the reported discharge strategy may be inappropriate for a particular chemical substance, it will prohibit further use of the exemption under the authority of § 723.175(m) of the rule.

G. Notice and Reporting

The proposed rule would have required manufacturers to submit an exemption notice before beginning to manufacture or process a new chemical substance under the terms of the exemption. This notice would contain information on the new chemical substance and a certification of compliance with the terms of the exemption. Some commenters criticized the content of the notice and suggested that its information requirements were too detailed.

The rule retains the proposal's requirements. In addition, the final rule requires that the exemption notice include an estimate of the maximum annual production volume and a description of the methods used to control or treat water discharge. The Agency believes that the information required in the notice is the minimum necessary for effective oversight of this exemption. EPA will review the information in this notice to ensure that the new chemical substance will not present an unreasonable risk of injury to health or the environment.

H. Recordkeeping

The proposed rule would have required manufacturers to keep records of new chemical substances they manufactured and processed under the exemption for a period of 30 years from the final date of manufacture. These records would contain information on production volume, exposure monitoring, worker exposure, and the use of controls and safeguards.

Some commenters thought that these requirements were unnecessarily

burdensome while others supported the recordkeeping requirements of the proposal. EPA believes that, since no annual reporting is required, these requirements are reasonable and necessary for enforcing the rule.

There is often a long latent period between exposure to a chemical substance and any adverse effects due to that exposure. Therefore, it is reasonable to require that manufacturers retain records for a substantial length of time. EPA has attempted to minimize the specific records required and to make the recordkeeping requirements consistent with those already required under other authorities. The final rule retains the recordkeeping requirements of the proposal.

EPA intends to institute and audit program for this exemption, under which it will review the records of companies manufacturing chemicals under the exemptions. EPA will conduct this program under the inspection authority of TSCA section 11.

I. Amendment and Repeal

The proposed rule would have given EPA the authority to amend or repeal the exemption. Some commenters were confused about the significance of this authority and how EPA would use it. TSCA requires that any amendment or repeal of an exemption rule follow the rulemaking procedures of sections 6(c)(2) and (3) of the Act. EPA will consider repeal or amendment of the rule if it learns that the conditions of the exemption are not adequate to prevent an unreasonable risk of injury to health or the environment. To repeal or amend this rule, the Agency need not actually demonstrate an unreasonable risk but only the possibility that an unreasonable risk could exist.

EPA may also use the amendment or repeal process to make either general or specific changes in the substantive content of the rule. For example, amendment of the rule could involve expansion, restriction, or other modification of the rule's substantive terms. EPA could also amend the specific terms of the rule to expand the scope or applicability of the exemption category. This repeal or amendment could affect new chemical substances that are eligible for the exemption but are not yet in production, as well as chemical substances that are already being produced under the terms of the exemption.

J. Prohibition of use of the exemption

Repeal or amendment will not be used to respond to individual exemption notices. Instead, EPA will use the rule's authority to prohibit use of the exemption whenever the Agency determines that a new chemical substance may present an unreasonable risk of injury to health or the environment. This is a new section of the rule, although similar language appeared in the proposal. The new section responds to comments that the Agency failed to distinguish adequately between the authority to amend and repeal the rule and the authority to prohibit use of the exemption for individual chemical substances.

K. Inventory

The TSCA Chemical Substance Inventory is a list of chemical substances in commerce. Chemical substances not included on the Inventory are subject to the premanufacture notification requirements of TSCA section 5(a)(1).

New chemical substances manufactured or processed under this exemption will not be added to the Inventory. Therefore, manufacturers who wish to manufacture exempt chemicals outside the scope of the exemption will be required to first submit premanufacture notices. After review of the premanufacture notice and upon receipt of a commencement of manufacture notice, these chemical substances will be added to the Inventory.

V. Public Record

EPA has established a public record of this rulemaking (Docket Number: OPTS–50028). It is available for inspection in the OPTS Reading Room, Rm. E–107, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

The public record includes: (1) All documents and information considered by the Agency in reviewing Polaroid's exemption application, except confidential business information contained in PMNs; (2) the comments received in response to the November 3, 1981 proposal; (3) the transcript of the public hearing held on December 15, 1981; and (4) a support document containing the Agency's response to the major public comments on this rule.

While confidential business information contained in PMNs was considered by the Agency in developing this rule, the Agency does not believe that it is necessary to disclose this information in this rulemaking. A nonconfidential report of our review of the PMN data is included in the public record.

The November 3, 1981 proposal listed the documents contained in the public record. The following documents have since been added to the public record:

39. SRI International, Analysis of Application from Polaroid Corporation for Exemption of Polaroid Corporation from TSCA Requirement: Subtask 2: "Perform a Market Analysis of the Instant Photographic Chemical Industry," dated October 30, 1981.

40. Public Comments in Response to November 3, 1981 Federal Register Proposed Rule (46 FR 54585), ten comments, dated December 3, 1981.

41. ICF, Incorporated, "Data Provided by PMN Submitters and Costs to Provide the Data," dated December 11, 1981.

42. "Transcript of Public Hearing on Proposed Rule to Exempt Chemicals Used in or for Instant Photographic Film Articles under Section 5(h)(4)," dated December 15, 1981.

43. Eastman Kodak, "Chemical Assessment Program of Eastman Kodak," dated February 9, 1982.

44. USEPA–OTS, "Memorandum from Joseph DeSantis to Edward Klein Describing March 23, 1982 Telephone Conversation with Jeffrey Bates, Attorney, Polaroid Corporation," dated March 29, 1982.

45. USEPA–OTS, "Economic Analysis of the Final Section 5(h)(4) Exemption Rule for Chemicals Used in or for Instant Photographic Film Articles," dated April 1, 1982.

46. Springborn Management Services, Inc., "The Cost of Engineering Controls (associated with proposed exemption rule for instant photographic chemicals): Final Report," dated April 2, 1982.

47. USEPA–OTS, "Nonconfidential Summary of Analysis of 80 Photographic PMNs received during 1981–82," dated April 8, 1982.

48. USEPA–OTS, "Summary of Response to Major Public Comments," dated April 27, 1982.

VI. Application of Executive Order 12291, Paperwork Reduction Act, and the Regulatory Flexibility Act

Under Executive Order 12291, EPA must determine whether a regulation is "major" and thus subject to the Regulatory Impact Analysis requirement. This regulation is not major because is does not satisfy any of the criteria for a major regulation outlined in the Executive Order. The annual impact of this rule on the economy will not exceed $100 million. EPA believes that the savings from reducing or eliminating PMNs for chemical substances used in or for the manufacture or processing of instant photographic and peel-apart film articles will outweigh the cost of submitting an

exemption application. No particular geographic region will be burdened. The exemption rule will not affect government agencies. The exemption will improve the ability of domestic manufacturers to compete with foreign competitors and will encourage domestic innovation. EPA expects that the net effect of this exemption rule on the economy will be positive.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

The requirements of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*, do not apply because the rule's recordkeeping and reporting requirements apply to fewer than ten companies. Also, under the provisions of 5 U.S.C. 605(b), the Regulatory Flexibility Act, EPA certifies that the attached rule will not have a significant economic impact on a substantial number of small entities. The two companies directly affected by the rule are not small businesses. Because only manufacturers of instant photographic and peel-apart film articles will be eligible for the exemption, custom chemical companies that supply chemical substances to these manufacturers would not be eligible for the exemption and therefore may be adversely affected. It is possible that some of these companies may be small manufacturers. Because the identity of these custom companies is considered confidential, EPA does not know their exact size. However, EPA believes that only a few companies—probably no more than ten—have been involved in custom chemical manufacture for the companies directly affected by the exemption; furthermore, most of the companies that the Agency has been able to identify as possible suppliers are large companies. Therefore, a certified above, this rule will not have a significant impact on a substantial number of small entities.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

List of Subjects in 40 CFR Part 723

Chemicals, Environmental protection, Premanufacture notification, Hazardous materials, Recordkeeping and reporting requirements.

Dated: May 26, 1982.

Anne M. Gorsuch,

Administrator.

Therefore, Chapter I of 40 CFR is amended by adding a new Part 723 consisting at this time of Subpart B, § 723.175, to read as follows:

PART 723—PREMANUFACTURE NOTIFICATION EXEMPTIONS

Subpart A [Reserved]

Subpart B—Specific Exemptions

Sec.

723.175 Chemical substances used in or for the manufacture or processing of instant photographic and peel-apart film articles.

Authority: Sec. 5, Toxic Substances Control Act, 15 U.S.C. 2604.

Subpart B—Specific Exemptions

§ 723.175 Chemical substances used in or for the manufacture or processing of instant photographic and peel-apart film articles.

(a). *Purpose and scope.* (1) This section grants an exemption from the premanufacture notice requirements of section 5(a)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2604(a)(1)(A)) for the manufacture and processing of new chemical substances used in or for the manufacture or processing of instant photographic and peel-apart film articles.

(2) To manufacture a new chemical substance under the terms of this exemption, a manufacturer of instant photographic or peel-apart film articles must:

(i) Submit an exemption notice when manufacture begins under paragraph (i) of this section.

(ii) Comply with certain requirements to limit exposure to the new chemical substance under paragraphs (e), (f), (g), and (h) of this section.

(iii) Comply with all recordkeeping requirements under paragraph (j) of this section.

(b) *Definitions.* (1) "Act" means the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).

(2) An "article" is a manufactured item (i) which is formed to a specific shape or design during manufacture, (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (iii) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in § 710.2 of this chapter except that fluids and particles are not considered articles regardless of shape or design.

(3) The term "byproduct," "EPA," "impurities," "person," and "site" have the same meanings as in § 710.2 of this chapter.

(4) The term "category of chemical substances" has the same meaning as in section 26(c)(2) of the Act (15 U.S.C. 2625).

(5) The terms "chemical substance," "distribute in commerce," "distribution in commerce," "environment," "manufacture," "new chemical substance," and "process" have the same meanings as in section 3 of the Act (15 U.S.C. 2602).

(6) "Director of the Office of Toxic Substances" means the Director of the EPA Office of Toxic Substances or any EPA employee designated by the Office Director to carry out the Office Director's functions under this section.

(7) The term "exemption category" means a category of chemical substances for which a person(s) has applied for or been granted an exemption under section 5(h)(4) of the Act (15 U.S.C. 2604).

(8) The term "instant photographic film article" means a self-developing photographic film article designed so that all the chemical substances contained in the article, including the chemical substances required to process the film, remain sealed during distribution and use.

(9) "Intermediate" means any chemical substance which is consumed in whole or in part in a chemical reaction(s) used for the intentional manufacture of another chemical substance.

(10) "Known to or reasonably ascertainable" means all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know, our could obtain without unreasonable burden or cost.

(11) The term "peel-apart film article" means a self-developing photographic film article consisting of a positive image receiving sheet, a light sensitive negative sheet, and a sealed reagent pod containing a developer reagent and designed so that all the chemical substances required to develop or process the film will not remain sealed within the article during and after the development of the film.

(12) "Photographic article" means any article which will become a component of an instant photographic or peel-apart film article.

(13) "Special production area" means a demarcated area within which all manufacturing, processing, and use of a new chemical substance takes place, except as provided in paragraph (f) of this section, in accordance with the requirements of paragraph (e) of this section.

(14) "Test data" means:

(i) Data from a formal or informal study, test, experiment, recorded

observation, monitoring, or measurement.

(ii) Information concerning the objectives, experimental methods and materials, protocols, results, data analyses (including risk assessments), and conclusions from a study, test, experiment, recorded observation, monitoring, or measurement.

(15) "Used in or for the manufacturing or processing of an instant photographic or peel-apart film article," when used to describe activities involving a new chemical substance, means the new chemical substance (i) is included in the article, or (ii) is an intermediate to a chemical substance included in the article or is one of a series of intermediates used to manufacture a chemical substance included in the article.

(16) "Wet mixture" means a water or organic solvent-based suspension, solution, dispersion, or emulsion used in the manufacture of an instant photographic or peel-apart film article.

(c) *Exemption category.* The exemption category includes new chemical substances used in or for the manufacture or processing of instant photographic or peel-apart film articles which are manufactured and processed under the terms of this section.

(d) *Applicability.* This exemption applies only to manufacturers of instant photographic or peel-apart film articles who:

(i) Manufacture the new chemical substances used in or for the manufacture or processing of the instant photographic or peel-apart film articles.

(ii) Limit manufacture and processing of a new chemical substance to the site(s) listed in the exemption notice for that new chemical substance submitted under paragraph (i) of this section.

(iii) Comply with the requirements of paragraphs (e), (f), (g), (h), and (j) of this section.

(iv) Do not distribute in commerce or use a peel-apart film article containing a new chemical substance until submission of a premanufacture notice under section 5(a)(1)(A) of the Act (15 U.S.C. 2604) and until the review period for the notice has ended without EPA action to prevent distribution or use.

(e) *Conditions of manufacture and processing in the special production area.* All manufacturing, processing, and use operations involving the new chemical substance must be performed in a special production area under the conditions set forth in this paragraph until the new chemical substance has been incorporated into a wet mixture, photographic article, or instant photographic or peel-apart film article.

(1) *Exposure limits.* In the special production area, the ambient air concentration of the new chemical substance during manufacture, processing, and use cannot exceed an 8-hour time weighted average (TWA) of 10 ppm for gases and vapors and 50 $\mu g/m^3$ for particulates, with an allowable TWA excursion of 50 percent above those concentrations for a duration of 30 minutes or less.

(2) *Respiratory protection*—(i) *Respirator requirement.* Except as specified in paragraph (e)(2)(ii) of this section, each person in the special production area must wear an appropriate respiratory protection device to protect against dusts, fumes, vapors, and other airborne contaminants, as described in 29 CFR Part 1910.134. Selection of an appropriate respirator must be made according to the guidance of American National Standard Practices for Respiratory Protection Z88.2–1969 and the NIOSH Certified Equipment List, U.S. Department of Health and Human Services, NIOSH publication No. 80–144.

(ii) *Waiver of respirator requirement.* Employees are not required to wear respirators if monitoring information collected and analyzed in accordance with paragraph (e)(3) of this section demonstrates that the ambient 8-hour TWA concentration of the new chemical substance in the area is less than 1 ppm for gases and vapors and 5 $\mu g/m^3$ for particulates with an allowable TWA excursion of 50 percent above these concentrations for a duration of 30 minutes or less.

(iii) *Quantitative fit test.* Each respirator must be issued to a specific individual for personal use. A quantitative fit test must be performed for each respirator before its first use by that person in a special production area.

(3) *Monitoring*—(i) *When to monitor.* (A) When suitable sampling and analytic methods exist, periodic monitoring in accordance with this paragraph must be done to ensure compliance with the exposure limits of paragraphs (e)(1) and (2)(ii) of this section.

(B) When suitable sampling and analytic methods do not exist, compliance with the exposure limits of paragraph (e)(1) and the requirements of paragraph (e)(10) of this section must be determined by an evaluation of monitoring data developed for a surrogate chemical substance possessing comparable physical-chemical properties under similar manufacturing and processing conditions.

(ii) *Monitoring methods.* A suitable air sampling method must permit personal or fixed location sampling by conventional collection methods. A suitable analytic method must have adequate sensitivity for the volume of sample available and be specific for the new chemical substance being monitored. If chemical-specific monitoring methods are not available, nonspecific methods may be used if the concentration of the new chemical substance is assumed to be the total concentration of chemical substances monitored.

(iii) *Monitoring frequency.* (A) When suitable air sampling and analytical procedures are available, monitoring must be done in each special production area during the first three 8-hour work shifts involving the manufacture or processing of each new chemical substance. Thereafter, monitoring must be done in each special production area for at least one 8-hour period per month, during a production run in which the new chemical substance is manufactured or processed. Samples must be of such frequency and pattern as to represent with reasonable accuracy the mean level and maximum 30-minute level of employee exposure during an 8-hour work shift. In monitoring for an 8-hour work shift or the equivalent, samples must be collected periodically or continuously for the duration of the 8-hour work shift. Samples must be taken during a period which is likely to represent the maximum employee exposure.

(B) If the manufacturer demonstrates compliance with the exposure limits for 3 consecutive months, further monitoring of the identical process must be performed only every 6 months thereafter, unless there is a significant change in the process, process design, or equipment. If there is such a change, the manufacturer must begin monitoring again according to the schedule in paragraph (e)(3)(iii)(A) of this section.

(iv) *Location of monitoring.* Air samples must be taken so as to ensure that the samples adequately represent the ambient air concentration of a new chemical substance present in each worker's breathing zone.

(4) *Engineering controls and exposure safeguards.* Engineering controls such as, but not limited to, isolation, enclosure, local exhaust ventilation, and dust collection must be used to ensure compliance with the exposure limits prescribed in paragraphs (e)(1) or (e)(2)(ii) of this section.

(5) *Training, hygiene, and work practices*—(i) *Training.* No employee may enter a special production area before the completion of a training program. The training program must be

adapted to the individual circumstances of the manufacturer and must address: The known physical-chemical and toxicological properties of the chemical substances handled in the area; procedures for using and maintaining respirators and other personal safeguards; applicable principles of hygiene; special handling procedures designed to limit personal exposure to, and inadvertent release of, chemical substances; and procedures for responding to emergencies or spills.

(ii) *Hygiene.* Appropriate standards of hygiene must be observed by all employees handling a new chemical substance in manufacturing, processing, or transfer operations. The manufacturer must provide appropriate facilities for employee changing and wash-up. Food, beverages, tobacco products, and cosmetics must not be allowed in special production areas.

(iii) *Work practices.* Operating procedures such as those related to chemical weighing and filtering, or the charging, discharging and clean-up of process equipment, must be designed and conducted to ensure compliance with the exposure limits prescribed in paragraph (e)(1) or (e)(2)(ii) of this section. Written procedures and all materials necessary for responding to emergency situations must be immediately accessible to all employees in a special production area. Any spill or unanticipated emission must be controlled by specially trained personnel using the equipment and protective clothing described in paragraph (e)(6) of this section.

(6) *Personal protection devices.* All workers engaged in the manufacture and processing of a new chemical substance in the special production area must wear suitable protective clothing or equipment, such as chemical-resistant coveralls, protective eyewear, and gloves.

(7) *Caution signs.* Each special production area must be clearly posted with signs identifying the area as a special production area where new chemical substances are manufactured and processed under controlled conditions. Each sign must clearly restrict entry into the special production area to qualified personnel who are properly trained and equipped with appropriate personal exposure safeguards.

(8) *Removal for storage or transportation.* A new chemical substance that is not incorporated into a wet mixture, photographic article, or instant photographic or peel-apart film article may be removed from the special production area for purposes of storage between operational steps or for purposes of transportation to another special production area. Such storage or transportation must be conducted in a manner that limits worker and environmental exposure through the use of engineering controls, training, hygiene, work practices, and personal protective devices appropriate to the chemical substance in question.

(9) *Labeling.* (i) Any new chemical substance removed from a special production area or stored or transported between operational steps must be clearly labeled. The label must show the identity of the new chemical substance or an appropriate identification code, a statement of any known hazards associated with it, a list of special handling instructions, first aid information, spill control directions, and where applicable, the appropriate U.S. Department of Transportation notations.

(ii) No label is required if the new chemical substance has been incorporated into a photographic article, or if it is contained in a sealed reaction vessel or pipeline, or if it has been incorporated into an instant photographic or peel-apart film article.

(10) *Areas immediately adjacent to the special production area.* The ambient air concentration of the new chemical substance in areas immediately adjacent to the special production area must not exceed the exposure limit established in paragraph (e)(2)(ii) of this section for waiver of respirator protection within the special production area. Periodic monitoring in accordance with paragraph (e)(3) of this section must be performed in immediately adjacent areas where it is reasonable to expect a risk of inhalation exposure.

(f) *Conditions of processing outside the special production area.* A wet mixture may be incorporated into a photographic article or an instant photographic or peel-apart film article outside the special production area under the conditions listed in this paragraph:

(1) *Engineering controls and exposure safeguards.* Engineering controls must limit the exposure to a new chemical substance contained in a wet mixture.

(2) *Training, hygiene and work practices*—(i) *Training.* Training of employees involved in the handling of wet mixtures containing a new chemical substance must be adapted to the individual circumstances of the employees' activities and must address: procedures for using personal exposure safeguards, applicable principles of hygiene, handling procedures designed to limit personal exposure, and procedures for responding to emergencies and spills.

(ii) *Hygiene.* Appropriate standards of hygiene that limit exposure must be observed by all employees handling wet mixtures that contain new chemical substances.

(iii) *Work practices.* Work practices and operating procedures must be designed to limit exposure to any new chemical substance contained in wet mixtures. Any spills or unanticipated releases of a wet mixture must be controlled by trained personnel wearing appropriate protective clothing or equipment such as gloves, eye protection, and, where necessary, respirators or chemically imprevious clothing.

(3) *Personal protection devices.* All workers engaged in the processing of a wet mixture containing a new chemical substance must wear suitable protective clothing or equipment such as coveralls, protective eyewear, respirators, and gloves.

(g) *Incorporation of photographic articles into instant photographic and peel-apart film articles.* A photographic article may be incorporated into the instant photographic or peel-apart film article outside the special production area. The manufacturer must take measures to limit worker and environmental exposure to new chemcial substances during these operations using engineering controls, training, hygiene, work practices, and personal protective devices.

(h) *Environmental release and waste treatment*—(1) *Release to land.* Process waste from manufacturing and processing operations in the special production area that contain a new chemical substance are considered to be hazardous waste and must be handled in accordance with the requirements of Parts 262 through 267 and Parts 122 and 124 of this chapter.

(2) *Release to water* All wastewater or discharge which contain the new chemcial subtance must be appropriately pretreated before release to a Publicly Owned Treatment Works (POTW) or other receiving body of water. In the case of release to a POTW, the pretreatment must prevent structural damage to, obstruction of, or interference with the operation of the POTW. The treatment of direct release to a receiving body of water must be appropriate for the new chemical substance's physical-chemical properties and potential toxicity.

(3) *Release to air.* All process emissions released to the air which contain the new chemical substance must be vented through control devices appropriate for the new chemical

substance's physical-chemical properties and potential toxicity.

(i) *Exemption notice.* An exemption notices must be submitted to EPA when manufacture of the new chemical substance begins.

(1) *Contents of exemption notice.* The exemption notice must include the following information:

(i) *Manufacturer and sites.* The notice must identify the manufacturer and the sites and locations where the new chemical substance and the instant photographic or peel-apart film articles will be manufactured and processed.

(ii) *Chemical identification.* The notice must identify the new chemical substance as follows:

(A) *Class 1 substances.* For chemical substances whose composition can be represented by a definite structural disagram (class 1 substances), the notice must provide the chemical name (preferably CAS or IUPAC nomenclature), the molecular formula, CAS Registry Number (if available), known synonyms (including trade names), and a structural diagram.

(B) *Class 2 substances.* For chemical substances that cannot be fully represented by a structural diagram, (class 2 substances), the notice must provide the chemical name, the molecular formula, the CAS Registry Number (if available), and known synonyms (including trade names). The notice must identify the immediate precursors and reactants by name and CAS Registry Number (if available). The notice must include a partial or incomplete structural diagram, if available.

(C) *Polymers.* For a polymer, the notice must indentify monomers and other reactants used in the manufacture of the polymer by chemical name and CAS Registry Number. The notice must indicate the amount of each monoer used (by weight percent of total monomer); the maximum residual of each monomer present in the polymer; and a partial or incomplete structural diagram, if available. The notice must indicate the number average molecular weight of the polymer and characterize the anticipated low molecular weight species. The notice must include this information for each typical average molecular weight composition of the polymer to be manufactured.

(iii) *Impurities.* The notice must identify the impurities that can be reasonably anticipated to be present in the new chemcial substance when manufactured under the exemption by name and CAS Registry Number, by class of substances, or by process or source. The notice also must estimate the maximum percent (by weight) of each impurity in the new chemical substance and the percent of unknown impurities present.

(iv) *Physical-chemical properties.* The notice must desribe the physical-chemical properties of the new chemical substance. Where specific physical-chemcial data are not available, reasonable estimates and the techniques used to develop these estimates must be provided.

(v) *Byproducts.* The notice must identify the name, CAS Registry number (if available), and the volume of each byproduct that would be manufactured during manufacture of the new chemical substance.

(vi) *Production volume.* The notice must include an estimate of the anticipated maximum annual production volume.

(vii) *Test data.* The notice must include all information and test data on the new chemical substance's health and environmental effects that are known to or reasonably ascertainable by the manufacturer.

(viii) *Identity of the article.* The notice must identify and describe the instant photographic film article(s) or peel-apart film article(s) that will contain the new chemical substance.

(ix) *Release to water.* The notice must include a description of the methods used to control and treat wastewater or discharge released to a POTW or other receiving body of water. The notice must also identify the POTW or receiving body of water.

(x) *Certification.* The manufacturer must certify in the notice that it is familiar with the terms of the exemption and that the manufacture, processing, distribution, use, and disposal of the new chemical substance will comply with those terms.

(2) *Duplication of information in premanufacture notice.* If a manufacturer who submits an exemption notice under this paragraph has already submitted, or simultaneously submits, a premanufacture notice under section 5(a)(1)(A) of the Act for the new chemical substance, it may, in lieu of submitting the information required by this paragraph, reference the required information to the extent it is included in the premanufacture notice. At a minimum, the exemption notice must identify the manufacturer and the new chemical substance, and contain the certification required by paragraph (i)(1)(x) of this section.

(3) *Address.* The exemption notice must be addressed to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC. 20460.

(j) *Recordkeeping.* (1) Manufacturers of a new chemical substance under this exemption must keep the following records for 30 years from the final date of manufacture.

(i) *Production records.* Each manufacturer must maintain records of the annual production volume of each new chemical substance manufactured under the terms of the exemption. This record must indicate when manufacture of the new chemical substance began.

(ii) *Exposure monitoring records.* Manufacturers must maintain an accurate record of all monitoring required by this section. Monitoring records may be adapted to the individual circumstances of the manufacturer but, at a minimum, must contain the following information: the chemical identity of the new chemical substance, date of the monitoring, the actual monitoring data for each monitoring location and sampling, and a reference to or description of the collection and analytic techniques. If the manufacturer does not monitor, the manufacturer must maintain a record of the reasons for not monitoring and the methods used to determine compliance with the exposure limits of paragraph (e)(1) of this section.

(iii) *Training and exposure records.* For each employee engaged in the manufacture or processing of a new chemical substance, the company must develop and maintain a record of the worker's participation in required training. This record must also demonstrate the regular use of personal exposure safeguards, including the results of any personal exposure monitoring, the results of the quantitative fit test for the worker's personal respirator, and any additional information related to the worker's occupational exposure.

(iv) *Treatment records.* Manufacturers who release treated wastewater or discharge containing a new chemical substance to a POTW or other receiving body of water must maintain records of the method of treatment.

(2) The manufacturer must make the records listed in paragraph (j)(1) of this section available to EPA upon written request by the Director of the Office of Toxic Substances. The manufacturer must provide these records within 15 working days of receipt of this request.

(k) *Confidentiality.* If the manufacturer submits information under paragraph (i) or (j) of this section which it claims to be confidential business information, the manufacturer must clearly identify the information at the

time of submission to the Agency by bracketing, circling, or underlining it and stamping it with "CONFIDENTIAL" or some other appropriate designation. Any information so identified will be treated in accordance with the procedures in Part 2 of this chapter. Any information not claimed confidential at the time of submission will be made available to the public without further notice to the submitter.

(l) *Amendment and repeal.* (1) EPA may amend or repeal any term of this exemption if it determines that the manufacturer, processing, distribution, use, and disposal of new chemical substances under the terms of the exemption may present an unreasonable risk of injury to health or the environment. EPA also may amend this exemption to enlarge the exemption category or to reduce the restrictions or conditions of the exemption.

(2) As required by section 5(h)(4) of the Act, EPA will amend or repeal the substantive terms of an exemption granted under this part only by the formal rulemaking procedures described in section 6(c)(2) and (3) of the Act (15 U.S.C. 2605(c)).

(m) *Prohibition of use of the exemption.* The Director of the Office of Toxic Substances may prohibit the manufacture, processing, distribution, use, or disposal of any new chemical substance under the terms of this exemption if he or she determines that the manufacture, processing, distribution in commerce, use, or disposal of the new chemical substance may present an unreasonable risk of injury to health or the environment.

(n) *Enforcement.* (1) A failure to comply with any provision of this part is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Submitting materially misleading or false information in connection with the requirements of any provision of this part is a violation of this regulation and therefore a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(4) EPA may seek to enjoin the manufacture of a new chemical substance in violation of this exemption or act to seize any chemical substances manufactured in violation of the exemption under the authority of section 17 of the Act (15 U.S.C. 2616).

[FR Doc. 82-15113 Filed 6-3-82; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program, (202) 287-0230, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Agency has developed criteria for flood plain management in flood prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The final base (100-year) flood elevations for selected locations are:

FINAL BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in above ground. *Elevation in feet (NGVD) **Elevation in feet (MLLW).
Alabama	Unincorporated areas of Shelby County (FEMA 6224)	Cahaba River	Approximately 1,000 feet upstream from Tuscaloosa Road Bridge.	*353
			Approximately 500 feet downstream from Southern Railway Bridge.	*369
			Approximately 1,200 feet upstream from County Road 52 bridge.	*403
			Approximately 800 feet downstream from confluence of Patton Creek.	*423

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in above ground. *Elevation in feet (NGVD) **Elevation in feet (MLLW).
			Approximately 120 feet downstream from centerline of southbound lane of U.S. Highway 31.	*425
			Approximately 900 feet downstream from confluence of Acton Creek.	*428
			Approximately 1,000 feet downstream from County Road 29 (Caldwell Mild Road) bridge.	*435
		Buck Creek	Approximately 110 feet downstream from centerline of southbound lane of Interstate Highway 65.	*515
			Just upstream from U.S. Highway 31	*530
		Bishop Creek	Approximately 100 feet upstream from centerline of northbound lane of Interstate 65.	*462
			Approximately 200 feet downstream from Alabama Highway 119.	*493
			Just downstream from County Road 14	*518
		Yellowleaf Creek	Just downstream from Alabama Highway 25	*407
			Approximately 550 feet upstream from confluence of Muddy Prong.	*433
			Just upstream from County Road 51	*448
			Just downstream from County Road 55	*455
			Approximately 300 feet downstream from confluence of North Fork Yellowleaf Creek and South Fork Yellowleaf Creek.	*460
		Four Mile Creek	Approximately 100 feet downstream from County Road 61.	*423
			Just upstream from County Road 55	*459
			Just upstream from County Road 49	*476
		Muddy Prong	Just upstream from County Road 450	*440
			Just downstream from Seaboard Coast Line Railroad (upstream crossing).	*460
			Just downstream from new U.S. Highway 280	*462
			Approximately 650 feet downstream from County Road 55.	*473
		South Fork Yellowleaf Creek	Approximately 200 feet upstream from County Road 49.	*462
			Just downstream from County Road 47	*476
			Just downstream from County Road 69	*488
		Bolivar Creek	Just upstream from County Road 39	*510
		North Fork Yellowleaf Creek	Just downstream from County Road 432	*465
			Approximately 1,200 feet downstream from confluence of Spencer Creek.	*473
			Approximately 150 feet downstream from County Road 439.	*483
			Approximately 130 feet downstream from U.S. Highway 280.	*501
			Approximately 130 feet upstream from County Road 43.	*532
		Little Creek	Just upstream from Seaboard Coast Line Railroad	*478
			Just upstream from U.S. Highway 280	*484
			Just downstream from Alabama Highway 38	*493
		Hargis Retreat Creek	Approximately 150 feet upstream from U.S. Highway 280.	*501
			Approximately 200 feet upstream from Alabama Highway 38.	*507
		Spencer Creek	Just upstream from Breeched Dam	*474
			Just downstream from County Road 39	*517
			Just downstream from County Road 36	*549
		Yellow Creek	3,500 feet upstream from confluence with North Fork Yellowleaf Creek.	*506
		Waxahatchee-Big Creek	Approximately 300 feet downstream from County Road 42.	*434
			Approximately 300 feet upstream from Montevallo Road.	*469
			Approximately 200 feet downstream from Tuscaloosa Road.	*479
			Approximately 250 feet downstream from confluence of Wolf Creek.	*483
	Camp Branch	Approximately 300 feet upstream from County Road 42.	*434	
			Approximately 430 feet upstream from Alabama Highway 25.	*482
			Just upstream from Southern Railway	*484
			Approximately 200 feet upstream from County Road 42.	*501
			Just downstream from County Road 70	*537
		Wolf Creek	Approximately 750 feet upstream from County Road	*484
		Wildwood Creek	Just upstream from County Road 26	*521
		Kelley Creek	Just upstream from U.S. Highway 231	*433
			Just upstream from County Road 57	*442
		Beeswax Creek	Just upstream from County Road 61	*407
			Just upstream from County Road 30	*434
		Tributary to Beeswax Creek	Approximately 1,350 feet upstream from confluence with Beeswax Creek.	*428
		Little Beeswax Creek	Just upstream from County Road 28	*409
			Approximately 150 feet downstream from County Road 77.	*429

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in above ground. *Elevation in feet (NGVD) **Elevation in feet (MLLW).
			Just downstream from County Road 61	*450
		Tributary to Little Beeswax Creek	Just upstream from Alabama Highway 78	*495
		Walthall Branch	Just upstream from County Road 449	*419
			Just downstream from Harpesville corporate limits	*443
		Locust Creek	Approximately 250 feet downstream from Southern Railway.	*414
Maps available for inspection at Shelby County Planning Office, County Courthouse, Columbiana, Alabama 35051.				
Alaska	Delta Junction (city), Southeast Fairbanks Division, FEMA-6224.	Jarvis Creek	700 feet southwest from intersection of Donnely Street and Shaw Avenue.	**1,168
Maps available for inspection at City Hall, Mile 265.5, Richardson Highway, Delta Junction, Alaska.				
Colorado	Olathe (town), Montrose County, FEMA-6224	Uncompahgre River	25 feet upstream of intersection of State Highway 348 and Uncompahgre River.	*5,337
			Intersection of Church Avenue and 6th Street	*5,343
Maps available for inspection at Town Hall, 420 Horton Street, Olathe, Colorado.				
Connecticut	Columbia, (town), Tolland County (Docket No. FEMA-6218.	Hop River	Confluence with Willimantic River	*254
			Downstream of Hop River Road	*269
			Upstream of Parker Bridge Road	*283
		Willimantic River	Downstream corporate limits	*251
			Confluence of Hop River	*254
Maps available for inspection at the Town Hall, Route 87, Columbia, Connecticut.				
Delaware	Dover (city), Kent County (Docket No. FEMA-6153)	St. Jones River	Downstream corporate limits	*9
			Upstream of Silver Lake Dam	*18
			Upstream corporate limits	*25
		Puncheon Branch	Confluence with St. Jones River	*9
			Approximately 50 feet upstream of U.S. Route 113A	*17
			Approximately 50 feet upstream of CONRAIL	*25
			Approximately 3,500 feet upstream of CONRAIL	*28
		Maidstone Branch	Confluence with St. Jones River	*24
			Approximately 1,050' upstream of CONRAIL	*29
			Upstream corporate limits	*38
		Cahoon Branch	Confluence with Maidstone Branch	*30
			Upstream corporate limits	*35
Maps available for inspection at the City Engineer's Office, City Hall Annex, Dover, Delaware.				
Florida	Brevard County (unincorporated areas) FEMA-6246	Atlantic Ocean—Open Coast	Intersection of Flounder and Commercial Roads	*8
			Eastern end of 30th Street	*9
			Approximately 600 feet east of intersection of Pelican Drive and State Highway A1A.	*12
			State Highway A1A over Sebastian Inlet at southernmost county limits.	*13
		Atlantic Ocean—Indian River	Intersection of Florida East Coast Railroad and Huntington Avenue.	*4
			Intersection of Patti Drive and Fay Drive	*4
			Intersection of Bass Drive and South Tropical Trail	*5
			Western end of Woods Lane	*5
			Intersection of Cedar Lane and Riviera Boulevard	*6
			Approximately 500 feet east along Valkaria Road from its intersection with Florida East Coast Railroad.	*8
			Approximately 500 feet west along Long Point Road from its intersection with State Highway A1A.	*8
			Approximately 200 feet east of intersection of 14th Street and U.S. Highway 1.	*11
		Atlantic Ocean—Banana River	Intersection of Martin Boulevard and North Banana River Drive.	*4
			Intersection of Furman Road and North Banana River Drive.	*5
			Intersection of West Virginia and North Banana River Drive.	*6
			Southern end of Morris Manor	*7
			Intersection of Red Soil Way and South Patrick Drive	*5
		Atlantic Ocean—Sykes Creek	Eastern end of Smith Road	*5
			Approximately 150 feet west of intersection of Harbor and Tarpon Roads.	*4
		Atlantic Ocean—Sebastian Creek	Western side of U.S. Highway 1 over Sebastian Creek	*10
			Intersection of Main Street and Canal Drive	*7
			Sebastian Creek at southern county limits	*6
Maps available for inspection at Water Management Department, Merritt Island Branch Courthouse, 2575 N. Courtney Parkway, Merritt Island, Florida.				
Florida	Cape Canaveral (city), Brevard County, FEMA-6246	Atlantic Ocean—Open Coast	Eastern end of Chandler Street (extended)	*8
		Atlantic Ocean—Banana River	Western end of Oak Lane	*4
			Western end of Center Street	*4
Maps available for inspection at Building Department, 105 Polk Avenue, Cape Canaveral, Florida.				
Florida	Cocoa Beach (city), Brevard County, FEMA-6246	Atlantic Ocean—Open Coast	Approximately 400 feet east of intersection of Flager Lane and Ocean Beach Boulevard.	*9
			Approximately 500 feet east of intersection of Minutemen Causeway and State Highway A1A.	*11

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in above ground. *Elevation in feet (NGVD) **Elevation in feet (MLLW).
		Atlantic Ocean—Banana River	Angelo Lane	*4
			Intersection of Sarasota Lane and Banana River Boulevard.	*5
			Intersection of River View Lane and South 4th Street	*5
			Intersection of Brevard Avenue and S. 11th Street	*5
Maps available for inspection at Building Department, 57 Brevard, Cocoa Beach, Florida.				
Florida	Town of Cross City, Dixie County (FEMA-6129)	Ponding Area 1	2,700 feet east of intersection of Seaboard Coast Line Railroad and McArthur Avenue.	*40
		Ponding Area 2	1,400 feet east and 1400 feet south of Seaboard Coast Line Railroad and McArthur Avenue intersection.	*39
		Ponding Area 3	2,200 feet north and 600 feet east of State Road 351 (Cedar Street) and State Road 351A intersection.	*42
		Ponding Area 4	1,000 feet north and 300 feet east of State Road 351 (Cedar Street) and State Road 351A intersection.	*43
		Ponding Area 5	1,000 feet east along extension of State Road 351A and 50 feet south.	*41
		Ponding Area 6	700 feet east and 20 feet south from State Road 351 and Lydia Street intersection.	*41
		Ponding Area 7	400 feet south from Seaboard Coast Line Railroad and McArthur Avenue intersection.	*39
		Ponding Area 8	150 feet east of intersection of Gaulden Avenue extended to the south at corporate limit.	*37
		Ponding Area 9	200 feet south from Gaulden Avenue and Williams Street intersection.	*37
		Ponding Area 10	250 feet south from State Road 351 and Jones Street intersection.	*37
		Ponding Area 11	900 feet north from State Road 351 and Kenneth Street intersection.	*38
		Ponding Area 12	100 feet north and 30 feet east of intersection of Seaboard Coast Line Railroad and westernmost corporate limit.	*40
		Ponding Area 13	Just south of intersection of Seaboard Coast Line Railroad and westernmost corporate limit.	*40
		Ponding Area 14	250 feet west from Bishop Street and Camp Street intersection.	*38
		Ponding Area 15	650 feet south and 50 feet east from Camp Street and Kressman Street intersection.	*37
		Ponding Area 16	750 feet south and 75 feet west from Camp Street and Kressman Street intersection.	*35
		Ponding Area 17	200 feet west from Camp Street and Estelle Boulevard intersection.	*36
		Ponding Area 18	100 feet north and 300 feet west from State Road 351 (Camp Street) and Ann Lla Boulevard.	*37
		Ponding Area 19	150 feet south from intersection of Estelle Boulevard and westernmost corporate limit.	*36
Maps available for inspection at Town Hall, Franklin Street at Barber Avenue, Cross City, Florida 32628.				
Florida	Daytona Beach (city) Volusia County, FEMA-6246	Atlantic Ocean—Open Coast	Eastern end of Lenox Avenue	*9
			Approximately 500 feet northeast of the intersection of University Boulevard and North Atlantic Boulevard.	*11
		Atlantic Ocean—Halifax River Intracoastal Waterway.	Intersection of Mason Avenue and Root Street	*6
			Approximately 400 feet northeast along Lexington Drive from its intersection with Ballough Road.	*7
			Intersection of South Beach Street and Shady Place	*7
			Northern end of Goldfinch	*8
			Western end of Auditorium Avenue	*6
Maps available for inspection at Engineering Office, Caroline & Bellevue, Daytona Beach, Florida.				
Florida	Daytona Beach Shores (city), Volusia County, FEMA-6246.	Atlantic Ocean—Open Coast	Eastern end of Dotefuhr Avenue	*9
			Approximately 400 feet northeast along Dunlawton Boulevard from its intersection with South Atlantic Avenue.	*11
Maps available for inspection at City Hall, 3050 S. Atlantic Avenue, Daytona Beach Shores, Florida.				
Florida	New Smyrna Beach (city), Volusia County, FEMA-6246.	Atlantic Ocean—Open Coast/ Ponce de Leon Inlet.	Approximately 600 feet northeast along East 15th Avenue (extended) from its intersection with South Atlantic Avenue.	*11
			Eastern end of Oakwood Avenue	*9
		Atlantic Ocean—Indian River North/Intracoastal Waterway and Turnbull Bay.	Intersection of Cunningham Drive and Inlet Shores Drive.	*7
			Intersection of Spruce Avenue and Art Center Avenue	*7
			Approximately 100 feet east along Rio Del Mar Drive from its intersection with South Riverside Drive.	*8
Maps available for inspection at Building and Planning Department, 210 Sams Avenue, New Smyrna Beach, Florida.				
Florida	Ormond Beach (city), Volusia County, FEMA-6246	Atlantic Ocean—Open Coast	Approximately 500 feet northeast along Amsden Road (extended) from its intersection with Ocean Shore Boulevard.	*11

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in above ground. *Elevation in feet (NGVD) **Elevation in feet (MLLW).
			Approximately 350 feet northeast along Neptune Avenue (extended) from its intersection with Ocean Shore Boulevard.	*9
		Atlantic Ocean—Halifax River/Intracoastal Waterway and Tomoka River.	Approximately 100 feet east of eastern end of Tiffany Circle.	*4
			Approximately 200 feet east of the intersection of Wilmette Avenue and North Beach Street.	*5
			Eastern side of intersection of Highland Avenue and North Beach Street.	*6
Maps available for inspection at Department of Planning and Community Development, 22 S. Beach Street, Ormond Beach, Florida.				
Florida	Ponce Inlet (town), Volusia County, FEMA-6246	Atlantic Ocean—Open Coast/Ponce de Leon Inlet.	Approximately 200 feet east of the intersection of Ponce Street and Ocean Avenue.	*9
			Approximately 400 feet east of the intersection of Atlantic Avenue South and Cindy Lane.	*11
		Atlantic Ocean—Halifax River/Intracoastal Waterway.	Intersection of Anchor Drive and Peninsula Drive	*7
			Sailfish Drive	*7
			Approximately 1,000 feet south along Peninsula Drive from its intersection with Pine Street.	*8
Maps available for inspection at Town Hall, 4680 S. Peninsula Drive, Ponce Inlet, Florida.				
Georgia	City of Hinesville, Liberty County (FEMA-6154)	Peacock Creek	Just downstream of Sandy Run Road	*20
		Peacock Creek Tributary 1	Just downstream of Fraser Drive extended	*19
			Approximately 70 feet downstream of U.S. Highway 82	*51
		Mill Creek	Approximately 150 feet downstream of Perkin Road	*76
		Mill Creek Tributary 2	Just upstream of State Highway 196	*77
			Just upstream of Pineland Road	*83
Maps available for inspection at City Hall, 115 East South Street, Hinesville, Georgia 31313.				
Illinois	(V) Island Lake, McHenry and Lake Counties (Docket No. FEMA-6224).	Fox River	About 1.9 miles downstream of State Route 176	*738
			Just downstream of State Route 176	*739
		Cotton Creek	About 200 feet downstream of Slocum Lake Road	*739
			Just upstream of Slocum Lake Road	*740
			Just upstream of Island Lake Dam	*751
		Mutton Creek	Just upstream of Eastway Drive	*753
			Just upstream of Gravel Pit Road	*759
Maps available for inspection at the Village Hall, 333 West State, Island Lake, Illinois.				
Illinois	(C) Pinckneyville, Perry County (Docket No. FEMA-6224).	Railroad Tributary	At mouth	*414
			Just downstream of State Route 127	*414
		Beaucoup Creek	About 3500 feet downstream of State Route 154	*409
			About 1800 feet upstream of State Route 154	*412
			Just upstream of Missouri Pacific Railroad	*415
Maps available for inspection at the Clerk's Office, City Hall, 110 South Walnut, Pinckneyville, Illinois				
Indiana	(Uninc.) Boone County (Docket No. FEMA-6224)	Prairie Creek (near Lebanon)	About 2.3 miles downstream of U.S. Route 52	*895
			About 1,600 feet upstream of Deadend Road	*924
			About 1400 feet downstream of East Washington Street.	*934
			About 1.0 mile upstream of 400 South Road	*950
		Prairie Creek (near Thorntown)	At confluence with Sugar Creek	*814
			About 0.95 mile upstream State Route 47	*828
		Sugar Creek	About 0.86 mile downstream of Conrail	*806
			About 600 feet upstream of Interstate 65	*840
		Eagle Creek	About 600 feet downstream of 1000 East Road	*814
			Just upstream of Zionsville Road	*833
			About 0.85 mile upstream of State Route 32	*897
		Little Eagle Creek	At Town of Zionsville corporate limits	*836
			At upstream country boundary	*865
		Fishback Creek	About 1.23 miles downstream of Interstate 465	*863
			About 0.70 mile upstream of State Route 334	*897
		New Reynolds Ditch	About 150 feet downstream of Golf Course Drive	*932
			Just downstream of Elm Swamp Road	*940
Maps available for inspection at the Boone County Area Planning Commission Office, First Floor, Boone County Courthouse, Lebanon, Indiana.				
Indiana	(Uninc.) Dearborn County (Docket No. FEMA-6224)	Logan Creek	At mouth	*533
			About 0.06 mile upstream of State Route 46 (second crossing).	*566
		Whitewater River	About 0.28 mile downstream of State Street	*511
			Just downstream of Interstate 74	*533
			Just upstream of county boundary	*547
		Ohio River	At confluence with Laughery Creek	*486
			About 0.85 mile upstream of state boundary	*490
		Tanners Creek	At abandoned bridge	*489
			At Conrail	*489
		Wilson Creek	At mouth	*488
			Just upstream of farm bridge (about 3100 feet upstream of Wilson Creek Road).	*502
			About 1100 feet upstream of farm bridge (about 4200 feet upstream of Wilson Creek Road).	*511
		Laughery Creek	At mouth	*486
			About 5.0 miles above mouth	*486
Maps available for inspection at the Planning Office, Dearborn County Courthouse, Lawrencesburg, Indiana				

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in above ground. *Elevation in feet (NGVD) **Elevation in feet (MLLW).
Indiana	(T) Decker Knox County (Docket No. FEMA-6224)	White River	Within corporate limits	*418
Maps available for inspection at the Knox County Area Planning Commission, Knox County Courthouse, Vincennes, Indiana.				
Indiana	(T) Greendale, Dearborn County (Docket No. FEMA-6224).	Ohio River	At confluence with Tanners Creek	*489
			At confluence with Great Miami River	*490
Maps available for inspection at the Greendale Town Hall, 510 Ridge Avenue, Lawrenceburg, Indiana.				
Indiana	(C) Lawrenceburg, Dearborn County (Docket No. FEMA-6224).	Ohio River	About 0.75 mile downstream of confluence with Tanners Creek.	*488
			About 2.45 miles upstream of confluence with Tanners Creek.	490
		Tanners Creek	Within the community	*489
Maps available for inspection at the City Hall, 405 Main Street, Lawrenceburg, Indiana.				
Indiana	(T) Marengo, Crawford County (Docket No. FEMA-6224).	Whiskey Run	About 1,200 feet downstream of Pleasant Street	*582
			About 1,400 feet upstream of Main Street	*588
		Brandywine Fork	At mouth	*582
			Just upstream of Jefferson Street	*587
			About 250 feet upstream of Southern Railway	*591
Maps available for inspection at the Town Hall, Route 1, Lincoln Avenue, Marengo, Indiana.				
Iowa	(C) Hastings, Mills County (Docket No. FEMA-6218)	Indian Creek	About 1000 feet downstream of County Road M-16	*1,000
			About 3600 feet upstream of County Road M-16 (at corporate limits).	*1,007
Maps available for inspection at the City Clerk's Office, City Hall, Hastings, Iowa.				
Iowa	(C) Malvern, Mills County (Docket No. FEMA-6224)	Silver Creek	About 1.0 mile downstream of Eleventh Street	*994
			About 500 feet upstream of Eleventh Street	*998
Maps available for inspection at the City Hall, Malvern, Iowa.				
Iowa	(Uninc.) Mills County (Docket No. FEMA-6224)	Missouri River	At downstream county boundary	*952
			Just upstream of Burlington Northern Railroad	*961
			At upstream county boundary	*973
		West Nishnabotna River	About 2,500 feet downstream of Norfolk and Western Railway.	*984
			Just upstream of Burlington Northern Railroad	*996
			Just upstream of County Road H-26	*1,008
			About 5,100 feet downstream of County Road H-12	*1,029
			At upstream county boundary	*1,040
		Keg Creek	Just upstream of County Road H-34	*969
			Just upstream of U.S. Route 275	*990
			About 750 feet upstream of County Road H-20	*1,001
			About 2,000 feet downstream of County Road H-12	*1,016
			At upstream county boundary	*1,024
		Indian Creek	Mouth at West Nishnabotna River	*1,000
			About 8,600 feet upstream of County Road M-16	*1,010
			At County Road M-21	*1,041
			Just upstream of Burlington Northern Railroad	*1,048
			About 200 feet upstream of county boundary	*1,065
		Indian Creek Bypass No. 2	At County Road M-21	*1,047
			At Divergence with Indian Creek	*1,048
		Silver Creek	About 2.27 miles downstream of County Road L-63	*976
			About 0.30 mile upstream of U.S. Route 34	*1,008
			About 5.02 miles upstream of U.S. Route 34	*1,029
			About 6.57 miles upstream of U.S. Route 34	*1,035
		Pony Creek	Just downstream of U.S. Highway 34	*959
			About 350 feet upstream of Interstate 29	*961
			About 3,000 feet downstream of Burlington Northern Railroad.	*967
			About 700 feet upstream of Burlington Northern Railroad.	*971
			About 2,700 feet upstream of Burlington Northern Railroad.	*977
			About 5,000 feet upstream of Burlington Northern Railroad.	*978
Maps available for inspection at the County Engineer's Office, County Courthouse, Glenwood, Iowa.				
Massachusetts	Leominster, city, Worcester County (Docket No. FEMA-6147).	North Nashua River	Downstream corporate limits	*279
			Confluence of Fall Brook	*286
			Mechanic Street (upstream)	*293
			Confluence of Monoosnoc Brook	*299
			State Route 2 (downstream)	*306
			Upstream corporate limits	*332
		Monoosnoc Brook	Confluence with North Nashua River	*299
			Whitney Street (upstream)	*324
			Adams Street (upstream)	*402
			Exchange Street (upstream)	*434
			West Street (upstream) (upstream crossing)	*463
			Upstream corporate limits	*494

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in above ground. *Elevation in feet (NGVD) **Elevation in feet (MLLW).
		Fall Brook	Confluence with North Nashua River	*286
			Confluence of tributary A to Fall Brook	*286
			Litchfield Street (upstream) (downstream crossing)	*349
			Grant Street (upstream)	*461
			Decicco Drive (upstream)	*510
			Pleasant Street (upstream)	*580
			Fall Brook Reservoir Dam (upstream)	*654
		Tributary to Monoosnoc Brook	Confluence with Monoosnoc Brook	*434
			Kingman Drive (upstream)	*520
		Tributary A to Fall Brook	Confluence with Fall Brook	*286
			Conrail (upstream)	*360
			Dam (downstream)	*452
		Tributary B to Fall Brook	Confluence with Fall Brook	*349
			Central Street (upstream)	*381
			Approximately 800' upstream of Union Street	*399
		Tributary C to Fall Brook	Confluence with Fall Brook	*408
			Anthony Road (upstream)	*540
		Baker Brook	Downstream corporate limits	*351
			Upstream corporate limits	*353
Maps available for inspection at the Planning Department, City Hall, 25 West Street, Leominster, Massachusetts.				
Michigan	(V) Chesaning, Saginaw County (Docket No. FEMA-6224).	Shiawassee River	About 1.5 miles downstream of Broad Street	*615
			Just upstream of Broad Street	*620
			About 1.1 miles upstream of Broad Street	*622
Maps available for inspection at the Village Hall, 1100 West Broad Street, Chesaning, Michigan.				
Michigan	(C) Grandville, Kent County (Docket No. FEMA-6224)	Huizenga drain	Just upstream of Kenowa Avenue	*616
			Just upstream of 44th Street	*628
			About 1500 feet upstream of Wilson Avenue	*638
		Huizenga drain branch No. 3	At confluence with Huizenga Drain	*622
			About 2650 feet upstream of Wilson Avenue	*625
		Grand River	At county boundary	*605
			At upstream corporate limits	*607
		Buck Creek	Just downstream of Canal Avenue	*605
			About 100 feet upstream of Cemetery Road	*619
			At upstream corporate limits	*633
Maps available for inspection at the City Hall, 3195 Wilson Avenue, S.W., Grandville, Michigan.				
Minnesota	(C) Oslo, Marshall County (Docket No. FEMA-6224)	Red River of the north	About 2750 feet downstream of State Highway 1 (at northwestern corporate limits).	*810
			About 850 feet upstream of Soo Line Railroad (at southern corporate limits).	*811
Maps available for inspection at the City Hall, P.O. Box 177, Oslo, Minnesota.				
Minnesota	(C) Stephen, Marshall County (Docket No. FEMA-6224).	Tamarac River	About 300 feet upstream of County Highway 5	*824
			At Lofgren Avenue	*830
Maps available for inspection at the City Hall, Stephen, Minnesota.				
Minnesota	(C) St. Vincent, Kittson County (Docket No. FEMA-6218).	Red River of the north	About 4,400 feet downstream of State Highway 171 (at northern corporate limits).	
			About 3,800 feet upstream of State Highway 171 (at southern corporate limits).	*794
Maps available for inspection at the City Hall, St. Vincent, Minnesota.				
Missouri	(V) Silex, Lincoln County (Docket No. FEMA-6224)	North Fork Cuivre River	Just downstream of Church Stream	*512
			Just downstream of County Highway E bridge	*513
		Mill Creek	Just downstream of Main Street	*512
			About 900 feet upstream of Main Street	*513
Maps available for inspection at the Mayor's Home, Culver and Williams Streets, Silex, Missouri.				
Nebraska	(C) Nebraska City, Otoe County (Docket No. FEMA-6224.	Missouri River	About 2.3 miles downstream of State Highway 2	*926
			About 1.13 miles upstream of confluence of Walnut Creek.	*935
		Threemile Creek	About 0.5 mile downstream of north-south county road (at downstream extraterritorial limits).	*964
			Just downstream of north-south county road	*975
			Just upstream of north-south county road	*981
			Just downstream of east-west county road	*981
			Just upstream of east-west county road	*989
			Just downstream of U.S. Highway 73-75	*1,019
			Just upstream of U.S. Highway 73-75	*1,029
			About 1,100 feet upstream of U.S. Highway 73-75	*1,029
		East tributary to tributary to South Table Creek.	At mouth at tributary to South Table Creek	*998
			Just downstream of east-west county road	*1,037
		West tributary to tributary to South Table Creek.	At mouth at tributary to South Table Creek	*1,005
			About 3,900 feet upstream of mouth	*1,032
		South Table Creek	At mouth at Missouri River	*931

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in above ground. *Elevation in feet (NGVD) **Elevation in feet (MLLW).
			Just upstream of Argo Avenue	*936
			Just upstream of Ninth Street	*953
			Just downstream of Trailer Court Street	*963
			Just upstream of Trailer Court Street	*973
			Just downstream of 19th Street	*973
			Just upstream of 19th Street	*980
			Just upstream of Steinhart Park Road	*985
			Just downstream of county road (west of KNCY towers).	*1,029
			Just upstream of county road (west of KNCY towers)	*1,040
			Just downstream of county road (to McCarthy School)	*1,080
			Just upstream of county road (to McCarthy School)	*1,097
			About 0.74 mile upstream of county road	*1,109
		Tributary to South Table Creek	Just downstream of Burlington Northern Railroad (downstream of 11th Corso).	*970
			About 3,200 feet upstream of 11th Corso	*985
			Just downstream of north-south county road	*1,022
			Just upstream of Burlington Northern Railroad (upstream crossing).	*1,029
			About 1.7 miles upstream of Burlington Northern Railroad (upstream crossing).	*1,066
		North Table Creek	At mouth at Missouri River	*931
		Just upstream of 16th Street	*961	
			Just downstream of Centennial Avenue	*1,007
			Just upstream of Centennial Avenue	*1,014
			Just downstream of county road	*1,032
			Just upstream of county road	*1,041
			Just downstream of county road (to McCarthy School	*1,088
			Just upstream of county road (to McCarthy School)	*1,093
			About 0.45 mile upstream of county road (at upstream extraterritorial limits).	*1,122
		Walnut Creek	About 1.0 mile upstream of mouth at Missouri River	*935
			Just downstream of north-south county road	*968
			Just upstream of Missouri Pacific Railroad	*978
			About 1.38 miles upstream of Missouri Pacific Railroad	*1,010
Maps available for inspection at the City Clerk's Office, City Hall, 1409 Central, Nebraska City, Nebraska.				
New Hampshire	Rochester, city, Strafford County (Docket No. FEMA-6218).	Salmon Falls River	Approximately 900 feet downstream of corporate limits	*180
			Downstream corporate limits	*183
			Upstream Walnut Grove Road	*186
			Upstream U.S. Route 202	*208
			Upstream Flat Rock Bridge Road	*221
			Downstream Spaulding Avenue	*228
			Upstream corporate limits	*248
		Cocheco River	Downstream corporate limits	*124
			Upstream England Road	*127
			Upstream dam (1st crossing)	*161
			Upstream Spaulding Turnpike (1st crossing)	*184
			Upstream State Route 125	*185
			Upstream Bridge Street	*219
			Downstream Spaulding Turnpike (2nd crossing)	*226
			Upstream Little Falls Bridge Road	*233
			Upstream corporate limites (3rd crossing)	*238
Maps available for inspection at the Planning Office, City Hall, 31 Wakefield Street, Rochester, New Hampshire.				
New Jersey	Greenwich, township, Gloucester County (Docket No. FEMA-6624).	Delaware River	Entire shoreline within community	*15
		Repaupo Creek	Confluence with Delaware River	*15
			Approximately 20' upstream of confluence with Delaware River.	*13
			Upstream State Route 44	*12
		Pargey Creek	Confluence with Repaupo Creek	*12
			Upstream Interstate 295	*10
		White sluice race	Confluence with Aunt Debs ditch	*13
			Approximately 1,700' upstream of confluence with Aunt Debs ditch.	*12
			Upstream Tomkin Station Road	*11
		London branch	Downstream of Interstate 295	*11
			Upstream of Interstate 295	*10
		Still run	Downstream of Interstate 295	*11
			Upstream of Interstate 295	*10
		Nehonsey Brook	Downstream State Route 44	*12
			Upstream State Route 44	*11
			Upstream Interstate 295	*10
		Clonmell Creek	Confluence with Delaware River	*15
			Approximately 20' upstream of Delaware River	*10
			Upstream of Conrail	*10
			Approximately 1,500' upstream of Delaware River	*11
Maps available for inspection at the Municipal Building, Broad and Walnut Streets, Gibbstown, New Jersey.				

FINAL BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in above ground. *Elevation in feet (NGVD) **Elevation in feet (MLLW).
New Jersey	Jackson, township, Ocean County (Docket No. FEMA-6224).	North branch Metedeconk River	Downstream Corporate Limits	*63
			Bethel Church Road (upstream side)	*70
			Aldrich Road (upstream side)	*81
			Larsen Road (upstream side)	*86
			Upstream Corporate Limits	*93
		Tributary to Toms River	Approximately 50 feet downstream of Cassville-Toms River Road.	*112
			Cassville-Toms River Road (upstream side)	*116
			Approximately 7,785 feet upstream of Cassville-Toms River Road.	*125
Maps available for inspection at the Municipal Building, Route 528, Jackson, New Jersey.				
New Mexico	City of Belen, Valencia County (FEMA-5979)	Shallow flooding ponding area	Intersection of Castillo Avenue and 4th Street	*4,803
Maps available for inspection at City Hall, 503 Becker Avenue, Belen, New Mexico 87002.				
New York	Esperance, village, Schoharie County (Docket No. FEMA-6181).	Schoharie Creek	Downstream corporate limits	*574
			Upstream corporate limits	*582
Maps available for inspection at the Village Hall, Main Street, Esperance, New York.				
New York	Granby, town, Oswego County (Docket No. FEMA-6197).	Lake Neatahwanta	Entire shoreline	*373
			Downstream corporate limits	*316
			Downstream corporate limits at Fulton	*318
			Upstream corporate limits at Fulton	*358
			Downstream of County Road 46	*362
			Upstream corporate limits	*364
		Ox Creek	Upstream Route 48	*360
			Ley Creek Road	*360
Maps available for inspection at the Town Hall, County Route 8, Granby, New York.				
New York	Scriba, town, Oswego County (Docket No. FEMA-6197).	Lake Ontario	Entire shoreline	*249
		Oswego River	Dowstream corporate limits	*297
			Upstream corporate limits	*298
		Wine Creek	Upstream of City Line Road	*343
			Upstream of Hall Road	*345
			Downstream of Churchill Road	*345
		Walker Creek	Upstream of Middle Road	*324
			Approximately 1,600' downstream from Creamery Road.	*334
			Upstream of Creamery Road	*342
			Downstream of State Route 104	*346
			Upstream of State Route 104	*355
		Lakeview Creek	Confluence with Lake Ontario	*249
			Approximately 1,100' downstream from West Lake Road.	*259
			Downstream of East Lake Road	*264
		Lycoming Creek	Confluence with Lake Ontario	*249
			Approximately 3,800' downstream from Wast Lake Road.	*260
			Downstream of East Lake Road	*267
			Upstream of East Lake Road	*277
			Downstream of Parkhurst Road	*277
			Upsteam of Parkhurst Road	*282
			Upstream of Lycoming Road (downstream crossing)	*287
			Approximately 1,600' upstream from Lycoming Road (downstream crossing).	*296
			Approximately 2,700' upstream from Lycoming Road (downstream crossing).	*305
			Approximately 900' downstream from Lycoming Road (upstream crossing).	*317
			Downstream of Lycoming Road (upstream crossing)	*318
			Upstream of Lycoming Road (upstream crossing)	*324
			Upstream of Minor Road	*329
		Cliff Road Creek	Confluence with Lake Ontario	*249
			Approximately 1,450' downstream from Cliff Road	*259
			Downstream of Cliff Road	*271
			Upstream of Cliff Road	*276
			Upstream of East Lake Road	*277
			Approximately 1,900' downstream from Conrail Bridge	*289
			Approximately 1,300' downstream from Conrail Bridge	*297
			Downstream of Conrail Bridge	*306
			City Line Road (extended)	*316
Maps available for inspection at the Municipal Building, Creamery Road, Scriba, New York.				
Oklahoma	Unincorporated areas of Tulsa County (FEMA-6218)	Arkansas River	Just upstream of 161st East Avenue extended	*587
			Just downstream of 145th East Avenue extended	*590
			Just upstream of 131st Street extended	*607
			Just upstream of 96th Street (Jenks Bridge)	*615
		Bird Creek	Just downstream of Mingo Valley Expressway	*589
			Just upstream of 86th Street	*610
			Approximately 600 feet upstream of 106th Street	*618
			Just downsteam of 136th Street	*628
			Just upstream of 156th Street North extended	*638
		Caney River	Just downstream of U.S. Highway 169	*599
		East Creek	Just downstream of 136th Street	*630
			Just downstream of 146th Street	*606
		Horsepen Creek	Just upstream of 129th East Avenue	*603
			Approximately 400 feet downstream of Memorial Drive	*630
			Approximately 400 feet downstream of 156th Street	*637
		Blackjack Creek	Just downstream of 146th Street	*609
			Just upstream of 136th Street	*626
			Just downstream of 129th Street	*662

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in above ground. *Elevation in feet (NGVD) **Elevation in feet (MLLW).
		Blackjack Creek tributary A	ust downstream of Atchison Topeka and Santa Fe Railway.	*623
		Cherry Creek (North Tulsa)	Just upstream of 156th Street	*619
			Just downstream of 146th Street	*644
			Just upstream of 136th Street	*661
		Elm Creek	Just upstream of 129th Avenue East	*591
			Just upstream of 26th Street North	*610
		Bird Creek tributary 5A	Just upstream of 76th Street North	*591
		Ranch Creek	Just upstream of 86th Street North	*594
			Just upstream of 106th Street North	*636
			Just downstream of 116th Street	*655
		Ranch Creek tributary A	Just upstream of the Atchison Topeka and Santa Fe Railway.	*597
			Just upstream of 86th Street North	*607
		Ranch Creek tributary B	Just upstream of the Atchison, Topeka and Sante Fe Railway.	*611
			At Mingo Road	*633
		Bird Creek tribuary 5B	Just upstream of 76th Street North	*606
			Just upstream of 86th Street North	*636
		Charley Creek	Just upstream of U.S. Highway 75	*634
		Panther Creek	Just downstream of 116th Street	*627
		Delaware Creek	Just upstream of Texas and Pacific Railroad	*613
			Just upstream of Cincinnati Avenue	*616
		Delaware Creek tributary	Just downstream of Trenton Avenue	*616
		Hominy Creek	Just upstream of Cincinnati Avenue	*619
		Coal Creek	Just upstream of Yale Avenue	*653
			Just downstream of Dawson Road	*656
			Just upstream of St. Louis and San Francisco Railroad	*658
		Flat Rock Creek	Just upstream of Cincinnati Avenue	*639
		Mingo Creek	Approximately 800 feet downstream of 56th Street North.	*590
		Berryhill Creek	Approximately 200 feet upstream of 21st Street	*646
			Just upstream of 65th West Avenue	*687
		Berryhill tributary	Just upstream of 31st Street	*670
		Black Boy Creek	Just upstream of Keystone Expressway (U.S. Highway 64).	*658
			Just upstream of Cameron Road	*667
		Black Boy Creek tributary	Just upstream of Keystone Expressway (U.S. Highway 64).	*657
		Harlow Creek	Just upstream of 65th West Avenue	*659
		Harlow Creek tributary	Just upstream of Keystone Expressway (U.S. Highway 64.	*661
		Prattville Creek	Just upstream of 21st Street	*656
		Fisher Creek	Just upstream of 137th West Avenue	*656
			Approximately 200 feet upstream of 21st Street	*662
		Anderson Creek	Just upstream of 41st Street	*701
			Just upstream of 56th Street	*735
		Arkansas River tributary (at Sand Springs).	Just upstream of 4th Street	*676
			Just downstream of 8th Street	*692
		Euchee Creek	Just upstream of Keystone Expressway (U.S. Highway 64).	*652
			Just upstream of Willow Street	*679
		Shell Creek	Just upstream of Keystone Expressway	*658
		Sand Creek	Just upstream of the Keystone Expressway (U.S. Highway 64).	*692
		Little Sand Creek	Just upstream of the Keystone Expressway (U.S. Highway 64).	*705
		Posey Creek	Just upstream of Yale Avenue	*613
			Just upstream of South Harvard Avenue	*639
			Just upstream of South Lewis Avenue	*663
		Posey Creek tributary	Just upstream of South Harvard Avenue	*636
		Polecat Creek	Just upstream of Elwood Avenue	*625
			Just upstream of U.S. Highway 75	*631
		Coal Creek (West Tulsa)	Just upstream of Elwood Avenue	*626
			Just upstream of 111th Street	*628
			Just downstream of 121st Street	*644
			Just upstream of 151st Street	*704
		Coal Creek tributary B	Just downstream of 131st Street	*697
		Nickel Creek	Just downstream of 91st Street	*633
		Mooser Creek	Just upstream of 37th West Avenue	*708
		Cherry Creek (West Tulsa)	Just upstream of I-244 (U.S. Highways 66 and 75)	*637
		Broken Arrow Creek	Just upstream of 131st Street	*603
			Just upstream of 121st Street	*612
			Just downstream of 91st Street	*672
			Just downstream of 81st Street	*702
		West branch Broken Arrow Creek	Just downstream of 121st Street	*616
			Just downstream of 111th Street	*642
		Haikey Creek	Just upstream of 129th East Avenue (Olive Avenue)	*597
			Just downstream of 131st Street (Jasper Street)	*607
			Just upstream of 121st Street	*621
			Just downstream of 111th Street	*628
			Approximately 600 feet downstream of 101st Street	*636
		White Church Creek	Just downstream of 129th East Avenue (Olive Avenue)	*641
			Just upstream of 121st Street	*660
		Fry ditch No. 1	Just upstream of 111th Street	*646
		Fry ditch No. 2 (shallow overland flooding No. 4).	Just upstream of downstream crossing of Mingo Road	*602
		Little Haikey Creek	Just downstream of Mingo Road	*664
			Just upstream of Memorial Drive	*693
		East branch Haikey Creek	Just downstream of 129th East Avenue	*650
		Shallow overland flooding area No. 7.	At 151st Street	*599
		Shallow overland flooding area No. 8.	At Northeast of Missouri Pacific Railroad	*600
		Snake Creek	Just downstream of Mingo Road	*606
		Snake Creek tributary	Just downstream of U.S. Highway 64 (Memorial Drive)	*603
		Duck Creek	Just downstream of Peoria Avenue	*648

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in above ground. *Elevation in feet (NGVD) **Elevation in feet (MLLW).
			Just upstream of Okmulgee Expressway (U.S. Highway 75).	*669
		North Duck Creek	Just upstream of Okmulgee Expressway (U.S. Highway 75).	*672
		Arkansas River tributary (at Bixby)	Just upstream of Missouri Pacific Railroad	*600
Maps available for inspection at Tulsa County Courthouse, 500 South Denver Street, Tulsa, Oklahoma 74103.				
Pennsylvania	Penn, township, Snyder County (Docket No. FI-4851)	Susquehanna River	Downstream Corporate Limits	*430
			Upstream Corporate Limits	*434
		Penns Creek	Confluence with Susquehanna River	*430
			Upstream of U.S. Routes 11/15 (downstream crossing).	*433
			Upstream of U.S. Routes 11/15 (Market Street)	*435
			Upstream of Gravel Pit Road	*444
			Upstream Corporate Limits	*453
		Middle Creek	Confluence with Penns Creek	*433
			Upstream of dam	*441
			Upstream of State Route 35	*446
			Upstream of Creek Road	*456
			Upstream Corporate Limits	*458
		South tributary	Confluence with Penns Creek	*433
			Upstream Corporate Limits	*433
Maps available for inspection at the Penn Township Building, Clifford Road, R.D. 1, Selinsgrove, Pennsylvania.				
Commonwealth of Puerto Rico.	Rio Anton Ruiz, FEMA-6216	Rio Anton Ruiz	30 meters downstream of the confluence of Quebrada Mambiche and Quebrada Collores.	*26.2
		Quebrada Mambiche	18 meters upstream of the intersection of the center of Puerto Rico Highway 924 and Quebrada Mambiche.	*31.4
		Quebrada de las Mulas	20 meters upstream of the intersection of the center of Puerto Rico Highway 927 and Quebrada de las Mulas.	*20.2
		Atlantic Ocean	Intersection Puerto Rico Highway 3 and Rio Anton Ruiz.	*2.9
Maps available for inspection at Puerto Rico Planning Board, Minillas Government Center, North Building, 14th Floor, Santurce, Puerto Rico.				
Commonwealth of Puerto Rico.	Rio Blanco Basin, FEMA-6216	Rio Blanco	50 meters upstream of confluence with Quebrada Maizales.	*5.6
			25 meters upstream of the intersection of the center of Puerto Rico Highway 927 and Rio Blanco.	*7.4
		Rio Santiago	20 meters upstream of the intersection of the center of Puerto Rico Highway 31 and Rio Santiago.	*21.5
		Rio Santiago lateral branch	5 meters upstream of the intersection of the center of Puerto Rico Highway 31 and Rio Santiago Lateral Branch.	*18.4
		Atlantic Ocean	At mouth of Rio Blanco	*2.9
Maps available for inspection at Puerto Rico Planning Board, Minillas Government Center, North Building, 14th Floor, Santurce, Puerto Rico.				
Commonwealth of Puerto Rico.	Rio Culebrinas Basin, FEMA-6216	Rio Culebrinas (downstream reach)	5 meters upstream of the intersection of the center of Puerto Rico Highway 2 and Rio Culebrinas.	*8.5
		Upstream face of Camino Las Brujas (Puerto Rico Highway 110)	*19.0	
		Rio Culebrinas (at San Sebastian)	30 meters upstreams of the intersection of the center of Puerto Rico Highway 109 and Rio Culebrinas.	*62.4
		Cano Madre Vieja	10 meters upstream of the intersection of the center of Puerto Rico Highway 418 and Cano Madre Vieja.	*6.0
		Atlanta Ocean	At mouth of Rio Culebrinas	*1.6
Maps available for inspection at Puerto Rico Planning Board, Minillas Government Center, North Building, 14th Floor, Santurce, Puerto Rico.				
Commonwealth of Puerto Rico.	Rio Daguao Basin, FEMA-6162	Rio Daguao	15 meters upstream of the intersection of Puerto Rico Highway 979 (Bennington Road) and Rio Daguao.	*9.4
			10 meters upstream of the intersection of Puerto Rico Highway 924 and Rio Daguao.	*50.6
		Quebrada Ceiba	25 meters upstream of the intersection of Puerto Rico Highway 3 (Avenida Lauro Pinero) and Quebrada Ceiba.	*10.1
			10 meters upstream of the intersection of Puerto Rico Highway 975 (upstream crossing) and Quebrada Ceiba.	*55.0
		Quebrada Aguas Claras	Intersection of Puerto Rico Highway 979 (Tarwara Drive) and Quebrada Aguas Claras.	*8.1
		Quebrada Aguas Claras tributary	25 meters upstream of the intersection of Puerto Rico Highway 3 (Avenida Lauro Pinero) and Quebrada Aguas Claras tributary.	*20.2
		Atlantic Ocean	At the mouth of Quebrada Ceiba (Bahia Demajagua)	*2.9
Maps available for inspection at Puerto Rico Planning Board, Minillas Government Center, North Building, 14th Floor, Santurce, Puerto Rico.				
Commonwealth of Puerto Rico.	Rio de la Plata, FEMA-6048	Rio de la Plata (at Toa Baja)	At intersection of Puerto Rico Highway 693 and Calle Industria (Puerto Rico Highway 693).	*5.4
		Rio de la Plata (at Toa Alta)	At intersection of Puerto Rico Highway 861 and Rio de la Plata.	*17.7
		Rio de la Plata (at Comerio)	At intersection of Puerto Rico Highways 158 and 775	*198.6
		Rio de la Plata (at Cayey)	At intersection of Puerto Rico Highway 1 and Rio de la Plata.	*371.2
		Rio de la Plata tributary No. 1	At intersection of Puerto Rico Highway 738 and Rio de la Plata tributary No. 1.	*371.2
		Rio Guavate	At intersection of Puerto Rico Highway 52 and Rio Guavate.	*376.9
		Quebrada Santo Domingo	At intersection of footbridge (near end of Calle Munoz Rivera) and Quebrada Santo Domingo.	*376.2
		Rio de Aibonito tributary No. 1	At intersection of Puerto Rico Highway 14 and Rio de Aibonito tributary No. 1.	*600.3

FINAL BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in above ground. *Elevation in feet (NGVD) **Elevation in feet (MLLW).
		Rio Guadiana	At intersection of Caserio Candelario Torres Bridge and Rio Guadiana.	*114.0
		Rio de la Plata overflow	0.1 kilometer downstream of intersection of Puerto Rico Highway 165 and Rio de la Plata overflow.	*6.4
		Atlantic Ocean	At intersection of Puerto Rico Highway 165 and Rio Cocal.	*1.6
Maps available for inspection at Puerto Rico Planning Board, Minillas Government Center, North Building, 14th Floor, Santurce, Puerto Rico.				
Commonwealth of Puerto Rico.	Rio Grande de Manti basin, FEMA-6048	Atlantic Ocean	At mouth of Rio Grande de Manati	*1.6
		Rio Granded de Manati	Intersection of Rio Grande de Manati and center of abandoned railroad bridge..	*6.4
			Intersection of Rio Grande de Manati and Puerto Rico Highway 642.	*22.0
			Intersection of Rio Grande de Manati and center of Puerto Rico Highway 145.	*45.2
Maps available for inspection at Puerto Rico Planning Board, Minillas Government Center, North Building, 14th Floor, Santurce, Puerto Rico.				
Commonwealth of Puerto Rico.	Rio Jacaguas basin, FEMA-6075	Rio Jacaguas	Intersection of Puerto Rico Highway 1 and Puerto Rico Highway 510.	*11.0
			25 meters upstream of intersection of Rio Jacaguas and Puerto Rico Highway 149.	*77.0
		Rio Jacaguas (at Villalba)	20 meters downstream of intersection of Rio Jacaguas and Puerto Rico Highway 151.	*150.2
		Rio Inabon	50 meters upstream of intersection of Rio Inabon and Puerto Rico Highway 506.	*7.5
			20 meters upstream of intersection of Rio Inabon and Puerto Rico Highway 52.	*44.0
		Rio Guayo	20 meters downstream of intersection of Rio Guayo and Puerto Rico Highway 14.	*64.0
		Caribbean Sea	At mouth of Rio Jacaguas	*1.8
Maps available for inspection at Puerto Rico Planning Board, P.O. Box 41119, Minillas Station, Santurce, Puerto Rico.				
Virginia	Stony Creek, town, Sussex County (Docket No. FEMA-6153).	Nottoway River	Area south of State Route 40 by-pass and east of Interstate 95 at southeast corporate limits.	*73
		Stony Creek	Downstream corporate limits	*75
			Upstream of Seaboard Coast Line Railroad	*79
			Upstream corporate limits	*80
Maps available for inspection at the Town Hall, Stony Creek, Virginia.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: May 4, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-14585 Filed 6-3-82; 8:45 am]

BILLING CODE 6718-03-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1473]

Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Thirty-seventh Revised Service Order No. 1473.

SUMMARY: Pursuant to section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96–254, this order authorizes various railroads to provide interim service over the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE: 12:01 a.m., June 1, 1982, and continuing in effect until 11:59 p.m., September 30, 1982, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT:

M. F. Clemens, Jr., (202) 275–7840 or 275–1559.

Decided: May 28, 1982.

Pursuant to section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96–254 (RITEA), the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for those operations.

In view of the urgent need for continued rail service over RI's lines pending the implementation of long-range solutions, this order permits carriers to provide service to shippers which may otherwise be deprived of essential rail transportation.

Appendix A, to the previous order, is revised by adding at Item 18, the authority for the Iowa Railroad Company (IRRC) to extend its operations from Rock Island, Illinois to Dexter, Iowa, a distance of approximately 212 miles, and between Altoona and Pella, Iowa, a distance of approximately 47 miles. A portion of this operation was previously provided by Chicago and North Western Transportation Company (CNW), which authority is vacated by this order. Appendix A is further revised by adding at Item 28, the authority for a new operator, the Okarche Central Railway, Inc. (OCRI), to operate between Enid and El Reno, Oklahoma, a distance of approximately 59 miles. OCRI also requested authority to operate between El Reno and Council, Oklahoma, and at El Reno, however, that authority is currently held by the North Central Oklahoma Railway, Inc. (NCOR). There has been no indication by either the Trustee or NCOR that NCOR's agreement to operate those segments has terminated. Moreover, OCRI's application is silent with respect to the

overlapping segments. Therefore, that portion of the application is granted to OCRI as overlapping authority with NCOR to assure that shippers will continue to receive service while OCRI establishes divisions and interchange agreements. At such time as OCRI and NCOR mutually agree on terms for handling NCOR traffic over the overlapping segments, the order may be modified to reflect such agreement.

Appendix B of Thirteenth Revised Service Order No. 1473 is unchanged, and becomes Appendix B to this Order.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the named appendices be authorized to conduct operations using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and good cause exists for making this order effective upon less than thirty days notice.

It is ordered,

§ 1033.1473. Service Order No. 1473.

(a) *Various Railroads authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, debtor (William M. Gibbons, Trustee).*

Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI), as listed in Appendix A to this order, in order to provide interim service over the RI; and as listed in Appendix B to this order, to provide for continuation of joint or common use facility agreements essential to the operations of these carriers as previously authorized in Service Order No. 1435.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service as authorized in paragraph (a).

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by section 122(a) Pub. L. 96–254.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations. Termination of interim operations will require at least (30) thirty days notice to the Railroad Service Board and affected shippers.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of the operations over the RI lines authorized in paragraph (a), operators shall be responsible for preserving the value of the lines, associated with each operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

1. In those instances where more than one railroad is involved in the joint use of RI tracks and/or facilities described in Appendix B, one of the affected carriers will perform the maintenance and have supervision over the operations in behalf of all the carriers as may be agreed to among themselves, or in the absence of such agreement, as may be decided by the Commission.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as the operations described in Appendix A by interim operators over tracks previously operated by the RI are deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective.

(k) In transporting traffic over these lines, all interim operators described in Appendix A shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) To the maximum extent practicable, carriers providing service under this order shall use the employees who normally would have performed the work in connection with traffic moving over the lines subject to this Order.

(m) *Effective date.* This order shall become effective at 12:01 a.m., June 1, 1982.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., September 30, 1982, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304, 10305, and section 122, Pub. L. 96–254.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

List of Subjects in 49 CFR Part 1033

Railroads.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and William F. Sibbald, Jr., J. Warren McFarland not participating.

Agatha L. Mergenovich,

Secretary.

Appendix A—Ri Lines Authorized to be Operated by Interim Operators

1. *Louisiana and Arkansas Railway Company (LA):*

A. Tracks one through six of the Chicago, Rock Island and Pacific Railroad Company's (RI) Cadiz yard in Dallas, Texas, commencing at the point of connection of RI track six with the tracks of The Atchison, Topeka and Santa Fe Railway Company (ATSF) in the southwest quadrant of the crossing of the ATSF and the Missouri-Kansas-Texas Railroad Company (MKT) at interlocking station No. 19.

2. *Peoria and Pekin Union Railway Company (PPU):*

A. All Peoria Terminal Railroad property on the east side of the Illinois River, located within the city limits of Pekin, Illinois.

B. Mossville, Illinois (milepost 148.23) to Peoria, Illinois (milepost 161.0) including the Keller Branch (milepost 1.55 to 6.15).

3. *Union Pacific Railroad Company (UP):*

A. Beatrice, Nebraska.

B. Approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI Milepost 581.5 north of Hallam, Nebraska.

4. *Toledo, Peoria and Western Railroad Company (TRW):*

A. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois.

5. *Chicago and North Western Transportation Company (CNW):*

A. From Minneapolis-St. Paul, Minnesota, to Kansas City, Missouri.

B. From Rock Junction (milepost 5.2) to Inver Grove, Minnesota (milepost 0).

C. From Inver Grove (milepost 344.7) to Northwood, Minnesota.

D. From Clear Lake Junction (milepost 191.1) to Short Line Junction, Iowa (milepost 73.6).

*E. From East Des Moines, Iowa (milepost 350.8) to West Des Moines, Iowa (milepost 363.34).

F. From Short Line Junction (milepost 73.6) to Carlisle, Iowa (milepost 64.7).

G. From Carlisle (milepost 64.7) to Allerton, Iowa (milepost 0).

H. From Allerton, Iowa (milepost 363) to Trenton, Missouri (milepost 415.9).

I. From Trenton (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2).

J. From Iowa Falls (milepost 97.4) to Estherville, Iowa (milepost 206.9).

K. From Bricelyn, Minnesota (milepost 57.7) to Ocheyedan, Iowa (milepost 246.7).

L. From Palmer (milepost 454.5) to Royal, Iowa (milepost 502).

M. From Dows (milepost 113.4) to Forest City, Iowa (milepost 158.2).

N. From Cedar Rapids (milepost 100.5) to Cedar River Bridge, Iowa (milepost 96.2) and to serve all industry formerly served by the RI at Cedar Rapids.

O. At Sibley, Iowa.

P. At Worthington, Minnesota.

Q. From Carlisle to Indianola, Iowa.

R. At Omaha, Nebraska, (between milepost 502 to milepost 504).

S. Peoria Terminal Company trackage from Iowa Junction (RI milepost 164.32/PTC milepost .91) through Hollis, Illinois to the Illinois River bridge (milepost 7.40).

6. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW):*

A. From West Davenport, through and including Muscatine, to Fruitland, Iowa, including the Iowa-Illinois Gas and Electric Company near Fruitland.

B. At Washington, Iowa.

C. From Newport, Minnesota to a point near the east bank of the Mississippi River, sufficient to serve Northwest Oil Refinery, at St. Paul Park, Minnesota.

D. From Davenport (milepost 182.35) to Iowa City, Iowa (milepost 237.01).

E. At Davenport, Iowa.

7. *St. Louis Southwestern Railway Company (SSW):*

A. From Brinkley to Briark, Arkansas, and at Stuttgart, Arkansas.

B. At North Topeka and Topeka, Kansas.

8. *Little Rock & Western Railway Company (LRWN):*

A. From Little Rock, Arkansas (milepost 135.2) to Perry, Arkansas (milepost 184.2).

B. From Little Rock (milepost 136.4) to the Missouri Pacific/RI Interchange (milepost 130.6).

9. *Missouri Pacific Railroad Company (MP):*

A. From Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5).

B. From Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 141.0).

C. From Hot Springs Junction (milepost 0.0) to and including Rock Island milepost 4.7.

D. From Wichita, Kansas (milepost 243.7) to Kechi, Kansas (milepost 235.9).

10. *Norfolk and Western Railway Company (NW):* is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District track, for the purpose of serving industries located adjacent to such tracks. Any trackage rights arrangements which existed between the Chicago, Rock Island and Pacific Railroad Company and other carriers, and which extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.

11. *Cadillac and Lake City Railway Company (CLK):*

A. From Sandown Junction (milepost 0.1) to and including junction with DRGW Belt Line (milepost 2.7) all in the vicinity of Denver, Colorado, a distance of approximately 6.6 miles.

B. From Colorado Springs (milepost 609.1) to and including all rail facilities at Colorado Springs and Roswell, Colorado (milepost 602.8), all in the vicinity of Colorado Springs, Colorado, and Eastward from Colorado Springs to Falcon, Colorado (milepost 590.3), a total distance of approximately 25.1 miles.

C. From Simla, Colorado (milepost 558.3) to Colby, Kansas (milepost 387.0), a distance of approximately 171.3 miles.

D. Rock Island trackage rights over Union Pacific Railroad Company between Limon and Denver, Colorado, a distance of approximately 83.8 miles.

12. *Baltimore and Ohio Railroad Company (BO):*

A. From Blue Island, Illinois (milepost 15.7) to Bureau, Illinois (milepost 114.2), a distance of 98.5 miles.

B. From Bureau, Illinois (milepost 114.12) to Henry, Illinois (milepost 126.94) a distance of approximately 12.8 miles.

13. *Keota Washington Transportation Company (KWTR):*

A. From Keota to Washington, Iowa; to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Washington, Iowa, and to serve any industries on the former RI which are not being served presently.

B. At Vinton, Iowa (milepost 120.0 to 123.0).

C. From Vinton Junction, Iowa (milepost 23.4) to Iowa Falls, Iowa (milepost 97.4).

14. *The La Salle and Bureau County Railroad Company (LSBC):*

A. From Chicago (milepost 0.60) to Blue Island, Illinois (milepost 16.61), and yard tracks 6, 9 and 10; and crossover 115 to effect interchange at Blue Island, Illinois. Street (Subdivision 1A, milepost 14.8), at Blue Island, Illinois.

B. From Western Avenue (Subdivision 1A, milepost 16.6) to 119th Street (Subdivision 1A, milepost 14.8), at Blue Island Illinois.

C. From Gresham (subdivision 1, milepost 10.0) to South Chicago (subdivision 1B, milepost 14.5) at Chicago, Illinois.

D. From Pullman Junction, Chicago, Illinois, (milepost 13.2) running southerly to the entrance of the Chicago International Port, a distance of approximately five miles, for the purpose of bridge rights only.

15. *The Atchison, Topeka and Santa Fe Railway Company (ATSF):*

A. At Alva, Oklahoma.

B. At St. Joseph, Missouri.

16. *The Brandon Corporation (BRAN):*

A. From Belleville, Kansas (milepost 226.1), to Manhattan, Kansas (milepost 143.0), a distance of approximately 83 miles.

17. *Iowa Northern Railroad Company (IANR):*

A. From Cedar Rapids, Iowa (milepost 100.5), to Manly, Iowa, (milepost 225.1).

B. At Vinton, Iowa, and west on the Iowa Falls Line to milepost 24.3.

18. *Iowa Railroad Company (IRRC):*

*A. From Council Bluffs (milepost 490.15) to West Des Moines, Iowa (milepost 363.34) a distance of approximately 126.81 miles.

B. From Audubon Junction (milepost 440.7) to Audubon, Iowa (milepost 465.1) a distance of approximately 24.4 miles.

C. From Hancock, Iowa (milepost 6.4) to Oakland, Iowa (milepost 12.3) a distance of approximately 5.9 miles.

+D. Overhead rights from West Des Moines, Iowa (milepost 363.34) to East Des Moines, Iowa (milepost 350.8). (This trackage is currently leased to the CNW, see Item, 5.E.)

+E. From East Des Moines, Iowa (milepost 350.8) to Iowa City, Iowa (milepost 237.01) a distance 113.79 miles.

+F. Overhead rights from Iowa City, Iowa (milepost 237.01) to Davenport, Iowa (milepost 182.35), including interchange with the Cedar Rapids and Iowa City Railway. (This trackage is currently leased to the MILW, see Item 6.D.)

*G. From Bureau, Illinois (milepost 114.2) to Davenport, Iowa (milepost 182.35)

H. From Rock Island, Illinois through Milan, Illinois, to a point west of Milan sufficient to serve the Rock Island Industrial Complex.

I. At Rock Island, Illinois including 26th Street Yard.

19. *Missouri-Kansas-Texas Railroad Company (MKT):*

A. From Oklahoma City, Oklahoma (milepost 496.4) to McAlester, Oklahoma (milepost 365.0), a distance of approximately 131.4 miles.

20. *Chicago Short Line Railway Company (CSL):*

A. From Pullman Junction easterly for approximately 1000 feet to serve Clear-View Plastics, Inc., all in the vicinity of the Calumet switching district.

B. From Rock Island Junction westerly for approximately 3000 feet to Irondale Wye.

21. *Kyle Railroad Company (Kyle):*

A. From Belleville (milepost 187.0) to Caruso, Kansas (milepost 430.0), a distance of approximately 243 miles. KYLE will be responsible for the maintenance of the jointly used track between Colby and Caruso as mutually agreed upon with CLK, and for coordinating operations.

22. *North Central Texas Railway, Inc. (NCTR):*

A. From Chico, Texas (milepost 562) to Dallas (North Junction), Texas (milepost 643.8).

B. Joint right-of-way district between Dallas (North Junction) and Endot, Texas (milepost 646.4).

23. *Enid Central Railway, Inc. (ENIC):*

A. From Enid, Oklahoma (milepost 345.27) to Kremlin, Oklahoma (milepost 330.03), including operations on the Ponca City Branch line from milepost 0.02 to milepost 0.30.

B. From North Enid, Oklahoma (milepost 0.30) to Ponca City, Oklahoma (milepost 54.8).

24. *North Central Oklahoma Railway, Inc. (NCOR):*

A. From Mangum, Oklahoma (milepost 97.2) to Chickasha, Oklahoma (milepost 0.0).

B. From Richards Spur, Oklahoma (milepost 486.45) to Anadarko, Oklahoma (milepost 463.39).

C. From Chickasha, Oklahoma (milepost 434.69) to El Reno, Oklahoma (milepost 400.31).

D. From El Reno, Oklahoma (milepost 513.31) to Council, Oklahoma (milepost 494.5).

25. *South Central Arkansas Railway, Inc. (SCAR):*

A. From El Dorado, Arkansas (milepost 99) to Ruston, Louisiana (milepost 154.77).

26. *Burlington Northern Railroad Company (BN):*

A. At Burlington, Iowa (milepost 0 to milepost 2.06).

B. At Okeene, Oklahoma.

C. At Lawton, Oklahoma.

27. *Fort Worth and Denver Railway Company (FWD):*

A. From Amarillo to Bushland, Texas, including terminal trackage at Amarillo, and approximately three (3) miles northerly along the old Liberal Line.

B. At North Fort Worth, Texas (milepost 603.0 to 611.4).

+28. *Okarche Central Railway, Inc. (OCRI):*

A. From Enid, Oklahoma (milepost 345.27) to El Reno Junction, Oklahoma (milepost 405.21).

B. From El Reno, Oklahoma (milepost 514.32) to Council, Oklahoma (milepost 496.40).

C. At El Reno, Oklahoma (milepost 402.73) to (milepost 404.19).

Note.—Certain segments of the above operation are overlapping with the NCOR (see Item 24). In the interest of operational clarity and efficiency, OCRI will be the supervising carrier for operations and maintenance.

+Added.

*Changed.

[FR Doc. 82-15123 Filed 6-3-82; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 47, No. 108
Friday, June 4, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 720

Affirmative Employment Programs; Affirmative Action for Disabled Veterans

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: These proposed regulations implement OPM's responsibilities under section 403 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, and section 307 of the Civil Service Reform Act of 1978. The regulations establish a Government-wide affirmative action program for disabled veterans in the Federal service.

DATE: Comments must be received by OPM by July 6, 1982.

ADDRESS: Send or deliver written comments to Assistant Director for Affirmative Employment Programs, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7528, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Hassan El-Amin or Marvin Kossmann, (202) 254–3058.

SUPPLEMENTARY INFORMATION: Under section 403 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 U.S.C. 2014), the former Civil Service Commission was given the responsibility for affirmative action programs in the executive branch with respect to disabled veterans. Subsequently, executive Order 12106 (1978) transferred various equal employment opportunity enforcement functions from the Civil Service Commission to the Equal Employment Opportunity Commission (EEOC), pursuant to Reorganization Plan No. 1 of 1978. In October 1980, Congress amended 38 U.S.C. 2014 and assigned OPM responsibility for planning, implementing and overseeing an affirmative action program for disabled veterans in the Federal service.

OPM and EEOC are working together and sharing responsibility for the program during fiscal year 1982. OPM will assume full responsibility for all aspects of the program as of October 1, 1982 (the beginning of fiscal year 1983). Accordingly, OPM and EEOC have instructed all Federal agencies to comply with instructions in EEOC's EEO–MD–709, "Affirmative Action for Hiring, Placement, and Advancement of Handicapped Individuals Including Disabled Veterans," during FY '82.

These proposed regulations implement OPM's responsibility under the law. They add Subpart C to Part 720 of Title 5 of the Code of Federal Regulations, and make other technical changes in Part 720 in connection with the addition of Subpart C. OPM will provide further guidance to federal agencies in Chapter 720 of the Federal Personnel Manual.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, 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.

I find that good cause exists for reducing the comment period on this proposed rulemaking from sixty to thirty days. The comment period is reduced in order to allow OPM to review comments and publish a final rule so that agencies have sufficient time to complete their affirmative action plans for disabled veterans by October 1, 1982.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because they apply only to Federal Government employment practices.

List of Subjects in 5 CFR Part 720

Equal employment opportunity, Government employees, Reporting requirements, Veterans.

U.S. Office of Personnel Management.
Donald J. Devine,
Director.

Accordingly, OMP proposes to amend 5 CFR Part 720 as shown:

1. By revising the Part heading to read as follows:

PART 720—AFFIRMATIVE EMPLOYMENT PROGRAMS

§ 720.101 [Amended]

2. in § 720.101, by redesignating the section title as "Federal Equal Opportunity Recruitment Program" and removing the word "subpart" and inserting in its place the word "section" in both places where it appears.

3. By adding a new § 720.102 to read as follows:

§ 720.102 Affirmative action for disabled veterans.

(a) Section 2014 of title 38, United States Code, provides, in part:

(c) Each department, agency, and instrumentality in the executive branch shall include in its affirmative action plan for the hiring, placement, and advancement of handicapped individuals in such department, agency, or instrumentality as required by section 501(b) of the Rehabilitation Act of 1973 (29 U.S.C. 791(b)), a separate specification of plans (in accordance with regulations which the Office of Personnel Management shall prescribe in consultation with the Administrator, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, consistent with the purposes, provisions, and priorities of such Act) to promote and carry out such affirmative action with respect to disabled veterans in order to achieve the purpose of this section.

(d) The Office of Personnel Management shall be responsible for the review and evaluation of the implementation of this section and the activities of each such department, agency, and instrumentality to carry out the purpose and provisions of this section. The Office shall periodically obtain and publish (on at least a semiannual basis) reports on such implementation and activities from each such department, agency, and instrumentality * * *

(e) The Office of Personnel Management shall submit to the Congress annually a report on activities carried out under this section * * *

(b) Section 3112 of title 5, United States Code, provides:

Under such regulations as the Office of Personnel Management shall prescribe, an agency may make a noncompetitive

appointment leading to conversion to career or career-conditional employment of a disabled veteran who has a compensable service-connected disability of 30 percent or more.

4. By adding a new Subpart C, to read as follows:

Subpart C—Affirmative Action for Disabled Veterans

Sec.
720.301 Purpose and authority.
720.302 Definition.
720.303 Agency programs.
720.304 Agency plans.
720.305 Agency accomplishment reports.
720.306 Responsibilities of the Office of Personnel Management.

Authority: 5 U.S.C. 7201; 42 U.S.C. 2000e; 38 U.S.C. 2014; 5 U.S.C. 3112.

Subpart C—Affirmative Action for Disabled Veterans

§ 720.301 Purpose and authority.

This subpart sets forth requirements for agency affirmative action programs designed to promote Federal employment and advancement opportunities for qualified disabled veterans. The regulations in this subpart are prescribed pursuant to responsibilities assigned to the Office of Personnel Management (OPM) under section 403 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 2014), and section 307 of the Civil Service Reform Act of 1978 (5 U.S.C. 3112).

§ 720.302 Definition.

As used in this subpart, "disabled veteran" means a person who:

(a) has served on active duty in the armed forces, and

(b) has been separated from the armed forces under honorable conditions, and

(c) either:

(1) has established the present existence of a service-connected disability, or

(2) is receiving compensation, disability retirement benefits, or a pension, under a statute administered by the Veterans Administration or a military Department.

§ 720.303 Agency programs.

(a) *Continuing programs.* Each Department, agency, or instrumentality in the executive branch shall conduct a continuing affirmative program for the recruitment, hiring, placement, and advancement of disabled veterans.

(b) *Program responsibility.* The head of each agency shall assign overall program responsibility to an appropriate agency official. The official so designated should be at a high enough level to ensure effective program administration and the devotion of adequate resources to the program.

(c) *Problem analysis.* Annually, OPM will provide appropriate data on the employment of disabled veterans to each agency participating in the Central Personnel Data File (CPDF). These data will be taken from CPDF. CPDF is considered to be each participating agency's official record of the status of disabled veteran employment. Each participating agency is responsible for assuring that such records are timely, accurate, and complete.

CPDF data must be used by participating agencies to identify problem areas and deficiencies in the employment and advancement of disabled veterans. OPM will establish with each agency not participating in CPDF, the nature and extent of data to be used identifying problems and deficiencies. Based on this analysis, agencies shall develop methods to improve the recruitment, hiring, placement, and advancement of disabled veterans, or revise or redirect existing methods, as necessary. These methods must then be translated into action items.

§ 720.304 Agency plan.

(a) *Plan development.* Each Department, agency, or instrumentality in the executive branch must have an up-to-date affirmative action plan for the employment and advancement of disabled veterans.

(1) Initial plans for fiscal year 1983 required under this subpart must be developed by October 1, 1982 and must be in effect on that day.

(2) Each agency must review its plan on an annual basis, together with its accomplishments for the previous fiscal year, updated employemnt data, and any changes in agency mission or structure, and update the plan as necessary.

(b) *Plan coverage.* (1) Each agency must have a nationwide plan covering all of its operating components and field installations. Nationwide plans shall include instructions assigning specific responsibilities on affirmative actions to be taken by the agency's various operating components and field installations to promote the employment and advancement of disabled veterans.

(2) Agency operating components and field installations must have a copy of the plan covering them, and must implement their responsibilities under it. Operating components and field installations shall develop separate plans when required to do so by the agency's headquarters or by OPM.

(c) *Plan Submission and Certification.* (1) Affirmative action plans developed under this section shall be submitted to OPM upon request. The Office of Personnel Management will review a selection of agency plans each fiscal year.

(2) Each agency must certify to OPM by November 1 of each year that it has an up-to-date plan as required by this section. This certification must indicate the date the agency's most recent plan was effective or was last amended, and may be submitted as part of the agency's annual accomplishment report required by section 720.305.

(d) *Plan Content.* Annual affirmative action plans for disabled veterans shall, at a minimum, contain:

(1) A statement of the agency's policy with regard to the employment and advancement of disabled veterans, especially those who are 30 percent or more disabled.

(2) The name and title of the offical assigned overall program leadership for the action plan.

(3) An assessment of the current status of disabled veteran employment, with emphasis on those veterans who are 30 percent or more disabled.

(4) A description of recruiting methods which will be used to seek out disabled veteran applicants, including special steps to be taken to recruit veterans who are 30 percent or more disabled.

(5) A description of how the agency will provide or improve internal advancement opportunities for disabled veterans.

(6) A description of how the agency will inform its operating components and field installations, on a regular basis, of their responsibilities for employing and advancing disabled veterans.

(7) A description of how the agency will monitor, review, and evaluate its planned efforts, including implementation at operating component and field installation levels during the period covered by the plan.

§ 720.305 Agency accomplishment reports.

(a) Not later than November 1 of each year, agencies must submit an annual report on their affirmative action program for disabled veterans to the Office of Personnel Management, covering the previous fiscal year.

(b) Agency annual accomplishment reports must describe:

(1) Methods used to recruit and employ disabled veterans, especially those who are 30 percent or more disabled.

(2) Methods used to provide or improve internal advancement opportunities for disabled veterans.

(3) A description of how the activities of major operating components and field installations were monitored, reviewed, and evaluated.

(4) An explanation of the agency's progress in implementing its affirmative action plan during the fiscal year.

§ 720.306 Responsibilities of the Office of Personnel Management.

(a) *Program review.* OPM will monitor agency program implementation through review of agency plans, direct agency contact, review of employment data, and through other appropriate means. As it deems appropriate, OPM will conduct onsite evaluations of program effectiveness, both at agency headquarters and at field installations or operating components.

(b) *Technical assistance.* The Office of Personnel Management will provide technical assistance, guidance, instructions, data, and other information as appropriate to supplement and support agency programs for disabled veterans.

(c) *Semiannual reports.* As provided by 38 U.S.C. 2014(d), OPM will, on at least a semiannual basis, publish reports on Government-wide progress in implementing affirmative action programs for disabled veterans.

(d) *Report to Congress.* As required by 38 U.S.C. 2014(e), OPM will report to Congress each year on the implementation and progress of the program. These reports will include specific assessments of agency progress or lack of progress in meeting the objectives of the program.

(38 U.S.C. 2014, 5 U.S.C. 3112)

[FR Doc. 82-15292 Filed 6-3-82; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1200

Rules of Practice and Procedure Governing Proceedings Under Research, Promotion, and Education Programs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction.

SUMMARY: This corrects FR Doc. 82-14806 published at page 23733 of the Tuesday, June 1, 1982, **Federal Register.** In the last column, under "DATE: Comments due by * * *", correct "July 16, 1982" to read "June 16, 1982."

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, phone (202) 447-2615.

Dated: June 2, 1982

D. S. Kuryloski,

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

[FR Doc. 82-15365 Filed 6-3-82; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-18761; File No. S7-933]

Proposed Pro Rata Rule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment a proposed rule that would govern the acceptance of securities deposited in response to a partial tender offer if a greater number of securities are deposited than the bidder is bound or willing to purchase. The proposed rule would provide that in such situations the bidder is required to accept securities on a pro rata basis according to the number of securities deposited by each depositor during the period such offer remains open.

The proposed rule is based on the Commission's assessment that, in light of current tender offer practices, extension of proration rights to the term of the tender offer is necessary to assure security holders the time to consider the merits of a tender offer and to obtain sufficient information upon which to base their investment decisions.

DATES: Comments should be submitted on or before July 6, 1982.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-933. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Arthur H. Miller, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed Rule 14d-8 under Sections 14(e) and 23(a) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a *et seq.*). If adopted, the proposed rule would require that if a greater number of securities are deposited pursuant to a partial tender offer than the person making the tender offer is bound or willing to take up, the securities deposited must be taken up pro rata according to the number of securities deposited by each depositor during the period such offer remains open.[1] The proposed rule is based on the Commission's assessment that, in light of current tender offer practices, extension of proration rights to the term of the tender offer is necessary to assure security holders the time to consider the merits of a tender offer and to obtain sufficient information upon which to base their investment decisions.

The Commission recognizes that the longer the proration period: (a) The greater the degree to which the offer is likely to be oversubscribed during the proration period, and therefore the smaller the portion of the securities tendered that will be accepted; and (b) the greater the possibility that the bid will be defeated through defensive tactics of the subject company (*e.g.*, litigation) or higher offers by others. Therefore, in addition to the other issues set forth below, comments are requested on whether extending the proration period to the life of the offer [2] may work to the disadvantage of the investing public by: (a) Reducing the portion of the securities tendered during the proration period that will be accepted; (b) reducing the prices others will be willing to pay in the market for securities during the tender offer; and (c) reducing the willingness of first bidders to make tender offers (and therefore, reducing the aggregate volume of such offers).

I. Background

In 1968, Congress enacted the Williams Act [3] in response to concerns that security holders of companies subject to tender offers and other techniques for accumulating large blocks of equity securities of publicly held companies were compelled to make important investment decisions without adequate time to consider the merits of the offer and without sufficient information upon which to base their choices. In 1979, in response to serious

[1] If adopted proposed Rule 14d-8 would rescind the current version of Rule 14d-8 (17 CFR 240.14d-8), which provides that the current ten calendar day proration period can be exended at the bidder's option.

[2] Extending proration throughout the tender offer will more than double the minimum proration period from ten calendar days to twenty business days.

[3] Act of July 29, 1968, Pub. L. No. 90-439, 82 Stat. 454 (codified at 15 U.S.C. 78m(d)-(e) and 78n(d)-(f) (1970)). The Williams Act added new Sections 13(d), 13(e), 14(d), 14(e) and 14(f) to the Exchange Act.

concerns that, under then current tender offer practices, security holders still lacked sufficient time and information to make important investment decisions, the Commission revised Regulation 14D (17 CFR 240.14d–1 *et seq.*) and adopted a new Regulation 14E (17 CFR 240.14e–1 *et seq.*), the principal purpose of which was to assure that security holders had adequate time to receive tender offer materials, consider the merits of the offer, and effect their investment decisions. To accomplish these goals, the Commission required that, among other things, tender offers remain open for at least twenty business days from the date of commencement and ten business days from the announcement of any price increase,[4] and that withdrawal rights be extended from seven calendar days from the date of commencement to fifteen business days from the date of commencement.[5]

Since the adoptions of Regulation 14D and Regulation 14E, new trends in tender offer practice have evolved that limit the effectiveness of the increased withdrawal rights and minimum tender offer period. Over the past year, there has been an increasing number of partial tender offers that provided for the minimum ten calendar day proration period. This increase appears to be attributable to a number of factors, including the trend toward tender offers so large that often only partial offers are feasible, a concomitant increase in the number of competing partial tender offers involving a number of price increases, and, more recently, the growing use by bidders of "two-step" offers that combine a partial cash tender offer with an offer of the securities of the bidder, usually in a subsequent second or third step merger transaction.[6] As a practical matter, security holders are compelled to make their investment decisions on these large and complex transactions within the ten calendar day proration period (which may be as few as six business days) or risk losing both the opportunity to sell into the market at prices reflecting the tender offer premium and the opportunity to participate in the cash (and frequently substantially higher priced) portion of the tender offer.[7]

The impact of the short proration period was highlighted this past summer by the three-way bidding contest for control of Conoco, Inc. by Joseph E. Seagram & Sons, Inc., E. I. DuPont de Nemours and Mobil Corporation, in which there were nine proration dates and six separate proration pools. Subsequent partial tender offers have continued to illustrate how important the proration period is under current tender offer practices. The Commission believes that the goal of informed decision making underlying the minimum tender offer period adopted under Section 14(e) of the Exchange Act requires an extension of the proration period.

The Commission recognizes that Section 14(d)(6) of the Exchange Act requires prorationing only during the first ten calendar days of a tender offer and for ten calendar days from the announcement of an increase in the consideration offered. However, the Commission believes that it has the authority to adopt proposed Rule 14d–8 pursuant to Section 14(e) of the Exchange Act. In 1970, two years after the enactment of the Williams Act, Section 14(e) was amended to give the Commission "full rulemaking authority" do "define and prescribe means reasonably designed to prevent * * * fraudulent, deceptive or manipulative" practices in connection with tender offers. The purpose of this additional grant of rulemaking authority was to give the Commission rulemaking powers to deal more effectively with rapidly evolving tender offer techniques that have the potential to injure investors. [8]

The ten day proration period, as used in current tender offers, can give rise to the types of practices that the 1970 amendments to Section 14(e) authorized the Commission to prevent by rulemaking. The Commission recognizes that, at the time the Williams Act originally was considered by Congress, proposals that would have extended pro rata treatment over the duration of the tender offer period and that would have given the Commission specific rulemaking authority with respect to proration were rejected.[9] Nonetheless, the Commission believes that in amending Section 14(e) in 1970 to give the Commission additional rulemaking authority, Congress recognized that the statutory scheme established in 1968 was inadequate to deal with continuously evolving tender offer practices, and that the Commission needed full rulemaking authority to deal more effectively with tender offer practices that had the potential to injure investors as these practices developed.[10]

II. Discussion

As used in recent partial tender offers, the minimum ten day proration period (1) fails to give some security holders an adequate opportunity to avail themselves of the minimum twenty business day tender offer period adopted pursuant to Section 14(e) of the Exchange Act and (2) leads to inordinately complex investment decisions.

A. Ten Calendar Proration Period

The end of the proration period represents a critical deadline for security holders faced with a partial tender offer. A security holder faced

[4] Rule 14e–1 (17 CFR 240.14e–1).

[5] Rule 14d–7 (17 CFR 240.14d–7). In addition, Rule 14d–7 provides that security holders can withdraw deposited securities on the date and until the expiration of ten business days following the date of the commencement of a competing tender offer, so long as the bidder has not already accepted such securities for payment. Other provisions designed to accomplish these purposes specify the date an offer is deemed to have commenced (Rule 14d–2, 17 CFR 240.14d–2), the filings to be made by the bidder with the Commission (Rule 14d–3, 17 CFR 240.14d–3), the disclosures to be made by the bidder to security holders (Rule 14d–6, 17 CFR 240.14d–6), the procedures to be followed by the bidder and the subject company to ensure adequate dissemination of such disclosures (Rules 14d–4 and 14d–5, 17 CFR 240.14d–4 and 240.14d–5), the filing and dissemination requirements of certain enumerated persons that solicit or recommend the acceptance or rejection of an offer (Rule 14d–9, 17 CFR 240.14d–9), and the requirements of the subject company with respect to disclosing its position on the tender offer (Rule 14e–2, 17 CFR 240.14e–2).

[6] *See, e.g.*, Freund & Greene, Substance Over Form S–14: A Proposal to Reform SEC Regulation of Negotiated Acquisitions, 36 Bus. Law. 1483, 1485–88 (1981); Freund & Easton, The Three-Piece Suitor: An Alternative Approach to Negotiated Corporate Acquisitions, 34 Bus. Law. 1679, 1680–87 (1979).

[7] *See* Lederman & Vlahakis, Pricing and Proration in Tender Offers, 14 Rev. of Sec. Reg. 813, 817 (1981).

[8] *See* S. Rep. No. 1125, 91st Cong., 2d Sess. at 4, 6 (1970); H.R. Rep. No. 1655, 91st Cong., 2d Sess. at 4, 6 (1970). At the time the 1970 amendments to Section 14(e) were enacted, Senator Williams, the sponsor of the legislation, stated:

(The rulemaking authority) provision is of the utmost necessity. The techniques used in corporate takeovers and tender offers have become increasingly sophisticated and change rapidly. This is particularly true in situations where the takeover is resisted by incumbent management—industrial warfare develops. Claims and counterclaims, charges and countercharges are hurled back and forth. Efforts are often made to influence the price of the securities involved. The Commission must be given full rulemaking powers in order to deal with these rapidly changing problems.

116 Cong. Rec. S. 3024 (February 10, 1970). Although the Commission would be relying on its authority under Section 14(e) if it adopts proposed Rule 14d–8, the proposed rule would be adopted as part of Regulation 14D and would apply only to those tender offers already subject to mandatory prorationing. The Commission believes that this is appropriate since the problems that prompted the rule proposal exist principally in tender offers subject to manatory prorationing.

[9] *See generally* Hearings on S. 510 Before the Senate Subcomm. on Securities of the Comm. on Banking and Currency, 90th Cong., 1st Sess. (1967); hearings on H.R. 14475 Before the House Subcomm. on Commerce and Finance of the Comm. on Interstate and Foreign Commerce, 90th Cong., 2d Sess. (1968).

[10] In addition to its rulemaking authority under Section 14(e), the Commission believes that the rulemaking authority granted to the Commission in Section 23(a) provides authority to adopt proposed Rule 14d–8.

with such an offer realistically must choose and implement one of three investment options before the proration period ends: (1) Tender to the bidder in order to be sure of participating in the tender offer; (2) sell on the open market at prices reflecting the tender offer price, the risks of proration and, in some cases, the likelihood of competing bids (foregoing any possible price increases and avoiding the risk of proration or bid failure); [11] or (3) hold and remain a security holder of the subject company at least for the immediate future. Failure to select one of these three options before the expiration of the proration period is tantamount to choosing the third, because the first and second options can disappear at the end of the proration period if the offer is oversubscribed.

Due to the short time period, some security holders do not have the time to make informed investment decisions within the 10 calendar day proration period. Even under the best circumstances, a ten calendar day period is insufficient for some security holders to obtain the requisite information about the tender offer, consider the information in view of personal circumstances, and, if the security holder decides to tender, physically deliver his letter of transmittal and share certificates (or a guarantee of delivery in lieu thereof) to the bidder's depository. If, as is common, the tender offer materials are sent by first-class mail on the first day of the tender offer, some security holders, many of them individuals, may not receive such materials until at least several days into a ten calendar day proration period, particularly when securities are held in street name or by nominees. A few security holders may not even receive tender offer materials sent first class on the first day of a tender offer until after the ten calendar day proration period has expired.[12]

To gain decision making time, many professional and sophisticated investors use extraordinary measures. These investors often dispatch messengers to pick up tender offer materials on the first day of the offer and frequently arrange for hand delivery of shares or letters of guarantee to the depository on the last day of the proration period. Non-professional, individual investors may not have these resources.[13]

A contested tender offer presents an even more difficult situation. If, as is common in such offers, the bidder elects not to mail its materials to security holders, but rather to publish a summary advertisement which invites interested security holders to request tender offer materials from the bidder,[14] the time needed for security holders to request the tender offer materials results in additional delay in the arrival of the tender offer materials. On the other hand, where the bidder has decided to mail its materials to security holders pursuant to the Commission's rules, in some cases, there have been delays in the commencement of the bidder's mailing that have reduced the security holders' decision making time. Thus, in a contested partial tender offer, it is possible that a few security holders will not receive the tender offer materials within the first ten calendar days of the offer, regardless of which method of dissemination a bidder uses.

It was just such problems that led the Commission in 1979 to require that tender offers be kept open for at least twenty business days from the date of commencement and at least ten business days from the date of an increase in the offering price.[15] However, the efficacy of these minimum time periods has been undermined in partial tender offers, where security holders faced with such offers have had to act within ten calendar days to protect their proration rights. It is anomalous that a security holder faced with a partial offer, that may include discussion of the issuance of the securities of the bidder in a second step transaction (in many cases worth significantly less than the cash paid in the first step), effectively has only ten calendar days in which to make his investment decision whereas a security holder faced with an "any and all" offer is assured at least twenty business days in which to make his decision.

The investment decision in an "any and all" offer is often far simplier than that in a partial offer. The security holder confronting a partial tender offer has a more complex task in assessing the risks of oversubscription and prorationing and the consequences of remaining a minority security holder of the subject company with the bidder now occupying a dominant role in the subject company's affairs.[16] Moreover, proposed second step mergers, which frequently are part of the plan of takeover, tend to be significantly more complicated in the context of partial offers which typically involve the issuance of the bidder's securities, whereas in the any and all cash offer context the second step merger is more commonly for the same cash amount per share.

B. Investment Decisions

In recent tender offers, short proration periods greatly complicated the investment decisions to be made by security holder and may have caused considerable confusion on several levels. First, it is questionable whether security holders fully appreciate the importance of deciding—before the

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[11] A security holder cannot depend on selling his shares into the market after expiration of the proration period at prices obtainable prior to the end of that period, since an announcement by the bidder at the end of the proration period that its offer is oversubscribed or even close to fully subscribed (absent some other factor such as a higher competing bid) may be expected to cause the market price of the subject company's securities to drop significantly below the tender offer price. This market price will reflect the likelihood of a competing bid and, in most cases, will be higher than the pre-offer market price for the subject company stock. One consequence of the extension of proration rights to the term of the offer may be to lower the market price for the securities during at the least some part of the tender offer period, as professional arbitrageurs will face an increased risk of proration.

[12] Just how long it takes for security holders to receive materials placed in the mails is impossible to determine and varies depending on a number of factors, such as the geographic location(s) where the materials are mailed, whether they are presorted by destination, and the time of year.

The length of the delivery process varies depending on a number of factors, including (i) the geographic proximity of the security holder, his stock certificates and the bidder's depository; (ii) whether the securities are registered in the security holder's name or held in "nominee" or "street" name; (iii) whether the security holder has a relationship with a stockbroker or bank that is able and willing to assist the security holder in delivery the shares or in submitting to the depository a "guarantee of delivery" on the security holder's behalf; and (iv) whether the stockbroker or bank imposes its own internal processing delays in order to handle the transaction for its client.

[13] *See* Nathan & Volk, Developments in Acquisitions and Acquisition Techniques Under the Williams Act, Practicing Law Institute, Twelfth Annual Institute on Securities Regulation 178, 181–182 (Fleischer, Lipton, Mundheim & Santoni, eds., 1981) (comments of Theodore Levine, Martin Lipton and Stephen R. Volk); Welles, Inside the Arbitrage Game, Institutional Investor 41, 46–51 (Aug. 1981). In the context of the tender offer of Mobil Inc. for Marathon Oil Corp., an article in the Wall Street Journal, Nov. 30, 1981 at 55, noted the advantages institutional investors and arbitrageurs have over non-professional investors.

(The institutions and arbitrageurs) will use armies of messengers to hand-deliver their tenders * * *, allowing them to defer a decision (whether to tender) until hours, or even minutes, before the (proration) deadlines.

But the estimated 38,000 individual shareholders without these advantages will face a (very) difficult week. "I feel sorry for any poor individual shareholder trying to figure this (tender offer) out," says Thomas O'Loughlin, energy analyst at Wilmington Trust.

[14] *See* Rule 14d–4.

[15] Rule 14e–1.

[16] See Corenco Corp. v. Schiavone & Sons, Inc., 362 F. Supp. 939, 948–50 (S.D.N.Y.), *aff'd*, 488 F.2d 207 (2d Cir. 1973) (partial bidder must disclose financial information about itself to help security holders decide whether to tender or remain security holders of the surviving corporate entity controlled by bidder); *see also*, Prudent Real Estate Trust v. Johncamp Realty, Inc., 599 F.2d 1140 (2d Cir. 1979) (same).

expiration of the proration period—whether to tender, sell or hold their stock. The varying legal consequences of the disclosed "proration date," "withdrawal date," and "expiration date" may also confuse some security holders. Moreover, it has come to the commission's attention that security holders may focus exclusively on the expiration date—twenty business days from the commencement of the offer—and ignore the importance of the shorter proration date. Such thinking could result in some security holders being shut out of offers.

Second, a short proration period, coupled with the pro rata provision which requires a bidder to extend the proration period for at least ten calendar days upon increasing the offered consideration, has given rise to a practice of timing price increases to establish a basis for interpreting the existing provisions to permit the creation of multiple "proration pools" rather than extending the initial proration period to the tenth calendar day from such increase. These multiple pools also complicate the decision making process notwithstanding the extensive disclosure concerning the effect of such pools.[17]

Third, an increase in consideration by a bidder after its initial proration period has ended that results in a new ten calendar day proration period may create the illusion that additional pro rata rights have been conferred when, in fact, none have. To illustrate, when an offer is oversubscribed during the initial proration period and thereafter the consideration offered is increased without an increase in the number of shares sought, no shares tendered into the second proration pool will be accepted for purchase, even though announcement of the second proration pool may cause security holders to expect that shares tendered into that pool will be purchased on a pro rata basis.

III. Inquiries Regarding Economic Implications

While the Commission believes that the proposed extension of the proration period is necessary in order to provide investors with the time specified in Regulations 14D and 14E to make informed decisions in the face of complex tender offers, the Commission is aware that, as with any additional regulation, there are economic consequences to such action.[18] The Commission recognizes that there are a number of informed commentators who question the efficiency even of the current scheme. Since the introduction of federal tender offer regulation, a number of economic and financial analyses of tender offers and tender offer regulation have argued that federal regulation has substantially increased the risks and costs to the first bidder, which may result in fewer initial takeover bids being commenced. Thus, these studies suggest, security holders of companies not subject to tender offers may have lost opportunities to receive any premium since possible tender offers for their securities were foregone. In addition, it has been argued that there are possible efficiency losses to the economy due to foregone tender offers. That is, some firms may be operated less efficiently than they could be, and not be potentially subject to tender offers, due to the generally higher costs and risks associated with making initial tender offers. The adoption of Regulation 14E and the 1979 revisions to Regulation 14D, according to this argument, have exacerbated the stituation. The Commission intends to evaluate the entire regulatory scheme applicable to tender offers, including these economic issues. The Commission's evaluation may include studies of these issues as well as the issuance of a release soliciting comment with respect to the implications of the regulatory scheme governing the commencement and conduct of tender offers subject to the Williams Act and soliciting suggestions for any possible legislative amendments the Commission should propose to the Williams Act.

IV. Impact on Competition

In addition to the issues raised by the proposal, the Commission requests written comment on whether the proposed rule, if adopted, would have an adverse effect on competition or would impose a burden on competition which is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry should include, to the extent feasible, detailed empirical and evidentiary material in support of any conclusions, opinions or positions. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a)(2) of the Exchange Act.

V. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the rule proposed herein will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release.

List of Subjects in 17 CFR Part 240

Reporting requirements, Securities.

Text of Proposal

In accordance with the foregoing, Title 17, Chapter 2, of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revising Rule 14d–8, § 240.14d–8, to read as follows:

§ 240.14d–8 Pro Rata Rights.

Notwithstanding the pro rata provisions of Section 14(d)(6) of the Act, if any person makes a tender offer or request or invitation for tenders for less than all of the outstanding equity securities of a class, and if a greater number of securities are deposited pursuant thereto than such person is bound or willing to take up and pay for,

[17] The complexity inherent in multiple proration pools is well illustrated by the Conoco takeover contest. When Seagram, in its tender offer for Conoco, announced its first price increase (from $73 per share to $85 per share) on July 13, 1981, four days *before* the end of its initial proration period, it was required to and did extend its initial proration period to July 22, ten calendar days after July 13. However, when Seagram raised its price from $85 per share to $92 per share on July 23, 1981, one day after its initial extended proration period closed, it did not extend its initial proration period but, instead, created a new ten calendar day proration period running from July 23 to August 1, 1981. Because Seagam's tender offer was underscribed during the first proration period, all shares tendered during the first proration period were eligible for purchase and the percentage of Conoco's shares that Seagram was willing to purchase dropped from 51% at the outset of the offer to 38% during the second proration period, thus heightening the proration risk of Seagram's second proration pool.

In DuPont's competing bid for Conoco, when DuPont's first proration period expired, the cash portion of its offer was underscribed. All shares tendered to DuPont during such period and not withdrawn were accepted for cash entirely, subject to no prorationing. For the next ten days of its offer DuPont accepted shares for cash on a first come-first served basis. On the eleventh day from the expiration of its first proration period, DuPont announced a price increase and commenced a new ten day proration period. Shares tendered during this period, however, were not accepted for cash as the cash portion of the DuPont offer was fully subscribed prior to the announcement of the DuPont price increase.

[18] An immediate consequence will be an extension of the time before which securities may be accepted for payment in a partial tender offer. Since proposed Rule 14d–8 would extend the proration period to be coextensive with the duration of the offering period, in the simplest case, the bidder would have to wait until the expiration of the twentieth business day, rather than the fifteenth business day (i.e., termination of the withdrawal period), to accept securities for payment.

the securities taken up and paid for shall be taken up and paid for as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor during the period such offer, request or invitation remains open.

Authority: This rule is being proposed pursuant to Sections 14(e) and 23(a) of the Securities Exchange Act of 1934.

(Sec. 23, 48 Stat. 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 580; sec. 3, 82 Stat. 455; secs. 3–5, 84 Stat. 1497; sec. 18, 89 Stat. 155; (15 U.S.C. 78n(e), 78w(a)))

By the Commission.

George A. Fitzsimmons,

Secretary.

May 25, 1982.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed rule published in Securities Exchange Act Release No. 34–18761 (May 25, 1982) "Proposed Pro Rata Rule" will not, if promulgated, have a significant economic impact on a substantial number of small entities. Although the proposed rule would, by its terms, require that all bidders (including small entities) in oversubscribed partial tender offers for securities referred to in Section 14(d)(1) of the Securities Exchange Act of 1934 grant pro rata treatment according to the number of securities deposited by each depositor during the period such offer is held open, neither bidders in nor persons subject to such tender offers ordinarily are small entities within the meaning of Commission Rule 0–10, 17 CFR 240.0–10. Therefore, it is anticipated that the proposed rule will not have a significant impact upon small entities.

Dated: May 25, 1982.

John S. R. Shad,

Chairman.

[FR Doc. 82-15275 Filed 6-3-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-098 (Montana—1)]

High-Cost Gas Produced From Tight Formations; Montana

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cosnst gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office Pipeline and Producer Regulation contains the recommendation of the State of Montana that the Bowdoin, Greenhorn, and Phillips Formations each be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on July 1, 1982. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on June 16, 1982.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Victor Zabel, (202) 357–8616.

SUPPLEMENTARY INFORMATION:

Issued: June 1, 1982.

I. Background

On January 29, 1982, the State of Montana Board of Oil and Gas Conservation (Montana) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Bowdoin, Greenhorn, and Phillips Formations located in Phillips and Valley Counties, Montana, each be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Montana's recommendation that the Bowdoin, Greenhorn, and Phillips Formations each be designated a tight formation should be adopted. Inasmuch as approximately 70% of the recommended formation underlies Federal land, the United States Department of the Interior, Minerals Management Service (MMS) reviewed the recommendation. By letter dated February 24, 1982, MMS informed the Commission that it did not approve Montana's recommendation. In this letter, MMS stated that the production of gas from the subject formations presented neither extraordinary risk nor cost. MMS also stated that it believed that the applicant seeking the tight formation designations and its expert witnesses employed excessive manipulation of data in establishing permeability values and pre-stimulation flow rates. By letter dated March 26, 1982, MMS reversed its position as stated in the letter of February 24, 1982, and concurred with Montana's recommendation. Montana's recommendation and supporting data are on file with the Commission and are available for public inspection.

On April 22, 1982, the Commission received a letter from Mr. James M. Haughey, who represents Montana-Dakota Utilities Co. (MDU), which opposed the subject tight formation appplications when they were before the Montana Oil and Gas Conservation Board. MDU's April 22, 1982 letter protests the action of MMS by which it initially opposed the tight formation recommendations (as evidenced in its February 24, 1982 letter) and then reversed its position (as evidenced in its March 26, 1982 letter).

MDU alleges that MMS reversed its position after having made post-hearing contacts with persons who had filed the applications seeking the subject tight formation recommendations. MDU claims that the opponents of the applications (MDU and other) had no notice or knowledge of these post-hearing contacts and had no opportunity to counter the off-the-record arguments then made, to cross-examine witnesses or consider any other information presented during these contacts. MDU therefore requests that the Commission accept only MMS' February 24, 1982 letter opposing the tight formation recommendation, and disregard MMS' March 26, 1982 letter.

On April 27, 1982, the Commission received a letter from Commissioner Thomas J. Schneider of the Montana Public Service Commission (MPSC). MPSC requests that the Commission treat MMS' February 24, 1982 letter as final and reject the March 26, 1982 letter. MPSC further requested that the Commission investigate the circumstances described in MDU's letter.

The Commission was notified on May 11, 1982, by a letter from Senator Max Baucus that the matter raised by MDU and MPSC concerning MMS' actions has been forwarded to the United States Comptroller General with a request that the Comptroller General undertake an investigation of the matter.

The above discussed letters are in the public file in this docket, are available for public inspection and interested persons are invited to comment on the matters raised therein.

II. Description of Recommendation

The recommended formations underlie portions of Phillips and Valley Counties in northcentral Montana. The area encompasses portions of Townships 26 through 37 North, and Ranges 27 through 38 East, excluding certain areas in and around the Bowdoin Dome. The recommended formations are members of the Lower Colorado Group of Late Cretaceous age. The average depth to the top of the Bowdoin Formation is 1,800 feet with its base defined as the top of the Greenhorn Formation. The average depth to the top of the Greenhorn Formation is 2,050 feet with its base defined as the top of the Phillips Formation. The average depth to the top of the Phillips Formation is 2,070 feet.

III. Discussion of Recommendations

Montana claims in its submission that evidence gathered through information and testimony presented at a public hearing in Order No. 151–81, Docket No. 128–81 convened by Montana on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formations without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formations is expected to produce more than five (5) barrels of oil per day.

Section 271.703(c)(2)(i) states that the Commission will approve the designation of any formation recommended by a jurisdictional agency if the formation meets each of the guidelines set forth in § 271.703(c)(2)(i)(A), (B), (C), and (D). Preliminary Commission staff analysis indicates that Montana's recommendation may not meet the guidelines specified in § 271.703(c)(2)(i)(A) and (B). The Bowdoin Formation's average pre-stimulation flow rate appears to be in excess of the maximum allowable production rate set out in the regulations. The estimated average *in situ* gas permeability for the Bowdoin Formation, based on pressure build-up data, appears to be greater than the limit of 0.1 millidarcy. In addition, the average prestimulation flow rates for the three subject formations were calculated by the applicants using zero flow rates from wells which may not have been completed for production. Comments are specifically requested on these issues.

Montana further asserts that existing State and Federal Regulations assure that development of these formations will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Montana that the Bowdoin, Greenhorn, and Phillips Formations, as described and delineated in Montana's recommendation as filed with the Commission, each be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before July 1, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–098 (Montana–1), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than June 16, 1982.

List of Subjects in 18 CFR Part 271

Natural gas, incentive price, tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Montana's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—CEILING PRICES

Section 271.703(d) is revised by adding new subparagraphs (113), (114), and (115) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(78) through (112) [Reserved]

(113) *Bowdoin Formation in Montana. RM79–76–098 (Montana–1)*—(i) *Delineation of formation.* The Bowdoin Formation is located in Phillips and Valley Counties, Montana, and underlies an area bounded by Townships 26 through 37 North and Ranges 27 through 38 East, excluding all or portions of Township 30 North, Ranges 32 through 35 East; Townships 31 through 33 North, Ranges 31 through 35 East; Townships 34 and 35 North, Ranges 31 and 32 East; Township 36 North, Ranges 30 and 31 East; and Township 37 North, Ranges 29 and 30 East.

(ii) *Depth.* The Bowdoin Formation lies between the base of the Niobrara Formation and the top of the Greenhorn Formation. The average depth to the top of the Bowdoin Formation is 1,800 feet.

(114) *Greenhorn Formation in Montana. RM79–76–098 (Montana–1)*—(i) *Delineation of formation.* The Greenhorn Formation is located in Phillips and Valley Counties, Montana, and underlies an area bounded by Townships 26 through 37 North and Ranges 27 through 38 East, excluding all or portions of Township 30 North, Ranges 32 through 35 East; Townships 31 through 33 North, Ranges 31 through 35 East; Townships 34 and 35 North, Ranges 31 and 32 East; Township 36 North, Ranges 30 and 31 East; and Township 37 North, Ranges 29 and 30 East.

(ii) *Depth.* The Greenhorn Formation lies between the base of the Bowdoin Formation and the top of the Phillips Formation. The average depth to the top of the Greenhorn Formation is 2,050 feet.

(115) *Phillips Formation in Montana. RM79–76–098 (Montana–1)*—(i) *Delineation of formation.* The Phillips Formation is located in Phillips and Valley Counties, Montana, and underlies an area bounded by townships 26 through 37 North and Ranges 27

through 38 East, excluding all or portions of Township 30 North, Ranges 32 through 35 East; Townships 31 through 33 North, Ranges 31 through 35 East; Townships 34 and 35 North, Ranges 31 and 32 East; Township 36 North, Ranges 30 and 31 East; and Township 37 North, Ranges 29 and 30 East.

(ii) *Depth.* The Phillips Formation lies between the base of the Greenhorn Formation and the top of the Belle Fourche Shale. The average depth to the top of the Phillips Formation is 2,070 feet.

[FR Doc. 82-15206 Filed 6-3-82; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

Proposed Change of Position Concerning Country of Origin Marking Requirements for Imported Semiconductor Devices; Including Transistors, Diodes, and Integrated Circuits; Extension of Time for Public Comment

AGENCY: Customs Service, Treasury.

ACTION: Notice of extension of time for comment.

SUMMARY: This notice extends the period of time within which interested members of the public may submit written comments with respect to a notice of proposed change of position relating to the marking requirements for imported semiconductor devices, including transistors, diodes, and integrated circuits. A document inviting the public to comment on the notice was published in the **Federal Register** on April 5, 1982 (47 FR 14493). Comments were to have been received on or before June 4, 1982. A request has been received to extend the period for the submission of comments claiming that additional time is needed because the proposed change presents major questions for the semiconductor industry which requires further study and analysis. Customs believes that the request has merit. Accordingly, the period of time for the submission of written comments is extended to July 6, 1982.

DATES: Comments must be received on or before July 6, 1982.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Samuel Orandle, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: May 28, 1982.

John P. Simpson,

Director, Office of Regulations and Rulings.

[FR Doc. 82-15166 Filed 6-3-82; 8:45 am]
BILLING CODE 4820-02-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 412; Re: Notice No. 360]

Los Carneros Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice amends the proposed boundaries of the previously proposed Los Carneros viticultural area. Evidence received at a public hearing and in response to Notice No. 360, published in the **Federal Register** on December 15, 1980, (45 FR 82470) indicates that the originally proposed area does not meet the requirements of 27 CFR 4.25a(e)(2). Therefore, the Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing new boundaries delineating the area which it feels does meet the viticultural area requirements.

DATE: Comments must be received by August 3, 1982.

ADDRESSES: Send written comments to—Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, (Notice No. 412).

Copies of comments will be available for public inspection during normal business hours at the—ATF Reading Room, Federal Building, Room 4405, 1200 Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Steve Simon, Research and Regulations Branch (202-566-7626).

SUPPLEMENTARY INFORMATION:

Original Proposal

On December 15, 1980, ATF published a notice of proposed rulemaking, Notice No. 360, in the **Federal Register** proposing the establishment of the "Los Carneros" viticultural area in Napa County, California. A public hearing concerning the proposal was held in Santa Rosa, California, on January 14, 1981. ATF accepted written comments on the proposal until February 13, 1981.

The original Los Carneros proposal was based on a petition submitted by Beaulieu Vineyards. Under this proposal, the Los Carneros viticultural area would have comprised the area in Napa County south of the city of Napa and west of the Napa River.

Geographical Features. Section 4.25a(e)(2)(iii) requires a viticultural area to possess geographical features which distinguish the viticultural features of the area from the surrounding areas. The presence of Haire-Coombs soils constitutes the main agrological difference between the originally proposed Los Carneros area and the grape-growing areas in the more northern parts of Napa County. However, the evidence received in the public hearing indicates that these predominant Haire-Coombs series soils, the soils in the proposed area most desirable for grape cultivation, extend into Sonoma County.

Additionally, the record indicates that the climate in the area within Sonoma County and adjacent to the originally proposed area and the climate in the originally proposed area are essentially identical. Both the area in Sonoma County and the area in Napa County are characterized by generally cooler temperatures, a greater number of foggy days, and a more pronounced marine influence than the climate in the area to the north.

Based on this evidence, ATF does not feel that the originally proposed area is geographically distinguishable from the adjacent area in Sonoma County.

Proposed Name. Section 4.25a(e)(2) (i) and (ii) require evidence that the proposed viticultural area is known by the proposed name and the boundaries are as specified. One commenter at the public hearing claimed that the Los Carneros region was associated strictly with the Napa Valley viticultural area. The Napa Valley region is located entirely in Napa County. However, other persons at the public hearing claimed that the southern portion of the Sonoma Valley region was also known locally as the Los Carneros area. While most of the wineries currently producing wines labeled with a "Los Carneros" designation are located in Napa County, many of these wines labeled with the Los Carneros designation are derived, in part, from grapes grown in the southern end of the Sonoma Valley area. Also, at least one winery in Sonoma County (Buena Vista Vineyards) is closely identified with the Los Carneros region. According to the *Connoisseurs' Guide to California Wine*, March 25, 1979, at 72-

74 (vol. 4, issue 4), Buena Vista Vineyards has substantial acreage, located in the "Carneros" area, which overlaps from Sonoma County into Napa County.

Both the *Connoisseurs' Guide, supra,* and A. Lichine, *New Encyclopedia of Wines and Spirits* (2d ed. 1976) support the contention that the Los Carneros area includes portions of both Napa and Sonoma Counties. The *Connoisseurs' Guide, supra,* at 74 states that "Carneros" is the coolest viticultural area within Sonoma County and overlaps into Napa County. Alexis Lichine's *New Encyclopedia of Wines and Spirits, supra,* at 497 states that the "Carneros" region "straddles the border between Sonoma and Napa."

Based on this evidence ATF does not feel that the originally proposed viticultural area includes all the area historically and currently known to the industry and consumers as the Los Carneros region.

Other Comments. Several commenters addressed the issue of overlapping viticultural areas. ATF does not object to a proposed viticultural area solely on the grounds that it may partially or completely overlap another area. Regulations do not prohibit overlapping viticultural areas. Each proposed area must be judged individually.

New Proposal

ATF is amending the proposed boundary of the proposed Los Carneros viticultural area to include certain grape-growing areas of Sonoma County along San Pablo Bay with similar grape-growing characteristics, climate, and soil as the originally proposed area in Napa County. The new proposed boundary is described by using features which appear on the following United States Geological Survey maps—

(1) "Sears Point, Calif.," 7.5 minute series Quadrangle;

(2) "Sonoma, Calif.," 7.5 minute series Quadrangle;

(3) "Napa, Calif.," 7.5 minute series Quadrangle; and

(4) "Cuttings Wharf, Calif.," 7.5 minute series Quadrangle.

The new proposed boundary begins at the junction of Sonoma Creek and San Pablo Bay. The boundary then runs in a northerly direction up Sonoma Creek to State Road 121. From this junction of Sonoma Creek and State Road 121, the boundary runs easterly along State Road 121 to the Napa County-Sonoma County line and then northerly along the county line to the township line T.6.N./T.5.N. The boundary then runs easterly along this township line to Browns Valley Creek, then along Browns Valley Creek eastward to Napa Creek. The boundary then follows Napa Creek to the Napa River, and then in a southerly direction down the Napa River to the Napa County-Solano County line. The boundary then runs westerly on the Napa County-Solano County line to the beginning point.

Public Participation

ATF requests comments concerning this proposal from all interested persons. While this document proposes boundaries for the Los Carneros viticultural area, comments concerning other boundaries for this viticultural area will be considered.

Comments are particularly sought regarding the proposed overlap of the Los Carneros viticultural area into parts of the previously approval Napa Valley and Sonoma Valley viticultural areas. ATF's policy is to accept and consider any evidence showing viticultural areas to overlap one another, and if this evidence meets the criteria given in the regulations, such overlapping areas may be approved. As stated in T.D. ATF-96 (46 FR 59237), "Each area must be judged individually on the criteria required in the regulations. Each area must meet the same requirements concerning the area's proposed name and the presence of distinguishing geographical characteristics. In addition, the establishment of viticultural areas is an evolutionary process. ATF will continue to consider any new information concerning viticultural areas."

As proposed by this notice, Los Carneros would consist entirely of land that overlaps either Napa Valley or Sonoma Valley. Such overlapping is supported by the evidence that ATF has so far received. The original Los Carneros petition, which is not being adopted, proposed an area located only in Napa Valley. As another option, Los Carneros might conceivably be approved as a separate and distinct viticultural area, mutually exclusive from any other area—however, this could not be done unless substantial evidence were submitted to support retracting the boundaries of the Napa Valley and Sonoma Valley areas, through amendment of existing regulations.

Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action. ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. Chapter 6) requires Federal agencies to make an initial and final analysis of regulatory proposals where the agency feels that the proposal will have a significant economic impact on a substantial number of small entities. In addition, the agency is required to determine if a proposal would have significant secondary or incidental effects on a substantial number of small entities, or cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

The value of an appellation of origin when used in wine labeling and advertising is primarily intangible. Moreover, the value of an appellation of origin such as "Los Carneros" may vary widely due to factors completely unrelated to this proposal. Therefore, ATF is not able to assign a realistic economic value to the use of "Los Carneros" as an appellation of origin. In the absence of evidence to the contrary, ATF does not expect this proposal, if promulgated as a final rule, to have a significant economic impact on a substantial number of small entities. This proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities, or cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Index Terms

List of **Federal Register** index terms for 27 CFR Part 9: Administrative Practice and Procedure, Consumer Protection, Wine, Viticultural Areas.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a major rule since it will not result in—

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

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

Drafting Information

The principal authors of this document were Thomas L. Minton and Steve Simon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority: This viticultural area is proposed under the authority in 27 U.S.C. 205.

Signed: April 26, 1982.

Stephen E. Higgins,

Acting Director.

Approved: May 13, 1982.

John M. Walker, Jr.,

Assistant Secretary (Enforcement Operations).

[FR Doc. 82-15077 Filed 6-3-82; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

Exemption From Requirements for Recording Occupational Injuries and Illnesses; Proposed Rule and Amendment

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

ACTION: Proposed rule.

SUMMARY: OSHA is proposing to amend Part 1904 to exempt certain employer establishments from requirements to: (1) Maintain, retain, and provide access to the log and summary of occupational injuries and illnesses (§ 1904.2, § 1904.6 and § 1904.7); (2) maintain, retain, and make available for inspection the supplementary record of occupational injuries and illnesses (§ 1904.4 and § 1904.6); and (3) post the annual summary of occupational injuries and illnesses for each establishment (§ 1904.5).

The agency proposes to exempt employer establishments in the following Standard Industrial Classifications (SIC's):

SIC's 52–59 (Retail Trades) *except* SIC's 52–54
SIC's 60–67 (Finance, Insurance, and Real Estate)
SIC's 70–89 (Services) *except* SIC's 70, 75, 76, 79, 80

This action is part of OSHA's continuing effort to reduce the recordkeeping burden on employers. The primary value to OSHA of these records has been to help OSHA compliance officers assess workplace safety and health conditions as part of OSHA's general schedule (agency-initiated) inspections of establishments. Since 1977, however, OSHA has not included in its general inspection program those employers who would be exempt under this proposal. Further, because of low incidence rates at the affected firms and limited OSHA resources there is little likelihood that these firms would be included in any future targeting scheme. Thus, for these establishments, the primary agency use of these records no longer exists. OSHA, therefore, proposes to exempt these employers from the requirements to keep records. The proposed exemption will relieve a large number of employers of an unnecessary paperwork burden without lessening on-the-job safety protection for workers.

DATE: Comments must be received on or before July 6, 1982.

ADDRESS: Comments should be submitted to the Docket Officer, Occupational Safety and Health Administration, Docket No. P200, Room S6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Raymond Donnelly, Occupational Safety and Health Administration, Room N3622, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523–8076.

SUPPLEMENTARY INFORMATION:

Background

The regulations concerning OSHA's occupational injury and illness recordkeeping system (29 CFR Part 1904) were adopted in 1971. Their purpose is to:

implement section 8(c)(1), (2), 8(g)(2) and 24(a) and (e) of the Occupational Safety and Health Act of 1970. These sections provide for recordkeeping and reporting by employers covered by the Act as necessary or appropriate for enforcement of the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation and analysis of occupational safety and health statistics (29 CFR 1904.1).

On July 29, 1977, OSHA amended these regulations to exempt small employers with 10 or fewer employees from the recordkeeping requirements of Part 1904 (42 FR 38567). OSHA then stated that the amendment would continue the Congressional intent, expressed in previous appropriations acts (Pub. L. 93–517 and Pub. L. 94–206) to generally exempt employers with 10 or fewer employees from the recordkeeping requirements but not from the requirement in § 1904.8 to report accidents resulting in a fatality or multiple hospitalization nor from the requirement in § 1904.21 to participate in the Bureau of Labor Statistics' (BLS) annual statistical survey, if such an employer is selected to participate. OSHA also stated that the small employer exemption would carry out the mandate of section 8(d) of the Act which requires that information obtained under the Act be obtained with a minimum burden on employers (29 U.S.C. 657(d)).

OSHA now proposes to provide a comparable exemption for establishments which are classified in the Office of Management and Budget's Standard Industrial Classification (SIC) Manual as retail trade, finance, insurance, real estate and services—SIC's 52–89 (excluding 52–54, 70, 75, 76, 79 and 80).

For the purposes of this exemption, OSHA intends to apply the rules of classification of establishments set out in the Standard Industrial Classification Manual (Office of Management and Budget—1972, Supp. 1977) which is available in OSHA's Docket Office for inspection and copying. The SIC Manual can also be found in public libraries and will be available at all OSHA and BLS regional offices for reference, inspection and copying.

According to these rules, the SIC of an establishment is determined essentially by the principal product or group of products produced or distributed, or of services rendered. For retail trade, finance, insurance, and real estate, the criterion is the value of receipts; and for services, the value of receipts or revenues is the classification criterion. In establishments with diversified activities, the activity determined to account for the largest share of production or sales will identify the primary activity and thus the SIC classification. The proposed amendment (§ 1904.12(h)) contains a more detailed description of the establishments which are proposed for exemption.

Proposed Exemption From Log, Summary and Supplemental Record Requirements

The requirements to maintain, retain and provide access to the OSHA prescribed log, summary of occupational injuries and illnesses and supplemental record were intended to serve three main purposes.

First, these requirements were designed to aid OSHA's compliance safety and health officers to identify hazardous operations when conducting general schedule inspections. Establishments in SIC's 52–89, however, have not been targeted for general schedule inspections since 1977 because these establishments fall within less hazardous industrial divisions. For the

same reason, coupled with limited OSHA resources, it is highly unlikely that such firms would be included in any future targeting plan. Thus, for the establishments proposed for exemption the requirements have outlived their original purpose as a necessary component of general schedule inspection activity. It should be noted that inspections in these establishments will continue to be made in response to employee complaints, and as part of OSHA's investigation of fatalities, multiple hospitalization incidents, and imminent danger situations. In these cases, however, the hazard information is provided by the complaint itself or through prompt investigation.

The second purpose of these regulations was to provide employers and employees with useful information about conditions at their workplace. Statistics show that eliminating the requirement to maintain the OSHA log and supplemental record for the establishments affected by this proposed exemption would not result in the loss of useful information. Approximately 94 percent of all establishments in SIC's 52–89 (excluding 52–54, 70, 75, 76, 79, and 80) based on past BLS data, could be expected to have fewer than two injuries per establishment on an annual basis.

The third purpose of these regulations was to ensure the gathering of uniform, reliable safety and health statistics. OSHA does not intend, with this proposal, to exempt affected employers from participating in the Bureau of Labor Statistics annual survey of occupational injuries and illnesses. Currently, only a small percentage of these employers are asked to participate; in the future, these selected employers will be notified in advance by BLS of the requirement to participate in the survey and to maintain the OSHA log and make reports for the survey as requested by BLS.

Scope and Effect of Proposed Exemption

These exemptions will provide recordkeeping relief to a significant number of employers. It is estimated that 474,000 employers would be exempted under this proposal, leaving unchanged the small employer exemption which already covers approximately 80% of the establishments in SIC's 52–89. This exemption is proposed to take effect beginning January 1, 1983.

The scope of the proposed exemption is confined to establishments in the Major Industry Groups, within SIC's 52–89, which now meet two criteria. The first is that the establishments now fall within SIC's not now targeted for general schedule inspections. As discussed above, since 1977 all establishments in SIC's 52–89 have not been targeted for such inspections. The second criteria is that the establishments now fall within Major Industry Groups in SIC's whose average lost workday case injury rate (LWDC), as published by the Bureau of Labor Statistics, for 1978–80 is at or below 75 percent of the private sector average. Major Industry Groups in SIC's 52–89 which have LWDC averages above 75 percent of the private sector average and thus are not included in the proposed exemption are: building materials and garden supplies (SIC 52); general merchandise and food stores (SIC's 53, 54); hotels and other lodging places (SIC 70); repair (SIC's 75, 76) amusement, and recreation services (SIC 79); and health services (SIC 80).

In addition to those major industrial divisions addressed by our proposal, OSHA reviewed the lost workday case injury averages for the wholesale trade sector (SIC's 50, 51). It was found, however, that the LWDC average for both major wholesale groups for 1978–80 was higher than 75 percent of the private sector rate for the same time period. Therefore, the wholesale trade classification, both durable and nondurable goods, is not included in the proposed exemption.

Submission of Comments

Interested persons are invited to submit written comments on these proposed exemptions from certain requirements of Part 1904. Comments should be submitted in quadruplicate and be received by July 6, 1982. They should be sent to the Docket Office, Occupational Safety and Health Administration, Docket No. P200, Room S6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

OSHA, in accordance with Executive Order 12291 (46 FR 13193), hereby states that this rulemaking does not constitute a "major rule" since its effect will not meet any of the definitional elements in § 1(b) of the Executive Order. As stated above, the effect of this proposal would be to reduce many employers' paperwork burden, and accordingly result in lower costs to them. OSHA also certifies that this proposal does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (Pub. L. 96–354; 94 Stat. 1164) because, it will not have a significant economic impact on a substantial number of small entities, in that no increased reporting requirements are proposed and competition within affected industries is not affected.

This document was prepared under the direction and supervision of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, pursuant to Section 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 29 U.S.C. 657(g), 1593, 1600), Section 4 of the Administrative Procedures Act (45 U.S.C. 553), and Secretary of Labor's Order 8–76, it is hereby proposed to amend Part 1904 of Title 29 of the Code of Federal Regulations as set forth below.

Signed at Washington, D.C. this 28th day of May, 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

List of Subjects in 29 CFR Part 1904

Health records, Health statistics, Occupational safety and health.

It is proposed to amend Part 1904 of Title 29, Code of Federal Regulations as follows:

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

1. By adding a new paragraph (h) to § 1904.12, to read as follows:

§ 1904.12 Definitions.

* * * * *

(h) *Establishments Classified in Standard Industrial Classification Codes. (SIC) 52–89*—(1) Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52–89.

(2) Retail trades are classified as SIC's 52–59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishings stores, and eating and drinking places.

(3) Finance, insurance and real estate are classified as SIC's 60–67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance, and real estate.

(4) Services are classified as SIC's 70–89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal education, social, and cultural; and membership organizations.

(5) The primary activity of an establishment is determined as follows:

For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of the normal basis for determining the primary activity.

2. By adding a new § 1904.16 to read as follows:

§ 1904.16 Establishments classified in Standard Industrial Classification Codes (SIC) 52–89, except 52–54, 70, 75, 76, 79 and 80.

An employer whose establishment is classified in SIC's 52–89 (excluding 52–54, 70, 75, 76, 79, and 80), need not comply, for such establishment, with any of the requirements of this part except the following: (a) Obligation to report under § 1904.8 concerning fatalities or multiple hospitalization accidents; and (b) obligation to maintain a log of occupational injuries and illnesses under § 1904.21, upon being notified in writing by the Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

[FR Doc. 82–15010 Filed 6–1–82; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Proposed Rule; Extension of comment period and notice of meeting.

SUMMARY: Substantial public interest has developed in response to proposed revisions of regulations governing National Forest System land and resource management planning. The proposed rule was published February 22, 1982 (47 FR 7678–7696). In response to this interest, the Department will hold a meeting, open to the public, to discuss and consider topics that have emerged from comments on the proposed rule. Also the period for the public to comment on the proposed rule is hereby extended to July 6, 1982.

DATES: The meeting will be held June 30–July 2, 1982, beginning at 9 a.m. each day. Notice from those who plan to attend must be received by June 23, 1982.

Written comments on the proposed rule must be received by close of business July 6, 1982.

ADDRESSES: The meeting will be held at West Park Hotel, Club Room 1900 North Fort Myer Drive, Rosslyn, Virginia. Persons who wish to attend the meeting must notify: Charles R. Hartgraves, Director, Land Management Planning, Forest Service, USDA, P.O. Box 2417, Washinton, D.C. 20013, (202) 447–6697.

Comments on the proposed rule must be mailed to the same address.

FOR FURTHER INFORMATION CONTACT: Charles R. Hartgraves, (202) 447–6697.

SUPPLEMENTARY INFORMATION: On February 22, 1982, the Department of Agriculture published a proposed rule which would revise National Forest System land and resource management planning procedures. The existing regulations are mandated by the National Forest Management Act and are found at 36 CFR Part 219. The deadline for public comment on the proposed revisions was April 23, 1982.

To respond to public interest in the proposed amendments, the deadline for public comment is now extended to July 6, 1982. Also, a meeting will be held to discuss and consider, as a minimum, the following topics which have evolved from public consideration and comment on the proposed rule:

—Planning Principles
—Public Involvement
—Fish and Wildlife Requirements
—Departures from Even Flow Non-declining Yield Harvest Levels
—Formulation and Comparison of Alternatives
—Wilderness
—Regional Plans
—Treatment of RPA Goals in Planning
—Integrated Pest Management
—Interdisciplinary Analysis
—Monitoring
—Analysis of the Management Situation
—Economic Analysis Procedues
—Timber Suitability Evaluations

During the meeting the views of members of the former National Forest Management Act Committee of Scientists will be received. Under Section 6 of the National Forest Management Act, the Secretary of Agriculture appointed a Committee of Scientists to provide scientific and technical advice and counsel on proposed guidelines and procedures in relation to National Forest planning. Upon promulgation of the final planning rule in September 1979 (44 FR 53976), the Committee of Scientists was terminated. All former Committee members are being invited as individual consultants to discuss and consider the above major topics.

The meeting will be open to the public. As appropriate and as time permits, comments from the audience will be accepted. Persons who plan to attend must give notice by June 23, 1982.

Dated: June 1, 1982.

Douglas W. MacCleery,

Deputy Assistant Secretary, Natural Resource and Environment.

[FR Doc. 82–15194 Filed 6–3–82; 8:45 am]
BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 790

[OPTS–48001C; TSH–FRL 1827–3]

Toxic Substances Control Act Data Reimbursement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a rule to implement sections 4(c)(3), and 4(c)(4), of the Toxic Substances Control Act (TSCA), 15 U.S.C. Sec. 2603, 2604. This proposal sets forth methods of determining fair amounts for data reimbursement and resolving disputes that arise over reimbursement.

DATE: To ensure that all comments are considered in the development of the final rule, written comments must be submitted on or before September 2, 1982.

ADDRESS: Written comments should bear the document control number (OPTS–48001C) and be addressed to: Document Control Officer, Office of Pesticides and Toxic Substances (TS–793), Environmental Protection Agency, Room E–401, 401 M Street, SW., Washington, D.C. 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Industry Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–511B, 401 M Street, SW., Washington, D.C. 20460, (202–382–3790). Outside Continental U.S.: (Operator—202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Introduction

When the Administrator of the Environmental Protection Agency (EPA) promulgates a test rule, all of the manufacturers, importers, and

processors of the chemical which are subject to the rule are expected to jointly bear the cost of the test. If firms are unable to agree on the amount or method of reimbursement, section 4 requires the Administrator to issue reimbursement orders. This notice proposes a rule establishing procedures and substantive criteria for EPA's determination of fair and equitable reimbursement.

The proposal reflects EPA's review of the comments received in response to the Advance Notice of Proposed Rulemaking (ANPR) published in the Federal Register of September 18, 1979 (44 FR 54284). Many of the comments proved to be useful in drafting the proposed rule. A summary of comments and EPA's response to them may be found in the public file on this rule.

II. Statutory Scheme

A. Section 4

Section 4 of TSCA authorizes the Administrator to issue rules requiring the manufacturers (including importers) and processors of chemical substances or mixtures to test them in order to generate information from which the effects of the chemicals on health and the environment can be determined. Section 4(c) permits a person to apply for an exemption from testing which must be granted if the Administrator determines that the chemical to which the application pertains is equivalent to one for which test data have been submitted or are being developed, and that submission of data by the applicant would be duplicative (section 4(c)(2)). Persons receiving exemptions at any time before the end of the reimbursement period have an obligation to reimburse those who actually perform the required testing for a portion of the costs incurred in complying with the rule. The reimbursement period begins when the last nonduplicative test data are submitted and ends five years later or at the expiration of a period of time equal to the time necessary to develop that data, whichever is longer.

Under section 4(c), parties may seek assistance from the Agency only after the parties have tried and failed to agree on appropriate reimbursement. In that circumstance the Administrator must issue a reimbursement order directing persons who received exemptions to provide fair and equitable reimbursement to those who incurred the testing costs. The Administrator must base her orders on a rule developed in consultation with the Department of Jusice and the Federal Trade Commission. All relevant factors, including competitive position and the market shares of the persons providing and receiving reimbursement, are to be taken into account in developing the rule.

B. Section 5(h)(2)

Section 5(h)(2) provides reimbursement only for data submittal by persons giving notice under section 5(b)(2) for a chemical on the section 5(b)(4) list of chemicals which may present an unreasonable risk of injury to health or the environment. It does not provide a comprehensive reimbursement scheme for other data submitted under section 5.

The Agency is not proposing at this time to include section 5(h)(2) in the data reimbursement scheme. The general approach taken in this proposal for section 4 will probably work for section 5, but several differences will require adjustments which the Agency has not yet analyzed sufficiently. Because section 5(b)(4) has not been implemented, there is no immediate need for a reimbursement provision nor is there enough information to design the necessary provisions.

III. The Rule

A. Overview and Scope

In order to encourage negotiated settlements and to keep the administrative procedures for granting reimbursement orders as simple and efficient as possible, EPA is proposing a set of procedures and decision criteria which emphasize the factors relied on by the private sector in similar disputes.

This rule potentially affects all persons subject to test rules. Any person who receives an exemption from testing or data submission requirements or who is entitled to reimbursement for testing costs incurred by compliance with section 4(a) may ask EPA to resolve reimbursement disputes. The criteria and procedures contained in this rule will apply only to those who are involved in disputes for which government assistance has been requested. Subject to the anti-trust laws, voluntary cost allocation arrangements may be made in any manner agreeable to the parties.

When persons subject to a test rule are unable to agree on appropriate reimbursement, and request assistance, an informal hearing will be conducted by an independent hearing officer selected by the parties from a roster maintained by the American Arbitration Association. The procedures will be similar to those used in commercial arbitration, with some significant differences explained elsewhere in this notice.

The hearing officer will base his proposed order on the formula and criteria set forth in this rule. In general, a person's share of the test cost will be equal to his share of the total production of the test chemcial. All costs incurred in meeting the requirements of the test rule, including a reasonable profit, will be eligible for reimbursement. A person who believes that the formula will not provide fair and equitable reimbursement in a specific case may propose modifications to it.

The hearing officer's proposed order will become the final agency order thirty days after it is delivered unless reviewed by the Administrator. Petitions for review will be automatically granted when the hearing officer's order is based upon a modified formula. Review will be discretionary in other cases. If a party's appeal is denial or lost, he may seek review in federal district court.

B. Type of Administrative Proceeding

1. *Proposed Procedures.* EPA is proposing that the initial reimbursement decision by made by a private hearing officer on the basis of an informal adjudicatory hearing. The hearing will generally be conducted according to the April 1981 edition of the American Arbitration Association's "Rules for Commercial Arbitration" (Commercial Rules), with the changes described below. If the Commercial Rules change, EPA will change the data reimbursement procedures after appropriate notice and comment periods.

EPA believes an informal adjudication, like this modified arbitration procedure, has a number of advantages. Evidentiary rules are flexible so that less time will be spent arguing about the propriety and relevance of evidence. The hearings are apt to be less expensive, and less likely to create antagonism between the parties. The flexible process and greater discretion of the hearing officer will easily accommodate the variety of situations in which the reimbursement arguments will arise. The American Arbitration Association has considerable experience in conducting fact-finding adjudications of this sort, and has agreed to assist EPA in dealing with any unique problems that might arise.

While EPA considered the alternative of using its own employees (probably in a panel of two or three persons of different areas of expertise) to conduct the informal hearings, the Agency proposes relying on private hearing

officers for several reasons. Having the initial order made by an independent hearing officer will conserve Agency staff time and resources. Judging from the comments received on the ANPR, firms in the chemical industry trust persons who serve as arbitrators to be both impartial and efficient. Some commenters suggested that the problems of keeping financial and other business information confidential would be easier in a hearing conducted by a private hearing officer. Because hearing officers will be chosen for their knowledge of the issues, less explanation and background evidence will be necessary, and therefore the hearings should be shorter.

If the Agency, as a result of comments, concludes that it should not use private hearing officers, it will provide for its own employees to serve as hearing officers, using the same informal procedures described above. However, in this case the Agency may modify or eliminate the administrative review which is now included in the proposal.

2. *Differences from Commercial Arbitration.* Most of the changes EPA has made from the Commercial Rules result from the differences between voluntary arbitration and the statutory context of the reimbursement hearings. For example rules 1, 7, 9, 12, 14, and 15 all refer to agreements to arbitrate. EPA certainly encourages parties to make private agreements to arbitrate differences that arise over data reimbursement, but when they are able to do so they will not need assistance of the Agency. Commercial arbitration is binding because the parties voluntarily agree to give up some of their rights. The authority for reimbursement hearings is a statute rather than the mutual consent of the parties. Therefore, EPA's rules allow one party to initiate hearings, rather than requiring written agreement of all parties.

All references in the Commercial Rules to "arbitrator" and "award" will be deemed for the purposes of the EPA data reimbursement rule, to mean "hearing officer" and "proposed order."

The times given for chosing the hearing officer and locale are the same as the times given in rules 11 and 13, but the times begin to run from the end of the 30 day notice period during which additional interested parties may join. This ensures that all parties have an equal voice in the decisions.

Under Commercial Rule 23, stenographic records are only made at the request of the parties. However, EPA proposes that all data reimbursement hearings be recorded with the expense split among participants to facilitate review of the hearing officer's proposed order. EPA particulary invites comment on the feasibility and desirability of this requirement.

The need to protect confidential business information prompted the Agency to modify rules 25 and 31 for the purposes of data reimbursement hearings. The hearing officer will have the authority to exclude anyone, including a party, if necessary to protect the confidentiality of information, and therefore may also accept evidence in the absence of some parties.

EPA proposes a modified version of rule 27 to require oaths of both the hearing officer and witnesses.

EPA's modified rule 31 would allow the hearing officer to request EPA's Administrator to issue a subpoena, if information or attendance cannot be secured any other way.

Commercial rules 42, 43 and 45 pertaining to the award have been modified for the Agency's rule. Instead of an award, the hearing officer will issue a proposed order; which in addition to the order itself and the signature of the hearing officer, will contain a concise statement of basis and rational, and a schedule for payment of the reimbursement. This will aid the agency in making a fair and thorough review. Provision for filing of the proposed order has been deleted from rule 45, so the orders may be delivered either by mail or by personal service.

Parts "a" and "c" have been deleted from rule 47. They are not applicable since the method of appeal is provided by statute to EPA and then to federal court.

As in commercial arbitration, under rule 50, the parties will pay for hearing officer's expenses and the administrative expenses of the American Arbitration Association. By the authority of TSCA sec. 26(b), a party will pay for its share of the expenses up to $2500 per party or $100 per small business.

3. *Legal Issues.* In developing the proposed procedures, EPA evaluated the need for formal adjudications to resolve reimbursement issues, and the constitutionality of delegating the initial decision responsibility to a private party. The Agency's analysis of each of these issues is summarized below.

(i) *Formal adjudication.* EPA has concluded that it is not obligated to conduct formal trial-type hearings before issuing reimbursement orders. The formal hearing procedures described in the Administrative Procedure Act are necessary only when mandated by some other statue.[1] The APA alone contains no obligation to conduct formal adjudicatory hearings. *Reed v. Morton,* 480 F. 2d. 634 (9th Cir. 1973); cert. den., 414 U.S. 1064; *Marathon Oil Co. v. EPA,* 564 F. 2d. 1253 (9th Cir. 1977).

TSCA section 4(c) itself does not explicitly or impliedly require formal adjudication. It says nothing at all about hearings before the Administrator issues a reimbursement order. Nor is there an indication in the legislative history that Congress felt it was enacting a formal adjudicatory proceeding. Courts generally agree that failure to provide any hearing means that Congress did not intend APA procedures to apply. *Marathon Oil, Supra,* at 1263 and cases cited therein. There is a provision for judicial review of the final reimbursement orders, and this implies that some record must be created in the Agency so that a court can intelligently review the decision. However, it is not necessary to conduct a formal adjudication in order to create a sufficient record for review. *Yong v. Regional Manpower Administration,* 509 F. 2d 243 (9th Cir. 1975).

In some cases, courts have nevertheless required an administrative hearing on the basis of the constitutional requirement of procedural due process of law. *See e.g. Wong Yang Sung v. McGrath,* 339 U.S. 33 (1950). However, the cases make clear that in many circumstances it need not be an evidentiary or judicial type trial. The "resolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of governmental and private interests that are affected." *Mathews v. Eldridge,* 424 U.S. 319, 334 (1976). In *Mathews v. Eldridge,* the Supreme Court indicated the factors that must be taken into account in making such a determination. They are: (1) the nature of the private interest at stake, (2) the risk of error and the value of additional procedural safeguards in protecting against it, and (3) the government's interest in the cost and difficulty of administering its programs. 424 U.S. at 335.

The private interest at stake in the reimbursement hearings is the amount of corporate contribution to joint testing. There does not seem to be anything inherent in the statutory right to a fair and equitable allocation which depends upon a formal trail. The value of

[1] "This section applies * * * in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing * * *" 5 U.S.C. Sec. 554(a).

additional safeguards, such as the opportunity for cross-examination, is low for these hearings. The concerns usually addressed by such procedures (veracity of the witnesses, and a chance to confront one's accuser) are not dominant in reimbursement disputes. Finally, there is the usual government interest in reducing the cost and burden of a hearing for itself as well as for the parties.

Therefore, the Agency believes that it may use informal procedures that will contribute to the expeditious handling of the data reimbursement orders so long as they conform to the basic requirements of due process.

(ii) *Delegation of initial decision to a private hearing officer.* The case law on delegation to private parties has been primarily concerned with statutes which delegated the power to regulate the activities of competitors. Even in such cases, the delegations have generally been upheld. In *Mulford v. Smith,* 307 U.S. 38 (1938), the Court considered a provision of the Agricultural Adjustment Act of 1938 which authorized local farmer committees to allocate quotas among farmers of the state. This delegation was found to be constitutional because there were definite, although not detailed, standards governing the delegated power, and because the scheme provided for both administrative review (by a local farmer's review committee) and judicial review. In *Sunshine Anthracite Coal v. Adkins,* 310 U.S. 381 (1940), the Court approved a scheme in which members of the coal industry recommended prices to a government commission, which generally accepted the recommendations. In upholding the scheme the Court found that the standards for setting prices were relatively specific. More importantly, the industry recommendations were formally subordinated to a government body.

The delegation to the National Association of Securities Dealers of the power to discipline securities dealers and brokers was upheld because the SEC had the power to review and expulsion or suspension of membership. *Johnson v. SEC,* 198 F. 2d 690 (2d Cir. 1952), *cert. denied; Silver v. NYSE,* 373 U.S. 341 (1963). Other delegations to private parties were upheld by the Court in *Currin v. Wallace,* 306 U.S. 1 (1939); and *U.S. Rock Royal Corp,* 307 U.S. 533 (1939) among other cases. The issue of delegation to private parties has not been specifically considered by Federal courts in recent years.

While the type of scheme EPA is proposing has never been directly addressed by the Supreme Court, EPA believes that under the criteria used in these decisions, the proposed delegation would be upheld. The fact that the hearing officer is not a competitor, but a disinterested person selected by the American Arbitration Association with the advice of the parties, is itself a strong guarantee against bias. The hearing officer's proposed order will be guided by EPA's reimbursement rules, and EPA will retain final authority over the reimbursement order. The reimbursement order is ultimately reviewable in federal court.

C. Timing and Circumstances of EPA's Involvement

1. *Initiation and participation.* In order to insure that the Agency is not unnecessarily involved, persons requesting a reimbursement proceeding must certify that they have attempted, but failed, to negotiate a settlement. Either the person seeking reimbursement or the person from whom the reimbursement is sought may initiate Agency proceedings.

EPA will attempt to consolidate all disputes related to a particular test rule to avoid the incomplete and inefficient computations that might result from a series of individual determinations. After a request for a hearing is made, EPA will publish a notice in the **Federal Register,** requiring any party wishing to participate in the proceeding to notify EPA within 30 days. Promptly after the end of the thirty-day period, when the Agency has the names of all those who wish to participate, the list of potential hearing officers will be mailed to them, and they will be asked to give a preference on the location.

2. *Timing.* The three periods during which most hearings will be held are: shortly after promulgation of the test rule, after completion of testing, and after the reimbursement period ends. Although it is expected that most disagreements will surface soon after the test rule is promulgated, the second and third formal opportunities to request EPA's involvement are being offered in the event that there are problems in deciding how to handle new market entrants or that there is a need to reallocate testing costs based on changed circumstances. A test rule remains in effect until the end of the reimbursement period (section 4(b)(4)). Those who enter the market late will have the same choice of testing by themselves, joining a consortium, or obtaining an exemption and incurring a reimbursement obligation. When late entrants can not achieve private agreements they may request EPA's assistance.

In addition, EPA proposes that if at any time other than the three formally designated periods a company has good cause to hold a hearing, it may petition the Agency.

3. *Defining the reimbursement period.* When a test rule requires several tests of varying lengths, the reimbursement period will begin when the last non-duplicative set of test data is submitted and will end after a period of time equal to that which had been necessary to develop the last data or after five years, whichever is longer.

Figuring a different reimbursement period for each test would increase the probability that EPA would be involved since separate arrangements would have to be made for each test. It would also multiply the possibilities for disagreement among the firms, and increase the transaction costs for all concerned. This option seems to needlessly complicate the reimbursement process. The other alternative of measuring the reimbursement period from the first data to be submitted, might result in the reimbursement period closing before all of the test data has been submitted.

D. Method of Allocation

In drafting the proposal EPA has, as directed by the Act, considered "all relevant factors, including the effect on the competitive position of the persons required to provide reimbursement in relation to the person to be reimbursed and the share of the market for such substance or mixture of the person required to provide reimbursement in relation to the share of such market of the persons to be reimbursed". The legislative history shows that Congress was concerned about the potential effects on small businesses, particularly anti-competitive possibilities.

The Agency has considered several alternatives in its efforts to design a system to provide "fair and equitable reimbursement". The first decision was to provide a general formula to guide the hearing officer. A formula has the advantages of predictability, consistency and accountability. However, it is clear that a certain amount of flexibility is also needed because no formula could cover all the situations in which data reimbursement arguments might arise. Commenters on the ANPR agreed that a general rule that could be adjusted for different circumstances would be best.

The second consideration was the variables that should go into the formula. Of the three most obvious bases for allocation: market share, size of the firm, or equal split without regard

to market share or size, market share seems to EPA to provide the most relevant and fairest basis for allocation of testing costs. The commenters on the ANPR agreed. Only one suggested equal distribution, the rest favored market share.

The only other factor mentioned by the Act is competitive position. Neither the Agency nor any other interested party has been able to define competitive position for the purpose of a distribution formula. The Agency believes that considerations of competitive position and proportion of exposure attributable to a firm, though they are not reducible to a general formula, may be relevant and helpful in specific cases. When a party thinks that competitive position, exposure, or any other factor should be taken into account, he can raise the issue for a hearing officer's consideration. The hearing officer will then have the discretion and the duty to adjust the general formula to produce a fair result.

The chosen method of allocating test costs appears to minimize the potential effects on small businesses. Every one of the 2 published and 50 completed but unpublished economic analyses of possible test chemicals shows that companies with the largest market shares are larger companies. In future situations when this is not true and a smaller company feels that it has been allocated an unfair share of test costs, it may propose an adjustment to the hearing officer.

1. *Market share.* EPA has been persuaded that production volume is the best measure of market share. The information is objective and, according to commenters, readily available. It is a fairly accurate reflection of market share and competitive position, which TSCA directs the Agency to consider. It thus provides a rough measure of the proportion of the profit generated by the test chemical which a company receives, and of the company's ability to contribute to the test costs. Production volume has been used for similar purposes in anti-trust actions. Finally, in many cases, quantity of production also has a general correlation to the amount of exposure attributable to each manufacturer, though it may vary according to how the chemical is used or processed.

2. *Calculation of production volume.* The period over which production volume will be measured begins with the calendar year before the test rule is promulgated and will continue through the most recent data available at the time of the hearing. Using a long period will reduce the possibility that calculations will be skewed by a temporary aberration and assure that disputes arising late in the reimbursement period will not be settled on the basis of outdated market information.

If relative production volumes change after reimbursement is made but before the reimbursement period ends, it will be up to the parties to decide whether the change is large enough to warrant reopening the issue. Again, if the parties cannot agree among themselves, they may approach the Agency for assistance.

Production volume will include amounts of the test chemical produced as a by-product or impurity.

3. *Exports, imports, and exempted uses.* Section 12(a)(2) specifically authorizes testing of chemicals destined for export in order to determine whether the manufacture or processing of them presents an unreasonable risk to the health or environment of this country. Therefore, production volume calculations will include export chemicals when the section 12(a)(2) finding has been made.

TSCA section 3(7) defines manufacture to include importation. Thus, importers will necessarily be subject to the same test and reimbursement rules as manufacturers. It will be relatively easy to include the importers of bulk chemicals in the cost allocation process, but when the chemical is part of a mixture, or has been processed into some other form, it will be more difficult. The proposed policy statement under section 13 defines importers and gives them the responsibility of certifying compliance with TSCA and its rules and orders. This puts the importer on notice that its actions and products must comply with TSCA. It also identifies a responsible party in the chain of those involved.

EPA is considering an approach similar to that followed for sections 5, 8, and 13 in which only importers of the test chemical in bulk and in mixtures will be responsible for complying with the rule and importers of articles incorporating the test chemical would not be. EPA particularly invites comment on the treatment of importers.

The Agency's interpretation of the Act is that quantities of chemicals manufactured or processed for the exempt uses listed in section 3(2) should not be used even to calculate reimbursement shares. However, the manufacturer will have to demonstrate to the satisfaction of the hearing officer that the amounts are entitled to exemption.

4. *Reimbursable costs.* It is possible that a firm may wish to conduct additional testing beyond that required by EPA (e.g., another dose level or species). EPA encourages any scientifically valuable testing which a company wishes to pursue, but TSCA does not authorize EPA to order data reimbursement for those extra costs. Of course firms may agree among themselves to split additional costs.

The Agency believes that all the actual direct costs of the test should be reimbursable. For both independent labs and companies doing in-house testing, a portion of fixed costs, including rent, equipment, and salaries, should be eligible for reimbursement. In addition, EPA considers the administrative costs of developing a protocol, evaluating data, arranging for funding, and supervising the actual tester to be reimbursable.

Independent laboratories will surely include a profit in their fee. A manufacturer with its own lab should also be able to earn a profit. To guard against excessive profits, the hearing officer will have the authority to review the overall costs as well as the amount claimed as profit. However, the profit earned will be presumed to be fair unless it is clearly excessive compared to similar situations.

Some costs may be incurred in repairing or repeating tests that have failed. EPA believes that these costs should be reimbursable, to the extent that they were not caused by the negligence of the tester. Compliance with published Good Laboratory Practices (44 FR 27362, 45 FR 77357) and any applicable test methodology requirements would help prove due care.

The Federal Trade Commission suggested that reimbursement be based, not on actual costs, but on the lowest bid in a competitive bidding system. A test sponsor would not have to hire the lowest bidder to do the testing, but could only be reimbursed by that amount. This would presumably encourage the sponsor to keep costs as low as possible. EPA has tentatively rejected this suggestion, but would be particularly interested in comments on this issue because it was not raised for comment in the ANPR.

Competitive bidding is not necessary to prevent artificial inflation of testing costs by the test sponsor. Laboratories are already in competition with each other and price is not the only factor by which they are evaluated. The speed with which the test could be conducted, the quality controls employed and other considerations are also part of the decision. Another check on inflated prices will be provided by EPA's economic impact analyses of proposed test rules which include a predicted

impact on the price per pound of the test chemical. EPA does not believe that artificial inflation of test costs will often be a problem.

Even if it were, a "shadow" competitive bidding process does not appear to be the best way to counter the problem. The lowest bid received would not necessarily be sufficient to fully comply with the test rule. In addition, many things can change or go wrong during a test, and it is usually not until it is over and evaluated that anyone can make an accurate calculation of cost. Excessive or inflated costs may well be at issue in the reimbursement hearings. The hearing officer can consider evidence on the issue, and certainly would not order companies to pay reimbursement for those portions of the test costs he considers excessive or unjustified.

E. Other Reimbursement Issues

1. *Reimbursement obligations of processors.* The proposed reimbursement rule reflects the assumption that manufacturers generally will pay for testing, and will pass on a share of the test costs to processors through increases in market price of chemicals. Thus, processors will usually discharge their data reimbursement obligation indirectly.

All the economic analyses done for proposed test rules show that the market will allow manufacturers to pass on a share of test costs to the processors in the form of a normal price increase. Thus, the processors will contribute indirectly to the cost of testing. If processors then were to be required to provide reimbursement, they would be paying twice. A somewhat less important reason for handling processors' obligation through the market is that for each rule there may be hundreds or thousands of processors. It would be economically and administratively inefficient to include every person. Furthermore, the Agency is presently considering blanket rather than individual exemptions. Without applications from individual companies it will be extremely difficult for EPA to identify and locate all of the small processors in a market.

However, EPA recognizes that there will be cases in which indirect payment by processors will not result in an equitable distribution of the burden. When necessary test rules will include special provisions giving the processors of that test chemical direct reimbursement obligations. In other cases manufacturers may argue to the hearing officer that fair and equitable reimbursement would not be possible without the contributions of the processors and list those companies that should be joined.

Like disputes with other manufacturers, disputes between manufacturers and processors must be negotiated voluntarily first. Only if those negotiations break down may the parties apply to EPA for a hearing. This gives processors notice that manufacturers want to include them in the cost sharing for a particular test, and makes them parties from the beginning.

When processors do participate for one of the above reasons, the hearing officer will determine allocation on a case-by-case basis. If the test rule contains a finding that all of the risk or exposure occurs within the processing, and therefore only processors should be obligated to test and provide reimbursement, reimbursement will be determined according to the amount of the test chemical processed. EPA particularly invites suggestions for alternative allocation formula to use with processors.

2. *Voluntary testing.* This proposal applies only to tests done pursuant to a section 4 test rule. It will not apply to voluntary tests and EPA can not promulgate test rules merely to afford a reimbursement remedy where completed or ongoing testing provides, or is likely to provide, adequate data for risk assessment.

EPA does not believe that the absence of mandatory data reimbursement will discourage voluntary testing. As long as voluntary arrangements are successful, EPA's involvement will be unnecessary. If the voluntary arrangements break down, for financial or other reasons, and EPA is able to make the necessary section 4(a) findings, data reimbursement assistance would become available.

3. *Section 8(a) reporting requirement.* If industry does ask EPA to intervene in reimbursement disputes, EPA will need production volume data. The mechanism by which EPA proposes to collect the data was suggested by the Chemical Manufacturer's Association.

EPA proposes a contingent reporting requirement that will go into effect only when EPA publishes a **Federal Register** notice announcing a request for a reimbursement proceeding. All manufacturers subject to the test rule will then have thirty days in which to report to EPA their production volume of the test chemical for the calendar year preceding promulgation of the test rule and for each subsequent year up to the present.

The advantage of this approach is that the reporting requirement becomes effective only when a live dispute arises, eliminating the submission of unnecessary data, conserving resources, and expediting reimbursement proceedings.

The automatic reporting requirement is limited to manufacturers. This does not rule out the possibility that processors may be required to furnish reimbursement information in some cases. If the manufacturers think that processors ought to have a direct reimbursement obligation in a particular case, they may raise the point either in their comments on the proposed testing rule or during a reimbursement hearing. If so, reporting requirement for processors may be added to a test rule where appropriate.

If EPA finds that it already has production data as a result of some other reporting requirement, or another source, the **Federal Register** notice which announces a request from one or more parties to commence reimbursement proceedings will also announce an immediately effective exemption from the reporting requirement.

If the parties convince the hearing officer that factors other than production volume should be considered, additional data may be needed. Use of a reporting rule in this situation would delay the hearing unnecessarily. Therefore, if the parties fail to provide the information voluntarily, the hearing officer may request the Administrator of EPA to issue subpoenas.

4. *Multiple testing.* One of the more difficult issues concerns the allocation of costs when two or more firms submit or plan to submit the same type of data on equivalent chemicals. Section 4(c) appears to require reimbursement of all persons who are developing or have developed data. It does not explicitly address the question of whether a person who received an exemption may select a data submitter or must distribute pro rata shares to everyone who has conducted testing.

In one of the pre-enactment versions of TSCA, EPA was given the authority to designate someone to conduct tests if the persons required to test were unable to agree on a test sponsor within a reasonable time or if the agreed upon sponsor was not acceptable to EPA. S. 776, 94th Cong., 1st Sess. Sec. 4(c) (1975). In its formal comments on this bill, EPA objected to the burden that this authority would place on EPA. Congress accepted EPA's comments and deleted the official designation provisions from TSCA. The legislative history suggests that authority to designate an official tester can not be implied from section 4. Further, EPA believes that arguments supporting designation of an "official"

sponsor overlook some important considerations. In particular, it is highly unlikely that any firm or consortium would start a second testing group unless they had valid reasons for wanting to carry out separate testing. EPA is reluctant to doom all chances for such consortiums to obtain reimbursement.

Therefore, EPA is following an approach which allows reimbursement to distributed more widely. After promulgation of the test rule, the various firms would make known their intent regarding testing. At that time, persons subject to the rule would align themselves with the various consortia. Because those who join consortia would be fulfilling their test rule obligations by sponsoring a test, they would not have to file for exemptions, nor would they have to reimburse the sponsors of any identical test. It is possible that a group would sponsor only some of the required tests, and would then have a reimbursment responsibility for those which it did not sponsor.

Persons who obtained exemptions without joining a consortium would divide their reimbursement shares among the testing groups, based on the percentage that each group's costs represent of the total cost of all testing. However, in a reimbursement proceeding, a consortium could argue that it should receive more than its pro rata share. The consortium would have the burden of proving why a pro rata distribution would not be fair and equitable in that case.

5. *Categories.* EPA discussed the financial aspects of testing structurally-related categories of chemicals in its proposed test rule and exemption policy, published in the **Federal Register** of July 18, 1980 (45 FR 48515). As illustrated by that discussion, and the comments submitted in response, the issue is an extremely difficult one. Because EPA is in the process of deciding important test rule issues which bear upon categories, EPA is not presently in the position to propose a generic reimbursement approach to categories. Rather, EPA will either propose specific approaches for categories when chemical specific test rules for categories are proposed or will amend this rule. In either case manufacturers and processors involved will have an opportunity to comment upon the modified approach before it is applied to them.

6. *Confidentiality.* There are two situations in which the Agency must help protect confidential business information: during reimbursement hearings, and during any Agency review of proposed orders. In the first situation the parties should be able to work out arrangements together with the presiding officer. For example, the hearings may be closed, or the arguments may be confined to the formula, and actual computation left to the presiding officer or an independent accountant. When an argument directly concerns the validity of the confidential figures being submitted it may be more difficult to shield the information. The Agency invites comment on the frequency with which this might happen, and ways in which such arguments might be handled. In the second situation, during the Agency review process, ample protection will be afforded by section 14(a) of TSCA.

7. *Enforcement.* EPA expects that in most cases debts created by an EPA reimbursement order will be paid without the need for further involvement by the Agency. If, following issuance of a final reimbursement order, a person owing reimbursement refuses to make payment, there are several alternative methods which may be used to compel him to do so. EPA believes that the parties initially should pursue whatever non-TSCA legal remedies may be available under state law, or federal law other than TSCA. If no such remedy is available, the party seeking payment may use the authority of section 20 of TSCA to directly sue the party from whom its is seeking payment, without requiring any EPA involvement. Section 20 allows "any person" to "commence a civil action-against any person * * * who is alleged to be in violation of this Act * * *." A person who failed to fulfill a reimbursement obligation set forth in an Agency order would be in violation of the reimbursement rule under section 4 and in violation of the Act. Plaintiffs suing under section 20 can be awarded costs of the suit, including fees for attorneys and expert witnesses, if the "court determines that such an award is appropriate".

When the section 20 remedy is unavailable or ineffective, and the person seeking payment has no other legal remedy, he can request the Agency to use its own enforcement powers under section 16 or 17 of TSCA. Section 16 would allow the imposition of civil penalties up to $25,000 per day until the reimbursement order was obeyed, and section 17 conveys authority to bring court actions to compel payment.

IV. Public Participation

EPA is particularly interested in the comments of small manufacturers on the effect that this proposed rule would have on their competitive position. A public meeting will be arranged if interest is demonstrated. Written comments should bear the document control number (OPTS–48001C) and be addressed to: Document Control Officer, Office of Pesticides and Toxic Substances (TS–793), Environmental Protection Agency, Room E–401, 401 M Street, SW., Washington, DC 20460 (202–382–3532).

As required by TSCA section 4(c)(3), this rule is being developed in consultation with the Department of Justice and the Federal Trade Commission. Comments made by them have been placed in the public record and are available for inspection.

V. Regulatory Assessment Requirements

A. Regulatory Impact Analysis

Executive Order 12291, issued on February 17, 1981 requires all proposed rules to be accompanied by an initial determination of whether they are major rules. This proposed rule is not a major rule. This regulation is a procedural one, and imposes no new substantive burdens on the regulated industry. Its sole purpose and effect is to provide a mechanism for deciding disputes that arise over the sharing of test costs among those subject to a test rule. It was designed to leave primary responsibility in the private sector, involving the EPA as little as compliance with the language of section 4 will allow. This regulation will have virtually no effect on the economy. It will not cause major price or cost increases, it will not significantly affect competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposal was submitted to the Office of Management and Budget (OMB) which concurred in conformance with Executive Order 12291.

B. Regulatory Flexibility Analysis

EPA has evaluated this proposal under the mandate of the Regulatory Flexibility Act. Under the approach suggested in TSCA and adopted in this rule, the burden of sharing in test costs is apportioned among the manufacturers and processors of a test chemical according to their share of the market. In most cases this will mean that the smaller firms would have proportionally smaller shares of reimbursement. However, any firm may argue that extenuating circumstances make the amount unfairly high and that the hearing officer should modify the formula. It is expected that because most cost sharing arrangements will be private ones similar to those used now for voluntary testings, many small manufacturers as well as most small

processors will have *de facto* exemptions. Therefore, I certify that this rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, authorizes the Director of the Office of Management and Budget to review certain information collection requests by federal agencies. EPA has determined that the reporting requirements set out in § 790.104 constitutes an information requirement subject to the terms of the PRA.

EPA believes that the reporting requirement proposed here minimizes the reporting burden by obtaining only information necessary to the resolution of reimbursement disputes, and only under limited circumstances. The reporting requirement is contingent on a request to EPA to resolve an actual reimbursement dispute and will not require the submission of information where there are no disputes requiring EPA intervention. Industry comments have indicated that most reimbursement issues will be settled privately, without need for EPA involvement. When disputes are referred to EPA, a minimum of necessary information will be collected. Production volume information will have practical utility because the Agency's formula allocates shares of test costs in proportion to a person's share of the total production of the chemical. The proposed rule specifies that EPA will grant immediate exemptions from the reporting requirement if it determines that the Agency already has the information, or does not need it to resolve the reimbursement dispute. Finally, the type of information required under this rule should be readily accessible within each entity subject to the rule.

Under the terms of the PRA this proposed rule is being forwarded to the Director of OMB. EPA will respond to any comments from the Director, and other public comments, when the final rule is published in the **Federal Register.**

List of Subjects in 40 CFR Part 790

Environmental protection, Test procedures, Data reimbursement, Hazardous materials, Chemicals.

Dated: May 26, 1982.

Anne M. Gorsuch,

Administrator.

Therefore, it is proposed that Chapter I, 40 CFR be amended by adding Part 790 consisting at this time of Subpart F to read as follows:

PART 790—TEST PROCEDURES: GENERAL

Subpart A–E [Reserved]

Subpart F—Data Reimbursement

Sec.

790.100 Scope and authority.
790.101 Applicability.
790.102 Definitions.
790.103 Initiation of reimbursement proceedings.
790.105 Reporting requirements.
790.106 Timing.
790.108 Hearing procedures.
790.109 Hearing fees and expenses.
790.110 Basis for the proposed order.
790.111 Processors.
790.112 Formula.
790.113 Production volume.
790.114 Costs.
790.116 Multiple tests.
790.117 Review
790.118 Availability of the order.
790.119 Prohibited acts.

Authority: Sec. 4 and 8 of TSCA, 15 U.S.C. Sec. 2603, 2607.

Subpart A–E [Reserved]

Subpart F—Data Reimbursement

§ 790.100 Scope and authority.

(a) This part establishes procedures and criteria to be used in determining fair amounts of reimbursement for testing costs incurred under section 4(a) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2603(a)).

(b) Section 4(c) of TSCA requires EPA to develop rules for the determination of fair and equitable reimbursement (15 U.S.C. section 2603(c)).

§ 790.101 Applicability.

(a) This rule is potentially applicable to all manufacturers and processors who may be required by a specific test rule promulgated under section 4(a) of TSCA to conduct tests and submit data, and who seek the assistance of the Administrator determining the amount or method of reimbursement.

(b) The provisions of this rule will take effect only when a manufacturer or processor requests EPA's assistance.

§ 790.102 Definitions.

Terms defined in the Act, and not explicitly defined herein, are used with the meanings given in the Act.

(a) "The Act" refers to the Toxic Substances Control Act TSCA (15 U.S.C. 2601 *et seq.*).

(b) "The Agency" or "EPA" refers to the Environmental Protection Agency.

(c) "Dispute" refers to a present controversy between parties subject to a test rule over the amount or method of reimbursement for the cost of developing health and environmental data on the test chemical, which the parties have been unable to resolve.

(d) "Exemption holder" refers to a manufacturer or processor, subject to a test rule, which has received an exemption under sections 4(c)(1) or 4(c)(2) of TSCA from the requirements of the test rule.

(e) A "party" refers to a person subject to a section 4 test rule, who

(1) Seeks reimbursement from another person,

(2) From whom reimbursement is sought, or

(3) Who intervenes in a data reimbursement proceeding in accordance with § 790.103.

(f) "Reimbursement period" refers to a period that begins when the data from the last non-duplicative test to be completed under a test rule is submitted to EPA and ends after an amount of time equal to that which had been required to develop that data or after five years, whichever is later.

(g) "Test rule" refers to a regulation ordering the development of data on health or environmental effects or chemical fate for a chemical substance or mixture pursuant to TSCA section 4(a).

§ 790.103 Initiation of reimbursement hearing.

(a) When persons subject to a test rule are unable to reach an agreement on the amount or method of reimbursement for test data development as described in TSCA section 4(c)(3)(A), any of them may initiate a hearing by filing two signed copies of a request for a hearing with a regional office of the American Arbitration Association and mailing a copy of the request to EPA, and to each party of whom they are aware.

(b) The request for hearing must contain the following:

(1) The names and addresses of the filing party and its counsel, if any.

(2) Identification of the test rule under which the dispute arose.

(3) A concise explanation of the issues on which the parties are unable to agree.

(4) A sworn statement by the filing party that the parties tried in good faith to reach an agreement on reimbursement and failed.

(c) The request for a hearing shall be accompanied by the appropriate administrative fee, as provided in a current Fee Schedule of the American Arbitration Association.

(d) Promptly upon receipt of the request for a hearing, the Administrator will publish a notice in the **Federal Register**, advising those subject to the test rule that a request for a hearing has been made.

(e) Any other person wishing to participate in the hearing shall so notify EPA wihtin 30 days of the **Federal Register** notice.

§ 790.104 Reporting requirement.

(a) Within 30 days after the **Federal Register** notice announcing a request for a hearing each person subject to the test rule must deliver to the Administrator information on its production volume for the calendar year preceeding publication of the test rule and for each year thereafter, up to the filing of the request for a hearing. If EPA already has the production volume information, or does not need it, the **Federal Register** notice will exempt persons subject to that test rule from this reporting requirement.

§ 790.106 Timing.

Request for hearings may be made:

(a) Between 90–120 days after EPA's acceptance of the protocol for the applicable test rule;

(b) For 30 days after publication of a **Federal Register** notice announcing the submission of the final test data, and

(c) For 30 days after the end of the reimbursement period;

(d) Or at any time for good cause.

§ 790.108 Hearing procedures.

Except as otherwise specified, hearings shall be conducted according to the April 1981 edition of the American Arbitration Association "Rules for Commercial Arbitration" in effect upon publication of this proposed rule. All references therein to "arbitrator" and "award" shall be deemed for the purposes of this rule to be to "hearing officer" and "proposed award".

(a) *Appointment of the Hearing Officer.* The list of potential hearing officers and locations shall be sent to the parties promptly upon completion of the notice period specified in § 790.103(d).

(b) *Stenographic record.* The American Arbitration Association shall arrange for a stenographic record, with cost to be split by the parties. In the event that it is needed for an appeal to EPA, the Agency shall pay for the cost of transcribing the record.

(c) *Attendance at hearings.* All parties may attend, but the hearing officer has the discretion to determine the propriety of the attendance of other persons. The hearing officer shall have the power, upon motion, to exclude any person, including a party or other essential person, during the testimony of any witness to protect confidential business information.

(d) *Evidence.* The rules of evidence will be those of the Commerical Rules except that a hearing officer may receive evidence in the absence of a party excluded to protect confidential business information.

(e) *Subpoenas.* The hearing officer may request the Administrator to issue subpoenas for information or for the attendance of persons that cannot be obtained in any other manner.

(f) *Oaths.* Both the hearing officer and witnesses shall take oaths.

(g) *Form of the proposed order.* The proposed order shall be in writing and shall be signed either by the sole hearing officer or by at least a majority if there is more than one. It shall contain a concise statement of its basis and rationale, and a timetable for payment of any ordered reimbursment.

§ 790.109 Hearing fees and expenses.

(a) The fees and expenses of conducting the reimbursement hearings shall be apportioned among the parties by authority of section 26(b) of TSCA, up to the limits for such fees. Fees and expenses in excess of the limit of $2,500 per person or $100 per small business will be paid by EPA.

§ 790.110 Basis for the proposed order.

(a) The hearing officer shall propose a fair and equitable amount of reimbursement based on the formula set forth in § 790.112.

(b) The formula shall be presumed to be fair and equitable as applied to all persons subject to a test rule. However, the hearing officer has the discretion to modify the formula if necessary to provide fair and equitable reimbursement.

(c) The burden of coming forward with the specific circumstances which necessitate modifications to the formula shall lie with the party requesting the modification.

§ 790.111 Processors.

(a) When test rules require both manufacturers and processors to conduct testing, processors shall not be required to provide reimbursement except in one of the following three circumstances:

(1) When one or more manufacturers demonstrate to the hearing officer that it is necessary to include processors in order to provide fair and equitable reimbursement in a specific case.

(2) When a test rule expressly obligates processors as well as manufacturers to make data reimburesment payments.

(3) When one or more processors voluntarily agree to reimburse manufacturers for a portion of test costs. Only those processors who volunteer will incur the obligation.

(b) A hearing including processors shall be initiated in the same way as those including only manufacturers. Voluntary negotiations must be attempted in good faith first, and the request for a hearing must contain the names of the parties and a sworn statement that the voluntary negotiations failed.

(c) When processors as well as manufacturers are required to provide reimbursement, the hearing officer will decide for each case how the reimbursement should be allocated among the participating parties. The proposed order shall follow as closely as possible the formula in § 790.112. When a test rule is applicable solely to processors, the hearing officer will apply the formula to the amount of the test chemical purchased or processed rather than the amount manufactured and sold.

§ 790.112 Formula.

A firm's share of the cost of testing shall be equal to its share of the total production volume of the test chemical according to the formula:

$$R_x = C\frac{V_x}{V_t}$$

Where

R = the reimbursement share owed by company X.

C = the total cost of the testing required by the test rule.

V_x = the volume of the test chemical produced by company X over the period defined by § 790.113.

V_t = the total volume of the test chemical produced over the period defined by § 790.113.

§ 790.113 Production volume.

(a) Production volume will be measured over a period that begins one calendar year before publication of the final test rule in the **Federal Register** and continues up to the latest data available upon settlement of a dispute.

(b) For the purpose of determining fair reimbursement shares, production volume shall include amounts of the test chemical imported in bulk form and the total domestic production of the chemical including that produced as by-products and impurities except (1) that destined for export and not covered by findings made under TSCA section 12(a)(2); and (2) that excluded from TSCA under section 3(2)(B). The burden of establishing the fact that particular amounts of the test chemical are actually produced for exempt purposes lies with the party seeking to exclude those amounts from the calculation of his production volume.

§ 790.114 Costs.

(a) All costs reasonable and necessary to comply with the test rule,

taking into account the practices of other laboratories in conducting similar tests, are eligible for reimbursement. Necessary costs include:

(1) Direct and indirect costs of planning, conducting, analyzing and submitting the test results to EPA.

(2) A reasonable profit, and a reasonable rate of interest and depreciation on the tester's initial capital investment.

(3) The cost of repeating or repairing tests where failure was demonstrably due to some cause other than negligence of the tester.

(b) Costs attributable to tests beyond those specified by EPA shall not be eligible for reimbursement under this rule.

§ 790.116 Multiple tests.

When more than one person performs tests required by the test rule, reimbursement shall be determined as follows. The costs of all the tests will be added together. Each exemption holder shall be responsible for a share of the total which is equal to its share of the total production of the test chemical. The exemption holders shall divide their shares between the test sponsors in proportion to the costs of their respective tests. Those sponsoring a particular test do not have to obtain exemptions for that test and therefore do not have reimbursement responsibilities for the same tests done by others.

§ 790.117 Review.

(a) The hearing officer's proposed order shall become a final Agency order unless accepted for review by the Administrator. Appeals shall be filed with EPA within 30 days after the proposed orders are delivered.

(b) Review must be granted upon appeal of a party when the hearing officer's order was based upon a modified formula as provided by § 790.112(b).

(c) Review may be granted at the Administrator's discretion, upon appeal of a party, when the hearing officer's proposed order was based upon the formula set out in this rule.

(d) When the proposed order and record of the hearing is inadequate for a full and fair review, the Administrator shall order the transcription of the stenographic record of the hearing, and request an administrative law judge of the Agency to compile any necessary additional information by holding oral arguments or any other reasonable means.

(e) The final Agency order may be reviewed in federal court as provided by 26 U.S.C. 2603(c).

§ 790.118 Availability of the award.

The final agency order shall be available to the public for inspection and copying pursuant to 5 U.S.C. 552(a)(2), subject to necessary confidentiality restrictions.

§ 790.119 Prohibited acts.

Failure to provide information required by the Agency or to pay the amounts awarded under this rule within time alloted in the final order shall constitute a violation of 15 U.S.C. 2614(1) or 2614(3).

[FR Doc. 82-15201 Filed 6-3-82; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Service

41 CFR Part 101-41

Use of Cash to Procure Passenger Transportation Services Costing More Than $100; Extension of Comment Period

AGENCY: General Services Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 30, 1982, the General Services Administration published a proposed rule in the Federal Register (47 FR 13387) concerning the use of cash to procure passenger transportation services costing more than $100. The period for commenting on that proposed rule has been extended until 4 p.m., May 14, 1982. This extension is the result of a request from the Air Transport Association of America, on behalf of its member carriers, to allow all the airlines to comment on the proposal.

DATE: Comments must be received by 4 p.m., June 11, 1982.

ADDRESS: Written comments should be sent to the General Services Administration (TACP), Washington, D.C. 20406.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Reports and Procedures Branch, Office of Transportation Audits (202-275-0664).

(31 U.S.C. 244 and 40 U.S.C. 486(c))

Dated: May 6, 1982.

Janice Mendenhall,

Acting Commissioner, Transportation and Public Utilities Services.

[FR Doc. 82-15190 Filed 6-3-82; 8:45 am]

BILLING CODE 6820-AM-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6333]

National Flood Insurance Program; Proposed Flood Elevation Determination

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., National Flood Insurance Program (202) 287-0230, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4 (a)).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the

second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The proposed base (100-year) flood elevations for selections locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arizona	Tombstone (City), Cochise County	Walnut Gulch	Intersection of Camino San Rafael Road and Ridge Road (Gleeson Road).	*4,391
Maps available for inspection at City Clerk's Office, 315 E. Fremont, Tombstone, Arizona.				
Send comments to the Honorable Alex Gradillas, P.O. Box 339, Tombstone, Arizona 85630.				
Florida	Belleair Beach (City), Pinellas County	Gulf of Mexico	Intersection of Causeway Boulevard and Palm Drive	*10
Maps available for inspection at City Hall, 444 Causeway Boulevard, Belleaire Beach, Florida.				
Send comments to the Honorable Leonard K. Avant, 444 Causeway Boulevard, Belleair Beach, Florida 33535.				
Florida	Clearwater (City), Pinellas County	Alligator Creek	Intersection of Beachwood Avenue and Park Trail	*21
			Center of Logan Street, 100 feet west of its intersection with Belcher Road.	*44
		Gulf of Mexico	Intersection of Mandalay Avenue and Baymont Street	*11
			Intersection of Engman Street and Fairburn Avenue	*11
			Intersection of Edgewater Drive and Sunset Point Road.	*14
		Tampa Bay	Intersection of Bayshore Boulevard (County Road 30) and San Mateo Street.	*10
			Intersection of Perry Drive and Shinto Drive	*10
		Alligator Lake	Intersection of Arlie Avenue and Rose Road	*10
Maps available for inspection at Public Works Department, 10 S. Missouri Avenue, Clearwater, Florida.				
Send comments to the Honorable Charles F. Lecher, P.O. Box 4748, Clearwater, Florida 33518.				
Florida	Dunedin (City), Pinellas County	Curlew Creek	North end of Palm Boulevard, approximately 420 feet north along Palm Boulevard from its intersection with Fairway Drive.	*11
		Gulf of Mexico	Intersection of Lynhurst Street and Broadway	*11
			Intersection of Palm Boulevard and Edythe Drive	*12
			Intersection of King Duncan Boulevard and Loch Lomond Road.	*13
Maps available for inspection at Engineering Department, Police Administration Building, 737 Louden Avenue, 2nd Floor, Dunedin, Florida.				
Send comments to the Honorable Cecil Englebert, P.O. Box 750, Dunedin, Florida 33528.				
Florida	Gulfport (City), Pinellas County	Boca Ciega Bay	Intersection of 31st Avenue South and 56th Street South.	*11
Maps available for inspection at Engineering Department, 2401 53rd Street, South, Gulfport, Florida.				
Send comments to the Honorable Jay P. Clymer, P.O. Box 5187, Gulfport, Florida 33737.				
Florida	Indian Rocks Beach (City), Pinellas County	Gulf of Mexico	Intersection of East Gulf Boulevard and La Hacienda Drive.	*10
Maps available for inspection at Building Department, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida.				
Send comments to the Honorable Frank Proctor, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida 33535.				
Floride	Indian Shores (Town), Pinellas County	Gulf of Mexico	Intersection of 193rd Avenue and Whispering Pines Drive.	*10
Maps available for inspection at Building Department, 1930 Gulf Boulevard, Indian Shores, Florida.				
Honorable Donald C. Myers, P.O. Box 235, Indian Shores, Florida 33535.				
Florida	Largo (City), Pinellas County	Gulf of Mexico	Downstream (south) side of 8th Avenue at its crossing over McKay Creek.	*10
			Intersection of Indian Rocks Road and Anglers Lane	*10
		Boca Ciega Bay	Intersection of Pleasant View Drive and Circle Drive	*11
		Tampa Bay	Intersection of Egret Drive and Sandpiper Drive	*10
Maps available for inspection at Engineering Department, 214 Cleveland Avenue, Largo, Florida.				
Send comments to the Honorable Thomas D. Feaster, P.O. Box 296, Largo, Florida 33540.				
Florida	Madeira Beach (City), Pinellas County	Gulf of Mexico	Intersection of North Bayshore Drive and 140th Avenue.	*11
Maps available for inspection at Building & Zoning Department, 300 Municipal Drive, Madeira Beach, Florida.				
Send comments to the Honorable J. Kenneth Jacobson, P.O. Box 8605, Madeira Beach, Florida 33738.				

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Florida	North Redington Beach (Town), Pinellas County	Gulf of Mexico	Intersection of Bath Club Concourse and Gulf Boulevard (State Highway 699).	*10
Maps available for inspection at Building Department, 190—173rd Avenue, North Redington Beach, Florida.				
Send comments to the Honorable William H. Wadsworth, 190—173rd Avenue, North Redington Beach, Florida 33708.				
Florida	Oldsmar (City), Pinellas County	Old Tampa Bay	Intersection of Lake Way and Dolphin Drive South	*10
			Intersection of Buckingham Avenue and Lafayette Boulevard.	*10
		Lake Tarpon	Intersection of Lake Tarpon Outfall Canal and McMullen Booth Road (State Highway 593 and County Road 77).	*7
Maps available for inspection at Planning Department, 150 Fellers Lane, Oldsmar, Florida.				
Send comments to the Honorable Sandy J. Francisco, P.O. Box 100, Oldsmar, Florida 33557.				
Florida	Pinellas County (unincorporated areas)	Alligator Creek	50 feet downstream from the center of McMullen-Booth Road (State Highway 593) over the channel.	*12
			50 feet upstream from the center of Northeast Coachman Road (State Highway 590) over the channel.	*29
		Joe Creek	Intersection of Westchester Boulevard and Ashford Court.	*12
			Intersection of Creek and 62nd Street North	*18
		Boca Ciega Bay	Intersection of Heron Drive and 94th Street	*11
			Intersection of Oakhurst Drive and Walker Avenue	*11
			Intersection of Pinehurst Drive and Burning Tree Drive	*11
			Intersection of Seagull Drive South and Debbie Lane South.	*12
		Gulf of Mexico	Intersection of Harbor View Lane and Royal Drive	*10
			Intersection of Bay Shore Drive and 81st Avenue North.	*10
			Intersection of Monte Cristo Boulevard and Desoto Drive.	*11
			Intersection of Seaford Street and Iowa Avenue	*12
		Tampa Bay	Intersection of Snug Harbor Road and Gandy Crest Drive.	*9
			Intersection of Shore Boulevard and Phoenix Avenue	*10
			Intersection of Roberta Lane and Summerdale Drive	*10
			Intersection of Evergreen Avenue and Ulmerton Road (State Highway 688).	*10
		Anclote River	Intersection of Salt Lake Drive and Bayou Drive	*10
			Intersection of Anclote Road (County Road 47) and Brady Road (County Road 84).	*11
		Lake Tarpon	Intersection of Cypress Drive and Freshwater Drive	*7
			Intersection of Sandy Point Road and Anchorage Lane	*7
		Alligator Lake	Intersection of Seaboard Coast Line Railroad and a tributary to Alligator Lake, approximately 1500 feet northeast along the railroad from its intersection with McMullen-Booth Road (State Highway 593).	*10
Maps available for inspection at Zoning Department, 440 Court Street, Clearwater, Florida.				
Send comments to the Honorable Charles E. Rainey, 315 Court Street, Clearwater, Florida 33516.				
Florida	Redington Beach (Town), Pinellas County	Gulf of Mexico	Intersection of 159th Avenue and Gulf Boulevard (State Highway 699).	*11
Maps available for inspection at Town Hall, 105-164th Avenue, Redington Beach, Florida.				
Send comments to the Honorable Andy Miller, 105-164th Avenue, Redington Beach, Florida 33708.				
Florida	Redington Shores (Town), Pinellas County	Gulf of Mexico	Intersection of Coral Avenue and Gulf Boulevard (State Highway 699).	*10
Maps available for inspection at Building Department, 17796 Gulf Boulevard, Redington Shores, Florida.				
Send comments to the Honorable James R. Feimster, 17796 Gulf Boulevard, Redington Shores, Florida 33708.				
Florida	Safety Harbor (City), Pinellas County	Old Tampa Bay	Intersection of Birch Creek Drive and Honeysuckle Court.	*10
			Intersection of Hamilton Avenue and Spring Boulevard	*10
		Alligator Lake	Intersection of Division Street and Rome Avenue	*10
Maps available for inspection at Engineering Department, 750 Main Street, Safety Harbor, Florida.				
Send comments to the Honorable Doris Mellema, 750 Main Street, Safety Harbor, Florida 33572.				
Florida	St. Petersburg (City) Pinellas County	Tampa Bay	Intersection of 9th Street South and Bayou Boulevard	*9
			Intersection of Central Avenue and Bayshore Drive	*9
			Intersection of Chancellor Street and Massachusetts Avenue.	*9
			Intersection of 9th Street North (State Highway 688) and Roosevelt Boulevard (State Highway 686).	*10
		Boca Ciega Bay	Intersection of 50th Avenue South and 34th Street South (U.S. Highway 19, State Highway 55).	*10
			Intersection of Central Avenue and Sunset Drive	*12
			Intersection of Keystone Court and 28th Avenue	*13
		Joe Creek	Intersection of 36th Avenue North and 60th Street North.	*19
Maps available for inspection at Zoning Department, 205 9th Street, North, Room 202, St. Petersburg, Florida.				
Send comments to the Honorable Corrinne Freeman, P.O. Box 2842, St. Petersburg, Florida 33731.				

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Florida	St. Petersburg Beach (City), Pinellas County	Gulf of Mexico	Intersection of 21st Avenue and Gulf Boulevard (State Highway 699).	*10
			Intersection of 79th Avenue and Boca Ciega Avenue	*11
Maps available for inspection at Building Department, 7701 Boca Ciega Drive, St. Petersburg Beach, Florida.				
Send comments to the Honorable Otto Halboth, P.O. Box 66719, St. Petersburg Beach, Florida 33706.				
Florida	South Pasadena (City), Pinellas County	Boca Ciega Bay	Intersection of Shore Drive and Pasadena Avenue (State Highway 690).	*11
Maps available for inspection at Building Department, 7047 Sunset Drive, South Pasadena, Florida.				
Send comments to the Honorable Thomas A. Ravelli, 7047 Sunset Drive, South Pasadena, Florida 33707.				
Florida	Tarpon Springs (City), Pinellas County	Gulf of Mexico	Intersection of Holiday Drive and Pinecrest Circle	*12
			Intersection of Ventor Avenue and Beach Drive	*16
		Lake Tarpon	Intersection of Jasmine Avenue and Oakwood Street	*7
		Anclote River	Intersection of Safford Avenue and Cedar Street	*10
Maps available for inspection at Building Department, South Pinellas and Court Street, Tarpon Springs, Florida.				
Send comments to the Honorable George C. Tsourakis, P.O. Box 1575, Tarpon Springs, Florida 33589.				
Florida	Treasure Island (City), Pinellas County	Gulf of Mexico	Intersection of 3rd Street East and Capri Boulevard	*11
			Intersection of 82nd Avenue and West Gulf Boulevard	*13
Maps available for inspection at Building Department, 120 108th Avenue, Treasure Island, Florida.				
Send comments to the Honorable Walter Stubbs, 120 108th Avenue, Treasure Island, Florida 33706.				
Georgia	City of Morrow, Clayton County	North Fork Juster Creek	Just upstream of Interstate Highway 75	*867
			Just upstream of Reynolds Road	*879
		Conine Creek	Approximately 300 feet from Interstate Highway 75	*870
		Duffey Tributary	Approximately 50 feet from Limit of Detailed Study	*865
		York Tributary	Just upstream of Duffey Drive	*850
			Just upstream of Argonne Drive	*864
		Stratford Tributary	Just upstream of Mural Circle	*867
Maps available for inspection at City Hall, 1500 Morrow Road, Georgia 30260.				
Send comments to Mayor George Crowe or Mr. Jim Millirons, City Manager, City Hall, 1500 Morrow Road, Morrow, Georgia 30260.				
Georgia	City of Stockbridge, Henry County	Brush Creek	Just upstream of East Atlanta Road	*745
			Just upstream of Davis Road	*758
			Just upstream of Shields Road	*774
Maps available for inspection at City Hall, 130 Berry Street, Stockbridge, Georgia 30281.				
Send comments to Mayor Rudy Kelley or Merle Manders, City Clerk, City Hall, P.O. Box 12, Stockbridge, Georgia 30281.				
Indiana	(Uninc.) Knox County	Wabash River	At confluence of White River	*405
			About 5.2 miles upstream of U.S. Route 50	*430
		White River	Mouth at Wabash River	*405
			About 3.7 miles upstream of confluence of Buckhorn Creek.	*428
		Maria Creek	Mouth at Wabash River	*430
			Just upstream of State Route 550	*430
		Small Creek	At mouth	*429
			Just downstream of State Route 550	*454
		Snapp Creek	About 1.8 miles upstream of U.S. Route 41	*448
		Kessinger Ditch	About 1.0 mile downstream of U.S. Route 50	*446
			About 1800 feet upstream of southeast 300 South Road.	*457
Maps available for inspection at the Area Plan Commission Office, Knox County Courthouse, 7th and Busseron Streets, Vincennes, Indiana.				
Send comments to Honorable Wilbur G. Parish, Chairman of the Knox County Board of Commissioners, Knox County, Knox County Courthouse, 7th and Busseron Streets, Vincennes, Indiana 47591.				
Louisiana	Town of Grand Isle, Jefferson Parish	Gulf of Mexico	At the intersection of Oleander Avenue and Church Road.	*14
			At the intersection of Oleander Avenue and Jean Lafite Street.	*12
			At the intersection of Oleander Avenue and Leona Linda Avenue.	*12
			At the intersection of Oleander Avenue and Ludwig Lane.	*11
Maps available for inspection at Town Hall, Ludwig Lane, Grand Isle, Louisiana 70358.				
Send comments to Mayor Wayne C. Guidry or Kath Barthelemy, Town Clerk, Town Hall, P.O. Box 245, Grand Isle, Louisiana 70358.				
Louisiana	Unincorporated Areas of Iberia Parish	Gulf of Mexico/Vermilion Bay	State Highway 329 at the City of Emma	*11
			Intersection of Adolph Road and Segura Road	*11
			City of Delaware, intersection of Arpent Road and County Road 222.	*12
Maps available for inspection at Office of the Iberia Parish Secretary-Treasurer, Iberia Parish Courthouse, 1300 Iberia Street, New Iberia, Louisiana 70560.				
Send comments to Mr. Cliff Auchoin, President, Iberia Parish Policy Jury, or Mr. Ernest Freyou, Parish Secretary-Treasurer, Iberia Parish Courthouse, New Iberia, Louisiana 70560.				
Louisiana	Unincorporated Areas of Lafourche Parish	Gulf of Mexico	Shoreline of Lake Raccouri	*17

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 2,000 feet west of Bayou Lafourche at Southern Corporate Limits of City of Golden Meadow.	*16
			Confluence of Grand Bayou and Bayou Blue	*15
			Confluence of Bayou Pierce and Bayou Des Amoreux	*9

Maps available for inspection at Development Permit Office, Lafourche Parish Courthouse, Thibodaux, Louisiana 70302.

Send comments to Mr. Dick Egle, President, LaFourche Parish Police Jury or Mr. John Newton, Development Office, LaFourche Parish Courthouse, P.O. Box 1236, Thibodaux, Louisiana 70302.

Louisiana	Unincorporated Areas of St. Mary Parish	Gulf of Mexico	State Highway 83 at the Town of Florence	*13
			State Highway 317 at the Town of South Bend	*16
			At the western tip of Cypremort Point	*18

Maps available for inspection at St. Mary Parish Engineer's Office, St. Mary Parish Courthouse, Main Street, Franklin, Louisiana 70538.

Send comments to Mr. Emory C. Jennings, President, St. Mary Parish Police Jury, or Mr. F. K. Clausen, St. Mary Parish Engineer, St. Mary Parish Courthouse, Main Street, Franklin, Louisiana 70538.

Massachusetts	Burlington, Town Middlesex County	Vine Brook	At downstream corporate limits	*124
			Downstream of Wheeler Road	*144
			Upstream corporate limits	*180
		Sandy Brook	Confluence with Vine Brook	*126
			Approximately 1,000' upstream of Raymond Road extension.	*137
		Sawmill Brook	Downstream corporate limits	*107
			Approximately 300' upstream of Lucaya Circle (extended).	*126
		Tributary B to Vine Brook	Confluence with Vine Brook	*126
			Downstream of Route 3	*141
			Upstream corporate limits	*146
		Tributary C to Vine Brook	Confluence with Vine Brook	*138
			Approximately 0.3 mile upstream of Muller Road	*157

Maps available for inspection at the Office of the Town Engineer, Burlington Town Hall, 29 Center Street, Burlington, Massachusetts.

Send comments to the Honorable Arthur Ferreria, Chairman of the Town of Burlington Board of Selectmen, Town Hall, 29 Center Street, Burlington, Massachusetts 08013.

Michigan	(V) Clarkston, Oakland County	Clinton River	Just downstream of Pinehurst Street	*975
			Just downstream of Waldon Road	*978
			Just upstream of Waldon Road	*983
			Just downstream of East Church Street	*985
			Just upstream of East Church Street	*990
			Just downstream of North Main Street (near Washington Street).	*994
			Just upstream of Spillway Outlet	*1,000
			About 450 feet upstream of Miller Road	*1,002
		Clarkston Dam Outlet	At confluence with Middle Lake	*976
			About 650 feet upstream of Depot Street	*976
		Deer Lake	Shoreline	*976
		Middle Lake	Shoreline	*976
		Parke Lake	Shoreline	*991

Maps available for inspection at the Village Hall, 375 Depot, Clarkston, Michigan.

Send comments to Honorable Jackson Byers, Village President, Village of Clarkston, Village Hall, 375 Depot, Clarkston, Michigan 48016.

Michigan	(Twp.) Independence Oakland County	Clinton River	About 0.7 mile upstream of Woodhull Lake	*960
			Just upstream of Andersonville Road	*970
			Just upstream of Dixie Highway	*975
			Just upstream of Blue Grass Lane	*1,004
			About 650 feet upstream of Perry Lake Road	*1,012
		Sashabaw Creek	Just upstream of Mann Road	*962
			About 200 feet upstream of Maybee Road	*973
		Walters Lake Drain	About 600 feet upstream of mouth	*1,034
			Just upstream of Eston Road	*1,040
		Walters Lake	Shoreline	*1,042
		Dennis Lake	Shoreline	*1,033
		Round Lake	Shoreline	*1,042
		Whipple Lake	Shoreline	*1,034
		Deer Lake	Shoreline	*976
		Dark Lake	Shoreline	*976
		Lester Lake	Shoreline	*969
		Van Norman Lake	Shoreline	*969
		Towsend Lake	Shoreline	*960
		Woodhull Lake	Shoreline	*960
		Lake Oakland	Shoreline	*960
		Greens Lake	Shoreline	*970
		Middle Lake	Shoreline	*976
		Parke Lake	Shoreline	*991

Maps available for inspection at the Town Hall, P.O. Box 69, 90 North Main Street, Clarkston, Michigan.

Send comments to Honorable James Smith, Supervisor, Township of Independence, Town Hall, P.O. Box 69, 90 North Main Street, Clarkston, Michigan 48016.

Michigan	(V) Sparta Kent County	Nash Creek	About 1,700 feet downstream of Division Street	*740
			Just upstream of Chessie System	*745
			About 0.6 mile upstream of State Street	*754
		Rogue River	About 0.7 mile downstream of 13 Mile Road	*738
			About 150 feet upstream 13 Mile Road	*742

Maps available for inspection at the Village Hall, 160 East Division Street, Sparta, Michigan.

Send comments to Honorable Edward Soderstrom, Village President, Village of Sparta, Village Hall, 160 East Division Street, Sparta, Michigan 49345.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Michigan	(Twp.) West Bloomfield, Oakland County	Franklin Branch River Rouge	About 1.0 mile downstream of Ten Hill Road	*800
			About 1,600 feet upstream of Ten Hill Road (just upstream of dam).	*827
			Just downstream of Middlebelt Road	*864
			Just upstream of Middlebelt Road	*871
			About 2,800 feet upstream of Middlebelt Road (just downstream of dam).	*875
			About 2,800 feet upstream of Middlebelt Road (just upstream of dam).	*881
			Just downstream of Walnut Lake Road	*895
			Just upstream of Walnut Lake Road	*900
			Just upstream of Lockhart Drive	*926
			Just upstream of Check Dam	*949
		Simpson Lake Outlet	At confluence with Franklin Branch River Rouge	*872
			Just upstream of Spring Road	*875
			Just upstream of Walnut Lake Road	*879
		Walnut Lake Outlet	About 400 feet downstream of Middlebelt Road	*879
			About 625 feet upstream of Middlebelt Road	*863
		Pebble Creek	Just upstream of 14 Mile Road	*893
			About 2,300 feet upstream of Farmington Road (just upstream of Private Drive).	*927
			Just upstream of Nashway Drive	*945
			Just upstream of West Maple Road	*949
		Minnow Pond Drive	Just upstream of 14 Mile Road	*882
			About 2,900 feet downstream of West Maple Road	*925
			Just downstream of West Maple Road	*943
		Carus Lake-Pleasant Lake Channel	Just upstream of Haggerty Road	*936
			Just upstream of Grand Trunk Western Railroad	*942
			Just downstream of Halstead Road	*948
		Clinton River	Within the community	*932
		Pleasant Lake	Shoreline	*948
		Middle Straits Lake	Shoreline	*933
		Upper Straits Lake	Shoreline	*933
		Union Lake	Shoreline	*928
		Middle Straits Lake	Shoreline	*862
		Green Lake	Shoreline	*930
		Pine Lake	Shoreline	*932
		Walnut Lake	Shoreline	*883
		Simpson Lake	Shoreline	*879
		Woodpecker Lake	Shoreline	*949
		Morris Lake	Shoreline	*926
		Hammond Lake	Shoreline	*921
		Upper Long Lake	Shoreline	*914
		Cass Lake	Shoreline	*932
	Maps available for inspection at the Township Hall, 4460 Orchard Lake Road, West Bloomfield, Michigan.			
	Send comments to Honorable John Doherty, Supervisor, Township of West Bloomfield, Township Hall, 4460 Orchard Lake Road, West Bloomfield, Michigan, 48033.			
Minnesota	(C) Canby, Yellow Medicine County	Canby Creek	At downstream corporate limit	*1,200
			Just downstream of U.S. Highway 75	*1,230
			Just upstream of U.S. Highway 75	*1,235
			At upstream corporate limit	*1,237
		Shallow Flooding (overflow from Canby Creek).	Area Southeast of the intersection of County Highway 3 and St. Olaf Avenue, North, North of Canby Creek.	#3
	Maps available for inspection at the Administrative Assistant's Office, City Hall, 110 Oscar Avenue, North Canby, Minnesota.			
	Send comments to Honorable Darold Snortum, Mayor, City of Canby, City Hall, 110 Oscar Avenue, North, Canby, Minnesota 56220.			
Minnesota	(C) Mounds View, Ramsey County	Ardan Park Pond	Shoreline	*905
		Judicial Ditch No. 1 pond	Shoreline	*901
		Lois Drive Pond	Shoreline	*901
		Branch No. 5 Pond	Shoreline	*903
		County Road H-2 Pond	Shoreline	*901
		Belle Lane Pond	Shoreline	*889
		Bronson Drive Pond	Shoreline	*904
		Highway 10, County Road I Pond	Shoreline	*905
		Woodcrest Lake -1	Shoreline	*889
		Rice Creek Pond	Shoreline	*873
		Oak Lake Park Pond	Shoreline	*894
		Greenwood Drive Pond	Shoreline	*894
		Longview Drive Pond	Shoreline	*892
		Westcrest Lake -2	Shoreline	*889
		Spring View Lane Pond	Shoreline	*877
		Shallow Flooding (Ponding from Rainfall).	Southeast Pond	*874
			Knollwood Drive Pond	*893
			Long Lake Road Highway 10 Pond	*897
			Hillview Pond	*901
			Silver Lake Pond	*901
			Edgewood Drive Pond	*902
	Maps available for inspection at the Clerk Administrator's Office, City Hall, 2401 Highway #10, Mounds View, Minnesota.			
	Please send comments to Honorable Duane McCarty, Mayor, City of Mounds View, City Hall 2401 Highway #10, Mounds View, Minnesota 55112.			
Missouri	(C) Mexico, Audrain County	Lakeview Park Creek	About .34 mile downstream of Huntingfield Road	*752

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of Huntingfield Road	*760
			Just upstream of private road (about .46 miles upstream of Huntingfield Road).	*768
			Just upstream of U.S. Highway 54	*773
			Just downstream of Missouri Power and Light Dam	*775
			Just upstream of Missouri Power and Light Dam	*795
			About .01 mile downstream of Osage Road	*797
			Just upstream of Osage Road	*805
			Just upstream of Illinois Central Gulf Railroad	*807
		North Fork Lakeview Park Creek	At confluence with Lakeview Park Creek	*797
			Just upstream of Lakeview Road	*800
			Just downstream of Illinois Central Gulf Railroad	*804
			Just upstream of Illinois Central Gulf Railroad	*809
		Davis Creek	About .22 mile downstream of State Highway 15	*735
			About .43 mile upstream of Kentucky Road	*740
		South Fork Salt River	Just downstream of County Highway J	*735
			Just downstream of Norfolk and Western Railway	*751
		Town Branch	Just downstream of State Highway J	*738
			Just downstream of Craig Street	*743
			Just upstream of Woodlawn Street	*749
			Just upstream of Calhoun Street	*751
			Just upstream of Jefferson Street	*760
			Just upstream of Olive Street	*769
			Just downstream of Green Boulevard	*816
Maps available for inspection at the City Engineer's Office, City Hall, 300 North Coal Street, Mexico, Missouri.				
Send comments to Honorable Robert Griffith, Mayor, City of Mexico, City Hall, 300 North Coal Street, Mexico, Missouri 65265.				
Missouri	(C) Union Franklin County	Bourbeuse River	About 0.24 mile downstream of U.S. Highway 50	*515
			About 0.85 mile upstream of U.S. Highway 50	*519
		Flat Creek	At confluence with Bourbeuse River	*515
			Just upstream of Church Street	*522
			About 0.23 mile upstream of Chicago, Rock Island and Pacific Railroad.	*580
		Fenton Creek	At confluence with Flat Creek	*515
			Just upstream of Chicago, Rock Island and Pacific Railroad.	*522
			Just upstream of St. Louis Rock Road	*533
			About 0.55 mile upstream of St. Louis Rock Road	*570
		Possum Creek	At confluence with Flat Creek	*524
			Just upstream of Main Street	*545
			About 0.65 mile upstream of Main Street	*606
		Flat Creek North Tributary	At confluence with Flat Creek	*533
			About 0.9 mile upstream of Chicago, Rock Island and Pacific Railroad.	*582
Maps available for inspection at the City Hall, 500 East Locus, Union Missouri.				
Send comments to Honorable Charles Parent, Mayor, City of Union, City Hall, 500 East Locus, Union, Missouri 63084.				
Missouri	(C) Wright City, Warren County	Peruque Creek	About 8,200 feet downstream of County Highway F	*671
			Just upstream of County Highway F	*696
			About 2,300 feet upstream of County Highway F	*702
Maps available for inspection at the City Hall, P.O. Box 436, Wright City, Missouri.				
Send comments to Honorable Willian Schloeman, Mayor, City of Wright City, City Hall, P.O. Box 436, Wright City, Missouri.				
Nebraska	(V) Pender Thurston County	Logan Creek	About 6,800 feet downstream of State Highway 94	*1,323
			Just upstream of State Highway 94	*1,330
			About 7,700 feet upstream of State Highway 94	*1,333
		Unnamed Tributary to Logan Creek.	At mouth	*1,331
			About 7,600 feet upstream of State Highway 9	*1,346
		Logan Creek Overflow	About 1,350 feet downstream of First Street	*1,325
			About 1,700 feet upstream of Willis Street	*1,331
Maps available for inspection at the City Office, City Hall, P.O. Box S, Pender, Nebraska.				
Send comments to Honorable Kerwin Kent, Mayor, Village of Pender, City Hall, P.O. Box S, Pender, Nebraska 68047.				
Nevada	Lyon County (Unincorporated Areas)	Carson River	80 feet east from center of intersection of Silver Street and U.S. Highway 50.	*4,359
		Gold Canyon Creek	70 feet upstream from center of State Highway 341	*4,905
		Walker River	Center of intersection of Willow Drive and State Highway 3.	*4,395
Maps available for inspection at Department of Public Works, Lyon County Courthouse, Yerington, Nevada.				
Send comments to the Honorable Dave Andrulli, Lyon County Courthouse, Yerington, Nevada 89447.				
Nevada	Yerington (City) Lyon County	Walker River	Intersection of Main Street and Goldfield Avenue	*4,379
			Intersection of McCormick Avenue and Wassuk Way	*4,390
Maps available for inspection at City Clerk's Office, 102 S. Main, Yerington, Nevada.				
Send comments to the Honorable Vaughn B. Silva, P.O. Box 479, Yerington, Nevada 89447.				
New Jersey	Beachwood, Borough, Ocean County	Jakes Branch	Downstream corporate limits	*16
			Upstream side of Double Trouble Road	*18
			Chestnut Street (extended)	*21
		Barnegat Bay	Toms River shoreline	*6
Maps available for inspection at the Borough Hall, 315 Atlantic City Boulevard, Beachwood, New Jersey.				
Send comments to Honorable George Poth, Mayor of Beachwood, Borough Hall, 315 Atlantic City Boulevard, Beachwood, New Jersey 08722.				

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New Jersey	Cranford, Township, Union County	Rahway River	Upstream of Garden State Parkway	*44
			Upstream side of downstream crossing of Conrail	*53
			Upstream side of Droescher's Dam	*61
			Confluence with Orchard Street Branch	*68
			At upstream corporate limits	*71
		Orchard Street Branch	Confluence with Rahway River	*68
			Approximately 700' upstream of upstream Conrail crossing.	*75
		Gallows Hill Road Branch	Confluence with Rahway River	*69
			Upstream side of Second Private Drive	*82
		College Branch	At confluence with Rahway River	*70
			Springfield Avenue bridge	*70

Maps available for inspection at the Municipal Building, 8 Springfield Avenue, Cranford, New Jersey.

Send comments to Honorable Gene Marino, Mayor of Cranford, Municipal Building, 8 Springfield Avenue, Cranford, New Jersey 07016.

New Jersey	Egg Harbor, Township, Atlantic County	English Creek	Downstream of Zion Road at spillway	*10
			Upstream of School Road	*16
			Approximately 4,100' upstream of School Road	*27
		Mill Branch	Confluence with Little Meadow Run	*12
			Upstream of Garden State Parkway	*17
			Upstream of Spruce Road	*25
			Upstream of Ridge Road	*26
			Approximately 3,200' upstream of Ridge Road	*30
		Little Meadow Run	Confluence with Mill Branch	*12
			Upstream of Garden State Parkway	*16
			Approximately 3,580' upstream of Spruce Road	*22
			Upstream of Delaware Road	*32
			Upstream of Ridge Road	*33
		Lakes Creek	Bevis Mill Road	*9
			Approximately 4,900' upstream of Bevis Mill Road	*13
		Maple Run	At confluence with Patcong Creek and Mill Branch	*12
			Approximately 1,800' upstream Mill Road	*14
		Patcong Creek	At spillway upstream of Central Avenue	*11
			At confluence with Mill Branch and Maple Run	*12
		North Branch	Downstream of Garden State Parkway	*14
			Upstream of Garden State Parkway	*19
			Upstream of Conrail	*30
			Upstream of upstream Conrail crossing	*46
		Great Egg Harbor Bay	Entire shoreline of Great Egg Harbor Bay within community.	*9
			Entire shoreline of Great Egg Harbor River	*9
			Entire shoreline for eastern portion of the township	*9

Maps available for inspection at the Office of the Construction Official, Egg Harbor Township Complex, Central Avenue and Bargaintown Road, Bargaintown, New Jersey.

Send comments to Honorable John J. Heinz, Jr., Mayor of Egg Harbor Township, R.D. 1, P.O. Box 262, Linwood, New Jersey 08221.

New Jersey	Kenilworth, Borough, Union County	Rahway River	Kenilworth Avenue (upstream)	*71
			Lenape Park Dam (upstream)	*73
		Drainage Ditch	Confluence with Rahway River	*71
			Confluence with Branch 10-30	*71
		Stream 10-30	Confluence with drainage ditch	*71
			Willshire Drive (upstream)	*74
		West Brook	Downstream corporate limits	*76
			Carnegie Avenue (upstream)	*82
			Sumner Street (upstream)	*88
		Branch 10-24	*Downstream corporate limits	*80
			Garden State Parkway (upstream)	*84
			Rahway Valley Railroad (upstream)	*89
		Branch 10-30-1	Confluence with drainage ditch	*71
			North 12th Street (extended)	*76
		Black Brook	Downstream corporate limits	*74
			Springfield Road (upstream)	*80

Maps available for inspection at the Borough Hall, 567 Kenilworth Boulevard, Kenilworth, New Jersey.

Send comments to Honorable Olivio Mancino, Mayor of Kenilworth, 567 Kenilworth Boulevard, Kenilworth, New Jersey 07033.

New Jersey	Keyport, Borough, Monmouth County	Raritan Bay	Corporate limits from State Highway No. 35 to approximately 675' northeast of West Front Street.	*13
			Corporate limits from approximately 1,250' northeast of West Front Street to confluence of Chingarora Creek with Raritan Bay.	*17
			Area approximately 1,300' southeast of confluence of Chingarora Creek with Raritan Bay to approximately 400' southeast of confluence of Chingarora Creek with Raritan Bay.	*15
			Eastern corporate limits approximately 1,425' from confluence of Chingarora Creek with Raritan Bay to Highway No. 36 extended.	*12

Maps available for inspection at the Municipal Building, 18 Main Street, Keyport, New Jersey.

Send comments to Honorable Richard W. Bergen, Mayor of Keyport, 18 Main Street, Keyport, New Jersey 07735.

New Jersey	Union Beach, Borough, Monmouth County	Raritan Bay	Shoreline from confluence of Chingarora Creek to Conaskonk Point.	*17

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Shoreline from Conaskonk Point to confluence of Waackaack Creek.	*18
		Thornes Creek	Entire shoreline within community	*5
		Chingarora Creek	Shoreline from confluence with Raritan Bay to approximately 500 feet upstream of Raritan Bay.	*16
			Shoreline from approximately 500 feet upstream of Raritan Bay to St. Johns Avenue (extended).	*15
			Shoreline from St. Johns Avenue (extended) to upstream corporate limits.	*12

Maps available for inspection at the Municipal Building, 650 Poole Avenue, Union Beach, New Jersey 07735.

Send comments to Honorable Vincent L. Farley, Mayor of Union Beach, 650 Poole Avenue, Union Beach, New Jersey 07735.

New Jersey	West Cape May, Borough, Cape May County	Delaware Bay	Flooding affecting northwestern corporate limits	*9
		Atlantic Ocean	From southern corporate limits approximately 100 feet west of First Avenue to Sunset Boulevard.	*12
			From southern corporate limits approximately 100 feet west of First Avenue and approximately 340 feet east of Morrison Avenue to the northern corporate limits.	*10
			From southern corporate limits approximately 300 feet east of Morrison Avenue and approximately 400 feet west of South Bay Shore Road to Fifth Avenue.	*10

Maps available for inspection at the Municipal Building, West Cape May, New Jersey.

Send comments to Honorable John A. Vasser, Jr., Mayor of West Cape May, P.O. Box 399, West Cape May, New Jersey 08204.

New York	Village of Asharoken, Suffolk County	Long Island Sound	From Eaton's Neck Point to 600 feet east of Eaton's Neck Lighthouse.	*15
			From 600 feet east of Eaton's Neck Lighthouse to the southern corporate limit.	*16
			East of the intersection of Asharoken Avenue and Bevin Road.	*13

Maps available for inspection at the Village Hall, One Asharoken Avenue, Asharoken-Northport, New York.

Send comments to Honorable Peter C. Anderson, Mayor, Village of Asharoken, One Asharoken Avenue, Asharoken-NorthPort, New York 11768.

New York	Babylon, Town, Suffolk County	Atlantic Ocean	Entire shoreline within community	*15
			Fire Island Inlet shoreline within the community	*12
			Great South Bay shoreline within the community	*8

Maps available for inspection at the Babylon Town Hall, 200 East Sunrise Highway, Lindenhurst, New York 11757.

Send comments to Honorable Raymond Allmendinger, Town Supervisor of Babylon, Town Hall, 200 East Sunrise Highway, Lindenhurst, New York 11757.

New York	Clarkstown, Town, Rockland County	Crumm Creek	Confluence with Hackensack River	*124
			Downstream of Phillips Hill Road	*226
			Approximately 80' upstream of Little Tor Road	*269
			Downstream of Rollingwood Drive	*314
			Approximately 100' upstream of Mary Ann Lane	*350
			Downstream of Buena Vista Drive	*452
		Demarest Kill	Confluence with Hackensack River	*96
			Approximately 160' upstream of Old State Route 304	*104
			Upstream of Squadron Boulevard West	*126
			Upstream of New Hempstead Road	*151
			Upstream of Twin Elm Lane	*192
			Downstream of Middletown Road	*249
		East Branch Hackensack River	Confluence with Hackensack River	*86
			Downstream of Kings Highway	*121
			Approximately 100' upstream of Gilchrest Road	*134
			Approximately 880' upstream of U.S. Route 910	*151
		Hackensack River	Downstream corporate limits	*60
			Lake DeForest	*86
			Upstream of Old State Route 304	*90
			Downstream of Lucille Boulevard Dam	*116
			Confluence of Torne Brook	*126
		Mill Creek	Confluence with Hackensack River	*67
			Upstream of Demarest Mill Road	*120
			At Rockford Drive	*166
		Nauraushaun Brook	Downstream corporate limits	*198
			Downstream of Pelham Avenue	*266
			Upstream of North Middletown Road culvert	*288
			Downstream of Smith Road	*296
		Pascack Brook	Downstream corporate limits	*329
			Downstream of Old Nyack Turnpike	*343
			Upstream of Pascack Road	*361
			Upstream corporate limits	*406
		Torne Brook	Confluence with Hackensack River	*126
			Upstream of downstream dam	*212
			Upstream corporate limits	*298
		Hudson River	Entire shoreline within Clarkstown	*8

Maps available for inspection at the Department of Environmental Control, Town Hall, 10 Maple Avenue, New City, New York.

Send comments to Honorable Theodore Dusanenio, Town Supervisor of Clarkstown, Town Hall, 10 Maple Avenue, New City, New York 10956.

New York	City of Glen Cove, Nassau County	Hempstead Harbor	From Matinicock Point to eastern corporate limits	*20
			From Soundbeach Drive extended to Southland Drive extended.	*17
			From Glen Cove Landing to southern corporate limits	*14

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Dosoris Pond	From Birch Lane extended to eastern corporate limits	*16
			From Danas Island Road to Birch Lane extended	*15
			From Lattingtown Road to 1,100 feet north of Lattingtown Road.	*15
	Maps available for inspection at the City Hall, Bridge Street, Glen Cove, New York.			
	Send comments to: Honorable Alan M. Parente, Mayor of Glen Cove, City Hall, Bridge Street, Glen Cove, New York 11542.			
New York	Huntington, Town, Suffolk County	Long Island Sound	From southeastern corporate limits to Village of Asharoken.	*16
		Huntington Bay	From Village of Asharoken to confluence of Northport Bay.	*14
			Hungton Harbor from Village of Huntington Bay to approximately 900 feet northeast of Ketewomoke Drive extended.	*12
			Huntington Harbor from approximately 900 feet northeast of Ketewomoke Drive extended to Village of Lloyd Harbor.	*14
		xNorthport Bay	From confluence with Huntington Bay to approximately 450 feet northeast of Birmingham Drive extended.	*14
			From approximately 450 feet northeast of Birmingham Drive extended to Winkle Point Road extended.	*12
			From Winkle Point Road extended to Village of Asharoken.	*14
			From Village of Northport to Village of Huntington Bay	*14
		Cold Spring Harbor	Entire shoreline within the community	*12
	Maps available for inspection at the Town Hall, 100 Main Street, Huntington, New York.			
	Send comments to Honorable Kevin Butterfield, Town Supervisor of Huntington, 100 Main Street, Huntington, New York 11743.			
New York	Middletown, City, Orange County	Monhagen Brook	Downstream corporate limits	*467
			Downstream of Genung Street	*495
	Maps available for inpection at the Department of Public Works, City Hall, 16 James Street, Middletown, New York.			
	Send comments to Honorable Richard Hutchings, Mayor of Middletown, City Hall, 16 James Street, Middletown, New York 10940.			
New York	Village of North Haven, Suffolk County	Shelter Island Sound	From Gleason Point to the confluence with Stock Farm Creek.	*11
			From Tyndal Point to Farnum Pond	*9
			From 500 feet northwest of Corwin Road extended to South Ferry Road.	*11
			At Manor Drive extended	*9
			At Fresh Pond	*9
			Northeast of the intersection of South Ferry Road and Fresh Pond Road.	*9
		Noyack Bay	From Gleason Point to Short Beach Road	*10
		Sag Harbor Cove	From Short Beach Road to South Ferry Road	*9
	Maps are available for inpection at the Village Hall, Main Street, Sag Harbor, New York.			
	Send comments to: Honorable Delories McNamara, Mayor, Village of North Haven, Village Hall, Main Street, Sag Harbor, New York 11963.			
New York	Ocean Beach, village, Suffolk County	Atlantic Ocean	Entire shoreline within community	*15
		Great South Bay	Entire shoreline within community	*5
	Maps available for inpection at the Village Hall, Ocean Beach, New York.			
	Send comments to Honorable Thomas Schwartz, Mayor of Ocean Beach, P.O. Box 457, Ocean Beach, New York 11770.			
New York	Port Jefferson, village, Suffolk County	Long Island Sound	Entire shoreline	*16
		Port Jefferson Harbor	From Belle Terre/Port Jefferson corporate limits to 600 feet southwest of Belle Terre/Port Jefferson corporate limits.	*11
			From 600 feet southwest of Belle Terre/Port Jefferson corporate limits to Port Jefferson/Poquott corporate limits.	*14
		Mt. Sinai Harbor	From the mouth to approximately 250 feet east of Waterview Drive extended.	*16
			From approximately 250 feet east of Waterview Drive extended to the corporate limits.	*15
	Maps available for inpection at the Office of the Village Clerk, Village Hall, 121 West Broadway, Port Jefferson, New York.			
	Send comments to Honorable Harold Sheprow, Mayor of Port Jefferson, Village Hall, 121 West Broadway, Port Jefferson, New York 11777.			
New York	Quogue, village, Suffolk County	Atlantic Ocean	Entire shoreline within the community	*14
		Quantuck Bay	From southern corporate limits to south of Montauk Highway.	*8
			From south of Montauk Highway to northern corporate limits.	*7
		Shinnecock Bay	Southern portion of Shinnecock Bay up to approximately 750 feet north of Bay Road extended.	*9
			Entire shoreline of Quogue Canal	*9
			From approximately 750 feet north of Bay Road extended to northern corporate limits.	*7
			Entire shoreline of Stone Creek	*7
			Entire shoreline of Phillips Creek	*7
	Maps available for inpection at the Village Office, Jessup Avenue, Quogue, New York.			
	Send comments to Honorable T. Decker Orr, Mayor of Quogue, Village office, Jessup Avenue, Quogue, New York 11959.			

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Village of Shoreham, Suffolk County	Long Island Sound	Along the northernmost corporate limits between the western and eastern corporate limits.	*16
Maps available for inpection at the Office of the Village Clerk, Overhill Road, Shoreham, New York.				
Send comments to: Honorable James Jehle, Mayor, Village of Shoreham, Woodville Road, Shoreham, New York 11768.				
New York	Smithtown, town, Suffolk County	Long Island Sound	Entire shoreline within the community	*16
Maps available for inspection at the Town Hall, 99 West Main Street, Smithtown, New York.				
Send comments to Honorable Patrick Vecchio, Town Supervisor of Smithtown, 99 West Main Street, Smithtown, New York 11787.				
Ohio	(Uninc.) Lucas County	Blue Creek	At confluence with Swan Creek	*641
			Just upstream of Waterville-Swanton Road	*643
			Just upstream of Schadel Road	*647
			Just upstream of Neapolis-Waterville Road	*650
			About 2,300 feet upstream of Neapolis-Waterville Road.	*651
		Berger Ditch	About 600 feet downstream of Cedar Point Road	*578
			Just downstream of upstream corporate limits (about 5,200 feet upstream of Cedar Point Road).	*582
		Blystone Ditch	Just downstream of Monclova Road	*620
			Just upstream of the Norfolk and Western Railroad	*626
			Just downstream of Norfolk and Western Railroad (upstream of Black Road).	*632
		Cairl Ditch	Just downstream of Perrysburg-Holland Road	*610
			Just upstream of Pilliod Road	*617
			Just upstream of Holloway Road	*622
			About 450 feet upstream of Albon Road	*633
			Just downstream of Interstates 90 and 80	*639
		Cedar Creek	Just downstream of Lyon Road	*578
			About 500 feet upstream of Decant Road	*582
			About 100 feet downstream of Cousine Road	*586
			About 4,600 feet upstream of Cousine Road	*588
		Drennon Ditch	Just upstream of the Village of Holland corporate limits (about 2,000 feet downstream of Angola Road).	*629
			About 1,000 feet downstream of Angola Road	*632
			About 920 feet downstream of Angola Road	*638
			Just downstream of dam	*638
			Just upstream of dam	*644
			About 50 feet upstream of Angola Road	*647
			About 3,100 feet upstream of King Road	*652
			About 3,300 feet upstream of King Road	*656
			Just downstream of Centennial Road	*661
		Eisenbraum Ditch	About 400 feet upstream of Woods Avenue	*646
			About 700 feet upstream of Woods Avenue	*647
		Everett Ditch	At the confluence with Wolf Creek	*635
			At the confluence of Kujawski Ditch	*639
		Good Ditch	Just upstream of Holland-Sylvania Road	*626
			Just upstream of Interstate 475	*629
			About 50 feet upstream of McCord Road	*636
			Just upstream of King Road	*656
		Heidman Ditch	About 50 feet downstream of the Interstate 475 culvert outlet.	*634
			About 700 feet upstream of Hill Avenue	*637
			About 100 feet downstream of McCord Road	*642
			About 300 feet upstream of Nebraska Avenue	*646
			Just downstream of Dorr Street	*654
		Hill Ditch	About 350 feet downstream of the Interstate 475 culvert outlet.	*635
			Just upstream of Wilford Road	*640
			Just upstream of the McCord Road culvert inlet	*648
			About 2,400 feet upstream of the McCord Road culvert inlet.	*649
		Keener Ditch	About 1,550 feet upstream of the confluence with Swan Creek.	*615
			Just upstream of Weir	*619
			About 2,570 feet upstream of the confluence with Swan Creek.	*625
		Kujawski Ditch	At the confluence with Everett Ditch	*639
			Just upstream of the Crissey Road culvert inlet	*644
			About 1,650 feet upstream of the Crissey Road culvert inlet.	*647
			About 700 feet upstream of the Conrail bridge	*664
		Maumee River	Just upstream of Interstate 475	*593
			About 3.5 miles upstream of Abandoned Highway bridge.	*624
			At upstream county boundary	*648
		Ottawa River	About 300 feet upstream of Interstate 475	*609
			About 4,600 feet upstream of Sturbridge Road	*613
		Peter May Ditch	Just upstream of Derbeyshire Road	*635
			About 550 feet upstream of McCord Road	*640
			About 400 feet upstream of Perrine Road	*654
			Just downstream of King Road	*659

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Sautter Ditch	About 2,400 feet downstream of Corduroy Road	*578
			About 3,600 feet upstream of Jerusalem Road	*593
		Shontee Creek (West)	About 1,500 feet downstream of Omar Avenue	*584
			Just downstream of the Chessie System and Ann Arbor Railroad.	*586
		Silver Creek	About 1,750 feet downstream of Stickney Avenue	*583
			Just downstream of Stickney Avenue	*584
		Smith Ditch	At confluence with Hill Ditch	*640
			About 2,650 feet upstream of McCord Road	*653
		Stone Ditch	About 350 feet downstream of the Ohio Turnpike culvert outlet.	*628
			About 800 feet upstream of the Ohio Turnpike culvert inlet.	*632
			Just downstream of Salisbury Road	*639
		Swan Creek	Just upstream of Salisbury Road	*614
			Just downstream of Whitehouse-Spencer Road	*647
		Tenmile Creek	About 100 feet downstream of Brint Road	*656
			Just downstream of Centennial Road	*665
			Just downstream of Sylvania-Metanova Road	*686
		Thomas Ditch	Confluence with Wood Ditch	*647
			About 1,400 feet upstream of the confluence with Wood Ditch.	*648
			About 1,780 feet upstream of the confluence with Wood Ditch.	*651
		Tifft Ditch	About 650 feet upstream of Peartree Lane	*633
		Wood Ditch	At confluence with Kujawski Ditch	*644
			Just upstream of Conrail	*646
			About 1,050 feet upstream of Geiser Road	*650
		Wolf Creek	Just upstream of Holland-Sylvania Road	*606
			About 1,000 feet upstream of Perrysburg-Holland Road.	*615
			About 350 feet downstream of Roycroft Drive	*625
			About 4,400 feet upstream of Albon Road (at confluence of Everett Ditch).	*635
		Shallow Flooding (Overflow from Eisenbraum Ditch).	Aboput 1,000 feet north of intersection of Gilhouse Road and Talmadge Road.	#1
		Lake Erie	Shoreline	*578
		Maumee Bay	Shoreline (east of City of Oregon)	*578
			Shoreline (west of City of Oregon)	*579
Maps available for inspection at the Lucas County Building Regulations Department, 437 Michigan Street, Toledo, Ohio.				
Send comments to Honorable James Holvemer, President of the County Commissioners, Lucas County, Lucas County Courthouse, Toledo, Ohio 43604.				
Oklahoma	City of New Cordell, Washita County	Calvary Creek	Just upstream of South Crider Road	*1,495
			Just upstream of Grant Street	*1,528
		Tributary No. 1 of Calvary Creek	Just upstream of South Crider Road	*1,516
			Just downstream of 14th Street	*1,550
		Tributary No. 1 of Tributary No. 1 of Calvary Creek.	Just upstream of 14th Street	*1,561
Maps available for inspection at City Hall, 101 East Main Street, New Cordell, Oklahoma 73632.				
Send comments to Mayor Tom Crider or Jean Smith, City Recorder, City Hall, P.O. Box 417, New Cordell, Oklahoma 73632.				
Pennsylvania	Rapho, township, Lancaster County	Little Chickies Creek	Downstream Drager Road	*273
			Upstream Dam	*290
			Upstream Pinkerton Road	*302
			Downstream Valley Road	*320
			Downstream Mount Joy Road	*327
			Upstream Mount Pleasant Road	*346
		Chickies Creek	Upstream Eby Chigues Road	*328
			Upstream Conrail	*335
			Approximately 200' upstream State Route 283	*350
			Downstream Erisman Road	*355
			Downstream Lebanon Road	*439
			At confluence of Shearers Creek	*448
		Rife Run	Upstream West Colebrook Road	*400
			Upstream Orchard Road	*410
Maps available for inspection at the Rapho Municipal Building, R.D. 2, Manheim, Pennsylvania.				
Send comments to Honorable Abe Siegrist, Chairman of the Rapho Board of Supervisors, R.D. 2, Manheim, Pennsylvania 17545.				
Rhode Island	Barrington, town, Bristol County	Massachuck Creek	Entire stream upstream of Washington Road	*6
		Brickyard Pond	Entire shoreline	*6
		Echo Lake	Entire shoreline	*8
		Narragansett Bay	Entire shoreline	*20
		Providence River	Entire shoreline	*20
		Palmer River	Shoreline from Conrail to northern corporate limits	*12
			Shoreline from confluence of Barrington River to Conrail.	*18
		Warren River	Shoreline from confluence of Narragansett Bay to approximately 350' east of Adams Point Road extended.	*20
			Shoreline approximately 350' east of Adams Point Road extended to Ferry Lane extended.	*19
			Shoreline Ferry Lane extended to confluence of Barrington River.	*18
Maps available for inspection at the Office of the Building Inspector, Town Hall, 283 County Road, Barrington, Rhode Island.				
Send comments to Honorable Allan C. Klepper, President of the Barrington Town Council, Town Hall, 283 County Road, Barrington, Rhode Island 02806.				

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Rhode Island	Cranston, city, Providence County	Pawtuxet River	Upstream of Broad Street	*16
			Upstream of Conrail (downstream crossing)	*18
			Upstream of Elmwood Avenue	*21
			At confluence of Pocasset River	*23
			Upstream of State Route 37 (eastbound)	*24
			4,500' upstream State Route 37 (eastbound)	*26
			Upstream corporate limits	*28
		Furnace Hill Brook	At confluence with Meshanticut Brook	*62
			Upstream of Furnace Hill Road	*70
			Upstream of Phenix Avenue	*143
			Approximately 3,800' upstream Phenix Avenue	*254
			Upstream of Pippin Orchard Road	*323
		Furnace Hill Brook Tributary	At confluence with Furnace Hill Brook	*143
			Approximately 2,000' upstream of confluence with Furnace Hill Brook.	*200
			Approximately 3,700' upstream of confluence with Furnace Hill Brook.	*247
		Pocasset River	At confluence with Patuxet River	*23
			Upstream of Garden City Drive	*32
			Approximately 150' upstream Reservoir Avenue	*35
			Approximately 100' upstream of Park Avenue	*48
			Upstream of Print Works Pond Dam	*71
			Upstream of Access Road	*74
			Approximately 2,700' downstream upstream corporate limits.	*79
			At upstream corporate limits	*81
		Meshanticut Brook	At downstream corporate limits	*40
			Upstream of Conrail bridge	*48
			Upstream of Interstate Route 295 (southbound)	*51
			Upstream of State Route 37	*62
			Upstream of Meshanticut Drive	*65
			Upstream of Ambrose Street	*78
			Upstream of Phenix Avenue	*102
			Upstream of Scituate Avenue	*124
		Providence River	Entire shoreline within community	*20

Maps available for inspection at the City Planner's Office, City Hall, 869 Park Avenue, Cranston, Rhode Island.

Send comments to Honorable Edward D. DiPrete, Mayor of Cranston, City Hall, 869 Park Avenue, Cranston, Rhode Island 02910.

Rhode Island	North Kingstown, town, Washington County	Annaquatucket River	Upstream of Boston Neck Road	*22
			Upstream of Featherbed Lane	*29
			Upstream of Tower Hill Road (U.S. Route No. 1)	*42
			Upstream of Belleville-pond Dam	*49
			Upstream of Old Railroad Grade (downstream crossing).	*60
			Approximately 100' downstream of Conrail	*81
		Mattatuxet River	Confluence with Pettaquamscutt River	*11
			Upstream of State Route 138	*16
			Upstream of Dam	*39
		Quidnesset Brook	Approximately 3,800' downstream of Quidnesset Road	*14
			Approximately 1,000' upstream of Quidnesset Road	*19
		Sand Hill Brook	Approximately 100' downstream of North Quidnesset Road.	*16
			Upstream of Briarbrook Drive (downstream crossing)	*24
			Upstream of U.S. Route 1	*37
			Approximately 100' downstream of Devils Foot Road	*41
		Narrangansett Bay	Shoreline from north corporate limits to Quonset Point	*19
			Shoreline from Quonset Point to south corporate limits	*17
		Potowomut River	Shoreline from confluence with Narrangansett Bay to approximately 2,200' east of the confluence.	*18

Maps available for inspection at the Department of Planning and Development, Town Hall, 80 Boston Neck Road, North Kingstown, Rhode Island.

Send comments to Honorable Lloyd Sherman, President of the North Kingstown Town Council, Town Hall, 80 Boston Neck Road, North Kingstown, Rhode Island 02852.

Tennessee	City of Bradford, Gibson County	Town Creek	Just upstream of Illinois Central gulf Railroad	*349
			Just upstream of State Highway 105 (Main Street)	*356

Maps available for inspection at City Hall, East Main Street, Bradford, Tennessee 38316.

Send comments to Mayor Richard Belew or Mr. Roger Dudley, City Coordinator, City Hall, P.O. Box 87, Bradford, Tennessee 38316.

Tennessee	Town of Kenton, Gibson & Obion Counties	Carroll Creek	Just upstream of U.S. Route 45W	*305
		Unnamed Tributary to Carroll Creek.	Just upstream of Sanderson Street	*314

Maps available for inspection at Town Hall, 108 North Poplar, Kenton, Tennessee 38233.

Send comments to Mayor Damon Cross or Lamar King, Vice Mayor, Town Hall, 108 North Poplar, Kenton, Tennessee 38233.

Tennessee	Town of Milan, gibson County	Wolf Creek	Just upstream of U.S. Highway 79 (Vanhook Street)	*391
			Just upstream of State Route 104 (South 1st Street)	*395
		Clear Creek	Just at the confluence with Wolf Creek	*396

Maps available for inspection at Town Hall Building, South First Street, Milan, Tennessee 38358.

Send comments to Mayor Herb Davis or Parnell Landers, Town Planning Director, Town Hall, South First Street, Milan, Tennessee 38358.

Tennessee	City of Trenton, Gibson County	North Fork of Forked Deer River	Just upstream of U.S. Highway 45 Bypass	*316

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Cain Creek Tributary	Just downstream of Kellwood Drive	*330
			Just upstream of College Street	*343
		North Fork Tributary	Just upstream of U.S. Highway 45W	*313
		North Fork Tributary No. 3	Just upstream of County Road	*320

Maps available for inspection at City Hall, 309 College Street, Trenton, Tennessee 38382.

Send comments to Mayor Ronnie A. Riley or Mr. Paul Bennett, City Utility Manager, City Hall, 309 College Street, Trenton, Tennessee 38382.

Texas	Village of Dickinson, Galveston County	Bensons Bayou	Just upstream of Deats Road	*12
			Approximately 700 feet upstream of Rodeo Bend Road.	*14
		Bordens Gully	Approximately 200 feet downstream of Spruce Street	*12
			Just downstream of Hughes Lane	*14
		Dickinson Bayou	Approximately 800 feet upstream of Highway 3	*11
			Approximately 800 feet upstream of I-45 & 75	*12
			Just downstream of Highway 646	*13
		Gum Bayou	Just upstream of FM 517 (Flooding at this location is affected by backwater effects from Dickinson Bayou).	*11
		Magnolia	Approximately 500 feet upstream of Deats Road	*12
			Approximately 250 feet upstream of Sunset Drive	*14
		Tributary to Gum Bayou	Just downstream of the corporate limits	*13

Maps available for inspection at Village Hall, 2716½ Main Street, Dickinson, Texas 77539.

Send comments to Mayor Robert B. Holley or Ms. Lita K. Strawn, City Secretary, Village Hall, P.O. Box 1977, Dickinson, Texas 77539.

Texas	City of La Marque, Galveston County	Lower Highland Bayou	Just upstream of State Highway 6 near the southern corporate limits (Flooding at this location is affected by Coastal Surge from Galveston Bay).	*12
			Just upstream of Fairwood Road (Flooding at this location is affected by Coastal Surge from Galveston Bay).	*12
		Upper Highland Bayou and Diversion Channel.	Just upstream of Old Camp Wallace Road (Flooding at this location is affected by Coastal Surge from Galveston Bay).	*12
		Unnamed Tributary 1	Just downstream of Main Street (FM 519)	*7
		Unnamed Tributary 2	Just downstream of Edna Street	*7
		Unnamed Tributary 3	Just downstream of FM 1765	*16
		Marchand Bayou	Just upstream of FM 519 (Flooding at this location is affected by Coastal Surge from Galveston Bay).	*12
			Just downstream of Newman Road	*15

Maps available for inspection at City Hall, 322 Laurel, La Marque, Texas 77568.

Send comments to Mayor Ronald Crowder or Mr. Ivan Langford, City Manager, City Hall, 322 Laurel, La Marque, Texas 77568.

Texas	Down of Pine Forest, Orange County	Ten Mile Creek	Approximately 300 feet upstream of Lake View Road	*15
			Just downstream of State Highway 1131	*17
		Tiger Creek	Just upstream of southern corporate limits	*14
			Approximately 600 feet upstream of Lake View and Cutoff Roads.	*16

Maps available for inspection at Orange County Commissioners Office, 190 Camp Street, Vidor, Texas 77662.

Send comments to Mayor Billie Buck, Pine Forest Town Hall, P.O. Box 1004, or County Commissioners Office, 190 Camp Street, Vidor, Texas 77662.

Texas	City of Port Arthur, Jefferson County	Rhodair Gully	Just upstream of Port Arthur Road	*10
			Just downstream of U.S. Highway 69	*15
		Alligator Gully	At the intersection of Memorial Freeway and Main "B" Canal.	*3
		Port Acres	At the intersection of State Highway 365 and Wilson Avenue.	*3
		Lakeside	Along Bayou Drive and Cashmere Drive	*1
		Crane Bayou	At the intersection of Main Avenue and 15th Street	*3
		Sabine Pass	At the entrance to Sabine Pass	*21
			Just south of Texas Point at mouth of Texas Bayou	*16
			At the Coast Guard Station at shore side	*13
			At Sabine Pass side	*14
			At Sabine Pass community at intersection of State Highway 87 and Broadway Street.	*12
			At Sabine Pass just upstream of U.S. Highway 82	*12
			At the crossing of State Highway 87 over the Intracoastal Waterway.	*12
			At Gulf Gate Bridge at Sabine/Neches Canal	*10
			At Main Avenue extended outside of the Levee	*8
		Neches River	At State Highway 87 (under the control of Wave Height Action).	*9
			At mouth of Molasses Bayou (affected by Wave Height Surge).	*8

Maps available for inspection at City Hall, 444 4th Street, Port Arthur, Jefferson County, Texas 77640.

Send comments to Mayor Bernis Sadler or Mr. Ross White, City Planner, City Hall, P.O. Box 1089, Port Arthur, Texas 77640.

Texas	City of Santa Fe, Galveston County	Highland Bayou above Diversion Dam.	Approximately 1,000 feet upstream of FM 646	*24
			Approximately 200 feet upstream of Avenue R	*26

Maps available for inspection at City Hall, 4925 Main Street, Santa Fe, Texas.

Send comments to Mayor John Roberts or Mr. William Lambert, City Manager, City Hall, P.O. Box 946, Alta Loma, Texas 77510.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Virginia	Newport News, city of	Chesapeake Bay	Hampton Roads from eastern corporate limits to Small Boat Harbor.	*13
			Entire shoreline os Small Boat Harbor	*10
		James River	From Small Boat Harbor to a point approximately 750' upstream of Museum Parkway (extended).	*13
			From a point approximately 750' upstream of Museum Parkway (extended) to confluence of Fishers Creek.	*12
			Fishers Creek from confluence to a point approximately 780' upstream.	*11
			Fishers Creek from a point approximately 780' upstream to a point approximately 1,170' downstream of Graham Drive (extended).	*10
			Fishers Creek from a point approximately 1,170' downstream of Graham Drive (extended) to a point approximately 900' upstream of Madison Lane North.	*9
			From confluence of Fishers Creek to confluence of Deep Creek.	*12
			*Deep Creek from confluence to a point approximately 7,680' upstream.	10
			Deep Creek from a point approximately 7,680' upstream to a point approximately 210' upstream of Warwick Boulevard.	*9
			From confluence of Deep Creek to Fort Eustis boundary.	*12
		Warwick River	From confluence with James River to Digges Drive (extended).	*12
			*From Digges Drive (extended) to confluence of Lucas Creek.	11
			Lucas Creek from confluence to a point approximately 1,110' downstream from Tabbs Lane.	*10
			Lucas Creek from a point approximately 1,110' downstream from Tabbs Lane to Gwynn Circle.	*9
			From confluence of Lucas Creek to a point approximately 600' downstream of Hoopes Road (extended).	*11
			From a point approximately 600' downstream of Hoopes Road (extended) to a point approximately 7,260' upstream of Hoopes Road (extended).	*10
			Form a point approximately 7,260' upstream of Hoopes Road (extended) to confluence of Stony Run.	*9
			Stony Run from confluence to a point approximately 750' downstream from Lucas Creek Road.	*9
			From confluence of Stony Run to a point approximately 270' upstream of Fort Eustis Boulevard.	*9
		Skiffes Creek	From northern boundary of Fort Eustis to a point approximately 4,530' downstream of the Chessie System Railroad.	*9
	Maps available for inspection at the Public Works Department, City Hall, Newport News, Virginia.			
	Send comments to Honorable Robert T. Williams, City Manager of Newport News, 2400 Washington Avenue, Newport News, Virginia 23607.			
Virginia	Norfolk, city	Chesapeake Bay	Entire shoreline within community	*12
			Entire shoreline of Willoughby Bay	*11
			Shoreline of Elizabeth River from Norfolk and Portsmouth Belt Railway Pier to confluence of southern and eastern Branches of Elizabeth River.	*10
			Shoreline of Layfayette River from confluence with Elizabeth River to Hampton Boulevard.	*10
			Shoreline of Layfayette River east of Hampton Boulevard.	*9
			Entire shoreline of southern and eastern Branches of Elizabeth River.	*9
	Maps available for inspection at the City Hall, Norfolk, Virginia.			
	Send comments to Honorable Julian Hirst, City Manager of Norfolk, 1101 City Hall, Norfolk, Virginia 23501.			
Virginia	Poquoson, city	Chesapeake Bay	Lambs Creek from confluence with Poquoson River to a point approximately 2,520' upstream.	*11
			Poquoson River from confluence with Lambs Creek to Hunts Point at confluence with Chesapeake Bay.	*11
			Shoreline from a point approximately 1,160' east of Wagner Road (extended) to confluence of Bennett Creek.	*13
			Bennett Creek from confluence with Lyons Creek to confluence of White House Cove.	*13
			Floyds Bay from confluence with Bennett Creek to a point approximately 300' upstream Forrest Road.	*11
			Shoreline from confluence with Bennett Creek to entrance of Sandy Bay.	*13
			Northwest Branch Back River from Tin Shell Point to confluence with Cedar Creek.	*11
			Cedar Creek from confluence of Northwest Branch Back River to confluence with Oxford Run.	*11

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Northwest Branch Back River from confluence with Cedar Creek to confluence with Brick Kiln Creek.	*11

Maps available for inspection at the City Hall, 830 Poquoson Avenue, Poquoson, Virginia.

Send comments to Honorable James Lord, City Manager of Poquoson, City Hall, 830 Poquoson Avenue, Poquoson, Virginia 23662.

Virginia	Sussex County	Nottoway River	Confluence of Rowanty Creek	*70
			Approximately 50' upstream of State Route 40	*73
			Approximately 100' upstream of Interstate 95	*83
			Upstream Seaboard Coastline Railroad	*89
			Upstream County boundary	*94
		Rowanty Creek	Confluence with Nottoway River	*70
			Upstream of State Route 602	*71
			Approximately 2,050' upstream of Interstate 95	*75
		Stony Creek	Confluence with Nottoway River	*72
			Upstream of Seaboard Coastline Railroad	*79
			Upstream of County boundary	*86
		Sappony Creek	Confluence with Stony Creek	*83
			Upstream of State Route 681	*88
			Approximately 12,900' upstream of State Route 681	*106
		Peaquarter Swamp	Confluence with Stony Creek	*83
		Swamp	Upstream of State Route 681	*91
			At County boundary	*121

Maps available for inspection at the County Courthouse, Sussex, Virginia.

Send comments to Honorable Richard Albert, County Administrator of Sussex, P.O. Box 1397, Sussex, Virginia 23884.

Wisconsin	(V) Cross Plains, Dane County	Black Earth Creek	About 200 feet downstream of U.S. Highway 14	*859
			About 0.5 mile downstream of Church Street	*865
			About 1,500 feet upstream of Church Street	*875
		Brewery Creek	Just downstream of Main Street	*874
			Just upstream of Lewis Street	*882
			Just upstream of Valley Street	*888
			About 600 feet upstream of Brewery Road	*905
		Enchanted Valley Creek	Just downstream of U.S. Highway 14	*875
			Just upstream of U.S. Highway 14	*878
			Just downstream of Brewery Road	*890
			Just upstream of Brewery Road	*896
			Just downstream of Military Road (near Brewery Road)	*903
			Just upstream of Military Road (near Brewery Road	*910

Maps available for inspection at the Village Hall, 2107 Julius Street, Cross Plains, Wisconsin.

Send comments to Honorable Jerome Geurts, Village President, Village of Cross Plains, Village Hall, 2107 Julius Street, Cross Plains, Wisconsin 53528.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: May 19, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 14586 Filed 6–3–82; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[General Order 16; Docket No. 82–21]

Improvements in Prehearing and Discovery Procedures

AGENCY: Federal Maritime Commission.

ACTION: Enlargement of Time to Comment.

SUMMARY: Pursuant to request of the Maritime Administrative Bar Association the time for filing comments in response to the notice of proposed rulemaking in this proceeding on improvements in prehearing and discovery procedures (47 FR 14734; April 6, 1982) is enlarged to and including June 21, 1982. Additional time is needed to allow members of that Association to review comments prepared by the Association's special committee on this matter.

DATE: Comments due June 21, 1982.

ADDRESSES: Comments (original and 15 copies) to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION: None.

Francis C. Hurney,

Secretary.

[FR Doc. 82–15083 Filed 6–3–82; 8:45 am]

BILLING CODE 6730–01–M

Notices

Federal Register
Vol. 47, No. 108
Friday, June 4, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–163), notice is hereby given of a meeting of the Committee on Rulemaking of the Administrative Conference of the United States, scheduled to be held at 2:00–3:00 p.m., Tuesday, June 1, 1982, in the Library of the Administrative Conference, 2120 L Street, N.W., Suite 500, Washington, D.C.

The Committee will meet briefly to consider comments made by the Council of the Conference on several aspects of the Committee's proposed statement on pending legislation which would amend the informal rulemaking provisions of the Administrative Procedure Act. The need to act quickly to ready the Committee proposal for submission to the membership of the Conference precluded the usual advance notice of the meeting.

Attendance is open to the interested public, but limited to the space available. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact Michael W. Bowers (202–254–7065). Minutes of the Committee meeting will be available on request.

Richard K. Berg,
General Counsel.
May 28, 1982.

[FR Doc. 82–15165 Filed 6–3–82; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Oregon; Revisions of Recreation Use Controls Within Boundaries of the Wild Section of Rogue River Component of National Wild and Scenic River System

Pursuant to 43 CFR 8351.2–1 the following Amendment is hereby made to the **Federal Register**, Vol. 47, No. 38, Thursday, February 25, 1982; of the same title, Section II, B–4, Commercial Use paragraph 4 should read:

"No commercial trip shall be greater than 12 persons total (for small trips), or 24 persons total (for large trips), including crew members, except for the following flexibility provisions:

"a. Recognizing that circumstances beyond an Authorized Outfitter's reasonable control may on short notice notice occasionally require carrying passengers not planned for, not available through the common pool, and in excess of normally allowed party sizes; up to 20 percent of an Authorized Outfitter's trips, according to the approved schedule, may carry as many as two persons beyond the authorized trip size for small trips, and as many as three persons beyond the authorized trip size for large trips. The maximum number of such trips for each Authorized Outfitter is determined in advance by the BLM Authorized Officer, and each Authorized Outfitter will be advised.

"b. From September 1, through the termination of the regulated season guided fishing trips are offered by some outfitters using small hard shell drift boats of limited carrying capacity each of which requires its own guide. Because of the need for a higher than usual ratio of guides to passengers for such trips, the total party size for small guided fishing trips scheduled from September 1 through the termination of the regulated season is authorized at 15 rather than 12 persons."

Hugh R. Shera,
Medford District Manager.

William Covey,
Forest Supervisor, Siskiyou National Forest.

[FR Doc. 82–15158 Filed 6–3–82; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lincoln National Forest Grazing Advisory Board; Meeting

The Lincoln National Forest Grazing Advisory Board will meet at 10:30 a.m., July 7, 1982, at the Holiday Inn, Highway 70, Ruidoso, New Mexico. The purpose of the meeting is to provide grazing permittees of the Lincoln National Forest means for offering advice and recommendations concerning:

Management Plans
Range Improvements
(a) Range Betterment Funds
(b) Permit Modifications

Other items to be discussed are off-road vehicle use, base property requirements, and impacts on grazing by other resource activities.

The meeting will be open to the public. Persons who wish to attend should notify Don Cunico, Lincoln National Forest Supervisor's Office, Federal Building, 11th & New York, Alamogordo, New Mexico. Telephone: (505) 437–6030. Written statements may be filed with the Board before or after the meeting.

Rules for public participation will be established at the meeting.

Dated: May 28, 1982.

James R. Abbott,
Forest Supervisor.

[FR Doc. 82–15161 Filed 6–3–82; 8:45 am]

BILLING CODE 3410–11–M

Routt National Forest Grazing Advisory Board; Meeting

The Routt National Forest Grazing Advisory Board will meet July 29, 1982 at the Routt Forest Supervisor's Office, Hunt Building, 137 10th St., Steamboat Springs, Colorado. The board will leave at 8:30 a.m. to review grazing allotments in the Williams Fork drainage of the Middle Park Ranger District.

Other business will include: (1) A short business meeting, (2) review allotment management plans for high elevation sheep allotments, (3) review and make recommendations on use of vacant allotments, (4) review and make recommendations on use of range betterment funds, (5) review vegetative manipulation projects.

The meeting will be open to the public. Persons who wish to attend and participate should notify Jim Webb, Routt National Forest (303–879–1722) prior to the meeting. Public members may participate in discussions during

the meeting at any time or may file a written statement following the meeting.

Dated: May 28, 1982.

Jack Weissling,

Forest Supervisor.

[FR Doc. 82-15159 Filed 6-3-82; 8:45 am]

BILLING CODE 3410-11-M

Federal Grain Inspection Service

Renewals of Designation of the Sioux City Inspection and Weighing Agency, Inc., and A. V. Tischer and Son, Inc.

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the renewals of designation of the Sioux City Inspection and Weighing Agency, Inc. (Sioux City), and A.V. Tischer and Son, Inc. (Tischer), as official agencies responsible for providing inspection services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.)* (Act).

EFFECTIVE DATE: July 1, 1982.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2405 Auditors Building, Washington, DC 20250, telephone (202) 447-8525.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512-1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

The December 30, 1981, issue of the **Federal Register** (46 FR 63170) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Sioux City and Tischer's designations would terminate on June 30, 1982, and requesting applications for designation as the agency to provide official inspection services within each specified assigned area. Applications were to be postmarked by January 29, 1982.

FGIS announced the names of the applicants for designation for each agency and requested comments on same in the March 1, 1982, issue of the **Federal Register** (47 FR 8370). Comments were to be postmarked by April 15, 1982.

Four applicants requested designation for all or part of the geographic area currently assigned to Sioux City. Three requested designation for the entire geographic area. These were the Sioux City Inspection and Weighing Agency, Inc., applying for a renewal of designation; Fremont Grain Inspection Department, Inc. (Fremont), Fremont, Nebraska; and David L. Ayers (Ayers), Sioux City, Iowa, proposing to establish a new agency. The fourth, Aberdeen Grain Inspection, Inc. (Aberdeen), Aberdeen, South Dakota, requested designation for that portion of Sioux City's geographic area located in South Dakota.

Eight comments were received regarding the designation of the official agency in the Sioux City, Iowa, area cited in the December 30 issue of the **Federal Register.** Four commentors recommended the renewal of designation of Sioux City; three recommended the designation of Fremont; one expressed a preference to be serviced by a neighboring official agency. No comments were received regarding the designation of either Ayers or Aberdeen.

After considering all available information in relation to the criteria for designation in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), it has been determinded that Sioux City is better able to provide official services in the geographic area for which it is being selected, and its designation is being renewed. This assigned area is the entire geographic area as described in the December 30 issue of the **Federal Register.**

Two comments were received regarding the renewal of designation of Tischer (the only applicant) as the official agency in the Fort Dodge, Iowa, area cited in the December 30 issue of the **Federal Register.** These commentors expressed a preference to be serviced by a neighboring official agency.

After considering all available information in relation to the criteria for designation in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), it has been determinded that Tischer is better able to provide official services in the geographic area for which its designation is being renewed. This assigned area is the entire geographic area as described in the December 30 issue of the **Federal Register.**

Effective July 1, 1982, and terminating June 30, 1985, the responsibility for providing official inspection services in each geographic area as specified above will be assigned to Sioux City and Tischer, respectively.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection and where the agency and one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the agencies will provide official inspection services not requiring a licensed inspector to all locations within their geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of the specified service points. Interested persons may also obtain a list of the specified service points by contacting the agencies at the following addresses:

Sioux City Inspection and Weighing Agency, Inc., 310 S. Floyd Boulevard, #302, Sioux City, IA 51101

A. V. Tischer and Son, Inc., P.O. Box 339, Fort Dodge, IA 50501

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: May 28, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82-15141 Filed 6-3-82; 8:45 am]

BILLING CODE 3410-02-M

Request for Comments on Applicants for Designation in the Areas Currently Assigned to the Louisville Grain Inspection Services, Inc., Minot Grain Inspection, Inc., and Tri-State Grain Inspection Service, Inc.

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for designation as the official agency in the areas currently assigned to the Louisville Grain Inspection Services, Inc. (Louisville), Minot Grain Inspection, Inc. (Minot), and Tri-State Grain Inspection Service, Inc. (Tri-State). The designations terminate September 30, 1982.

DATE: Comments to be postmarked on or before July 19, 1982.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management Staff, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1642, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382-0231. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Lewis Lebakken, Jr., telephone (202) 382–0231.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore the Executive Order and Secretary's Memorandum do not apply to this action

The April 1, 1982, issue of the **Federal Register** (47 FR 13981) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official inspection services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71, *et seq.*) (Act), in the areas currently assigned to Louisville, Minot, and Tri-State, respectively. Applications were to be postmarked by April 30, 1982.

One applicant requested designation for all of the geographic area currently assigned to Louisville. That applicant is Louisville Grain Inspection Services, Inc., Louisville, Kentucky. One applicant requested designation for all of the geographic area currently assigned to Minot. That applicant is Minot Grain Inspection, Inc., Minot, North Dakota. One applicant requested designation for all of the geographic area currently assigned to Tri-State. That applicant is Tri-State Grain Inspection Service, Inc., Cincinnati, Ohio. Louisville, Minot, and Tri-State applied for renewals of designation for additional 3-year periods.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their views and comments concerning the applicants for designation. All comments must be submitted to the Regulations and Directives Management Staff, specified in the address section of this notice, and postmarked not later than July 19, 1982.

Consideration will be given to comments filed and to other information available before a final decision is made with respect to this matter. Notice of the final decision will be published in the **Federal Register** and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: May 28, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–15132 Filed 6–3–82; 8:45 am]

BILLING CODE 3410–02–M

Termination of Designations of the Idaho Grain Inspection Service, Inc., Lewiston Grain Inspection Service, Inc., and Utah Department of Agriculture

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the designations of three official agencies will terminate, in accordance with the U.S. Grain Standards Act, as amended, on November 30, 1982, and requests applications from parties interested in being designated as agencies to conduct official inspection services in the geographic areas currently serviced by each of the specified agencies. The official agencies are the Idaho Grain Inspection Service, Inc., Lewiston Grain Inspection Service, Inc., and Utah Department of Agriculture.

DATE: Applications to be postmarked on or before July 6, 1982.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2405 Auditors Building, Washington, D.C. 20250, telephone (202) 447–8525. All applications submitted pursuant to this notice will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

Section 7(f)(1) of the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, at 79(f)(1)) (Act), specifies that the Administrator of the Federal Grain Inspection Service is authorized upon application by any qualified agency of person, to designate such agency or person to perform official inspection services after a determination is made that the applicant is better able than any other applicant to provide official inspection services in an assigned geographic area.

Idaho Grain Inspection Service, Inc. (Idaho), P.O. Box 4209, Pocatello, Idaho 83201, was designate as an official agency under the Act for the performance of official grain inspection functions on July 1, 1981. Lewiston Grain Inspection Service, Inc., (Lewiston), 1450 Third Avenue North, Lewiston, Idaho 83501, was designated as an official agency under the Act for the performance of official grain inspection functions on July 24, 1978. The Utah Department of Agriculture (Utah) 147 North 200 West, Salt Lake City, Utah 84103, was designated as an official agency under the Act for the performance of official grain inspection functions on July 1, 1978. The agencies' designations will terminate on November 30, 1982. For Lewiston and Utah, this termination date reflects administrative extensions of official agency designations as discussed in the July 16, 1979, issue of the **Federal Register** (44 FR 41275). Section 7(g)(1) of the Act states generally that designations of official agencies shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Idaho pursuant to section 7(f)(2) of the Act and which is the geographic area that may be assigned to the applicant selected for designation is the southern half of the State of Idaho up to the northern boundaries of Adams, Valley, and Lemhi Counties.

The geographic area presently assigned to Lewiston pursuant to section 7(f)(2) of the Act and which is the geographic area that may be assigned to the applicant selected for designation is the northern half of the State of Idaho down to the northern boundaries of Adams, Valley, and Lemhi Counties.

The geographic area presentlyu assigned to Utah pursuant to section 7(f)(2) of the Act and which is the geographic area that may be assigned to the applicant selected for designation is the entire State of Utah.

Interested parties, including Idaho, Lewiston, and Utah, are hereby given opportunity to apply for designation as the official agency for each respective specified geographic area, as described above, under the provisions of section 7(f) of the Act and § 800.196(b) of the regulations issued thereunder. The designations in each specified geographic area are for the period beginning December 1, 1982, and terminating November 30, 1985. Parties wishing to apply for either of these designations should contact the Chief, Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information. Applicants must be postmarked not later than July 6, 1982 to be eligible for consideration.

In making a determination as to which applicant will be designated to provide official inspection services in the geographic areas, consideration will be given to all applications submitted and all other information available.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: May 28, 1982.

J. T. Abshien,

Director, Compliance Division.

[FR Doc. 82–15131 Filed 6–3–82; 8:45 am]

BILLING CODE 3410–02–M

Soil Conservation Service

North Jefferson Elementary School Flood Prevention R. C. & D. Measure, West Virginia

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 North Jefferson Elementary School Flood Prevention RC&D Measure, Jefferson County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Craig M. Right, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505, telephone 304–291–4151.

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. Craig M. Right, State Conservationist , has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns works of improvement to be installed to provide flood prevention. The planned works of improvement include approximately 1,080 feet of grassed waterway, 600 feet of diversion and 620 feet of drain tile to be installed in the bottom of the diversion.

The Notice of a Finding of No Significant Impact (FONSI) has 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 assessment are on file and may be reviewed by contacting Mr. Craig M. Right.

No administrative action on implementation of the proposal will be taken until July 6, 1982.

Date: May 24, 1982.Q02

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–96 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Craig M. Right,

State Conservationist.

[FR Doc. 82–14829 Filed 6–3–82; 8:45 am]

BILLING CODE 3410–16–M

Belfast City Park R. C. & D. Measure, Maine

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Mr. Billy R. Abercrombie, State Conservationist, Soil Conservation Service, USDA Office Building, University of Maine, Orono, Maine, 04473, telephone 207–866–2132.

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 Guidelines (7 CFR Part 1500); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Belfast City Park R. C. & D. Measure, Waldo County, Maine.

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. Billy R. Abercrombie, 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 flood prevention. The planned works of improvement include a surface water control and disposal system. Conservation practices include diversions, drop inlets, underground conduits, and seeding.

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 Mr. Billy R. Abercrombie. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: May 24, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Billy R. Abercrombie,

State Conservationist.

[FR Doc. 82–14967 Filed 6–3–82; 8:45 am]

BILLING CODE 3410–16–M

Eastanollee Creek Critical Area Treatment R.C. & D. Measure, 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 Eastanolle Creek Critical Area Treatment Measure, Camden 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, Dwight M. Treadway, State Conservationist, has determined that the preparation and review of an

environmental impact statement are not needed for this project.

The objective of the sponsors is to stabilize sediment producing areas in the Eastanollee Creek Watershed. The planned works of improvement include streambank stabilization with rock or similar material and other materials. Vegetative material will be used to stabilize 12.5 acres of eroding streambank or areas exposed following construction. About 30 acres of gullies and eroding areas will be graded, shaped, and vegetated. Conservation practices include preservation of native vegetation and immediate stabilization of exposed areas.

The Finding of No Significant Impact (FONSI) has 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 Dwight M. Treadway.

No administrative action on implementation of the proposal will be taken until July 6, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 27, 1982.

Dwight M. Treadway,

State Conservationist.

[FR Doc. 82-15176 Filed 6-3-82; 8:45 am]

BILLING CODE 3410-16-M

Office of Rural Development Policy

National Advisory Council on Rural Development; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-163), notice is hereby given of a meeting of the National Advisory Council on Rural Development. The meeting will be held on June 23 and June 24, 1982 at the John Deere Center, John Deere Road, Moline, Illinois 61265. The meetings will begin at 9:00 a.m. each day.

The purpose of the meeting will be to develop preliminary policy options related to rural development issues and to discuss specific assignments for the remainder of fiscal year 1982.

The meeting will be open to the public. In order to provide opportunity for the public to comment on the work of the Council, written statements will be received two weeks prior to and two weeks following the meeting. Due to the press of business, however, public participation will be limited to written statements. Views and comments will be addressed in writing, and, when deemed appropriate by the Co-Chair, may be addressed orally at the next meeting of the Council.

Written comments, both prior to and following the meeting, should be addressed to: Mr. Willard (Bill) Phillips, Jr., Acting Director, Office of Rural Development Policy, Room 4128-S, United States Department of Agriculture, 12th and Independence SW., Washington, D.C. 20250, (202) 382-0044.

Dated: May 26, 1982.

Willard Phillips, Jr.,

Acting Director, Office of Rural Development Policy.

[FR Doc. 82-15234 Filed 6-3-82; 8:45 am]

BILLING CODE 3410-07-M

CIVIL RIGHTS COMMISSION

Kentucky 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 Kentucky Advisory Committee to the Commission will convene at 1:00p and will end at 4:00p, on Jume 29, 1982, at the Executive Inn, 978 Phillips Lane, in the Dolphin Room, Louisville, Kentucky 40213. The purpose of this meeting will be to review the draft of a report on fair housing.

Persons desiring additional information should contact the Chairperson, James M. Rosenblum, 33 Ten Broeck Way, Louisville, Kentucky 40222, (502) 636-1411 or the Southern Regional Office, Citizens Trust Bank Building, 75 Piedmont Avenue, North East, Room 362, Atlanta, Georgia 30303, (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 1, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-15162 Filed 6-3-82; 8:45 am]

BILLING CODE 6335-01-M

Nevada Advisory Committee; Amendment

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 Advisory Committee to the Commission scheduled for 1:00-5:00p on June 24, 1982, in the Federal Building, Reno, Nevada, (FR Doc. 82-14317 on page 22995) has been changed.

The date and time remain June 24, 1982, beginning at 1:00p and will end at 5:00p, the location is the Washoe County School District, Adminstration Building, Board Room, 425 East Ninth Street, Reno, Nevada, 89520.

Dated at Washington, D.C., June 1, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-15163 Filed 6-3-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Certain Textiles and Textile Products From Argentina; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain textiles and textile products from Argentina, specifically men's and boys' woolen apparel. The review covers the period January 1, 1980 through December 31, 1980. There have been no known shipments of this merchandise to the United States during this period of review and there are no known unliquidated entries. As a result of this review, the Department has preliminarily determined to require a cash deposit of estimated countervailing duties equal to the net subsidy calculated in the original investigation, that is, 3.23 percent of the f.o.b. invoice price of the merchandise. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 4, 1982.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202, 377-1775/2786).

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1978, the Department of the Treasury published in the **Federal Register** (43 FR 53421) an affirmative final countervailing duty

determination regarding certain textiles and textile products from Argentina. The notice stated that the Government of Argentina had provided bounties or grants on the manufacture, production or exportation specifically of men's and boys' woolen apparel within the meaning of section 303 of the Tariff Act of 1930 ("the Tariff Act").

On January 1, 1980, the provisions of title I of the Trade Agreements Act of 1979 became effective. On January 2, 1980, the authority for administering the countervailing duty law was transferred from the Department of the Treasury to the Department of Commerce ("the Department"). The Department published in the Federal Register of May 13, 1980 (45 FR 31455) a notice of intent to conduct administrative reviews of all outstanding countervailing duty orders. As required by section 751 of the Tariff Act, the Department has now conducted an administrative review of the order on certain textiles and textile products from Argentina.

Scope of the Review

Imports covered by the review are men's and boys' woolen apparel imported from Argentina. Such apparel is currently classifiable under the items of the Tariff Schedules of the United States Annotated (TSUSA) listed in the Appendix to this notice.

The review covers the period January 1, 1980 through December 31, 1980. We reviewed two programs: (1) the *reembolso*, a cash rebate of indirect taxes paid as a percentage of the value of the exported merchandise, found countervailable in the final determination; and (2) a preferential financing program found countervailable in another investigation.

Preliminary Results of the Review

In response to our questionnaire regarding the countervailing duty order, the Government of Argentina stated that there were no exports to the United States of this merchandise during the period of review. Our examination of import statistics for that period confirms the statement. Furthermore, there are no known unliquidated entries of this merchandise.

At the time of the final determination the preferential short-term financing did not appear to be a bounty or grant because the interest rate charged was not less than that available commercially. Based on information supplied by the Government of Argentina, we find that situation continued to exist through the period covered by this review. Additionally, due to a reduction in the rate of the *reembolso* effective December 24, 1981, there is no indication that the benefits received under this program will exceed those found in the final determination.

As a result of our review, we preliminarily determine the potential rate of subsidy to be 3.23 percent *ad valorem* the rate found in the original countervailing duty determination.

Accordingly, as provided for by section 751(a)(1) of the Tariff Act, the Department intends to notify the Customs Service to collect a cash deposit of estimated countervailing duties of 3.23 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results on or before July 6, 1982 and may request disclosure and/or a hearing on or before June 16, 1982. Any request for an administrative protective order must be made no later than June 10, 1982. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

June 1, 1982.

Appendix—Wearing Apparel

372.0800(b)
372.1020(a)(b)
372.1050(a)(b)
372.2500(for male infants)
372.3000(b)
372.3500(b)
372.4000(b)
372.4500(b)
373.0500 of wool
373.1500
376.0800(b)
378.3510(b)
378.4000(b)
378.4500(b)
379.1100
379.1300
379.1510 through 379.1530
379.1710 through 379.1750
379.2010
379.2020
379.3520(a)
379.6615(a)
379.6934 through 379.6958(a)
379.7100
379.7240 through 379.7295
379.7400
379.7510
379.7530
379.7605 through 379.7650
379.7810 through 379.7850
379.7900
379.8100
379.8311 through 379.8360
379.8410
379.8420
379.8615(a)
379.8715(a)
379.9815(a)

(a) Wool articles classified under this TSUSA item number are covered by this notice if they are included in the textile category system used by the United States to monitor and administer the U.S. textile trade agreements made pursuant to the Arrangement Regarding International Trade in Textiles, December 20, 1973, 25 U.S.T. 1001, TIAS 7840.

(b) If the item is for men and boys, it is included in this notice. The term "men and boys" should be interepreted in accordance with the applicable headnotes to the schedule part and subpart in which the TSUSA number falls. Where the phrase is not covered by such headnotes, items classified under the TSUSA number which can be used by either sex are covered by this notice. Items under TSUSA numbers identifiable as being intended exclusively for women are not covered by this notice.

[FR Doc. 82-15249 Filed 6-3-82; 8:45 am]

BILLING CODE 3510-25-M

Leather Wearing Apparel From Colombia; Preliminary Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Suspension Agreement.

SUMMARY: The Department has conducted an administrative review of the suspension agreement for the countervailing duty investigation on leather wearing apparel from Colombia. The review covers the period April 2, 1981 through August 31, 1981. As a result of the review, the Department preliminarily determines that Confecciones Amazonas Orinoco, a Colombian exporter of leather wearing apparel to the United States, has complied with the terms of the suspension agreement. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 4, 1982.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202, 377-3691/2786).

SUPPLEMENTARY INFORMATION:

Background

On January 15, 1981, the Department of Commerce ("the Department") published in the **Federal Register** (46 FR 3255) a preliminary affirmative countervailing duty determination regarding leather wearing apparel from Colombia. On April 2, 1981, the Department published in the **Federal Register** (46 FR 19963) a notice of suspension of countervailing duty investigation. The Department noted that the suspension agreement between Confecciones Amazonas Orinoco ("CAO") and the Department met the criteria provided in sections 704 (b) and (d) of the Tariff Act of 1930 ("the Tariff Act"). In the notice, the Department also announced its intent to conduct an administrative review of the suspension agreement within twelve months, as provided for in section 751 of the Tariff Act. The Department has now conducted that administrative review.

Scope of the Review

The leather wearing apparel covered by this review is currently classifiable in items 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated. This merchandise includes men's, boys', women's, girls' and infants' leather coats and jackets and other leather wearing apparel (such as vests, pants and shorts), as well as parts and pieces thereof.

The review covers the period April 2, 1981 through August 31, 1981, and the only program found to constitute a subsidy in the preliminary affirmative countervailing duty determination, the Tax Reimbusement Certificate Program ("CAT").

Analysis of Program

Under the CAT program, exporters of leather wearing apparel receive tax certificates equal to 12 percent of the domestic value-added content, or effectively 9 percent of the f.o.b. value of each shipment. In the preliminary affirmative determination, the Department found the full benefit to be countervailable. We have now preliminarily determined that the potential rate of subsidy under this program was 9 percent *ad valorem* during the review period.

Compliance With Agreement

In the suspension agreement, CAO renounced all CAT benefits associated with exports of leather wearing apparel to the United States, and agreed not to accept substitute or equivalent benefits. The agreement can remain in force only so long as the shipments covered by the agreement account for at least 85 percent of exports of such merchandise to the United States.

On the basis of information provided by the Banco de la Republica (the central bank of Colombia) and the Colombian government, we have found that CAO did not apply for and received no benefits under the CAT program during the period of review. The government has also certified that no substitute or equivalent benefits were available to CAO, and that CAO did not indirectly derive these benefits. Although other exporters began to export to the United States during this period, our examination of the submitted information indicates that CAO continued to account for at least 85 percent of U.S. imports of such Colombian leather wearing apparel.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that CAO has complied with the terms of the suspension agreement for the period April 2, 1981 through August 31, 1981.

Interested parties may submit written comments on these preliminary results on or before July 6, 1982 and may request disclosure and/or a hearing on or before June 16, 1982. Any request for an administrative protective order must be made no later than June 10, 1982. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

June 1, 1982.

[FR Doc. 82-15250 Filed 6-3-82; 8:45 am]

BILLING CODE 3510-25-M

Stainless Clad Steel Plate From Japan; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

SUMMARY: We have determined that stainless clad steel plate from Japan is being sold, or is likely to be sold, in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930. The U.S. International Trade Commission ("ITC") will determine within 45 days of the publication of this notice whether these imports are materially injuring, or threatening to materially injure, a U.S. industry.

EFFECTIVE DATE: June 4, 1982.

FOR FURTHER INFORMATION CONTACT: Paul Nichols, Office of Investigations, International Trade Administration, Department of Commerce, Washington, DC 20230, (202) 377-1768.

SUPPLEMENTARY INFORMATION:

Case History

On October 6, 1981, we received a petition in proper form from counsel on behalf of Lukens Steel Company, Coatesville, Pennsylvania, alleging that stainless clad steel plate from Japan is being sold at less than fair value within the meaning of section 731 of the Tariff Act of 1930 ("the Act") (19 U.S.C. 1673).

Upon reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping investigation, and we published a "Notice of Initiation" in the **Federal Register** on October 15, 1981 (46 FR 50814).

On November 13, 1981, the ITC determined that there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports of stainless clad steel plate from Japan. The ITC published notice of its determination in the **Federal Register** on December 2, 1981 (46 FR 58619).

During the course of this investigation, including an on-site review of Japan Steel Works' ("JSW") records, JSW refused to disclose certain information on home market and U.S. sales which the Department believed to be necessary in order to assure itself that: (1) JSW properly selected "such or similar" sales in the home market from the total of all home market sales (the Department could not establish, for example, that sales selected by JSW were, in fact, those which were most similar to U.S. sales); and (2) all sales to the U.S. of stainless clad steel plate had been included in response to the Department's request.

On March 19, 1982, we preliminarily determined that stainless clasd steel plate from Japan is being, or is likely to be, sold in the United States at less than fair value (47 FR 12200). In view of JSW's refusal to allow access to certain information, this determination was based upon the best information available, which was found to be the petitioner's information. On April 2, 1982, we were notified by counsel for JSW that no further information would

be submitted by JSW in this proceeding. By separate letter of the same date, JSW also requested the return of all confidential documents, including the response submitted to the Department during the course of this investigation.

On April 6, 1982, counsel for Lukens was granted the opportunity to submit supplemental information prior to the final determination in this case. By letter dated April 7, 1982, Lukens informed the Department that it would not supplement nor amend the data submitted as part of its petition. On April 7, 1982, we returned to JSW all documents submitted by them during the course of this investigation.

The Department is making this final determination based on the best information otherwise available during the course of this proceeding, in accordance with section 776(b) of the Act (19 U.S.C. 1677e(b)). Information submitted by the petitioner at the time of the initiation of this case has been determined to be the best information available, as it was for the preliminary determination.

Scope of Investigation

The merchandise covered by this investigation is stainless clad steel plate currently classifiable under item number 607.94 of the *Tariff Schedules of the United States (TSUS).* The product is a rectangular finished steel mill product consisting of a layer of stainless steel bonded to a substrate of less expensive carbon or low alloy steel. Depending on its intended use, stainless clad steel plate can be produced in various combinations of stainless and base materials, and in various other dimensions and qualities as specified by the customer. Stainless clad steel plate has many applications where the corrosion resistance of stainless steel and the higher design strength of carbon or alloy steel are required.

This investigation covers sales made between February 1 and October 31, 1981. JSW was the only known Japanese producer of clad steel plate for export to the United States during the investigative period.

Methodology of Fair Value Comparison

Comparisons were made between United States price and the foreign market value of the imported merchandise.

United States Price

We used purchase price, as defined in section 772(b) of the Act, to determine the United States price because the price of stainless clad steel plate to unrelated purchasers in the United States was agreed to before the merchandise was imported into the United States. We calculated the purchase price on the basis of data contained in the petition concerning JSW's delivered price to unrelated U.S. purchasers, with deductions for inland freight, handling, ocean freight, and Customs duty, which were also based upon data in the petition.

Foreign Market Value

We used the constructed value in accordance with section 773(a)(2) of the Act to determine foreign market value because of the absence of home market or third country sales data. We calculated constructed value on the basis of data contained in the petition concerning materials, labor, overhead costs and packing. We also included the statutory amounts for general expenses (10 percent) and profit (8 percent) in accordance with section 773(e)(1) of the Act.

Issue: In our preliminary determination, we considered the petitioner's contention that "critical circumstances" existed with respect to this case and determined that the allegation failed to satisfy the requirements of section 733(e)(1)(A)(ii).

DOC Position: No new information has been submitted which would factually support a determination different from the conclusion reached in the preliminary determination.

No additional issues have been raised by counsel for the petitioner or respondent since the preliminary determination.

Final Determination

Based on our investigation, and in accordance with section 735(a) of the Act, we have reached a final determination that stainless clad steel plate from Japan is being sold, or is likely to be sold, at less than fair value within the meaning of section 731 of the Act. Margins were found on all of the sales compared. The average margin on all sales compared was 14 percent.

We have provided interested parties with an opportunity to present oral views in accordance with 19 CFR 353.47 and written views in accordance with 19 CFR 353.46(a). All views presented have been considered in making this determination.

Continuation of Suspension of Liquidation

The liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise will continue to be suspended. The U.S. Customs Service will continue to require posting of a cash deposit, bond, or other security in the amount of 14 percent of the f.o.b. value of the imported product.

ITC Notification

We are notifying the ITC of this action so that it may determine whether these imports are materially injuring, or threatening to materially injure, a U.S. industry. That determination is due on or before July 19, 1982.

As section 735(c)(1)(A) of the Act requires, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC determines that material injury does not exist, this proceeding will be terminated, and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, within seven days we will issue an antidumping order, directing customs officers to assess an antidumping duty on all stainless clad steel plate from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

May 28, 1982.

[FR Doc. 82-15251 Filed 6-3-82; 8:45 am]
BILLING CODE 3510-25-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Level of Certain Wool Apparel Products From Thailand

May 28, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing by 475 dozen the level of restraint established for wool sweaters in Category 445/446, produced or manufactured in Thailand and exported during the year which began on January 1, 1982 and extends through December 31, 1982. The adjusted level will be 11,715 dozen.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654))

SUMMARY: Under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand, an investigation has been held concerning a discrepancy in the data affecting imports of wool textile products in Category 445/446. It has been concluded that 475 dozen have been improperly charged to the level of restraint established for the category during the year which began on January 1, 1982. Accordingly, the level of restraint for this category is being increased by 475 dozen to 11,715 dozen.

EFFECTIVE DATE: June 3, 1982.

FOR FURTHER INFORMATION CONTACT: Gordana Slijepcevic, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On December 18, 1981, there was published in the **Federal Register** (46 FR 61689) a letter dated December 14, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool, and man-made fiber textile products, produced or or manufactured in Thailand, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982. As a result of a data discrepancy investigation, which uncovered an improper charge amounting to 475 dozen, the Chairman of the Committee for the Implementation of Textile Agreements, in the letter published below, directs the Commissioner of Customs to adjust the level of restraint for Category 445/446 by the amount of that charge to 11,715 dozen.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

May 28, 1982.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 14, 1981 by the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Thailand.

Effective on June 3, 1982, paragraph 1 of the directive of December 14, 1981 is amended to include an adjusted level of restraint of 11,715 dozen for wool textile products in Category 445/446.[1]

The action taken with respect to the Government of Thailand and with respect to imports of wool textile products from Thailand has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exceptions to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR. Doc. 82–15252 Filed 6–3–82; 8:45 am]

BILLING CODE 3510–25–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Report from Employer, School, Personal Reference.

Form is used by recruiters to request reference reports on applicants for enlistment in the Armed Forces. Information requested is necessary to determine eligibility for enlistment.

Former and current employers, schools attended, personal references; 840,180 responses; 140,030 hours.

Forward comments to Mr. Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Mr. John V. Wenderoth, DOD Clearance Officer, OASD(C), DIRMS, IRAD, Room 4B929, Pentagon, Washington, DC 20301; telephone (202) 697–1195.

A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD, MRA&L(PI), Room 3C800, Pentagon, Washington, DC 20301; telephone (202) 695–0643.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1982.

[FR Doc. 82–15178 Filed 6–3–82; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Errors and Ambiguities in Utility Power Sales Contracts Offered August 28, 1981; Correction

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Correction of Errors and Ambiguities Contained in Utility Power Sales Contracts Offered August 28, 1981.

SUMMARY: This Notice describes corrections of errors and ambiguities contained in the utility power sales contract which was offered by BPA to its customers on August 28, 1981. These corrections will appear in an Amendatory Agreement to be offered to those BPA customers which were offered such contracts.

The Amendatory Agreement is part of a settlement package proposed by BPA customers to revolve outstanding contract issues and pending litigation. This Amendatory Agreement is being offered immediately to BPA customers since it merely corrects or explains existing contract language to conform with the original intent of the parties.

The Notice contains the August 28th utility power sales contract, general contract provisions, and exhibit language with new language inserted and underlined. The contract language is followed by an explanation of the issues involved and how the language was added to or modified.

[1] The level of restraint has not been adjusted to account for any imports after December 31, 1981.

All Federal actions are subject to the National Environmental Policy Act (NEPA). A preliminary analysis of the impacts of correcting the errors and ambiguities in the power sales contracts does not reveal significant impacts to the quality of the human environment. A Brief Memorandum to the Files, documenting these findings, will be prepared and will be available to the public upon request.

FOR FURTHER INFORMATION CONTACT:

Ms. Donna L. Geiger, Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon 97212, 503–230–3478. Oregon callers may use the toll-free number 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048.

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503–230–4551;

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–345–0311.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Gordon H. Brandenburger, Kalispell District Manager, P.O. Box 758, Kalispell, Montana 59901, 406–755–6202.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington, 98801, 509–662–4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Roy Nishi, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

SUPPLEMENTARY INFORMATION: The Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501 (Regional Act), required BPA to simultaneously offer, within 9 months of the date of enactment, which was December 5, 1980, long-term sales contracts to (1) existing public body and cooperative customers and investor-owned utility customers, (2) Federal agency customers, (3) electric utility customers participating in the residential exchange, and (4) direct-service industrial customers. BPA offered utility power sales contracts to its customer on August 28, 1981. The customers have 1 year, until August 28, 1982, to accept the offered contracts. This Notice corrects errors and ambiguities contained in the utility power sales contract offered on August 28, 1981.

On November 12, 1981, BPA's public agency customers met with BPA to discuss problems they felt remained unresolved with the offered contracts. They expressed the view that if these outstanding issues were resolved they might be able to sign the offered contracts.

BPA met with customer representatives on November 17 and November 20, 1981, to discuss the outstanding issues raised by the public agencies and investor-owned utilities. In response, BPA's Administrator sent out a November 27, 1981, letter to BPA's customers and interested parties noting customer concern regarding (1) errors and ambiguities in the contract, (2) issues relating to the optimum, efficient, and economical use of BPA and its customers systems, and (3) substantive issues related to each party's rights and obligations under the contracts. BPA stated that it would attempt to resolve issues included in categories (1) and (2) but would not discuss issues in category (3).

Just prior to expiration of the deadline for filing, each of BPA's customer classes filed a lawsuit challenging BPA's contract offers. These lawsuits include *Public Power Council v. Johnson, Pacific Power* and *Light v. Johnson,* and *Alcoa v. BPA* Ninth Court of Appeals Action No. 81–7806, 81–7803, and 81–7813, respectively. The first two lawsuits involved challenges to the utility power sales contract offer. The third lawsuit challenges provisions of BPA's residential purchase and sale agreement offer.

In March 1982, BPA reached a settlement agreement with the investor-owned utilities which were petitioners in *Pacific Power and Light v. Johnson* and the direct-service industries which were petitioners in *Alcoa v. BPA.* Settlement of these two lawsuits was conditioned on the public agencies not raising issues in their briefs in *Public Power Council v. Johnson* which the petitioners felt affected the cost or quality of service to investor-owned utilities or direct-service industries.

In April 1982, the BPA Administrator met with public agency customers to discuss whether it would be possible to reach a settlement instead of proceeding with its lawsuit. BPA encouraged the public agency customers to attempt to reach a settlement of outstanding issues with BPA's other customer classes. BPA also informed its public agency customers that BPA could not commit itself in a settlement agreement to offer contract amendments nor would BPA offer proposed contract amendments on issues of substance until BPA had provided for public comment, consulted with interested agencies and groups, and complied with the National Environmental Policy Act of 1969 (NEPA).

Between April 26 and April 30, 1982, BPA's public agency customers called a series of meetings of all BPA customers to attempt to resolve outstanding issues in the contract offers, including the issues raised in the lawsuits. BPA attended these meetings at the request of the public agency customers.

The areas of discussion included (1) errors and ambiguities in the utility power sales contract, (2) an investor-owned utility proposal to modify the Contracted Requirements provisions of the contract, and (3) issues in the public agency customers' lawsuit. The public agency customers called an additional meeting on May 7 where agreement was reached by BPA's customer classes on a package of proposed solutions which the customers asked the BPA Administrator to implement.

A part of the proposed settlement package is an Amendatory Agreement addressing the correction of errors and ambiguities, as described in this Notice. BPA has determined that the amendments proposed by utilities and listed below do not require public comment or consultation with interested agencies or groups before being offered. These amendments correct errors and clarify ambiguities discovered in the contracts offered on August 28, 1981. They do not change materially the obligations of the parties under the offered contracts. Other amendments proposed by the utilities do provide for different obligations under the contracts, and BPA will separately publish those proposed amendments, seek comment, and consult with interested agencies and groups before deciding whether they should be offered.

The following language is the resolution of "errors and ambiguities," identified by utilities, which will appear in the Amendatory Agreement described above. The original power sales contract, general contract provision and exhibit language is shown with the new language inserted and underlined. The language is followed by an explanation of the issue and how the contract language was added to or modifies.

A. Section 3(b) is deleted and replaced by a new section 3(b) ad follows:

1. *Existing Contract language with proposed new contract language inserted.*

"Actual Firm Peak Load" and "Actual Firm Energy Load" mean the actual maximum integrated one-hour monthly peak and average monthly energy loads, respectively, of the Purchaser's system in the Pacific Northwest, for each Billing Month, after adjustment pursuant to section 17(e). Such actual loads shall not include any load to the extent that the Purchaser had a unilateral right to interrupt such load during such month, even if such load was not actually interrupted, but shall include the amount of any load which the Purchaser *had a right to interrupt or* actually interrupted for the purpose of backing up or providing economic operation of *its system including* its Firm Resources. In addition, any New Large Single Load or portion of such load shall not be included in the Purchaser's firm loads hereunder prior to the date Bonneville is obligated to supply such load with Firm Power pursuant to the terms of section 8(e). Contractual obligations of the Purchaser to utilities outside its normal service area may, if permitted by the terms of section 12(a), be included in the Purchaser's Firm Resources, but shall not be included in the Purchaser's Actual Firm Loads hereunder. Actual Firm Peak Load and Actual Firm Energy Load shall be referred to collectively as "Actual Firm Load."

2. *Explanation of error or ambiguity and proposed resolution.* The contract as offered on August 28, 1981, includes a definition of Actual Firm Loads, Section 3(b), which BPA is obligated to serve pursuant to the power sales contract. There is a corresponding definition of Estimated Firm Loads, Section 3(o), which is used for planning purposes and determining BPA's estimated obligation to serve a utility in the upcoming Operating Year. Under the terms of both definitions, BPA does not provide service to any load where the purchaser has a unilateral right to interrupt service to such loads. The definitions provide an exception to this priniciple where the utility may interrupt the load only for the purposes of backing up its Firm Resources or promoting the economic operation of its Firm Resources. The parties agreed that the definition of Estimated Firm Load clearly included the loads covered by the exception but that it was ambiguous whether such loads were actually included by the language in the definition of Actual Firm Load. An additional issue was raised concerning the effect of the language on interruptible loads on the implementation of load management schemes. The utilities were concerned that the language on interruptible loads might prevent the use of load management schemes when load management was an alternative to the installation of additional distribution facilities in a congested urban area. Such result is an ambiguity in the language and would result in an unintended effect from the definition of Actual Firm Load and Estimated Firm Load.

It was determined that the ambiguity regarding which interruptible loads could receive service from BPA could be cleared up by the insertion of the words "had a right to interrupt or" between the words "purchaser" and "actually" in the second sentence of the definition of Actual Firm Loads. It was also determined that the insertion of the words "its system including" between the phrases "economic operation of" and "its Firm Resources" would make clear that load management schemes could promote economic operation of a utility's entire system instead of only its resource use. A corresponding change in the definition of estimated firm loads was also made to not preclude the intended use of load management schemes.

3. *Corresponding change in the existing contract language in section 3(o) to follow changes in section 3(b).*

"Estimated Firm Peak Load" and "Estimated Firm Energy Load" mean the best estimate of the maximum integrated one-hour monthly peak and average monthly energy loads of the Purchaser's system in the Pacific Northwest which are equally likely to be less than or greater than the Purchaser's actual peak and energy loads in each month under normal weather conditions, except that the Purchaser may increase the largest of such monthly peak loads during the Operating Year to represent the peak load which is equally likely to be less than or greater than the Purchaser's actual peak load during the Operating Year. Such system loads shall be reduced by any and all loads to the extent that the Purchaser has unilateral rights to interrupt deliveries to such load during each month of such Operating Year, excepting loads which the Purchaser has a right to interrupt for the purpose of backing up or providing economic operation of *its system including* its Firm Resources. In addition, any New Large Single Load or portion of such load shall not be included in the Purchaser's firm loads hereunder prior to the date Bonneville is obligated to supply such load with Firm Power pursuant to the terms of section 8(e). Contractual obligation of the Purchaser to utilities outside its normal service area may, if permitted by the terms of section 12(a), be included in the Purchaser's Firm Resources, but shall not be included in the Purchaser's firm loads hereunder. Estimated Firm Peak Load and Estimated Firm Energy Load shall be referred to collectively as "Estimated Firm Load."

B. Exhibit B, Section 8(d)(3) is deleted and replaced by a new Exhibit B, Section 8(d)(3) as follows:

1. *Existing general contract provision language with proposed new language inserted.*

Upon adoption of a methodology as provided in section 4(f)(2) and section 4(e)(3)(G) of Pub. L. 96–501, Bonneville will give notice of intent to adopt a *policy*, provide opportunity for public comment, and publish draft procedures in the **Federal Register** for imposing surcharges. Such *proposed policy* shall include:

(A) standards to be met before Bonneville will excuse surcharges which would otherwise be appropriate, consistent with Bonneville's obligations to implement cost-effective conservation measures to the maximum extent practicable;

(B) that Bonneville will impose surcharges to the extent not excused or suspended under the terms of the *policy;*

(C) an opportunity for interested persons to present views, data, questions, and arguments to Bonneville relevant to the imposition of surcharges in specific instances, and the adequacy of financial assistance made available by Bonneville;

(D) that surcharges imposed will be continued to the extent and for the period projected energy savings attributable to cost-effective model conservation standards are not achieved;

(E) for recovery from the Purchaser of the additional costs (including increases in the Utility's average system cost) that Bonneville will incur because the projected energy savings attributable to model conservation standards have not been achieved, subject to the limitations set forth in sections 4(f)(1) and 4(f)(2) of Pub. L. 96–501; *provided, however,* that surcharges will not be levied as a result of an increase in a Utility's average system cost except to the extent that the Utility failed to implement conservation measures that are designed to be cost-effective for its Consumers in terms of the electric rates its Consumers pay.

2. *Explanation of ambiguity and proposed resolution.* The utilities have expressed a concern that section 8(d)(3) of the General Contract Provisions imposed an unlawful method of establishing policy. Section 8(d)(3) requires BPA to establish standards for the imposition of conservation surcharges after the Regional Council adopts a methodology for determining when surcharges should be applied. Such standards should provide guidelines as to when BPA will exercise its discretion and not impose surcharges recommended by the Regional Council. Section 8(d)(3) included 5 standards and provided that "such rule shall include"

these standards. The utilities were concerned that by stating that the rule must include these standards, they would be denied an opportunity to comment on the standards.

The concern of the utilities was an unintended result. The contract amendment changes "such rule shall include" to "such proposed policy shall include" to reflect BPA's intent to allow interested parties an opportunity to comment on the proposed standards. BPA also changed the language of section 8(d)(3) from the development of a rule to the development of a policy to clearly reflect the Agency action which is occurring.

The correcting language provides that BPA will issue a proposed policy containing standards described in section 8(d)(3). The correcting language reflects that BPA would be required to provide notice of and an opportunity to comment on proposed standards under 8(d)(3) before adoption by BPA.

C. Exhibit B is amended by adding section 8(g) as follows:

1. *Existing general contract provision language with proposed new language inserted.*

(g) *Bonneville shall establish and apply a discount to the rate or rates of utility Customers with low system densities. The level of such discount and the standards for determining which Customers qualify for such discount shall be established pursuant to the rate adjustment process described in this section.*

After 5 years of experience in the application of such discount, Bonneville shall review the level and standards of such discount. Such review will occur independently of the rate adjustment process, and at such time Bonneville and the Purchaser may consider an amendment to this contract to fix the level of the discount and the standards for Customer qualification for the balance of the term of this contract, or such other amendments as the parties deem appropriate. Any such amendments shall be by mutual agreement of Bonneville and the Purchaser.

2. *Explanation of error and proposed resolution.* When BPA offered the power sales contract on August 28, 1981, BPA inadvertently omitted section 8(g) of the General Contract Provisions. This section provides for an independent review after 5 years of the discount for low system density which BPA has developed through the rate adjustment process. While BPA has previously sent a letter to its customers explaining the inadvertent omission of section 8(g) of the GCP's, it was determined that such section should be included in a signed amendment to the contract.

D. Exhibit B, Section 55 is deleted and replaced by a new Exhibit B, Section 55 as follows:

1. *Existing general contract provision language with proposed new language inserted.*

Resale of Power. The Purchaser shall not resell Firm Power delivered under this contract except to those Consumers and utilities within its service area in the Pacific Northwest to the extent such Consumers and utilities are normally dependent on the Purchaser for their firm power supplies. The Purchaser shall not sell power from its Firm Resources in such a manner as to increase the Purchaser's Computed Peak Requirement or Computed Average Energy Requirement on BPA in any month. These prohibitions on resale in this section shall not be interpreted as a general prohibition against the Purchaser simultaneously purchasing Firm Power from BPA and selling power generated at its own facilities to other utilities *or entities, nor shall these prohibitions be interpreted to preclude the Purchaser from reflecting the cost of Firm Power delivered under this contract in pricing such sales to other utilities or entities.*

2. *Explanation of error or ambiguity and proposed resolution.* An area of concern to generating utilities was BPA's intended application of section 55 of the General Contract Provisions regarding resale of power. These utilities were concerned that section 55 would prevent them from reflecting the cost of BPA power in pricing of their own surplus resources. It was agreed that the intent of such language was to require that surplus sales by utilities be made from its own resources and not from power purchased from BPA, but that the pricing of the sale of customer resources should not be affected by the contractual prohibition on reselling Federal power. This result was accomplished by inserting at the end of the section the phrase "or entities, nor shall these prohibitions be interpreted to preclude the Purchaser from reflecting the cost of Firm Power delivered under this contract in pricing such sales to other utilities or entities."

E. Exhibit D, Definition Z of section 7 is deleted and replaced by a new Definition Z as follows:

1. *Existing Contract contract language with proposed new language inserted.*

Z=The load growth of the Purchaser since passage of Pub. L. 96-501 and any deficits of investor-owned utilities determined by subtracting from BPA's estimate of the Purchaser's Actual Firm Load for the Operating Year for which the allocation will apply either (1) the Purchaser's Actual Firm Load in *the first Operating Year for which Bonneville's load growth notice in section 10(e) of this agreement is effective* for public body, cooperative and Federal agency Customers; or (2) the contribution to the Purchaser's Assured Capabilities for such Operating Year for a Purchaser on Computed Requirements or the planning capability for a Purchaser on Metered Requirements of any Firm Resources which were included as 5(b)(1)(A) resources in the Purchaser's Firm Resource Exhibit for investor-owned utilities. "Z" shall be deemed to be one for Customers where "Z" is less than one

2. *Explanation of ambiguity and proposed resolution.* Sections 9(e), 11(b)(4), and definition Z in Exhibit D of the contract offered on August 28, 1981, use a July 1, 1983, date to measure the load growth of a public agency in determining the amount of resources such utility should construct to meet its load growth under the Regional Act. It was felt that due to BPA's present draft forecast of regional loads and resources, the July 1, 1983, date was no longer appropriate for determining when public agency customers should commence constructing resources. It was felt that the section specified could be made effective by replacing the July 1, 1983, date with a later date when BPA would need to acquire resources to meet its obligations under the power sales contracts.

Correcting language was inserted in section 10(e) of the power sales contract to provide a 5-year notice to public agency customers of the need to commence construction of resources. BPA may give this notice at any time in the future when it determines additional resources are needed to meet regional needs. Such notice would provide a new date to measue a utility's obligation to construct resources to meet its load growth and make the referenced sections of the contract which depended on a July 1, 1983, date operative.

Definition Z of section 7 of Exhibit D in the power sales contract is used as the denominator of a ratio which allocates certain specified resources. These resources are allocated to different utilities based on the relative success each utility has had in developing resources to meet its load growth. This ratio is used to allocate intraclass excess entitlements described in section 5(e)(1) of the Regional Act. While the ratio using definition Z would work based on July 1, 1983, date, the ratio using definition Z as changed by the load growth notice in section 10(e) will more accurately reflect a customer's success in building resources to meet its load growth.

F. Exhibit K is deleted and replaced by a new Exhibit K as follows:

1. *Existing contract exhibit language.*

This exhibit is unique to the Customer.

2. *Proposed new contract or general contract provision language.*

(5) *Exhibit K is deleted and replaced by a new Exhibit K attached hereto and by this reference made a part of this contract in accordance with the specific provisions of this contract relating to Exhibit K.*

3. *Explanation of error or ambiguity and proposed resolution.* Exhibit K of the contract offered on August 28, 1981, provides an exhibit which lists in Table 1 a Purchaser's loads which are New Large Single Loads and in Table 2 a list of the Purchaser's loads and the amounts of energy which were contracted for, or committed to prior to September 1, 1979. These determinations are made pursuant to section 3(13) of Pub. L. 96–501 and section 8 of the power sales contract. The existing language specifies that Exhibit K is for information purposes only. Utilities were concerned that such phrase would reduce the certainty they hoped such exhibit would provide. They were also concerned that the word "none" listed on the Tables would imply that such utilities did not have any facilities which were contracted for, or committed to. It was agreed such language should be changed to "no determinations have been made as of the effective date set forth above.

G. Section 8(i) is deleted and replaced by a new Section 8(i) as follows:

1. *Existing Contract provision language with proposed new language inserted.*

(i) *Compliance.* Bonneville and the Purchaser agree that should a Purchaser fail to report a New Large Single Load of which the Purchaser has, or reasonably should have had knowledge, such Purchaser shall be backbilled from the date the increase in load became a New Large Single Load. For this subsection only, such backbilling shall include the following costs: (1) the difference between the Priority Firm Power Rate Schedule or its successor rate schedule and the New Resource Firm Power Rate Schedule or its successor rate schedule; (2) interest charges on the backbilled amount determined at Bonneville's prevailing interest rate; and (3) a late payment charge on the backbilled amount. *This section 8(i) shall not apply if the Purchaser is an investor-owned utility.*

2. *Explanation of error or ambiguity and proposed resolution.* Section 8(i) of the contract provides a backbilling provision in the event the customer fails to report a New Large Single Load. Such backbilling is based on the difference between the Priority Firm Power Rate Schedule and the New Resource Firm Power Rate Schedule. The contract offered on August 28,1981, failed to specify that such section does not apply to investor-owned utilities. Investor-owned utilities are already purchasing power at the New Resource Firm Power Rate Schedule so that billing for Firm Power would not be affected by a New Large Singel Load.

H. Section 9(e) is deleted and replaced by a new Section 9(e) as follows:

1. *Existing Contract provision language with proposed new contract language inserted.*

The limitations of subsection (b) above shall not apply if the Purchaser has developed adequate resources to meet its load growth including the increase in load resulting from service to a new facility of a Consumer or additional service to an existing facility of a Consumer and replace reductions in its Firm Resources which are included as 5(b)(1)(A) resources in its Firm Resources Exhibit. The Purchaser shall be deemed to have *developed* [built] adequate resources for Bonneville to supply such increase in load if *on an estimated basis,* the Purchaser has *provided* [developed] resources which were dedicated to its load *as 5(b)(1)(B) resources* or *made available* [sold] to BPA equal to the sum of (1) reductions in 5(b)(1)(A) resources between the '79–80 Operating Year and the date specified in subsection (b)(2) above *which either: (A) resulted from factors reasonably within the control of the Purchaser; or (B) the Purchaser could anticipate on the date it gave notice under subsection (b) above;* and (2) growth in Actual Firm Energy Load between (A) the *first Operating Year for which Bonneville's notice under section 10(e)* is effective and the date specified in (b)(2) above for public bodies, cooperatives and Federal agencies or (B) the '79–80 Operating Year and the date specified in (b)(2) above for investor-owned utilities.

2. *Explanation of ambiguity and proposed resolution.* Section 9(e) of the contract provides an exemption from the notice requirement of section 9(b) when the customer is adding a large single load. Section 9(b) of the contract provides for up to 7 years' notice before a utility can add a large single load of more than 35 average MW where BPA is unable to acquire resources to serve such load. Section 9(e) exempts a customer from such requirement when that customer has developed adequate resources to meet its load growth and replace reduction of resources it is required to have available to serve its load. Without the change in the amount of load growth the customer is required to construct resources to meet, this section would become inoperable since a utility should not build resources when there is no regional need. Using the load growth notice in section 10(e) will allow this section to operate as intended.

Language in the second sentence of section 9(e) was also changed to clarify how the measurement will be made as to whether a utility has developed adequate resources. The words "on an estimated basis" were inserted to clarify BPA's intent that a purchaser's load growth and reductions of resources would be measured on an estimated basis when a utility invoked the exemption of section 9(e). Conditions on how to measure reductions of 5(b)(1)(A) resources were also included to clarify that such reductions would be measured on an estimated basis. The amount of resources a customer would be required to develop would be fixed at the start of a 7-year period. The customer would then be responsible for ensuring that BPA has access to that amount of resources during such 7-year period. BPA would not be required to acquire the resources provided by the customer, but such resources would be available for acquisition if such resource turned out to be the cost-effective resource available to meet such obligation.

I. Section 10 is amended by adding a new Section 10(e) as follows:

1. *Proposed new contract language.*

(e) *For purposes of sections 9(e), 11(b)(4), and Definition Z of Exhibit D only, prior to July 1 of any year Bonneville may notify the Purchaser that Bonneville needs to acquire additional resources to meet the Purchaser's load growth occurring after the start of the Operating Year specified in the notice. Such Operating Year shall not commence prior to the expiration of the fifth full Operating Year after Bonneville notifies the Purchaser hereunder.*

2. *Explanation of error or ambiguity and proposed resolution.* Sections 9(e), 11(b)(4), and definition Z in Exhibit D of the contract offered on August 28, 1981, use a July 1, 1983, date to measure the load growth of a public agency in determining the amount of resources such utility should construct to meet its load growth under the Regional Act. It was felt that due to BPA's present draft forecast of Regional loads and resources, the July 1, 1983, date was no longer appropriate for determining when public agency customers should commence constructing resources. It was felt that the sections specified could be made effective by replacing the July 1, 1983, date with a later date when BPA would need to acquire resources to meet its obligations under the power sales contracts.

Correcting language was inserted in section 10(e) of the power sales contract to provide a 5-year notice to public agency customers of the need to commence construction of resources. BPA may give this notice at any time in the future when it determines additional

resources are needed to meet Regional needs. Such notice would provide a new date to measure a utility's obligation to construct resources to meet its load growth and make the referenced sections of the contract which depended on a July 1, 1982, date operative.

J. Section 11(b)(4) is deleted and replaced by a new Section 11(b)(4) as follows:

1. *Existing Contract provision language with proposed new contract language inserted.*

If regional curtailment has been requested after July 1, 1982, because BPA is unable to acquire sufficient resources to meet its firm obligations, BPA shall reduce the amount of load curtailment determined in paragraph (3) above during any month if the Purchaser's load growth as specified in subparagraph (A) below exceeds the amount of resources which the Purchaser has dedicated to its own load or made available to BPA as specified in subparagraph (B) below. Such amount of load curtailment for each month shall be reduced partially or in its entirety by the amount which (A) exceeds (B) below:

(A) the excess of the Purchaser's Actual Firm Energy Load in average megawatts over the Purchaser's Actual Firm Energy Load in average megawatts for the same month during the *Operating Year prior to the first Operating Year for which Bonneville's load growth notice in section 10(e) of this agreement is effective;* and

(B) the annual firm energy capability in average megawatts of (i) resources acquired by BPA from the Purchaser under Pub. L. 96–501; and (ii) the portion of the Purchaser's Firm Resources which are included as 5(b)(1)(B) resources in its Firm Resources Exhibit. Such resources shall not include conservation programs to the extent such programs have been reflected in the Purchaser's Actual Firm Energy Load in subparagraph (A) above.

2. *Explanation of error or ambiguity and proposed resolution.* Section 11 of the contract offered on August 28, 1981, provides a compensation payment in the event of Regional curtailment. This payment reflects the difference between a customer retail rate and the wholesale power rate a customer pays to BPA. This provision is designed to reduce the effect on utility retail rates due to regional curtailment programs designed to assist another utility.

Section 11(b)(4) provides that such compensation payment shall be reduced if BPA is the entity requesting regional curtailment and a utility has not developed adequate resources to meet its load growth. Customers would become ineligible for payments under section 11 without the load growth notice provided in section 10(e).

K. Section 12(b)(10) is deleted and replaced by a new Section 12(b)(10) as follows:

1. *Existing Contract language with proposed new contract language inserted.*

Any Firm Resource may be removed from the Purchaser's Firm Resources Exhibit for any Operating Year or Years to the extent that equivalent peak and energy capability from another *firm resource* is added to the Purchaser's Firm Resources Exhibit for such year or years. Such added resource shall be one which was not planned as of December 5, 1980, to meet the firm load growth in the Pacific Northwest or, if so planned, has been offered for sale to BPA and BPA has declined such offer.

2. *Explanation of error or ambiguity and proposed resolution.* Section 12(b)(10) of the contract was changed to reflect a typographical error in the first sentence of such subsection. The contract offered on August 28, 1981, capitalized the term firm resource in the phrase "from another firm resource is added" in the first sentence of section 12(b)(10). Firm resource in such phrase should be a lower case term.

L. Section 14 is amended by adding a new Section 14(e) as follows:

1. *Proposed new contract language.*

(e) *Nothing in this Power Sales Contract shall be construed to create, or to preclude, adversely affect of otherwise limit in any manner, rights of the Purchaser to purchase nonfirm energy from Bonneville under appropriate terms and conditions in separate agreements at the rate specified in the Wholesale Nonfirm Energy Rate Schedule or its successor.*

2. *Explanation of error or ambiguity and proposed resolution.* Utilities were concerned that failure to provide a mechanism for purchasing nonfirm energy by Metered Requirements customers could be interpreted as a waiver of the rights of such customers to purchase nonfirm energy from BPA. Section 14(e) of the contract is proposed to be added to ensure that no such intent was implied by the contract. The contract provides mechanisms for making sales of nonfirm energy to Computed Requirements customers which schedule power from BPA. Such mechanisms are not established under the contract for making nonfirm deliveries to a Metered Requirements customer and therefore billing provisions were not added for such customers. The correcting language of section 14(e) is being added to assure Metered Requirements customers that they are not losing any rights they may have to purchase nonfirm energy from BPA.

M. Section 17 is amended by resequencing subparagraphs 17(b)(1)(B) through (D) to 17(d)(1)(C) through (E) and adding a new section 17(d)(1)(B) as follows:

1. *Proposed new contract language.*

(B) *Except for the Flexibility Account balance previously retained in subparagraph (D) below, the amount of change in the Flexibility Account for any month of the Operating Year shall be limited to the sum of the following:*

(i) *For Firm Resources which the Purchaser includes in Coordination Agreement planning, such monthly change shall not exceed the limit allowed pursuant to section 9(m)(3) of the Coordination Agreement; and*

(ii) *For Firm Resources which the Purchaser does not include in Coordination Agreement planning, such monthly change shall not exceed the sum of the following:*

(a) *The algebraic difference for such month between the Purchaser's Estimated Firm Energy Load less the Estimated Firm Energy Load, if any, submitted under Coordination Agreement planning and the Purchaser's Actual Firm Energy Load less the Actual Firm Energy Load, if any, submitted under the Coordination Agreement; and*

(b) *The algebraic difference in energy capability between the actual maintenance outages of such resources for such month and the scheduled maintenance outages of such resources used in the calculation of the Purchaser's Assured Capability for such month; and*

(c) *For specific other purposes as mutually agreed by Bonneville and the Purchaser.*

2. *Explanation of error or ambiguity and proposed resolution.* Section 17(d) of the power sales contract establishes a Flexibility Account which allows a utility to make adjustments to its Assured Energy Capability in different months of an Operating Year. The flexibility account concept is established under the Pacific Northwest Coordination Agreement which provides for coordinated operations of generating utilities in the Pacific Northwest. Section 17(d) also established a Flexibility Account for resources which are not included in Coordination Agreement planning. It was the intent of the parties that the Flexibility Account for resources not included in Coordination Agreement planning should be identical to the Flexibility Account under Coordination Agreement planning.

The language in the power sales contract offered on August 28, 1981, does not clearly specify that the limit specified in section 9(m)(3) of the Coordination Agreement applies to the Flexibility Account established for resources not included in Coordination Agreement planning. Section 17(d)(1)(B) was added to the contract in the correcting language to make sure such limitation was applicable to Flexibility

Accounts for resources not included in Coordination Agreement planning.

N. Section 17(j) is amended by adding a new Section 17(j)(4) as follows:

1. *Proposed new contract language.*

(4) *Nothing in this section 17(j) shall be construed to limit, affect or otherwise modify Bonneville's obligation to acquire power for the Purchaser as provided in section 9(i) of Pub. L. 96-501.*

2. *Explanation of error or ambiguity and proposed resolution.* Section 17(j) of the contract provides that BPA will acquire replacement power for a delayed resource. Such sections provide that BPA will replace up to 50 percent of the lost resource at the request of a utility at the new resource firm power rate. Utilities were concerned that such limit to 50 percent implied a waiver of BPA's obligation under section 9(i) of the Regional Act to acquire replacement power for a utility. The corrective language includes section 17(j)(4) to assure utilities that nothing in section 17(j) limits their rights under section 9(i) in the Regional Act.

Issued in Portland, Oregon, May 28, 1982.

Earl E. Gjelde,

Acting Administrator.

[FR Doc. 82-15327 Filed 6-3-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 6291-000]

City of Arcata, California; Application for Preliminary Permit

May 28, 1982.

Take notice that City of Arcata, California (Applicant) filed on May 3, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for Project No. 6291 to be known as the Grizzly Creek Water Power Project located on Grizzly Creek in Humboldt County, California near the town of Bridgeville. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Rory Robinson, City Manager, City of Arcata, 736 F Street, Arcata, California 95521.

Project Description—The proposed project would consist of: (1) An intake structure within the south bank of Grizzly Creek; (2) a 6,000-foot-long diversion conduit; (3) a 30-inch diameter, 2,500-foot-long penstock; (4) a powerhouse containing a single generating unit with a rated capacity of 650 kW; and (5) 12-kV, 8,000-foot-long transmission line connecting the project to an existing line southwest of the proposed powerhouse.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, results, of environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $60,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 18, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before August 18, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than October 18, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to invervenemust be received on or before August 18, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15221 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL82-16-000]

Commonwealth Edison Co.; Filing

May 28, 1982.

Take notice that on May 10, 1982, the Illinois Cities of Batavia, Geneva, Naperville, Rochelle, Rock Falls and St. Charles (Cities) filed a petition for relief, under sections 205, as amended and 206 of the Federal Power Act, from any further increases in Commonwealth Edison Company's (Edison) fuel adjustment charge and a request for investigation of Edison's fuel purchase practices, particularly in reference to fuel for the Collins generating plant.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before June 25, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15207 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-531-000]

Connecticut Light and Power Co.; Filing

May 28, 1982.

The filing Company submits the following:

Take notice that on May 17, 1982, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to Transmission Agreement dated November 1, 1981 between (1) CL&P, the Hartford Electric Light Company (HELCO) and Western Massachusetts Electric Company (WMECO) and (2) the Massachusetts Municipal Wholesale Electric Company (MMWEC).

CL&P states that the Transmission Agreement provides for transmission services to certain member systems of MMWEC for the wheeling of MMWEC's entitlement in various generating facilities during the period from November 1, 1980 to April 30, 1981.

CL&P further states that the transmission charge rate is a monthly rate equal to one-twelfth of the annual average cost of transmission service on the Northeast Utilities system determined in accordance with Schedule C and Exhibits I, II and III thereto of the Transmission Agreement. The monthly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-month), and (ii) the number of kilowatts which each MMWEC member is entitled to receive during such month. The monthly transmission charge is reduced by up to 50% to give due recognition for payments made by MMWEC members to other systems also providing transmission service.

CL&P requests that the Commission waive its notice requirements to allow for an effective date of November 1, 1980.

According to CL&P copies of this rate schedule have been sent to CL&P, HELCO, WMECO, and MMWEC (Ludlow, Massachusetts).

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 11, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15220 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6154-000]

David G. DeMera; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

May 26, 1982.

Take notice that on April 2, 1982, David DeMera (Applicant) filed an application, under section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended),* for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 6154) would be located on Mill and Sulphur Creeks, near Dinsmore, in Humboldt County, California. Correspondence with the Applicant should be directed to: David G. DeMera, Star Route 116-A, Carlotta, California 95528.

Project Description—The proposed project would consist of: (1) Two 3-foot-high natural rock diversion structures; (2) a low-pressure pipeline between the two diversion structures; (3) an 11,000-foot-long steel pipeline; (4) a powerhouse containing one generating unit rated at 540 kW; and (5) a 2,100-foot/long transmission line. The average annual generation would be 1.65 million kWh.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the California Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before July 8, 1982, either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 8, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the

Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15222 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-532-000]

Florida Power Corp.; Filing

May 28, 1982.

The filing Company submits the following:

Take notice that on May 17, 1982, Florida Power Corporation (Florida Power) tendered for filing a revision to the daily capacity charge for its scheduled interchange service to Florida Power & Light Company, Tampa Electric Company, the Orlando Utilities Commission, the Sebring Utilities Commission, the Jacksonville Electric Authority, and the Cities of Gainesville, Kissimmee, St. Cloud and Lakeland, Florida under interconnection agreements with each of these utilities. According to Florida Power, the revised charge of $87.42 per MW per day is based on 1981 data and is derived according to the same method shown in cost support schedules submitted with the interconnection agreements. According to Florida Power, the present daily capacity charge based on 1980 data is $82.66 per MW per day.

Florida Power requests that the revised daily capacity charge be made effective on May 1, 1982, and requests waiver of the notice requirement.

According to Florida Power, the filing has been served on each of the above-named utilities and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 14, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15208 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-530-000]

Florida Power & Light Co.; Filing

May 28, 1982.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FP&L), on May 17, 1982, tendered for filing a document entitled Amendment Number Two to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and the Utilities Commission of the City of New Smyrna Beach, Florida, which original Agreement was executed January 28, 1977.

FP&L states that under Amendment Number Two of the Agreement the Contracted Demand for Transmission Service shall be 4,533 kW as of May 1, 1982.

FP&L requests an effective date of May 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served on the Utilities Commission, City of New Smyrna Beach.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 11, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15209 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6227-000]

Heber Light and Power Co.; Application for Exemption of Small Conduit Hydroelectric Facility

May 28, 1982.

Take notice that on April 19, 1982, Heber Light and Power Company (Applicant) filed an application, under section 30 of the Federal Power Act (Act) (16 U.S.C. 823(a), for exemption of a hydroelectric project from requirements of Part I of the Act. The Lake Creek Project (FER. Project No. 6227) is located on Lake Creek in Wasatch County, Utah. Correspondence with the Applicant should be directed to: Mr. Ray Farrell, Heber Light and Power Company, 31 South 1st West, Heber City, Utah 84032.

Purpose of Project—Project energy is used to supplement the power needs of three municipalities and adjacent rural areas in Wasatch County.

Project Description—The project consists of: (1) An existing 17,655-foot long, 22-inch diameter steel penstock; (2) an existing powerhouse containing one vertical impulse turbine/generator unit rated at 1,750 kW; (3) an existing 5-mile long, 12.47-kV transmission line; and (4) appurtenant facilities. The power plant operates under a static head of 1,031 feet, and produces approximately 9,500 MWh of energy annually.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State of Utah, Department of Natural Resources are requested, for the purposes set forth in section 30 of the Act, to submit within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly indentified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be

made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Appoicant's representatives.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 2, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15223 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6256-000]

Town of Gold Bar, Washington; Application for Preliminary Permit

May 28, 1982.

Take notice that the Town of Gold Bar (Applicant) filed on April 26, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a) 825(r)) for Project No. 6256 to be known as the Index Creek project located on Index Creek in the Snoqualmie National Forest in King County, Washington. The application is on file with the Commission and is available for public inspection.

Correspondence with the Applicant should be directed to: Charles R. Meyer, Attorney for Town of Gold Bar, P.O. Box 550, Sultan, Washington 98294.

Project Description—The proposed project would consist of: (1) Three diversion structures located at elevation 1950 feet on two tributaries and the mainstem of Index Creek; (2) four power conduits having a total length of 22,500 feet; (3) a powerhouse at elevation 800 feet containing two generating units with a total capacity of 9300 kW; and (4) a one-mile-long, 115-kV transmission line. Applicant estimates that the project would have an average annual output of 38,000 MWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. During the term of the permit Applicant would conduct studies to determine the engineering, environmental, economic, and financial feasibility of the project. Applicant estimates that the studies would cost $50,000.

Competing Applications—This application was filed as a competing application to Woods Creek, Inc's. application for Project No. 5858 filed on January 7, 1982. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 15, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15229 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-525-000]

Indianapolis Power & Light Co.; Filing

May 28, 1982.

The filing Company submits the following:

Take notice that Indianapolis Power & Light Company (IP&L) tendered for filing on May 17, 1982, Modification No. 1 dated June 1, 1982, to the Interconnection Agreement dated December 1, 1981 between IP&L and Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier).

IP&L states that Modification No. 1 amends section 3 of Service Schedule D—Short Term Power of the 1981 Agreement by amending subsection 3.11 thereof to permit Hoosier to sell short term power to or through IP&L at less than $1.05 per kilowatt-week consistent with Hoosier's capacity costs. IP&L further states that by making these amendments, Hoosier is allowed the flexibility of selling to IP&L or to third parties through IP&L, short term power at a rate lower than $1.05 per kilowatt-week, which is a rate essentially based upon IP&L's capacity costs. IP&L's demand charge on short term sales to Hoosier remains fixed at $1.05 per kilowatt-week consistent with its costs and previous filing, but the daily demand charge also has been amended to ⅛ of the weekly rate.

IP&L requests an effective date of June 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 10, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene or protest. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15224 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-426-000]

Jersey Central Power & Light Co.; Order Accepting for Filing and Suspending Revised Rates, Granting Interventions, Granting in Part and Denying in Part Motions for Summary Disposition, and Establishing Procedures

Issued: May 26, 1982.

On March 31, 1982, Jersey Central Power & Light Company (JCP&L) tendered for filing revised rates [1] for firm power service to six wholesale customers.[2] The company has proposed a two-step rate increase. Phase A, for which JCP&L requests an effective date of May 31, 1982, would increase jurisdictional revenues by approximately $3.5 million (20.9%), based on a calendar 1982 test year. Phase B, for which JCP&L requests an effective date of June 1, 1982, represents an additional increase of about $2 million or a total of $5.5 million (32.8%).

Notice of the instant filing was issued on April 7, 1982, with responses due on or before April 21, 1982. A timely petition to intervene was filed by Allegheny Electric Cooperative, Inc. and the Boroughs of Butler, Pemberton, Lavallette, and Seaside Heights, New Jersey (Customers). The Borough of Lavalette also filed a separate protest. The Customers object to the two-step increase as an attempt to circumvent the Commission's suspension policy. As a result, they request that the Commission reject the proposed Phase B increase or, in the alternative, combine both phases as one rate for purposes of analysis and suspend the total increase for five months.

In addition, the Customers raise a number of rate base and cost of service issues. The Customers further request that the Commission, by summary disposition, exclude the following items from JCP&L's cost of service: (1) All amounts for cash working capital in excess of the 45-day rule traditionally used by the Commission; (2) all nuclear fuel in process included in rate base; and (3) extraordinary property losses in rate base associated with the company's abandonment of its Longwood Valley, Mount Hope, Atlantic Station, and Forked River generating units.

On April 23, 1982, an untimely petition to intervene was filed by the Borough of Madison, New Jersey (Madison). The pleading, dated April 16, 1982, states that Madison received notice of the filing on April 15, 1982, that as a full requirements wholesale customer of JCP&L it will be directly affected by this rate increase, and that it is in the process of retaining specialized counsel and intends to file a more detailed protest. Madison does not, however, raise any specific substantive issues.

On May 4, 1982, JCP&L filed an answer to the petitions to intervene. While not opposing the requests for intervention and a hearing, the company disputes the allegations raised in the Customers' petition and contends that the request to reject the Phase B rates or to consider both phases as one rate should be denied. JCP&L also challenges the motions for summary disposition and asserts that any suspension should be limited to one day.

Discussion

Initially, we find that participation by each of the petitioners is in the public interest. Inasmuch as Madison appears to have acted with due diligence upon notification of the filing and considering its direct interest as an affected wholesale customer, its apparent attempt to satisfy the prescribed comment deadline in the absence of specialized counsel, and the early stages of this proceeding, we further find that good cause exists to accept Madison's untimely petition. Accordingly, we shall grant the petitions of Madison and the Customers to intervene.

We find that JCP&L's submittal substantially complies with the Commission's filing regulations; [3] we shall therefore deny the Customers' motion to reject JCP&L's Phase B rates. We shall also deny the request that JCP&L's two-step increase be viewed as one rate. Nothing in the Federal Power Act or the Commission's regulations prohibits JCP&L from filing a two-phase increase, and we have previously sanctioned such filings. *See, e.g., Sierra Pacific Power Company,* Docket No. ER82-105-000 (February 5, 1982); *Pacific Gas and Electric Company,* Docket No. ER81-679-000, 17 FERC ¶61,069 (October 23, 1981.

The Customers contend, however, that the effect of JCP&L's filing is to place interim rates into effect in anticipation of a maximum suspension for the full increase—a policy which the Commission purportedly disapproved in *West Texas Utilities Company,* Docket No. ER82-23-000 (February 26, 1982). We disagree that the *West Texas* rationale is applicable here. In that proceeding, the utility's proposed rate increase was suspended for the full five months permitted by statute. In seeking rehearing, the company then proposed that a lower, interim rate be placed into effect during the suspension period. In the instant case, JCP&L has submitted both sets of rates concurrently. Unlike *West Texas,* there is no "moving target" to be evaluated by the Commission or by JCP&L's customers. So long as the two phases are independently evaluated for purposes of determining appropriate suspension periods, neither the company nor its customers will be subjected to irreparable harm.

Concerning the motions for summary disposition, the issue of working cash allowance raises questions of law or fact more appropriately resolved on the basis of an evidentiary hearing. However, consistent with Commission precedent, nuclear fuel in process [4] and unamortized investment in cancelled plants [5] must be excluded from rate base. We shall therefore deny the request for summary disposition as to cash working capital and grant summary dispositions as to the remaining two issues.

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[1] Designated as:

(1) Jersey Central Power & Light Company Sixth Revised Sheet No. 13 to FPC Electric Tariff, Original Volume No. 1, (Supersedes Fifth Revised Sheet No. 13)—Phase A rates.

(2) Seventh Revised Sheet No. 13 to FPC Electric Tariff, Original Volume No. 1 (Supersedes Sixth Revised Sheet No. 13)—Phase B rates.

[2] The affected wholesale customers are the Boroughs of Butler, Lavallette, Madison, Pemberton, and Seaside Heights, and the Allegheny Electric Cooperative, Inc.

[3] *See, Municipal Light Boards of Reading and Wakefield, Massachusetts* v. *EPC,* 450 F.2d 1341 (D.C. Cir. 1971).

[4] *E.g., Duke Power Co.,* Docket No. ER81-550-000, 17 FERC ¶61,053 (October 16, 1981; *Central Power & Light Co.,* Docket No. ER81-167-000, 15 FERC ¶61,191 (May 29, 1981.

[5] *E.g., New England Power Co.,* Opinion No. 49 (July 19, 1979) aff'd sub nom. New England Power Co. v. *FERC, Docket No. 80-1343 (D.C. Cir., October 15, 1981).*

We further note that JCP&L has included nuclear radwaste systems in rate base as a component of pollution control CWIP.[6] In *Louisiana Power & Light Company,* Opinion No. 110, 14 FERC ¶61,075 (January 28, 1981), we determined that radiation control facilities, including nuclear radwaste systems, do not qualify as pollution control CWIP within the scope of section 2.16(a) of the Commission's regulations. Therefore, we shall summarily reject JCP&L's inclusion of nuclear radwaste systems in rate base.

Because the cost of service effect of the summary dispositions on the Phase A rates is insubstantial,[7] we shall not require JCP&L to refile its Phase A rates. However, the effect on the Phase B rates is substantial and we shall require the company to file revised Phase B rates and supporting cost documents which reflect the exclusion of the three rate base component identified above.

Our preliminary review of the instant filing indicates that the rates proposed by JCP&L have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing, as modified by summary disposition, and we suspend their operation as ordered below.

In *West Texas, supra,* we noted that rate filings would ordinarily be suspended for one day where preliminary review indicates that the proposed increase may be unjust and unreasonable but may not generate substantially excessive revenues, as defined in *West Texas.* In the instant proceeding, our examination suggests that the proposed Phase A increase may not yield excessive revenues, much less substantial excessive revenues. With respect to the Phase B increase, however, our review indicates that they may produce substantially excessive revenues as defined in *West Texas.* Accordingly, we shall suspend the Phase A increase for one day to become effective subject to refund on June 1, 1982, and the Phase B rates for five months to become effective subject to refund on November 1, 1982.

JCP&L has requested that the Commission issue an order approving the use of tax normalization with respect to Accelerated Cost Recovery System (ACRS) property in order to satisfy the requirements of the Economic Tax Recovery Act of 1981 (ERTA). While we can conclude that the instant filing reflects a normalization method of accounting for post-1980 property additions, further analysis will be required in order to determine whether JCP&L has properly calculated the effects of normalization in its jurisdictional cost of service.

The Commission orders:

(A) The Customers' motion to reject JCP&L's Phase B rates is denied.

(B) JCP&L's proposed Phase A rates are hereby accepted for filing and suspended to become effective, subject to refund, on June 1, 1982.

(C) JCP&L's proposed Phase B rates, as modified by summary disposition, are hereby accepted for filing and suspended to become effective, subject to refund, on November 1, 1982.

(D) JCP&L's inclusion of nuclear radwaste systems, nuclear fuel in process, and unamortized investment in cancelled units in rate base is summarily rejected. The motion for summary disposition as to working cash allowance is denied. Within thirty (30) days of the date of this order, JCP&L shall file revised Phase B rates and cost support reflecting these determinations.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules and Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of JCP&L's rates.

(F) The petitioners are hereby permitted to intervene in this proceeding subject to the Commission's Rules of Practice and Procedure and the regulations under Federal Power Act; *Provided, however,* that participation by such intervenors shall be limited to the matters set forth in their petitions to intervene; and *provided, further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved by any order or orders entered by the Commission in this proceeding.

(G) The Commission staff shall serve top sheets in this proceeding on or before June 11, 1982.

(H) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15215 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[6] The primary function of a radwaste system is to remove dissolved wastes from primary cooling systems during the normal operation of a nuclear generating unit.

[7] Only the issue of nuclear radwaste systems affects the Phase A rates.

[Docket No. ER82-412-000]

Kansas Gas & Electric Co.; Order Accepting for Filing and Suspending Revised Rates and Proposed Cancellation of Transmission Service Schedule, Granting Interventions, Denying Motions for Rejection and Summary Disposition, and Establishing Hearing and Price Squeeze Procedures

Issued: May 28, 1982.

On March 30, 1982, Kansas Gas and Electric Company (KG&E) tendered for filing (1) increased rates for firm power service to fourteen full requirements and eight partial requirements municipal customers, to the Kansas Power and Light Company (KP&L), and Missouri Public Service Company (MPS); (2) revised rates for firm power and transmission services to Kansas Electric Power Cooperative, Inc. (KEPCO); and (3) a proposed cancellation of service Schedule T, Transmission Service, to the City of Chanute, Kansas.[1] The proposed rates would result in an increase in revenues of approximately $2,120,132 (7.74%) for the twelve months ending December 31, 1982. KG&E requests that the revised rates be made effective on May 31, 1982.[2]

Notice of KG&E's filing was issued on April 6, 1982, with responses due by April 21, 1982. On April 21, 1982, KP&L filed a petition to intervene which raises no substantive issues but note that the proposed rates may not be just and reasonable. On April 29, 1982, the Kansas State Corporation Commission

[1] *See* Attachment A for customers and rate schedule designations.

[2] We note that KG&E's contracts provide for unilateral rate changes only as to Cities of Augusta, Oxford, Burlington, Coffeyville, Girard, Wellington, and Winfield, and KP&L, MPS, and KEPCO.

filed an untimely notice of intervention also raising no specific issues.

On April 21, 1982, twenty-four Kansas Cities (Cities) filed a protest, petition to intervene, request for five month suspension, and motion for summary disposition.[3] The Cities seek rejection of KG&E's filing with respect to certain of these customers[4] on the grounds that under the *Mobile-Sierra* doctrine their contracts with KG&E permit rate changes only prospectively after an investigation under section 206 of the Federal Power Act. They allege in this connection that section 206 authorizes only one rate investigation at a time and note that two such proceedings are now before the Commission.[5] The Cities request rejection of KG&E's filing with respect to the Cities of Neodesha and Mulvane on the same grounds and allege that their contracts preclude any change in rates prior to a final Commission order and judicial review.

The Cities also request summary disposition with respect to KG&E's 30 day fuel oil inventory and use of a 100 percent demand ratchet for partial requirements customers. In addition, the Cities believe that the requested rate of return is excessive, that KG&E should not be permitted to withdraw the currently available transmission service schedule applicable to the City of Chanute, and that a five month suspension is warranted. Finally, the Cities allege price squeeze.

On April 21, 1982, KEPCO filed a protest, petition to intervene, and motion to reject or to suspend and initiate price squeeze proceedings. KEPCO sought rejection of KG&E's submittal on the ground that it did not substantially comply with the Commission's filing requirements. KEPCO requested, in the alternative, that we find the filing deficient and withhold the assignment of a filing date until KG&E complies with the filing requirements.[6]

In addition, KEPCO alleges price squeeze and challenges several aspects of the proposed cost of service, including (1) the rate of return on common equity, (2) the level of fuel stocks, (3) the depreciation expense, (4) the claimed production and transmission operating and maintenance expenses, (5) a decrease in the revenue credit allocated to KEPCO, (6) KG&E's proposed level and amortization period for deferred tax accounts, and (7) possibly excessive cash working capital.

KEPCO also appears to seek summary disposition with regard to KG&E's demand allocation calculation and KG&E's method of calculating the interest expense deduction for income tax purposes. With respect to the former, KEPCO states that KG&E's method violates Commission precedent by utilizing contract demand quantities rather than projected coincident peak demands. As to the latter, KEPCO suggests that KG&E has not calculated its interest expense deduction in accordance with the appropriate formula for determining interest expense chargeable to operations by a company that uses gross AFUDC rates.

On May 16, 1982, KG&E filed an answer to the pleadings of the Cities and KEPCO, in which it responded to all their allegations.

Discussion

The Commission finds that participation in this proceeding by each of the petitioners is in the public interest and that, as a matter of comity, good cause exists to permit the Kansas Commission to intervene out of time. Accordingly, the petitions to intervene will be granted.

We find the KG&E's submittal substantially complies with the Commission's filing requirements. Accordingly, KEPCO's motion to declare the filing deficient will be denied.[7]

The Cities' motion to reject the filing with respect to customers whose contracts preclude a change in rates prior to a final Commission order must also be denied. The fact that KG&E may not unilaterally increase rates under these contracts calls for a section 206 investigation, not for rejection.[8] The language of section 206 does not on its face or by reasonable implication preclude more than one rate investigation at the same time. No legitimate public policy goal would be advanced by precluding the company from attempting to demonstrate that more recent costs and revenues would support a different rate for a more recent period of time.

Concerning the allegation that KG&E's contracts with Neodesha and Mulvane preclude any rate change until authorized by the Commission and upon judicial review, we shall address that matter in a subsequent order. Inasmuch as the proposed rate change will not imminently become effective as to these customers, their rights will not be prejudiced by deferral of decision on this issue.

We find that the requests for summary disposition as to KG&E's fuel stock inventory and use of contract demand rather then coincident peak demands raise questions of law or fact most appropriately addressed during the course of the hearing to be convened pursuant to this order. Thus, these requests will be denied.

Our review of KG&E's testimony and test period cost of service indicates that, contrary to KEPCO's contentions, KG&E has calculated AFUDC on a net-of-tax basis and that its interest expense deduction for tax purposes has been calculated consistent with its test period AFUDC procedures. Accordingly, summary disposition of this issue is inappropriate.

The Cities' request for summary rejection of KG&E's 100% demand ratchet in the partial requirements rates also will be denied. We note that the demand ratchet has not changed from KG&E's prior rates and is a subject of litigation in Docket No. ER80–259, which is awaiting the judge's initial decision. It is therefore appropriate to make this issue subject to the outcome of the proceeding in Docket No. ER80–259.

Our preliminary review of KG&E's filing indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and, as to the customers whose contracts permit unilateral rate changes, we shall suspend the rates as ordered below.

We recently addresed the Commission's suspension policy in the *West Texas Utilities Company*, Docket No. ER82–23–000 (February 26, 1982). In that order, we noted that rate filings would ordinarily be suspended for one day where preliminary review indicates that the proposed increase may be unjust and unreasonable but may not generate substantially excessive revenues, as defined in *West Texas*. In the instant proceeding, however, our preliminary review suggests that the proposed increase may yield

[3] On April 28, 1982, the City of Bronson withdrew as a petitioner to intervene.

[4] Arcadia, Arma, Blue Mound, Bronson, Elsmore, Erie, Haven, Mavan and Mount Hope.

[5] Docket Nos. ER77–578 and ER80–259.

[6] On May 18, 1982, KEPCO amended its pleading. KEPCO acknowledges receipt of additional workpapers from KG&E and indicates that a number of its prior informational concerns have been satisfied. Noting that KG&E's filing does substantially comply with the Commission's filing requirements, KEPCO has withdrawn its request for rejection but restates its request for issuance of a deficiency letter to obtain "full" compliance.

[7] *See Municipal Light Boards of Reading and Wakefield, Mass.* v. *FPC*, 450 F.2d 1341 (D.C. Cir. 1971).

[8] We have already stated that rate changes may be filed under these contracts, but that they will have effect prospectively only after a final Commission order determining just and reasonable rates. *Kansas Gas and Electric Company*, Docket No. ER77–578 (February 1, 1978).

substantially excessive revenues. As we stated in *West Texas*, under such circumstances, we shall suspend the rates for the maximum period. Accordingly, we shall suspend KG&E's rates for the customers subject to unilateral rate changes for five months, to become effective, subject to refund on October 31, 1982.

With respect to the proposed cancellation of the transmission service schedule to the City of Chanute, KG&E states that the service is to be withdrawn because it has not been used for some time. The Cities, however, over that such termination would deny the partial requirements customers access to alternate sources of power, KG&E demurs. Under these circumstances, the most appropriate course is to suspend the proposed cancellation for five months and set it for hearing. KG&E, as the proponent of the change in service, will bear the burden of persuasion.[9]

In light of the intervenors' price squeeze allegations, we shall institute price squeeze procedures and phase those procedures in accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, Docket No. ER79–339 (August 6, 1979).

The Commission orders:

(A) KEPCO's request for issuance of a deficiency letter is hereby denied.

(B) The Cities' request for rejection of KG&E's submittal as to those customers whose contracts permit rate changes to become effective only prospectively is denied.

(C) The requests for summary disposition are hereby denied.

(D) The demand ratchet issue is hereby made subject to the outcome of the proceeding in Docket No. ER80–259.

(E) KG&E's rates for customers whose contracts permit unilateral rate changes are hereby accepted for filing and are suspended for five months from sixty days after filing to become effective October 31, 1982, subject to refund.

(F) The rates with respect to the remaining customers are also hereby accepted for filing and are suspended, with the rates found to be just and reasonable by the Commission, to become effective prospectively following a final Commission order in this docket. As noted in the body of this order, the effective date as to Neodesha and Mulvane will be addressed at a later date.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regualtory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of KG&E's rates.

(H) KG&E's proposed cancellation of Service Schedule T, Transmission Service under the City of Chanute's rate schedule is hereby suspended for five months and set for hearing as noted in the body of this order.

(I) The petitions to intervene in this proceeding are hereby granted subject to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act; *Provided, however,* that participation by such intervenors shall be limited to the matters set forth in their petitions to intervene; and *provided, further,* that the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order of the Commission in this proceeding.

(J) The Commission staff shall serve top sheets in this proceeding on or before June 16, 1982.

(K) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (expect motions to consolidate or sever and motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(L) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The price squeeze portion of this case shall be governed by the procedures set forth in section 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(M) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission. Commissioner Hughes concurred with a separate statement.

Kenneth F. Plumb,

Secretary.

[9] Cancellation of a rate schedule is a change in service under section 205(d) of the Federal Power Act. *See* 18 CFR 2.4; *Pennsylvania Water and Power Company* v. *F.P.C.*, 343 U.S. 414 (1951). As the proponent of that change, KG&E bears the burden of persuasion. Administrative Procedure Act, 5 U.S.C. 556(d)

ATTACHMENT A—KANSAS GAS & ELECTRIC COMPANY, DOCKET NO. ER82–412–000

[Rate Schedule Designations]

Designation	Other party	Description
(1) Supplement No. 11 to Rate Schedule FPC No. 55	Missouri Public Service Company	Rate Schedule PWM–682.
(2) Supplement No. 14 to Rate Schedule FERC No. 134	City of Agusta	Amendment to Service Schedule A, Firm Power.
(3) Supplement No. 4 to Rate Schedule FERC No. 135	City of Oxford	Rate Schedule PWM–682.
(4) Supplement No. 2 to Supplement No. 1 to Rate Schedule FERC No. 144	City of Burlington	Amendment to Service Schedule A, Firm Power.
(5) Supplement No. 1 to Supplement No. 1 to Rate Schedule FERC No. 145	City of Wellington	Do.
(6) Supplement No. 1 to Supplement No. 1 to Rate Schedule FERC No. 146	City of Winfield	Do.
(7) Supplement No. 2 to Supplement No. 1 to Rate Schedule FERC No. 147	City of Girard	Do.
(8) Supplement No. 1 to Supplement No. 1 to Rate Schedule FERC No. 149	City of Coffeyville	Do.
(9) Supplement No. 5 to Rate Schedule FERC No. 150 (Supersedes Supplement No. 1).	Kansas Power & Light Company	Rate Schedule PMW–682.
(10) Supplement No. 8 to Rate Schedule FERC No. 151	KEPCO	Amendment to Service Schedule A, Firm Power and Service Schedule B, Transmission Service.
(11) Supplement No. 11 to Rate Schedule FPC No. 114	City of Arma	Rate Schedule PWM–682.
(12) Supplement No. 9 to Rate Schedule FPC No. 115	City of La Harpe	Do.
(13) Supplement No. 6 to Rate Schedule FPC No. 116	City of Elsmore	Do.
(14) Supplement No. 9 to Rate Schedule FPC No. 117	City of Blue Mound	Do.
(15) Supplement No. 9 to Rate Schedule FPC No. 118	City of Moran	Do.
(16) Supplement No. 10 to Rate Schedule FPC No. 119	City of Mulberry	Do.

ATTACHMENT A—KANSAS GAS & ELECTRIC COMPANY, DOCKET NO. ER82-412-000—Continued

[Rate Schedule Designations]

Designation	Other party	Description
(17) Supplement No. 8 to Rate Schedule FPC No. 120	City of Bronson	Do.
(18) Supplement No. 5 to Rate Schedule FPC No. 121	City of Savonburg	Do.
(19) Supplement No. 10 to Rate Schedule FPC No. 122	City of Haven	Do.
(20) Supplement No. 10 to Rate Schedule FPC No. 123	City of Mount Hope	Do.
(21) Supplement No. 10 to Rate Schedule FPC No. 124	City of Arcadia	Do.
(22) Supplement No. 10 to Rate Schedule FPC No. 125	City of Mindenmines	Do.
(23) Supplement No. 14 to Rate Schedule FPC No. 131	City of Neodesha	Do.
(24) Supplement No. 12 to Rate Schedule FPC No. 132	City of Mulvane	Do.
(25) Supplement No. 7 to Rate Schedule FPC No. 133	City of Erie	Do.
(26) Supplement No. 1 to Supplement No. 5 to Rate Schedule FPC No. 128	City of Chanute	Amendment to Service Schedule T—Transmission Service.

Hughes, Commissioner; Concurring

In a concurring opinion in Arizona Public Service Company, 18 FERC ¶ 61,066 (January 25, 1982) I discussed, at length, my views of the relationship of Sections 205 and 206 of the Federal Power Act and the contractual limitations on rate filings. This case provides an excellent illustration of the virtues of the course that I suggested there: that in the absence of a clear contrary intent we should regard contractual filing limits as permitting section 205(d) filings with effective dates deferred until final Commission action, or judicial review, if the contract so provides.

The municipals here boldly assert, without explanation or citation, that under section 206 a rate can only be subject to a single investigation. There is some intuitive merit in that position, since under section 206 the Commission tests the lawfulness of the currently effective rate and aims as prescribing a prospective just and reasonable substitute. Except in an unusual case it would not be appropriate or useful to maintain two dockets for that purpose. Section 205, on the other hand, all too readily accommodates pancaked cases, each focused on testing the lawfulness of rates to be effective for discrete periods of time.

The Commission's decision in this matter, with just as little explanation, rejects the customer's contention, so that it can make the equally baseless conclusion that "the fact that KG&E may not unilaterally increase rates under these contracts calls for a Section 206 investigation, not for rejection." (Slip Opinion, p. 4).

How much easier it would be to treat such filings as section 205 filings to become effective upon the Commission's final order, thereby avoiding needless and heedless commentary on the provisions of the Power Act.

David Hughes,

Commissioner.

[FR Doc. 82-15216 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-520-000]

Montaup Electric Co.; Filing

May 28, 1982.

The Filing Company submits the following:

Take notice that Montaup Electric Company ("Montaup") on May 14, 1982, tendered for filing a unit power sales agreement between Montaup and Newport Electric Corporation ("Newport"). Under the unit power sales agreement Montaup sells to Newport a total of 3000 kW of capacity and associated energy from Montaup's Somerset Units Nos. J-1 and J-2 for the period beginning May 1, 1982 and ending October 31, 1982. The agreement also provides for transmission service from the Somerset units over Montaup's system to Newport under a tariff on file with the Commission.

Montaup requests waiver of the Commission's 60-day notice requirement in order to allow an effective date of May 1, 1982.

Copies of this filing have been served on Newport, the Massachusetts Department of Public Utilities and the Rhode Island Public Utilities Commission.

Any person wishing to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20425, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 10, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15210 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER81-71-001]

New England Power Co.; Compliance Filing

May 28, 1982.

The filing company submits the following:

Take notice that on May 19, 1982, New England Power Company filed a refund compliance report pursuant to the Commission's letter order of April 19, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before June 14, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15211 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-414-000]

Ohio Edison Co.; Order Accepting Rates for Filing, Granting Intervention, and Terminating Docket

Issued: May 28, 1982.

On March 30, 1982, Ohio Edison Company (Ohio Edison) tendered for filing a proposed increase in its transmission rates for Wheeling Ohio Power Company (Ohio Power) energy to rural electric cooperative members of Buckeye Power, Inc.[1] The proposed rates are based on a twelve month test period ending December 13, 1982, and would increase revenues for this period by approximately $833,000 or 63%. Ohio Edison requested an effective date of June 2, 1982.

The instant filing concerns proposed increases in the Facilities Use Charges payable by Ohio Power to Ohio Edison. These charges are contained in Section 8 of the Agreement dated June 20, 1968 between Ohio Power and Ohio Edison (Ohio Edison FERC Rate Schedule No.

[1] Designated as follows:

Ohio Edison Company, Supplement No. 5 to Rate Schedule FPC No. 67 (Supersedes Supplement No. 2.)

67 and Ohio Power FERC Rate Schedule No. 71). Under this agreement, Ohio Edison buys specified amounts of power from Ohio Power at various points of interconnection and resells equivalent amounts of power back to Ohio Power at specified delivery points, where Ohio Power then delivers such power to Buckeye Power, Inc.

Notice of Ohio Edison's filing was issued on April 7, 1982, with comments, protests, or petitions to intervene due on or before April 21, 1982. On April 21, 1982. Ohio Power filed a petition to intervene and request for hearing, suspension and other relief, alleging that Ohio Edison is precluded by the contract of June 20, 1968, from effecting a unilateral rate change. Ohio Power requests that if the proposed rates are permitted at all, they be made effective only prospectively after final Commission order. Ohio Power further alleges that Ohio Edison has failed to show that the instant filing is permissible under either Section 205 of the Federal Power Act or the contract. Should this Commission find that Ohio Edison is permitted by contract or Section 205 to effect a unilateral rate change, Ohio Power requests a maximum suspension on the grounds that Ohio Edison's recent rate increase application in Docket No. ER82–79–000 was suspended for five months and reflects the identical test year submitted in the instant filing (order issued January 8, 1982).

Discussion

We believe that intervention in this proceeding by Ohio Power is in the public interest. Accordingly, the petition to intervene will be granted.

Our analysis of Ohio Edison's filing in this case indicates that the present agreement between Ohio Power and Ohio Edison provides for unilateral rate changes. We therefore find that Ohio Power's position on this issue is without merit.

The present Ohio Edison-Ohio Power Agreement provides in pertinent part that:

> 23. Action before Regulatory Authorities. Either party hereto may, upon delivery of prior written notice to the other, take such action before or make such filings with any regulatory authority having jurisdiction in respect of any term or provision of this Agreement as it shall deem appropriate and, in the event of any such action by either party hereto which effects or is intended to effect any change in any term or condition hereof, the terms and conditions hereunder shall be, except as provided in section 14 hereof, the terms and conditions as so changed or as shall result from any ensuing action by or before any regulatory authority having jurisdiction.

This language provides for changes to be made by action of the parties "before" regulatory authorities having jurisdiction. Thus, the present agreement provides for unilateral rate changes and Ohio Power's position is without merit. We note further that Ohio Power did not raise this fixed rate argument at the time of Ohio Edison's last rate increase in Docket No. ER79–197.

Ohio Power requests a maximum suspension on the grounds that Ohio Edison's recent rate increase application in Docket No. ER82–79–000, which was based on the identical test year submitted in the instant filing, was suspended for five months. With respect to this request, we note that Ohio Edison's application in Docket No. ER82–79–000 involves proposed rates for both partial requirement and transmission service to twenty-one municipal customers. While our analysis in that docket indicated that Ohio Edison's total proposed charges were excessive, its transmission rate taken alone was found to be cost-justified. Thus we shall deny Ohio Power's motion for a maximum suspension on the grounds that the instant filing is based on the same test year as Ohio Edison's submittal in Docket No. ER82–79–000.

Ohio Power also asserts in its petition that the proposed rates pose a potential detriment to Ohio Edison by virtue of the interrelationship between the 1968 Agreement between Ohio Edison and Ohio Power and a January 1, 1968 agreement, as amended, among Buckeye, Ohio Power, and five other electric utilities in Ohio, not including Ohio Edison (Ohio Power FERC Rate Schedule No. 70). Our review of this matter indicates that any remedy that may exist for the alleged detriment is beyond the scope of this proceeding. This proceeding deals with Ohio Edison's rates, not with the impact such rates may have on a separate agreement.

Since Ohio Power has raised no factual ratemaking issues and our preliminary analysis indicates that the rates are not excessive, Ohio Edison's submittal will be accepted for filing to become effective June 2, 1982, as requested.

The Commission orders:

(A) The petition to intervene of Ohio Power is hereby granted.

(B) Ohio Edison's submittal in this docket is hereby accepted for filing to become effective June 2, 1982, as requested.

(C) Docket No. ER82–414–000 is hereby terminated.

(D) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–15217 Filed 6–3–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. E–7278–000]

Otter Tail Power Co.; Payment

May 28, 1982.

Take notice that on February 19, 1982, the City of Elbow Lake, Minnesota (Elbow Lake) filed a notice of payment from Elbow Lake to Otter Tail Power Company pursuant to the Commission's order on remand, issued on November 20, 1981. Elbow Lake states that it remitted the sum of $47,009.55.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before June 14, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–15212 Filed 6–3–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA82–21–000]

Phillips Petroleum Co.; Application For Adjustment

Issued: May 27, 1982.

On May 7, 1982, Phillips Petroleum Company (Phillips) filed with the Federal Energy Regulatory Commission (Commission) an application for an adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301 *et seq.* (Supp. IV 1980), and 18 CFR 1.41 of the Commission's Rules of Practice and Procedure. Specifically, Phillips requests that the Commission waive 18 CFR 271.805(c) of the Commission's regulations which requires that a petition for a determination that an enhanced recovery technique is used be filed by the operator within 150 days after a stripper well under NGPA section 108 has produced more than the statutory amount of natural gas.

Phillips states that it filed for and received an affirmative section 108 determination on the Seaboard A No. 1 well located in Park County, Wyoming.

from the United States Geological Survey, Casper, Wyoming, and that the Commission noticed receipt of the determination on July 10, 1979, under Commission Control No. JD 79–12146. Phillips states that the determination became final on August 24, 1979. It further alleges that in its initial section 108 application for determination it stated that a pumping unit and an electric motor were included as part of the inventory for the well but that the equipment was not operable due to lack of electrical power. In addition, Phillips alleges that it stated that once power lines were constructed to connect to this equipment, and if production should exceed the 60 Mcf per day guidelines, Phillips intended to establish the enhanced recovery provisions of the NGPA. Phillips now states that production exceeded the statutory limit for the 90-day period ending April 1979, but due to inadvertant oversight it did not file either a notice of disqualification or petition for a determination of enhanced recovery technique until May 1982. Montana-Dakota Utilities Company purchases the gas produced from the subject well which is operated by Phillips. Waiver of the filing date requirement for an enhanced recovery technique petition by the Commission would permit Phillips to collect the NGPA section 108 maximum lawful price on and after April 30, 1979. Phillips alleges that a strict application of the Commission's regulations would subject it to a loss of approximately $80,700.00.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure as set forth in Order No. 24, issued March 22, 1979, 44 FR 18961 (March 30, 1979), as amended.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed within fifteen days after the publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–15225 Filed 6–3–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RA82–21–000]

Powerine Oil Co.; Filing of Petition For Review Under 42 U.S.C. 7194

May 27, 1982.

Take notice that Powerine Oil Company on May 5, 1982 filed a Petition for Review under 42 U.S.C. § 7194(b) (1977) Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before June 11, 1982, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before June 11, 1982, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H–025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–15226 Filed 6–3–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER82–225–001 and ER82–222–002]

Resources Recovery (Dade County), Inc.; Order On Rehearing and Denying Intervention

Issued: May 24, 1982.

On January 12, 1982, Resources Recovery (Dade County), Inc. (RRD) tendered for filing a proposed initial rate schedule applicable to sales of energy and capacity to Florida Power and Light Company (FPL) from a solid waste resource recovery facility operated by RRD in Dade County, Florida. RRD is currently the operator of a qualifying small power production facility as defined in section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and section 292.204 of the Commission's regulations.[1] RRD is also subject to the provisions of the Federal Power Act (FPA).[2]

On March 12, 1982, the Commission issued an order in this proceeding Denying Motion to Reject, Accepting Initial Rates, Conditionally Granting Waiver, Dismissing Petition for Declaratory Order, and Granting Intervention.[3] On April 12, 1982, the Commission received a leter from RRD indicating acceptance of the condition contained in paragraph (B) of the Commission's order.[4] Also on April 12, 1982, FPL filed a timely application for rehearing and Metropolitan Dade County, Florida (Dade) filed an untimely petition to intervene and an application for rehearing.

On April 27, 1982, RRD filed an answer in opposition to Dade's petition to intervene pursuant to Section 1.8 of the regulations. RRD asserts that Dade has not shown good cause for late intervention. RRD further states that Dade does not have a sufficiently close relationship to this proceeding nor will it suffer a direct and immediate injury as a result of this proceeding, so intervention should be denied.

Also on April 27, 1982, FPL filed an answer in support of Dade's petition to intervene in this docket indicating that it has no objection to the granting of the petition.

For the reasons discussed below, we shall deny Dade's late-filed petition to intervene, and grant in part and deny in part the application for rehearing filed by FPL.

I. Background

In our earlier order, we accepted RRD's initial rate schedule filing and granted waiver of the 60-day notice requirement on the condition that RRD agree to make such refunds as may be ordered by the Commission in light of any relevant court decision or agency action.[5] RRD has accepted that

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[1] *See* Order Dismissing Petition for Declaratory Order, Docket No. QF81–19–000 (issued February 19, 1982); Order Denying Petition for Rehearing, Docket No. QF81–19–000 (issued May 4, 1982).

[2] RRD's facility is a 76 megawatt qualifying small power production facility. Section 210(e) of PURPA prohibits the Commission from exempting qualifying small power production facilities between 30 and 80 megawatts aggregate capacity from the provisions of the FPA.

[3] 18 FERC 61,243.

[4] Paragraph (B) of the Commission's March 12, 1982 order stated:

(B) RRD's petition for waiver of the sixty (60) day notice of filing requirement is hereby granted on the condition that RRD agrees to make any and all refunds, at the appropriate rate of interest, as shall be ordered by the Commission in light of any relevant court decision or agency action on remand as discussed above.

[5] *Id.*

condition. We also granted RRD's request for waiver of the cost of service data requirements under section 35.12 of our regulations and accepted the rates prescribed by the Florida Public Service Commission (FPSC) to become effective subject to the refund condition.[6]

II. Discussion

A. FPL—Application for Rehearing

In its petition for rehearing, FPL asks for Commission clarification, reconsideration, or modification, as appropriate, of our March 12 order with regard to the following issues. First, FPL asks that we reject RRD's rate filing unless RRD accepts the refund condition described above. Second, FPL asks that we require RRD to post a bond or provide other assurance that it will pay any refund that may be ordered. FPL indicates that the Commission has broad authority under section 309 of the FPA to require such assurance.[7] Third, FPL asks that we modify our prior order by deleting the finding that the FPSC rates are just and reasonable rates under the FPA. Fourth, FPL asserts that we should require RRD to submit the cost of service information required by section 35.12 of our regulations. Finally, FPL requests that we reject condition 7(b) of RRD's rate schedule.

1. *Acceptance of refund condition.* FPL's request that we reject RRD's rate filing absent RRD acceptance of our refund condition is moot. As noted above, RRD filed a letter indicating its acceptance of that condition on April 12, 1982.

2. *Bond requirement.* FPL requests that the Commission require RRD to post a bond or provide other assurance that it will pay any refund that may ultimately be ordered. FPL also requests that we modify our order to list both RRD and Resource Recovery (Dade County) Construction Corporation (RRDC) as the filing utilities. FPL indicates that RRDC is a sister corporation of RRD which claims title to the facility in question. Both RRD and RRDC are subsidiaries of Parsons & Whittermore, Inc. (P&W). FPL asks that we either require RRD and RRDC to jointly post bond in the amount of $5 million or that we require P&W to provide a guaranty of the refund obligation of its subsidiaries. FPL cites various cases which indicate the Commission's authority under section 309 is to be given a broad reading, thus permitting the Commission to require such assurances.

While we do not disagree that our authority under section 309 of the FPA is broad, we do not find FPL's suggested use of that authority appropriate in this case. FPL's request that we require RRD and RRDC or P&W to post bond or other assurances arises out of the underlying commercial contractual dispute between FPL, RRD, and Dade regarding ownership of the facility in question. It is not this Commission's role, however, to become involved in such disputes which are presently pending before a state forum of competent jurisdiction.[8] Neither is it our traditional practice to require that a going electric utility concern guaranty refunds either by bond or other economic assurances. The issue regarding which company will be liable under the refund obligation and the ability of that company to satisfy the refund obligation, if any, may be resolved in a judicial proceeding.

3. Just and reasonable finding. FPL asserts that the Commission should modify its order by deleting the finding that the rates prescribed by the FPSC are just and reasonable rates under the FPA. FPL states that there is no substantial evidence in the record to support such a finding. In the alternative, FPL suggests that the Commission clarify the order by indicating that such finding is not intended to limit the power of either this Commission or the FPSC to determine that different rates are appropriate and to order corresponding refunds.

In the March 12, 1982 order, we intended to make a generic finding that State commission rates set in compliance with Section 210 of PURPA and this Commission's rules thereunder shall be considered to be just and reasonable rates under the Federal Power Act. Having undertaken a major rulemaking to arrive at the Section 210 rules, we do not believe that a further hearing is required in order to determine that this Commission shall accept as just and reasonable the ratemaking standards which it has required the State Commissions to follow.

Since, however, a challenge had been made in the Florida State Courts to the FPSC rates and a challenge had been made to the Commission's rules under Section 210 of PURPA, which actions may affect the FPSC rates, we conditioned the acceptance of RRD's rates on an agreement to make them subject to refund pending the outcome of those court proceedings. Implicit in such a condition is our conclusion that the FPSC rates may not ultimately be found to be just and reasonable, depending on the outcome of the court proceedings. Thus, refunds may be ordered of any amounts in excess of what is ultimately determined to be the just and reasonable rate.

4. *Cost-of-service information.* In its application for rehearing, FPL requests that we condition our waiver of the cost of service data requirements in section 35.12 of our regulations on the requirement that RRD file cost information within a reasonable time after a rehearing order. FPL does not seek rejection of RRD's rates on the grounds that RRD did not provide this information initially. Rather, FPL suggests that this information may be necessary for Commission consideration in the event that the *American Electric Power Corp.* v. *FERC*[9] decision is not reversed. Moreover, FPL suggests that the filing of cost of service data by RRD will not impose a significant burden on RRD.

In our prior order, we noted that the *AEP* decision vacating our rules requiring the states to set full avoided cost rates for purchases from qualifying facilities has been stayed pending appeal. That decision remains stayed pending further appeal by the Commission.[10] Thus, we find that cost of service data are not required from RRD at this time.

5. *Interconnection.* FPL's final contention is that the Commission should reject condition 7(b) of RRD's rate schedule. FPL asserts that this condition, which requires FPL to maintain service necessary to receive power from RRD, is an attempt to obtain an interconnection order without meeting the requirements of sections 210 and 212 of the FPA, contrary to the ruling of *AEP*.

As we stated above with respect to FPL's cost of service information request, the mandate vacating the

[6] RRD's rates for sales to FPL are the full avoided costs for FPL purchases from qualifying facilities as determined by the FPSC under Orders 9970, 10198, and 10331, and generally applicable orders amending those orders.

[7] Section 309 of the FPA states that the Commission has the authority:

to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary and appropriate to carry out the provisions of this chapter. 16 U.S.C. 825h.

[8] *See* Order Denying Petition for Declaratory Order and Motion to Hold Proceeding in Abeyance, Docket No. QF81-19-000 (issued February 22, 1982) in which the Commission stated:

We find that it is not appropriate for the Commission to sift through the competing claims of the parties to determine, under state contract law, who is the rightful owner or operator of the facility under the terms of the contracts. Therefore, the commercial issues raised in FP&L's Petition for Declaratory Order should be resolved in the state forum of competent jurisdiction.

[9] No. 80-1789 (D.C. Cir. January 22, 1982).

[10] On April 9, 1982, the D.C. Court of Appeals denied rehearing. On April 20, 1982, the Commission filed a Motion for a Stay of the Mandate.

Commission's rules as a result of the *AEP* decision has been stayed pending further appeal. Thus, the requirement that FPL interconnect with RRD under section 292.303(c) of our regulations remains in effect. We therefore dismiss without prejudice FPL's request for hearing under section 206 of the FPA on this matter.

B. Dade County—Petition To Intervene

Dade County (Dade) did not file a timely petition to intervene in this proceeding. Rather, Dade has simultaneously petitioned to intervene and applied for rehearing. With regard to the late-filed petition to intervene, Dade asserts that it has a significant interest in this proceeding, that good cause exists for late intervention, and that its interests in this proceeding are substantially different from those of FPL. Dade's interest in the proceeding is based on its claims to beneficial ownership of the facility under state law and preservation of its property rights.

RRD opposes and FPL supports Dade's petition to intervene. RRD states that Dade has not shown good cause for the lateness of its petition. RRD indicates that Dade had actual knowledge of the proceedings yet chose to file its petition to intervene as late in the administrative process as possible. Thus, RRD argues that Dade's petition should be denied on lateness grounds alone.

RRD also argues that Dade has not satisfied the applicable criteria of section 1.8 of our regulations regarding grounds for intervention. RRD states that Dade is not entitled to intervene by statute, does not have an interest which may be directly affected by the proceeding, and is not entitled to discretionary intervention.

The due date for petitions to intervene in this proceeding was February 12, 1982, as established in the notice published in the **Federal Register** (47 FR 3853, January 27, 1982). An initial order was entered on March 12, 1982. Dade filed its petition to intervene and application for rehearing on April 12, 1982, the last day of the rehearing period.

Dade does not indicate that it was not on notice as to these proceedings. Rather, Dade asserts that it was engaged in good faith negotiations with RRD during the pendency of the proceedings. Therefore, Dade refrained from intervening in order to avoid any implication of bad faith in these negotiations. Dade asserts that, "after three months of inconclusive settlement negotiations, * * * [it] determined that protection of its property rights required it to resume pursuit of its legal remedies in the various judicial and administrative proceedings which affect its interest."

Section 1.8(d) of our regulation requires a showing of good cause in order to grant a petition to intervene filed out of time. In a recent order we stated:

> In determining whether good cause to permit a late intervention exists, the Commission will consider four factors: 1) the nature of the interest alleged by the late intervenor and whether that interest is adequately represented by other parties in the proceeding; 2) whether permitting the late intervention will prejudice other parties in the proceeding; 3) whether permitting the late intervention will delay resolution of the proceeding; and 4) the reasons offered by the late intervenor for not having filed on time.[11]

We have also indicated that late-filed petitions to intervene must show "extraordinary circumstances" which justify their lateness.[12] Because Dade seeks to intervene at the rehearing stage, it bears a heavier burden in demonstrating that good cause exists.

Dade has not demonstrated extraordinary circumstances which justify its lateness. It is apparent from the record before us that Dade knew or should have known of these proceedings in order to allow it to intervene in a timely manner.[13] Moreover, the nature of the interest alleged by Dade is not one which is appropriately raised in this proceeding. In its filing, Dade petitions us to establish an escrow account into which FPL would place payments for the sale of power to RRD. Dade asserts that it is entitled to such payments as the equitable owner of the facility under state law.

As we stated above with regard to FPL's bond request, this claim, which arises out of the complex commercial contractural dispute presently subject to arbitration, is best presented to a state forum of competent jurisdiction. We do not believe it would be appropriate to interfere in pending state proceedings by independently imposing escrow requirements.

For these reasons, we shall deny Dade's petition to intervene.

The Commission Orders

(A) The petition to intervene in this proceeding filed on April 12, 1982, by Metropolitan Dade County, Florida is hereby denied.

(B) The application for rehearing filed by Florida Power and Light Company pursuant to section 1.34 of our regulations, on April 12, 1982, is hereby granted in part and denied in part as described in the body of this order.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15230 Filed 6-3-82; 8:45 am]

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[11] *Consolidated Gas Supply Corporation*, Order Granting Rehearing, docket No. CP80-346-000 (issued May 13, 1982).

[12] *Colorado Interstate Gas Co.*, 50 F.P.C. 1918, 1919 (issued December 14, 1973).

[13] With regard to Dade's assertion that it did not wish to show bad faith in its contract negotiations, we note that, during the pendency of these proceedings, Dade sought review of the FPSC's interconnection order before the Florida State Supreme Court.

[Project No. 5651-002]

Snake River Pottery; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

May 28, 1982.

Take notice that on May 3, 1982, Snake River Pottery (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 5651) would be located on an unnamed Spring near Bliss, in Gooding County, Idaho. Correspondence with the Applicant should be directed to: Mr. Dale Hatch, P.O. Box 1071, Twin Falls, Idaho 83301.

Project Description—Applicant proposes to rehabilitate its existing project by replacing two existing generating units with installed capacity of 30 kW with new generating units with total rated capacity of 97 kW. The existing project consists of: (1) an intake structure; (2) a 650-foot-long penstock; (3) a powerhouse at elevation 2,710 feet m.s.l. that the Applicant would move to an elevation outside the A.J. Wiley Project No. 2845 reservoir boundary on the Snake River, when it is licensed for construction; and (4) a proposed 12.5-kV, 1,270-foot-long transmission line connecting the project with an existing Idaho Power Company line north of the project.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Idaho

Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife concerning the project and its resources are requested; however resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before August 9, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 C.F.R. 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Precedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 9, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15227 Filed 6-3-82; 8:45 am]

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[Docket No. ER82-427-000]

Southern Calif. Edison Co.; Order Accepting for Filing and Suspending Revised Rates, Denying Motions for Rejection and for Summary Disposition, Granting Interventions, and Establishing Hearing and Price Squeeze Procedures

Issued: May 28, 1982.

On March 31, 1982, Southern California Edison Company (SCE) tendered for filing a proposed two-step increase in its wholesale rates for service to eight wholesale customers.[1] The step one rates provide for an increase in jurisdictional revenues of approximately $38.5 million (15.8%) for the twelve month test period ending August 31, 1983. The step two rates, which reflect the costs associated with three nuclear units scheduled to commence service during the test year,[2] would result in an additional increase in revenues above the step one rates of aproximately $22 million (7.7%). SCE requests effective dates for the step one and step two rates of June 1, 1982, and June 2, 1982, respectively.[3]

Notice of the filing was issued on April 8, 1982, with responses due on or before April 23, 1982. On April 21, 1982, Arizona Public Service Company filed a petition to intervene. Timely petitions to intervene were also filed by the Cities of Anaheim, Riverside, Banning, Colton, and Azusa, California (Cities) and by the City of Vernon, California (Vernon). By letter dated May 13, 1982, the Honorable George E. Brown, Member of Congress, supported the Cities' protest expressing concern as to the level of SCE's rate increase and the proposed effective dates. On May 13, 1982, the City of Banning individually protested SCE's filing. In addition, on May 20, 1982, numerous citizens of Riverside submitted petitions, signed form statements, and individual comments supporting that city's protest.

Cities move to reject the step one increase because SCE has not filed separate cost support for its step one rates. Cities request summary disposition with respect to several cost of service and rate design items,[4] request a maximum suspension, allege price squeeze, and also object to other cost of service items. Cities also request an expedited hearing on SCE's fuel adjustment clause.[5]

Vernon also requests a five month suspension of the step two as well as the step one rates. Vernon objects to various cost of service items, and also alleges price squeeze. In addition, Vernon points out that SCE's present and proposed Rate Schedule TOU-R contains special conditions 3 and 4 concerning energy and billing demand determination and that such conditions of service are currently being litigated in Docket No. ER81-177-000. Therefore, Vernon requests that special conditions

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[1] *See* Attachment A for customers and rate schedule designations.

[2] SONGS 2 (scheduled for August 15, 1982), Palo Verde No. 1 (scheduled for May, 1983), and SONGS 3 (scheduled for August, 1983).

[3] SCE states that while it believes no suspension of its step two rates is warranted, SCE would not object to an effective date of the earlier of the in-service date of its San Onofre Nuclear Unit No. 2 (SONGS 2) (anticipated to be August 15, 1982) or five months after the June 2 proposed effective date, *i.e.*, November 2, 1982.

[4] The Cities request summary disposition with respect to SCE's: (1) cost of service inclusion of investments and other costs associated with Palo Verde No. 1 and SONGS 3; (2) improper assignment of regulatory commission expenses to wholesale service; (3) allocation of certain distribution expenses to wholesale service; (4) improper functionalization and allocation of materials and supplies to construction and electric operations; (5) inclusion of pre-certification expenses in the cost of service; (6) failure to properly synchronize interest expense during the test year; (7) inconsistent allocation of deferred taxes and underlying tax deductions; (8) expenses claimed for nuclear fuel purchased from a subsidairy; and (9) insufficient cost support for its proposed rate design.

[5] Such request is based on the fact that the Cities of Anaheim and Riverside engage in economy energy transactions and, therefore, these customers must have timely information as to the cost of energy to be purchased from SCE. The Cities contend that because SCE's fuel adjustment clause contains a one-month lagging feature, the actual cost of energy to be purchased cannot be determined.

3 and 4 contained in the proposed rate schedule be subject to the outcome of proceedings in Docket No. ER81–177–000. Vernon and Cities also request that if the Commission does not summarily reject the claimed costs associated with Palo Verde 1 and SONGS 3 or direct Edison to refile its cost of service to eliminate all costs projected beyond April 30, 1983, acceptance of Edison's filing be conditioned upon a binding commitment by Edison to refrain from filing any additional rate increase with a proposed effective date prior to August, 1983. The petitioners contend that based on historic slippage in nuclear unit in-service dates, commercial operation of Palo Verde 1 and SONGS 3 is not likely to occur during the test period.

On May 5, 1982, SCE filed a response to the Cities' motion to reject the filing and on May 10, 1982, an answer to the other pleadings. SCE requests that the Commission deny the motion to reject its filing, accept for filing its March 31, 1982 rate increase, deny the requests for summary disposition, deny the motion for conditions on the Commission's acceptance of the filing, deny the requests for expedited hearing, and summarily dispose of certain issues raised by the intervenors.

Discussion

Initially, we find that participation in this proceeding by Cities, Vernon, and Arizona Public Service Company is in the public interest and we shall therefore grant their petitions to intervene.

We find that SCE's submittal substantially complies with the Commission's filing regulations.[6] Thus, the concerns expressed by Cities do not constitue a sufficient basis on which to summarily reject SCE's filing.[7]

In view of the matters raised by the intervenors, our review indicates that SCE's revised rates have not shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

In *West Texas Utilities,* Docket No. ER82–123–000 (February 26, 1982), we noted that rate filings would ordinarily be suspended for one day where preliminary review indicates that the proposed rates may be unjust and unreasonable but may not produce substantially excessive revenues, as defind in *West Texas.* In the instant submittal, our examination suggests that the proposed increase may not yield substantially excessive revenues. Accordingly, we shall suspend SCE's step one rates for one day to become effective on June 2, 1982, subject to refund. Consistent with the company's suggestion, we shall suspend SCE's step two rates to become effective as of the earlier of the SONGS 2 in-service date or November 2, 1982, subject to refund.

The requests for summary disposition will be denied. These issues as well as the other matters raised by the intervenors present questions of law or fact more appropriately resolved on the basis of an evidentiary hearing. The requests to condition acceptance of SCE's filing by imposition of an arbitrary rate moratorium also will be denied.

The Cities also request that the fuel adjustment clause contained in the instant filing be subject to a separate and expedited hearing. We note that an identical fuel clause was submitted in SCE's prior rate increase filing in Docket No. ER81–177–000 and that the fuel clause issue is being considered as part of the ongoing proceeding in that docket. Since the issue is subject to litigation in ER81–177–000, the intervenors request for a separate and expedited hearing on the fuel clause issue in the instant docket will be denied as unnecessary.

As requested by the intervenors, Special Conditions of Service Nos. 3 and 4 will be subject to the outcome of proceeding in Docket No. ER81–177–000. In accordance with the Commission's policy and procedures established in *Arkansas Power and Light Company,* Docket No. ER79–339 (August 6, 1979), we shall phase the price squeeze issue raised by the intervenors.

The Commission orders:

(A) Cities' motion to reject SCE's filing in whole or in part is hereby denied.

(B) SCE's revised rates are hereby accepted for filing, and SCE's step one revised rates are hereby suspended for one day to become effective, subject to refund, on June 2, 1982. SCE's step two revised rates are suspended to become effective as of the earlier of the SONGS 2 in-service date or November 2, 1982, subject to refund. SCE shall notify the Commission of the implementation of the step two rates within ten (10) days thereafter.

(C) All motions for summary disposition or to condition acceptance of SCE's filing are hereby denied.

(D) Cities' motion for an expedited hearing on SCE's fuel clause contained in the instant filing is denied.

(E) Special Conditions of Service No. 3 and 4 shall be subject to the outcome of the proceedings in Docket No. ER81–177–000.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of SCE's rates.

(G) The petitions to intervene in this proceeding are hereby granted subject to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act; *Provided, however,* that participation by such intervenors shall be limited to the matters set forth in their petitions to intervene; and *provided, further,* that the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order of the Commission in this proceeding.

(H) The Commission staff shall serve top sheets in this proceeding on or before June 15, 1982.

(I) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(J) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the

[6] *See Municipal Light Boards of Reading and Wakefield, Mass.* v. *FERC,* 450 F.2d 1341 (D.C. Cir. 1971). SCE has complied with the cost support requirements under section 35.13 for its proposed total increase of $60.5 million to be implemented in two steps. Since SCE has supported its total requested increase, separate cost support statements under section 35.13 of the regulations are not necessary or required for SCE's step one rates which were set simply by excluding fixed costs associated with SONGS 2.

[7] Vernon has argued that if only a one day suspension is granted the effective date of SCE's step one rates (proposed to be June 1, 1982) would precede the incurrence of test year costs by three months. In this regard, we note that section 35.13 of the Commission's regulations permits the filing of a Period II test year which begins no later than three months after the proposed effective date. Therefore, SCE's proposed June 1, 1982 effective date and Period II beginning September 1, 1982, meet the time requirements of section 35.13.

rate which, but for consideration of price squeeze, would be just and reasonable. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(K) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

RATE SCHEDULE DESIGNATIONS (DOCKET NO. ER82-427-000), SOUTHERN CALIFORNIA EDISON CO., FILING DATE: MAR. 31, 1982

Designation	Description	Other party
(1) Supplement No. 16 to Rate Schedule FERC No. 6 (Supersedes Supplement No. 14).	TOU-R (Step-One).	Arizona Public Service Co. (Cibola).
(2) Supplement No. 17 to Rate Schedule FERC No. 13 (Supersedes Supplement No. 15).	do	Vernon.
(3) Supplement No. 21 to Rate Schedule FERC No. 15 (Supersedes Supplement No. 19).	do	Anaheim.
(4) Supplement No. 16 to Rate Schedule FERC No. 16 (Supersedes Supplement No. 14).	do	Azusa.
(5) Supplement No. 22 to Rate Schedule FERC No. 17 (Supersedes Supplement No. 20).	do	Riverside.
(6) Supplement No. 15 to Rate Schedule FERC No. 21 (Supersedes Supplement No. 13).	do	Banning.
(7) Supplement No. 15 to Rate Schedule FERC No. 29 (Supersedes Supplement No. 13).	do	Arizona Public Service Company (Blythe).
(8) Supplement No. 17 to Rate Schedule FERC No. 31 (Supersedes Supplement No. 15).	do	Colton.
(9) Supplement No. 19 to Rate Schedule FERC No. 33 (Supersedes Supplement No. 15).	do	Southern California Water Co. (Harnish).
(10) Supplement No. 20 to Rate Schedule FERC No. 33 (Supersedes Supplement No. 17).	do	Southern California Water Co. (Gold Hill).
(11) Supplement No. 17 to Rate Schedule FERC No. 6 (Supersedes Supplement No. 16).	do	Arizona Public Service Co. (Cibola).
(12) Supplement No. 18 to Rate Schedule FERC No. 13 (Supersedes Supplement No. 17).	do	Vernon.
(13) Supplement No. 22 to Rate Schedule FERC No. 15 (Supersedes Supplement No. 21).	do	Anaheim.

RATE SCHEDULE DESIGNATIONS (DOCKET NO. ER82-427-000), SOUTHERN CALIFORNIA EDISON CO., FILING DATE: MAR. 31, 1982—Continued

Designation	Description	Other party
(14) Supplement No. 17 to Rate Schedule FERC No. 16 (Supersedes Supplement No. 16).	do	Azusa.
(15) Supplement No. 23 to Rate Schedule FERC No. 17 (Supersedes Supplement No. 22).	do	Riverside.
(16) Supplement No. 16 to Rate Schedule FERC No. 21 (Supersedes Supplement No. 15).	do	Banning.
(17) Supplement No. 16 to Rate Schedule FERC No. 29 (Supersedes Supplement No. 15).	do	Arizona Public Service Co.
(18) Supplement No. 18 to Rate Schedule FERC No. 31 (Supersedes Supplement No. 17).	do	Colton.
(19) Supplement No. 21 to Rate Schedule FERC No. 33 (Supersedes Supplement No. 19).	do	Southern California Water Co. (Harnish).
(20) Supplement No. 22 to Rate Schedule FERC No. 33 (Supersedes Supplement No. 20).	do	Souther California Water Co. (Gold Hill).

[FR Doc. 82-15218 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

Omnibus Settlement For June 15, 1982

May 27, 1982.

In the matter of Tennessee Gas Pipeline Company, (Docket Nos. RP80-97 and RP81-54) Michigan Wisconsin Pipe Line Company, (Docket Nos. RP80-100 and RP81-61) Natural Gas Pipe Line Company of America, (Docket Nos. RP80-107 and RP81-49) Transcontinental Gas Pipe Line Corporation, (Docket Nos. RP80-117 and RP82-3) United Gas Pipe Line Company, (Docket Nos. RP80-121 and RP81-81) Trunkline Gas Company, (Docket No. RP80-106) Columbia Gulf Transmission Company, (Docket Nos. RP80-145 and RP82-83) Columbia Gas Transmission Corporation, (Docket No. RP80-146) Florida Gas Transmission Company, (Docket Nos. RP81-7 and RP81-84) High Island Offshore System, (Docket No. RP81-18) U-T Offshore System, (Docket No. RP81-20) Transwestern Pipeline Company, (Docket No RP81-130) Texas Eastern Transmission Corporation, (Docket No. RP81-109)

Take notice that on June 15, 1982, at 10:00 a.m., there will be a conference of all parties to the above-docketed proceedings, for the purpose of resuming settlement discussions pertaining to costs incurred by pipelines to provide transportation and separation services for producer-owned liquid and liquefiable hydrocarbons. Issues concerning the proper allocation of such costs appear to arise in the above-captioned dockets. These dockets, while not consolidated, will be jointly convened for purposes of these discussions as a matter of convenience, and to assure consistency in resolving these issues, to the extent possible.

This conference will be held in a hearing room at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. In addition to the parties, those having filed interventions in this proceeding will also be permitted to attend this conference. If, however, such persons have not previously been permitted to intervene in any of the above-captioned dockets by order of the Commission or of a Presiding Administrative Law Judge, attendance will not be deemed to authorize intervention as a party in any of these proceedings, nor will attendance by a person granted intervention in one or more of the above-captioned proceedings be deemed to authorize intervention in any other docket. Persons seeking further information about this conference should contact Richard Bonnifield, Commission Staff Attorney, at (202) 357-8583.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15228 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-528-000]

Union Electric Co.; Filing

May 28, 1982.

The filing Company submits the following:

Take notice that on May 17, 1982, Union Electric Company (UE) tendered for filing Third Amendment and Revised Schedule II to the Interchange Agreement dated May 2, 1969 between UE and St. Joseph Light and Power Company.

Said agreements provide for revisions in reservation charges for System Participation Power and Short-Term Power and the energy rate for Emergency Power under said Interchange Agreement.

UE requests an effective date of June 1, 1982 for the Amendment and revised Schedule.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 11, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15213 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4856-001]

Utah Board of Water Resources; Application for License (Over 5 MW)

May 28, 1982.

Take notice that the Utah Board of Water Resources (Applicant) filed on January 8, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for construction and operation of a water power project to be known as the Long Park Project No. 4856. The project would be located on Sheep Creek in Daggett County, Utah. Correspondence with the Applicant should be directed to: Daniel Lawrence, Director, Utah Board of Water Resources, 1636 West North Temple, Salt Lake City, Utah 84116.

Project Description—The proposed project would consist of: (1) the Applicant's existing earth-filled dam, 110 feet high and 790 feet long; (2) the existing reservoir covering approximately 400 acres with a storage of 13,700 acre-feet; (3) a new 42-inch diameter steel and concrete penstock 9,600 feet long; (4) a new 50- by 42-foot concrete powerhouse containing one 7.0-MW turbine/generator unit operating under a head of 1,025 feet; (5) a new 69-kV transmission line 9.3 miles long; and (6) appurtenant facilities.

Purpose of Project—The average annual generation of 21 million kWh would be sold to the Deseret Generation and Transmission Cooperative.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before Aug. 18, 1982, either the competing application itself (see 18 CFR 4.33(a) and (d)) or a notice of intent [See 18 CFR 4.33(b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or petitions to intervene must be received on or before Aug. 18, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15231 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER79-121-005]

Utah Power & Light Co.; Compliance Filing

May 28, 1982.

The filing company submits the following:

Take notice that on May 24, 1982, Utah Power & Light Company submitted a revised filing in accordance with the Commission's letter of April 29, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, on or before June 9, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15232 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-423-000]

Virginia Electric and Power Co.; Order Accepting for Filing and Suspending Revised Rates, Denying Summary Disposition, Granting Interventions, and Establishing Price Squeeze and Hearing Procedures

Issued: May 28, 1982.

On March 31, 1982, Virginia Electric and Power Company (VEPCO) tendered for filing increased rates for ten municipal customers, eighteen cooperative customers and the North Carolina Eastern Municipal Power Agency.[1] The proposed rates would increase revenues by approximately $18,260,000 (9.1%) for the calendar year 1982 test period. VEPCO requests an effective date of May 30, 1982, subject to suspension no longer than one day; the company states, however, that if a pending settlement agreement in Docket No. ER81-388-000 is ultimately approved by the Commission, VEPCO will refund with interest any increased revenues above the settlement rate collected until September 1, 1982, so as to comply with the terms of the settlement agreement.

Additionally, VEPCO requests waiver of the following Commission requirements: (a) a portion of Statement AX (§ 35.13 of the regulations) which provides for the submission of certain rate orders; (b) § 35.14 of the regulations to the extent that it limits recovery of fuel costs through a fuel adjustment clause to the "net energy cost of purchases, *exclusive of capacity or demand charges*;"[2] and (c) the tax normalization provisions of section 35.25 as promulgated in Order No. 144-A (February 22, 1982).

Public notice of the filing was issued on April 6, 1982, with responses due on or before April 21, 1982. On April 19, 1982, petitions to intervene were filed individually by the Secretary of the Navy (Navy) and Bear Island Paper Company (Bear Island). The Navy states that while VEPCO's Military Service

[1] *See* Attachment A for customers and rate schedule designations.

[2] VEPCO seeks permission to pass through the demand-related portion of its purchased power expenses to wholesale customers.

(MS) rate schedule is not subject to this Commission's jurisdiction, the terms of the Navy's contract with VEPCO link the MS rates to the rates set by the Commission for the RS rate schedule (Resale Service to Municipalities and Private Utilities). In developing rates for service to the Navy, VEPCO utilizes the same methodology, rate of return, test period, and effective date permitted pursuant to the RS rate schedule. Bear Island raises no substantive issues, but states that it is a high load factor industrial customer which purchases power furnished by VEPCO to the Rappahannock Electric Cooperative. Bear Island contends that its interests will not be adequately represented by other parties to this proceeding.

On April 20, 1982, ElectriCities of North Carolina and the North Carolina Eastern Municipal Power Agency (ElectriCities) filed a petition to intervene, protest, request for hearing, and a motion for summary disposition. The request for summary disposition applies to an alleged request by VEPCO for an advisory opinion on the proper treatment of Accumulated Deferred Investment Tax Credits (ADITC) in the capital structure.[3] Also, ElectriCities request that the proposed rates be suspended at least until September 1, 1982, as envisioned by the settlement agreement which is pending before the Commission in Docket No. ER81–388–000. ElectriCities allege the following improper adjustments or treatment in the wholesale cost of service: (1) excessive and unsupported operation and maintenance expenses; (2) excessive fuel stock allowance; (3) improper functionalization of deferred tax balances; (4) use of excessive depreciation rates; and (5) use of decommissioning expenses based on a mothballing method rather than an immediate dismantlement method. In addition, ElectriCities challenge VEPCO's request for waiver of the fuel clause requirements stating that the company is attempting to institute a purchased power adjustment clause and that a more economical alternative mix of economy power, short-term capacity and energy, and use of its oil-fired generation may reduce the level of capacity-related purchased power costs. Finally, ElectriCities allege that the proposed rates may result in a price squeeze.

[3] In a May 5, 1982 response, VEPCO states that it is not seeking an advisory opinion as to the proper treatment of ADITC, but that it has stated its position on the issue in the event that the Commission decides to reconsider its existing policy. VEPCO has also responded to other of the petitioners' contentions.

On April 21, 1982, Old Dominion Electric Cooperative and Prince William Electric Cooperative (Cooperatives) and the North Carolina Electric Membership Corporation (NCEMC) filed petitions to intervene. The Cooperatives and NCEMC request a five month suspension raising various cost of service issues including: (1) failure to synchronize interest expense deduction for tax purposes with the interest component of the requested rate of return; (2) inadequate support for test period increases in production and transmission operation and maintenance expenses; (3) questionable forecasts of test period demand and energy requirements; (4) overstatement of the wholesale customers' allocated share of nuclear fuel disposal costs; and (5) overstated cash working capital allowance. The Cooperatives and NCEMC object to VEPCO's proposed inclusion of capacity costs associated with purchased power expenses in the fuel adjustment clause, and contend that, if an automatic pass-through is permitted, the company should be required to credit the entire amount (capacity and energy) of intersystem sales against its recoverable fuel costs. The Cooperatives allege price squeeze and request the establishment of phased price squeeze proceedings. NCEMC, instead, seeks to have the price squeeze issue decided before the cost of service issues.

Discussion

We find that participation in this proceeding by each of the petitioners is in the public interest. Therefore, we shall grant the petitions to intervene.

Consistent with our conclusions in a previous proceeding [4] and based on the support submitted thus far, we shall deny VEPCO's request for waiver of the § 35.14 fuel clause regulations. However, we believe that this is an issue which the company should be permitted to pursue at hearing.

We shall grant VEPCO's request for waiver of the requirements of Statement AX since the rate orders required therein have been submitted in earlier proceedings before this Commission. With respect to VEPCO's request for waiver of the Commission's tax normalization requirements based on the company's assertion that the information was not completed in time to be included in its filing, we shall deny waiver and require VEPCO to file revised rates and cost of service statements which reflect tax normalization procedures consistent with Order No. 144–A and § 35.25 of the regulations.[5] Inasmuch as VEPCO is not seeking an advisory opinion concerning the treatment of ADITC and has not improperly reflected ADITC in its capitalization or rates, summary disposition, as requested by ElectriCities, is unnecessary and will be denied.

[4] *Florida Power & Light Company*, Docket No. ER81–588–000 (September 2, 1981).

Our preliminary review of VEPCO's filing and the intervenors' pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept VEPCO's rates for filing and suspend them as ordered below.

We recently addressed the Commission's suspension policy in *West Texas Utilities Company*, Docket No. ER82–23–000 (February 26, 1982). In that order, we stated that where our preliminary examination indicates that revised rates may be unjust and unreasonable, but may not be substantially excessive as described in *West Texas*, we would generally suspend the rates for one day. In the case of VEPCO's rates, preliminary review suggests that the proposed rates may not produce excess revenues. Therefore, absent other circumstances, we would suspend VEPCO's rates for one day from the proposed effective date. As noted above, VEPCO ostensibly requests a May 30, 1982 effective date, although the company acknowledges that its pending offer of settlement in Docket No. ER81–388–000 contains a moratorium provision which would preclude the company from proposing to collect revised rates prior to September 1, 1982. That settlement has not been approved, although as to certain of VEPCO's customers, the settlement rates have been implemented on an interim basis pending Commission disposition on the merits.[6] The Commission expects that action on the settlement agreement will be forthcoming shortly. In order to maintain the *status quo ante* and to preserve the interests of all affected parties, we conclude that circumstances other than those related to rate level make it appropriate to suspend VEPCO's rates to become effective, subject to refund,

[5] This conclusion is consistent with our decision in *Wisconsin Electric Power Company*, Docket No. ER82–347–000 (April 13, 1982), as to the most appropriate and equitable manner by which to implement the requirements of Order No. 144–A.

[6] By order issued on February 11, 1982, in Docket No. ER81–388–000, the Commission authorized VEPCO to collect the proposed settlement rates on an interim basis from the North Carolina cooperative customers.

on September 2, 1982. In the event that the settlement is rejected, the moratorium provision will be inapplicable and, upon request by VEPCO, the Commission will modify this order to provide for a one day suspension from May 31, 1982 (60 days after filing). If, however, the settlement is approved, the September 2 effective date will prevent VEPCO's customers from unnecessarily paying the increased rates immediately, revising their retail rates accordingly, and seeking any required regulatory approval for their own rate changes.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, Docket No. ER79-339 (August 6, 1979), we shall phase the price squeeze issue raised by the intervenors.[7]

The Commission orders:

(A) ElectriCities' motions for summary disposition on the issue of ADITC is hereby denied.

(B) VEPCO's request for waiver of the outstanding filing requirements of § 35.13 of the regulations is hereby granted.

(C) VEPCO's request for waiver of the Commission's tax normalization requirements is hereby denied. VEPCO shall submit, within thirty (30) days of the date of this order, revised rates and cost statements which reflect tax normalization procedures consistent with Order No. 144-A and § 35.25 of the regulations.

(D) VEPCO's proposed rates, as modified to comply with Order No. 144-A, are hereby accepted for filing and suspended to become effective on September 2, 1982, subject to refund.

(E) VEPCO's request for waiver of the fuel adjustment clause regulations under section 35.14 is hereby denied, without prejudice to the company seeking to support its position at hearing that the demand-related portion of purchased power expenses should be collected through the fuel adjustment clause.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR, Chapter I], a public hearing shall be held concerning the justness and reasonableness of VEPCO's rates.

(G) The petitions to intervene are hereby granted subject to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act; *provided, however, that participation by such intervenors shall be limited to the matters set forth in their petitions to intervene; and provided, further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved by any order or orders entered by the Commission in this proceeding.

(H) The Commission staff shall serve top sheets in this proceeding on or before June 10, 1982.

(I) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(J) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause shown. The price squeeze portion of this case shall be governed by the procedures set forth in section 2.17 of the Commission's regulations as the may be modified prior to the initiation of the price squeeze phase of this proceeding.

(K) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[7] We perceive no basis for addressing the price squeeze issue at hearing in advance of the remaining issues since, as we have previously noted, it is necessary to develop a "just and reasonable rate but for price squeeze" in order to properly assess claims of price squeeze. Thus, we decline to depart from existing phasing practice as requested by NCEMC. However, we acknowledge that, under that practice, the presiding judge has discretion to modify the procedural schedule where good cause is found to do so.

ATTACHMENT A.—VIRGINIA ELECTRIC AND POWER COMPANY

[Docket No. ER82-423-000—Rate Schedule Designations]

Designation	Tariff customers
Eighth Revised Sheet Nos. 4 through 9 and 17 and Ninth Revised Sheet No. 10 to FPC Electric Tariff, First Revised Volume No. 1 (supersedes Seventh Revised Sheet Nos. 4 through 9 and 17 and Eighth Revised Sheet No. 10).	Town of Blackstone. Town of Culpepper. Town of Elkton. Town of Enfield. Town of Franklin. City of Harrisonburg. Town of Iron Gate. City of Manassas. Town of Wakefield. Town of Windsor.

Designation	Description
Supplement No. 1 to Supplement No. 3 to Rate Schedule FERC No. 102.	Schedule RS-A, Interim Electric Service to North Carolina Eastern Municipal Power Agency.

Customer	Rate schedule	Supplement number		
		RC [1]	RC-F [2]	RC-Inter [3]
B-A-R-C EC	76	39	40	41
Community EC	77	51	52	53
Craig-Botetourt EC	78	36	37	38
Mecklenburg EC	79	62	63	64
Northern Neck	80	43	44	45
Prince George EC	82	44	45	46
Prince William EC	83	65	66	67
Shenandoah Valley EC	84	63	64	65
Southside EC	85	67	68	69
Tri-County EC	86	42	43	44
Albemarle EMC	88	40	41	42
Cape Hatteras EMC	89	26	27	28
Edgecombe-Martin County EMC	90	43	44	45
Halifax EMC	91	35	36	37
Roanoke EMC	92	47	48	49
Tideland EMC	93	32	33	34
Central Virginia EC	94	52	53	54
Rappahannock EC	101	43	44	45

[1] Firm resale schedule RC.
[2] Excess facilities schedule RC-F.
[3] Interruptible service schedule RC-Interruptible.

[FR Doc. 82-15219 Filed 6-3-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER82-529-000]

Western Massachusetts Electric Co.; Filing

May 28, 1982.

The filing Company submits the following:

Take notice that on May 17, 1982, Western Massachusetts Electric Company (WMECO) tendered for filing a proposed Purchase Agreement with Respect to Various Gas Turbine Units (Purchase Agreement) dated December 1981 between WMECO, the Connecticut Light and Power Company (CL&P) and the Hartford Electric Light Company (HELCO) (collectively the NU

Companies) and the City of Chicopee Municipal Lighting Plant (Chicopee).

WMECO states that the Purchase Agreement provides for a sale to Chicopee of a specified percentage of capacity and associated energy from five gas turbine generating units during the period from December 1, 1981 to November 30, 1982, together with related transmission service.

WMECO requests an effective date of December 1, 1981, and therefore requests waiver of the Commission's notice requirements.

WMECO states that the Capacity Charge for the proposed sevice was determined on a cost of service basis at the time that the sale was made and was determined in accordance with Appendix C and Exhibits thereto of the Purchased Agreement. The Transmission Charge rate is and annual average cost of transmission service on the Northeast Utilities (NU) system at the time that the sale was made and was determined in accordance with Appendix E and Exhibits thereto of the Purchase Agreement. The monthly Transmission Charge is determined by the product of (i) the transmission charge rate divided by twelve (S/KW-month), and (ii) the number of kilowatts of winter capability which Chicopee is entitled to receive. The Variable Maintenance Charge is desired from historical costs and the Additional Maintenance Charge is twice the Variable Maintenance Charge, based on manufacturer's recommendations.

WMECO states that copies of this rate schedule have been mailed or delivered to CL&P, HELCO and Chicopee, Chicopee, Massachusetts.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 10, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15233 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-347-001]

Wisconsin Electric Power Co.; Compliance Filing

May 27, 1982.

The filing Company submits the following:

Take notice that on May 11, 1982, Wisconsin Electric Power Company filed a compliance report pursuant to the Commission's order issued April 13, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before June 7, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-15214 Filed 6-3-82; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2140-3]

Availability of Environmental Impact Statements Filed May 24 Through May 28, 1982 Pursuant to 40 CFR Part 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities, Ms. Kathi Wilson, (202) 245-3006.

Corps of Engineers:
- EIS No. 820342, Final, COE, AK, Valdez Hydrolectric Powerplant, Allison Lake/ Copper River Basin, Due: July 6, 1982
- EIS No. 820343, Final, COE, MI, Harrisville Harbor Shore Erosion Damage Mitigation, Alcona County, Due: July 6, 1982
- EIS No. 820327, DSuppl, COE, IA, Blowers Creek Local Flood Protection Project, Black Hawk County, Due: July 19, 1982
- EIS No. 820341, DSuppl, COE, CA, South Fork Flood Control Project, Santa Clara River, Los Angeles Co., Due: July 19, 1982
- EIS No. 820350, DSuppl, COE, IL, Eldred and Spankey Drainage and Levee District Flood Control Project, Due: July 19, 1982

Department of Commerce:
- EIS No. 820347, Final, NOA, SEV, REG ATL Atlantic Bluefin Tuna Fishery, Fishery Management Plan, Due: June 8, 1982

Department of Interior:
- EIS No. 820329, Draft, BLM, SEV, ID NV Bruneau-Kuna Grazing Management Program, Due: July 19, 1982
- EIS No. 820339, Draft, BLM, CA, Western Counties Wilderness Study Project/ Escondido-Border Unit, Due: July 19, 1982
- EIS No. 820346, Draft BLM, ID, Owyhee Wilderness Study Areas Wilderness Designation, Owyhee County, Due: March 9, 1982
- EIS No. 820349, Draft, BLM, CA, Central California Study Areas, Wilderness Recommendations, Due: July 19, 1982
- EIS No. 820335, Final, BLM, UT, White River Dam Water Development Project, Uintah County, Due: July 6, 1982
- EIS No. 820332, Final, FWS, SEV, in MI, St. Joseph River Anadromous Fisheries Program, Due: July 6, 1982
- EIS No. 820351, Draft, OSM, MT, Rosebud's Area "C" Mine, Permit and Mining and Reclamation Plan, Due: July 2, 1982

Department of Transportation:
- EIS No. 820326, Final, FAA, AZ, Falcon Field Master Plan, Expansion of Facilities, Maricopa County, Due: July 6, 1982
- EIS No. 820336, DSuppl, FHW, NV, US 395 Construction, Winters Ranch to I-580, Washoe County, Due: July 19, 1982
- EIS No. 820345, Final, FHW, CA, Patten Way Construction, Webster Street and Lincoln Avenue, Due: July 6, 1982
- EIS No. 820344, Final, FHW, MD, MD-702 Extension, Old Eastern Avenue to Back River Neck Road, Due: July 6, 1982

Environmental Protection Agency:
- EIS No. 820328, Final, EPA, VT, Arlington Wastewater Treatment Facilities, Grant Bennington County, Due: July 6, 1982
- EIS No. 820330, Final, EPA, MD, Little Patuxent Water Quality Management Center (Savage Plant), Grant, Due: July 6, 1982
- EIS No. 820333, Final, EPA, PA, Leola Wastewater Treatment Facilities Plan, Grant, Lancaster County, Due: July 6, 1982

Department of Housing and Urban Development:
- EIS No. 820340, Draft, HUD, MT, Valley Unit Housing Development, Mortgage Insurance, Gallatin County, July 19, 1982
- EIS No. 820331, Report, HUD, CO, Colorado Springs Metropolitan Areawide Study, EL Paso County.
- EIS No. 820334, Final, CDB, MD, Carroll Creek Flood Control and Adjacent Park Improvements, CDBG, Due: July 6, 1982

Department of Defense, Navy:
- EIS No. 820337, Draft, USN, RI, Naval Education and Training Center, Homeporting of Frigate Vessels, Due: July 19, 1982

National Science Foundation:
- EIS No. 820338, Draft, NSF, HI, Mauna Kea 10-Meter Wave Telescope Installation, Grant, Hawaii County, Due: July 19, 1982

Nuclear Regulatory Commission:
- EIS No. 820348, Final NRC, IL, Clinton Power Station, Unit 1, Operating License, DeWitt County, Due: July 6, 1982

Amended Notice:
- EIS No. 760402, Draft, COE, CA, Nine-Par Sanitary Landfill Project, Santa Clara County, Permit, Due:[1]

[1] Published Federal Register 3-26-76—Officially Withdrawn.

Dated: June 2, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82-15291 Filed 6-3-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59086A; TSH FRL 2136-5]

Benzoxazole Carbocyanine; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM-82-14) under section 5 of the Toxic Substances Control Act (TSCA) on April 14, 1982. Notice of receipt of the application was published in the **Federal Register** of April 23, 1982 (47 FR 17665). EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on May 26, 1982.

FOR FURTHER INFORMATION CONTACT: Anna Coutlakis, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 M St., SW., Washington, DC 20460, (202-382-3742).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the **Federal Register**. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On April 14, 1982, EPA received an application for an exemption from the requirements of sections 5(a) and 5(b) of TSCA to manufacture a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM-82-14. The manufacturer claimed his identity, the specific chemical identity, the specific use and production volume of the new substance as confidential business information. The generic name of the new substance is benzoxazole carbocyanine, and it will be used as an ingredient in photographic film. The test marketing period is not to exceed 2 months. During manufacturing and processing, 19 workers will be dermally exposed for a total of 29 days. A notice published in the **Federal Register** of April 23, 1982 (47 FR 17665) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency has not received any comments concerning the application.

EPA has established that the test marketing of the substance described in TM-82-14, under the conditions set out in the application, will not present any unreasonable risk of injury to health or the environment. No significant health concerns were identified for the TME substance. Minimal exposure is expected during manufacture and processing of the chemical. There is low potential for human contact to the new substance in the photographic film. No significant environmental concerns were identified and environmental release of the substance will be low.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application and, in particular, those enumerated below.

1. This exemption is granted solely to this manufacturer.

2. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.

3. The production volume of the new substance may not exceed that described in the test marketing exemption application.

4. The test marketing activity approved in this notice is limited to a period of 2 months commencing on the date of signature of this notice by the Administrator.

5. The number of workers exposed to the new chemical should not exceed that specified in the application and the duration of exposure should not exceed that specified.

The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: May 26, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-15186 Filed 6-3-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59090; TSH FRL 2138-3]

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by June 21, 1982.

ADDRESS: Written comments, identified by the document control number "(OPTS-59090)" and the specific TME number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E-401, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm.

E–216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the public reading room E–107.

TME 82–21

Close of Review Period. July 8, 1982.
Manufacturer. Confidential.
Chemical. (G) Substituted benzene compound.
Use/Production. (S) Intermediate for manufacture of a chemical substance. Prod. range: Confidential.
Toxicity Data. Confidential.
Exposure. Minimal number of technical personnel.
Environmental Release/Disposal. Confidential.

TME 82–22

Close of Review Period. July 9, 1982.
Manufacturer. Confidential.
Chemical. (G) Substituted benzene.
Use/Production. (S) Intermediate for manufacture of a chemical substance. Prod. range: Confidential.
Toxicity Data. Confidential.
Exposure. Minimal number of technical personnel.
Environmental Release/Disposal. Confidential.

Dated: June 1, 1982.

Denise F. Swink,

Acting Director, Management Support Division.

[FR Doc. 82–15184 Filed 6–3–82; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 78–371; FCC 82–180]

Exchange Network Facilities for Interstate Access (ENFIA)

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order extending agreement.

SUMMARY: In accordance with the original ENFIA agreement, approved on April 16, 1979, the Commission determines that an extension of the agreement for a maximum additional period of two years is in the public interest. The Commission also determines that the level of payment for the OCCs' use of jointly used subscriber plant is to be maintained at 55%.

DATES: See paragraph 34.

FOR FURTHER INFORMATION CONTACT: Aileen R. Amarandos, Common Carrier Bureau, (202) 632–9342.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

Adopted: April 14, 1982.

Released: April 14, 1982.

By the Commission: Commissioner Quello concurring and issuing a statement; Commissioner Fogarty dissenting and issuing a statement; Commissioner Jones concurring and issuing a separate statement; Commissioner Dawson concurring and issuing a separate statement.

In the matter of Exchange Network Facilities for Interstate Access (ENFIA), CC Docket No. 78–371.

I. Introduction

1. On April 16, 1979 (44 FR 23933; April 23, 1979), this Commission issued an order in this proceeding approving an agreement among several carriers regarding Exchange Network Facilities for Interstate Access (ENFIA). 71 FCC 2d 440 (1979). This agreement established the methods to be used to compute charges of AT&T and GTE subsidiaries for the origination or termination of certain interstate telecommunications services provided by carriers other than telephone companies (OOCs).[1] That agreement is commonly known as the ENFIA agreement. The OCC services that are covered by the agreement are described as services that are "like" MTS and WATS or as "Execunet/SPRINT-type interstate services." Those terms describe some services that use local exchange switches at both ends. They do not include enhanced services or basic services that cannot be used for voice communications. The origination and termination or access service covered by the ENFIA agreement does not encompass every form of access service that conceivably might be provided for an Execunet/SPRINT-type service. The agreement is limited to the access that was then being provided for Execunet/SPRINT-type service. Such access is provided through line side terminations with a Class 5 switch that requires the use of seven digits to enable an OCC customer to reach an OCC switch.

2. The ENFIA agreement requires that charges be computed separately for three distinct elements. Element 1 consists of the line between an OCC switch and the local exchange or Class 5 switch. Charges for similar lines in other tariffs are incorporated by reference. Element 2 consists of the use of the traffic sensitive portion of that Class 5 switch and the use of other traffic sensitive switching and trunking facilities in connection with calls that are switched through more than one Class 5 switch in the same local exchange. The charge is computed to simulate the amounts that local exchange carriers receive through settlements or divisions of revenues when comparable service is provided for MTS or WATS. A discount from that simulated charge is included to compensate for local message unit charges that OCC customers pay to access an OCC switch. Element 3 consists of the use of non-traffic sensitive local exchange facilities such as terminals, inside wiring, subscriber lines, and the non-traffic sensitive portion of a Class 5 switch. That charge is also related to a simulated charge for MTS or WATS use of such facilities. The OCC charge is currently 55% of the simulated MTS–WATS charge. The charges specified in the ENFIA agreement were implemented in a tariff known as BSOC 8.

3. The ENFIA agreement was designed to provide an interim formula for the computation of such OCC access charges until this Commission or the Congress established a more comprehensive access compensation system. Paragraph 6 of the ENFIA agreement provides that the interim charges will be superseded by charges filed pursuant to an order of this Commission in the *MTS-WATS Market Structure Inquiry* (CC Docket No. 78–72) or charges established pursuant to new legislation relating to that subject. If neither contingency occurs before the fifth anniversary of the effective date, the agreement will expire.

4. Paragraph 11 specifies another contingency that would end the agreement. Expiration will occur on the third anniversary of the effective date unless this Commission has determined that an extension "is reasonable and in the public interest" and determines "an appropriate level of payment" for Element 3.[2]

[1] The term OCC has traditionally been used to describe a carrier that does not provide local exchange telephone service and does not participate in any joint rate offerings with carriers that do provide local exchange telephone service.

[2] This deadline is also made explicit in the BSOC 8 tariff, which states that a new rate level for Element 3 (Rate Level D) will be applicable from May 2, 1982 through April 15, 1983 if, prior to April 15, 1982, "the F.C.C. determines the rates are in the public interest and specifies an appropriate level of payment (Factor P) for the use of jointly used subscriber plant." Factor P represents a weighting applicable to the OCCs which approximates the cost and value differences between ENFIA connections and MTS and WATS connections. Rate Levels A, B and C for Factor P have been 35%, 45% and 55% respectively. Factor P is one component of

The Separations Amount and Billed Minutes are to be determined according to specific procedures set forth in the tariff, although, as set forth below, the calculation of Billed Minutes has been the subject of considerable controversy. The 1.015 component is a constant that provides for ENFIA-related use of Independent Telephone Company local exchange facilities involved in Bell-Independent Extended Area Service areas.

5. AT&T filed a new tariff on January 13, 1982, for the OCC access service that is presently provided under the ENFIA BSOC 8 tariff. The new tariff is known as BSOC 10. AT&T proposes to make BSOC 10 effective on April 16, 1982 if this Commission does not elect to extend the ENFIA agreement. However, if the ENFIA agreement is extended, BSOC 10 will automatically be withdrawn.

6. On March 1, 1982, we issued a Public Notice inviting parties to combine comments on the extension of the ENFIA agreement with petitions regarding the BSOC 10 tariff. The following parties filed either separate or combined pleadings: American Telephone and Telegraph Company (AT&T); ABC, CBS, and NBC (the Networks); the GTE Telephone Companies (GTE); MCI Telecommunications Corporation (MCI); Rochester Telephone Corporation (Rochester); Satellite Business Systems (SBS); Southern Pacific Communications Company (SPCC); Tel Systems Management Corporation (TSM); United States Independent Telephone Association (USITA); U.S. Telephone Communications (U.S. Tel.); United States Transmission Systems (USTS); Western Union Telegraph Company (Western Union); National Association of Regulatory Utility Commissioners (NARUC); Organization for the Protection and Advancement of Small Telephone Companies and National Telephone Cooperative Association (OPASTCO/NTCA); the Illinois Commerce Commission (Illinois); and the Kentucky Public Service Commission (Kentucky).[3]

II. Comments and Discussion

A. Public Interest Considerations

7. The first issue before the Commission is whether it is in the public interest to extend the ENFIA agreement for an additional two years. This question relates to the usefulness of the agreement and the formula it establishes as an interim mechanism for the determination of certain access costs pending a more permanent resolution of the access charge issue for all interstate services. Most of the parties have addressed the extension question in the context of the level of charges, and do not provide a separate assessment of the continued value of the agreement itself.

8. AT&T believes that the extension of the ENFIA agreement is a desirable course, but specifies that, under either of the two choices available to the Commission, the extension of ENFIA or the approval of the BSOC 10 tariff, the level of payment for Element 3 must be set at 100%. Similarly, GTE, NARUC and Kentucky generally favor extension of the agreement, on the condition that, in Phase II, actual billed minutes of use are used and the level of payment is set at 100%. The Networks say that the agreement should not be extended unless it is clear that users of MTS, WATS and private line services do not subsidize ENFIA customers. USITA's position is that the Commission should permit BSOC 10 to become effective on the ground that subsidies to the OCCs should be eliminated. OPASTCO/NTCA and Illinois do not take a specific position on the extension issue, but agree with the parties who argue that actual billed minutes and a payment level of 100% should be used. Rochester opposes the continuation of the agreement beyond a maximum period of one year and advocates an expeditious transition to state approved exchange access charges.

9. Some of the OCCs believe that the agreement has never represented a legitimate cost basis for rates and should not be extended. Both MCI and Western Union take this position, arguing that there is no record upon which the Commission can extend ENFIA into Phase II, and that considerations of parity with other technologically similar interstate services, particularly FX and CCSA, necessitate a return to the pre-ENFIA local business rate for OCC connections. MCI, along with SBS, SPCC, and U.S. Tel., also maintains that the continued use of a traffic sensitive measure to allocate non-traffic sensitive costs is another major infirmity of the ENFIA agreement, especially in light of the Commission's recent decision to freeze temporarily the percentage of non-traffic sensitive costs allocated to the interstate jurisdication. Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board (CC Docket No. 80–286), FCC 82–98 released February 26, 1982. SPCC argues that the formula should not be extended, but that the charges for ENFIA should be capped at the current dollar level.

10. Other OCCs think the agreement should be extended, but urge that the charges not be increased. For example, SBS, USTS, U.S. Tel., and Tel. System generally believe that the agreement should be extended, but also specify that the rate level should be frozen. SBS provides specific reasons why an extension of the agreement itself would serve the public interest. SBS stresses the necessity of providing a workable interim solution to the access problem while a more permanent access charge mechanism is being developed. Both USTS and SBS perceive a need to avoid costly litigation among carriers concerning the proper level of ENFIA rates and prevent disastrous dislocations in the competitive marketplace.

11. We have determined that the public interest would be served by an extension of the ENFIA agreement. This decision is based upon essentially the same considerations which led us to conclude that the public interest would be served by approving the original agreement. When we approved that agreement, we were confronted with a choice between approving the agreement or conducting protracted proceedings to determine the lawfulness of an alternative AT&T ENFIA tariff that included substantially higher charges. We concluded that such proceedings would waste Commission and carrier resources because any ENFIA tariff would be superseded either by access charges to the established in CC Docket No. 78–72 or access charges established pursuant to legislation that was being actively considered in both houses of Congress. We are confronted with a

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Element 3 charges, which are derived through the following formula:

Use of Jointly Used Subscriber Plant = SEP Amount x Factor P x Billed Minutes x 1.015.

[3] The Commission has also received several informal or unsolicited submissions from the parties regarding this matter. For example, on November 30, 1981, AT&T made an informal filing consisting of cost, revenue and traffic data relating to Element 3. On December 17, 1981, MCI submitted a filing styled as a complaint concerning ENFIA charges. File No. E–81–37. This filing merely repeats arguments MCI has raised and which are being considered in this and other proceedings. Therefore, we are incorporating that "complaint" as a filing in CC Docket No. 78–72. We have also decided to consider it as a filing in this proceeding expressing MIC's views with respect to the appropriate level of payment during an ENFIA extension. On January 1, 1982, SPCC and USTS made a joint Informational Submission addressed to Element 3. On February 10, 1982, MCI filed a petition regarding BSOC 10 also addressing the ENFIA agreement. On February 17, 1982, AT&T submitted a letter analyzing the joint SPCC/USTS Informational Submission, and on February 26, 1982, SPCC responded to AT&T's critique. Finally, on March 30, 1982, the Commission received a letter from the Minnesota Public Utilities Commission supporting the extension of the ENFIA agreement.

similar choice today. The BSOC 10 tariff would establish much higher OCC access charges and appears to raise significant questions that would require protracted investigation. This Commission is still in the process of formulating access charge computation rules in CC Docket No. 78–72 and the Congress is still actively considering bills that would establish access charges.

12. An investigation of BSOC 10 would be even more wasteful than an investigation of the original AT&T ENFIA tariff because we have made progress in formulating access charge computation rules in the intervening three years. We will probably be adopting final access charge rules before any BSOC 10 investigation could be completed. In these circumstances, the public interest would clearly be served by an extension of the ENFIA agreement.

13. We reject the contentions of the parties that the agreement must be invalidated because it does not cure the lack of parity among interstate services. The telephone companies, the Networks, and NARUC basically argue that the agreement should be extended only if subsidies of OCCs are eliminated by increasing the level of payment toward 100% of the amount paid by MTS and WATS. In contrast, many of the OCCs assert that parity of charges between ENFIA and FX/CCSA services must be restored. The extent of any lack of parity between ENFIA and other interstate services and the appropriate level of discount for such a lack of parity, should it exist, are still unresolved questions. This is precisely the issue that is being addressed in the context of CC Docket No. 78–72. It would be imprudent to prejudge the result of that proceeding by replacing the ENFIA agreement with some other mechanism that might, in the final analysis, prove no more accurate than ENFIA. Such an action would also occasion needless dislocations in the marketplace since further adjustments would have to be made to the access charge schedules that will ultimately be approved. At this stage, the public interest is best served by an extension of an arrangement that was originally sanctioned by the parties themselves and that provides a reasonable interim solution to a very complex problem.

14. We also reject the contentions of some OCCs that the viability of the agreement has been vitiated by the Commission's recent action to freeze temporarily the subscriber plant factor (SPF) used in the jurisdictional allocation of non-traffic sensitive plant. The ENFIA agreement concerns the development of rates for an interstate service, not the apportionment of costs between jurisdictions. Therefore, as AT&T has noted, the structure of charges for Element 3 under the ENFIA agreement remains entirely consistent with SPF freeze. The SPF freeze will ultimately be reflected in the charges paid by OCCs, but the interim adoption of a percentage rather than usage based factor for allocations between state and interstate operations does not require the elimination of our current practice of using a traffic sensitive measure for the division of costs among services within the same jurisdication.[4]

15. In addition, we do not accept the arguments made by MCI, SBS, and SPCC that jurisdictional cost separations results cannot be used as a basis for ENFIA rates. These parties maintain that separations procedures are unlawful, that they create inappropriate subsidies, and that they are not intended to be used in ratemaking. These same objections were made by the OCCs to the Interim Cost Allocation Manual. In our *Report and Order* adopting that Manual, we acknowledged the shortcomings of the separations process but stated that the decision to use separations results as a measure of the costs to be allocated among AT&T's interstate services was the best of available alternatives. 84 FCC 2d 384 (1981), paragraph 27.[5] The same is true here. The separations process is currently under review by a Federal-State Joint Board in CC Docket No. 80–286, and, until final revisions to separations procedures are made and the access charge issue is resolved, there is no better alternative to the use of separations results in the computation of ENFIA charges as agree to by the parties. As noted by USTS, the signatories to the agreement certainly recognized that final decisions on these issues might not be made within the first three years of the ENFIA arrangement and this is why provisions for a two year extension were made. In our view, the fact that there are problems with separtations that are not yet resolved is an argument for extending the agreement rather than abandoning it.

16. The OCC arguments that the ENFIA agreement should be replaced by a frozen dollar rate level are also unpersuasive. MCI maintains that the FCC is not restricted to an extension of the formula, and that, from the beginning, it was understood that the parties would be free to advocate other positions in Phase II to achieve an acceptable "bottom line." However, the language of the original agreement makes it clear that the parties did not contemplate that ENFIA would be extended at a frozen rate. Rather, the agreement sets out a specific formula which governs any extension. Under the terms of the agreement, if we determine that an extension is in the public interest, only the percentage for Factor P must be established to initiate Phase II of the arrangement. Since freezing the dollar amount of ENFIA charges was not contemplated by the parties, we could take this step only by abandoning the agreement itself and prescribing in its place a new rate which happens to be equal to the rate developed under the agreement for an earlier period. If it is desirable to effectuate the intent of the parties—and we believe that such a goal is entitled to some weight—this can only be done by developing a rate based upon the formula in the agreement after the Commission has determined a new Factor P. Moreover, there is no basis here for prescribing the existing ENFIA rate. This rate is unrelated to costs and is otherwise unsupported by any record evidence. SPCC argues that, since the Commission has chosen to maintain the *status quo* for interstate allocations while deliberations on access charges and separations continue, the *status quo* must be maintained for OCCs as well. We reiterate that jurisdictional allocations are a separate consideration, and our policy choices in that area do not necessarily provide the proper precedent for our actions regarding arrangements among interstate services.

17. Another recent development must be taken into account in determining whether the agreement should be extended. AT&T and the Department of Justice have entered into an agreement with respect to the terms of a consent decree in an antitrust case.[6] Those terms include a requirement that access charge tariffs be filed for Bell Operating Companies, as defined in the decree, that specify an effective date for the tariffs that is within 18 months of the effective date of the decree. Such a tariff effective date may occur before April 16, 1984. These provisions of the decree, as noted by SBS, are a further reason for

[4] In addition, in our order adopting the SPF freeze, we explicitly stated that the action was non-prejudicial, and that it did not, as the OCCs seem to believe, constitute a final repudiation of the general applicability of traffic sensitive measures to non-traffic sensitive costs. Rather, it was adopted as an interim measure pending resolution of the issues in CC Docket No. 80–286.

[5] The Commission's decision in this matter has been unanimously upheld. MCI v. FCC, D.C. Cir. No. 81–1052 (April 13, 1982).

[6] Modification of Final Judgment, Civil Action No. 17–49 (D.D.C.).

the adoption of a non-disruptive interim approach to the ENFIA extension.

18. Finally, we do not believe that the nature of OCC services has changed so remarkably since the agreement was first adopted that the formula is no longer serviceable. Several of the OCCs indicate that their expansion into residential, off-peak hour services represents substantially altered circumstances from those that led them to agree to the inclusion of billed minutes in the formula for Element 3. They maintain that the reflection of these additional minutes in the ENFIA calculations will increase the charges so significantly that the formula must be viewed as unworkable. At this time, a dispute exists concerning the identification of relevant minutes of use for the purpose of calculating ENFIA rates. However, this matter need not be resolved to extend the agreement, since it will be examined in full in the context of revision to BSOC 8.[7] Therefore, we make no disposition here on the issue of the definition of the proper number of billed minutes to be used in the computations, and we find that the fact that a dispute exists concerning those minutes does not detract from the essential soundness of the agreement as an interim approach.

B. Level of Payment

19. There is disagreement among the parties as to the scope of the level of payment that the Commission is obligated to determine in the context of this action. The OCCs, including MCI, SBS, and SPCC argue that the Commission must make a general determination that ensures that local access will be available at reasonable rates. In a similar vein, but toward a different result, GTE, Kentucky, USITA, OPASTCO/NTCA, the Networks, NARUC and Illinois seem to indicate that, in order to extend the ENFIA agreement into Phase II, the Commission must make a broad assessment of the impact of ENFIA charges on local carriers and resolve matters concerning any subsidies that may be flowing to the OCCs. It is certainly true that in assessing the ultimate rate to be established in Phase II of ENFIA, the Commission must assure that the charges are reasonable, for both OCCs and local carriers, and that they are non-discriminatory to the extent that discrimination is discerned and found unjustified. However, as AT&T has observed, the question before us in this particular action is a narrow one.[8] Under the terms of both the original agreement and BSOC 8, the implementing tariff, the Commission is obliged to determine only the level of Factor P, or the percentage of the simulated MTS–WATS charge applicable to OCC ENFIA connections.[9]

20. With regard to that percentage factor, the lines between the parties are clearly drawn. The ENFIA agreement says that AT&T and GTE expect to urge that the Element 3 level of payment be increased to 100% during any extension and the OCCs expect to urge that the level of payment "be substantially reduced below the Phase I level." Those expectations have been realized. AT&T, GTE, OPASTCO/NTCA, Kentucky and Illinois specifically state that an increase from the present 55% to 100% should be instituted. USITA and the Networks ask for an elimination of the subsidy for OCCs. NARUC says that the percentage chosen should not fall below a level that is reasonable in light of any differences in the quality of interconnection, but suggests that the Commission "err on the high side." Generally, the parties arguing for a 100% factor contend that the OCCs provide services that are the functional equivalents of MTS and WATS, and that, unless ENFIA charges are put on par with the costs allocated to similar services, a significant shortfall will have to be borne by the customers of AT&T's other interstate offerings. These parties also assert that a 100% factor is necessary to avoid incentives for large MTS and WATS users to by-pass local exchange facilities. Finally, they observe that OCCs enjoy vigorous financial growth, and that since they are no longer fledglings in the marketplace, they must bear their fair share of relevant costs of access.

21. The OCCs, on the other hand, are mostly of the view that the structure of the ENFIA formula is now inadequate to reflect the cost conditions under which OCCs operate, and that the percentage factors should probably be reduced below 55%. They argue for the maintenance of a significant discount on the basis that parity of technical interconnection has not yet been achieved.[10]

22. In our order adopting the ENFIA agreement, we determined that the reduced percentage as agreed to by the parties were appropriate in part because of these differences in interconnection. *See* especially paragraph 38 and footnote 25. We assumed that the parties' estimate of cost and value differences provided a reasonable basis for an interim discount. The record in CC Docket No. 78–72 does not provide any concrete information with respect to the costs that would be incurred if local exchange switches were equipped to provide equal digit access. Nor does that record provide any information with respect to the value that interexchange service customers place on the ability to make calls of higher technical quality using fewer digits. This difference in access service cannot be viewed exclusively as a competitive problem. The requirement that additional digits be used and the possible existence of other transmission and signalling disparities place a burden on the end user of Execunet/SPRINT-type services. An end user would presumably expect some kind of discount if that user obtained an equally cumbersome service from AT&T. Failure to take such qualitative differences into account in establishing rates would arguably grant an undue preference to MTS–WATS users. Therefore, at this time, taking the extra digits and allegations of other factors into account, we cannot find that a discount that differs from the parties' original estimate would be appropriate for the purposes of this Order.

23. There is an additional reason why an increase to 100% would not be appropriate under the present circumstances. The SPCC comments in the original ENFIA proceeding noted that some traffic sensitive Central Office Category 6 investment that is allocated to the interstate jurisdiction is attributable to weighting factors that were designed to reflect differences in the use of such facilities by toll and local exchange costs. SPCC suggested that such costs be excluded from any OCC access charges because the OCC services use those facilities in the same manner as local exchange service. The AT&T reply comments agreed that some adjustment would be reasonable. SBS also notes the substandard quality generated in the VGCOCF and local switching and trunking facilities and the

[7] See paragraph 32, below.

[8] The applicability of ENFIA charges to resellers, an issue raised by U.S. Tel and TSM is outside of the scope of this particular decision, and will be treated separately.

[9] MCI claims that such a determination must be made pursuant to Section 205(a) of the Communications Act, and must be accompanied by hearings and opportunities for cross examination. However, as AT&T has pointed out, our authority to make these determinations is derived from the agreement itself. In specifying a percentage for Factor P, we are merely fulfilling our responsibilities as defined in the agreement, and the thousands of pages of pleadings filed by parties to this and related proceedings give us ample basis for such a limited action.

[10] SBS and USTS have itemized the aspects of unequal interconnection including, among other things, channel noise characteristics, lack of dial pulse access, lack of the digit dialing, and lack of call billing and automatic number identification.

general technical inadequacies of using business lines to terminate MTS and WATS like traffic. SBS argues that a non-parity factor to account for these inadequacies should be applied to ENFIA services as a whole.

24. Adjustments for these problems would logically be included in Elements 1 and 2 rather than Element 3. The ENFIA agreement does not authorize us to make interim adjustments in Elements 1 and 2. Therefore, to the extent they are appropriate, such differences in interconnection can be reflected only in an Element 3 adjustment. A 100% Element 3 level of payment would not be appropriate during an ENFIA extension because it would not include such adjustments.

25. However, we find that an adjustment in excess of 45% cannot be justified. MCI and Western Union assert that access charges should be reduced in order to equalize the charges with those applicable to FX and CCSA which use connections similar to those provided for Execunet/SPRINT services. Viewed from the perspective of the general using public, three different means currently exist for obtaining local exchange service for interstate access. First, users of public switched network services effectively pay the highest charges for their use of the local exchange based on a revenue requirement determined under the separations process.[11] Second, telephone company customers requiring access to local exchange facilities for such services as FX and CCSA pay relatively lower charges in accordance with rates stated in local exchange tariffs on file with various states. The third process of compensation for exchange access service is that which is embodied in the ENFIA agreement as applied to OCCs. The ENFIA payment levels are lower than MTS/WATS payments but higher than the rates that other telephone company customers pay for interstate use of the local exchange.

26. Disparities in the access costs that are reflected in rates for different telephone company services and the rates of "value added" carriers were explicitly recognized in the original ENFIA agreement. The parties probably selected an intermediate level of payment that is lower than the MTS/WATS level and higher than the level for many other services because they recognized that it would be impossible to establish parity between Execunet/SPRINT-type access and all other forms of access compensation until those disparities are eliminated through other proceedings. We santioned that approach for the interim period when we approved the original agreement. We believe it is still reasonable to allow OCCs to pay charges that are lower than MTS/WATS access costs and higher than other access costs during the interim period. That interim period will, of course, end when access charges are established pursuant to the rules we will be prescribing in CC Docket No. 78–72.

27. The use of an intermediate level charge during the interim period that will precede the elimination of unjustified disparities in access costs for other services is at least as appropriate today as it was in 1979. It is probably more appropriate because we are closer to the adoption of rules that will eliminate such unjustified access cost disparities among other services.

28. We have already mentioned that our recent decision in CC Docket No. 80–286 to adopt the Joint Board's recommendation to impose a temporary SPF freeze does not affect our decision to extend the ENFIA agreement. The SPF freeze also will have no effect at all on Rate Level D. The Separation Amount, (SEP Amount) which is one of the elements of the ENFIA formula will be determined for Rate Level D based upon 1981 costs which can be obtained from separations. However, it will not be possible to compute the SEP Amount for Rate Level E by obtaining a count of MTS and WATS minutes from the separations process itself. As a result of the SPF freeze, the minute count used in jurisdictional separations that is the basis of the calculation of the SEP Amount will no longer be performed. However, a count of MTS, WATS and ENFIA traffic is required for and will be obtained by using the methods that we have presecribed in the Interim Cost Allocation Manual. That Manual allocates interstate non-traffic sensitive exchange plant investment that is not allocated to private line services among the three message categories on the basis of unweighted relative use. A factor that represents MTS minutes as a percentage of total minutes is used to determine the portion of the total investment that is attributable to MTS. The same procedure is used for WATS and the Execunet/SPRINT services. The combined MTS/WATS cost that is computed under the Interim Cost Allocation Manual method can be divided by total MTS/WATS minutes to obtain an MTS/WATS per minute cost for purposes of computing the SEP Amount required by the ENFIA agreement. The parties to the ENFIA agreement must have contemplated such minor adjustments for separations changes that might occur before the agreement expired.

29. In their joint Informational Submission, SPCC and USTS suggest a different adjustment to reflect the SPF freeze. SPCC and USTS suggest that the exchange plant costs be allocated among Execunet-SPRINT-type services and other services upon the basis of the relative number of "access lines" for purposes of computing access charges for the Execunet/SPRINT-type services. Those carriers claim that the use of this alternative methodology would produce an Element 3 charge of $7.01 per month.

30. Any charge that reflects costs allocated on the basis of relative lines rather than relative usage would represent a radical departure from the rate computation methods that were contemplated by the parties to the ENFIA agreement at the time they entered into the agreement. A charge that is based upon such an alternative method could not accurately be described as an extension of the ENFIA agreement. It would also be inconsistent with the Interim Cost Allocation Manual. We have accordingly concluded that the SPCC–USTS Informational Submission is not useful for purposes of determining an appropriate level of payment for Element 3 during an extension of the ENFIA agreement.[12]

III. Conclusion and Ordering Clauses

31. We have determined that an extension of the ENFIA agreement is reasonable and in the public interest. We have also determined that the existing level of payment is appropriate at this time under these conditions (i.e., given the interim nature of the extension and our present lack of information as to ENFIA costs) for purposes of computing Element 3 charges during the extension period. The term "level of payment" refers to the percentage of the simulated MTS/WATS charge. We are not freezing the dollar amount of the Element 3 charge. Element 3 charges

[11] As has been recognized in CC Docket No. 80–286, a Federal-State Joint Board proceeding established to examine and modify certain aspects of the jurisdictional separations process, these charges do not necessarily reflect true costs.

[12] That Informational Submission would be of limited value even if we concluded that a line rather than a usage charge would be appropriate. SPCC and USTS have not defined "access lines" and have not described the facilities used for telephone company services that should be deemed to be equivalent to a line between a Class 5 and an OCC switch for purposes of obtaining a line count. It appears that SPCC and USTS must have used line count based on their VGCOCFs in order to produce an Element 3 charge of $7.01 per month. Since the number of VGCOCFs is not representative of OCC subscriber line usage, that procedure would not provide an appropriate line count, even if such costs where allocated on a per line basis.

that are computed pursuant to the ENFIA agreement are adjusted periodically to reflect changes in MTS/WATS cost and OCC usage.

32. Absent an agreement among the parties, the dispute concerning the proper calculation of billed minutes will be addressed in the context of revisions to BSOC 8. To ensure-continued interconnection pending the resolution of this dispute, the Commission may draw upon its inherent statutory powers. See Sections 4(i) 201(a), and 204(b); of the Communications Act, 47 U.S.C. 154(i), 201(a) and 204(b); and *Lincoln Telephone and Telegraph Co. v. FCC*, 659 F. 2d 1092, 1107 (D.C. Cir. 1981).

33. In view of the contingent nature of the BSOC 10 tariff, we do not intend to conduct any proceedings with respect to that tariff. We will not rule on petitions for investigation, suspension or rejection with respect to BSOC 10 because our decision to extend the ENFIA agreement renders such petitions moot.

34. Accordingly, it is hereby ordered, that the agreement approved by the Memorandum Opinion and Order of this Commission in this proceeding adopted April 12, 1979, and released April 16, 1979, is extended until the earlier of:

(a) The effective date of access charge tariffs filed pursuant to an order of this Commission in CC Docket No. 78–72;

(b) The effective date of access charge tariffs filed pursuant to requirements imposed by future amendments to the Communications Act of 1934;

(c) April 16, 1984.

35. It is further ordered, that the level of payment for purposes of computing Element 3 charges should be 55% of MTS/WATS costs per minute for the use of the same facilities.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Action taken by Commission April 14, 1982.

Concurring Statement of FCC Commissioner James H. Quello

In re: The ENFIA Proceeding (CC Docket No. 78–371)

In my view, extension of the ENFIA agreement clearly serves the public interest, but it must be emphasized that this is strictly an interim solution which does not attempt to address the difficult policy questions surrounding the issue of access to the local exchanges. These policy questions are under active consideration by the Commission in its *MTS–WATS Market Structure Inquiry* (CC Docket No. 78–72). Further, the nature of the access issue has been significantly affected by the proposed AT&T-Justice Department settlement. Since the Commission is not prepared to resolve the access issues, the Commission must attempt to do its best to reasonably extend the negotiated agreement.

I do not fully support the majority opinion here because I share Commissioner Fogarty's concern that—under the existing separations process—the ordinary telephone ratepayer who uses MTS appears to be subsidizing users of OCC services. I believe that the percentage prescribed by the majority is too low. The OCC's are not a cottage industry, and they should be required to compete under equitable standards. Nevertheless, such a subsidy was written into the negotiated ENFIA agreement, and I am unwilling to support Commission imposition of a drastic change in the current rate structure without a better record than is obtainable at this time. Further, it is more consistent with long-term Commission goals that the Commission should err here on the side of unwarranted encouragement of competition rather than toward unnecessary restrictions in favor of a monopoly. I must emphasize, however, that this action should not be read as a signal that the Commission will encourage OCC competition through any type subsidy when a full record for decision has been compiled.

The unfairness which I perceive in this decision is an artifact of the separations process. Action on appropriate access charges for various telecommunications services will substitute reasoned decisionmaking for this necessarily arbitrary Commission choice. A very new telecommunications environment is evolving. This Commission action is clearly not a bridge to that environment, but I believe it constitutes a stepping stone placed in that direction.

Therefore, I concur.

Dissenting Statement of Commissioner Joseph R. Fogarty

In Re: *Exchange Network Facilities for Interstate Access (ENFIA), CC Docket No. 78–371.*

I opposed the ENFIA approach to setting interstate access charges from the beginning. I foresaw then that if the Commission accepted the ENFIA contract at some point we would be faced with the difficult problem of how to adjust the formula at the expiration of Phase I of the agreeement. Instead, I urged the Commission to institute an investigation immediately to determine what rate should be prescribed. Had we taken that action, we by now would have completed the investigation and thereby avoided the dilemma which now confronts us.

The Commission did not adopt my recommendation, preferring instead to delay the agony of decision-making. As a consequence, we are stuck with an ENFIA contract, upon which we have placed our ostensible imprimatur, and only one—or perhaps two—options thereunder: first, if we find it in the public interest to do so, we may extend the contract for a period of two years; and second, after having determined that extension would be in the public interest, we may determine what the Element 3 Factor P percentage should be. Due to our limited authority under the contract, the Commission is placed in a difficult position. The ENFIA Agreement is not a statute; it is what the parties agreed to and, unfortunately, what we permitted them to agree to. So, faced with this reality, we have little choice but to extend the agreement.[1]

To extend the agreement is one thing, but to continue Factor P at 55% is quite another. Here, I must dissent from the majority's decision to maintain what I believe is a completely unjust and unreasonable 55% level of payment for the OCCs. In the majority's rush to protect the "status quo," it has neglected also to protect the interests of the American ratepayer. Once these ratepayers realize that by this decision the Commission has permitted the continued subsidization of the OCCs at their expense and in the amount of almost 7¢ per minute for each OCC call, they will be rightfuly outraged.[2] As my more conservative colleagues have so often observed in other contexts, "there is no such thing as a free lunch." I regret to see that the OCCs are given the status of an exception to prove this rule.

In its recent equalization filing, AT&T conceded that it was seeking FCC permission to require MTS, WATS and Private Line customers to cross-subsidize ENFIA in the amount of $107.7 million because of the fact that the ENFIA category was earning a negative (approximately minus 4%) rate of return.[3] This filing came soon after we had allowed AT&T to earn a 12.75% rate of return.[4] Given ENFIA's negative rate of return, common sense indicates that those interstate ratepayers who do not use OCC services are making-up the difference. Some would argue that it is not the public but telephone companies that absorb this amount but this argument is false. We are not dealing here with money being shifted from the corporate pocket of a local operating company to the corporate pocket of AT&T Long Lines. Instead, we are dealing with costs which, by law, must be borne by a ratepayer—either OCC or Non-OCC. This is not really a case of AT&T versus the OCCs, but of OCC customers versus other interstate ratepayers. If both our pro-competition and cost-causation theories are to reflect any intellectual honesty and integrity, all ENFIA-related costs should be borne by the OCCs and their customers. By deciding to maintain Factor P at 55%, the majority has taken a giant step away from the achievement of this goal.

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[1] A preferable alternative might have been to permit the ENFIA Agreement to lapse, accept for filing and then suspend a Bell tariff, and finally resolve many of these issues as quickly as possible in a tariff investigation.

[2] Many of the OCCs argue the separations costs do not represent true costs. However, until this issue is resolved by the Joint Board in Docket 80–282, the separations costs are the costs which provide the most relevant reference for ENFIA end-to-end MTS/WATS-type interstate service. This approach was recently approved by the D.C. Circuit Court of Appeals, in *MCI* v. *FCC*, No. 81–1052 (D.C. Cir., filed April 13, 1982). As a consequence, it would be unfair to non-OCC ratepayers not to use jurisdictional separations cost results as a basis for ENFIA rates.

[3] AT&T Transmittal No. 13904, filed in December 3, 1981.

[4] *AT&T*, 86 FCC 2d 221, *aff'd on recon.*, 87 FCC 2d 34 (1981).

On the record before this Commission, maintenance of the level of payment of 55% is unsupportable.[5] The types of factors which are used to justify the continuation of a 45% discount are not properly included in any consideration of Rate Element 3. They were disposed of by the parties in Rate Element 2 negotiations. The types of unequal interconnection outlined by the OCCs fail to justify the magnitude of the discount anyway.

Instead of maintaining the OCC level of payment of 55%, the Commission should have increased the level of payment to 65% in Step IV (1982–1983) and to 75% in Step V (1983–84). Under the plain language of the ENFIA Agreement, it is obvious that the parties agreed in Phase I, Steps I, II and III, that they would base the percentage level of OCC payment on combined OCC revenues. Under Step I the increase trigger amount was $110 million per year, under Step II the amount was more than $110 million but not exceeding $250 million per year. Based on staff projections, current combined OCC revenues are estimated to be in excess of $1 billion per year. The progression of the level of payment under Phase I was 10% per year—from 35% to 45% to 55%— and given the tremendous increase in OCC revenues, it is only logical and consistent with the agreement to extend the level of payment from 55% to 65% in the fourth year and from 65% to 75% in the fifth year. As footnotes 3 and 8 of the majority's decision make clear, the Commission has both the record and the authority to increase the Factor P percentage. Moreover, the Commission's broad authority and discretion to set percentages in rulemaking has been recently affirmed. *See WJG Telephone Company, Inc.,* v. *FCC,* No. 81–146 (D.C. Cir., filed April 9, 1982). This action would be a clear signal to all carriers—including both the OCCs and AT&T (subsequent to any Consent Decree divestiture)—that they will be expected eventually top pay 100% of their proper access costs.[6]

There are those who would argue that Factor P should remain at 55% to protect the nascent OCC industry. While I am not insensitive to the special needs of the infant and the infirm, the OCCs are no longer babes in need of an FCC incubator, given that their combined revenues for 1981 will exceed $1 billion. Further, I note that the parties who represent the actual toll ratepaying public—e.g. NARUC. Kentucky, Illinois, OPASTCO/NTCA—all support an increase in the level of payment. The facts upon which this issue should be decided—as distinguished from the plaintive wailings of some of the parties—clearly indicate that the infants have attained their majority and should be treated accordingly.

Under the ENFIA Agreement, the Commission was given the responsibility of determining that an extension of the agreement was reasonable and in the public interest as well as determining an appropriate level of payments. By no stretch of the imagination is 55% an appropriate level. In prescribing this inadequate level, the majority has failed to discharge its responsiblity with the effect that the vast majority of U.S. toll ratepayers will continue to subsidize competition for competition's sake.

April 14, 1982.

Concurring Statement of Commissioner Anne P. Jones

In Re: *Exchange Network Facilities for Interstate Access (ENFIA)—CC Docket No. 78–371.*

This Commission has been placed in an extremely difficult if not impossible position by the necessity to act on the ENFIA agreement without an adequate record—indeed without any meaningful record at all. I agree that an extension of the ENFIA agreement is in the public interest only in the very narrow sense that not extending this agreement may well lead to an even worse result. The determination that the level of payment should be set at 55 percent of the MTS/WATS equivalent is, in my view, a determination based upon the rawest sort of pragmatism. It most emphatically cannot and does not stand for a determination by this Commission that this is an appropriate level of discount for current OCC access to local telephone facilities, where such access may be inferior, by some measure, to that traditionally provided to the Bell/Independent interstate operation.

For pragmatic considerations I cannot dissent. In all honesty I cannot approve. Therefore, I concur.

Concurring Statement of Commissioner Mimi Weyforth Dawson Re: Exchange Network Facilities for Interstate Access (ENFIA) and Bell System Operating Companies Tariff FCC No. 8*

With these decisions the Commission is extending an agreement among AT&T, GTE and several other common carriers (OCCs) concerning the terms and conditions of interconnection to AT&T's and GTE's local operating companies, suspending AT&T's tariff which purports to honor the terms of that agreement and prescribing an interim rate pending the outcome of the investigation. I agree with the outcome of these decisions because I believe it does not produce an unreasonable increase in the interconnection rate for the OCCs. For reasons set forth below, any greater increase would not be appropriate in view of our projected course in resolving jurisdictional separations and access questions. However, I do not agree with the methodology used, *i.e.,* freezing the discount applied to level of payment,[1] and utilizing the number of billed minutes as a mechanism for adjusting the rate. I object to the focus on the billed minutes because it lends what may be undue credence to the practice of applying a traffic sensitive measure to determine the rate for use of non-traffic sensitive plant.

Rather, I urge the Commission to adopt a timetable that would establish parity of interconnection and access charges for all interstate competitors. That timetable could track the one agreed upon by AT&T and the Department of Justice in the proposed modification of the 1956 Consent Decree. In the interim, I believe the Commission should have increased the level of payment in ENFIA for Rate Level D to 65 percent. Additionally, if the access charge proceeding is not resolved prior to the onset of the fifth year of the ENFIA agreement, the level of payment should be increased to 75 percent. Finally, OCC minutes for interstate ratemaking purposes should be set equal to those used for separations purposes,[2] until the Commission determines an appropriate method by which to allocate NTS costs among interstate services. To do otherwise, in my opinion, would discourage efficient use of the telecommunications network.

As the preceding discussion indicates, the appropriate solution to any interim or final access charge question requires not only an understanding of today's exchange access costs and terms of exchange access, but also requires an in-depth look at jurisdictional separations and the interconnection agreements contained in the proposed Consent Decree modification between AT&T and the Department of Justice. We must evaluate any approach we take prior to solution of these issues in light of what the ultimate interconnection charges are likely to be when the anticipated changes in jurisdictional separations are completed and the right to equal interconnection for all interstate competitors is secured.

Currently, MTS and equivalent services pay, either directly or indirectly through the settlements process, the equivalent of an exchange access charge that contributes towards the cost of: 1) connecting facilities between the toll switching center and the local company's central office; 2) local exchange switching and trunking facilities; and 3) non-traffic sensitive (NTS) subscriber plant (which consists of regulated customer premises equipment, inside wiring, the customer-dedicated local telephone lines extending from the customer premises to the local central office, and the customer-dedicated portions of the local switch). The third cost element represents, by far, the

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[5] On this critical point, I join Commissioner Quello to the extent he believes that the percentage prescribed is too low (*See* Concurring Statement of Commissioner James H. Quello), and Commissioner Jones to the extent that she states that the level of payment decision does not stand for a determination that the 55% figure is an appropriate level of discount for current OCC access to local telephone facilities (*See* Concurring Statement of Commissioner Anne P. Jones).

[6] With regard to access costs, many parties assume that the Subscriber Plant Factor (SPF) will be reduced to Subscriber Line Usage (SLU). This has not been decided by the Joint Board in Docket 80–282, and it is premature for parties to make any assumptions based on such a result.

*Action taken by the Commission on April 14, and April 29, 1982.

[1] Because of the significant disparity in interconnection between the OCC and the AT&T/independent long distance services, the Commission has determined that a 55 percent discount is appropriate for the OCCs during the interim period prior to resolution of the access charge proceeding. The Commission believes this proceeding will be resolved before the extended ENFIA agreement expires on April 16, 1984.

[2] The Commission recently froze the percentage of non-traffic sensitive costs allocated to the interstate jurisdiction at 1981 levels. See Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board (CC Docket No. 80–286), FCC 82–98, released February 26, 1982. OCC minutes for separations purposes have been frozen at 3000 minutes per ENFIA line.

largest part of the exchange access expense that providers of MTS and equivalent services contribute to the local exchange carrier. For this element, the OCCs pay 55 percent of the amount that AT&T and GTE pay for an equivalent number of MTS/WATS minutes. Private line services, it should be noted, make no interstate contribution to local exchange carriers for subscriber plant.

The allocation of NTS subscriber plant is both the most important and the most controversial factor in determining costs for access purposes. Of course, any allocation of NTS costs between jurisdictions must be arbitrary "because there is no purely economic method of allocation." [3] Nevertheless, the percentage of NTS costs allocated to the interstate jurisdiction has risen over time from strict relative usage to the subscriber plant factor. With the onset of competition in the telecommunications industry, however, numerous parties have argued that the subscriber plant factor is not economically sustainable because the new competitors will simply bypass the local exchange to avoid paying excessive access charges. In response, the Commission has established a Federal/State Joint Board to examine the legal, economic and equitable arguments for changing the current allocation of exchange costs between jurisdictions.

The record amassed in the Joint Board proceeding to date is voluminous. Over seventeen volumes of comments have been filed in addition to cost data for over seven hundred telephone companies. The commenters, in my opinion, argue persuasively that the portion of NTS costs allocated to the interstate jurisdiction must drop considerably to conform with the dynamics of a competitive market. While the exact percentage to be allocated among jurisdictions, or the manner in which it should be allocated, has not been determined by this Commission, I think it is significant for our purposes here that the majority of respondents, including AT&T, support an interstate allocation of NTS costs of no more than about 10 percent, including appropriate adjustments to this average for areas in need of relief from significant upward rate pressure.

Acknowledging potential changes in jurisdictional separations is critical to our decision here because any interim access charge must be a stepping stone on the path that leads to our final destination. As mentioned, the record in the Joint Board proceeding supports a substantial reduction in the portion of NTS costs allocated to the interstate jurisdiction. Such a reduction means that the separations amount that the OCCs must pay for in the ENFIA tariff would drop precipitously. Assuming for illustrative purposes that the interstate allocation of NTS plant will drop to ten percent, then the ultimate charge for OCC access to the local exchange will not be significantly greater than the interim rate being prescribed through this order. This is true *even if* the level of payment in the ENFIA agreement is increased to 100 percent and AT&T's estimates concerning OCC minutes per line are employed for ratemaking purposes. Of course, if the Commission were to allocate NTS plant between jurisdictions on the principle of economic efficiency alone, the interstate portion of NTS costs would be much less than 10 percent.[4] This would result in even lower access charges for interstate competitors.

Faced with these longer term considerations, the Commission essentially is being forced in this proceeding to make premature judgments concerning quality of interconnection and the actual costs for that interconnection. It seems clear to me that the present record does not present any irrefutable facts on either of these issues. The only undisputed fact is that the parties have agreed to disagree. Moreover, the Commission has not made any fundamental or lasting decisions concerning separations, the allocation of costs among interstate services or interconnection, and we have seen that these parameters will be changing over time.

Therefore, I concur in these decisions only to the extent that I believe the interim rate prescription is in the public interest and will not be disruptive to the market. However, I sincerely regret that this Commission has missed the opportunity to spell out the beginning of a rational approach to resolving the issues of access and separations. Without such a beginning, I am fearful that any investigatory efforts in this area will simply act to obfuscate the real issue of how costs should be allocated efficiently.

[FR Doc. 82-15112 Filed 6-3-82; 8:45 am]

BILLING CODE 6712-01-M

[3] See *MCI* v. *FCC*, D.C. Cir 81-1052 at 16 (1982).

[4] See, *e.g.*, the Comments of NTIA in Docket 80-286, August 18, 1981.

June 1, 1982.

[Report No. 1354]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed by June 21, 1982. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 90 of the Commission's Rules to Prescribe Policies and Regulations to Govern the Interconnection of Private Land Mobile Radio Systems with the Public Switched Telephone Network in the Bands 806–821 and 851–866 MHz. (Docket No. 20846)

Filed by: Kenneth E. Hardman, Attorney for Telocator Network of America on 5–24–82. Paul Rodgers, Charles D. Gray & Deporah A. Dupont, Attorneys for National Association of Regulatory Utility Commissioners on 5–24–82. (Petition for Clarification)

Subject: Amendment of Parts 2 of the Commission's Rules governing Frequency Allocations, 22 of the Commission's Rules governing the Public Mobile Radio Services, 73 of the Commission's Rules governing the Radio Broadcast Services, and 74 of the Commission's Rules governing Experimental, Auxiliary, and Special Broadcast, and Other Program Distribution Services to reallocate UHF–TV Broadcast Channel 17 for common carrier fixed relay and control operations in the State of Hawaii. (Gen Docket No. 81–460, RM–2364)

Filed by: Arthur Blooston & Gerard J. Duffy, Attorneys for RadioCall, Inc., on 5–14–82.

Subject: Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations. (Colorado Springs, Denver, Evergreen, Lamar, Monte Vista, and Pueblo, Colorado). (BC Docket No. 81–819, RM–3839)

Filed by: Eric L. Bernthal, Attorney for Sky Hi, Inc. (KKFM), on 5–24–82.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-15110 Filed 6-3-82; 8:45 am]

BILLING CODE 6712-01-M

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

Task Group A–3 of Working Group A: U.S. Interests

Chairman: John Marus (212) 684–4700

Date: Tuesday, June 22, 1982

Time: 1–4 P.M.

Location: Federal Communications Commission, 1919 M Street, N.W., Room 650, Washington, D.C.

Agenda:

(1) Welcome and Introductions
(2) Approval of Agenda
(3) Subcommittee A–3 Mandate
(4) Proposed Report Outline for U.S. Interests
(5) Tentative Work Schedule
(6) Other Business
(7) Next Meeting
(8) Adjournment

Dated: May 28, 1982.

Federal Communications Commission

William J. Tricarico,

Secretary.

[FR Doc. 82-15111 Filed 6-3-82; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before June 24, 1982. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters, from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. 93–26.

Filing party: Ralph M. Pais, Esq., Graham & James, One Maritime Plaza, Suite 300, San Francisco, California 94111.

Summary: Agreement No. 93–26 amends the basic agreement of the North Europe -U.S. Pacific Freight Conference to extend the expiration date of the independent action clause through December 30, 1982.

Agreement No. T–2171–8.

Filing party: Ryokichi Higashionna, Ph. D., Director of Transportation, State of Hawaii, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813.

Summary: Agreement No. T–2171–8, between the State of Hawaii (Hawaii), Matson, Terminals, Inc. (Matson) and California and Hawaiian Sugar Company (H&C), modifies the parties' basic agreement, which provides for the lease of marine terminal space by Hawaii to Matson for use primarily as a container facility. The purpose of the modification is to terminate all container vessel terminal and stevedoring service operations by Matson at Fort Armstrong, Honolulu Harbor, as of September 6, 1981, but covers the continued operation of the molasses tank farm on Parcel I through June 30, 1983, with H&C. As compensation, Matson shall pay to Hawaii $0.94 per sq. ft. per annum for Parcel I consisting of 60,484 sq. ft., and $0.314 per sq. ft. per annum for Easement AB consisting of 24,695.20 sq. ft. Dockage, wharfage, storage charges and pipeline tolls will be assessed Matson according to Hawaii's tariff. The leased premises are to be used for the handling of bulk molasses transported by vessels which berth at Fort Armstrong's terminal and related activities.

Agreement No. T–3498–2.

Filing Party: Mr. Marion S. Moore, Jr., Traffic Manager, South Carolina State Ports Authority, P.O. Box 817, Charleston, South Carolina 29402.

Summary: Agreement No. T–3498–2, between South Carolina State Ports Authority (Authority) and Moller Steamship Compahy (Moller), modifies the basic agreement between the parties which provides for the preferential use by Moller of Berth No. 1, as well as the lease to Moller of 4.04 acres of land at the Authority's Columbus Street Terminal. The purpose of the modification is to (1) change the location of the premises to a 12.8 acre site at the Authority's Wando River Terminal, with a corresponding increase in rental; (2) designate an area for handling, stuffing and stripping of containers at the Container Freight Station; and (3) change the form of the agreement from a lease to a license.

By Order of the Federal Maritime Commission.

Dated: May 27, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82–15085 Filed 6–3–82; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 82–28]

Gila River Products v. the Sea-Land Service, Inc.; Filing of Complaint and Assignment

Notice is given that the complaint filed by Gila River Products against Sea-Land Service, Inc. was served May 26, 1982. Complainant alleges that respondent has demanded payment of rates for ocean transportation in violation of the Shipping Act, 1916.

This proceeding has been assigned to Administrative Law Judge John E. Cograve. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis G. Hurney,

Secretary.

[FR Doc. 82–15085 Filed 6–3–82; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Early Termination of the Waiting Period of the Premerger Notification Rules; Gannett Co. Inc.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Gannett Co. Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain voting securities of Mississippi Media Corp. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Gannett Co. Inc. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: May 20, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–15244 Filed 6–3–82; 8:45 am]

BILLING CODE 6750–01–M

Early Termination of the Waiting Period of the Premerger Notification Rules; McLean Securities

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: McLean Securities is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain assets of Ferrell Lines Incorporated. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: May 14, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–15243 Filed 6–3–82; 8:45 am]

BILLING CODE 6750–01–M

Early Termination of the Waiting Period of the Premerger Notification Rules; Saatchi & Saatchi Company, P.L.C.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Saatchi & Saatchi Company, P.L.C. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all the voting securities of Compton Communications, Inc. The grant as made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Saatchi & Saatchi Company, P.L.C. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: May 6, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons comtemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–15241 Filed 6–3–82; 8:45 am]

BILLING CODE 6750–01–M

Early Termination of the Waiting Period of the Premerger Notification Rules; Western Institutional Properties Trust

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Western Institutional Properties Trust is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain assets of Roxboro Investments (1976) Ltd. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: May 20, 1982.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–15242 Filed 6–3–82; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 28.

Public Health Service

Center for Disease Control

Subject: National Immunization Survey—Supplement to September Current Population Survey—CPS–1/CPS–524(IM)—Reinstatement

Respondents: Individuals or households

OMB Desk Officer: Richard Eisinger

Social Security Administration

Subject: Calculation of 1978 Base Year Court Costs To Be Deducted From IV–D Claims for Certain Court Costs—New

Respondents: State or local governments

OMB Desk Officer: Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to both the HHS Reports Clearance Officer and the appropriate OMB Desk Officer designated above at the following addresses:

J. J. Strnad, HHS Reports Clearance Officer, Hubert H. Humphrey Building, Room 524.F, Washington, D.C. 20201

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer)

Dated: May 28, 1982.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 82-15109 Filed 6-3-82; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 78N-0318; DESI 8082]

Calcium Propionate and Sodium Propionate Vaginal Gel; Denial of Hearing and Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs denies a hearing and withdraws approval of the new drug application for Propion Gel because the drug lacks substantial evidence of effectiveness. The drug is used in the treatment of vulvovaginal candidiasis.

EFFECTIVE DATE: June 14, 1982.

FOR FURTHER INFORMATION CONTACT: Suzanne O'Shea, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 8082) published in the Federal Register of July 28, 1972 (37 FR 15188), FDA announced its evaluation of a report received from the National Academy of Sciences-National Research Council (NAS-NRC), Drug Efficacy Study Group regarding Propion Gel (NDA 8-082), manufactured by Wyeth Laboratories, Inc., Division of American Home Products Corporation, P.O. Box 8229, Philadelphia, PA 19101 ("Wyeth"). The notice stated that the drug was probably effective for the treatment of vulvovaginal candidiasis and afforded Wyeth an opportunity to obtain and submit substantial evidence of the effectiveness of the product.

Wyeth submitted no data in response to the July 28, 1972 notice. Instead, in February 1973, it submitted to the Advisory Review Panel on Over-the-Counter (OTC) Antimicrobial Products information to show that Propion Gel is generally recognized as safe and effective for OTC use. Subsequently, the Advisory Review Panel on OTC Contraceptives and Other Vaginal Products (OTC Vaginal Products Panel) assumed responsibility for products used in treating vaginal infections or irritations. Although Propion Gel has been used to date only as a prescription drug, the OTC panel considered the information that Wyeth submitted. That panel's recommendation was that Propion Gel be found safe and effective as an OTC product for the symptomatic relief of minor vaginal irritations and for the physician-supervised treatment of *Candida albicans* infections.

In a notice of opportunity for hearing published in the Federal Register of February 2, 1949 (44 FR 6777), the Director of the Bureau of Drugs proposed to withdraw approval of the new drug application for Propion Gel as a prescription product on the grounds that the drug lacks substantial evidence of effectiveness. The Director explained that no data from adequate and well-controlled studies, as defined in 21 CFR 314.111(a)(5)(ii), had been submitted in response to the July 28, 1972 notice.

By submissions dated March 2 and April 3, 1979, Wyeth requested a hearing and filed information in support of Propion Gel's effectiveness as a prescription product. Wyeth objected to the proposed withdrawal of approval of Propion Gel, and offered several alternative courses of action. These are discussed below in section V.

After considering all of the material submitted by Wyeth and the findings of the OTC Vaginal Products Panel, the Commissioner concludes that there is no genuine and substantial issue of fact justifying a hearing, and that the legal objections offered are insubstantial. A full discussion follows.

I. The Drug

Propion Gel contains calcium propionate (10 percent) and sodium propionate (10 percent) in a water soluble base containing glycerin, boric acid (3 percent), and tragacanth.

II. Recommended Uses

The current labeling of Propion Gel offers the product for the treatment of vulvovaginal candidiasis.

III. Data Submitted to Support Claims of Effectiveness

Wyeth submitted summaries of 41 references from the medical literature (not all of which were fully identified) to the OTC Vaginal Products Panel, and incorporated them by reference into its hearing request.

Wyeth's submission is on its face inadequate to support a hearing or to demonstrate the safety and effectiveness of Propion Gel for prescription use. The submission fails to satisfy several requirements of 21 CFR 314.200, governing hearing requests. For example, the submission did not include any protocols or raw data of studies on which Wyeth relies to justify its request. 21 CFR 314.200(d). Nor did Wyeth submit an analysis specifying how each study meets each criterion of an adequate and well-contolled study, 21 CFR 314.200(d)(2). Most importantly, however, Wyeth's submission is deficient because the summaries submitted show that the references are not reports of adequate and well-controlled clinical investigations, but are merely generalized descriptions of the condition, isolated case reports, reports of in vitro studies, animal safety tests, or uncontrolled clinical studies. Effectiveness may be shown only by adequate and well-controlled clinical studies. 21 U.S.C. 355(d); 21 CFR 314.200(d)(1).

Of the 41 references submitted by Wyeth, the 17 listed below are, according to Wyeth's own summaries (which are condensed below), descriptions of vaginitis in general and a general recommendation of calcium propionate-sodium propionate vaginal jellies. None of the listed reports even purports to present adequate and well-contolled studies using control groups, blinding techniques, quantitative analyses, and statistical evaluation. 21 CFR 314.111(a)(5)(ii). They are, rather, isolated case reports, random experience, and reports lacking the details which permit scientific evaluation, which are inadequate to demonstrate the effectiveness of a product. 21 CFR 314.111(a)(5)(ii)(*c*).

1. Abel, S., "Diagnosis and Treatment of Vaginitis," *General Practice*, 4:35-40, 1951. The author recommends Propion Gel for mycotic vaginitis and states that the infection is usually cleared in two weeks.

2. Davis, P. L., "Monolilial Pruritis Ani et Vulvae," *Medical Times*, 82:859-60, 1954. The author states that relief was obtained with Propion Gel by many patients whose conditions were resistant to other therapy.

3. DeCosta, E. J., "Infections of the Vagina and Vulva," *Clinical Obstetrics and Gynecology*, 12:195-218, 1969. Possible causes of vulvovaginitis are discussed. Propion Gel is one of several treatments recommended for candidiasis.

4. Gray, L. A. and M. L. Barnes, "Vaginitis in Women, Diagnosis and Treatment," *American Journal of Obstetrics and Gynecology*, 92:125–36, 1965. In 478 patients complaining of discharge or vaginitis, *Candida albicans* was cultured in 33 percent of the patients. Treatment with propionic acid preparations appeared helpful.

5. Greenblatt, R. B. and J. W. Bennett, "Pediatric Gynecology and Endocrinology," *Pediatrics*, 18:318–22, 1956. The authors discuss causes of vulvovaginitis in children, and recommend Propion Gel for *Candida albicans* infection.

6. Heseltine, H. C. and T. Lefebvre, "Management Causes of Vaginal Discharge (Especially Trichomoniasis and Mycosis)," *Illinois Medical Journal*, 128:333–337, 1965. The author discusss causes of vaginitis. They recommend a jelly containing sodium and calcium propionate and propionic acid to treat infections caused by *Candida albicans*.

7. Idson, B., "Topical Fungal Infections," *Drug and Cosmetic Industry*, 92:422–424, 1963. The author reviews fungal infections and mentions Propion Gel for vaginal use.

8. Mussey, E., "Some Common Gynecological Complaints," *Proceedings of the Staff Meetings of the Mayo Clinic*, 34:291–299, 1949. Propion Gel is recommended for treatment of *Candida albicans* infection. The author states that the product is unlikely to cause secondary dermatitis.

9. Parker, R. T., C. P. Jones, and F. B. Carter, "Pruritis Vulvae in the Postclimacteric Woman," *Geriatrics*, 11:235–242, 1956. The authors claim that a vaginal jelly composed of calcium and sodium propionate is effective in the treatment of mycotic vulvovaginitis due to infection with *Candida albicans*.

10. Parker, R. T., C. P. Jones, and W. C. Thomas, "Causes and Therapy of Pruritis Vulvae," *Modern Medicine*, 98–100, 1956. The authors claim that mycotic infections are the second most common cause of itching and state that treatment with sodium and calcium propionate is simple and effective.

11. Patterson, J. F., "Office Gynecology," *North Carolina Medical Journal*, 17:165–170, 1956. The author discusses several gynecological problems and recommends Propion Gel to treat vaginitis caused by *Candida albicans*.

12. Peck, S. M., "Fungus Infections and Their Treatment," *Medical Annals of the District of Columbia*, 21:1–10, 1952. The author reviews several kinds of fungal infections and mentions liquids, powders, and ointments containing sodium propionate for treatment.

13. Peck, S. M. and L. Schwartz, "A Practical Plan for the Treatment of Superficial Fungus Infections," *Public Health Reports*, 58:337–345, 1943. The etiology, treatment, and prophylaxis of superficial fungal infections are discussed. One of the tinctures recommended contains sodium propionate as one of the components.

14. Tate, B. C., "The Choice of Fungicide," *Practitioner*, 169:193–195, 1952. The author discusses *Monilia* and ringworm infections. The use of sodium propionate ointment is mentioned.

15. Traylor, J. B., "Vaginal Discharge," *Journal of the Medical Association of Georgia*, 42:529–530, 1953. The author asserts that *Trichomonas vaginalis* is seen most often and that the second most common cause of vaginal discharge is infection with moniliasis. Treatment with Propion Gel for moniliasis is recommended.

16. Weinstein, B. B. and D. Weinstein, "Vaginitis," *Mississippi Doctor*, 29:117–122, 1951. The authors review various causes of vaginitis and recommend Propion Gel for treatment of *Candida albicans* infections.

17. Zuspan, F. P., et al., "Management of Patients with Vaginal Infections. An Invitational Symposium," *Reproductive Medicine*, 9:1–16, 1972. The authors recommend Propion Gel to treat vaginits caused by *Candida albicans*.

Several of Wyeth's summaries (Refs. 18 through 32, condensed below) are merely reports of in vitro studies or animal safety tests. These references also are insufficient to justify a hearing because effectiveness may be demonstrated only by adequate and well-controlled *clinical* studies. 21 U.S.C. 355(d); 21 CFR 314.111; 21 CFR 314.200(d)(1).

18. Cantarelli, P. R., "Effect of Sodium Propionate on the Growth of Some Yeasts," *Rev. Agr.*, 43(2):51, 1968. The author asserts that sodium propionate in culture media inhibited growth in the *Candida, Saccharomyces, Torulopsis, Pichia, Rhodotorula*, and *Zygosaccharomyces* genera.

19. Georges, A., "Fungistatic Activity of Propionic and Caprylic Acids in Relation to pH," *Archives Belges de Dermatologie et de Syphiligraphie*, 9:1–13, 1953. Under in vitro conditions, the bacteriostatic action of propionic acid is higher than caprylic acid, but the fungistatic activity of caprylic acid is greater than propionic acid.

20. Hara, S., et al., "Pharmacological and Toxic Actions of Propionates. Examination of General Pharmacological Actions and Toxicity of Sodium and Calcium Propionates," *Chemical Abstracts*, 62:977, 1965. When administered to rats orally, in short-term and long-term experiments, the propionates showed almost no toxicity.

21. Heseltine, W. W., "A Note on Sodium Propionate," *Journal pf Pharmacy and Pharmacology*, 4:120–122, 1952. The author asserts that a 20 percent sodium propionate solution instilled into rabbits' eyes caused no deleterious effects. Oral daily doses of 6 grams given to an adult male caused no adverse effects.

22. Heseltine, W. W., "Sodium Propionate and Its Derivatives as Bacteriostatics and Fungistatics," *Journal of Pharmacy and Pharmacology*, 4:577–581, 1952. The author describes the bacteriostatic and fungistatic activity of sodium propionate against 21 microoraganisms.

23. Heseltine, W. W., and L. D. Galloway, "Some Antibacterial Properties of Sodium Propionate," *Journal of Pharmacy and Pharmacology*, 3:581–585, 1951. Using in vitro assay methods, the authors show that sodium propionate inhibits a wide range of bacteria and fungi.

24. Keeney, E. L., "The Fungistatic and Fungicidal Effect of Sodium Propionate on Common Pathogens," *Bulletin of Johns Hopkins Hospital*, 73:379, 1943. The author determined the fungistatic and fungicidal activity of sodium propionate on several pathogenic fungi.

25. Keeney, E. L., et al. "Studies on Common Pathogenic Fungi and on Actinomyces Bovis. In Vitro Effects of Fatty Acids," *Bulletin of Johns Hopkins Hospital*, 75:377–392, 1944. The authors compared the in vitro fungistatic and fungicidal effects of sodium valerate, sodium caproate, sodium caprylate, sodium caprate, sodium undecylenate, and sodium propionate on common pathogens and on *Actinomyces bovis*.

26. Mariat, F., et al., "Fungistatic Action of Sodium Propionate and Sodium Lauryl Sulfate, Their Synergism When Used in Combination," *Annales de l'Institut Pasteur*, 91:678–683, 1956. The authors assert that there is a synergism between sodium propionate and sodium lauryl sulfate in their fungistatic activity on four pathogenic fungi.

27. Peck, S. M., "A New Method for the Evaluation of Anti-Fungicidal Chemicals," *Transactions of the New York Academy of Sciences*, 2:112–117, 1949. The author evaluates fungicides and their effects on the metabolism of the fungi in the formation of trichophytin.

28. Peck, S. M. and H. Rosenfield, "The Effects of Hydrogen Ion Concentration, Fatty Acids and Vitamin C on the Growth of Fungi," *Journal of Investigative Dermatology*, 1:237, 1938.

The authors study the in vitro fungicidal activity of various fatty acids.

29. Pomerat, C. M., and C. D. Leake, "Short Term Cultures for Drug Assays: General Considerations," *Annals of the New York Academy of Sciences,* 38:1110–1128, 1954. Propionic acid was found to be injurious to primary explants of chick spinal cord, heart, and spleen. Sodium propionate was found to be less toxic.

30. Theodore, F. H., "Inhibitory Effect of Sodium Propionate on Contaminant Fungi," *Eye, Ear, Nose, Throat Monthly,* 45:73–79, 1966. The author investigated the action of sodium proprionate and a propionate-naphazoline mixturec against fungi shown to be capable of ocular pathogenicity.

31. Vicher, E. E., et al., "The Effect of Sodium Propionate and Sodium Caprylate on the Fatty Acid Content of *Trichophyton Rubrum,*" *Mycopathologia,* 35:208–214, 1968. The authors conclude that both sodium propionate and sodium caprylate in subfungistatic concentrations manifest significant effects on the fatty acid synthesis and pigmentogenesis of *T. Rubrum.*

32. Wyss, O., et al., "The Fungistatic and Fungicidal Action of Fatty Acids and Related Compounds," *Archives of Biochemistry,* 7:415–425, 1945. Various saturated and unsaturated fatty acids were tested for their fungistatic and fungicidal activity.

The following references are, again as shown by Wyeth's own summaries (Refs. 33, 34, and 35, condensed below), reports of clinical studies of conditions other than vaginitis. These references are clearly inadequate to demonstrate the effectiveness of Propion Gel in treating vulvovaginal candidiasis. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*). In fact, Propion Gel is not mentioned in any of these studies.

33. Keeney, E. L. et al., "Propionate and Undecylenate Ointments in the Treatment of Tinea Pedis and an In Vitro Comparison of their Fungistatic and Antibacterial Effects with Other Ointments," *Bulletin of Johns Hopkins Hospital,* 75:417–439, 1944. In the vitro portion of the experiment, propionat-propionic acid ointment was superior in its fungistatic effect on *Trichophyton mentagrophytes* to undecylenate-undecylenic acid, ammoniated mercury (10%), sulfathiazole (5%), Whitfield's (half and full strength), and tyrothricin (0.5%). In the clinical portion of the study, comparable results were obtained in the treatment of athlete's foot.

34. Keeney, E. L. and E. N. Broyles, "Sodium Propionate in the Treatment of Superficial Fungus Infections," *Bulletin of Johns Hopkins Hospital,* 73:479–483, 1943. The results of treatment of 55 patients with athlete's foot due to *Trichophyton gypseum* and *Trichophyton purpureum* were reported. Following 20 weeks of continuous treatment, fungus material was found in only 3 patients. In 23 patients with tinea crusis treated with sodium propionate, 91 percent were cured. Treatment with sodium propionate was also successful in patients with several other conditions (none of which was vulvovaginal candidiasis).

35. Peck, S. M., et al., "Role of Sweat as a Fungicide," *Archives of Dermatology and Syphilology,* 39:126–146, 1939. The author claims that topical applications of ingredients of sweat, such as mixtures of lactic acid, propionic acid, butyric acid and ascorbic acid, are valuable in treating fungal infections. It is asserted that areas of the body which are exposed to greater concentrations of sweat have less tendency to fungal infections.

Wyeth identified six references (Refs. 36 through 41) that contain results of clinical studies which it asserts demonstrate that Propion Gel is effective in treating vulvovaginal candidiasis. As with the other 35 references, Wyeth submitted only a brief summary of the article reporting the study. However, even if Wyeth had submitted the articles themselves they would not justify a hearing because the articles are not reports of adequate and well-controlled studies. 21 CFR 314.200(d)(1).

A review of the articles describing the studies shows that five (Refs. 36 through 40) used no control group at all and that the sixth study (Refs. 41), which did use a control group, failed to collect critical data from it. Thus all six clinical studies failed to provide a comparison of the results of treatment of diagnosis with a control in such a fashion as to permit quantitative evaluation. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*). The reports of these studies are also inadequate because they do not explain the methods of observation and recording of results or the steps taken to minimize bias on the part of the subject and observer. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*). Furthermore, only two of the six studies (Refs. 40 and 41) were conducted using Propion Gel; the other studies tested other products with different formulations. The following descriptions of these articles show all six studies to be uncontrolled.

36. Alter, R. L., et al., "The Treatment of Mycotic Vulvovaginitis with Propionate Vaginal Jelly," *American Journal of Obstetrics and Gynecology,* 53:241–244, 1947. The authors treated 54 pregnant and nonpregnant patients who had mycotic vulvovaginitis. All patients were treated with a vaginal jelly containing calcium and sodium propionate. All patients obtained relief from pruritis vulvae within 76 hours. Of the nonpregnant patients, 80 percent were cured; of the pregnant patients, 39 percent were cured.

37. Branscomb, L. "Mycotic Vulvovaginitis," *Southern Medical Journal,* 41:534–537, 1948. *Candida albicans* was identified as the causative factor in 63 percent of 81 patients with vulvovaginal itching. All patients were propionate jelly. The author reports that a majority of the patients were relieved of itching in 72 hours, and 64.7 percent were cured within 3 weeks. Of the 18 patients not cured within 3 weeks, four were pregnant.

38. Davids, A. M., and A. Kurtin, "Fatty Acid Therapy of Pruritus Vulvae,"*American Journal of Obstetrics and Gynecology,* 58:397–400, 1949. The authors tested sodium propionate ointment (15% sodium propionate), douches (5% sodium propionate), and suppositories (10% sodium propionate). In 23 case of pruritus, relief was obtained in 1 to 4 weeks. In 22 cases of menopausal or atrophic vulvitis, the pruritus disappeared in 2 to 8 weeks. The authors also state that they successfully treated two patients with vulvectomy and four patients with additional lichenification.

39. Jones, C. P., et al., "Mycotic Vulvovaginitis and the Vaginal Fungi," *American Journal of Obstetrics and Gynecology,* 54:738–747, 1947. The authors report on a series of 280 patients (189 pregnant, 91 nonpregnant) with mycotic vulvovaginitis. *Candida albicans* was identified as the causative organism in 91.07 percent of the patients. Over 100 patients obtained excellent results when treated with a calcium and sodium propionate jelly. Negative cultures were obtained in 80 percent of the nonpregnant patients and 33 percent of the pregnant patients. The authors also discussed vaginal fungi in general, their identification, symptomology, and various treatments.

40. Suran, R. R. and R. B. Greenbelt, "Propionic Acid in the Therapy of Mycotic Vulvovaginitis: A Method of Diagnosis," *Journal of the Medical Association of Georgia,* 38:89–94, 1949. In 35 of 37 patients with mycotic vulvovaginitis due to *Candida albicans,* Propion Gel gave symptomatic relief. Negative cultures were obtained in 50 percent of the pregnant patients and 34 percent of the nonpregnant patients.

41. Kantor, H. I., "Evaluation of Treatment for Monilia in Pregnancy," *American Journal of Obstetrics and*

Gynecology, 62:170–172, 1951. Seventy-two pregnant women who had been diagnosed, through positive *Monila* cultures, as having monilial vulvovaginitis were chosen for this study. Twenty-nine of these women served as a control group and received no treatment of any kind. The remaining 43 subjects were asked to follow a treatment of one-half to three-quarters of an applicatorful of Propion Gel nightly for at least 2 or 3 weeks. The researcher concluded, from questioning the subjects, that 38 of the 43 used the Propion Gel as prescribed.

Six weeks after starting treatment, 29 of the 38 subjects in the Propion Gel group stated that their symptoms had improved (76%). However, cultures taken at the same time showed that only 15 (44%) of the Propion Gel subjects had negative cultures, and that 19 (56%) had positive cultures (4 cultures not obtained).

Followup cultures in the Propion Gel group taken 6 weeks post delivery showed 25 (89%) negative and 3 (11%) positive cultures (11 cultures not obtained). (Since these figures add up to 39, rather than 38 subjects, an error was apparently made in reporting of the study.) Followup cultures taken from the control group at 6 weeks post delivery showed 28 were negative (96.5%) and 1 positive.

In short, the study results show that the group that received no Propion Gel treatment evidenced a post-delivery clinical cure rate greater than the group that received Propion Gel. Because the author did not present any data for the control group at 6 weeks after starting treatment, no comparison is possible for this portion of the study. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*).

Negative results aside, this study is inadequate to justify a hearing because the procedures used were inadequate. For example, the report does not describe how the subjects were divided into test and control groups. Therefore, there is no assurance of comparability in the test and control groups of pertinent variables, such as age, or severity or duration of disease. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). Nor does the study explain steps taken to minimize bias on the part of the subjects and observers. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*). Apparently, no form of "blinding" was used to minimize bias on the part of the observers and analysts of the data.

Furthermore, the study design, although including a control group, fails to provide a comparison with the control in such a fashion as to permit quantitative evaluation at a significant point in the study. That is, the control group was not tested (either for subjective symptomatic relief or objective culture results) at 6 weeks after entry into the study. Consequently, no meaningful interpretation can be made of the data gathered on the treated group at that point of the study. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*). Careful controls are especially important in studies on vulvovaginal candidiasis because a number of women with this condition may experience spontaneous remissions. (Isaacs, J. H., "Nystatin Vaginal Cream in Monilial Vaginitis," *Illinois Medical Journal*, 143:240–241, 1973.) Indeed, the statistics compiled in this study at 6 weeks post delivery—showing spontaneous cures in 28 of the 29 (96.5%) control patients—demonstrate this fact. Accordingly, because of the likelihood of spontaneous cures, there is no way to determine how many, if any, of the "cures" at 6 weeks after beginning treatment were attributable to Propion Gel.

In addtion to the 41 references listed above, Wyeth submitted the following excerpts from the medical literature (several of which were not fully identified) with its hearing request:

1. Benson, R. C., *Handbook of Obstetrics & Gynecology*, 6th Ed., Lang Medical Publications, Los Altos, Calif., 1977, pp. 476–80. This excerpt describes various vaginal disorders and lists Propion Gel and three other products for use in treatment of *Candida albicans* vaginitis.

2. Green, T. H., "Gynecology: Essential [sic] of Clinical Practice," pp. 229–233. This excerpt describes various vaginal disorders and lists Propion Gel and seven other products as effective for use in monilial vaginitis.

3. Wilson, J. R., "Vaginal Diseases," *Obstetrics & Gynecology*, 1975, pp. 595–596. This excerpt discusses candidiasis and states that propionic or ricinoleic acid jellies and several other products can be used with good results.

4. "Vulvovaginitis Method of James L. Breen, M.D., and Theodore Cohen, M.D.," in *1978 Current Therapy*, p. 808. This excerpt also discusses candidiasis and simply lists Propion Gel and five other products for treatment of vulvovaginal candidiasis.

These four excerpts from the medical literature are clearly testimonial in nature and do not offer any evidence from adequate and well-controlled clinical studies to support the efficacy of Propion Gel. Isolated case reports, random experience, and reports lacking the details which permit scientific evaluation, such as these, are inadequate to show the efficacy of a product. 21 CFR 314.111(a)(5)(ii)(*c*).

There is another serious defect in Wyeth's submission. None of the information submitted by Wyeth demonstrates the contribution of each component of the product. 21 CFR 300.50. Propion Gel is a low pH ointment containing 3 percent boric acid in addition to the propionic acids. Because boric acid itself can be an effective antifungal agent (Van Slyke, K. K., et al., "Treatment of Vulvovaginal Candidiasis With Boric Acid Powder," *American Journal of Obstetrics and Gynecology*, 141:145–148, 1981), any relief obtained from use of the product is not necessarily due to the propionic acid components. In addition, the acidic ointment alone would no doubt be soothing to inflamed and infected tissues. Thus, Propion Gel is properly considered a combination product, but no studies have been submitted to determine the contribution of each component.

IV. Summary

The information submitted by Wyeth is, on its face, inadequate to support a hearing for Propion Gel. 21 CFR 300.50; 21 CFR 314.111; 21 CFR 314.200. Of the 41 references submitted, only six even purported to be clinical studies on vulvovaginitis. The remaining 35 were in vitro studies, animal studies, studies on conditions other than vulvovaginitis, or mere testimonials.

With respect to the six studies on vulvovaginitis using human subjects, only two tested Propion Gel. None of these clinical studies were adequate and well controlled. Five of the six did not use any control group. The one study that did use a control group failed to compare its results with those of the treatment group at 6 weeks after treatment began; when the results of the control group (no treatment) were compared with the Propion Gel at 6 weeks post delivery, the no-treatment group exhibited a greater cure rate than the Propion Gel group.

Finally, no studies were submitted by Wyeth to show that each component in Propion Gel contributes to the effect claimed within the meaning of and as required by 21 CFR 300.50.

V. Legal Arguments

Wyeth argues that a hearing is justified because the NAS–NRC panel and the OTC Vaginal Products Panel found Propion Gel to be effective. As Wyeth notes, the NAS–NRC Panel on Drugs Used in Disturbances of the Reproductive System found Propion Gel to be effective in treating vulvovaginal candidiasis. It is also true that the OTC Vaginal Products Panel recommended that calcium propionate and sodium propionate be classified as generally

recognized as safe and effective (Category I) for the relief of minor vaginal irritations and that a professional labeling claim for the treatment of *Candida albicans* be allowed for these ingredients. However, as shown below, neither panel's recommendation warrants the holding of an evidentiary hearing.

At the outset, it is important to note that the NAS-NRC reports are only recommendations to the agency. *Holland-Rantos Co.* v. *United States Dep't of Health, Educ. & Welfare,* 587 F.2d 1173, 1175 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944, 948 (6th Cir. 1970). So too are the OTC advisory review panel reports. 21 CFR 330.10(a)(5). It is also important to note that these recommendations cannot overcome any deficiencies in the data upon which they are based.

The NAS-NRC Panel identified three articles (by Alter et al. (Ref. 36), Jones et al. (Ref. 39), and Suran and Greenblatt (Ref. 40)) in support of its finding that Propion Gel is effective for treating vulvovaginal candidiasis. As discussed fully above, none of these studies used a control group and, therefore, none is an adequate and well-controlled study. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*).

Similarly, in support of its recommendation to the Commissioner on sodium propionate and calcium propionate, the OTC Panel identified only Wyeth's submission of 41 references discussed above and one additional article:

Harvey, S. C., "Antimicrobial Drugs," *in* "Remington's Pharmaceutical Sciences," 15th Ed., Edited by Osol, A. and J. E. Hoover, Mack Publishing Co., Easton, PA, pp. 1167–1168, 1975.

The inadequacies of the 41 articles referred to in Wyeth's submission to the OTC Panel are discussed in detail above. The additional excerpt is a brief description of sodium propionate which states that propionic acid and its soluble salts are fungistatic and bacteriostatic against a number of gram-positive cocci. The excerpt does not refer to Propion Gel, nor is it even a report of a clinical study, much less a report of an adequate and well-controlled study. Isolated case reports, random experience, and reports lacking the details which permit scientific evaluation, such as this article, are inadequate to demonstrate effectiveness. 21 CFR 314.111(a)(5)(ii)(*c*).

Therefore, the discrepancy between the Commissioner's view and the views of the NAS-NRC Panel and the OTC Vaginal Products Panel is not an issue of fact justifying a hearing because effectiveness must be demonstrated by adequate and well-controlled clinical studies. 21 U.S.C. 355(d); 21 CFR 314.111(a)(5). Therefore, to grant a hearing based upon panel recommendations would be futile because, in the absence of adequate and well-controlled studies, as here, Propion Gel may not be found effective for its labeled indication. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.,* 412 U.S. 609 (1973).

Wyeth also has requested that the Commissioner stay any decision on its hearing request until 30 days following publication of the final monograph for OTC vaginal products. Wyeth argues that it would be arbitrary and capricious to withdraw approval of the new drug application for Propion Gel for prescription use prior to publication of the final monograph for OTC vaginal products, that deferring a decision on the withdrawal of the new drug application would preserve the integrity of the OTC review process, and that the agency's handling of cough/cold products provides a precedent for such a deferral. The firm also asks for a determination whether Propion Gel is generally recognized as safe and effective is labeled in accordance with the tentative findings of the OTC Vaginal Products Panel.

As the Director pointed out in the notice of opportunity for hearing, OTC vaginal products are not the subject of this DESI proceeding. 44 FR 6778. There is no legal requirement that decision regarding OTC use of a drug for certain indications be made contemporaneously with decisions regarding prescription use of the same drug. To the contrary, docket management is a matter left to the discretion of the administrative agency. *REA Express, Inc.* v. *United States,* 568 F.2d 940, 950 (2d Cir. 1977), *cert. denied,* 435 U.S. 923 (1978). See also 21 CFR 314.200(h).

Although deferred action was appropriate for certain cough/cold products, it is not appropriate for Propion Gel. As explained in the **Federal Register** notice regarding cough/cold prescription products (38 FR 34482), many of the ingredients in those products also were contained in currently marketed OTC cough/cold products. Decisions on prescription products containing ingredients that were not components of OTC drug products, or that were found to be lacking substantial evidence of effectiveness, were not held in abeyance. Because Propion Gel was approved as, and has always been marketed solely as, a prescription product and because there is no other product containing the same ingredients that has been marketed as an OTC product, the cough/cold situation is inapposite, and Propion Gel is not an appropriate candidate for deferral. Furthermore, FDA is under court order to proceed expeditiously to complete implementation of the DESI review as soon as possible. *American Public Health Ass'n* v. *Veneman,* 349 F. Supp. 1311 (D.D.C. 1972). The only result of Wyeth's proposed stay would be a delay which is neither necessary nor desirable.

Nor does taking action on Propion Gel's new drug application prior to completion of the OTC review proceeding on vaginal products interfere with the integrity of the OTC review. They are separate proceedings. Wyeth may submit further data in the OTC proceeding and, as noted above, the OTC review may address other indications not under consideration here. Whether products such as Propion Gel, containing sodium propionate and calcium propionate, are generally recognized as safe and effective for OTC use is a matter properly resolved in the OTC review proceeding. Accordingly, Wyeth's request for a decision on the present OTC status of Propion Gel is denied.

Wyeth also argues that an administrative stay pending publication of the OTC final monograph on vaginal products would involve no health hazard. In support of this contention, the firm submitted a June 10, 1955 letter from the agency stating that Propion Gel was no longer regarded as a new drug. Such informal opinions have long since been revoked. 21 CFR 300.100(d). Moreover, even if Propion Gel were regarded as safe, there is no justification for permitting the continued marketing of a product that lacks substantial evidence of effectiveness.

The Commissioner also finds unconvincing Wyeth's contention that it will not know until publication of the final OTC monograph what information is required to justify a hearing with respect to Propion Gel. The agency's regulations set forth the information required to show effectiveness and, through those requirements, what is necessary to demonstrate an issue of fact justifying a hearing. 21 CFR 314.111(a)(5); 21 CFR 314.200(g)(1). As the Supreme Court has said with respect to these regulations, "the drug manufacturers have full and precise notice of the evidence they must present * * *" *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra,* 412 U.S. at 622. The regulations would not be clarified by staying a decision on the prescription product until publication of the final OTC monograph. Therefore, the Commissioner denies Wyeth's request

for a stay of the decision to grant or deny a hearing.

VI. Findings

On the basis of the foregoing, the Commissioner finds (1) that there is a lack of substantial evidence that Propion Gel is effective for its labeled indications, and (2) that there is a lack of substantial evidence that each component of Propion Gel contributes to the claimed effects. 21 U.S.C. 355(d); 21 CFR 300.50; 21 CFR 314.111(a)(5)(ii). Further, Wyeth has not demonstrated that there is a genuine and substantial issue of fact requiring a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 52 Stat. 1052 as amended (21 U.S.C. 355(e)) and under authority delegated to the Commissioners (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), the hearing request is denied and approval of NDA 8–082 for Propion Gel is withdrawn effective June 14, 1982.

Dated: May 27, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82–15107 Filed 6–3–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 82F–0131]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant in lubricants with incidental food contact.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3624) has been filed by Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the use of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant in lubricants with incidental food contact.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: May 26, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82–15104 Filed 6–3–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 81N–0132]

Preparations Containing Carbazochrome Salicylate; Denial of Hearing and Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs is denying a hearing and withdrawing approval of the new drug application for Adrenosem Salicylate Tablets, Syrup, and Solution. The products contain carbazochrome salicylate and are used for reduction of bleeding for various surgical and other bleeding states.

EFFECTIVE DATE: June 14, 1982.

FOR FURTHER INFORMATION CONTACT: Carol Kimbrough, Bureau of Drugs (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 5597) published in the **Federal Register** of January 10, 1970 (35 FR 396), the Food and Drug Administration (FDA) announced that it had evaluated reports received from the National Academy of Sciences/National Research Council, Drug Efficancy Study Group (NAS/NRC) on the drug products Adrenosem Tablets, Syrup, and Solution, containing carbazochrome salicylate (hereinafter referred to as Adrenosem) (NDA 8–644 held by Beecham-Massengill Pharmaceuticals, Division of Beecham, Inc., Bristol, TN 37620, hereinafter referred to as Beecham). At the time of publication of that notice, the products were marketed by the S. E. Massengill Co., Bristol, TN 37620.

The notice stated that carbazochrome salicylate preparations lacked substantial evidence of effectiveness for hematuria, metrorrhagia, and menorrhagia; for prevention or treatment of retinal hemorrhage and diabetic retinitis; for treatment of pulmonary bleeding, gingival bleeding, epistaxis, idiopathic purpura; and for familial hereditary telangiectasia. The drugs were evaluated as "possibly effective" for their other labeled indications. The holders of all approved new drug applications (NDA's) for carbazochrome salicylate preparations and any persons marketing such drugs without approval were given 60 days to delete from labeling those indications evaluated as lacking substantial evidence of effectiveness, and 6 months to submit data to FDA providing substantial evidence of effectiveness of the drugs for the "possibly effective" indications. The notice stated that at the end of the 6-month period, any such data would be evaluated to determine whether there was substantial evidence of effectiveness for any of those indications and, if no data were submitted or if data submitted did not provide such evidence, procedures would be initiated to withdraw approval of the NDA's for the drugs. Pursuant to the notice of January 10, 1970, Beecham submitted data from several studies to support the claims of effectiveness of Adrenosem for various surgical and other bleeding states. FDA reviewed the data and concluded that they did not provide substantial evidence that Adrenosem was effective for any of the indications studied. Accordingly, in a notice published in the **Federal Register** of August 6, 1974 (39 FR 28306) (formerly Docket No. FDC–D–563), the Director of the Bureau of Drugs responded in detail to the submission by Beecham and proposed to withdraw approval of the NDA for Adrenosem. Beechan and all other manufacturers or distributors of drug products identical, related, or similar to Adrenosem were given 30 days to request a hearing and 60 days within which to submit the data, information, and analyses relied upon to justify a hearing.

On August 21, 1974, Beecham filed a written notice of appearance and requested a hearing. On October 3, 1974, Beecham submitted data, information, and analysis in support of its hearing request.

On July 22, 1981, Beecham filed data on three additional studies not previously submitted to FDA. Although the submission did not comply with the requirements of 21 CFR 314.200(c), it has been included in FDA's evaluation of the hearing request.

The Commissioner, after consideration of all of the material submitted by Beecham, has concluded that there is no genuine issue of material

fact requiring a hearing, and that Beecham's legal objections are insubstantial. A full discussion follows.

I. The Drugs

A. *Adrenosem Tablets (1 and 2.5 milligrams).* Each tablet represents 1 or 2.5 milligrams adrenochrome semicarbazone (present as 26 milligrams or 65 milligrams carbazochrome salicylate, respectively).

B. *Adrenosem Syrup.* Each 5 milliliters represents 2.5 milligrams adrenochrome semicarbazone (present as 65 milligrams of carbazochrome salicylate).

C. *Adrenosem Solution (1 and 2 milliliter Ampuls).* Each milliliter represents 5 milligrams adrenochrome semicarbazone (present as 130 milligrams carbazochrome salicylate).

II. Recommended Uses

The labeling recommends Adrenosem for use "preoperatively (prophylactically) and therapeutically in conditions characterized by increased capillary permeability and associated capillary oozing."

III. Data Submitted To Support Claims of Effectiveness

To support its contention that a hearing is justified, Beecham submitted the following:

Exhibit I

This exhibit contains six studies and Beecham's analysis of them. The NAS/NRC Panel on Drugs Used in Surgery designated the studies as "controlled studies that have shown a reduction in blood loss in transurethral prostatectomy, in oral surgical procedures, and a reduction in the transplacental transmission of fetal erythrocytes * * *." The Panel identified other studies, however, that failed to show effectiveness: "However, many controlled studies (none of which are cited by the manufacturer in the package insert) fail to show any benefit from the use of the drug in these conditions and others, including radical mastectomy, plastic surgery, transurethral prostatectomy, thoracotomy, and tonsillectomy * * *." In Exhibit I, Beecham claims that these studies were either inappropriate or were otherwise defective, and objects to their being cited to "counterbalance" the importance of the "controlled" studies the Panel characterized as supporting effectiveness. Beecham proceeds to discuss the studies characterized by the Panel as "controlled" and showing effectiveness in reducing blood loss in transurethral prostatectomy and in oral surgical procedures, and a reduction in transplacental transmissions of fetal erythrocytes. Beecham contends that these studies establish the existence of an issue of fact justifying a hearing.

An evaluation of each of the six studies contained in Beecham's Exhibit I and a response to Beecham's claims regarding the evidentiary value of the studies appear below.

1–4. *Perkins* ("A Clinical Investigation of Adrenochrome Monosemicarabazone Sodium Salicylate," *Oral Surgery, Oral Medicine and Oral Pathology,* 10:230–236, 1957). The investigator describes four experiences (Groups A, B, C, and D) with the use of Adrenosem.

Group A: Beecham suggests that the study on "Group A" is the most relevant to Adrenosem's claims. In that study, "identical" bilateral oral surgical procedures on opposite quadrants of the same jaw were performed in 24 patients. The patients were treated with Adrenosem only during the second procedure, so that each patient served as his own control. Blood was collected by an aspirator; the volume and hemoglobin content were measured. The investigator found that significantly less blood was lost during the second operation than was lost during the first (P 0.01).

Evaluation: The types of surgical procedures performed during the study were not described, so it is impossible to ascertain whether the procedures were comparable as claimed; i.e., whether the treatment groups (first versus second) were comparable with respect to the surgical procedures employed, a pertinent variable. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). Because the investigator knew when the drug was in use and when it was not, the possibility of bias on his part cannot be excluded. For example, a deeper cut may have been made during the first operation or the more difficult procedure may have been performed first. In fact, it happens that the mean operating time for the control side was 18 minutes, while that for the Adrenosem side was only 15, even though it might have been expected that the similar procedure should have been easier the second time. Section 314.111(a)(5)(ii)(*a*)(*3*) and (*4*) requires that the protocol (1) explain methods of observation so as to minimize bias; (2) compare results of treatment and control in such a fashion as to minimize bias; and, among other things, (3) state the precise nature of the control and explain the methods used to minimize bias. Manifestly, the study fails to meet these requirements.

Group B: The investigator included in this group "numerous surgical cases" in which Adrenosem was administered at dosages of 10 milligrams (mg). The investgator claims that Adrenosem was an effective hemostatic agent and that the speed of action varied in different patients: "In eleven cases the action of Adrenosem occurred five to ten minutes following parenteral administration of the drug. Twenty minutes after [administration] * * *, hemostatic effects were demonstrable in at least 80 percent of all patients. Twenty cases showed a reduction in bleeding twenty minutes following injection of Adrenosem Salicylate but as the operative procedure progressed the hemostatic effects disappeared. Secondary hemorrhage responded fairly well to Adrenosem * * *".

Evaluation: There was no actual study of Group B, only a discussion of subjective impressions of random cases, without any data to support the investigator's conclusions; e.g., it is not clear how the onset of action of Adrenosem was identified. The total number of patients who were treated is not identified, and there were no controls. The report of Group B, therefore, fails to satisfy the requirements of 21 CFR 314.111(a)(5)(ii) for an adequate and well-controlled clinical investigation.

Group C: Twenty-five male students took part in this study. Their average age was 22 years and their average weight was 149 pounds. The investigation was divided into two phases which were conducted 2 weeks apart. In the first phase Adrenosem was administered intramuscularly. In the second phase it was administered orally. Control bleeding time were determined using the right ear lobe. One hour after the injection or ingestion of Adrenosem, a second bleeding time was determined using the left ear. The two bleeding times were then compared. The mean bleeding time 1 hour after an intramuscular dose of Adrenosem was 84 seconds, as compared with a mean time of 107 seconds for the "control" ear lobes. The investigator claimed that this 23-second difference was statistically significant.

Evaluation: Bleeding times in the same person can vary widely, and their interpretation is somewhat subjective. The assessment or observation of bleeding times must be standardized to permit any valid conclusions, and must be blinded so that investigator bias in conducting the test is minimized. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*). Moreover, the present report is little more than an anecdote, an assertion that bleeding time was "significantly" shortened. It is impossible from the data available to carry out an adequate quantitative comparison of the control and treatment

values, 21 CFR 314.111(a)(5)(ii)(*a*) (*4*) and (*5*), because individual values, standard deviations, or p values are not listed and raw data have not been supplied. Also, even the mean bleeding times obt ained during the second phase of the study were not reported. The only information regarding bleeding times on oral treatment was the remark that "the hemostatic effect of the liquid form and the injection form appears to be the same." These are obvious deficiencies under 21 CFR 314.111(a)(5)(ii)(*a*) and (*(3)* (*5*). The lack of data documenting the conduct and results of the study make it unsuitable for scientific evaluation.

Group D: There is very little information given for this group, only two short paragraphs in which the investigator states that the local hemostatic effect of Adrenosem was tested but "was not revealed" in this group of patients.

Evaluation: Adrenosem is recommended for use in conditions characterized by increased capillary permeability and associated capillary oozing, because it allegedly reduces capillary permeability. The investigator was obviously trying with this group of patients to test the validity of this theory. However he concluded that the results in this instance were not supportive of the drug's effectiveness.

5. *Messer et al.* ("Effect of Carbazochrome Salicylate on Transplacental Transmission of Fetal Erythrocytes," *Obstetrics and Gynecology*, 27:83–88, 1966). The investigators obtained blood smears within 48 hours postpartum from 129 women who received 10 mg of carbazochrome salicylate parenterally during labor. In addition, smears were taken from 128 women who before labor received carbazohrome orally (2.5 mg, three times a day, antepartum); 102 received the drug on a short-term schedule averaging 19 days antepartum, and 26 received the drug on a long-term schedule averaging 5 months antepartum. Seventy-five of the patients were in both groups; i.e., they received the drug both parenterally during labor and orally before labor. The smears were scanned for 15 minutes; the results were recorded as positive if fetal cells were identified, negative if none were seen. Results for "controls" were obtained from data on a group of 119 previously studied obstetric patients, plus 103 untreated obstetric patients studied concurrently with the treated women. (Maternal and fetal blood types, mode of delivery, and incidence of cervical laceration and manual placental removal were recorded for the group of 103 patients; it is not clear how the previous study on the group of 119 was conducted.) For the 222 patients considered as controls, 19 percent had demonstrable fetal red cells.

The investigators found that of the 129 patients receiving parenteral carbazochrome, 14 percent had fetal red cells demonstrated; of the group of 75 patients receiving both oral and parenteral medication, 8 percent had demonstrable fetal red cells. In the group of patients taking the medication orally on a long-term basis, however, 19 percent had fetal red cells as compared with 10 percent of those taking it on a short-term basis. The investigators concluded that Adrenosem appears to have some effect, when compared with the "controls" described above, in decreasing fetal maternal red blood cell transfer.

Evaluation: Constructing a "control" group from a mixture of previously treated and currently treated patients (a combination of concurrent and historical controls) is a most unusual practice and requires explanation; in particular, the investigator must explain when the decision to do this was made and how bias was avoided if it was made after the concurrent controls were evaluated. 21 CFR 314.111(a)(5)(ii)(*a*) (*4*) and (*5*). This was not done in the study. The study also failed to mention how the patients were assigned to the treated and untreated (the concurrent 103 patients) groups, although there is no indication that assignment was made in a manner that would minimize bias. 21 CFR 314.111(a)(5)(iii)(*a*)(*2*)(*ii*).

The presence of fetal cells found is affected by a number of characteristics of the mother and could be affected also by the techniques used in looking for cells, so that it is essential in evaluating the effect of a drug that characteristics are similar in both the treatment and control groups. Although the investigators recognized the significance of ABO mother-baby incompatibility (incompatible cells are hemoloyzed and removed rapidly from the maternal circulation), and tested for it in 202 patients, they did not state the number of incompatible mothers belonging either to the control or the drug-treated group. Similarly, they did not report on Rh incompatability within the control or drug-treated group. They also neglected to make that distinction for the patients who had received cervical lacerations or who had been subjected to manual removal of the placenta, although they had found that mothers with these conditions had a higher incidence of fetal erythrocytes in their blood during the post-partum period than is generally encountered. Thus, comparability of the groups with respect to two pertinent variables that affect the incidence of fetal erythyrocytes in maternal blood was not established. Comparability in age was not established either. A fourth pertinent variable also was not addressed, viz., whether ascertainment of the presence of cells was comparable for control and treatment groups. Even assuming that the unblinded nature of the study did not affect the comparability of ascertainment in the concurrently treated patients (not necessarily a valid assumption, unless the reader was blind to treatment) there is no basis at all for thinking that ascertainment was similar in the 119 previously studied patients, unless the smears were blindly reread at the time of the present study. No evidence that such a procedure was carried out has been provided. The study, therefore, fails to meet the requirements of 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*), in that groups were not comparable with respect to pertinent variables.

There are also peculiarities in the results that require evaluation. The investigators did not offer any explanation as to why the mothers who had taken the medication orally for 5 months had a higher incidence of fetal erythrocytes in their circulation (19 percent) than the mothers who had taken the drug orally for only 19 days (10 percent, calculated by FDA from the study data reprinted in the literature report). The first of these values equals the control value. Analysis of results is apparently incomplete. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*).

6. *Burke, Pogrund,* and *Clark* ("Hemostatic Agents in Control of Bleeding," *Clinical Research*, 8:127, 1960). In a study referred to by the investigators as double-blind, the investigators evaluated 7 hemostatic agents in transurethral prostatectomy in 225 patients. Only 14 of those patients received Adrenosem. The investigators collected the extravasated blood and irrigation fluid by means of an indwelling catheter and measured total volume and hemoglobin content. They reported that Adrenosem reduced the amount of lost blood and the blood loss per gram of removed tissue. The reduction was said to be satistically highly significant, as compared with an untreated control group.

Evaluation: Beecham has filed to provide any description or documentation of the methods of assignment of patients into groups (required under 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*ii*)), the methods used to assure comparability of patients in test and control groups (required

under 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*)), or methods used to maintain double-blilnd conditions (21 CFR 314.111(a)(5)(ii)(*a*)(*4*)). Another report on the study, contained in a drat of a manuscript intended to be submitted elsewhere for publication by the same investigators, was included in the hearing request and indicates that the controls were untreated (no placebo) prostatectomized patients who were subjects in a previous study. The study thus was apparently not blind with respect to the untreated control group, even if it was blind as to which hemostatic agent was used. Moreover there was no concomitant control. While a historical control can be acceptable in some circumstances, the control group must be shown to be comparable to the treatment group with respect to pertinent variables (e.g., age, skill of the surgeon, difficulty of procedure, amount of tissue removed, and technique used). 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). Since no evidence is provided to establish that the study was blinded, bias on the part of the investigators (e.g., in tabulating the data or in performing the surgery) may not have been minimized. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*). Furthermore, the report on the conduct of the study is merely an abstract and does not provide a complete description or raw data sufficient for consideration as scientific evidence.

In summary, Exhibit I does not contain adequate and well-controlled studies, required under 21 CFR 314.111(a)(5)(ii). Furthermore, it fails to establish the existence of any issue of fact requiring a hearing.

Exhibit II

Beecham submitted an article by L. S. Persun, Jr. ("An Objective Appraisal of over 4,000 Tonsillectomy and Adenotonsillectomy Procedures," *The Laryngoscope*, LXXIV (2):260–266, 1964). The author described the incidence of primary bleeding (i.e., unusual bleeding during tonsillectomy and adenotonsillectomy) at a hospital during the year 1953, when Adrenosem was not used, and in the years 1955, 1956, 1957, and 1958, when it was used almost routinely. In 1961 and 1962, the author collected the data from the hospital records and found that the incidence of primary bleeding changed from 27.6 percent in 1953 to 12.7 percent in 1955, 20 percent in 1956, 22.2 percent in 1957, and 26.6 percent in 1958. The author concluded that the increase in bleeding after 1955 occurred because the frequency of preoperative injections of Adrenosem decreased from 88 percent in 1955 to 44.3 percent in 1956, 37.5 percent in 1957, and 29 percent in 1958. Beecham claims that because the data were gathered several years after treatment, there was no possibility of bias on the part of the surgeons or of the other hospital personnel, and that "blinding of the study was accomplished by the fact that operating surgeons and attending hospital personnel were not involved in any sort of clinical study, rather their duties were performed as usual."

In short, Beecham claims that the requirements for an adequate and well-controlled clinical investigation (21 CFR 314.111(a)(5)(ii)) were substantially met because the documented natural history of the patients constituted an adequate historical control. Beecham has petitioned in the alternative for a waiver of such requirements in the event FDA concludes that the study fails to satisfy the statutory requirements.

Evaluation: Any such historical control must be assessed cautiously, because over long time periods medical practice and the recording of events can change substantially and affect the apparent frequency of an event. In the present case, submitted data show that in 1955 the incidence of bleeding in patients not treated preoperatively with the drug was 39 percent (18 of 46) and in 1958 it rose to 83 percent (122 of 147). Such an increase in bleeding frequency in untreated patients from the baseline of 27.6 percent in 1953, the year before Adrenosem was introduced, indicates substantial variation in either the patient population treated, the procedures used, or the nature of observation by the medical staff, and plainly shows that year-to-year comparisons to assess drug effect are not valid. The data are peculiar in other respects. In 1958, the incidence of primary bleeding in patients who had received Adrenosem preoperatively in the form of injections was 10 percent, while the incidence of bleeding in patients who had received the drug as a syrup was 17.4 percent. The incidence in those who had received the drug in both forms (i.e., as an injection and as syrup), however, was 36 percent, an increase that defies any good explanation. These varying results certainly question effectiveness of Adrenosem. This study was, as its own introduction states, "in no respect a controlled study", nor were any measures used to minimize observer bias. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*) and (*4*). There is no basis for granting the sponsor's request that FDA waive any of the requirements of 21 CFR 314.111(a)(5)(ii). The sponsor's request contains no information providing a sufficient explanation, as required by the waiver provisions in 21 CFR 314.111(a)(5)(ii)(*a*)(*5*), as to why specific criteria are not reasonably applicable to clinincal investigation of Adrenosem and what alternative procedures have been employed such that the study yields substantial evidence of effectiveness, despite nonconformance with the criteria.

Exhibit III

This portion of the submission includes an article ("Comparative Blood Loss in Hysterectomies—An Apparent Effect of Carbazochrome Salicylate on Postoperative Infections," *Obsterics and Gynecology*, 39:357–361, 1972), raw data, and other information about a study on comparative blood loss in hysterectomies by Eugene J. Diefenbach. In the study, 53 women who had undergone hysterectomies were treated with Adrenosem and 51 others were treated with saline. The medication was administered intramuscularly, 2 milliliters (mL) of solution (10 mg) at 5, 3, and 1 hours preoperatively, at 4 hours postoperatively, and as a single 2 mL injection 4 hours later, and then in the form of a syrup 15 mL (7.5 mg) every 4 hours for 32 hours. The investigator claimed that the medication was assigned and administered by the nursing or house staff "to insure that the operating team remained unaware of medication assignment," and that "all (medication) kits were coded and random-packed by the sponsor to avoid selecting the medication for any given patient". Blood loss was estimated by measuring blood volume preoperatively and at 2, 48, and 120 hours postoperatively, with the radioisotope dilution technique using I–131, labeled "human serum asbumin," obtained from an independent laboratory. Hemoglobin and hematocrit determinations were also made. The investigator found that patients who had received the drug lost less blood than the control patients in all measured intervals. The differences, however, were not statistically significant. There were highly significant differences in morbidity though. There were no "complications" in the 53 drug-treated patients; there were 15 cases of infection (pyelocystitis, pelvic or abdominal abscess, incisional or respiratory infection) in the control patients ($P<0.0001$).

Evaluation: Review of the submitted data shows that a plan for evaluation of postoperative morbidity was not included in the original protocol but "was added to the evaluative criteria by mutual agreement between the investigator and the sponsor". According to the report, "Postoperative morbidity or complication was recorded

when temperatures of 100.4° F or greater persisted for the second postoperative day or on any two consecutive such days". The Christensen memorandum of May 11, 1970 (NDA 8-644, Vol. #3) shows that this criterion was added after the study was completed, after the code had been officially broken, and after statistical analysis of the results had shown no drug effect (i.e., no significant differences in bleeding). Such a post-hoc analysis cannot be freed from potential analyst bias (21 CFR 314.111(a)(5)(ii)(*a*)(*4*)), particularly when identification of an infection was made after the study was over, and can at best be considered a hypothesis to be subjected to further testing.

The submitted patient records do not show the original temperature values but only abbreviated transcripts of them. In most instances, especially for drug-treated patients, the transcripts simply contain the statement "not over 100.4° F". This part of the study lacks raw data. 21 CFR 314.200(d). Moreover, it is not apparent how the investigator made the diagnoses of pyelocystitis, pelvic or abdominal abscess, etc., or how he differentiated among similar conditions when the only criterion evidently used was temperature elevation. No reports of urinalyses, white blood counts, or other indicia of infection were submitted to FDA. Even if these diagnoses were correct, their significance is unclear. Adrenosem is not claimed to have antibiotic or anti-infective properties. The suggested rationale, that Adrenosem prevented "seepage and oozing" from "capillaries or microcirculatory vessels", and thus prevented bacterial growth in the "serosanguineous fluid", is wholly speculative and unsupported. In fact, submitted data show no significant differences in the amount of blood lost between the placebo and the drug group in any of the evaluation periods.

In sum, the only effect of Adrenosem that this study purported to show was discovered as an after-the-fact analysis of a parameter not included in the original study plan. Moreover, the reported effect is not one for which Adrenosem is indicated. Insofar as the claimed effect of Adrenosem is concerned—prevention of blood loss—the study showed no drug effect.

The study also failed to satisfy the requirements for an adequate and well-controlled study. First, the investigator very likely was able to distinguish the drug from the placebo. The "randomization schedule" indicates that each medication kit had two numbers, one consecutive and one random. The patient records show that only the consecutive numbers were used. The drug numbers were all in the 100 series (101–165), while the placebo numbers were all in the 200 series (201–265). Thus, the first digit revealed the identity of the medication. The submitted data indicate that in all probability, the principal investigator received a copy of the medication code on March 16, 1967, 3 days after the medication was shipped to him. Thus, the study may not have been blind at all, and bias in the selection of patients, operative technique, and post-operative treatment cannot be excluded. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*ii*).

In the second place, Beecham asserts that there were no transfusions of blood or blood products and mentions nothing about other fluids. The report describing the study ignored this subject completely. The patients' records show, however, that all patients except one control patient were administered considerable amounts of blood and/or other fluids. Mean values of blood volume, Hb, and Hct for each group were apparently calculated without applying corrections for the amount of blood or fluid administered. Thus, although the determination of these values appears to have been unbiased (they were performed by an independent laboratory that was unaware of the code), the results represent not only actual blood losses, but also the effect of any differences between the two groups in the amount of administered blood or fluids. Failure to discuss the transfusions and the methods by which administered blood or fluid was measured constitutes an inadequate description of observations and method of analysis. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*) and (*5*).

Exhibit III also contained reprints from eight publications. The reprints do not discuss the use of Adrenosem; they report complications of hysterectomy. On the basis, the reprints do not support the effectiveness of the indications for Adrenosem.

Exhibit IV

This section contains reports from two previously sumitted studies which were discussed in the notice of opportunity for hearing of August 6, 1974. The McDevitt study (unpublished) involved 103 children 1 to 12 years of age who were undergoing elective tonsillectomy or adenotonsillectomy. Patients were alternatively assigned to an active group (treated with Adrenosem) or to a control group. Beecham reports that 42 of the 51 control patients exhibited some degree of bleeding, whereas only one of the 52 Adrenosem-treated patients exhibited reportable bleeding.

Evaluation: No attempt was made to minimize potential observer bias through blinding or other means. 21 CFR 314.111(a)(5)(ii)(*a*) (*3*) and (*4*). The drug is claimed to reduce capillary permeability and prevent or control capillary oozing. It is not purported to have an effect on larger vessels. Review of the patient records submitted indicates that of the control patients, four required sutures; three required sutures and clamps; nine required sutures, clamps, and packs; four required clamps and packs; eight required sutures and packs; and one required a clamp. None of the Adrenosem-treated patients required sutures, clamps, or packs. The fact that so many control patients required clamps and sutures allows one to speculate that the surgeon may have cut larger vessels in these patients than in Adrenosem-treated patients. Operating time was 21.4 minutes for the control patients versus 16.9 minutes for the Adrenosem-treated patients, a highly significant difference ($P < 0.01$). This may indicate that more difficult procedures were used for this group. In any case, it is apparent that patient groups were not comparable for pertinent variables—the difficulty of the procedure and the degree of trauma to larger vessels. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*).

The study was not blinded and treatments were not randomly assigned. The surgeon knew exactly who the control and Adrenosem-treated patients were; he had control over their assignment. Such a procedure fails to minimize bias in assignment to groups and cannot be considered adequate and well-controlled. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*ii*).

The second study, Horne and Scott ("Andrenosem Therapy for Bleeding Coincident with the Use of Intrauterine Contraceptive Devices: A Double-Blind Study," *Fertility and Sterility*, 21:230–233, March 1970), had a double-blind design. Thirty-nine women who had used intrauterine contraceptive devices for 3 months or longer and had experienced some intermenstrual or excessive menstrual bleeding associated with the device participated in the study. Each patient received 6 numbered bottles, each containing 100 tablets of medication. Three of the bottles contained the drug while the other bottles contained a matching placebo. The numbering of the bottles was randomized so that the sequence of drug and placebo tablets varied in eight ways. The women were aware that one-half of their supplies were placebo. Each woman was supplied with a special

calendar on which she recorded any bleeding, classified in three categories: S-staining or spotting, B=bleeding=1–3 tampons or pads daily, and F=flowing=4 tampons or pads or more daily. This information was recorded for two control cycles prior to therapy, then for six consecutive cycles on therapy, and finally for two subsequent cycles after therapy. Twenty-six of the women completed the study. The results showed no statistically significant reduction in the number of tampons or pads used during the days of menstruation, but there was a significant decrease both in the number of days of intermenstrual bleeding or staining (or spotting) and the number of tampons or pads used in the Adrenosem-treated cycles compared to the placebo cycles ($P < 0.01$ to < 0.001).

Evaluation: Although Beecham submitted copies of some of the raw data, the special calendar on which the women recorded their bleeding were not submitted. Those notes are essential to an evaluation of the study because only the women—not the physicians—directly evaluated the bleeding. 21 CFR 314.200(d). Without the raw data it is not clear how the investigators translated the summary reports for each woman into exact numbers of tampons per day, or how the summary designations of "S", "B", or "F" were used for further analysis.

Beecham failed to discuss the results obtained during the days of menstruation. Those results did not support effectiveness. This is an omission under 21 CFR 314.200(d)(1).

Finally, the submitted data indicate that as of March 10, 1969 (a date prior to the completion of the study and the evaluation of its results), one of the investigators knew the packaging scheme (i.e., the medication sequence for each of the eight combinations). This is apparent from the record of patient number 30 of which the investigator indicated which were the placebo and which were the drug periods. Thus, the study may not have been blind, at least for the investigator, and the possibility of bias in the evaluation and analysis of data cannot be excluded. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*).

A later study of the effects of Adrenosem by the same investigator, Dr. Horne ("Adrenosem—A Systemic Hemostatic Agent—In Intercurrent Bleeding and/or Spontaneous Miscarriage During the First Trimester of Pregnancy"), showed no drug effect. The study evaluated the effect of Adrenosem on intercurrent bleeding and/or spontaneous miscarriage during the first trimester of pregnancy in one group of women with histories of spontaneous abortion or ectopic pregnancy, and another group of women with either no such histories or no previous pregnancies. The study showed no significant differences between the 56 drug treated women and the 52 women who received a placebo. The results of a similar, more recent study conducted by O. T. Bolding (with 53 women, initiated in 1973 and scheduled for completion by August 1974) have not been report to FDA.

Exhibit V

This section of the submission contains two films describing three operations—one dermabrasion, part of which was performed before and part after the administration of Adrenosem, and two rhinoplastics. One rhinoplasty was performed on a patient who had received Adrenosem and the other was performed on a control patient who had not received Adrenosem. These films do not represent controlled trials. The patients were selected in an unknown manner from an undefined group. It is not known, for example, whether the dermabrasion patient was the only one studied this way or whether he was chosen from a large group because he demonstrated the desired result. Treatment was known to both physician and patient and there was no attempt to minimize bias on the part of the investigators or analysts. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*) and (*4*). Since the films are merely visual anecdotes, they are not relevant evidence of effectiveness. A discussion follows.

1. *Dermabrasion by H. J. Bernardt, M.D.* This film shows dermabrasion performed on both sides of the face of an adult male. The left side was planed before the patient was injected with Adrenosem; the right side and the forehead were planed half an hour after an intramuscular injection (2 mL) of the drug. The left side seemed to bleed more than the right side or the forehead. The narrator said that the bleeding on the left side required 8 minutes to stop, while the bleeding on the right side stopped within 1 minute.

Evaluation: The procedure was not blinded. The surgeon knew which side had been abrased before and after injection of the drug. The possibility of bias on his part cannot be excluded. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*) and (*4*). When the scarred face of the patient was shown at the beginning of the film, the right side was photographed under contrast illumination, so that the "pits" were well outlined and appeared to be deep. The left (control) side was shown under more direct illumination, so the "pits" did not show up well, and this side appeared smoother. It is possible, however, that the left side actually had deeper scars and required deeper planing. Furthermore, it was obvious that the scarred area on the left side was larger than the scarred area on the right side, and that the surgeon moved the high-speed rotating brush (used for removing the skin) faster on the left (control) side than on the right side on forehead. That variation alone could account for a difference in bleeding. Greater brush pressure or deeper planing on the left side, which could have been caused unconsciously by a biased surgeon, could also account for differences in bleeding between the two sides. Therefore, this study does not constitute a basis upon which experts could fairly and responsibly conclude that the drug is effective. 21 CFR 314.111(a)(5)(i).

2. *Rhinoplasty by W. S. Brown, M.D.* Dr. Brown operated on two young females of the same age, heights, and weight, who had similar coagulation and bleeding times, red blood cell count, and Hb content. The first girl, who was not treated with Adrenosem, lost a large amount of blood during the operation (about 400 mL). "She had continuous and profuse bleeding. The blood flowed two freely to handle even with sponges and suction," according to the surgeon's description. In contrast, the second girl, who was treated with Adrenosem, had very little bleeding. There was no need to use suction and only a few sponges were used to wipe the blood she lost.

Evaluation: As in the previous film, this procedure was not blinded. The surgeon indicated that he was prejudiced in favor of Adrenosem and said that when he was asked to perform the two procedures, he was hesitant because he did not wish to proceed in one case without the use of Adrenosem. He may have cut the tissues deeper or been rougher on the first patient than he was on the second. In a normal person, bleeding during a surgical procedure is due mainly to severance of blood vessels and capillaries. It is minimized by the effectiveness of the surgeon in trying the bleeders and packing the oozing surfaces. The face that the study was not "blind" to the surgeon could undoubtedly bias results. Moreover, no statistical significance can be attached to the different result seen in just two patients, as this could easily be the result of chance.

Exhibit VI

This exhibit consists of the sponsor's medical rationale and conclusions that "there is evidence of hemostatic effect in appropriately controlled evaluations and this is sufficient to warrant continued marketing of Adrenosem".

This is conclusory statement, not a clinical investigation. 21 U.S.C. 355(e).

Exhibit VII

This exhibit consists of a list of 640 hospitals that purchased Adrenosem during the 5 months preceding the date of submission of the hearing request. A drug's marketing history does not satisfy the statutory requirements for substantial evidence of effectiveness. *Upjohn* v. *Finch*, 422 F. 2d 944, 954 (6th Cir. 1970).

Additional Studies

The following additional reports were contained in Beecham's 1981 submission:

1. An unpublished report describes a 10-subject dermabrasion study conducted in 1976 and 1977 by George A. Farber, M.D. The study design required that a "no treatment" control side of each patient's face was to be randomly selected, and that the dermabrasion procedure on that side the patient's face was to be completed. Then, either Adrenosem or placebo (a saline solution), selected randomly, was to be administered to the patient 30 minutes prior to initiation of dermabrasion on the other side of the face. Ratings comparing bleeding were to be recorded on an analogue scale by an observer who was to place a perpendicular mark on a horizontal line indicating the degree of bleeding, ranging from "no bleeding" at one end to "profuse bleeding" at the other end. Observations were to be recorded at 10 points throughout the dermabrasion procedure. A global evaluation was also to be made by the observer at the end of the dermabrasion. Beecham described the study as a "double-blind parallel group design" study that "despite the relatively small number of patients," showed that patients treated with Adrenosem prior to undergoing dermabrasion exhibited less bleeding than did patients given placebo. Beecham's analysis indicated that data sufficient for assessment were obtained for 9 of the 11 ratings available concerning each patient's bleeding, and that at 7 of these rating times, there was observed less bleeding for the 5 Adrenosem treated patients than the 5 treated with placebo. The difference was statistically significant ($p < 0.05$).

Evaluation: The study population is inadequately described and there are a number of variables about which the report provides no information, thus making it impossible to conclude that comparability in test and control groups was assured, as is required by 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). For example, although there is information indicating that there is comparability in sexual composition of the groups, there is inadequate data regarding comparability of the test and control groups with respect to age, concomitant medications, severity of the condition necessitating the surgery, and other variables. On a few of the patient report forms, however, there is information which appears to show that there were differences between the groups in important variables. For example, the record for patient number 4 states that a partial rather than a full face abrasion was performed. And the record for patient number 3 states that it was necessary to perform the dermabrasion deeper than usual due to the particular condition of the patient's skin. The record of patient number 2 indicates that the patient was taking two concomitant medications daily. With such a small study population (only 5 treated with Adrenosem and 5 with placebo), individual circumstances that appear to distinguish some patients from the other immediately raise doubts about the validity of comparisons between groups.

Surprisingly, although the results on the no treatment control side were presumably intended, in part, to serve as a baseline measurement that could show comparability between the placebo and Adrenosem groups, these results were not analyzed at all.

Although Beecham describes the study design as "double-blind," certain conditions existing at the time the study was in progress may have interfered with the "blinding" attempt and created a potential for bias on the part of the observer or the individual performing the dermabrasion. For example, although a randomization schedule was to be used to determine the control side, 9 of 10 controls were on the left side. Although it is unclear who gave the injections and in whose presence, there is no indication that adequate precautions were taken to prevent the person performing the dermabrasion from knowng which patients were in the various test categories. Efforts to minimize bias were thus inadequate. 21 CFR 314.111(a)(5)(ii). For example, the placebo and Adrenosem differ in color, so the individual injecting this substance, or anyone in a good position to observe the injection, might be aware of the nature of the injection. In addition, Adrenosem injectable is hypertonic in solution and consequently causes pain upon injection, whereas normal saline as used in the placebo is isotonic and does not cause pain. Therefore, just the reaction of the patient upon receiving the injection could indicate to the person performing the dermabrasion, or the observer, the nature of the injection.

In summary, this study is not adequate and well controlled. The deficiencies concerning the comparability of the small groups from which data were derived, and the inadequacy of blinding measures, with the resultant possibility of bias, indicate that the study and results cannot be relied upon as substantial evidence of effectiveness.

2. An unpublished report describes an 8-subject dermabrasion study in 1979 by George A. Farber, M.D. The design and execution of the study appear to be similar to that of his earlier study described immediately above (No. 1).

Evaluation: The criticisms of the study described above (No. 1) regarding comparability of test groups and adequacy of blinding are applicable also to this study. Moreover, as noted by Beecham, the study results showed only a trend in favor of Adrenosem. The results were not statistically significant. Even if the results had been more favorable to Adrenosem, this study contained a number of deficiencies in addition to those shared with the 1976–1977 study. The protocol called for a study involving 20 patients, but results were submitted for only 8. No mention is made of the remaining 12. There is included with the report a randomized set of 10 numbers, but no mention is made regarding the 2 numbers exceeding those required for the actual number of patients included in the study as finally submitted. Without information regarding these discrepancies from the protocol, one can only hypothesize as to whether the study was terminated prematurely because the results were thought to be unsuccessful or whether additional patients were studies without the results being submitted, etc. This lack of information essential to scientific evaluation prevents consideration of the report as relevant evidence. 21 CFR 314.111(a)(5)(ii)(*c*).

The extremely small number of patients for whom data are submitted would make it difficult to draw conclusions from the study, even if the results had attained statistical significance. Supporting the view that such a small study is inherently susceptible to inaccurate findings is the rather implausible suggestion yielded by this study that the placebo (saline solution) had the effect of inhibiting blood loss. (The report as submitted does not contain a compilation of a mean observed rating of bleeding for the control side of the face, although the ratings for the side treated with placebo

or Adrenosem are submitted. FDA has observed from the raw data, however, that for 9 of the 10 points at which each patient's bleeding was observed, the mean for bleeding on the placebo side of the face was less than for the control side.)

In summary, this study is not adequate and well-controlled because of basic deficiencies from the requirements of 21 CFR 314.111(a)(5)(ii), particularly those concerning the need for study groups to be comparable and for bias to be minimized. In addition, the results are not statistically significant.

3. An unpublished report describes a small dermabrasion study conducted in 1973 by Dr. Walter S. Brown. Although the design of the study required participation by 60 patients, information was submitted for only 20 patients; the data for the other 40 patients were considered invalid because the patients had received epinephrine injections prior to the dermabrasion. Patients included in the study were to meet various entrance criteria; e.g., having taken no antihistamines for 48 hours prior to the trial, having taken no aspirin products for at least 2 weeks, requiring a full-face dermabrasion, and having similar lesions on each side of the face. One side of the face of each patient, randomly selected, was to serve as the control while the other, randomly selected, was to receive either placebo (saline solution) or Adrenosem. Prior to surgery, all drapes, gauzes, sponges, plastic envelopes, and surgeon's gloves were collected and weighed. During surgery all blood from the abraded cheek was collected in sterile sponges and placed in the plastic envelope labeled for that side of the face. Upon completion of the procedure, both used and unused sponges and drapes were weighed. The difference in weights of the materials before and after the procedure represented blood loss. Efficacy as to be evaluated on the basis of (1) differences in the weight of blood absorbed by sponges, (2) differences in the time of onset of bleeding, (3) differences in the length of time from the commencement of dermabrasion to the cessation of bleeding, and (4) differences in the duration of bleeding time. Beecham stated that the study produced no statistically significantly results favoring Adrenosem.

Evaluation: The results of the study, as stated in Beecham's statistical evaluation, showed that Adrenosem was no more effective than placebo in controlling bleeding during dermabrasion. There was no statistically significant findings supporting the drug's effectiveness when evaluated under any of the four variables used as measurements.

IV. Summary

The hearing request contains reports from 10 clinical studies, 2 promotional films, and a list of 640 hospitals that had purchased Adrenosem during the 5 months preceding the date of the submission. None of the studies was a classical randomized blinded clinical trial, nor were adequate measures taken to minimize bias. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*) and (*4*).

Seven of the studies (Perkins, Messer *et al.*, Persun, and McDevitt) were designed as unblinded studies. Because the measurements made in those studies involved subjective elements, some method of minimizing observer bias was needed. Consequently, those studies fail to provide substantial evidence of effectiveness.

The remaining three studies (Burke *et al.*, Diefenbach, and Horne) are described as double-blind, but it is not clear that they were. In the Burke study, the code for a number of hemostatic agents tested concurrently appears to have been made by the investigator himself, indicating that the study was not blind to the investigator. In addition, the "controls" were not study patients who received a placebo; apparently they were untreated patients from a previously study. 21 CFR 314.111(a)(5)(ii)(*a*) (*4*). In the Diefenbach study, consecutive numbers were used instead of the random code numbers. All the drug numbers were in the 100 series and all the placebo numbers were in the 200 series, thus facilitating decoding. Even if blinding had been successful, there was no significant difference in bleeding between groups. An additional criterion, "infection" (not defined), was added later, clearly in an unblinded manner, and there was no explanation of how analyst bias was minimized. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*). There is also evidence that the randomization schedule was sent to the principal investigator at the beginning of the study. Similar evidence exists for the Horne study.

The studies contain other deficiencies as well. Copies of raw data and other information necessary to answer questions concerning the capability of the studies to meet the criteria cited in 21 CFR 314.111(a)(5)(ii) for adequate and well-controlled studies have either not been submitted at all (Burke *et al.*) or have been submitted only partially (Horne).

In the studies using a control group of some kind (other than those of Diefenbach and Horne), comparability in treatment group or in procedures used was either clearly lacking (McDevitt) or could not be assessed (Perkins, Messer, and Burke). 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*).

The July 22, 1981 submission contained reports from three additional studies, all using Adrenosem in dermabrasion. Although Beecham states that attempts were made to minimize bias in observation and recording of results, the information submitted fails to establish that adequate steps were taken. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*). For example, there is no evidence that any study was "blind" to the surgeon who was actually performing the dermabrasion. Additionally, for the two studies using an observer to rate the degree of bleeding, there is some suggestion that the study was not blind to the observer. This is particularly important because, as Beecham has admitted, the measurement of effectiveness in these two studies (by Farber) is subjective in nature. Beecham states that photographs were taken to "document" the observer's ratings of the degree of bleeding, but the photographs themselves appear inadequate for objective assessment. For example, the patients' photographs were taken from a variety of different positions, some showing whole face, some half face, some head up, some head down, etc., and the sizes of the abraded areas varied. That indicates that differences pictured in bleeding may actually represent differences in surface area abraded rather than presence or absence of drug effect. The report contains no attempt to correlate the photographs with the observer's ratings. All three of the dermabrasion studies were conducted with a relatively small number of patients and were deficient in that it could not be ascertained whether the test and control groups were comparable with respect to pertinent variables (severity of condition, concomitant drugs, etc.). 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*).

The sponsor's "pooling" of results from the first and second Farber studies cannot elevate data that are basically unreliable because of defects in the conduct of the studies themselves to a level that constitutes substantial evidence of effectiveness. Even if the three studies had been adequate and well controlled, two of them (the second Farber study and the Brown study) would be of no support to Beecham because they did not produce results that statistically significantly favored Adrenosem.

V. Legal Arguments

Beecham presented a number of arguments in addition to the clinical data submitted, as follows:

1. Beecham objects generally to the requirements of 21 CFR 314.200(d) as excessively burdensome, contending that they force the applicant to "prove his entire case in detail before the FDA will consider whether to grant a hearing." That contention mischaracterizes the regulation. The Type of data and form of presentation required by § 314.200(d) is set forth in § 314.111(a)(5)(ii). That section does not specify the quantum of data that, on its face, will permit FDA to determine whether there exists a genuine and substantial issue of fact for a hearing, and it does not require an applicant to prove his case. The preamble of the 1974 final order promulgating the regulation (39 FR 9750) made it clear that "[T]he amount of evidence sufficient to satisfy this burden is entirely different from the amount necessary to establish the effectiveness of the drug" (39 FR 9755).

The Drug Amendments of 1962 imposed a responsibility on drug manufacturers to prove, and on FDA to review, the effectiveness of drugs then on the market that had been approved on the basis of safety alone. The Supreme Court, in discussing the Amendments, recognized that it would be impractical to conduct a hearing on every issue arising in the course of such a review, and it approved procedures designed to separate those issues for which a hearing was truly justified from those for which no hearing was required. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973).

The burden on the manufacturer to collect and submit the necessary data is not excessive; without it, FDA's burden in reviewing and evaluating data would be insurmountable. With regard to the requirement that all raw data upon which the party requesting a hearing relies be submitted with a hearing request, the agency's response to comment No. 17 of the 1974 notice amending the requirements of 21 CFR 314.200 explains that all such raw data must be available to FDA to ensure that there is no misunderstanding with respect to the material on which the request relies (39 FR 9756). Only then can FDA fairly determine whether the data is adequate "on its face", as the Supreme Court announced in *Hynson*. The procedural regulation particularizes the statutory requirement that the manufacturer demonstrate effectiveness and clarify the most probative data (39 FR 9750, 9754). This format gives Beecham the opportunity to explain in detail how and why each relevant study satisfies the requirements of the statute and regulations and contains sufficient evidence of effectiveness to justify a hearing. It puts Beecham on notice is to just what is required.

2. Beecham objects to the format requirement for hearing requests. It is a well-recognized principle, applied by courts and administrative agencies, that hearing requests and other applications and pleadings may be required to be in a standard format and to contain specified types of information. *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra; Dyestuffs & Chemicals, Inc.* v. *Flemming*, 271 F.2d 281 (8th Cir. 1959), *cert. denied*, 362 U.S. 911 (1960); *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192 (1956). The statute, 21 U.S.C. 371(a), clearly authorizes the Commissioner to promulgate reasonable format requirements for FDA. The courts have specifically approved the substance of the format requirements at issue here. *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra; Cooper Laboratories, Inc.* v. *Commissioner, FDA*, 501 F.2d 772 (D.C. Cir. 1974).

3. Beecham objects to the 60-day time limit for submission of the hearing request. The response to comment No. 11 in the 1974 notice (39 FR 9755) thoroughly addressed objections to the 60-day requirement for submission of data. It was determined that in all but a few cases, 30 days was ample time and 60 days was "an entirely reasonable period of time" within which to submit the required data and information. The response noted that all available data need not be submitted—only data and information satisfying the requirements of [currently] 21 CFR 314.200. In any event, Beecham was in no way prejudiced by that requirement. The original DESI announcement questioning the efficacy of Adrenosem was published in 1970. Beecham and its predecessor in interest had ample notice that the administrative process would lead to withdrawal of approval of the product unless substantial evidence of effectiveness was submitted.

4. Beecham claims that Adrenosem is the only drug recommended for control of bleeding and oozing from capillaries and that to withdraw approval of it without an opportunity for a hearing would unfairly deprive patients undergoing surgical procedures of the only drug recommended for such control. In fact, Adrenosem is not recommended by medical authorities for that purpose; e.g., it is not listed in the "AMA Drug Evaluations" or in other recognized books of therapeutics. "Remington's Pharmaceutical Sciences" (15th edition, p. 768) states that the clinical usefulness of Adrenosem is "scientifically unjustified." Furthermore, FDA did provide an opportunity for a hearing on genuine issues of material fact. However, none were presented.

5. Beecham cites footnote 17 in *Hynson, supra*, suggesting that 21 CFR 314.111(a)(5)(ii)(*a*)(*2*) might not be sufficient to allow FDA to base a hearing denial wholly thereon, raising terms such as "minimizing bias", "assures comparability", and "pertinent variables" as examples of overly vague terms. Beecham then claims that the nature of the drug effect exerted by hemostatic agents renders if difficult to select a bleeding model that complies with such terms; i.e., that provides statistically conclusive proof of significantly decreased blood loss following administration of the drug.

Footnote 17 specifically refers only to [currently] § 314.111(a)(5)(ii)(*a*)(*2*)(*i*), requiring "*adequate* assurance that they [subjects] are suitable for the purposes of the study." (Emphasis in original.) The Court recognized that the "qualitative standards 'adequate and suitable' " did not lend themselves to a clear-cut definition, so that it might not be possible to tell from the face of a study whether those standards had been met. In contrast, there are particular, scientifically recognized methods of assigning subject to test groups so as to "minimize bias" and "assure comparability" between groups. Beecham complains that the term "pertinent variables" is vague, yet the standard itself lists several pertinent variables—age, sex, severity of disease, etc. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). Furthermore, even "a regulatory provision which seems vague in the abstract may nevertheless be conclusively at odds with the peculiarly deficient item of evidence." *Cooper Laboratories* v. *FDA*, 501 F.2d 772, 780 (D.C. Cir. 1974). Also § 314.111(a)(5)(ii)(*a*)(*4*) suggests some very specific ways in which bias can be minimized and comparability between groups can be assured. Beecham has simply failed to establish that its product meets these criteria or that it merits evaluation under different criteria.

6. Beecham attempts to "reserve" its right to utilize all other data and evidence of effectiveness of Adrenosem in additional submissions to FDA, at an administrative hearing, and in any judicial review proceeding. However, no such right exists. See, *Edison Pharmaceutical Co.* v. *FDA*, 600 F.2d 831 (D.C. Cir. 1969). A person requesting a

hearing must produce all studies known to it that are adequate, well-controlled, and relevant to the effectiveness of the drug. 21 CFR 314.200(d)(1). This ensures scientific accuracy, effective utilization of agency resources, and protection of the public health.

Of course, FDA recognizes that special circumstances may arise in cases where a study is in progress and results are not yet available. Section 314.200(c)(2) provides for such situations. However, Beecham has not claimed that there are any ongoing studies upon which it might rely, and can make no legal claim of a right to consideration of data submitted at a later date. In fact, Beecham's hearing request fails to cite 12 clinical studies initiated after 1970 and planned to be conducted under randomized double-blind conditions. These studies, which are summarized in the table below, apparently provided no results supporting claims of effectiveness of Adrenosem.

RANDOMIZED DOUBLE-BLIND CLINICAL STUDIES INITIATED AFTER 1970

No. and principal investigator	Surgical procedure or test	Number of patients till 6/24/74
1. J. D. Arnold	Ultrastracture and number of circulating platelets.	5
2. C. P. Alfrey	Template bleeding time, platelet count, plasma recalc. time in normal volunteers.	10
3. C. P. Alfrey	Same tests as above but before and after administration of 10 g aspirin.	10
4. C. P. Alfrey	Same tests as in No. 2 but in stabilized thrombocytopenic pts.	4
5. N. Orentreich	Dermabrasion in healthy volunteers.	94
6. N. Orentreich	Facial dermabrasion	15
7. M. Edgerton	Skin grafting (donor sites)	17
8. G. Smith	Skin grafting (donor sites)	90
9. G. Smith	Burn wound debridement + skin grafting.	8
10. M. Edgerton	Same as above	60
11. H. Leveen	Transurethral prostatic resection.	20
12. O. T. Bolding	Bleeding associated with IUCD.	53
Total number of patients		386

7. Beecham argues that an acknowledgment by NAS/NRC of the existence of controlled studies showing the effectiveness of Adrenosem for certain conditions established a material issue of fact requiring a hearing. FDA has reviewed the studies described by NAS/NRC as "controlled" and has concluded that they were not adequate and well controlled. The results of that review are described in Section III, above. It is noteworthy that NAS/NRC also stated that "many controlled studies * * * fail to show any benefit from the use of the drug", and that NAS/NRC itself determined that the drug was only possibly effective.

8. Beecham argues that, with reference to the NAS/NRC citation of controlled studies showing effectiveness, a retroactive application of the criteria for adequate and well-controlled studies described in 21 CFR 314.111(a)(5)(ii) is contrary to case law. Beecham further argues that many of FDA's objections to studies submitted are based upon imprecise standards contained in 21 CFR 314.111(a)(5)(iii)(*a*)(*2*) and, as such, reflect subjective determinations that are inadequate as a basis for denying a hearing. Although it is true that some of the criteria for adequate and well-controlled studies expressed in the regulations are not susceptible to precise objective measurement, it is equally true that a study can be so deficient that an analyst cannot relate the results to the criteria in a meaningful way. In such circumstances, FDA may properly find that there is no material issue of fact to justifying a hearing.

The Supreme Court has specifically held that if the information supplied does not even arguably meet the standards of 21 CFR 314.111(a)(5), then FDA is justified in withdrawing approval of an NDA without a formal hearing. *Weinberger* v. *Hynson, Westcott & Dunning, Inc., supra.*

VI. Findings

On the basis of the foregoing, the Commissioner finds that there is a lack of substantial evidence that Adrenosem Tablets, Syrup, and Solution are effective for any indication, and that Beecham has not demonstrated a genuine and substantial issue of fact requiring a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 76 Stat. 782 as amended (21 U.S.C. 355(e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 formerly 5.1; see 46 FR 26052; May 11, 1981)), the hearing request is denied, and approval of NDA 8-644, and all amendments and supplements thereto, is withdrawn, effective June 14, 1982.

Dated: May 28, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-15108 Filed 6-3-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82N-0052; DESI 5595]

Sodium Pentobarbital and Carbromal for Oral Use; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notices.

SUMMARY: This notice denies a request for hearing and withdraws approval of the new drug application for Carbrital Kapseals, Carbrital Half-Strength Kapseals, and Carbrital Elixir, all containing sodium pentobarbital and carbromal. These products are recommended for use as a sedative and hypnotic for insomnia. The basis of the withdrawal is thay the drug products lack substantial evidence of effectiveness for their labeled indications.

EFFECTIVE DATE: June 14, 1982.

FOR FURTHER INFORMATION CONTACT: Margery Erickson, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 5595) published in the **Federal Register** of June 18, 1971 (36 FR 11756), the Food and Drug Administration (FDA) evaluated the effectiveness of Carbrital Kapseals, Carbrital Half-Strength Kapseals, and Carbrital Elixir, all containing sodium pentobarbital (pentobarbital) and carbromal, NDA 5-595, held by Parke, Davis and Co., Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950 (Parke-Davis). The announcement stated that FDA had evaluated the reports of the National Academy of Sciences/National Research Council Drug Efficacy Study Group (NAS/NRC), together with other evidence, and concluded that pentobarbital with carbromal was possibly effective for its sedative and hypnotic indications. Manufacturers were given 6 months to provide substantial evidence of effectiveness of the drug products for their recommended use.

In response to the June 18, 1971 notice, Parke-Davis submitted (1) a 4-patient sleep laboratory study comparing the effects of Carbrital Kapseals, pentobarbital, and placebo on sleep patterns and sleep stages in insomniac subjects, and (2) a 12-patient study comparing bromide levels in serum and urine in patients using Carbrital Kapseals and Neurosine (an antispasmodic containing triple bromides).

Subsequently, the Director of the Bureau of Drugs issued a notice (formerly Docket No. FDC-D-439) in the **Federal Register** of August 6, 1974 (39 FR 28309), that the submitted data had been found not to constitute substantial evidence of the effectiveness of the three combination drug products for

their recommended use. Accordingly, the Director proposed to withdraw approval of the new drug application for these products and offered an opportunity for a hearing on the proposal.

On September 5, 1974, Parke-Davis requested a hearing for each of the three products and, on October 4, 1974, submitted the data on which it now relies to justify a hearing. The October 4 submission included reports of three clinical studies, the above-mentioned sleep study, and affidavits in support of the claimed effectiveness of Carbrital. In later correspondence, dated November 24, 1975, February 27, 1976, and January 6, 1977, Parke-Davis submitted the results of three additional sleep studies.

Parke-Davis states that these studies are adequate and well controlled and provide substantial evidence that Carbrital preparations have the effects claimed in their labeling. Parke-Davis also states that it has met the requirements for fixed-combination prescription drugs for humans (21 CFR 300.50) because (a) its submission establishes that the addition of a subtherapeutic dose of carbromal to a therapeutic dose of pentobarbital produces a more rapid onset of action and a longer hypnotic activity than does pentobarbital alone, and (b) the scheduling of pentobarbital and Carbrital under the Controlled Substances Act (21 U.S.C. 801 et seq.) reflects a determination that the presence of carbromal minimizes the potential for abuse of the principal active ingredient (pentobarbital) in the Carbrital combinations.

The Commissioner of Food and Drugs has considered the material submitted by Parke-Davis and concluded that there is no genuine issue of material fact requiring a hearing and that Parke-Davis' legal argument, based on the claim of a reduced potential for abuse, is insubstantial. Specifically, he finds that the combination of carbromal and pentobarbital has not been shown to provide any benefit over that of pentobarbital alone, and therefore that carbromal has not been shown to contribute to the effects of the combination. 21 CFR 300.50. A full discussion follows:

I. The Drugs

Each Carbrital Kapseal contains a fixed combination of 1½ grains (gr) (97.5 milligrams (mg)) sodium pentobarbital and 4 gr (260 mg) carbromal. Each Carbrital Half-Strength Kapseal contains a fixed combination of ¾ gr (48.7 mg) sodium pentobarbital and 2 gr (130 mg) carbromal. Each fluid ounce of Carbrital Elixir contains a fixed combination of 2 gr (130 mg) sodium pentobarbital and 6 gr (390 mg) carbromal.

II. Recommended Uses

Carbrital Kapseals, Carbrital Half-Strength Kapseals, and Carbrital Elixir are now labeled for use as a sedative and hypnotic for insomnia.

III. Data Submitted To Support Claims of Effectiveness

Parke/Davis submitted reports of three clinical studies, reports of four sleep laboratory studies, four affidavits, two articles on insomnia, and an excerpt on pentobarbital in support of the effectiveness of Carbrital as a sedative and hypnotic for insomnia. The submission is evaluated as follows:

A. Clinical Study Comparing Carbrital and Placebo

"A Double Blind Study Designed To Compare Carbrital and Placebo as Hypnotic Agents," Dennis Slone, unpublished, 1967–1968.

This was a double-blind, crossover study comparing Carbrital to placebo in 43 patients who were diagnosed as having a wide variety of diseases (e.g., cardiovascular, dermatological, endocrine, gastrointestinal, genitourinary, joint, neurological, psychiatric, respiratory). The investigator states that patients who were chosen for the study were mentally alert and routinely had been receiving a hypnotic.

At bedtime, patients were given a capsule of Carbrital or an identical appearing placebo capsule. On the following night, patients were crossed over to the other treatment. The order of administration was randomized and was revealed neither to the patient nor to the investigator. On the morning following the two-night study, each patient was asked the following questions: (1) "On which night did you sleep better?" and (2) "On which night did it take longer to fall asleep?"

The investigator found a statistically significant difference favoring Carbrital over placebo only in the responses to the first question.

This study is not adequate and well controlled and cannot provide substantial evidence of the effectiveness of Carbrital because its design did not consider the requirements of the combination policy (21 CFR 300.50). That policy requires that each component of a fixed combination be shown to contribute to the claimed effect. (In this proceeding it is the contribution of the carbromal component which is at issue.) Because this study did not provide a comparison of Carbrital with pentobarbital, it is impossible to determine the contribution of carbromal to the combination (i.e., whether the data favoring Carbrital over placebo are attributable to the addition of carbromal to pentobarbital, or whether the same effect could have been achieved with pentobarbital alone). Accordingly, this study failed to provide any evidence of whether Carbrital is effective as a fixed combination. 21 CFR 300.50.

B. Clinical Studies Comparing Carbrital, Pentobarbital, and Placebo

1. "A Double-Blind Study To Compare Carbrital, Pentobarbital Sodium, Placebo as Hypnotic Agents," Pasquale J. Costa, unpublished, 1968.

This was a double-blind, crossover study comparing the effects of Carbrital, pentobarbital, and placebo in 54 patients. The three treatments were administered so that each patient received a different treatment each day over a 3-day testing period. All but five patients had a primary diagnosis of insomnia. The patients were divided into three equal groups and randomly assigned to one of three different sequences of drug administration. Each patient was given a single oral dose of the assigned regiment at bedtime. A nurse then observed the patient and recorded whether the patient fell asleep in less than 15 minutes, 15 to 30 minutes, 30 to 45 minutes, 45 to 60 minutes, or more than 60 minutes. The nurse also recorded whether the patient's total duration of sleep was more than 8 hours, 7 to 8 hours, 6 to 7 hours, 5 to 6 hours, or less than 5 hours. A series of questions concerning sleeping and reawakening were asked each patient on the morning after each of the three treatments.

In 1969, Parke-Davis conducted a statistical analysis of the study and concluded that "no significant difference was found between the three treatement groups (Carbrital, pentobarbital, and placebo) with respect to patient response to the ten primary measurements * * *." Parke-Davis subsequently provided another statistical analysis (using paired comparisons) in support of its hearing requests.

Parke-Davis states that its second analysis is more sensitive than the intial analysis and concludes that Carbrital is significantly more effective than pentobarbital in one of the parameters, "effect of medication before onset of sleep." This parameter was measured by the patient's response to the question "What was the effect of the medication before you fell asleep?" The patient was required to choose from the answers ranging from "very pleasant" to "very

unpleasant". Parke-Davis reported that after the administration of Carbrital, nine patients had a pleasant or very pleasant effect prior to onset of sleep; when crossed over to pentobarbital these patients had an unpleasant, a very pleasant, or no effect. Parke-Davis further reported that after administration of pentobarbital, only two patients had a pleasant or very pleasant effect prior to onset of sleep; when crossed over to Carbrital these patients had an unpleasant, a very unpleasant, or no effect. Using this paired analysis, Parke-Davis concluded that Carbrital was superior to pentobarbital ($p. < .05$).

This study is not an adequate and well-controlled clinical investigation for a number of reasons. First, the study did not provide adequate assurance that the patient populations was suitable for the study. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). Because the design of the study requires testing with three treatments over a 3-day period, it is critical that each patient be expected to have sleep difficulties lasting at least three nights. Patients with intermittent problems lasting one or two nights would be unsuitable for such a study. The investigator's failure to provide any baseline data on patient's sleep histories makes it impossible to determine whether they were suitable for this study.

Another critical defect in this study was the failure of the investigator to provide washout periods between treatment administrations. Because the administration of a hypnotic drug on one night may affect sleep on a subsequent night, no-drug periods between treatment administrations were necessary to ensure that residual effects were not carried over to the subsequent phase of treatment. If there were such effects, patients would not have been comparable as they were given each therapy. Accordingly, there was a lack of assurance that the groups were comparable as to pertinent variables. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*).

The failure to consider the order of administration of treatments also indicates that inadequate measures were taken to minimize bias in the comparison of treatment groups. Because the study utilized a crossover design, patient responses may have been attributable to the order of drug administration (i.e., a period effect). For example, the patients who gave better responses on Carbrital may have received Carbrital before pentobarbital, while the patients who preferred pentobarbital may have received pentobarbital first. In that event each of the patients would have preferred the treatment received first, and any apparent difference between the treatments would be attributable to the order of drug administration. Accordingly, the order of drug administration should have been taken into account in the statistical analysis, and Parke-Davis' statistical analyses failed to assure that any apparent differences between treatments were not attributable to the order of drug administration. (See, Gart, J., "An Exact Test for Comparing Matched Proportions in Crossover Designs," *Biometrika,* Vol. 56, 75–80, 1969.) 21 CFR 314.111(a)(5)(ii)(*a*)(*5*).

Parke-Davis also failed to provide assurance that steps were taken to minimize bias on the part of the analyst. For example, 4 of the 11 efficacy variables, including "effect of medication before onset of sleep", were originally recorded on a five-point scale but were collapsed without explanation into a two-point scale—success or failure. Collapsing the categories after examination of the data could have introduced bias and distorted the results. Thus, the failure to explain the methods used to minimize bias on the part of the analyst violated another basis requirement of an adequate and well-controlled study. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*).

Finally, even if the study were not fatally flawed, Parke-Davis' analysis did not show that Carbrital was superior to pentobarbital. Only 1 of 11 variables, "effect of medication before onset of sleep," significantly favored Carbrital over pentobarbital. The meaningfulness of this particular variable as a measure of the effectiveness of the combination for insomnia has not been established. More important, Parke-Davis' statistical analysis failed to address the issue of multiple comparisons. When comparisons are being made for many variables there is a much greater likelihood of finding a statistically significant difference for any one of those variables than when one variable is being analyzed. It was necessary, therefore, to adjust for the multiple comparisions that were made. Parke-Davis provided no statistical analysis which did so—a critical omission. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*). When comparisons are made for 11 variables, the probability of finding 1 statistically significant comparison (at $p=.05$) in favor of the test drug grows. Thus, even accepting the validity of this variable, Parke-Davis' results do not disprove the null hypothesis: Carbrital is no more effective than pentobarbital alone.

Parke-David also stats that its reanalysis revealed other significant differences between Carbrital and pentobarbital. Specifically, Parke-Davis reports that the results with respect to "elapsed time between taking medication and sleep" and "patient has a good night's sleep" reached statistical significance favoring Carbrital over placebo while pentobarbital did not significantly differ from placebo. The appropriate comparision, however, is a direct one between Carbrital and pentobarbital. In such a comparision, Carbrital was found not be significantly superior to pentobarbital. Despite this finding, Parke-David contends that the other comparisons are sufficient to establish Carbrital's effectiveness in conformance with the combination policy (21 CFR 300.50).

Parke-Davis' position misinterprets the combination policy, which requires that each component of a combination product contribute to the claimed effect. Whether carbromal contributes to the claimed and established effect of pentobarbital in the combination product can be determined only by directly comparing the combination with the single entity, pentobarbital. The indirect comparison used by Parke-David does not address the question whether the addition of carbromal to the combination enhances the activity of pentobarbital. Rather, it only tells how each regimen performed in relation to placebo. Because the direct comparision of Carbrital and pentobarbital failed in light of the multiple comparisions issue to demonstrate that Carbrital is more effective than pentobarbital, the study does not show that carbromal makes a contribution to the effects of the combination.

2. "A Double-Blind Study To Compare Carbrital, Pentobarbital Sodium, Placebo as Hypnotic Agents," Charles Savarese, unpublished, 1968.

This study followed the basic protocol used in the Costa study except that the investigator does not claim that he selected a patient population of all insomniacs. Rather, he states only that he selected patients with various diseases who required administration of an oral hypnotic at bedtime. The data resulting from the Savarese study, like the Costa study, were originally analyzed in 1969. None of the tested parameters reached statistical significance favoring Carbrital over pentobarbital. As in the Costa study, Parke-Davis provided a second statistical analysis using its paired comparison technique. The later analysis reported a statistically significant difference favoring Carbrital over pentobarbital for only one

parameter, "disturbing interruptions of sleep."

This study is not an adequate and well-controled clinical investigation for the same reasons noted for the Costa study: (a) no assurance that the population was suitable for a 3-day study of insomnia (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*)); (b) no washout periods (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*)); (c) failure to account for the order of drug administration in the statistical analysis (21 CFR 314.111(a)(5)(ii)(*a*)(*5*)); (d) collapsing of efficacy categories after examination of data (21 CFR 314.111(a)(5)(ii)(*a*)(*4*)); and (e) failure to provide a statistical analysis which considered the issue of multiple comparisions (21 CFR 314.111(a)(5)(ii)(*a*)(*5*)). In addition, as in Costa, only 1 variable ("disturbing interruptions of sleep") out of 11 allegedly reached a statistically significant difference favoring Carbrital. Moreover, as explained below, even this one difference was based upon a numerical error.

Table 9 of Parke-Davis' submission (Vol. III at 38) indicates that nine patients had an interruption of sleep with pentobarbital but not with Carbrital, while only two patients had an interruption of sleep with Carbrital but not with pentobarbital. This is reported as a significant difference favoring the combination ($p < .05$). However, a review of the individual case reports and of table 11 (Vol. III at 45) which lists all interruptions of sleep, shows that eight (rather than nine) patients actually had an interruption of sleep with pentobarbital but not with Carbrital, and that three (rather than two) patients actually had an interruption of sleep with Carbrital but not with pentobarbital. Accordingly, even under Parke-Davis' statistical analysis, the one comparision claimed to favor Carbrital was not statistically significant ($p > .05$).

3. Evaluation of pooled analysis of data from Costa and Savarese studies.

Parke-Davis conducted a statistical analysis of the pooled data from the Costa and Savarese studies in order to increase the sample size. Parke-Davis justified pooling on the ground that identical protocols were used in the two studies.

For a number of reasons the pooling of data from these studies is not appropriate. First, the pooled analysis is based upon individual studies that are not adequate and well controlled within the meaning of 21 CFR 314.111(a)(5)(ii). Therefore, the pooled analysis cannot yield results that are scientifically valid.

Moreover, pooling of data from one or more studies is justified only when the conditions under which studies were conducted are the same. With respect to the Costa and Savarese studies, the patient populations are quite different. In the Costa study all but five of the patients were diagnosed by the investigator as insomniacs, while the majority of those selected for the Savarese study were not diagnosed as insomniacs. Furthermore, the Savarese study included many patients (at least 29 of 60) with emotional or cerebral disease (including senility, cerebral arteriosclerosis, stroke, chronic brain syndrome, and schizophrenia), while the patients in the Costa study were primarily elderly convalescents without these conditions. Finally, because no prior baseline data on sleep patterns of the patients of both studies were provided, it is impossible to determine whether they were sufficiently comparable with respect to severity or duration of the condition to permit pooling. This is but another reason why pooling of the data from the two studies for statistical analysis is not justified. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*) and (*a*)(*5*).

In any event the pooled analyses suffer from the same deficiences as do the anlayses of the individual studies. Even taking these analyses at face value, the only variable for which a significant difference is reported by Parke-Davis is "disturbing interruptions of sleep." As before, when the multiple comparisons issue is taken into account, 1 significant comparison (at $p = .05$) out of 11, never replicated in another study, should not be considered to be an unusual event and does not provide convincing evidence that carbromal makes a contribution to the effects of the combination. In fact, as noted above, such a finding will emerge frequently as a matter of chance.

Parke-Davis reports that the Carbrital-pentobarbital comparison, "almost all of the parameters evaluated leaned strongly in favor of Carbrital * * *." The data do not support this claim. Of the 11 categories in which the drugs were compared, none, except for the category "disturbing interruptions of sleep" considered above, favored Carbrital over pentobarbital even at the 0.10 level of significance.

C. Sleep Laboratory Comparison Studies

Parke-Davis sponsored four sleep laboratory studies to compare the effects of Carbrital, pentobarbital, and placebo on the sleep patterns of patients. The first study was conducted by Anthony Kales. In an affidavit submitted by Parke-Davis, Dr. Kales characterized this investigation as a pilot study. Although Dr. Kales found the study to "suggest" effectiveness of Carbrital, he concluded that further investigation was necessary. Parke-Davis then conducted three additional sleep studies which were subsequently submitted to FDA. Although Parke-Davis did not file these additional studies in a timely fashion (see 21 CFR 314.200(c)(2)), the Commissioner nevertheless has considered them. These additional studies did not show that Carbrital is significantly superior to pentobarbital in any of the tested parameters. All four sleep studies are evaluated below.

1. "A study to compare the effects of CI–138 (Carbromal 4 gr and sodium pentobarbital, 1½ gr) with CI–643 (Pentobarbital, sodium, 1½ gr), and placebo on sleep patterns and sleep stages in insomniac patients as measured by continuous nightly monitoring of electro-encephalographic (EEG), electromyographic (EMG), and electro-ophthalmographic (EOG) tracings," Anthony Kales, unpublished, 1973.

This study was a double-blind, crossover laboratory investigation comparing the effects of Carbrital, pentobarbital, and placebo on sleep patterns and sleep stages in four insomniac patients through continuous nightly monitoring of EEG, EMG, and EOG tracings.

The subjects selected were four females between the ages of 21 and 45. Each subject had a chronic history of sleep induction time (onset of any sleep stage from "lights out") longer than 45 minutes and/or a history of frequent nocturnal awakenings. The subjects were monitored for four consecutive nights in the sleep laboratory and received a placebo each night. At bedtime, on nights 5, 6, and 7, two subjects received Carbrital and two received pentobarbital. On nights 8 through 11, all subjects received a placebo to wash out drug effect. On nights 12, 13, and 14, Carbrital was administered to the two subjects who had received pentobarbital earlier; the two subjects who had received Carbrital were crossed over to pentobarbital.

On each night of the study, electrodes were placed on the scalp, around the eyes, and under the chin. The head was bandaged and the leads from the electrodes attached to an eight-channel recorder. Each subject was then placed in a quiet room, medication was administered, lights were turned off, and the monitoring commenced and continued for 8 hours. Night 1 was used as an adaptation night and data derived from it were excluded from calculation. Data from nights 2, 3 and 4 (placebo)

were used as the baseline for comparison with the Carbrital and pentobarbital nights.

The effects of Carbrital, pentobarbital, and placebo were evaluated using the following comparisons: sleep induction time; sleep duration time; number of nocturnal awakenings; total wake time; total time and percentage of sleep time spent in stages REM (rapid eye movement) 1, 2, 3, and 4; and number of awakenings and percentages of sleep time spent in sleep stages REM 1, 2, 3, and 4.

The investigator of this study reported that Carbrital and pentobarbital individually were more effective than placebo, and that Carbrital "may" have been more effective than pentobarbital alone with regard to sleep induction time and decrease in total wake time in three of four patients.

This study was previously evaluated by FDA in the August 6, 1974 notice (39 FR 28309). Because the study was conducted on a very small population, four patients, FDA determined that no valid conclusions could be drawn concerning the effectiveness of the products and/or whether both active ingredients contribute to the claimed effects. As noted above, the investigator concluded that further study was required to reach a firm conclusion. As shown below, the three followup studies conducted by Parke-Davis did not confirm the author's suggestion that Carbrital may be more effective than pentobarbital.

2. "A study to compare the effects of CI–138 (Carbromal 240 mg and sodium pentobarbital, 110 mg) with CI–643 (Pentobarbital, sodium, 100 mg), and placebo on sleep patterns and sleep stages in insomniac patients as measured by continuous nightly monitoring of electro-encephalographic (EEG), electromyographic (EMG), and electro-ophthalmographic (EOG) tracings," Gerald Vogel, unpublished, 1975.

This was a double-blind, crossover study designed to compare the effects of Carbrital, pentobarbital, and placebo on the sleep patterns of four healthy adults with a history of difficulty in falling asleep. Two males and two females between the ages of 30 and 55 were selected. Each subject had a history of chronic insomnia with an initial sleep latency (i.e., time needed to fall asleep) usually more than 45 minutes and always more than 30 minutes, or a sleep latency following an awakening usually more than 30 minutes and always more than 15 minutes.

The following monitoring schedule was used: On nights 1 through 4, the subject received placebo and was monitored in a sleep laboratory; on nights 5 through 7, the subject received drug A and was monitored in a sleep laboratory; on nights 8 through 15, the subject received drug A and slept at home; on nights 16 through 18, the subject received drug A and was monitored in a sleep laboratory; and, on nights 19 through 22, the subject received placebo and was monitored in a sleep laboratory. These 22 consecutive nights were followed by 1 to 2 weeks of sleeping at home without drugs (i.e., "washout" period). Thereafter, the same 22-night schedule of placebo and drug administration was followed with drug B. The subjects were monitored by conventional EEG/EOG/EMG methods in the sleep laboratory.

During the laboratory nights, the following sleep variables were objectively measured (electrographically) for each subject: total sleep time; total wake time; percentage bedtime occupied by sleep; wakefulness to first half minute of sleep (sleep latency to first sleep); time from "lights out" to first 10 consecutive minutes of sleep (sleep latency to first persistent sleep); number of awakenings of 1 minute or longer; total wake time between first sleep and last sleep; minutes and percentage of total time of stages REM 1, 2, 3, 4, and movement time; REM latency; and total bed time. The morning following each night, six variables measuring subjective experience of sleep were assessed with questionnaires administered to each subject: time to fall asleep; number of awakenings; hours of sleep; hour of final awakening; soundness (depth) of sleep; and quality of sleep.

The investigator concluded that "both drugs (Carbrital and pentobarbital) objectively reduced insomnia by increasing total sleep time, decreasing sleep latencies, and decreasing intermittent wakefulness and both did so about equally well * * *. The only objective differences between the drugs were minimal * * *. But in our small sample, the addition of carbromal 240 mg to pentobarbital 100 mg seems to have added little or nothing to the effects of pentolarbital on objective measures of insomnia. Essentially the same can be said of subjective estimates of insomnia. We found no remarkable differences between the two drugs."

Parke-Davis provided a statistical analysis of the study which concluded that only one of the parameters revealed a statistically significant difference between pentobarbital and Carbrital; that is, pentobarbital had longer REM sleep. Parke-Davis did not explain the significance of this finding as required by 21 CFR 314.111(a)(5)(ii)(*a*)(*5*).

3. "A study to compare the effects of CI–138 (Carbromal 240 mg and sodium pentobarbital, 100 mg) with CI–643 (pentobarbital, sodium, 100 mg), and placebo on sleep patterns and sleep stages in insomniac patients as measured by continuous nightly monitoring of electro-encephalographic (EEG), electromyographic (EMG), and electro-ophthalmographic (EOG) tracings," E. O. Bixler and J. D. Kales, unpublished, 1975.

This study was conducted under the identical protocol used in the preceding study. The effects of Carbrital, pentobarbital, and placebo were evaluated in four patients on the basis of the following sleep parameters: sleep latency; wake time after onset of sleep; total wake time; total sleep time; and REM.

The investigators concluded that this study confirms the effectiveness of both drugs for short-term use but does not indicate that there are any significant differences between the drugs with respect to inducing and maintaining sleep over REM sleep and total wake time.

The statistical analysis submitted by Parke-Davis noted that only one of the five sleep parameters revealed a statistical difference between pentobarbital and Carbrital; that is, pentobarbital had longer REM sleep in minutes that Carbrital at the second treatment. The significance of this finding was not explained as required by 21 CFR 314.111(a)(5)(ii)(*a*) (*5*).

4. "A study to compare the effects of CI–138 (Carbromal 240 mg and sodium pentobarbital, 100 mg) with CI–643 (Pentobarbital, sodium, 100 mg), and placebo on sleep patterns and sleep stages in insomniac patients as measured by continuous nightly monitoring of electro-encephalographic (EEG), electro-myographic (EMG), and electro-ophthalmographic (EOG) tracings," I. Karacan, unpublished, 1976.

This was a double-blind, crossover sleep laboratory study designed to compare the effects of Carbrital, pentobarbital, and placebo on sleep patterns and sleep stages in 12 insomniac patients through continuous nightly monitoring of EEG-EOG tracings. Eight males and four females between the ages of 21 and 45 who satisfied the following insomniac conditions were entered into the study: complaint of abnormally long sleep latency; average sleep latency of at least 30 minutes on two pre-study nights of laboratory-monitored sleep; and complaint of shorter total sleep time than before initial onset of insomnia. Patients were instructed not to take any major

tranquilizers or sleep medications 4 weeks prior to the study.

All patients had 10 nights of laboratory-monitored sleep beginning with a pre-study period (nights 1 and 2) in which no medication was administered. This was followed by study nights 3 through 10 in which the patients were given identical-appearing capsules containing either Carbrital, pentobarbital, or placebo. All-night sleep monitoring produced values for 26 standard EEG–EOG parameters. Patients also completed a 24-item, presleep questionnaire each night and a 37-item, post-sleep questionnaire each morning.

The investigator found "no clear indications of relative superiority between the drugs."

It is apparent from the result of the Karacan study, the Vogel study, and the Bixler and Kales study that Carbrital is not superior to pentobarbital in any of the tested parameters. These three followup studies fail to replicate the tentative favorable results of the 1973 pilot study (Kales) and fail to provide substantial evidence that Carbrital meets the combination policy (21 CFR 300.50).

D. Affidavits

Parke-Davis submitted affidavits from Dr. Edward Carr Jr., Dr. Edward Felix Domino, Dr. Anthony Kales, and Dr. William Edward O'Malley. Generally, the affidavits conclude that on the basis of the studies submitted by Parke-Davis, Carbrital is more effective than placebo and may be more effective than pentobarbital alone with regard to sleep induction and decrease in total wake time. In addition, Drs. Carr, Domino, and O'Malley concluded that the Slone, Costa, Savarese, and Kales (pilot) studies were well-controlled clinical investigations which constitute substantial evidence that Carbrital preparations are effective for use as sedative-hypnotics for insomnia. The affiants did not provide any analysis to support their conclusions, and did not address specific criteria of the regulations. Nor did Parke-Davis revise these affidavits in light of the three additional sleep studies subsequently submitted which found no differences favoring Carbrital over pentobarbital.

It is well settled that affidavits do not constitute substantial evidence of a drug's effectiveness. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973). Substantial evidence is statutorily defined as adequate and well-controlled investigations. 21 U.S.C. 355(d). Mere conclusory statements lacking details which permit scientific evaluation are not considered to be substantial evidence. 21 CFR 314.111(a)(5)(ii)(*c*).

As shown above, each of the studies submitted by Parke-Davis clearly fails to meet one or more of the regulatory criteria for adequate and well-controlled clincial investigations. Submission of conclusory affidavits cannot overcome these deficiencies or "change the scientific studies and the data reported into something they are not." *Cooper Laboratories, Inc.* v. *FDA*, 501 F. 2d 772, 785 (D.C. Cir. 1975) (quoting *Upjohn* v. *Finch*, 422 F. 2d 944, 955 (6th Cir. 1970)). Moreover, because the affidavits are merely conclusory and fail to address how the studies meet the specific regulatory criteria, they are clearly inadequate to create a genuine issue of fact requiring a hearing.

E. Other Studies

Parke-Davis submitted the following articles on insomnia: Jones, H. S. and I. Oswald, "Two Cases Of Healthy Insomnia," *Electroencephalography and Clinical Neurophysiology*, 24:378–380, 1968, and Johnson, L. C., "Psychological and Physiological Changes Following Total Sleep Deprivation," *in* "Sleep: Physiology and Pathology: a symposium," Edited by Kales, A., J. P. Lippincott & Co., Philadelphia, pp. 206–211, 1969. Parke-Davis also submitted an excerpt from a textbook regarding sodium pentobarbital, "The Pharmacological Basis of Therapeutics," 3rd Ed., Edited by Goodman, L. S. and A. Gilman, The MacMillan Co., New York, pp. 121–122, 1965. These publications do not even mention the Carbrital combinations and are, therefore, clearly unrelated to the use of Carbrital and whether it is effective as a fixed combination. 21 CFR 300.50; 21 CFR 314.111(a)(5)(ii).

IV. Summary

For the foregoing reasons, the medical evidence submitted by Parke-Davis fails to meet the statutory standard for "adequate and well-controlled investigations" (21 U.S.C. 355(d)), as particularized by 21 CFR 314.111(a)(5)(ii), or the requirements of 21 CFR 300.50.

The clinical study conducted by Slone was incapable of establishing carbromal's contribution to the claimed effects of Carbrital as required by 21 CFR 300.50.

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The Costa and Savarese studies did not provide adequate assurance of suitable populations or comparable patient groups. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*) and (*iii*). The statistical analysis also failed to account for the order of drug administration. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*). Also Parke-Davis did not explain whether and, if so, what steps were taken to minimize analyst bias in its reanalyses of these studies. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*).

The pooling of the data from the Costa and Saverese studies is meaningless in light of the above described deficiencies in each study. In addition, the pooled results do not establish that Carbrital is superior to pentobarbital alone.

At least three of the four sleep laboratory studies provide affirmative evidence that Carbrital failed to meet FDA's policy for fixed-combination prescription durgs for humans (21 CFR 300.50) because the fixed combination of carbromal and pentobarbital was not shown to provide any benefit beyond that of pentobarbital alone.

Finally, all of the medical data submitted by Parke-Davis were derived from studies using the full-strength product Carbrital or a similar dosage formulation. No data were submitted on the formulations of Carbrital Half-Strength Kapseals or Carbrital Elixir. Accordingly, there is no evidence of any kind to support the claims for these formulations.

V. Legal Argument

As a fixed combination drug, Carbrital must satisfy the combination drug policy. Parke-Davis has argued that its submissions show that the addition of carbromal to pentobarbitol enhances the effectiveness of the pentobarbitol alone. For the reasons stated above, the data submitted by Parke-Davis do not support this claim.

Parke-Davis has also presented an alternative, purely legal argument why Carbrital meets the combination drug policy: Carbromal is said to minimize the potential for abuse of pentobarbitol. This assertion is not based on any factual evidence submitted by Parke-Davis. Rather, Parke-Davis states that (1) FDA has acknowledged that carbromal minimizes the potential for abuse of pentobarbitol and (2) pentobarbitol has been placed into schedule II of the Controlled Substances Act (CSA), while Carbrital is in schedule III.

Parke-Davis asserts that FDA has acknowledged a determination by the Drug Enforcement Administration (DEA) that the addition of carbromal to pentobarbitol minimizes the potential for pentobarbitol abuse. This is incorrect. FDA could not acknowledge such a finding by DEA, because DEA

has not determined that carbromal reduces the potential for abuse of pentobarbitol. DEA dis ask FDA to analyze the abuse potential of certain drugs, including pentobarbitol. However, FDA's report of April 5, 1973 to DEA, entitled "Control of the Barbiturate Sedative-Hypnotic Agents under the Controlled Substances Act," made no findings or recommendations concerning any barbiturate combination drug. Thus, neither FDA nor DEA have ever made any findings of fact concerning the abuse potential of Carbrital.

In the absence of any data on the potential for abuse of Carbrital, Parke-Davis relies upon the difference in scheduling under the CSA of pentobarbitol and Carbrital. When Congress enacted the CSA, all preparations containing barbituric acid were placed into schedule III. Following a rulemaking proceeding in 1973, several barbiturates, including pentobarbitol, where transferred into schedule II. The final rule provided that preparations containing pentobarbitol in combination with an active medicinal ingredient not listed in any schedule remain in schedule III (see 38 FR 31310). This action was taken without any findings being made about the abuse potential of any specific combination. Because carbromal, a drug not now marketed in the United States, was not listed in any CSA schedule, Carbrital remained a schedule III drug.

Thus, it can be seen that Parke-Davis' argument is a wholly legal one: A combination drug automatically has a lower abuse potential if it is in a less restrictive schedule than one of its components. This argument, which raises no factual issues, does not justify a hearing. A hearing is to be held to resolve factual disputes. Parke-Davis points only to difference in scheduling between pentobarbitol and combination drugs containing pentobarbitol to support its hearing request; no medical or scientific data have been submitted or cited.

This reliance exclusively upon scheduling misapprehends the nature of the scheduling process. Many factors go into the scheduling of drugs. These factors do not necessarily bear only upon actual abuse or abuse potential—a drug may remain in its original schedule, for example, simply because of insufficient information about abuse potential. The shifting of pentobarbitol from schedule III to schedule II does not reflect a considered judgment that Carbrital has a lower abuse potential, for neither FDA nor DEA studied that specific question.

As the sponsor of Carbrital, it is Parke-Davis' obligation to come forward with evidence that carbromal minimizes the potential for abuse of pentobarbitol. Lacking any evidence, Parke-Davis relies on a par se rule. This does not fulfill its obligation. Accordingly, Parke-Davis is not entitled to a hearing on the basis of 21 CFR 300.50(a)(2).

Parke-Davis also declàres that carbromal is exempted from the new drug provisions of the Federal Food, Drug, and Cosmetic Act of 1938 under the grandfather clause. Parke-Davis concedes, however, that Carbrital, the drug at issue here, is not exempted and that it must therefore demonstrate the contribution of carbromal in the combination product. Accordingly, whether carbromal is or is not grandfathered is irrelevant.

VI. Findings

On the basis of the foregoing review of all the evidence submitted and the legal arguments offered, the Commissioner finds that there is a lack of substantial evidence that (1) Carbrital Kapseals, Carbrital Half-Strength Kapseals, and Carbrital Elixir have the effects they are represented to have under the conditions of use prescribed, recommended, or suggested in their present labeling, and (2) each component of the Carbrital products has been shown either to contribute to the total effects claimed, or to minimize the abuse potential of the principal active ingredient, pentobarbital. 21 U.S.C. 355 (d) and (e); 21 CFR 314.111(a)(5)(ii); 21 CFR 300.50.

Parke-Davis has failed to demonstrate the existence of a genuine and substantial issue of fact requiring a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 52 Stat. 1052–1053 as amended (21 U.S.C. 355(e))), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), the request for a hearing is denied, and approval of NDA 5–595 for Carbrital Kapseals, Carbrital Half-Strength Kapseals, and Carbrital Elixir, and all amendments and supplements thereto, is hereby withdrawn. Distribution of these drug products in interstate commerce without an approved new drug application is illegal and subject to regulatory action. This order is effective June 14, 1982.

Dated: May 28, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-15105 Filed 6-3-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82M-0155]

Howmedica, Inc.; Premarket Approval of Deklene™ Nonabsorbable Surgical Sutures, U.S.P. Polypropylene Monofilament Surgical Sutures (DYED)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the DEKLENE™ Nonabsorbable Surgical Sutures, U.S.P., Polypropylene Monofilament Surgical Sutures (Dyed) sponsored by Howmedica, Inc., New York, NY. These sutures are to be manufactured under an agreement with the Lukens Corp., Lynchburg, VA, which has authorized Howmedica, Inc., to incorporate by reference information contained in its approved new drug application for the Lukens Polypropylene Monofilament Surgical Suture. 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 July 6, 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 June 25, 1981, Howmedica, Inc., New York, NY 10017, submitted to FDA an application for premarket approval of the DEKLENE™ Nonabsorbable Surgical Sutures, U.S.P., Polypropylene Monofilament Surgical Sutures (Dyed), a suture containing the color additive D&C Blue No. 6, and intended for general surgical use. The application included authorization from the Lukens Corp., Lynchburg, VA 24505, to refer to its approved new drug application for the Lukens Polypropylene Monofilament Surgical Suture. On April 30, 1982, 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), nonabsorbable surgical sutures

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 Cosmetic Act (the act) (21 U.S.C. 321(h)), such sutures 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 permarket approval of nonabsorbable surgical sutures comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310) 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.

Opportunity For Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic 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 of 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 notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue 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 July 6, 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: May 26, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82- Filed 6-3-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81D-0214]

Availability of Draft Guidelines; Target Animal Safety for New Animal Drugs; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is extending the time for submitting comments on draft guidelines titled, "Target Animal Safety Proposed Guidelines for New Animal Drugs." The guidelines were prepared by the Bureau of Veterinary Medicine.

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

DATE: Comments on or before September 3, 1982.

FOR FURTHER INFORMATION CONTACT: Donald A. Gable, Bureau of Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3414.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 9, 1982 (47 FR 5939), FDA announced the availability of draft guidelines prepared by the Bureau of Veterinary Medicine. The guidelines are intended to aid sponsors of new animal drugs develop studies to establish the safety of their drug in the target animal species. Such data are required for new animal drug approval. The draft guidelines are a compilation in a single document of safety data guidelines for dogs and cats, horses, ruminants, swine, and poultry. The notice announcing the availability of the draft guidelines was issued under § 10.90(b) (21 CFR 10.90(b), which provides for the use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to FDA. The agency invited the submission of written comments on or before June 4, 1982.

In a letter dated May 4, 1982 (on file with the Dockets Management Branch, Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857), the Animal Health Institute (AHI) asked that FDA extend the comment period for 90 days to enable it to provide adequate comments. To help assure the development of the most beneficial guidelines, FDA concludes that additional time for submission of comments is warranted.

Interested persons may submit written comments on the guidelines to the Dockets Management Branch (HFA–305) (address above) on or before September 3, 1982. Respondents should submit two copies (except that individuals may submit single copies) identified with the docket number found in brackets in the hearing of this document. The guidelines and received comments may be seen in the Dockets Management Branch from 9 a.m. to 4 p.m., Monday through Friday.

Dated: May 26, 1982.

Williams F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-14942 Filed 5-28-82; 11:25 am]

BILLING CODE 4160-01-M

[Docket No. 76N-0325; DESI 3265]

Darbid Tablets; Drugs for Human Use; Drug Efficacy Study Implementation; Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice reclassifies the irritable bowel syndrome indication for Darbid Tablets to lacking substantial evidence of effectiveness, proposes to withdraw approval of that indication, and offers an opportunity for a hearing on the proposal.

DATES: Requests for a hearing must be submitted on or before July 6, 1982. All data and information relied on to support a hearing request, and any other comments must be submitted on or before August 3, 1982.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 76N–0325, and the reference number DESI 3265, and 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 fill new drug applications (identify with NDA number): Division of Cardio-Renal Drug Products (HFD–110), 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 hearing, supporting data and information, reports of studies, and other comments: Dockets Management Branch (HFA–305).

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs.

Guidelines for dissolution testing: Division of Biopyarmaceutics (HFD–520), Bureau of Drugs.

Requests for the report of the National Academy of Sciences-National Research Counil: Public Records and Document Center (HFI–35), Rm. 12A–12.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD–501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: Suzanne O'Shea, Bureau of Drugs (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 18, 1971 (36 FR 11759), the Food and Drug Administration (FDA) announced its conclusion that Darbid Tablets, containing 5 mg isopropamide iodide (NDA 10–744; Smith Kline & French Laboratories, Division of Smith Kline Beckman Corp., 1500 Spring Garden St., Philadelphia, PA 19101), are effective as adjunctive therapy in peptic ulcer and probably effective as adjunctive therapy in treating the irritable bowel syndrome. FDA classified other indications as possibly effective and lacking substantial evidence of effectiveness.

In a notice of opportunity for hearing (NOOH) published in the **Federal Register** of March 22, 1977 (42 FR 15468), FDA stated that no data has been submitted on any of Darbid's less-than-effective indications, reclassified them to lacking substantial evidence of effectiveness, and offered an opportunity for a hearing on the reclassification.

In a notice published in the **Federal Register** of July 12, 1977 (42 FR 35895), FDA rescinded the 1977 NOOH as it pertained to the irritable bowel syndrome. Smith Kline & French Laboratories (SKF) has submitted data to support that indication, but the agency had inadvertently failed to review them. No hearing was requested on Darbid's other less-than-effective indications and they are no longer allowable in the labeling.

The data submitted to support the irritable bowel syndrome indication have now been reviewed and do not constitute substantial evidence of effectiveness. Therefore, the Director of the Bureau of Drugs reclassifies Darbid to lacking substantial evidence of effectiveness as adjuntive therapy for the irritable bowel syndrome and offers an opportunity for a hearing. A discussion of the data follows.

Data Reviewed

Irritable bowel syndrome (IBS) is a disease characterized by a variety of disorders of enteric function. The symptoms may be chronic or recurring. The most frequent symptom is abdominal pain of variable intensity, location, time of onset, and duration. The pain is usually relieved by a bowel movement, the passage of flatus, or an enema. Constipation or diarrhea is also often present, as well as postprandial fullness and gaseous distension of the abdomen. Almay, T. P., "Irritable Bowel Syndrome," *in* "Gastrointestinal Disease," edited by M. H. Sleisenger and J. S. Fordtran, pp. 1585–1597. Although it is widely believed that these symptoms are exacerbated by emotional tension and life stress, it has not been demonstrated that improvement in emotional problems leads to improvement of the gastrointestinal disease itself. Accordingly, improvement in the gastrointestinal symptoms that characterize the condition is the appropriate measure of Darbid's effectiveness in treating IBS.

SKF has submitted reports of three multi-clinic studies conducted under similar protocols in an effort to demonstrate the effectiveness of Darbid in treating IBS. SKF has designated the studies PM–180, PM–122, and PM–256. Two of the studies, PM–122 and PM–256, were designed to compare Combid, an SKF product containing Darbid and Compazine, with each of its components and placebo. The Darbid-placebo comparison has been extracted from those studies in order to determine the effectiveness of Darbid alone.

In all three studies patients were randomly assigned to either Darbid or placebo, were told to eat a bland diet, and were permitted antacids (different antacids and different frequencies for various investigators). Patients recorded their response each day on diary cards.

The patients were evaluated by the investigators at the initial visit and after the first, second, and fourth weeks of medication. Three related evaluations were made: (1) A variety of individual gastrointestinal symptoms (not all protocols called for evaluation of precisely the same symptoms) were evaluated on a scale of 0 to 3 (absent, mild, moderate, or severe) at each visit, (2) a gastrointestinal symptom morbidity score was calculated for each patient at each visit by adding the scores of the individual symptoms, and (3) a global evaluation of the effectiveness of the medication was made at the end of the investigation.

The investigators also evaluated Darbid's effectiveness in treating emotional symptom. The Bureau did not consider those evaluations in concluding that the drug lacks substantial evidence of effectiveness.

The study design used is adequate to determine the effectiveness of Darbid in treating IBS and, using it, SKF has presented some evidence of effectiveness. The Bureau concludes, however, that the favorable results obtained are not persuasive when considered along with the larger body of non-supportive results and that there is a lack of substantial evidence that Darbid is effective in the treatment of IBS.

PM–180—Four Investigators

The gastrointestinal symptoms evaluated in this study were abdominal discomfort or pain, distension, diarrhea, constipation, urgent or explosive bowel movements, and mucus in the stool.

Two of the four investigators, Drs. Weiss and Rowan, completed the study by enrolling 30 patients each. Drs. Sparberg and Grossberg were unable to complete the study, enrolling a combined total of 11 evaluable Darbid patients and 13 evaluable placebo patients.

SKF asserts that the two completed studies are the more definitive ones and demonstrate the effectiveness of Darbid. The firm states that data and analyses of the incomplete studies were submitted only to show that they do not negate the positive findings of the completed studies.

The Bureau acknowledges that the Weiss and Rowan studies each show statistically significant effects of Darbid in overall gastrointestinal symptom morbidity and in individual symptoms. A statistically significant difference in favor of Darbid in the global evaluation was also reported but the global evaluation in these studies is not useful, as it was not separated into emotional and gastrointestinal components. Thus, it cannot be determined to what extent

global improvement is attributable to improvement in emotional symptoms.

Data from the incomplete studies cannot be disregarded simply because the two completed studies provide some evidence of effectiveness. When the incomplete studies are considered, the results of the completed studies are less impressive.

In the incomplete studies, the change from initial severity in the gastrointestinal symptom morbidity scores are similar for the Darbid and placebo group. The good response to placebo in gastrointestinal symptom morbidity in the incomplete studies is in marked contrast to the response to placebo in the completed studies. The response in the incomplete studies is much more typical of results in studies of IBS, a cyclical, spontaneously resolving condition. The results of the four studies are shown in Table 1.

TABLE 1.—CHANGE FROM INITIAL SEVERITY IN GASTROINTESTINAL SYMPTOM MORBIDITY

	1st week	2d week	4th week
Incomplete studies:			
Grossberg:			
Darbid	8.4	9.7	10.1
Placebo	5.4	6.5	6.0
Sparberg:			
Darbid	3.3	3.7	4.7
Placebo	3.0	3.0	4.4
Completed studies:			
Rowan:			
Darbid	3.1	2.9	2.7
Placebo	0.6	0.9	0.9
Weiss:			
Darbid	2.5	4.7	5.8
Placebo	0.0	0.2	0.7

It can be seen that the placebo groups in the Rowan and Weiss studies had, on the average, almost no improvement over a 4 week period, a very unusual outcome. The disparity in the placebo response of the completed and incomplete studies is striking and has not been adequately explained. SKF attributes this lack of agreement to the fact that the incomplete trials were extended over a long period with few patients enrolled at any one time. By contrast, the Weiss and Rowan studies were completed in a short period with many patients enrolled at the same time, making it possible, SKF argues, for the investigator to continually reinforce his judgments of symptom severity. SKF asserts that it is "well-known that consistent subjective judgments enhance the sensitivity of clinical trial data." It must be pointed out, however, that if the severity rating scores are well defined, as they seem to be in this study, then the ratings should be less affected by this factor. In addition, it is just as likely in studies with few patients enrolled, the investigator may spend more time with each patient, possibly resulting in more careful attention to the severity ratings.

SKF states that the two predominant individual symptoms are abdominal pain and distension. As would be expected, these evaluations are consistent with the overall gastrointestinal symptom morbidity evaluations of which they are major components (Tables 2 and 3).

TABLE 2.—IMPROVEMENT IN ABDOMINAL PAIN

	Percentage of patients		
	1st week	2d week	4th week
Incomplete studies combined:			
Darbid	75	83	92
Placebo	62	69	85
Completed studies:			
Rowan:			
Darbid	80	87	87
Placebo	13	20	27
Weiss:			
Darbid	87	93	100
Placebo	13	20	20

TABLE 3.—IMPROVEMENT IN DISTENSION

	Percentage of patients		
	1st week	2d week	4th week
Incomplete studies combined:			
Darbid	83	83	83
Placebo	73	82	82
Completed studies:			
Rowan:			
Darbid	67	73	73
Placebo	14	14	29
Weiss:			
Darbid	46	85	85
Placebo	14	14	29

As in the overall gastrointestinal symptom morbidity evaluation, the lack of placebo response in the completed studies is surprising and unexplained.

Although the global evaluation is not a particularly useful measure of effectiveness in this study, it is interesting to note that a similar pattern emerges. In the Grossberg study, excellent or good global results were obtained by five or seven Darbid patients and seven of nine placebo patients. In the Sparberg study, excellent or good global results were obtained by three or four Darbid patients and three of four placebo patients. In contrast, in the Rowan study, excellent or good global results were obtained by 12 or 15 Darbid patients but only 2 of 15 placebo patients. In the Weiss study, excellent or good global results were obtained by 14 of 15 Darbid patients, but none of the placebo patients.

There is a further problem with the Weiss study, a particularly important one in view of the atypical results reported for the placebo group. The patient diary forms submitted to the agency, which according to the protocol were to have been completed by the patients, were in fact completed by the investigator. He explained the patients often completed the forms inadequately or had written illegibly. Therefore, he discussed the patients' forms with them and rewrote the forms himself. The original patient diary forms were destroyed. This explanation is insufficient to resolve major doubts about the adequacy of blinding in this study and the possibility of bias on the part of the investigator. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*) and (*4*). It does not seem possible, for example that every diary was so poor it required replacement, yet Dr. Weiss provided no forms filled out by patients. Moreover, if the diary represents the physician's interpretation of the patient's report it is a "physician global" evaluation, not a patient report. In the absence of further explanation the Weiss study cannot be regarded as reliable.

PM–122—Ten Investigators

A total of 85 Darbid patients and 89 placebo patients were studied by 10 investigators. The gastrointestinal symptoms evaluated were abdominal pain, distension, diarrhea, constipation, alternating diarrhea and constipation, and urgent or explosive bowel movements. The symptom morbidity evaluations were made at the second and fourth weeks after the start of medication, and a global evaluation was made at the end of the study. Two analyses of this study were submitted by SKF—one in 1972, the other after publication of the original NOOH.

As in PM–180, the global evaluation is not a useful measure of effectiveness because it is not separated into gastrointestinal symptoms and emotional symptoms. In addition, by SKF's analysis, there is no difference between Darbid and placebo. When the global evaluations of all 10 investigators are pooled, 51 percent of the Darbid patients reported good or excellent results, compared with 48 percent of the placebo patients reporting good or excellent results.

With respect to individual symptoms, numerical differences favoring Darbid were present for distention and constipation especially at 2 weeks. There was little or no advantage of Darbid for abdominal discomfort, the most common symptom, or for diarrhea or alternating constipation and diarrhea. The individual symptoms (corrected by referring to the original patient records) were not tabulated by investigator, and no statistical analysis was performed because it was felt that results from symptom to symptom were correlated.

The major analysis, therefore, was of the overall gastrointestinal morbidity.

In its analysis of overall gastrointestinal symptom morbidity, SKF pooled the data of 8 of the 10 investigators, stating that 2 were excluded because of the low number of patients enrolled by those investigators. This is not, however, adequate justification for excluding these investigators, and may suggest some analyst bias. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*) and (*5*).

There are unexplained differences between the 1972 analysis and the later analysis in gastrointestinal symptom morbidity. In the 1972 analysis, SKF reported statistically significant differences in favor of Darbid at both the second and fourth weeks. The later analysis covers seven fewer patients than the 1972 analysis. A statistically significant difference in favor of Darbid is reported only for the second week with mean adjusted scores of 3.9 for placebo vs. 3.0 for Darbid, obviously a small difference.

In addition, if gastrointestinal symptom morbidity is to be used as the main effectiveness variable, it must be demonstrated that the patient population for both treatment groups was similarly characterized with respect to individual symptoms at baseline (including an analysis of individual symptoms) by investigator, to show that groups were comparable with respect to pertinent variables. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*). SKF has submitted no tabulation to permit such an analysis.

PM–256—17 Investigators

The 17 investigators conducted two parallel studied, PM–256a examining patients with upper gastrointestinal functional disease (UGFD) and PM–256b examining patients with the IBS (called irritable colon syndrome by SKF). SKF submitted the results of the individual investigators in each study, the results of investigators combined within each study, and the results of PM–256a and PM–256b combined.

The major gastrointestinal symptoms evaluated in th IBS study were lower abdominal pain/discomfort, constipation, diarrhea, excessive flatus, and abnormal shape or consistency of stool. The minor gastrointestinal symptoms evaluated were nausea, vomiting, belching, and postprandial fullness. The major gastrointestinal symptoms studies in the UGFD investigation were abdominal discomfort, excessive belching, nausea and vomiting; minor symptoms were lower abdominal pain, alteration in bowel habits, apparent relationship between pain and bowel movements, and abnormal shape or consistency of stool.

The relevance of the investigation of UGFD to the determination of the effectiveness of Darbid in IBS is not clearly explained. Nevertheless, these data are summarized below along with the data from the study of IBS.

SKF first analyzed the results of the investigators individually with respect to major physical symptoms, minor physical symptoms, and total physical symptoms (major and minor symptoms combined). SKF cautioned that the study was planned with the expectation of not finding statistically significant differences within the 17 individual clinical trials. This expectation was largely realized, as shown in Table 4.

TABLE 4.—SIGNIFICANT DIFFERENCES IN FAVOR OF DARBID

	Major symptoms	Minor symptoms	Total physical symptoms
IBS study:			
Dr. Rowan		Week 1	
Dr. Vidins		Weeks 1, 2	
Dr. Berger			Week 2.
UGFD study:			
Dr. Rowan	Weeks 1, 4		Week 1.
Dr. Bartoli	Week 2		Week 4.
Dr. Wachsman (Study II).		Week 1	

SKF's second analysis consists of the pooled data of 13 of the 17 investigators in each study. Statistically significant advantages for Darbid ($p < .05$) were obtained in very few evaluations in this analysis. Thus, this analysis cannot be taken as substantial evidence of effectiveness.

SKF excluded Dr. Welch because of the large number of protocol violations and early dropouts. SKF also excluded Drs. Mattingly, O'Malley, and Rider because they treated a small number of patients. Treating a small number of patients is not adequate justification for excluding the investigators. The Bureau has, therefore, reanalyzed the results including all patients of Drs. Mattingly, O'Malley, and Rider. This analysis does not differ appreciably from that of SKF.

The global evaluation is a useful measure of effectiveness in this investigation as it consists of an evaluation of "the patient's physical symptoms * * *." It appears, therefore, that emotional symptoms were not considered in this global evaluation. SKF states that the global evaluations in both studies support the desirable action of Darbid. SKF's analyis indicates that in the IBS study, 73 percent of the Darbid patients showed some improvement, compared with 66 percent of the placebo patients who showed some improvement, virtually no difference. In the UGFD study, SKF reported that 77 percent of the Darbid patients showed some improvement, as opposed to 64 percent of the placebo patients, in somewhat greater difference and consistent with the somewhat more favorable results in this study generally. The Bureau's calculations indicate, however, that these differences are not statistically significant.

By SKF's analysis of the IBS study, when the investigators are pooled, there is no statistically significant ($p. < .05$) difference between Darbid and placebo at any time period in major physical symptoms, minor physical symptoms, or total physical symptoms. By SKF's analysis of the UGFD study, when the investigators are pooled, statisically significant differences ($p. < .05$) in favor of Darbid were obtained only in major and total symptoms at the first week.

SKF conducted no statistical analysis of the individual symptoms, but simply submitted tabulations of responses. The Bureau's calculations, including all patients who completed the study, indicate that at the fourth week of the IBS study there are trends in favor of Darbid, but no statistically significant differences. In the UGFD study there is a statistically significant ($p. < .05$) result only for excessive belching. The trends for all other symptoms in the UGFD study favor Darbid except for abdominal discomfort which produced essentially equivalent results for Darbid and placebo.

SKF relies most on its "third level" analysis: the data of the IBS study combined with the data of the UGFD study. When the data of these studies were combined, SKF found significant differences ($p. < .05$) in favor of Darbid in the global evaluation, in major physical symptoms at the second week, in minor physical symptoms at the fourth week and in total physical symptoms at the second and fourth weeks. Significant differences ($p. < .05$) in favor of Darbid were also found for abdominal pain at the first and second week, and for vomiting at the second and fourth week.

It is, however, facially untenable to combine the data from these two studies when the two investigations examine different diseases with different symptomatology simply because the same investigators study both diseases. The 256a study provides some evidence of effectiveness of Darbid in UGFD, but the evidence is weak (global evaluation did not show a significant difference) and has not been confirmed by any other study. Study 256b, in IBS, although

well designed provides no support for the effectiveness of Darbid.

Summary

SKF has not submitted substantial evidence of effectiveness of Darbid in treating the irritable bowel syndrome. The results of three multiclinic studies were submitted and reviewed by the Bureau. SKF claims that the results of two individual investigators, Drs. Rowan and Weiss (PM–180), are sufficient to demonstrate the effectiveness of Darbid. The results of these two studies are not persuasive, however, because of the unusally low level of placebo response and because of a major irregularity in the data of one investigator. In PM–122, baseline comparability for individual gastrointestinal symptoms was not assessed and the small (albeit statistically significant) advantage for Darbid cannot be interpreted. In PM–256b, a well-controlled trial, SKF found no significant results in favor of Darbid. In PM–256a few significant results were obtained, but these results in UGFD have not been replicated in any other study. Thus, there is some evidence of effectiveness for Darbid in functional bowel disease but the inconsistent results and weakness of the data lead to the conclusion that the evidence cannot be considered substantial.

In addition to the holder of the new drug application specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical to a drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved 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. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that Darbid Tablets (isopropamide iodide) are effective as adjunctive therapy for the treatment of peptic ulcer. The drug now lacks substantial evidence of effectiveness as adjunctive therapy in the irritable bowel syndrome.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to accept abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under the conditions described below.

1. *Form of drug.* The drug is in tablet form.

2. *Labeling.* 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 indication may be stated as shown in either (i) or (ii) below. As a result of the Bureau of Drugs' previous recommendations, some NDA holders for other anticholinergic drug products have begun to use the language in item (ii). The Bureau anticipates that that language will be in the Indications section of the full labeling text that is to be published as a labeling guideline for anticholinergic drug products in the future. However, at the present time labeling will be considered acceptable if either item (i) or (ii) is used for the indication.

(i) For use as adjunction therapy for the treatment of peptic ulcer.

(ii) For use as adjunctive therapy for the treatment of peptic ulcer. (*Name of drug*) has not been shown to be effective in contributing to the healing of peptic ulcer, decreasing the rate of recurrence, or preventing complications.

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 August 3, 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 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)) to the extent required in abbreviated new drug applications (21 CFR 314.1(f)).

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained before marketing such products. In vitro dissolution testing data must be submitted. (Guidelines for dissolution testing are available from the Division of Biopharmaceutics at the address given above.) Marketing drug products before approval of a new drug application will subject those products, and the 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 Darbid Tablets (isopropamide iodide) as adjunctive therapy in the treatment of the irritable bowel syndrome.

Notice is given to the holder of the new drug application, 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 that portion of NDA 10–744 and all amendments and supplements which pertian to the irritable bowel syndrome indication on the ground that new information before him, evaluated together with the evidence available to him when the application was approved, shows there is a lack of substantial evidence that Darbid Tablets 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 irritable bowel syndrome claim.

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 applicant and all other persons who manufacture or distribute a drug product that is identical, related, or similar to the drug product named above (21 CFR 310.6), are hereby given an opportunity for a hearing to show why approval of the new drug application

should not be withdrawn, and an opportunity to raise, for administrative determination, all issues relating to the legal status of the 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 July 6, 1982, a written notice of appearance and request for hearing, and (2) on or before August 3, 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 applicant 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 irritable bowel syndrome indication 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.

(Federal Food, Drug, and Cosmetic Act secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355), and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70 and 5.82))

Dated: May 26, 1982.

Harry M. Meyer, Jr.,

Director, Bureau of Drugs and Biologics.

[FR Doc. 82-14958 Filed 6-3-82; 8:45 am]

BILLING CODE 4160-01-M

Endocrinologic and Metabolic Drugs Advisory Committee; Meeting Change

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announced in the **Federal Register** of May 14, 1982 (47 FR 20859) a meeting of the Endocrinologic and Metabolic Drugs Advisory Committee scheduled for June 24, 1982. The agency is republishing the notice of this meeting to include a closed session.

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. June 24, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and executive secretary. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data and closed committee deliberations, 1 p.m. to 4 p.m.; A. T. Gregoire, Bureau of Drugs (HFD–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1869.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drug products for use in treating endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to present information should contact the executive secretary.

Open committee discussion. The committee will discuss (1) the FDA Action Report and (2) Trilostane capsules for treatment of Conn's and Cushing's disease (NDA 18–719).

Closed presentation of data. The sponsor will present unpublished clinical data relating to IND 14,024, an aldose reductase inhibitor for treatment of diabetic retinopathy. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will discuss the unpublished data relating to IND 14,024. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar, as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files complied for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made pbulic; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: May 27, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-14957 Filed 6-3-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 76N-0256; DESI 9149]

Trifluoperazine Hydrochloride; Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice announces the conditions for marketing trifluoperazine hydrochloride for the indication for which FDA now regards it as effective and offers an opportunity for a hearing concerning the indication reclassified in this notice to lacking substantial evidence of effectiveness. The drug is used for treating psychotic disorders.

DATES: Hearing requests due on or before July 6, 1982; supplements to approved new drug applications due on or before August 3, 1982.

ADDRESS: Communications in response to this notice should be identified with reference number DESI 9149, 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 Neuropharmacological Drug Products (HFD–120), Rm. 10B–34, Bureaus of Drugs and Biologics.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD–530), Bureaus of Drugs and Biologics.

Requests for a hearing (identify with the Docket Number appearing in the heading of this notice): Dockets Management Branch (HFA–305), Rm. 4–62.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Bureaus of Drugs and Biologics.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD–501), Bureaus of Drugs and Biologics.

FOR FURTHER INFORMATION CONTACT: John H. Hazard, Jr., Bureaus of Drugs and Biologics (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration announced its conclusions concerning the effectiveness of trifluoperazine drug products in a notice published in the **Federal Register** of April 3, 1971 (36 FR 6447) (DESI 9149, Docket No. FDC–D–334 (now Docket No. 76N–0256)), and amended on November 2, 1971 (36 FR 20997). On September 8, 1976 (41 FR 37834), the Director of the Bureau of Drugs reclassified the less-than-effective indications of the drug to lacking substantial evidence of effectiveness and offered an opportunity for hearing on the reclassification. The notice concluded that the drug was effective only for the indication "For use in the management of all manifestations of psychotic disorders."

On December 7, 1976 (41 FR 53539), the Director rescinded the previous 1976 notice insofar as it pertained to one of the less-than-effective indications. The Director has now evaluated data that the sponsor submitted to support the product's effectiveness for that indication, and announces his conclusions herein.

The present notice does not pertain to the indications classified as lacking substantial evidence of effectiveness in the April 3, 1971, and the September 8, 1976 notices. No person requested a hearing concerning them, and they are no longer allowed in the labeling. Any product labeled for those indications is subject to regulatory action. Products containing a drug other than trifluoperazine and included in those notices are not affected by this notice.

NDA 11–552; Stelazine containing trifluoperazine hydrochloride, in tablets of 1, 2, 5, or 10 mg; in 10 mg/mL concentrated solution; and in 2 mg/mL injectable solution; SmithKline Corp., 1500 Spring Garden St., Philadelphia, PA 19101.

For the indication "To control excessive anxiety, tension, and agitation as seen in neuroses or associated with somatic conditions," the sponsor presented data in three separate submissions.

1. *Cooperative Studies.* The first portion (Protocol 2291 of this submission was designed as a multicenter, double-blind, parallel group comparison of trifluoperazine and placebo in 187 patients having "psychoneurotic disorders of mild to moderate degree." Patients were required to show one or more of the following symptoms: Anxiety, agitation, tension, hyperactivity, fearful attitude, listlessness, sleep disturbances, or psychosomatic symptoms which may be accompanied by functional changes in a physiological system. The trial was to last 4 weeks, but depending on the

patients' responses, it could be extended to 6 weeks or terminated at 2 weeks.

Patients were required to be free of psychotropic medication for 7 days before being placed on a regimen of either 2 mg twice daily trifluoperazine tablets or 1 placebo tablets twice daily. The bottles had tear-off labels identifying the contents and were color coded.

Patients were seen at weeks 0, 2, and 4. Global change was assessed at the final visit. The Physicians Rating List (PRL) was completed at pre-trial and on the final visit. The PRL comprised 18 items each rated from 0 (symptom absent) to 3 (severe). The items from; the PRL were combined to form four factors: Anxiety Manifestations (agitation, hyperactivity, motor disturbance, and tension); Psychophysiologic Complaints (fatigue, psychosomatic, and vague somatic); Depression (guilt feelings, feeling of inferiority, poor interpersonal relationships); Total Morbidity (sum of all 18 items). It should be noted that the PRL, as developed by the sponsor for these studies, did not include "anxiety" as a variable for evaluation. Thus, the axiety manifestation section as described above assessed motor aspects and not the subjective experience of anxiety.

Studying the four factors, the sponsor performed both individual and combined statistical analyses of the results obtained by six of the investigators. A seventh investigator was not included because of protocol violations. The analyses comprised "standard statistical linear models," also referred to as "covariance analyses" in another section. The results for the six-investigator combined analysis indicated trifluoperazine produced more improvement than placebo on the global change variable and the PRL factors.

Although the study yielded significant results, the characteristics of the patients who were treated are unclear. Most important, excessive anxiety was not specifically required for a subject's inclusion in the study. It was only one of many possible symptoms which could be present in subjects who were diagnosed as having a psychoneurosis, and this category includes a variety of disorders. It is thus not clear that the patient population studied is relevant to the claimed use in controlling excessive anxiety. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*).

In addition, anxiety as a subjective experience was not included in the rating scale as a variable for assessment. This study was presumably carried out when anxiety was seen as a covert variable, leaving only the overt motor phenomena to be measured (e.g., tension, etc.). Such manifestations may or may not have been expressive of anxiety, and the investigator had to assume the presence of anxiety, based on a variety of behaviors. The observations made thus are only indirectly, if at all, measurements of the claimed effect. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*).

A second seven-investigator study (Protocol 121) was a 4-week, double-blind, parallel group comparsion of trifluoperazine and placebo. Data were collected on 202 patients who had been placed on a regiment of either 2 mg twice daily trifluoperazine tablets or placebo. The inclusion criterion was as follows: "Mild to moderate adult psychoneurotic outpatients with mixed anxiety-depressive states." Patients were required to have some of the following symptoms: Agitation, hyperactivity, motor disturbances, guilt feelings, feelings of inferiority, poor interpersonal relationships, psychophysiologic complaints, sleep disturbances.

The effect of the durg on specific symptoms was to be evaluated using the PRL described above. To avoid bias, investigators were asked to file each PRL form and not refer to a patient's previous score at a subsequent rating. The scores were obtained before treatment and then again during treatment (either after 2 weeks or 4 weeks on medication).

When medication was terminated, all patients were evaluated using a global efficacy rating of overall improvement (excellent, good, fair, or poor) to further evaluate any differences between the treatments.

A review of the raw data from the PRL showed that most of the patients fell into two distinct groups. Three of the seven investigators had selected patients who were characterized at pretreatment as showing mixed anxiety and depression. That is, the patients had high scores on both the anxiety manifestations factor and depression factor and low scores on the physiological factor. Three other investigators described their patients as dominated by symptoms of psychoneurotic anxiety. This group had high scores on the physiological factor and low scores on the anxiety manifestations factor and depression factor. The data from the mixed anxiety and depression studies were analyzed by the sponsor individually and as a group. The same procedure was applied to the findings from the three psychoneurotic anxiety studies.

The results from six of the mixed anxiety and depression studies and the psychoneurotic anxiety studies indicated there were statistically significant differences on the four PRL factors and on the gloval efficacy variable favoring trifluoperazine over placebo. In the seventh study, there were protocol violations, and the number of patients not in violation was too small for a separate analysis.

The Bureau's criticism of the studies centers on three areas. First, the patient selection criteria that were used were neither clearly specified nor clearly relevant to the indication. One obvious example of this is the fact that in the patients studied by three of the seven investigators, physiologic symptoms, and not anxiety and depression, predominated. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*). Second, the blinding procedure was easily susceptible to breakdown. A system of color coding was used where the active drug was coded with one of three colors, and the placebo with one of two colors. Pronounced side effects, readily recognizable in some patients given drugs of the phenothiazine class, could quickly identify the colors associated with the active drug. 21 CFR 314.111(a)(5)(iii)(*a*)(*3*). Third, the Bureau finds the PRL to be deficient. The items in the scale are not defined, anchor points are not provided, and the scale itself is not validated. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*).

The sponsor attempted to rebut this last criticism by presenting the views of one investigator who states that while the individual symptom scores do not appear to be reliable, the factor scores are reliable. In other words, the sponsor argued that if two symptom scores are highly correlated with each other, then there must be something reliable that the symptoms have in common. That view fails to consider the possibility that what they have in common may be unrelated to anxiety; i.e., correlation and validity must be distinguished. Furthermore, the sponsor's argument neglects the possibility that a rater's presumptions may influence more than one item in some manner. For example, if a rater presumes that people who feel guilty also have feelings of inferiority and poor interpersonal relations, then whenever the rater marks one of these symptoms high for a patient, he would mark the other symptoms high. Similarly, whenever a rater marked one of the these symptoms low, the rater would probably mark the other symptoms low. Should this presumption be widespread among raters, that is, if it were a social stereotype, then it will lead to a high correlation between all these symptoms based upon "halo effect" rather than on item reliability.

Because the PRL was the only scale used to measure change in symptomatology, the Bureau presented the question of efficacy as demonstrated by the studies to two consultants and to the Neuropharmacology Advisory Committee. The consensus was that the lack of clear, specific patient selection criteria made it impossible to determine the characteristics of the patients participating in the studies, and their relatinship to the indication, viz, "excessive anxiety and tension * * *." This, plus the lack of demonstrated validity for the PRL, made it difficult to determine the drug's exact effect. For this reason the Director recommended that the sponsor perform additional studies using other validated scales as support for both PRL and for clinical efficacy in anxious patients. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*i*), (*a*)(*3*), and (*a*)(*5*).

2. *Goldstein-Brauzer Study.* This study, submitted in July 1976, compared trifluoperazine, chlordiazepoxide, and placebo in 126 male and female psychoneurotic patients. An additional 45 patients were studied in a second phase.

The study's objective was to determine the clinical efficacy and patient tolerance of trifluoperazine when compared with chlordiazepoxide and placebo in subjects manifesting moderate to severe symptoms of anxiety and tension. The selection process excluded pregnant women and patients who were diagnosed as having metabolic or organic brain disease or pyschotic illness or serious liver, kidney, or cardiovascular disease. Also excluded were patients who were known to be hypersensitive to trifluoperazine or chlordiazepoxide. Those accepted by the project psychiatrist were randomly assigned to one of the three treatments, each containing approximately 40 patients. The trial was conducted under double-blind conditons for 4 weeks with either of the two active drugs or placebo.

All medication was furnished by the sponsor in identical appearing capsules. Trifluoperazine was dispensed in a dose range of from 2 to 10 mg daily, and chlordiazepoxide was dispensed in a dose range of 20 to 100 mg daily. Adjustments for each patient depended upon the patient's response to treatment. Adverse reactions were treated either with dose reduction and/or short-term addition of benztropine mesylate. Concomitant medication was limited to drugs needed for well-established organic diseases or birth control. Patients were not to have received other psychotropic drugs for at least 4 to 7 days before entering the study, and no other psychotropic drugs or hypnotics were to be taken during the study.

Efficacy was evaluated using two physician rating scales: a Modified Physician Questionaire (PQ) and the New Physicians Rating List (NPRL). Two self report forms, the Self Rating Symptom Scale (SRSS) and the Profile of Mood States (POMS), were also used. Measurements using all scales were obtained before the patient entered the study and at the end of the second and fourth weeks. A physician's global evaluation of improvement was to be made during the patient's final visit.

The design of the study appears adequate and appropriate. The entrance criteria of moderate to severe anxiety also appear to have been met, and there do not appear to have been any protocol deviations with regard to concomitant medications.

The results of the sponsor's analyses of the physician scales for the final week for the 126 patients indicated that both trifluoperazine and chlordiazepoxide produced more improvement than placebo on five of the ten variables. The analyses of the global change variables and the patients' scales were not significant.

There were a number of problems, however, with the analyses of the data. No explanation was given for the extremely high percentage of dropouts (49 percent) for patients on trifluoperazine. So large a dropout rate can jeopardize the effects of randomization, leaving groups that are no longer comparable, 21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*), or more important, serve to exclude patients responding poorly to the drug, leading to a biased analysis. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*). It probably would have been most appropriate to regard such patients as failing to respond to treatment; in any case, the sponsor would need to explain its handling of the group. Instead, the sponsor simply eliminated them and analyzed only the results of patients who completed the study. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*). Many patients had adjustments in the level of their dosages during the course of treatment. No justification was given by the sponsor for the omission of accounting for variation of dosage in the analysis of the data by linear models. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*).

In another instance the sponsor noted that not all patients kept all of their scheduled appointments, with the result that there were some missing data points. In these cases the sponsor said it substituted the data for the scale completed closest to the instance when the missing data should have been recorded. But reliance upon such estimation of missing data values is unacceptable since the sponsor did not specify clearly which and how many missing cases were involved. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*) and (*5*).

Finally the global ratings did not support efficacy. The usual seven-point scale was compressed to a four-point scale. Though the reduction in range of the scale in the analysis is justified in part by the small number of patients appearing in the extreme categories, doing so may have masked a response pattern different from the one reported. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*).

Following the completion of the 126 patients reported above, 45 additional patients were studied 7 months later, apparently in an attempt to increase the total number of participants and thus increase the significance of the findings. The sponsor apparently found no evidence suggesting a drug effect in these patients, and offered no explanation for the negative results. The sponsor, apparently after examining the results, did not provide an analysis of the total group but claimed that omitting those data from the larger study did not bias its results. There is no explanation provided of how analyst bias was avoided in this post-facto decision to exclude one group of patients from the analysis. 21 CFR 314.111(a)(5)(ii)(*a*)(*4*).

The Bureau performed a detailed analysis of the data from all 170 patients exposed to the drug in this study using an analysis of covariance with the baseline value of each efficacy variable as the covariate and treatment and epoch as factors. In no case did the probability values for comparisons among trifluoperazine, chlordiazepoxide, and placebo fall below 0.11. In most cases the *p*-values were considerably higher. Moreover, in most cases there was a significant treatment by epoch interaction, indicating that omitting the data from the second phase of the study (45 patients) did, in fact, bias the study results in favor of trifluoperazine. In conclusion, the analsyes of the total study indicated three was no difference in clinical effect between trifluoperazine, chlordiazepoxide, and placebo.

3. *Claghorn Study.* Submitted in September 1977, this double-blind, parallel group, 4-week study compared trifluoperazine (4 to 10 mg/day) and placebo in 74 psychoneurotic adult outpatients having moderate of severe states of manifest anxiety. Comprehensive inclusion criteria were employed which ensured the presence of subjective anxiety together with

muscular or autonomic phenomena. Psychological and behavioral changes were assessed before treatment and weekly during treatment for 4 weeks using the Hamilton Anxiety Scale (Hamilton), NPRL, and POMS. A seven-point global efficacy evaluation (marked worsening, moderate worsening, mild worsening, no change, mild improvement, moderate improvement, marked improvement) was completed at the conclusion of treatment. A record of adverse effects was kept.

The sponsor found statistical superiority of trifluoperazine to placebo on the Hamilton somatic factor and Hamilton total score, NPRL psychomotor, depression, and somatization factors, and NPRL total score, and global efficacy evaluation in patients who completed the trial. However, there were no statistically significant differences on the POMS self-rating scale.

Although the physician rating instruments (Hamilton and NPRL) used by the investigators yielded overall results supporting a total favorable therapeutic effect, no statistically significant differences between trifluoperazine and placebo were obtained on the "psychic" anxiety factor of the Hamilton or the NPRL. That is, there was no superiority of trifluoperazine on the basic anxiety variables. Hence, this study cannot be considered as providing evidence of the superiority of trifluoperazine over placebo for the emotional aspect of anxiety. 21 CFR 314.111(a)(5)(ii).

With the exception of one factor at one time point, trifluoperazine was not significantly better than placebo on any of the seven factors on the patient self-rating scale (POMS). (This is in contrast to the ratings obtained from the physician scales.) The sponsor discounts the results with the patient ratings with the comment that "the failure to find more statistically significant differences is probably related to the greater inherent variability that is known to be associated with self-rating scale data." However, the sponsor offers no documentation in support of this statement. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*).

Aside from specific critiques of the sponsor's submissions, the wording of the entire indication encompasses a broader range of conditions than was actually studied. As it now reads, the indication describes two conditions, one for neurosis and one for somatic conditions. Since only psychoneurosis was included in the entry criteria for each of the four studies submitted, all studies were directed towards the neurosis condition. While autonomic and musculoskeletal symptoms are frequent concomitants of anxiety, they are secondary to the condition of anxiety and do not constitute somatic conditions with associated anxiety. Therefore, no data have been submitted to support the somatic conditions portion of the indication. 21 CFR 314.111(a)(5)(ii)(*a*)(*2*).

For the reasons described above, the data submitted do not constitute substantial evidence that trifluoperazine hydrochloride is effective for the claimed indications.

Amendment

Accordingly, the September 8, 1976 notice is amended to read as follows as it pertains to trifluoperazine hydrochloride drug products.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the products specifically named above, this notice applies to any drug product that is not the subject of an approved new drug application and is identical to a product named above. It may also be applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved new drug application. It is a responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufacturers or distributes. Such 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 (HFD–310), (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug is effective for the indication listed in the labeling conditions below. The drug lacks substantial evidence of effectiveness for its 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.* The drug is in tablet or concentrated solution form for oral administration, or injectable solution form.

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 Indication is as follows:

For the managment of the manifestations of psychotic disorders.

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 August 3, 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 full 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)).

Data or information to comply with the bioavailability requirements of 21 CFR 320.21, if not already submitted, should be submitted in accord with paragraph (b) of that regulation.

b. Approval of an abbreviated new drug application (21 CFR 314.1(f))) containing full manufacturing information (under items 6, 7, and 8 of new drug application form FD–356H) must be obtained before marketing such products. Under 21 CFR 320.21, the application must include either evidence demonstrating the in vivo bioavailability of the drug or informaiton to permit waiver of the requirement. However, no waiver will be granted for the tablet dosage form, which is identified in 21 CFR 320.22(c) as a drug product with an actual or potential bioavailbility problem. Marketing before approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regualtory action.

c. *Notice of opportunity for hearing.* On the basis of all the data and information available to him, the Director of the Bureaus of Drugs and Biologics is unaware of any adequate and well-controlled clinical investigation conducted by experts qualified by scientific training and experience, meeting 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), demonstrating the effectiveness of the drug for the indications lacking substantial evidence of effectiveness referred to in paragraph A of this notice.

Notice is given to the holder of the new drug application and to all other interested persons that the Director of the Bureaus of Drugs and Biologics 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 application and all amendments and supplements thereto providing for the indications lacking substantial evidence of effectiveness, referred to in paragraph A of this notice, on the grounds that new information before him with respect to the drug products, evaluated together with the evidence available to him at the time the application was approved, shows there is a lack of substantial evidence that the drug product will ahve all the effects its purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the lableing. 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.

In addition to the ground for the proposed withdrawal of approval stated above, 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 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, contained 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 thereunder (21 CFR Parts 310, 314), the applicant and all other persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above (21 CFR 310.6) 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 the drug products named above and of all identical, related, or similar drug products.

An applicant or any other person subject to this notice under 21 CFR 310.6 decides to seek a hearing, shall file (1) on or before July 6, 1982, a written notice of appearance and request for hearing, and (2) on or before August 3, 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 notice. The procedures and requirements governing this notice of appearance and request for hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of the applicant or any other person subject to this notice under 21 CFR 310.6 to file timely written 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 with respect to the product and constitutes a waiver of any contentions concerning the legal status of any such drug product. Any such drug product labeled for the indications lacking substantial evidence of effectiveness referred to in paragraph A of this notice may not thereafer lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved 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 msut set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the 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 Drug will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice shall be filed in quadruplicate. Such submissions except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

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 Bureaus of Drugs and Biologics (21 CFR 5.82).

Dated: May 3, 1982.

Harry M. Meyer, Jr.,

Director, Bureau of Drugs and Biologics.

[FR Doc. 82-15274 Filed 6-3-82; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Amended Notice of Meeting of the National Advisory Research and Resources Council

Notice is hereby given of a change in the Agenda of the meeting of the National Advisory Resources Council, June 7–8, 1982, Conference Rm. 10, Bldg. 31–C, National Institutes of Health, Bethesda, MD 20205, and published in the **Federal Register** on May 10, 1982, 47 FR 20031.

The following have been added to the open portion of the meeting on June 7: An address entitled, "Misconduct in Science," by the Associate Director for Extramural Research and Training, NIH, and a discussion of DRR Support of Service Costs, by the Acting Director, DRR. The following items have been deleted from the open session of the meeting on June 7: Staff reports by the Program Directors of the Animal Resources, Biomedical Research Support, Biotechnology Resources, General Clinical Research Centers, and Minority Biomedical Research Support Programs. The following has been added to the open portion of the meeting on June 8: A Council Discussion of Support of Service Costs.

Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biotechnology Resources; 13.375, Minority Biomedical Research Support, National Institutes of Health)

NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular)

Dated: May 27, 1982.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 82-15133 Filed 6-3-82; 8:45 am]

BILLING CODE 4140-01-M

Planning Subcommittee of the National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Planning Subcommittee of the National Digestive Diseases Advisory Board on June 22, 1982, 10:00 a.m. to 8:00 p.m., in the Directors Room, Sheraton La Guardia Hotel, 90–10 Grand Central

Parkway, East Elmhurst, New York, 11369. The meeting, which will be open to the public, is being held to discuss the 1982 plans for the Board. Attendance by the public will be limited to space available.

Further information may be obtained by contacting Dr. Ralph Bain, Executive Director, National Digestive Diseases Advisory Board, P.O. Box 30377, Bethesda, Maryland 20205, (301) 496–2232. The agenda and rosters of the members can also be obtained from his office. Summaries of the meeting may be obtained by contacting Carole A. Peters, Committee Management Office, NIADDK, National Institutes of Health, Room 9A46, Building 31, Bethesda, Maryland 20205, (301) 496–5765.

Dated: May 27, 1982.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 82-15134 Filed 6-3-82; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

California; Preliminary Wilderness Recommendations for the Central California Study Area, Bakersfield District; Availability of Draft Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a draft environmental impact statement concerning preliminary wilderness recommendations in central California. The proposed action recommends wilderness for 16,630 acres and 78,419 acres nonsuitable as wilderness. Alternatives consider all wilderness (95,049 acres), no wilderness, partial wilderness (34,007 acres wilderness) and no action.

Comments on the draft environmental impact statement are being solicited from public agencies and interested individuals and organizations. The Bureau of Land Management invites written comments on the statement to be submitted by July 28, 1982 to the District Manager, Bakersfield District, 800 Truxtun Avenue, Room 302, Bakersfield, California 93301.

A limited number of copies of the draft environmental impact statement are available at the following locations:

California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484–4541

Washington Office, Bureau of Land Management, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240

Dated: May 19, 1982.

Ed Hastey,

State Director.

[FR Doc. 82-15068 Filed 6-3-82; 8:45 am]

BILLING CODE 4810-84-M

California Preliminary Wilderness Recommendations for the Western Counties Wilderness Study Project, California Desert District; Availability of Draft Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a draft environmental impact statement concerning preliminary wilderness recommendations in Western Counties of the Escondido-Border Planning Unit. The proposed action recommends wilderness for 17,774 acres and 13,109 acres non-suitable as wilderness. Alternatives consider all wilderness (30,883 acres), no wilderness, partial wilderness (22,571 acres wilderness), no action (no wilderness) and other management (360 acres wilderness).

Comments on the draft environmental impact statement are being solicited from public agencies and interested individuals and organizations. The Bureau of Land Management invites written comments on the statement to be submitted by August 4, 1982 to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507.

A limited number of copies of the draft environmental impact statement are available at the following locations:

California State Office, Bureau of Land Management, 2800 Cottage Way, E–2841, Sacramento, CA 95825, Telephone (916) 484–4541

Washington Office, Bureau of Land Management, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240

Dated: May 26, 1982.

Richard F. Johnson,

State Director.

[FR Doc. 82-15066 Filed 6-3-82; 8:45 am]

BILLING CODE 4310-84-M

Idaho Draft Owyhee Wilderness Plan Amendment/Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Draft Owyhee Wilderness Plan Amendment/EIS availability and public hearings concerning the suitability or nonsuitability of roadless areas for preservation as wilderness.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a draft land use plan amendment and environmental impact statement for five Wilderness Study Areas (WSAs 16–40, 41, 42, 45 and 47) in the Owyhee Resource Area of the Boise District in southwest Idaho. A map showing the boundaries of the five areas is available from the Boise District Office. The Plan Amendment/EIS proposed that the five WSAs are nonsuitable for inclusion in the National Wilderness Preservation System. Copies of the Draft Plan Amendment/EIS are available for inspection at the following locations:

Boise District Office, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705, Telephone (208) 334–1582.

Idaho State Office, Bureau of Land Management, Federal Building, 500 W. Fort Street, Boise, Idaho 83724, Telephone (208) 334–1770.

A limited number of single copies may be obtained by contacting the Idaho State Director, or Boise District Manager, at the above addresses.

Notice is hereby given that the Draft Owyhee Wilderness Plan Amendment/EIS will be available for public review and comment for over 60 days from the date filed with the Environmental Protection Agency. The Bureau of Land Management invites written comments on the adequacy of the Draft Plan Amendment/EIS to be submitted by August 9, 1982.

Notice is also given the public hearings will be held at:

(1) Lion's Club Hall, Highway 95, Jordan Valley, Oregon 97910, July 7, 1982 at 7:00 p.m.

(2) Boise Public Library Auditorium, 715 South Capital Blvd., Boise, Idaho 83706, July 8, 1982 at 7:00 p.m.

DATES: July 7, 1982—Public hearing in Jordan Valley, Oregon. July 8, 1982—Public hearing in Boise, Idaho. August 9, 1982—Deadline for receiving written testimony.

ADDRESS: Written comments on the Draft Owyhee Wilderness Plan Amendment/EIS should be sent to: Bureau of Land Management, Owyhee Wilderness Plan Amendment/EIS, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT:
Ted Milesnick or John Benedict, BLM Boise District Office. Telephone: (208) 334–1582.

SUPPLEMENTARY INFORMATION:
Individuals wishing to testify may do so by apearing at a hearing place as previously specified. Persons wishing to give testimony will be limited to ten minutes with written submissions invited. Prior to giving testimony at public hearings, individuals or spokesmen are requested to complete a hearing registration form. Registration forms may be obtained by contacting the Boise District Manager at the above address.

Clair M Whitlock,
Idaho State Director.
[FR Doc. 82–15067 Filed 6–3–82; 8:45 am]
BILLING CODE 4310–84–M

Initiation of a Resource Management Plan in South Dakota

AGENCY: Bureau of Land Management, Interior; Miles City District.

ACTION: Initiation of land use planning.

In accordance with the requirements in 43 CFR 1601.3(g), notice is hereby given that the BLM is initiating the Resource Management Plan (RMP) for public lands in Harding, Butte, Lawrence, Meade, East River, Pennington, Custer, Fall River, Haakon, Stanley, Perkins, Jackson, Jones, Lyman, and Gregory Counties. In addition to 276,313 surface acres, the RMP will address, to the extent information is available, approximately 800,000 acres of federal minerals throughout South Dakota. This RMP is scheduled to be completed in fiscal year 1986, but may be completed prior to the scheduled completion.

There will be an open house public meeting at 310 Roundup Street in Belle Fourche on July 12, 1982 from 8:00 a.m. to 4:00 p.m. and from 6:00 p.m. to 8:00 p.m. to obtain public comment on the scope of the RMP and the issues to be addressed therein.

EFFECTIVE DATE: June 7, 1982.

FOR FURTHER INFORMATION CONTACT:
Ray Brubaker, District Manager, Miles City District, BLM P.O. Box 940, Miles City, Montana 59301, (406) 232–4331.

Ray Brubaker,
District Manager.
[FR Doc. 82–15146 Filed 6–3–82; 8:45 am]
BILLING CODE 4310–84–M

Circle West Coal Deposit, Circle, Mont.; Proposed Coal Exchange; Environmental Assessment

AGENCY: Miles City District, Bureau of Land Management, Interior.

ACTION: Proposed Coal Exchange.

SUMMARY: The Miles City District Office is preparing an Environmental Assessment (EA) on a proposed coal exchange in the Circle West coal deposit near Circle, Montana. The exchange would block-up checkerboard coal ownership patterns among the Federal Government, State of Montana and Meridian Land and Mineral Company. The result would be two separate coal tracts, one owned by the Federal Government and one by Meridian Land & Mineral Co. Status of State owned coal would not change. Each tract would contain approximately 350 million tons of recoverable lignite coal. The scope of the EA will be established from public input obtained during a public comment period and two public meetings.

DATES: The public comment period is open through July 9, 1982. Public meetings are scheduled June 29 and 30, 1982.

ADDRESSES: Written comments may be sent to the District Manager, Miles City District, BLM, P.O. Box 940, Miles City, Montana 59301. Public meetings are scheduled as follows: June 29, 1:30 p.m., Petro Room, Student Union, Eastern Montana College, Billings, Montana. June 30, 1:30 p.m., Vets Club, Circle, Montana.

SUPPLEMENTARY INFORMATION: The Environmental Assessment will assess impacts on the human and physical environments resulting from the proposed exchange. In addition the assessment will portray an overview of market potential of future development possibilities. The document will also address any public interest to be served by the proposed exchange.

The E.A. will be prepared under Council on Environmental Quality's (CEQ) NEPA Regulations and Department of Interior and BLM guidelines.

The exchange proposal does not lend itself to a large variety of alternatives. Either the coal will be exchanged or it won't. So far the following two alternatives have been identified. Additional reasonable alternatives may be developed from public input received during the public comment period and meetings.

1. Exchange as Proposed: This alternative will address exchanging coal in the Circle West coal deposit in order to block-up federal and private coal ownership as proposed by Meridian Land and Mineral Co. This would mean the exchange of approximately 70,000 acres of coal ownership totaling at least 700 million tons of lignite coal.

2. No Action: This alternative will address the existing situation without the exchange. The Federal coal would then remain in it's current status which includes being under consideration for leasing in the 1983 Ft. Union Sale. The Ft. Union Coal EIS will be the basis of existing situation discussion.

The EA is directed at assessing the environmental, realty and ownership impacts of exchanging coal ownerships as outlined in the Meridian proposal of November 2, 1981. As the Fort Union Regional EIS is including projected impacts from on-site facilities, the environmental assessment will use that information without further review and address the additional environmental impacts from the larger tracts that would be formed as a result of the exchange. During the course of the exchange project the major issue with the BLM is the question of serving the public interest. It must be demonstrated that the proposed action is in the public interest before a favorable decision to exchange can be made.

Additional issues may be added as a result of the public comment period and meetings. Legal issues raised will be referred to appropriate authority for resolution. Questions on legality can not be addressed in this assessment.

Robert A. Teegarden,
Acting District Manager.
[FR Doc. 82–15147 Filed 6–3–82; 8:45 am]
BILLING CODE 4310–84–M

[M 55149]

Montana; Realty Action—Exchange

May 25, 1982.

AGENCY: BLM—Lewistown District Office, Interior.

ACTION: Notice of Realty Action M 55149, Exchange of public and private lands, Fergus and Chouteau Counties, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian

T. 21 N., R. 19 E.,
Sec. 4, Lots 1, 2, and 3, S½NE¼ and SE¼NW¼.
T. 22 N., R. 19 E.,
Sec. 33, E½SE¼ and SW¼.

Aggregating 483.26 acres of public lands.

In exchange for these lands, the United States Government will acquire the surface estate in the following described lands:

Principal Meridian

T. 24 N., R. 8 E.,
Sec. 23, Tract II as described by mets and bounds on that certain Certificate of survey No. 390060 filed April 14, 1980 in Chouteau County.
T. 22 N., R. 17 E.,
Sec. 11, E½NE¼, SW¼NE¼ and SE¼NW¼; and
Sec. 13, S½SE¼.
T. 22 N., R. 18 E.,
Sec. 5, NE¼SW¼; and
Sec. 6, Lot 6 and NE¼SW¼.

Aggregating 362.77 acreas of private lands.

In addition to the above-described private lands, the United States Government will acquire the Voyageur Art Gallery in Fort Benton.

DATES: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, Airport Road, Lewistown, Montana 59457. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of this Department.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report, is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire the Voyageur Art Gallery in Fort Benton to be used as a Recreation Visitor Contact Center on the Missouri River, and also to acquire additional recreation lands in the Missouri Breaks. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making the exchange.

The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditchs or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945, for the lands being transferred out of Federal ownership.

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record.)

4. Value equalization by cash payment or acreage adjustment.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

Michael J. Penfold,

State Director.

[FR Doc. 82–15149 Filed 6–3–82; 8:45 am]

BILLING CODE 4310–84–M

[N–10149, N–11698, N–12658]

Nevada; Classifications Vacated

May 26, 1982.

Pursuant to the authority designated by Bureau Order 701 and amendments thereto, exchange classifications N–10149, N–11698 and N–12658 are hereby vacated in their entireties. The land affected is described as follows:

Mount Diablo Meridian, Nevada

T. 14 N., R. 20 E.
Sec. 26, SE¼;
Sec. 35, NE¼, N½N½SE½.
T. 12 N., R. 23 E.
Sec. 4, Lot 1, SE¼NE¼
Sec. 9, NE¼NE¼.
T. 13 N., R. 23 E.
Sec. 25, E½SE¼;
Sec. 33, SE¼SE¼.
T. 15 N., R. 20 E.
Sec. 23, NE¼NE¼NE¼NE¼, SW¼NE¼NE¼NE¼, SE¼NW¼NE¼NE¼, SE¼NE¼NE¼, NE¼NE¼SE¼NE¼, E½NW¼SE¼NE¼, N½SE¼SE¼NE¼, NE¼SW¼SE¼NE¼, E½E½NW¼SE¼, NE¼SE¼SW¼SE¼, S½SE¼SW¼SE¼.

There area described comprises 649.25 acres (439.25 acres in Douglas County, 160 acres in Lyon County and 50 acres in Carson City) in Nevada.

The segregative effect of the classification orders is removed upon publication of this notice in the **Federal Register.**

Edward F. Spang,

State Director, Nevada.

[FR Doc. 82–15155 Filed 6–3–82; 8:45 am]

BILLING CODE 4310–84–M

[OR 11159]

Oregon; Partial Termination of Proposed Withdrawal and Reservation of Lands

Notice of Forest Service, U.S. Department of Agriculture, application OR 11159 for withdrawal and reservation of lands was published as FR Doc. 75–12569 on page 20830 of the issue of May 13, 1975, and republished as FR Doc. 79–29994 on page 55669 of the issue of September 27, 1979. The purpose of the proposed withdrawal was to protect the scenic and recreational values involving the Cascade Lakes Highway Road Zone Addition; the proposed Bachelor Butte Recreation Area; and the proposed Todd Lake Recreation Area. The applicant agency has cancelled its application insofar as it affects all of the Cascade Lakes Highway Road Zone Addition and portions of the proposed Bachelor Butte and Todd Lake Recreation Areas. The following described lands are included in the cancellation:

Willamette Meridian

Deschutes National Forest

Cascade Lakes Highway Road Zone Addition: A strip of land 330 feet wide on each side of the surveyed centerline of said road through the following legal subdivisions:

T. 20 S., R. 7 E.,
Sec. 36, SE¼NE¼, SE¼SW¼, and SE¼.
T. 21 S., R. 7 E.,
Sec. 1, lots 3 and 4, SW¼NW¼, NW¼SW¼, and S½SW¼;
Sec. 12, E½W½ and NW¼NW¼;
Sec. 13, W½E½ and E½NW¼and NE¼SW¼;
Sec. 24, SE¼ and W½NE¼;
Sec. 25, E½;
Sec. 36, E½.
T. 22 S., R. 7 E.,
Sec. 1, E½;
Sec. 12, N½SE¼, SE¼SE¼, and NE¼;
Sec. 13, NE¼NE¼.
T. 23 S., R. 7 E.,
Sec. 12, lots 2 and 3, E½NE¼, S½SW¼, and SW¼SE¼;
Sec. 13, N½NW¼;
Sec. 14, NE¼NE¼.
T. 19 S., R. 8 E.,
Sec. 5, lot 4, S½NW¼, N½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 6, lot 1;
Sec. 8, NW¼NE¼, S½NE¼, NE¼NW¼, and E½SE¼;
Sec. 9, W½SW¼;
Sec. 16, W½W½ and SE¼SW¼;
Sec. 21, NW¼NW¼ and E½W½;
Sec. 27, SW¼SW¼;
Sec. 28, W½NE¼, NE¼NW¼, N½SE¼, and SE¼SE¼;
Sec. 33, E½E½ and SW¼SE¼;
Sec. 34, W½NW¼ and NW¼SW¼.
T. 20 S., R. 8 E.,
Sec. 4, lots 1 and 2, SW¼NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, and NW¼SE¼;
Sec. 9, NW¼, N½SW¼, and SE¼SW¼;
Sec. 16, E½NW¼ and SW¼;
Sec. 20, NW¼NE¼, S½NE¼, NE¼SW¼, S½SW¼, and NW¼SE¼;
Sec. 21, NW¼NW¼;
Sec. 29, W½NW¼;
Sec. 30, NE¼NE¼, S½ NE¼, E½SW¼, N½SE¼, and SW¼SE¼;
Sec. 31, lots 1 and 2 and NE¼NW¼.
T. 22 S., R. 8 E.,
Sec. 7, lot 4;
Sec. 17, SW¼;
Sec. 18, lots 1, 2, and 3, SE¼NW¼, E½SW¼, and SE¼;
Sec. 19, SE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 20, NW¼ and NW¼SW¼;
Sec. 30, NE¼, SE¼SW¼, N½SE¼, and SW¼SE¼;
Sec. 31, E½W½ and NW¼NE¼.
T. 23 S., R. 8 E.,
Sec. 6, lots 3, 6, and 7, SE¼NW¼, and E½SW¼;
Sec. 7, lot 1.

Bachelor Butte Recreation Area

T. 18 S., R. 8 E.,
Sec. 24, SE¼;
T. 18 S., R. 9 E.,
Sec. 16, E½SW¼;
Sec. 18, lots 1 and 2, except that portion withdrawn by PLO 2751 of August 13, 1962;
Sec. 19, lots 1, 2, and 3, S½NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 28, NE¼NE¼, NE¼SW¼, NE¼NW¼ SW¼, S½NW¼SW¼, and S½SW¼, except that portion withdrawn by PLO 2751 of August 13, 1962;
Sec. 30, W½E½, W½SE¼NE¼, W½NE¼ SE¼, and NW¼SE¼SE¼;
Sec. 31, NW¼NE¼ and S½NE¼;
Sec. 32, NE¼NE¼, NE¼NW¼NE¼, S½NW¼NE¼, S½NE¼, S½S½NW¼, and NE¼SE¼NW¼;
Sec. 33, NW¼.

Todd Lake Recreation Area

T. 18 S., R. 9 E.,
Sec. 7, NE¼NE¼, W½E½, NW¼NE¼SE¼, S½NE¼SE¼, and SE¼SE¼;
Sec. 8, NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, and N½SE¼.

The areas described aggregate approximately 4,857 acres in Deschutes and Klamath Counties, Oregon.

Pursuant to the regulations contained in 43 CFR 2310.2–1(c), the above-described lands will be open to entry and location under the mining laws (30 U.S.C. Ch. 2) at 9:30 a.m., on July 9, 1982.

Dated: May 25, 1982.

Leland D. Morrison

Acting, Chief, Branch of lands and Minerals Operations.

[FR Doc. 82–15156 Filed 6–3–82; 8:45 am]

BILLING CODE 4310–84–M

Prineville District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Prineville District Grazing Advisory Board will be held July 14, 1982.

The meeting will begin at 1:00 P.M. in the conference room of the Bureau of Land Management office at 185 East 4th Street, P.O. Box 550, Prineville, Oregon 97754.

The agenda will include: (1) Status of the Brothers Environmental Statement, (2) Placement of Allotments into Selective Management Categories, (3) Benefit/Cost Analysis of Rangeland Improvement proposed in Brothers EIS.

The meeting is open to the public. Anyone wishing to make oral or written statements to the board is requested to do so through the office of the District Manager, at the above named address, at least 2 days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Gerald E. Magnuson,

District Manager.

May 18, 1982.

[FR Doc. 82–15148 Filed 6–3–82; 8:45 am]

BILLING CODE 4310–84–M

[W–73813]

Wyoming: Really Action—Exchange of Public Lands for Private Lands in the City of Worland, Washakie County

May 28, 1982.

The surface estate of the following described public land has been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Sixth Principal Meridian, Wyoming

T. 47 N., R. 92 W.,
Sec. 30, Parcel A.
Containing 7.65 acres.

In exchange for these lands, the United States will acquire the surface estate in the following described land from Cloud Peak Investment, Inc.:

Sixth Principal Meridian, Wyoming

T. 47 N., R. 92 W.,
A parcel of land in the SE¼NW¼ of Section 30, being described as follows: Beginning at a point on the south line of Big Horn Avenue in the City of Worland, Wyoming, said point being located 101.24 feet west of the east line of said SE¼NW¼ Section 30; thence from a tangent bearing of N. 87°03' E., along a curve to the left, having a radius of 1004.9 feet, for a distance of 101.75 feet, through a total angle of 5°48'05", along said south line of Big Horn Avenue, to a point on the east line of said SE¼NW¼ Section 30; thence S. 0°21' E. 221.21 feet, along said east line to a point located N. 0°21' W., 254.92 feet from the southeast corner of said SE¼NW¼ Section 30; thence S. 89°52' W. 101.24 feet; thence N. 0°21' W., 201.11 feet to the point of beginning, containing 0.48 acres of land, more or less.

Acquisition of the above private lands will provide a more suitable site for the Bureau's new district office headquarters in the City of Worland by extending the Bureau's commercial frontage on Big Horn Avenue. The private lands are zoned commercial, permitting use for the Bureau's office site while the above public lands are zoned residential, precluding Bureau use for that purpose. Transfer of the lands to private ownership will enable development for residential purposes. The exchange is consistent with the City of Worland's land use planning and zoning.

No mineral estates will be exchanged. All mineral interests in both the public and private lands described above are owned by third parties.

No grazing use authorizations affect the above public lands.

This action is consistent with the provisions of Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). The public interest will be well served by this exchange.

The exchange will be made subject to:

1. All valid existing rights (e.g. rights-of-way, easements, and leases of record);

2. Value equalization by cash payment.

Detailed information concerning the exchange including the planning documents and environmental assessment, is available for review at the Worland District Office, Bureau of Land Management, 1700 Robertson Avenue, Worland, Wyoming 82401.

Until July 12, 1982, interested parties may submit comments to the State Director, Bureau of Land Management (910), P.O. Box 1828, Cheyenne, Wyoming 82001. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this Notice of Realty Action will become the final determination of the Department of the Interior.

William S. Gilmer,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82–15154 Filed 6–3–82; 8:45 am]

BILLING CODE 4310–84–M

[Designation Order NM–030–82–01]

New Mexico Emergency ORV Closure

AGENCY: BLM, Las Cruces District, Interior.

ACTION: Emergency ORV Closure.

SUMMARY: Notice is hereby given relating to the use of Off-Road Vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989 and regulations contained in 43 CFR 8341.2.

DATE: This designation becomes effective when published.

ADDRESS: Las Cruces/Lordsburg Resource Area Office, 1705 North Valley Drive, Las Cruces, New Mexico 88001.

FOR FURTHER INFORMATION CONTACT: Daniel C. B. Rathbun, District Manager, Las Cruces District Office, P.O. Box

1420, Las Cruces, New Mexico 88004, Phone: (505) 524–8551.

SUPPLEMENTARY INFORMATION: The following described lands under the administration of the Bureau of Land Management are designated as limited to designated roads and trails until further notice. The area so designated is known as the West Potrillo Wilderness Study Area (WSA). The area is located within the Las Cruces/Lordsburg Resource Area of the Bureau of Land Management's Las Cruces District Office and consists of approximately 143,145 acres within Dona Ana County, New Mexico. The WSA is located approximately 40 miles southwest of Las Cruces, New Mexico.

This designation is a result of the observed damage caused by off-road travel within the WSA. This designation is necessary due to the Bureau of Land Management's wilderness mandate. This mandate is to prevent impairment of the wilderness characteristics of each WSA until Congress decides on the suitability of the WSA for inclusion in the National Wilderness Preservation System.

This designation will have an adverse affect on further off-road use of geophysical equipment for oil and gas exploration. There may also be an adverse affect on recreational off-road travel for activities such as hunting, rock hounding and pleasure driving.

A map with the designated roads and trails which will remain open for use by vehicles is available for review at the Las Cruces/Lordsburg Area Office located at 1705 North Valley Drive, Las Cruces, New Mexico.

Billy M. Brady,

State Director.

[FR Doc. 82–15151 Filed 6–3–82; 8:45 am]

BILLING CODE 4310–84–M

[NM 46404]

New Mexico; Termination of Proposed Withdrawal and Reservation of Lands

May 27, 1982.

The Corps of Engineers, Department of the Army, filed application NM 46404 for withdrawal and reservation of lands published as FR Doc. 81–21530, pages 37981–2 of the issue for July 23, 1981. The lands were temporarily segregated from the operation of the public land laws, including the mining and mineral leasing laws. The applicant agency now has a right-of-way granted under NM 45808 and has cancelled its application in its entirety.

New Mexico Principal Meridian

T. 17 S., R. 8 E.,

A strip of land situated in the N½ of Section 27 and the NE¼ of Section 28, being 5,026.63 feet long and 150.00 feet wide, lying 60.00 feet on the northerly side of and 90.00 feet on the southerly side of the following described centerline:

Beginning from a point on the west boundary of Holloman Air Force Base, said point bears S. 80°22'35† W., a distance of 1,337.75 feet from the section corner common to Sections 22, 23, 26 and 27;
Thence S. 41°46'42' W., a distance of 55.86 feet to a point;
Thence S. 41°41'37' W., a distance of 916.57 feet to a point;
Thence S. 83°24'21' W., a distance of 3,544.25 feet to a point;
Thence N. 39°05'40' W., a distance of 510.00 feet to the point. Termination.

A strip of land 1,433.00 feet in length and 20.00 feet in width situate in the NE¼ of Section 21. Commencing from the section corner common to Sections 15, 16, 21 and 22, south 56°30'00' west a distance of 2,080.00 feet to a point; thence south 63°45'00' east a distance of 450.00 feet to the true Point of Beginning for said tract;

Thence continuing S. 63°45'00' E., a distance of 470.00 feet to a point; Thence S. 14°00'00' E., a distance of 718.00 feet to a point; Thence S. 10°00'00' E., a distance of 245.00 feet to the Point of Termination for this parcel.

A tract of land situate in the S½S½NE¼ of Section 21. Commencing from the section corner common to Sections 15, 16, 21 and 22, thence south 56°30'00' west a distance of 2,080.00 feet to a point; thence south 63°45'00' east a distance of 920.00 feet to a point; thence south 14°00'00' east a distance of 718.00 feet to a point; thence south 10°00'00' east a distance of 245.00 feet to the true Point of Beginning, said Point of Beginning being the northeast corner of said parcel;

Thence continuing S. 10°00'00' E., a distance of 175.00 feet to a point, said point being the southeast corner of said parcel; Thence S. 89°52'00' W., a distance of 660.00 feet to a point, said point being on the 16th line of Section 21; Thence N. 00°42'00' E., along the east 16th line of Section 21, a distance of 175.00 feet to a point, said point being the northwest corner of said parcel; Thence N. 89°52'00' E., a distance of 620.00 feet to the Point of Termination for said parcel.

A tract of land situate in the NE¼ and N½SE¼ of Section 28, being more particularly described as follows:

All of the W½NE¼ except the SW¼SW¼ SW¼NE¼, W½E½NE¼, SW¼SW¼ NE¼NE¼ NE¼, W½W½SE¼NE¼NE¼, W½W½E½SE¼ NE¼, NE¼NW¼ NE¼NW¼SE¼, N½NE¼ NE¼NW¼SE¼, N½NW¼NW¼NE¼SE¼, N½NE¼ NW¼NE¼SE¼, SE¼NE¼NW¼NE¼ SE¼, NE¼SE¼NW¼NE¼SE¼, NW¼SW¼ NE¼NE¼SE¼, W½NW¼NE¼NE¼SE¼.
Sec. 21, E½NW¼NE¼.

The area described contains approximately 173.69 acres in Otero County.

Therefore, pursuant to the regulations contained in 43 CFR 2310.2–1(c) and subject to any valid existing rights, the lands described will be relieved of the above mentioned segregative effect at 9:00 a.m. on July 12, 1982.

All valid applications received at or prior to 9:00 a.m. July 12, 1982, shall be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Any questions concerning these lands should be directed to the Chief, Lands Unit, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501.

Dennis R. Erhart,

Acting Chief, Division of Operations.

[FR Doc. 82–15145 Filed 6–3–82; 8:45 am]

BILLING CODE 4310–84–M

[OR 3784 and OR 3784-A(WASH)]

Oregon and Washington Termination of Classification for Multiple use Management

1. By order of the Oregon State Director, Bureau of Land Management, which was published in the **Federal Register** on March 13, 1969 (34 FR 5184), 23,997.13 acres of public lands under the jurisdiction of the Bureau of Land Management were classified for multiple use management pursuant to the Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411–18) and the regulations in 43 CFR 2460. The lands are located in Wallowa County, Oregon, and Garfield and Asotin Counties, Washington.

2. Pursuant to 43 CFR 2461.3(c)(2), the classification is terminated in its entirety upon publication of this notice in the **Federal Register.**

3. At 9:30 a.m., on July 9, 1982, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands involved will be open to operation of the public land laws. All valid applications received at or prior to 9:30 a.m., on July 9, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. Subject to the provisions of existing withdrawals, the lands have been and continue to be open to operation of the mining laws and minerals leasing law.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: May 25, 1982.

Paul M. Vetterick,

Associate State Director.

[FR Doc. 82–15153 Filed 6–3–82; 8:45 am]

BILLING CODE 4310–84–M

Utah; Realty Action Exchange

The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 41 S., R. 13 W., S.L.M.
Sec. 5: Lots 1, 2 SW¼NE¼ SE¼NW¼ (159.36 ac.)
Sec. 7: SW¼SE¼ (40 ac.)
T. 41 S., R. 16 W., S.L.M.
Sec. 33: E½SE¼ (80 ac.)
Sec. 34: W½SW¼ (80 ac.)
T. 42 S., R. 13 W., S.L.M.
Sec. 8: NE¼SE¼ (40 ac.)
T. 42 S., R. 14 W., S.L.M.
Sec. 10: Lots 5, 6, 10, 11, NE¼SE¼ (127.18 ac.)
Sec. 15: SW¼NE¼ (40 ac.)
T. 42 S., R. 16 W., S.L.M.
Sec. 4: Lots 4, 7, 8, 9, SW¼NE¼, SE¼NW¼, E½SW¼ (325.83 ac.)
Sec. 9: Lots 1 thru 6, E½NW¼, W½SE¼ (364.19 ac.)
Sec. 14: NE¼NW¼ (40 ac.)
T. 42 S., R. 17 W., S.L.M.
Sec. 1: Lot 1 (40 ac.)
Total Acres: 1,336.56.

In exchange for these lands, the Federal Government will acquire the following tracts of non-Federal land in Washington County from the Thorley Cattle Company described as follows:

T. 39 S., R. 10 W., S.L.M.
Sec. 11: W½NW¼, W½SW¼ (160 ac.)
Sec. 14: NW¼SW¼ (40 ac.)
Sec. 20: S½NW¼, SW¼NE¼, SE¼SE¼, W½SE¼, E½SW¼ (320 ac.)
Sec. 21: S½NW¼, SW¼ (240 ac.)
Sec. 22: E½NE¼SE¼ (20 ac.)
Sec. 27: NW¼, N½SW¼, N½SE¼ (320 ac.)
Sec. 28: SE¼NW¼, NE¼SW¼, S½SW¼, SE¼ (320 ac.)
Sec. 29: E½NE¼, SE¼ (240 ac.)
Sec. 33: NW¼NW¼, E½NW¼, NE¼ (280 ac.)
Sec. 34: W½NW¼ (80 ac.)
Total Acres: 2,020.

The purpose of the exchange is to acquire private lands for better land management of Federal range and wildlife programs in the Virgin River Planning Unit. The exchange will include both surface and mineral estates. The exchange is consistent with the Bureau's planning for the lands involved. The exchange would be in the public interest.

The value of the lands to be exchanged will be approximately equal. Acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands. Upon publication of this notice these lands are hereby segregated from appropriation under the public land laws, including the mining laws. This segregation is in effect for two years or upon publication in the Federal Register of a termination of the segregation, whichever occurs first.

The terms and conditions applicable to the exchange are:

1. The conveyance document will include a reservation for all oil and gas leases until the leases expire. At that time, all oil and gas values will be released to the Thorley Cattle Company.

2. The conveyance document will include a reservation of a right-of-way for ditches and canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

3. The exchange of these lands will be subject to all existing rights, i.e., rights-of-way, water rights, etc.

Detailed information concerning the exchange is available for review at the Dixie Resource Area Office, 24 East St. George Blvd., St. George, Utah 84770.

For a period of 45 days, interested parties may submit comments to the Cedar City District Office, 1579 North Main, P. O. Box 724, Cedar City, Utah 84720. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department.

Dated: May 26, 1982.

Morgan S. Jensen,

District Manager.

[FR Doc. 82-15150 Filed 6-3-82; 8:45 am]

BILLING CODE 4310-84-M

Virginia; Coal Lease Offering by Sealed Bid

[ES 24616]

U.S. Department of the Interior, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. Notice is hereby given that certain coal resources in the tracts described below in Virginia will be offered for competitive lease by sealed bid followed by oral bids which shall begin at the level of the highest sealed bid in $5.00 increments in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437), as amended, and the Department of Energy Organization Act of August 4, 1977 (91 Stat. 565, 42 U.S.C. 7101). Pursuant to the regulations of 43 CFR 3422.3-1, only those submitting sealed bids may offer oral bids, and ⅛ of the total bonus bid must be tendered at the time of sale. The sale will be held at 2:00 p.m. June 29, 1982, at the Public Room of the Eastern States Office. All bids must be submitted to BLM, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. No bids received after 2:00 p.m. June 29, 1982 will be considered.

Coal Offered

The coal resource to be offered is to be mined underground from the Splashdam seam in the following lands located in Jefferson National Forest, Dickenson County, Virginia on Forest Service Tracts J-550-e, J-550-e-I. Containing 250.9 acres.

Resources have been calculated for underground mining. Recoverable reserves are estimated to be 300,000 tons. The coal should average 15,500 Btu/lb., moisture and ash free, with sulfur content of approximately .63 percent.

The minimum sealed bid shall be $110.00 or more per acre.

Jeff O. Holdren,

Authorized Officer.

[FR Doc. 82-15152 Filed 6-3-82; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Application

The applicants listed below wish to conduct certain activities with endangered species:

Applicant: Frida K. Hofmann, Los Altos, CA—PRT 2-9205

The applicant requests a permit to purchase in interstate commerce one pair of captive-bred red siskins (*Spinus cucullatus*) from Patricia Demko, Pittsburgh, PA for enhancement of propagation.

Applicant: Brookfield Zoo, Brookfield, IL—PRT 2-9200

The applicant requests a permit to export two captive-born Goeldi marmosets (*Callimico goeldii*) to the Skansen-Akvariet Zoo, Stockholm, Sweden for enhancement of propagation.

Applicant: Little Rock Zoo, Little Rock, AR—PRT 2-9198

The applicant requests a permit to purchase in interstate commerce one female captive-bred jaguar (*Panthera onca*) from the Jacksonville Zoo for enhancement of propagation.

Humane care and treatment during transport has been indicated by the applicants.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by

writing to the U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on this application within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: June 1, 1982.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 82-15185 Filed 6-3-82; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Suboperator (Texaco is Unit Operator) of the Eugene Island Block 330, I–1 Sand, Reservoir B, and Unit Operator of the Eugene Island Block 330, I–2 Sand, Reservoir B, Federal Unit Agreement Nos. 14–08–0001–16928 and 14–08–0001–16929, respectively, submitted on May 20, 1982, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the Eugene Island Block 330 I–1, Reservoir B, and I–2 Sand, Reservoir B Federal Units.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m. 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 28, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-15173 Filed 6-3-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that The Superior Oil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0247, Block 102, West Cameron Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 28, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-15174 Filed 6-3-82; 8:45 am]

BILLING CODE 4310-31-M

Office of Surface Mining Reclamation and Enforcement

[Federal Lease Nos. W-60231 and 2-0321779]

Availability of Final Environmental Impact Statement on the Proposed North Antelope Mine, Campbell County, Wyo.

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

ACTION: (OSM–EIS–6) Notice of Availability of Final Environmental Impact Statement.

SUMMARY: Pursuant to Section 1506.6 of Title 40, Code of Federal Regulations, notice is hereby given that the Office of Surface Mining (OSM), Western Technical Center, has prepared a final environmental impact statement (EIS) on the proposed North Antelope Mine. The EIS has been written to assist the Department in making a decision on North Antelope Coal Company's application to surface mine about 190 million tons of coal (average annual production 5 mty) over a period of 39 years. Alternative B, approval of a mining and reclamation plan which meets the requirements of the Surface Mining Control and Reclamation Act, other applicable laws, and special wildlife measures, has been selected as OSM's preferred alternative.

ADDRESSES: Copies of the final EIS may be obtained from Allen D. Klein, Administrator, Office of Surface Mining, Western Technical Center, Brooks Tower, 1020 Fifteenth Street, Denver, Colorado 80202.

Copies of the EIS are available for review at the Converse County Courthouse and the Douglas Library, Douglas, Wyoming; Campbell County Courthouse and the George Amos Memorial Library, Gillette, Wyoming; and at the state of Wyoming, Department of Environmental Quality, 401 Nineteenth Street, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic (telephone 303–837–5656) at the location given under "ADDRESSES."

SUPPLEMENTARY INFORMATION: The proposed North Antelope Mine site is located about 62 miles south of the City of Gillette, and 58 miles north of Douglas, and 60 miles west of Newcastle, Wyoming. The mine would encompass 3,762 acres of State, private and Federal land (Thunder Basin National Grasslands) of which 2,698 acres would be disturbed for mining, roads, and facilities. The EIS evaluates

three alternative actions the Department could take on the mining and reclamation plan which has been submitted to OSM and the State of Wyoming. Those alternatives are: (A) approval of a plan which meets the requirements of SMCRA and all other applicable laws; (B) alternative A plus additional wildlife measures; and (C) disapproval or no action.

OSM, with assistance from the Geological Survey, Forest Service, Interstate Commerce Commission, and State of Wyoming, has analyzed the impacts of the alternatives. On or before June 7, 1982, copies of the final EIS will be sent only to the agencies, individuals and organizations listed in Chapter V of the draft EIS, to those who commented on the draft EIS and to those who specifically requested a copy of the final EIS. However, copies of the final EIS will be mailed upon request.

Dated: May 27, 1982.

J. Steven Griles,

Director.

[FR Doc. 82-15245 Filed 6-3-82; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by special rule of the Commission's rules of practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP1-92

Decided: May 26, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 2110 (Sub-14), filed May 17, 1982. Applicant: BOWLUS TRUCKING CO., INC., 200 County Rd. 143, Fremont, OH 43420. Representative: Richard H. Brandon, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614)-889-2531. Transporting (1) *chemical and related products,* between points in Bergen County, NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI); and (2) *health care, medical and surgical supplies,* between Chicago, IL, and points in Somerset County, NJ, Grayson County, TX, and San Mateo County, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 13070 (Sub-6), filed May 20, 1982. Applicant: GERALD LIPPOLD & RODNEY ARNETT, d.b.a. LIPPOLD & ARNETT, 1302 South Broad, Carlinville, IL 62626. Representative: Rodney Arnett, (same address as applicant), (217) 854-2508. Transporting *food and related products,* between points in IL, MO, AR, OK, IN, IA, KY, TN, GA, FL, TX, LA, KS, and WI.

MC 39140 (Sub-181), filed May 20, 1982. Applicant: A. DUIE PYLE, INC., 200 Garfield Avenue, West Chester, PA 19380. Representative: Alan Kahn, 1430 Land Title Building, Philadelphia, PA 19110, (215) 561-1030. Transporting *metal products,* and *those commodities which because of their size or weight require the use of special handling or equipment,* between points in Chester and Montgomery Counties, PA, on the one hand, and, on the other, points in AL, CT, FL, GA, LA, MA, ME, MS, NC, NH, RI, SC, TX, and VA.

MC 104881 (Sub-9), filed May 20, 1982. Applicant: GAY TRUCK LINE, INC., P.O. Box 134, Highway 15 S., Falkner, MS 38629. Representative: Harold D. Miller, Jr., 17th Floor Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205, (601) 948-5711. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (1) between Holly Springs, MS, and the MS-AL state line, over U.S. Hwy 78; and (2) between Baldwyn, MS, and Tupelo, MS, over U.S. Hwy 45 and U.S. Hwy 45 by-pass, serving all intermediate points and serving points in Marshall, Union, Lee and Itawamba Counties, MS, as off-route points in connection with (1) and (2) above.

Note.—Applicant intends to tack this authority with its otherwise authorized regular route authority.

MC 108121 (Sub-20), filed May 19, 1982. Applicant: TRANSPORT STORAGE & DISTRIBUTING CO., 18800 Southcenter Parkway, Tukwila, WA 98188. Representative: Michael B. Crutcher, 2000 IBM Building, Seattle, WA 98101, (206) 623-7580. Transporting *transportation equipment,* between points in the U.S., under continuing contract(s) with General Motors Corporation of Detroit, MI.

MC 111310 (Sub-71), filed May 20, 1982. Applicant: MILLIS TRANSFER, INC., P.O. Box 352, Black River Falls, WI 54615. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703, (608) 256-7444. Transporting *such commodities as are dealt in or*

used by processors and distributors of hides, between Milwaukee, WI, and Manchester, NH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 113000 (Sub-7), filed May 20, 1982. Applicant: RICHARD A. EVAVOLD, d.b.a. EVAVOLD TRUCKING, P.O. Box 166, Ashby, MN 56309. Representative: Robert N. Maxwell, P.O. Box 2471, Fargo, ND 58108 (701) 237–4223. Transporting *building materials,* between points in the U.S. (except AK and HI), under continuing contract(s) with Pal-O-Pak Insulation Co., Inc., of Hartland, WI, Dalton Lumber Co., of Dalton, MN, Carlson Bros. Construction, Inc., of Evansville, MN, and Lakeside Lumber, of Ashby, MN.

MC 133570 (Sub-13), filed May 20, 1982. Applicant: A OF I, INC, Bellefontaine Road, P.O. Box 58, Hamilton, IN 46742. Representative: James P. Kirkhope, P.O. Box 15296, Fort Wayne, IN 46885, (219) 422–8884. Transporting (1) *iron and steel articles,* (2) *plastic and rubber articles,* (3) *machinery,* (4) *automotive parts,* (5) *pulp, paper and related articles,* and (6) *materials, equipment and supplies* used in the manufacture, distribution, installation and sale of the commodities in (1), (2), (3), (4) and (5) above, between points in the U.S. (except AK and HI).

MC 138841 (Sub-22), filed May 18, 1982. Applicant: BLACK HILLS TRUCKING CO., P.O. Box 2130, Rapid City, SD 57709. Representative: James W. Olson, P.O. Box 1552, Rapid City, SD 57709 (605) 342–7090. Transporting *general commodities,* (except classes A and B explosives and household goods), between points in CA, CO, IL, IA, KY, MN, NE, NV, NJ, NY, OR, UT, and WI, on the one hand, and, on the other, points in IA, IL, MN, MO, MT, NE, ND, SD, WI, and WY.

MC 143501 (Sub-13), filed May 20, 1982. Applicant: R.G.C. CARGO CARRIERS, INC., 16651 S. Vincennes Rd., S. Holland, IL 60473. Representative: Dean N. Wolfe, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877 (301) 840–8565. Transporting *such commodities,* as are dealt in or used by manufacturers of mirrors and mirrored tiles, between points in the U.S., under continuing contract(s) with Hoyne Industries, Inc., of Chicago, IL.

MC 144510 (Sub-7), filed May 20, 1982. Applicant: JERRY J. KOBS, INC., 131 Bridge Court, Sergeant Bluff, IA 51054. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114 (402) 397–9900. Transporting *food and related products,* between points in Dawson County, NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 144821 (Sub-17), filed May 20, 1982. Applicant: FREEDOM FREIGHTWAYS, INC., 9060 Latty Ave., St. Louis, MO 63134. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701, (601) 335–3576. Transporting (1) *such commodities* as are dealt in or used by retail department, variety and specialty stores, between points in the U.S. (except AK and HI); (2) *chemicals and machinery,* between ponts in Ouachita Parish, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI); and (3) *lumber and wood products, and petroleum, natural gas and their products,* between points in Dent County, MO, and Lunenburg County, VA, on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: To the extent the certificate embraces the transportation of liquefied petroleum gas, it shall be limited to 5 years from the date of its issuance.

MC 145101 (Sub-4), filed May 20, 1982. Applicant: BILLY P. RUPPE, d.b.a. RUPPE MOTOR LINES, 309 Kraft St., Gaffney, SC 29340. Representative: Billy P. Ruppe (same address as applicant), (803)–489–4715. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 146080 (Sub-3), filed May 17, 1982. Applicant: McKINLEY MUNCY, JR., d.b.a. CARDINAL BUS LINES, 2759 5th Ave., Huntington, WV 25702. Representative: McKinley Muncy, Jr. (same address as applicant), (304) 525–7611. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, between points in WV, KY, and OH, on the one hand, and, on the other, points in the U.S.

MC 146940 (Sub-3), filed May 17, 1982. Applicant: LUMBEE TRUCKING COMPANY, INC., Route 2, Box 139, Maxton, NC 28364. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Building, Charlotte, NC 28204, (704) 372–6730. Transporting *containers,* between points in Robeson County, NC, on the one hand, and, on the other, points in Martin County, IN.

MC 148060 (Sub-11), filed May 14, 1982. Applicant: STIVER LINES, INC., P.O. Box 8346, Topeka, KS 66608. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612, (913)–233–9629. Transporting *food and related products,* between points in the U.S. (except AK and HI).

MC 149111 (Sub-4), filed May 19, 1982. Applicant: GENERAL COMMODITIES WAREHOUSE & DISTRIBUTING CO., INC., 1200 Lebanon Road, West Mifflin, PA 15122. Representative: Sally A. Davoren, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222, (412) 471–3300. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Lebanon Chemical Corporation, of Lebanon, PA, Giant Eagle Markets, Inc., of Pittsburgh, PA, and Joseph E. Seagram & Sons, Inc., of New York, NY.

MC 150030 (Sub-3), filed May 20, 1982. Applicant: NICHOLAS POLSELLI, d.b.a. TEMPERATURE CONTROL TRANSPORT, 74 South St., Troy, NH 03465. Representative: Robert G. Parks, 20 Walnut St., Suite 101, Wellesley Hills, MA 02181, (617) 235–5571. Transporting *food and related products,* between points in MA, on the one hand, and, on the other, points in CT, DE, GA, ME, MD, NC, NH, NJ, NY, PA, RI, SC, VA, VT, and DC.

MC 151941 (Sub-7), filed May 17, 1982. Applicant: DELMONT E. HARTT, INC., U.S. Route 2, Etna, ME 04435. Representative: John C. Lightbody, 30 Exchange St., Portland, ME 04101, (207)–773–5651. Transporting *food and related products,* between points in the U.S. (except AK and HI).

MC 153421 (Sub-2), filed May 19, 1982. Applicant: PRINTCO, INC., P.O. Box 16039, Memphis, TN 38116. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703)–751–2441. Transporting *such commodities as are dealt in or used by wholesale, retail discount, variety, and department stores,* between points in Pulaski County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *chemicals and related products,* between points in the U.S. (except AK and HI).

MC 155040 (Sub-3), filed May 18, 1982. Applicant: FRANK A. KAISER III, d.b.a. L & D TRANSPORT, 10383 Ave. 408, Dinuba, CA 93618. Representative: Dwight L. Koerber, 110 North Second St., P.O. Box 1320, Clearfield, PA 16830, (814)–765–9611. Transporting (1) *metal products,* and (2) *rubber and plastic products,* between points in Fresno, Stanislaus and Alameida Counties, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 156180, filed May 17, 1982. Applicant: PAUL J. JENSEN AND BETTY L. JENSEN, d.b.a. JENSEN BUS

SERVICE, Route 1, Sauk City, WI 53583. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719, (608) 273–1003. Transporting *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, between points in Sauk, Columbia, and Dane Counties, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 157680 (Sub-1), filed May 21, 1982. Applicant: PAUL ZIRKLE, d.b.a. ZIRKLE TRUCK LINE, 9021 SW 79th St., Auburn, KS 66402. Representative: Clyde N. Christey, Ks Creidt Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612, (913)–233–9629. Transporting *metal products*, between points in Shawnee and Osage Counties, KS, on the one hand, and, on the other, points in OK, TX and CO.

MC 160401, filed May 20, 1980. Applicant: GLIDEWELL TRUCKING, INC., Rte. 1, Box 171, Ozark, MO 65721. Representative: Don Glidewell (same address as applicant), (417) 587–3428. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Lily-Tulip, Inc., of Toledo, OH, and General Electric Company, of Ft. Wayne, IN.

MC 160520, filed May 20, 1982. Applicant: OWENS, MINOR INC., 624 Wholesalers Parkway, Harahan, LA 70123. Representative: Harold R. Ainsworth, 2307 American Bank Building, New Orleans, LA 70130. Transporting *intervenous solutions and sets, and hospital supplies*, between points in Jefferson Parish, LA, on the one hand, and, on the other, points in MS.

MC 160790 (Sub-1), filed May 20, 1982. Applicant: C & M EXPRESS, INC., 766 W. Broadway, Gardner, MA 01440. Representative: James F. Martin, 8 W. Morse Rd., Bellingham, MA 02019, (617)–966–2093. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between (1) points in ME, NH, VT, RI, CT, MA, NY, NJ and PA; and (2) points in ME, NH, VT, RI, CT, MA, NY, NJ and PA, on the one hand, and, on the other, those points in the U.S. on the east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca County, MN, then northward along the westen boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the U.S. and Canada.

MC 160911, filed May 17, 1982. Applicant: PERU HOLLOW TRANSPORT CO., 1303 Peru Hollow Rd., Norwalk, OH 44857. Representative: Dennis A. Brown (same address as applicant), (419)–744–2454. Transporting *rubber and plastic products*, between points in the U.S., under continuing contract(s) with Killian Latex, Inc., of Akron, OH.

MC 161761, filed May 20, 1982. Applicant: MONTCLAIR MOTOR EXPRESS, INC., 147 Eagel Rock Way, Montclair, NJ 07042. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123, (212) 239–4610. Transporting *general commodities* (except classes A and B explosives and household goods), between points in NY, NJ, PA, DE, MD, VA, CT, MA, RI, and DC.

MC 162051, filed May 17, 1982. Applicant: BYRON TIMMS, d.b.a. FRED'S OF ATMORE, 100–102 S. Main Street, Atmore, AL 36502. Representative: H. J. Holcomb, 4300 New Getwell Road, Memphis, TN 38118, (901) 365–8880 (Ext. 3053). Transporting *such commodities* as are dealt in or used by department stores, between points in AL and MS, on the one hand, and, on the other, Memphis, TN, under continuing contract(s) with Baddour, Inc., of Memphis, TN.

MC 162071, filed May 17, 1982. Applicant: THE HELEN TOUR COMPANY, P.O. Box 152, S. Main St., Helen, GA 30545. Representative: Pam Parker (same address as applicant), (404) 878–2400. As a broker at Helen, GA, in arranging for the transportation of *passengers and their baggage*, in the same vehicle with passengers, between points in GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162100, filed May 20, 1982. Applicant: JOSEPH WRIGHT, d.b.a. SUCCESS DELIVERY SERVICE, 101 Keer Ave., Newark, NJ 07112. Representative: Rick A. Rude, Suite 611, 1730 Rhode Island Ave., NW., Washington, DC 20036, (202) 223–5900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Inter State Express, Inc., of Brooklyn, NY.

Volume No. OP2–110

Decided: May 26, 1982.

By the Commission, Review Board No. 1, members Parker, Chandler, and Fortier.

MC 89693 (Sub-49), filed May 6, 1982. Applicant: HARMS PACIFIC TRANSPORT, INC., 7322 N. Division St., Suite 209, Spokane, WA 99208. Representative: Boyd Hartman, P.O. Box 3641, Bellevue, WA 98009, 206–453–0312. Transporting *commodities in bulk*, between points in WA, ID, and OR.

MC 117173 (Sub-2), filed May 6, 1982. Applicant: McCARTER TRANSIT, INC., 2569 Darlington Rd., Beaver Falls, PA 15010. Representative: John A. Pillar, 1500 Bank Tower, 307 4th Ave., Pittsburgh, PA 15222, 412–471–3300. Transporting *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, between points in the U.S., under continuing contract(s) with 20th Century Tours, Inc., of Youngstown, OH.

MC 119752 (Sub-12), filed May 11, 1982. Applicant: G & G HAULAGE CO., INC., 125 Henderson Street, Jersey City, NJ 07302. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048, (212) 466–0220. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK and HI).

MC 124813 (Sub-241), filed May 6, 1982. Applicant: UMTHUN TRUCKING CO., 910 South Jackson St., Eagle Grove, IA 50533. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, 515–282–3525. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Weyerhaeuser Company, of Tacoma, WA.

MC 142672 (Sub-188), filed May 12, 1982. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., Highway 64 West, P.O. Drawer F, Mulberry, AR 72947. Representative: Harry Keifer (same address as applicant), 501–997–1683. Transporting *food and related products*, between points in Summit County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 143553 (Sub-11), filed May 6, 1982. Applicant: CONTINENTAL TRANSPORT SYSTEMS, INC., 35 Main St., Versailles, CT 06383. Representative: Ronald I. Shapss, 450 7th Ave., New York, NY 10123, 212–239–4610. Transporting (1) *chemicals and plastic articles*, between points in the U.S. (except AK and HI), under continuing contract(s) with Whitestone Chemical Company, of Spartansburg, SC, and (2) *chemicals, cleaning compounds, soaps, and toilet preparations*, between points

in the U.S. (except AK and HI), under continuing contract(s) with Purex Corporation, of Lakewood, CA.

MC 143553 (Sub-12), filed May 10, 1982. Applicant: CONTINENTAL TRANSPORT SYSTEMS, INC., 35 Main St., Versailles, CT 06383. Representative: Ronald I. Shapss, 450 7th Ave., New York, NY 10123, 212–239–4610. Transporting *metal products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Eastern Steel and Metal Co., of Milford, CT.

MC 145102 (Sub-87), filed May 13, 1982. Applicant: FREYMILLER TRUCKING, INC., 1400 S. Union Ave., Bakersfield, CA 93307. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703, 608–256–7444. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of building materials, between points in the U.S. (except AK and HI), under continuing contract(s) with Donn Corporation, of Westlake, OH.

MC 145632 (Sub-5), filed May 13, 1982. Applicant: OTTUMWA TRANSIT LINES, INC., 1414 West Second St., Ottumwa, IA 52501. Representative: Steven C. Schoenebaum, 1200 Register and Tribune Bldg., Des Moines, IA 50309, (515) 283–2076. Transporting *passengers and their baggage, in the same vehicles with passengers,* in special and charter operations, beginning and ending at points in Clark, Decatur, Lucas, and Wayne Counties, IA, and Audrain, Boone, Callaway, Carroll, Chariton, Howard, Lincoln, Linn, Livingston, Marion, Monroe, Montgomery, Pike, Ralls, Randolph, Saline, and Shelby Counties, MO, and extending to points in the U.S. (except AK and HI).

MC 148743 (Sub-3), filed May 10, 1982. Applicant: JOEY CRAWFORD TRUCKING CO., R. 1, Box 366–D, Farmington, MO 63640. Representative: Joey Crawford (same address as applicant), 314–756–3090. Transporting *commodities in bulk,* between those points in the U.S., in and east of ND, SD, WY, CO, and NM.

MC 156863, filed May 10, 1982. Applicant: ROSE CARTAGE SERVICE, INC., 17711 Paxton Ave., Lansing, IL 60438. Representative: Edward G. Finnegan, 134 North LaSalle St., Chicago, IL 60602, 312–782–9500. Transporting *building and construction materials, equipment, and supplies,* between points in IL, WI, IN, and MI, under continuing contract(s) with Harvey Cement Products, Inc., of Harvey, IL, and Continental Concrete Pipe Corporation, of Posen, IL.

MC 159733, filed May 10, 1982. Applicant: S & L TRUCKING, INC., P.O. Box 322, Harvard, IL 60033. Representative: William F. Mix, 21 A Muzzey St., Lexington, MA 02173, 617–861–7305, Transporting *General commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. under continuing contract(s) with Morton Chemicals, Division of Morton Norwich Products, of Woodstock, IL.

MC 161852 (Sub-1), filed May 6, 1982. Applicant: TROPHY TRANSPORT, INC., P.O. Box 2352, Dalton, GA 30720. Representative: Gerald K. Gimmel, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, 301–840–8665. Transporting *General commodities* (except classes A anf B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Beaulieu of America, Inc., Dalyn Corp., and L & P Sales, all of Dalton, Ga.

MC 161853, filed May 6, 1982. Applicant: SPECIAL OCCASION SERVICES, 1003 E. Catawba St., Belmont, NC 28012. Representative: Reita L. Spence (same as applicant) (704) 825–2242. As a *broker,* at points in NC and SC, in arranging for the transportation, by motor vehicle, of *Passengers and their baggage* in the same vehicle with passengers, in round-trip special and charter operations, beginning and ending at points in NC and SC, and extending to points in the U.S.

MC 161943, filed May 11, 1982. Applicant: MOTOR CARRIER EXPRESS, INC., 906 Woodland Drive, Cardinal Bldg., Suite 208, Elizabethtown, KY 42701, Representative: Douglas F. Stancell, P.O. Box 440, Hermitage, TN 37076, 615–885–1330. Transporting *General Commodities* (except classes A and B explosives and household goods), between points in KY and TN, on the one hand, and, on the other points in the U.S. (except AK and HI).

MC 161952, filed May 10, 1982. Applicant: UTILITY PROPANE COMPANY, One Elizabethtown Plaza, Elizabeth, NJ 07207, Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue, N.W., Washington, DC 20005, (202) 347–9332.Transporting *liquefied natural and petroleum gases, bulk heating oil and diesel fuel,* (1) between points in MA, RI, CT, NH, VT, ME, NY, NJ, PA, and DE; and (2) between points in MA, RI, CT, NH, VT, ME, NY, NJ, PA, and DE, on the one hand, and, on the other, those points in U.S. in and east of WI, IL, KY, TN, and MS. Condition: To the extent any certificate issued in this proceeding authorizes the transportation of liquefied and petroleum gases, it shall be limited in point of time to a period expiring 5 years from its date of issuance.

MC 161962, filed May 12, 1982. Applicant: P T L TRANSPORTS, INC., Rte. 1, Box 56M, Cyoress, TX 77429. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103, (817) 332–4718. Transporting *chemicals and related products,* between points in TX, on the one hand, and on the other, points in CA, CO, GA, IL, LA, MS, MO, NJ, OK, VA, and WA.

MC 162053, filed May 18, 1982. Applicant: ADVENTURE CHARTERS AND TOURS, INC., 4328 South Seville St., Las Vegas, NV 89121. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108, 415–986–8696. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Clark County, NV, and Iron and Washington Counties, UT, and extending to points in the U.S. (except AK and HI).

Volume No. OP 2–111

Decided: May 27, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 42212 (Sub-4), filed May 20, 1982. Applicant: HARDER'S EXPRESS, INC., Rte. 9-H, Claverack, NY 12513. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, 201–836–1144. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in NY, NJ, CT, and Berkshire County, MA, on the one hand, and, on the other, points in PA, DE, MD, WV, VA, VT, ME, NH, RI, MA, CT, NJ, NY, and DC.

MC 42343 (Sub-21), filed May 12, 1982. Applicant: CORPENZA, INC., 310 Chestnut Avenue, Vineland, NJ 08360. Representative: Mark D. Russell, Suite 348, Pennsylvania Bldg., 425 13th Street NW., Washington, DC 20004–1879, (202) 737–2188. Transporting *petroleum, natural gas and their products,* between points in Gloucester County, NJ, on the one hand, and, on the other, points in Berks, Cumberland, Lackawanna, Lancaster, Luzerne and York Counties, PA, and DE. Condition: To the extent any certificate issued in this proceeding authorizes the transportation of liquid petroleum gas, it shall be limited in point of time to a period expiring 5 years from its date of issuance.

MC 61502 (Sub-14), filed May 20, 1982. Applicant: WM. McCULLOUGH TRANSPORTATION CO., INC., 1130 U.S. Hwy No. 1, Elizabeth, NJ 07201. Representative: Ronald I. Shapss, 450 7th Ave., New York, NY 10123, 212–239–4610. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between Baltimore, MD, New York, NY, Charleston, SC, Boston, MA Philadelphia, PA, and Norfolk, VA, on the one hand, and, on the other, points in OH, IN, IL, NC, and SC.

MC 107012 (Sub-764), filed May 20, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, Fort Wayne, IN 46818. Representative: Bruce Boyarko (same address as applicant), 219–429–2224. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with M. Fortunoff of Westbury Corporation, of Westbury, NY.

MC 107012 (Sub-765), filed May 20, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, Fort Wayne, IN 46818. Representative: Bruce W. Boyarko (same address as applicant), 219–429–2224. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Western Publishing Co., Inc., of Racine, WI.

MC 107012 (Sub-766), filed May 20, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same address as applicant), 219–429–2224. Transporting *General commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Rockwool Industries, Inc., of Denver, CO.

MC 107012 (Sub-767), filed May 20, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same address as applicant), 219–429–2224. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with General Felt Industries, Inc., of Saddle Brook, NJ, and its subsidiaries.

MC 107012 (Sub-768), filed May 20, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same address as applicant), 219–429–2224. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Merillat Industries, Inc., of Adrian, MI.

MC 143553 (Sub-10), filed April 23, 1982. Applicant: CONTINENTAL TRANSPORT SYSTEMS, INC., 35 Main St., Versailles, CT 06383. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123, (212) 239–4610. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with The Stop & Shop Companies, Inc., of Boston, MA.

MC 145042 (Sub-18), filed May 11, 1982. Applicant: ZEELAND FARM SERVICES, INC., 2468 84th Ave., Zeeland, MI 49464. Representative: James R. Neal, 1200 Bank Lansing Bldg., Lansing, MI 48933, (517) 482–2400. Transporting *food and related products*, between those points in the U.S. in and east of MN, IA, MO, AR and LA.

MC 148502 (Sub-4), filed May 10, 1982. Applicant: L.F. CARTER, INC., Field Avenue, P.O. Box 224, Pittsford, VT 05763. Representative: Jack R. Abell, 29 South Main Street, P.O. Box 975, Rutland, VT 05701, (802) 775–6461. Transporting *ground limestone products and marble, granite and travertine building stone*, between points in Rutland County, VT, on the one hand, and, on the other, points in NJ, PA and RI, under continuing contract(s) with OMYA, Inc., of Proctor, VT.

MC 149063 (Sub-2), filed April 12, 1982. Applicant: BILL'S TRUCKING INC., 135 north State Street, Clairton, PA 15025. Representative: Robert J. Walshak (same address as applicant), (412) 461–4900. Transporting *metal products and machinery*, between points in the U.S., (except HI).

MC 151092, filed May 7, 1982. Applicant: LOCKLAR ENTERPRISES, INC., d.b.a. EXECUTIVE DELIVERY SERVICES, P.O. Box 18312, Greensboro, NC 27419. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Bldg., Charlotte, NC 28204, (704) 372–6730. Transporting *New furniture and fixtures*, between points in NC, on the one hand, and, on the other, points in the U.S. (except AK and HI.)

MC 14172 (Sub-1), filed May 10, 1982. Applicant: JIM MALEK d.b.a. JIM MALEK TRUCKING, 611 Shumway, Faribault, MN 55021. Representative: Jim Malek (same address as applicant), (507) 334–2129. Transporting *fabricated metal parts*, between points in the U.S., under a continuing contract(s) with Hofmann Industries, Inc., of Owatonna, MN.

MC 155913 (Sub-4), filed May 6, 1982. Applicant: SELDEN AND SPENCER, INC., Route 661, Chance, VA 22439. Representative: Carroll B. Jackson, 1810 Vincennes Rd., Richmond, VA 23229, (804) 282–3809. Transporting *(1) building materials, (2) chemicals and related products; (3) clay, concrete, glass or stone products, (4) lumber and wood products, (5) machinery, (6) metal products, (7) miscellaneous manufactured products, (8) pulp, paper and related products, (9) rubber and miscellaneous plastic articles, and (10) transportation equipment*, between points in VA, on the one hand, and, on the other, those points in the U.S. in and east of MI, IN, KY, TN, MS, and LA.

MC 157713 (Sub-2), filed May 13, 1982. Applicant: JOHNNY GOODNOH TRUCKING COMPANY, INC., Route 2, Box 45, Mulberry, AR 72947. Representative: George Spencer, 7 North Block, Fayetteville, AR 72701, (501) 442–0585. Transporting *barite and bentonite*, between points in Big Horn and Natrona Counties, WY, on the one hand, and, on the other, points in Beckham, Carter, Canadian, Custer, Garfield and Garvin Counties, OK, and Bee, Eastland, Ector, Grayson, Maverick, Midland, Reeves, Taylor and Washington Counties, TX.

MC 160983 (Sub-1), filed May 12, 1982. Applicant: GIN'S TRANSPORTATION, 5000 Wyoming, Dearborn, MI 48126. Representative: James F. Schouman, 21925 Garrison, Dearborn, MI 48124, (616) 561–3548. Transporting *iron and steel, and machinery* between points in MI, on the one hand, and, on the other, points in TN, KY, AL, GA, MO, IL, OH, IN, IA, WV, KS and PA.

MC 161653, filed April 23, 1982. Applicant: GOLD LINE TRANSPORT LTD., P.O. Box 91, Newcastle, New Brunswick, Canada E1V 3M2. Representative: Harold C. Pachios, 443 Congress Street, Portland, ME 04101, (207) 775–5831. Transporting *wood pulp, paper, and related products* between points in the U.S., under continuing contract(s) with Boise Cascade Canada Limited of Newcastle, New Brunswick, Canada.

MC 161872, filed May 6, 1982. Applicant: MARVIN MILLAM, d.b.a. M & L TRUCKING, Rte 1, Box 302, Brainerd, MN 56401. Representative: James M. Christenson, 4444 IDS Center, 80 South Eighth St., Minneapolis, MN 55402, (612) 339–4546. Transporting (1)

lumber, wood and forest products, between points in MN, WI, IA, SD, and ND, on the one hand, and, on the other, points in AL, MS, AR, MN, IA, MT, ID, WA, OR, CA, ND, SD, and WI.

MC 161902, filed May 10, 1982. Applicant: CKL BUS RENTAL SYSTEM, INC., d.b.a. CKL BUS SERVICE, 9 W Street, NW, Washington, D.C. 20001. Representative: Charles W. Tate (same address as applicant). Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, between points in Washington, D.C., on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161922, filed May 10, 1982. Applicant: REXLOR TRANSPORT, P.O. Box 13, Upper Sandusky, OH 43351. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415, (212) 263–2078. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with anchor Swan Corporation, of Bucyrus, OH, the Budd Company, of Madison Heights, MI, Guardian Industries, Inc., of Upper Sandusky, OH, Interior Steel, of Rockville, MD, and Mills Metal Compartment Co., Inc., of Upper Sandusky, OH.

MC 162002, filed May 14, 1982. Applicant: VISTA ROYALE TRAVEL SERVICE, INC., 5430 Lauby Rd.-Akron-Canton Airport, North Canton, OH 44720. Representative: Boyd B. Ferris, 50 West Broad St., Columbus, OH 43215, 614–464–4103. As a *broker,* at North Canton, OH, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, between points in OH, on the one hand, and, on the other, points in the U.S.

MC 162122, filed May 20, 1982. Applicant: ROBERT F. FENNESSEY, d.b.a. L & S TRANSFER, 117 Tosca Drive, Stoughton, MA 02072. Representative: Robert F. Fennessey (same address as applicant), (617) 344–6732. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) between points in CT, ME, MD, MA, NH, NJ, NY, PA, VT, and RI.

Volume No. OP4–189

Decided: May 24, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 54567 (Sub-17), filed May 17, 1982. Applicant: RELIANCE TRUCK CO., 2500 N. 24th Ave., Phoenix, AZ 85009. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014, (602) 264–4891. Transporting *general commodities* (except classes A and B explosives and household goods), between points in Rogers County, OK, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 65697 (Sub-64), filed May 18 1982. Applicant: TSC EXPRESS CO., P.O. Box 1695, Atlanta, GA 30301. Representative: Paul W. Smith, (same address as applicant), (404) 521–0730. Over regular routes, transporting *general commodities* (except classess A and B explosives), serving points in AL, GA, KY, MS, NC, and TN as off-route points in connection with carrier's otherwise authorized regular-route operations.

MC 70557 (Sub-58), filed May 17, 1982. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 W. Homer St., Chicago, IL 60639. Representative: Edward G. Bazelon, 29 S. La Salle St., Chicago, IL 60613, (312) 236–9375. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Pensacola Christian Schools, Inc., of Pensacola, FL, Rand and McNally & Company, of Skokie, IL, Outboard Marine Corporation, of Waukegan, IL, and The Clorox Company, of Oakland, CA, and its wholly-owned subsidiaries.

MC 144057 (Sub-5), filed May 6, 1982. Applicant: WHITEHALL TRANSPORT, INC., P.O. Box 387, Whitehall, WI 54773. Representative: Joseph E. Ludden, 2707 S. Ave., P.O. Box 1567, La Crosse, WI 54601, (608) 788–2000. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Kane-Miller Corporation, of Tarrytown, NY, and Tonka Toys, of Mound, MN.

MC 160397, filed May 17, 1982. Applicant: C. R. COPE ENTERPRISES–LCM, Route 4, Box 120, Seminole, TX 79360. Representative: Timothy Mashburn, P.O. Box 2207, Austin, TX 78768, (512) 476–6391. Transporting *Mercer commodities,* between points in KY, MI, NC, SC, and VA, on the one hand, and, on the other, points in the U.S. in and west of LA, AR, MO, IA and MN.

MC 160457, filed May 17, 1982. Applicant: LAREWS LEASING CO., Route 5, Forest Pines Dr., P.O. Box 884, Statesboro, GA 30458. Representative: Ralph M. Andrews, (same address as applicant), (912) 489–8811. Transporting *passengers and their baggage,* in special and charter operations, beginning and ending at points in Bulloch, Jenkins, Screven, Effingham, Bryan, Liberty, Evans, Candler, and Chatham Counties, GA, and extending to points in the U.S. (except AK and HI).

MC 160767 (Sub–2), filed May 17, 1982. Applicant: LADD TRANSPORTATION, INC., One Plaza Center, P.O. Box HP–3, High Point, NC 27261. Representative: Beverly C. Davis (same address as applicant), (919) 889–0333. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Scott Paper Co., of Philadelphia, PA.

MC 161037, filed March 16, 1982. Applicant: TRI–S, INC., 112 Pine Knob Dr., South Windsor, CT 06074. Representative: Frank P. Pappalardo (same address as applicant), (203) 644–0860. Transporting *waste materials and hazardous waste materials,* between points in CT and MA, on the one hand, and, on the other, points in NY, NJ, OH, PA, MD, and CT.

MC 161067, filed May 17, 1982. Applicant: SAMAR MOTOR STAGES, INC., 4358 McClure Rd., Gurnee, IL 60031. Representative: Patrick H. Smyth, 105 West Madison St., Suite 1008, Chicago, IL 60602, (312) 263–2397. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special operations, beginning and ending at points in Lake County, IL and Kenosha County, WI, and extending to points in the U.S.

MC 161407 filed May 17, 1982. Applicant: MARTINI, INC., P.O. Box #1, Rt. #309, Drums, PA 18222. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18571, (717) 344–8030. Transporting *foodstuffs and related products,* (1) between Lackawanna County, PA, on the one hand, and, on the other, New York, NY, and points in Forseyth County, NC, Campbell County, KY, Baltimore County, MD, and Allen County, IN; and (2) between Luzerne County, PA, on the one hand, and, on the other, New York, NY, and points Peoria County, IL, Milwaukee County, WI, Houston County, GA, Monroe County, NY, Forseyth County, NC, and Campbell County, KY.

MC 162017, filed May 17, 1982. Applicant: ED OLPIN, d.b.a. OLPIN TRUCKING, 275 W 2nd S, Pleasant Grove, UT 84062. Representative: Bruce W. Shand, 311 S State St., Suite 280, Salt Lake City, UT 84111, (801) 531–1300. Transporting *food and related products,* between points in the U.S., under

continuing contract(s) with Timberlake Cheese Co., Inc., of Timber Lake, SD.

MC 162067, filed May 18, 1982. Applicant: SHIRLEY A. MITCHELL, d.b.a. HAPPY VAGABOND TOURS, R.R. 1, North Main, Crete, NE 68333. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St., NW, Washington, DC 20005, (202) 783–7900. To operate as a *broker*, at Crete, NE, in arranging for the transportation of *passengers and their baggage*, between points in the U.S. (except HI).

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82–15128 Filed 6–3–82; 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 C.F.R. 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 F.R. 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 F.R. 80109.

Persons wishing to oppose an application must follow the rules under 49 C.F.R. 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarly, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operatins (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–93

Decided: May 26, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 160421 (Sub-2), filed May 17, 1982. Applicant: TIGER EXPRESS, INC., Ripley St., Lake Station, IN 46405. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602, (312) 236–5944. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Hebron and LeRoy, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 162080, Filed May 18, 1982. Applicant: IMPERIAL DISTRIBUTION SERVICES, INC., P.O. Box 16362, Denver, CO 80216. Representative: Edward J. Kiley, 1730 M St., N.W., Washington, DC 20036 (202)–296–2900. As a *broker* of *general commodities* (except classes A and B expolsives and household goods), between points in the U.S. (except AK and HI).

MC 161101, filed May 20, 1982. Applicant: COURT TRANSPORTATION SERVICES, INC, 11 Baldwin St., Bloomfield, NJ 07003. Representative: Peter Gregory Lordi, Jr., (same address as applicant), (201)–429–8050. As a *broker* of *general commodities* (except household goods), between ponts in the U.S. (except AK and HI).

Volume No. OP2–109

Decided: May 26, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 161852, filed May 6, 1982. Applicant: TROPHY TRANSPORT, INC., P.O. Box 2352, Dalton, GA 30720. Representative: Gerald K. Gimmel, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, 301–840–8565. As a *broker of general commodities* (except household goods) between points in the U.S. (except AK and HI).

MC 162033, filed May 17, 1982. Applicant: DAVID DENEAULT, ROLAND DUBOIS d.b.a. DRD ASSOCIATES, 848 Pleasant St., New Bedford, MA 02740. Representative: David Deneault, (same address as applicant), 617–999–2929. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP2–112

Decided: May 27, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 161502, filed April 14, 1982. Applicant: KENNETH D. KIMBROUGH, 4725 W. Cochise Dr., Glendale, AZ 85302. Representative: Stephanie Kimbrough, (same address as applicant), (602) 931–0450. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 161892, filed May 6, 1982. Applicant: HUBBARD EQUIPMENT CORP., 1612 Fifth Ave., Bay Shore, NY 11706. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, (201) 572–5551. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) between points in the U.S. (except AK and HI).

Volume No. OP4-190

Decided: May 24, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 148857 (Sub-4), filed May 17, 1982. Applicant: CHILD TRUCK LINE, INC., 711 S. Third St., Chowchilla, CA 93610. Representative: Herb Nelson, P.O. Box 995, Chowchilla, CA 93610, (209) 665-3741. 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 161527, filed May 14, 1982. Applicant: EVERETT JOHNSON, d.b.a. EVERETT JOHNSON TRUCKING, Rt. 9, Box 136, Caldwell, ID 83605. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343-3071. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 162047, filed May 18, 1982. Applicant: PANELLA TRUCKING, INC., 5000 E. Fremont St., Stockton, CA 95205. Representative: Daniel W. Baker, 100 Pine St., No. 2550, San Francisco, CA 94111, (415) 986-1414. 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 162057, filed May 17, 1982. Applicant: L&T INVESTMENTS, INC., Route 4, Box 490, Trinity, NC 27370. Representative: William G. Morris, 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-15127 Filed 6-3-82; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. 262]

Motor Carriers; Permanent Authority Restriction Removals; Decision-Notice

Decided: May 28, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Canadian carrier applicants: In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC-157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 109449 (Sub-73)X, filed May 10, 1982. Applicant: KUJAK TRANSPORT, INC., 6366 West Sixth St., P.O. Box 799, Winona, MN 55987. Representative: Daniel O. Hands, 205 West Touhy Ave., Suite 200A, Park Ridge, IL 60068. Subs-66, 67, 70, and 71, (1) broaden to (A) "general commodities (except classes A and B explosives, household goods, and commodities in bulk)" from general commodities (with exceptions) in Sub 66 part (20), (B) "chemicals and related products" from fertilizer in Sub 66 parts (11), (12) and (27), (C) "ores and minerals and clay, concrete, glass or stone products" from sand and gravel in Sub 66 parts (14), (26) and (30), (D) "food and related products" from (a) grain products, dry animal and poultry feeds, and dry feed ingredients in Sub 66 part (31), (b) malt beverages and confectionery in Sub 67, (c) foodstuffs and nonedible food products in Sub 70, (E) "furniture and fixtures" from mattresses, box springs, hide-a-beds, studio couches, bedframes, headboards and roll-a-way cots in Sub 71; (2) remove the restriction to or against the transportation of bulk products and other restrictions limiting vehicle use in Subs 66 parts (12), (27), 67, 70 and 71, (3) expand to counties (A) Winona, MN (Winona County) in Sub 66, (B) points in IA, MN, and WI within 200 miles of Winona, MN (Winona, Houston, Fillmore, Wabasha, Olmstead, Mower, Goodhue, Dodge, Dakota, Ramsey, Washington, Chicago, Pine, Carlton, St. Louis, Freeborn, Waseca, Steele, Rice, Scott, Hennepin, Anoka Isanti, Kanabec, Aitkin, Faribault, Blue Earth, Micollet, Le Sueur, Carver, Sibley, McLeod, Wright, Sherburne, Benton, Morrison, Mille Lacs, Crow Wings, Cass, Martin, Watonwan, Brown, Renville, Meeker, Stearns, Todd, Wadena, Jackson, Cottonwood, Redwood, Chippewa, Kandiyohi, Pope, Doughlas, Nobles, Murray, Lyon, Yellow Medicine, Lac Qui Parle, and Swift Counties, MN, Allamakee, Benton, Black Hawk, Boone, Bremer, Buchanan, Butler, Cedar, Cerro Gordo, Chickasaw, Clay, Clayton, Clinton, Delaware, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Howard, Humboldt, Iowa, Jackson, Johnson, Jones, Kossuth, Linn, Marshall, Mitchell, Palo Alto, Pocahontas, Poweshiek, Story, Tama, Webster, Winnebago, Winneshiek, Worth and Wright Counties, IA, and points in Wisconsin), in Sub 66 parts (11) and (12), (C) Arcadia, Gale, Trempealeau and Doge, WI (Trempealeau County), and Buffalo, Cross and Glencoe, WI (Buffalo County) in Sub 66 part (20), (D) points in MN within 35 miles of Winona, MN (Winona, Houston, Fillmore, Wabasha and Olmstead Counties) in Sub 66 part (20), (E) Winona, MN and points within 5 miles thereof (Winona County, MN and Trempealeau County, WI) in Sub 66 part (26), (F) Cochrane, WI (Buffalo County) in Sub 66 part (31), (G) LaCrosse, WI (LaCrosse County), WI, New Ulm, MN (Brown County) and Reading, PA (Berks County) in Sub 67, (H) Hodgkins, IL (Cook County) in Sub 70; (4) remove the plantsite restriction in Subs 67, 70 and 71; (5) change one-way to radial in Sub 66 parts (11), (12), (14), (20), (26), (27) and (30), and Subs 67, 70 and 71; (6) remove originating at and/or destined to restriction in Subs 67 and 70.

MC 111936 (Sub-33)X, filed May 20, 1982. Applicant: MURROW'S TRANSFER, INC., P.O. Box 4095, High Point, NC 27263. Representative: Wilmer B. Hill, Suite 366, 1030 Fifteenth St., NW., Washington, DC 20005. Sub-Nos. 17 and 19 (1) broaden wire to "metal products", Sub 17 and foodstuffs to "food and related products", Sub 19, (2) broaden Kouts, IN facilities to Porter County; High Point, NC to Guilford County, Sub 17, and (3) to radial authority, Sub 17.

MC 126402 (Sub-21)X, filed May 20, 1982. Applicant: JACK WALKER TRUCKING SERVICE, INC., 1506 Fort Sumpter Ct., Lexington, KY 40505. Representative: William L. Willis, 702 McClure Bldg., Frankfort, KY 40601. Subs 1, 3, 4, 5, 6, 8, 9, 10, 12, 15, 16, 17, 18, and 19 certificates: broaden to (1) "food and related products" from malt beverages, in containers, and/or empty malt beverage containers, all Subs; (2) county-wide authority: (a) Sub 1, Milwaukee-Milwaukee County, WI; Fort Wayne-Allen County, IN; and Peoria-Peoria County, IL; (b) Sub 3, Milwaukee-Milwaukee County, WI; St. Joseph-Buchanan County, MO; South Bend-St. Joseph County, IN; and Darfork-Perry County, KY; (c) Sub 4, Milwaukee-Milwaukee County, WI, and St. Joseph-Buchanan County, MO; (d) Sub 5, Ft. Wayne-Allen County, IN; Milwaukee-Milwaukee County, WI; and Peoria Heights-Peoria County, IL; (e) Sub 8, Winston-Salem-Forsythe County, NC and facilities near Perry-Houston County, GA; (f) Sub 10, St. Joseph-Buchanan County, MO and Milwaukee-Milwaukee County, WI; (g) Sub 16, facilities in Bourbon County with Bourbon County, KY; (h) Sub 17, Eden-Rockingham County, NC; and (i) Sub 19, Perrysburg-Wood County, OH; and (3) radial authority, all Subs.

MC 143649 (Sub-9)X, filed May 20, 1982. Applicant: FIGANBAUM TRUCKING, INC., Tripoli, IA 50676. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Subs 1, 2, 5F, 7F, and 8F: (1) Broaden (a) fertilizer and fertilizer materials to "chemicals and related products" in Subs 1, 2, 7F and 8F; and (b) liquefied petroleum gas to "petroleum and coal products" in Sub 5F; (2) remove facility limitations; (3) change one-way to radial authority; (4) replace Whiteside County, IL and Clinton County, IA, for Albany, IL (Sub 1); Dubuque County, IA, Jo Daviess County, IL, and Grant County, WI, for East Dubuque, IL (Sub 2); Chickasaw County, IA, for New Hampton, IA (Sub 5F); and Cerro Gordo County, IA, for Mason City, IA (Sub 7F); and (5) remove in bulk/in tank vehicles restrictions in Subs 1, 5F, and 7F.

[FR Doc. 82-15126 Filed 6-3-82; 8:45 am]

BILLING CODE 7035-01-M

Decision Notice

Motor Carrier; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC-FC-79773. By decision of May 19, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to NORTHLAND PRODUCE, INC. of Permit No. MC-144696 (Sub-Nos. 8X and 12X) issued to MEEUWSEN PRODUCE, INC. authorizing the transportation of (1) *chemicals and related products,* between points in the United States, under continuing contract(s) with L. Perrigo Co., of Allegan, MI, and (2) *food and related products,* between points in the United States under continuing contract(s) with (a) Bil-Man Foods, Inc., of Zeeland, MI, (b) Seabrook Foods, Inc., of Fresno, CA, and (c) Benco Pet Foods, Inc. of Zanesville, OH. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740.

Note(s).—(1) Application for temporary authority has been filed. (2) Transferee is a carrier.

MC-FC-79801. By decision of May 20, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to ALBERT FORTUNER of Certificate No. MC-95211 issued to JOE FORTUNER authorizing the transportation of (1) *household goods,* as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M.C.C. 467, between Carbondale, PA, on the one hand, and, on the other points in NJ and NY and (2) *race and show horses,* between Carbondale, PA, on the one hand, and, on the other points in NY. Representative: Joseph A. Keating, Jr., 121 South Main St., Taylor, PA 18517.

Note.—Transferee is a non-carrier.

MC-FC-79802. By decision of May 19, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to RED LINE, INC., of Emporia, KS of Certificate No. MC-153839 and (Sub-No. 1) issued to TOM WILSON, INC., of Emporia, KS authorizing the transportation of *meat, meat products, and meat byproducts, and articles distributed by meat packing houses,* (1) between points in Osborne County, KS, on the one hand, and, on the other, Los Angeles, CA, St. Joseph, MO, and points in Fresno, Stanislaus, and San Joaquin Counties, CA, and York County, NE, and (2) between points in Jewell County, KS, on the one hand, and, on the other, Los Angeles, CA, Houston and Ft. Worth, TX, Tucson, AZ, Denver, CO, and Minneapolis, MN, and points in Stanislaus County, CA; and *food and related products,* between points in York County, NE, on the one hand, and, on the other, points in CA.

Representative: Larry E. Gregg, P.O. Box 1979, Topeka, KS 66601. TA lease is sought. Transferee is a carrier.

MC–FC–79812. By decision of 5/20/82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to KOOTENAY MACHINERY TRANSPORT, INC., of Salmo, BC, Canada, of Certificate No. MC–114126 issued April 12, 1965, and MC–114126 (Sub-No. 5) issued May 4, 1965, to SALMO TRANSPORT, LTD., of Salmo, BC, Canada, authorizing: *ore concentrates,* in bulk, from ports of entry on the US-Canada boundary line at or near Oroville, Ferry, Danville, Laurier, Northport, and Metaline Falls, WA, and Port Hill and Eastport, ID, to Tacoma, WA, and Kellogg, ID, restricted to foreign commerce only, *cement and soda ash,* from Metaline Falls, WA, to the US-Canada boundary line at or near Nelway, BC, Canada; and *ore and ore concentrates,* from the port of entry on the US-Canada boundary line located at or near Metaline Falls, WA, to Metaline Falls, WA. Representative: Jack R. Davis, 1100 IBM Building, Seattle, WA 98101, (206) 624–7373. TA lease is sought. Transferee is not a carrier.

MC–FC–79813. By decision of May 20, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to PECK LEASING, INC., of Fall River, MA, of Permit No. MC–156045 issued December 17, 1981, MC–156045 (Sub-No. 1) issued November 2, 1981, and MC–156045 (Sub-No. 2) issued April 29, 1982, to H. P. LEASING, INC., of Somerset, MA, authorizing *general commodities* (except classes A and B explosives) between points in the U.S. under continuing contracts with (a) Transworld Adhesives and Chemical Corporation, of Rockland, MA, (b) Sarama Lighting of Mass., of Fall River, MA, and (c) Benny's Inc., of Esmond, RI; *general commodities* (except classes A and B explosives) between points in the U.S. under continuing contract with Hasbro Industries, of Pawtucket, RI; and *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. under continuing contracts with (a) Princess House, Inc., of No. Dighton, MA, (b) Titleist Golf Division of Acushnet Co., of New Bedford, MA, (c) Quality Carpet Inc., of Avon, MA, (d) Poly-American Inc., of Grand Prairie, TX, and (e) Globe Manufacturing Company of Fall River, MA. Representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043. Phone: 617–749–6500. TA lease is not sought. Transferee is not a carrier.

Note.—If transferee desires to become an applicant in transferor's pending proceeding in MC–156045 (Sub-No. 3) upon consummation of the transfer, an appropriate request for substitution of transferee as applicant should be filed jointly by transferor and transferee.

MC–FC–79825. By decision of 5/20/82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the lease to GREEN ACRE ENTERPRISES, INC. of Plymouth, NC, of Certificate No. MC–151646 issued March 18, 1981, Permit No. MC–151646 (Sub-No. 1) issued May 6, 1981, and Certificate No. MC–151646 (Sub-No. 2) issued May 6, 1981, to MISS-ALA DISTRIBUTORS, INC., of Columbus, MS, for a period of one year. The operating authority involves the transportation of (1) *paper and paper products,* (2) *lumber and wood products,* and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between the facilities of Weyerhaeuser Company, Inc., at points in (a) Lamar and Sumter Counties, AL, and (b) Calhoun, Lowndes, Neshoba and Perry Counties, MS, on the one hand, and, on the other, points in the U.S., (4) *furniture and fixtures* and *materials, equipment and supplies* used in the manufacture of furniture and fixtures, between points in the U.S., under continuing contract with Triangle Pacific Corporation, of Dallas, TX, and (5) *machinery* between points in Lowndes County, MS, on the one hand, and, on the other, points in AL, CT, MI, MN, OH, PA, TN, and WI. Representative: Donald B. Sweeney, Jr., Attorney, P.O. Box 2366, Birmingham, AL 35201. TA lease is not sought. Transferee is not a carrier.

MC–FC–79816. By decison of May 20, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to AMTRANS, INC., of Phoenix, AZ, of Certificate No. MC–145152 and all subs thereunder, issued to BIG THREE TRANSPORTATION, INC., of Springdale, AR, (James G. Nixon, Trustee in Bankruptcy) authorizing: *various commodities,* including foodstuffs, toilet articles, office furniture, electrical applicances, rubber and plastic articles, paper products, paint, aluminum paste, asphalt, and petroleum products, between named points throughout the U.S. Representative: Edward N. Button, 635 Oak Hills Ave., Hagerstown, MD 21740. TA lease is not sought. Transferee is not a carrier.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82–15125 Filed 6–3–82; 8:45 am]
BILLING CODE 7035–01–M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10254(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: American Can Company, American Lane, Greenwich, Connecticut 06830.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation:

(i) Fingerhut Corporation, Minnesota.

(ii) Pickwick International, Inc., Delaware.

(iii) U.S. Aluminum Corporation of Pennsylvania, Pennsylvania.

(iv) U.S. By-Products Corporation, Missouri.

(v) U.S. Reduction Co., Delaware.

(vi) Tinmet Corporation, Delaware.

(vii) Bigbee Transportation Company, Connecticut.

(viii) Figi's, Inc., Wisconsin.

(ix) Distribution & Transport, Inc., Minnesota.

1. Parent corporation and address of principal office: High Industries, Inc., 1905 Old Philadelphia Pike, Lancaster, Pennsylvania 17604.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) High Steel Structures, Inc. (Pennsylvania).

(ii) High Concrete Structures, Inc. (Pennsylvania).

(iii) Kurtz Bros., Concrete, Inc. (Pennsylvania).

(iv) Kurtz Transport, Inc. (Pennsylvania).

(v) Kurtz Materials Corporation (Delaware).

(vi) Lancaster Line & Stone Corporation (Pennsylvania).

(vii) High Realty Corporation (Pennsylvania).

(viii) High Associates, LTD. (Pennsylvania).

(ix) Lantz Builders, Inc. (Pennsylvania).

(x) High Steel Service Center, Inc. (Pennsylvania).

1. Parent Corporation and address of principal office: North American Philips

Corporation, 100 East 42 St., New York, NY 10017.

2. Wholly-owned subsidiaries which will participate in the operations:

Advance Transformer Co., an Illinois corporation, 2950 North Western Avenue, Chicago, Illinois 60618
Airpax Corporation, a Delaware corporation, Cheshire Industrial Park, Cheshire, Connecticut 06410
AKG Acoustics, Inc., a Delaware corporation, 77 Selleck Street, Stamford, Connecticut 06902
The Alliance Manufacturing Company, Inc., an Ohio corporation, 22790 Lake Park Boulevard, Alliance, Ohio 44601
American Color & Chemical Corporation, a Delaware corporation, 6525 Morrison Boulevard, Suite 310, Charlotte, North Carolina 28211
Amperex Electronic Corporation, a Delaware corporation, Providence Pike, Slatersville, Rhode Island 02876
Dialight Division, 203 Harrison Place, Brooklyn, New York 11237
Amperex Electronic Industries, Inc., a Delaware corporation, George Washington Highway, Smithfield, Rhode Island
Anchor Brush Company, Inc., a Delaware corporation, 625 South Railroad Street, Montgomery, Illinois 60538
Baker, Knapp & Tubbs, Inc., a Delaware corporation, 917 Merchandise Mart, Chicago, Illinois 60654
CPD, Inc., a Texas corporation, 8811 West Carpentar Freeway, Dallas, Texas 75247
Centralab, Inc., a Delaware corporation, 5855 North Glen Park Road, Milwaukee, Wisconsin 53209
Chicago Magnet Wire Corp., an Illinois corporation, 901 Chase Avenue, Elk Grove Village, Illinois 60007
Dent-X Corporation, a New York corporation, 36 Bulkley Avenue, Port Chester, New York 10573
Herman H. Smith, Inc., a Delaware corporation, 1913 Atlantic Avenue, Manasquan, New Jersey 08736
Kulka Electric Corp., a New York corporation, 520 South Fulton Avenue, Mount Vernon, New York 10550
Ludwig Industries, Inc., a Delaware corporation, 1730 North Damen Avenue, Chicago, Illinois 60647
Lustra Lighting Corporation, a Delaware corporation, 180 Manor Road, East Rutherford, New Jersey 07073
Magnavox CATV Systems, Inc., a Delaware corporation, 133 West Seneca Street, Manlius, New York 13104
Magnavox Government and Industrial Electronics Company, a Delaware corporation, 1313 Production Road, Fort Wayne, Indiana 46804
Mepco/Electra, Inc., a Delaware corporation, Columbia Road, Morristown, New Jersey 07960
N.A.P. Commercial Electronics Corp., a Delaware corporation, 100 First Avenue, Waltham, Massachusetts 02254
N.A.P. Consumer electronics Corp., a Delaware corporation, I–40 and Straw Plains Pike, P.O. Box 6950, Knoxville, Tennessee 37914
Norelco Service, Inc., a Delaware corporation, 100 East 42nd Street, New York, New York 10017
North American Philips Lighting Corporation, a Delaware corporation, Bank Street, Hightstown, New Jersey 08520
Ohmite Manufacturing Company, an Illinois corporation, 3601 Howard Street, Skokie, Illinois 60076
Philips Business Systems, Inc., a Delaware corporation, 175 Froehlich Farm Boulevard, Woodbury, New York 11797
Philips ECG, Inc., a Delaware corporation, 50 Johnson Street, Seneca Falls, New York 13148
Philips Electronic Instruments, Inc., a Delaware corporation, 750 South Fulton Avenue, Mt. Vernon, New York 10550
Philips Elmet Corporation, a Delware corporation, Lisbon Road, Lewiston, Maine 04340
Philips Medical Systems, Inc., a Delaware corporation, 710 Bridgeport Avenue, Shelton, Connecticut 06484
Philips Test & Measuring Instruments, Inc., a Delaware corporation, 85 McKee Drive, Mahwah, New Jersey 07430
Philips Ultrasound, Inc., a Delaware corporation, 2722 S. Fairview Street, Santa Ana, California 92704
The Selmer Company, a Delaware corporation, 640 Industrial Parkway, Elkhart, Indiana 46514
Solar Electric Corp., a Pennsylvania corporation, Harmer Street, Warren, Pennsylvania 16365
U.S. Appliances Corporation, a Delaware corporation, High Ridge Park, Building No. 3, Stamford, Connecticut 06904
Verd-A-Ray Corporation, a Delaware corporation, 615 Front Street, Toledo, Ohio 43605

1. Parent corporation and address of principal office: Peter J. Schmitt Co., Inc., 678 Bailey Ave., Buffalo, New York 14206.

2. Wholly-owned subsidiary which will participate in the operations, and State(s) of incorporation: DWG Transport, Inc. (New York).

1. Parent corporation and address of principal office: Schnadig Corporation, 4820 West Belmont Ave., Chicago, IL 60641.

2. Wholly-owned subsidiary which will participate in the operations, and State(s) of incorporation: K.I.S.S. Express Company (Illinois corporation).

1. Parent corporation (including all divisions within the corporation): Tultex Corporation, P.O. Box 5191A, Martinsville, VA 24115.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their principal offices:

A. Tultex Transportation, Inc., P.O. Box 5191A, Martinsville, VA 24115.

B. Peerless Spinning Corporation, Lowell, NC 28098.

C. Athletic Textile Co., Inc., Gastonia, NC 28052.

1. Parent Corporation: Unilever United States, Inc., 10 East 53rd St., New York, NY 10022.

2. Directly and Indirectly wholly-owned subsidiaries:

Lever Brothers Company, 390 Park Avenue, New York, NY 10022
Lever Brothers Export Corporation, 390 Park Avenue, New York, NY 10022
Thomas J. Lipton, Inc., 800 Sylvan Avenue, Englewood Cliffs, NJ 07632
Continential Foods, Inc. (S.A.), 800 Sylvan Avenue, Englewood Cliffs, NJ 07632
Continental Foods, Inc., 800 Sylvan Avenue, Englewood Cliffs, NJ 07632
Good Humor Corporation, 800 Sylvan Avenue, Englewood Cliffs, NJ 07632
Lipton Industries, Inc., 800 Sylvan Avenue, Englewood Cliffs, NJ 07632
Knox Gelatine, Inc., 800 Sylvan Avenue, Englewood Cliffs, NJ 07632
Pennsylvania Dutch-Megs, Inc., 523 S 17th Street, Harrisburg, PA 17105
Megs Realty, Inc., 523 S 17th Street, Harrisburg, PA 17105
Morton House Kitchens, Inc., 1001 7th Corso Street, Nebraska City, NB 68410
Lipton Pet Foods, Inc., 209 New Boston Street, Woburn, MA 01801
Lipton Prof. Soccer League, Inc., 800 Sylvan Avenue, Englewood Cliffs, NJ 07632
Erin Productions, Inc., 800 Sylvan Avenue, Englewood Cliffs, NJ 07632
A. Sahadi & Co., Inc., 2645 North Rose Street, Franklin Park, IL 60131
Lawry's Foods, Inc., 570 West Avenue 26, Los Angeles, CA 90065
Lawry's Foods International, Inc., 570 West Avenue 26, Los Angeles, CA 90065
Krenz Enterprises, Inc., 570 West Avenue 26, Los Angeles, CA 90065
National Starch & Chemical Corp., 10 Finderne Avenue, Bridgewater, NJ 08807
Proctor Chemical Co., Inc., Lumber Street, Salisbury, NC 28144

Seasonings, Inc., 1090 Pratt Boulevard, Elk Grove Village, IL 60007
Scientific Flavors, Inc., 2371 Berryllium Road, Scotch Plains, NJ 07076
Lutex Chemical Corp., Inc., 6153 Airways Boulevard, Chattanooga, TN 37421
Ensco, Inc., c/oNational Starch & Chemical Corp., 10 Finderne Avenue, Bridgewater, NJ 08807
Ablestik Laboratories, 833 West 182nd Street, Gardena, CA 90248
Permabond International Corp., 480 South Dean Street, Englewood, NJ 07631
Leland Chemical Corporation, HWY 74–76(P.O. Drawer 130), Leland, NC 28451
Island Falls Starch Co., Inc., Burleigh Street, Island Falls, MA 04747
Dycol Chemical, Inc., 10 Finderne Avenue, Bridgewater, NJ 08807

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–15124 Filed 6–3–82; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 29894]

Jefferson Warrior Railroad Company, Inc.—Acquisition and Operation—in Jefferson County, AL

Jefferson Warrior Railroad Company, Inc., P.O. Box 5327, Birmingham, AL 35207, represented by Curtis B. Hasty, Jr. and John F. Turbiville, P.O. Box 22601, Tampa, FL 33622, hereby gives notice that on the 17th day of May, 1982, it filed with the Interstate Commerce Commission at Washington, DC, an application pursuant to 49 U.S.C. 10901 for a decision approving and authorizing the acquisition and operation of a privately owned railroad, known as Mary Lee Railroad, a distance of 43.9 miles in Jefferson County, AL.

Pursuant to 49 U.S.C. 10901, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423, and the aforementioned counsels for applicant, within 35 days after the filing of the application.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–15122 Filed 6–3–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 387 (Sub-144)]

MKT Exemption for Contract Tariff ICC–MKT–C–0165

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: John J. Sado (202) 275–7277.

SUPPLEMENTARY INFORMATION: The Missouri-Kansas-Texas Railroad Co. (MKT) filed a petition on May 19, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). It requests that we permit its contract ICC–MKT–C–0165 to become effective on one day's notice. The contract was filed to become effective on 30 days' notice and involves incentive rates on corn, grain sorghums, soybeans and wheat for export.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. Cf. 49 U.S.C. 10762(d)(1). However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. The shipper has made commitments to the surrounding country elevators, which are not served by rail, to handle through his elevator the vast amounts of wheat generated by the upcoming harvest. The harvest will begin shortly and the influx of grain expected to move through the shipper's elevator cannot physically be stored for the period of time required between issue and the effective date of the contract. We find this to be the type of exceptional circumstance which warrants a provisional exemption.

MKT's contract may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

> If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30 day notice requirement in these instances is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication in the **Federal Register.**

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: May 27, 1982.

By the Commission, Division 2, Commissioners Gresham, Taylor, and Simmons. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–15118 Filed 6–3–82; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–36 (Sub-15)]

Oregon Short Line Railroad Co.; Abandonment and Discontinuance of Service by Union Pacific Railroad Company in Twin Falls County, ID; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that the commission, Review Board Number 3, has issued a certificate authorizing abandonment by Oregon Short Line Railroad Company and discontinuance of service by Union Pacific Railroad Company on a line of railroad known as the Wells Branch extending form railroad milepost 0.59 near Twin Falls, ID, to the end of the line at milepost 29.35 near Rogerson, ID, a distance of 28.76 miles, in Twin Falls County, ID, subject to certain conditions. Since no investigation was instituted, the requirement of § 1121.38(b) of the Regulations that publication of notice of abandonment decisions in the **Federal Register** be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicants, with copies to Louis Gitomer, Acting Deputy Director, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than June 14, 1982. The offer, as filed, shall contain information required pursuant to

§ 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-15115 Filed 6-3-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-139)]

Santa Fe Exemption for Contract Tariff ICC-ATSF-C-0069

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed on or before June 21, 1982.

FOR FURTHER INFORMATION CONTACT: John J. Sado, (202) 275-7277.

SUPPLEMENTARY INFORMATION: The Atchison, Topeka, and Santa Fe Railway Company (Santa Fe) filed a petition on May 12, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). It requests that we permit its contract ICC-ATSF-C-0069, to become effective on one day's notice. The contract was filed to become effective on 30 days' notice and involves transportation of empty covered hopper cars.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. Cf. 49 U.S.C. 10762(d)(1). However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. Mexican railroads are delivering empty shipper covered hoppers to border points. Congestion is increasing at these points and may hamper Santa Fe's operations, since it has no control over Mexican railroads' tender of cars in interchange. We find this to be the type of exceptional circumstance which warrants a provisional exemption.

Santa Fe's contract may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings.

If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30 day notice requirement in these instances is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed on or before June 21, 1982.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505).

Dated: May 28, 1982.

By the Commission, Division 1, Sterrett, Gilliam, and Andre.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-15116 Filed 6-3-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-136)]

Seaboard Coast Line Railroad Co.; Exemption for Contract Tariff—ICC-SCL-C-0026

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Provisional Exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed on or before June 21, 1982.

FOR FURTHER INFORMATION CONTACT: John J. Sado, (202) 275-7277.

SUPPLEMENTARY INFORMATION: The Seaboard Coast Line Railroad Company (SCL) filed a petition on May 12, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). It requests that we permit its contract ICC-SCL-C-0026 filed on May 12, 1982 to become effective on one day's notice. The contract involves the movement of grain, feed and feed ingredients.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. The shipper has opened a new feed mill which shipper cannot fully use until this contract becomes effective. We find this to be the type of exceptional circumstance which warrants a provisional exemption.

Petitioner's contract ICC-SCL-C-0026 may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 459 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a procedding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30-day notice requirement in this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101(a) and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed on or before June 21, 1982.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: May 27, 1982.

By the Commission, Division 2, Commissioners Gresham, Taylor, and Simmons. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-15117 Filed 6-3-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-140)]

Union Pacific Railroad Co.; Exemption for Contract Tariff ICC-UP-C-0017

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Provisional Exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff to be filed may become effective on one day's

notice. This exemption may be revoked if protests are filed within 15 days of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: John J. Sado, (202) 275–7277.

SUPPLEMENTARY INFORMATION: Union Pacific Railroad Co. (UP) filed a petition on May 19, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). It requests that we permit its addendum to contract ICC–UP–C–0011 to become effective on one day's notice. The contract was filed to become effective on 30 days' notice and involves paper and paper articles.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. Cf. 49 U.S.C. 10762(d)(1). However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. After the underlying contract became effective, the shipper discovered that its customers in Salt Lake City, UT would not purchase the shipper's paper and paper articles in the quantities necessary to justify the use of the type of boxcar the UP was required to supply. Therefore, the contract addendum was drawn allowing UP to supply smaller boxcars to the shipper. We find this to be the type of exceptional circumstance which warrants a provisional exemption.

UP's contract may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30 day notice requirement in these instances is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed on or before June 21, 1982.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: May 27, 1982.

By the Commission, Division 2, Commissioners Gresham, Taylor, and Simmons. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–15119 Filed 6–3–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 387 (Sub-138)]

Union Pacific Railroad Co., Exemption for Contract Tariff ICC-UP-C-0033

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Provisional Exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: John J. Sado, (202) 275–7277.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad Company (UP) filed a petition on May 13, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). It requests that we permit its contract ICC–UP–C–0033 filed on May 12, 1982 to become effective on one day's notice. The contract involves the movement of frozen foodstuffs.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. The contract provides for a minimum volume requirement based upon shipper's projection of its traffic year which began May 1, 1982. Further delay of the contract's effective date will hamper shipper's ability to meet the minimum volume requirement. We find this to be the type of exceptional circumstance which warrants a provisional exemption.

Petitioner's contract ICC–UP–C–0033 may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 459 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30-day notice requirement in this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101(a) and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed on or before June 21, 1982.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: May 27, 1982.

By the Commission, Division 2, Commissioners Gresham, Taylor, and Simmons. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–15120 Filed 6–3–82; 8:45 am]

BILLING CODE 7035–10–M

[Docket No. AB–43 (Sub-84)]

Illinois Central Gulf Railroad Company-Abandonment-Between Clinton and Lincoln, IL, and Between Lincoln and New Holland, IL; Findings

The Commission has found that the public convenience and necessity permit the Illinois Central Gulf Railroad Company to abandon its line of railroad between Clinton (milepost 41.30) and Lincoln, IL (milepost 62.31) and between Lincoln (milepost 64.03) and New Holland, IL (milepost 74.50), a total distance of 31.48 miles in DeWitt and Logan Counties, IL. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered fiancial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice.

Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-15421 Filed 6-3-82; 12:22 pm]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[No. 5.21 (Revised); also filed as Redelegation Nos. 23.6, 26.2, 38.19, 40.11, 41.5, 75.3, 99.15, and 100.4]

Redelegation of Authorities to the Field; Latin America and the Caribbean Region

Section I. Definition

AID Missions

AID Missions subject to this redelegation of authorities shall be the AID Missions to Bolivia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Paraguay and Peru, and the Regional Office for Central American Programs (ROCAP) and the Regional Development Office for the Caribbean (RDO/C).

Section II. Authorities

A. *Implementing Authorities.* Authority to negotiate, execute, and implement, in accordance with the terms of the authorization thereof and in accordance with applicable statutes and regulations, loan, grant and guaranty (other than Housing Guaranty) agreements, and amendments thereto, to their respective countries or regions, whether heretofore or hereafter authorized, including, but not limited to, authority:

1. To sign project grant agreements with foreign governments, foreign government agencies, and international organizations having a membership consisting primarily of such foreign governments; and to sign all project loan and guaranty (other than Housing Guaranty) agreements and trust fund agreements;

2. To approve contractors, review and approve all borower/grantee contracts financed in whole or in part by an AID loan or grant and review and approve requests for proposals and invitations for bids with respect to such contracts;

3. To prepare, negotiate, sign and deliver Project Implementation Letters; and

4. To review and approve documents and other evidence submitted by borrowers or grantees in satisfaction of conditions precedent under such loan, grant or guaranty agreements.

(See Delegation Nos. 5, 38.)

(Please note that the Director, SER/CM, has redelegated to the principal AID officers at posts in the LAC Region the authority to (i) execute OPGs with U.S. PVOs, pursuant to Redelegation of Authority No. 99.1.95 and (ii) sign grants to foreign nongovernmental non-profit organizations, pursuant to Redelegation of Authority No. 99.1.122)

B. *Waiver Authorities for Source, Origin and Nationality.* Authority to waive, in accordance with the applicable statutes and regulations, including the terms of Delegation of Authority No. 40 (AID Handbook 5) and the criteria prescribed by Supplement B of AID Handbook 1:

(a) *Selected Free World.* U.S. source, origin and nationality requirements, to permit AID financing of the procurement of goods and services, other than transportation services, in countries included in AID Geographic Code 941] (Selected Free World) and the cooperating country, when the cost of goods and services does not exceed $200,000 (exclusive of transportation costs) of funds made available under the Foreign Assistance Act of 1961, as amended (the "Act"); provided, however, that any waiver of the United States source and origin requirements for motor vehicle procurement shall not exceed $50,000 for any one transaction; and provided further, however, that each such motor vehicle waiver shall contain the required certification, as set forth in Delegation of Authority No. 40; and

(b) *Free World.* U.S. or AID Geographic Code 941 source, origin and nationality requirements, to permit AID financing of the procurement of goods and services, other than transportation services, in any country included in AID Geographic Code 899 (Free World) or AID GEOGRAPHIC CODE 935 (Special Free World), when the cost of goods and services does not exceed $200,000 (exclusive of transportation costs) of funds made available under the Act; provided, however, that any waiver of the United States source and origin requirements for motor vehicle procurement shall not exceed $50,000 for any one transaction; and provided further, however, that each waiver hereunder shall contain the appropriate certification, as set forth in Delegation of Authority No. 40.

(See Delegation No. 40.)

C. *Excess Property.* In accordance with the provisions of Section 607 of the Act and of AID Handbook 16, and subsequent to my authorizing such assistance, authority to execute transfer or transfer/trust agreements with friendly countries or with international organizations having a membership primarily of foreign governments.

(See Delegation No. 41.)

D. *Extension of Terminal Dates.* In accordance with AIDTO Circular A-24, dated December 16, 1977, and Delegation of Authority No. 133, and any amendments thereto, authority to extend:

1. The terminal date for meeting initial conditions precedent for a cumulative period of not to exceed six months;

2. The terminal date for requesting disbursement authorizations for a cumulative period of not to exceed two years; and

3. The terminal date for completion of performing services and furnishing goods (PACD) for a cumulative period of not to exceed two years;

Provided, however, that this authority shall be exercised in writing, including a justification therefore, and a copy shall be forwarded to the Director, LAC/DR; and provided further, however, that this authority shall not be execised if the result of so doing will cause the total life of a project (*e.g.*, from point of initial obligation to revised PACD) to be more than ten years.

E. *Waiver Authorities for Competition Under Borrower/Grantee Contracts.* Authority to waive, in accordance with the terms and provisions of chapter 12 C4c of Supplement B of AID Handbook 1, competition in the procurement of goods and services and to authorize a single-source negotiated borrower/grantee contract; provided that the estimated procurement does not exceed $100,000 for services or $25,000 (exclusive of transportation) for commodities.

(Please note that the provisions for noncompetitive negotiation of AID direct contracts are set forth in the AIDPRs, Part 7-3.)

F. *Waivers of Advertisement Requirements.* Authority to waive the requirement that a notice of availability of an IFB, RFTP, RFQ, or prequalification questionnaire be publicized in the *Commerce Business Daily* or and AID Publication for contracts which are $200,000 or less in estimated value; provided, however, that this authority only shall be exercised to avoid serious delay in project implementation; and provided further, however, that efforts shall in

any event be made to secure proposals, bids, or offers from a reasonable number of potential contractors or suppliers.

Section III. Redelegation of Authorities

Pursuant to the authorities delegated to me as Assistant Administrator for Latin America and the Caribbean, I hereby delegate all of the authorities set forth in Section II hereof, retaining for myself concurrent authority to exercise any of the functions herein redelegated, to the Director of each Mission included in Section I.

Section IV. Miscellaneous

A. The authorities redelegated pursuant to Section III hereof shall be exercised after consultation with a Regional Legal Advisor or GC/LAC, as appropriate, and any other appropriate support office (e.g., Contract Management, Commodity Management).

B. The authorities redelegated pursuant to Section III hereof (other than those set forth in Section II.E) may, in the discretion of the Mission Director, be further redelegated to his/her deputy or the individual acting in such capacity or may be exercised by the person acting in the capacity of the Mission Director while the latter is out of the country (with my prior approval).

C. This redelegation of authorities shall become effective on the date of my execution of this document and shall supersede on that date all delegations of authority previously issued to the affected AID Missions by the Assistant Adminstrator for Latin America and the Caribbean and/or the Deputy U.S. Coordinator of the Alliance for Progress; provided, however, that all actions taken under the delegations of authority which are hereby superseded shall remain valid and are hereby reaffirmed.

Dated: April 18, 1982.

Otto J. Reich,

Assistant Administrator, Bureau for Latin America and the Caribbean.

[FR Doc. 82-15167 Filed 6-3-82; 8:45 am]

BILLING CODE 6116-01-M

[Redelegation of Authority No. 133.3

Redelegation of Authorities to the Field; Latin America and the Caribbean Region

Section I. Definition

AID Missions

AID Missions subject to this redelegation of authorities shall be the AID Missions to Bolivia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama and Peru, and the Regional Office for Central American Programs (ROCAP) and the Regional Development Office for the Caribbean (RDO/C).

Section II. Authorities

Implementing Authorities

A. Authority to approve and to authorize funding for project and non-project assistance (other than Housing Investment Guaranties and Productive Credit Guaranties) in their respective countries, or regions (in the case of ROCAP and RDO/C), where such project or non-project assistance does not, over the approved life of the project or non-project assistance, exceed $5 million; provided, however, that, in the case of assistance in excess of $500,000 (or, for Operational Program Grants, $1 million), the Project Identification Document ("PID"), or other comparable material, for such assistance shall be submitted for review and approval to the LAC Bureau in AID/W prior to final approval by the AID Mission authorized hereby; and provided further, however, that the AID Missions may, upon submission of a PID, or other comparable material, to the LAC Bureau in AID/W, transfer final approval authority to the AA/LAC in cases where the AID Mission Director concludes that the Mission staff will require the assistance of the LAC Bureau to undertake the final review, or when host country considerations are sufficiently important to indicate that final approval by the AA/LAC would be the judicious course; and

B. Authority to approve amendments to project and non-project assistance, whether or not originally approved by the AID Mission, including those effecting an increase of the authorized amount of not to exceed $5 million; provided, however, that prior to the exercise of the authority to approve amendments, the AID Mission shall have communicated information to the LAC Bureau, satisfactory in form and substance to the LAC Bureau, of the scope of and justification for such amendment; and provided further, however, that no amendment shall be so approved if as a result thereof, the total life of project funding shall be more than $30 million.

Section III. Redelegation of Authority

Pursuant to the authorities delegated to me as Assistant Administrator for Latin America and the Caribbean, I hereby delegate all the authorities set forth in Section II hereof, retaining for myself concurrent authority to exercise any of the functions herein redelegated, including the authority to give final approval for any individual project or non-project assistance with a value of $5 million or less to the Directors of Missions included in Section I.

Section IV. Miscellaneous

A. The authorites redelegated pursuant to Section III hereof shall be exercised in accordance with applicable statutes and regulations, including the Foreign Assistance Act of 1961, as amended, and the AID handbooks and after consultation with a Regional Legal Advisor or GC/LAC, as appropriate, and with appropriate technical and support personnel.

B. The authorities redelegated pursuant to Section III hereof shall not be further redelegated; provided, however, that they may be exercised by the person acting in the capacity of the respective Mission director while the latter is out of the country (with my prior approval).

C. Nothing contained in this redelegation of authorities shall affect the authorities previously redelegated by me concerning waivers, excess property and the extension of terminal dates, such redelegated authorities to remain valid and in effect.

D. This redelegation of authorities shall become effective on the date of my execution of this document.

Otto J. Reich,

Assistant Administrator, Bureau for Latin America and the Caribbean.

[FR Doc. 82-15168 Filed 6-3-82; 8:45 am]

Dated: April 18, 1982.

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Consent Decree Amendment Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on May 2), 1982 a proposed consent decree amendment in *United State* v. *Republic Steel Corporation*, Civil Action No. C79-1201, was lodged with the United States District Court for the Northern District of Ohio, Eastern Division. The proposed decree amendment provides for the amendment of a Consent Order lodged in that action on August 28, 1979, as amended by Stipulation lodged on December 30, 1980. The current amendment modifies certain final compliance dates at botteries 6 and 7 from December , 1980 and February, 1981 until April, 1981.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication 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. *Republic Steel Corporation*, D.J. Ref. 90-5-1-1-1056.

A copy of the proposed consent decree may be examined at the office of the United States Attorney, Northern District of Ohio, Eastern Division, Suite 500, United States Courthouse, 1404 East Ninth Street, Cleveland, Ohio; 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 1515, 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 Resouces Division of the Department of Justice.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82-15169 Filed 6-3-82; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 6-82]

Privacy Act of 1974; Revised System of Records

Pursuant to subsection (e)(4) of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to modify a current system of records maintained by the Drug Enforcement Administration (DEA) entitled "Office of Internal Security Records (JUSTICE/DEA-010)." This is a system of records for which notice was published in the **Federal Register** on January 10, 1980.

DEA proposes to revise the system by changing the retention and disposal schedule for the records and by automating the records on certain categories of individuals, i.e., current DEA employees, DEA applicants, and DEA contractor employees. The "Retention and disposal," "Retrievability," and "Storage" sections of the notice have been changed to reflect those revisions. In addition, minor clarifying changes have been made to the "Categories or records * * *" and "Safeguards" sections of the notice.

The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the proposal to partially automate this system. Therefore, OMB, the Congress and the public are invited to submit written comments to the Administrative Council, Justice Management Division, Department of Justice, Room 6239, 10th and Constitution Avenue, N.W., Washington, D.C. 20530. If no comments are received on or before August 3, 1982, the proposed revision will be implemented without further notice in the **Federal Register.** No oral hearings are contemplated.

A report of the proposed revisions has been provided to the Director, OMB, to the President of the Senate and to the Speaker of the House of Representatives.

Dated: May 27, 1982.

Kevin D. Rooney,

Assistant Attorney General for Administration.

JUSTICE/DEA-010

SYSTEM NAME:

Office of Internal Security Records.

SYSTEM LOCATION:

Drug Enforcement Administration, 1405 I Street NW., Washington, D.C. 20537. Also, field offices. See Appendix I for list of addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) DEA employees, past and present; (B) Applicants for employment with DEA; (C) Drug offenders, alleged drug offenders, and persons suspected of drug offenses; (D) Offenders, alleged offenders, and persons suspected of committing Federal and state crimes broadly characterized as corruption or integrity offenses; (E) Confidential informants; (F) Witnesses; (G) Non-implicated persons with pertinent knowledge of circumstances or aspects with pertinent knowledge of circumstances or aspects of a case or suspect. These are pertinent references of fact developed by personal interview or third party interview and are recorded as a matter for which a probable need will exist.

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) Investigative reports with supporting memoranda and work papers relating to investigations of individuals and situations. (B) General files which include, among other things, supporting memoranda and work papers and miscellaneous memoranda relating to investigations of and the purported existence of situations and allegations about individuals. (C) Audit and inspection reports of inspections of DEA offices, personnel, and situations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Reorganization Plan No. 1 of 1968 and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information contained in this system is provided to the following categories of users as a matter of routine uses for law enforcement and regulatory purposes: A. Other Federal law enforcement and regulatory agencies; B. State and local law enforcement and regulatory agencies; C. Foreign law enforcement agencies with whom DEA maintains liaison; D. The Department of State; E. The Department of Defense and Military Departments; F. U.S. Intelligence agencies concerned with drug enforcement; G. The United Nations; H. Interpol; I. To individuals and organizations in the course of investigations to elicit information.

In addition, disclosures are routinely made to the following categories for the purposes stated: A. To Federal agencies for national security clearance purposes and to Federal and state regulatory agencies responsible for the licensing or certification of individuals in the fields of pharmacy and medicine; B. To the Office of Management and Budget upon request in order to justify the allocations of resources; C. To state and local prosecutors for assistance in preparing cases concerning criminal and regulatory matters; D. To the news media for public information purposes; E. To Federal, State and local governmental agencies who are conducting suitability for employment investigations on current or prospective employees.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records are maintained in standard investigation folders. Automated records are maintained on magnetic disks.

RETRIEVABILITY:

Access to manual records can be accomplished by the use of a card index maintained alphabetically by employee name. Access to the automated system is achieved by reference to personal identifiers, other data elements or any combination thereof.

SAFEGUARDS:

These records are maintained at DEA Headquarters which is protected by twenty-four hour guard service and electronic surveillance. Access to the building is restricted to DEA employees and those persons transacting business within the building who are escorted by DEA employees. Access to the system is restricted to employees of the Office of Internal Security and upper level management officials. The records are stored in safe-type combinations lock file cabinets. Access to the system will be on a strict need-to-know basis.

RETENTION AND DISPOSAL:

Case files are destroyed after five years unless the Office of Internal Security of the Chief Counsel determines that these files are required for potential or ongoing litigation. This determination will be subject to annual review. General files and audit files shall be retained as long as the subject is employed at DEA and for two years after termination.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Inspector, Drug Enforcement Administration, 1405 I Street NW., Washington, D.C. 20537.

NOTIFICATION PROCEDURE:

Inquires should be addressed to Freedom of Information Unit, Drug Enforcement Administration, 1405 I Street NW., Washington, D.C. 20537.

RECORD ACCESS PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

(A) DEA Investigations; (B) Federal, State and local law enforcement agencies; (C) Cooperating individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H), (e)(5) and (8), (f), (g), (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

[FR Doc. 82-15180 Filed 6-3-82; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal Committee on Apprenticeship; Public Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) of October 6, 1972, notice is hereby given that the Federal Committee on apprenticeship (FCA) will conduct an open meeting on June 28, 1982, from 9:00 a.m.-4:30 p.m.; June 29, from 9:00 a.m.-12:00 noon at the National Association of Home Builders, 15th and M Street, NW, Washington, D.C.

The agenda for the meeting on June 28th will include:

1. Preview of the Agenda
2. Impact of Defense Spending in Skill Shortages in Apprenticeable Occupations
3. Status Report of Apprenticeship Activities at the U.S. Department of Labor
4. Apprenticeship Activities at the Veterans Administration
5. Report on National Association of State and Territorial Apprenticeship Directors (NASTAD)

The agenda for the meeting on June 29th will include:

6. Proposals for Reauthorization of CETA
7. Review of other pending Federal Legislation Affecting Apprenticeship
8. Vocational Education Apprenticeship Linkages
9. Criteria and Procedures for Determining Apprenticeable Occupations
10. Government's Role in Apprenticeship: the Federal Role; the State Role
11. Future Directions for the Federal Committee on Apprenticeship

Agenda is subject ot change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the FCA meeting.

Members of the public are invited to attend the proceedings. Any member of the public who wishes to file written data, views or arguments pertaining to the agenda may do so by furnishing it to the Executive Secretary at any time prior to the meeting. Thirty duplicate copies are needed for the members and for inclusion in the minutes of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate in such a written statement, also the nature or intended presentation and the amount of time needed. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Communications to the Executive Secretary should be addressed as follows:

Mrs. M. M. Winters, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 601 D St., N.W., (Rm. 6114) Washington, D.C. 20213.

Signed at Washington, D.C., this 1st day of June 1982.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 82-15187 Filed 6-3-82; 8:45am]
BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The annual list of labor surplus areas is effective on June 1, 1982.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: James W. Higgins, United States Employment Service, Attention: TEEPA, 601 D Street, N.W., Washington, D.C. 20213. Telephone: 202–376–8499.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981 (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor's regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas.

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

Pursuant to those regulations the Assistanct Secretary of Labor is publishing below the annual list of labor surplus areas for the use of all Federal departments and agencies in directing procurement activity and locating new plants or facilities.

Signed at Washington, D.C. on May 26, 1982.

Albert Angrisani,

Assistant Secretary of Labor.

Labor Surplus Areas Eligible for Federal Procurement Preference From June 1, 1982, Through May 31, 1983

Eligible labor surplus areas	Civil jurisdictions included
Alabama	
Autauga County	Autauga County.
Barbour County	Barbour County.
Bibb County	Bibb County.
Birmingham City	Birmingham City in Jefferson County.
Blount County	Blount County.
Bullock County	Bullock County.
Butler County	Butler County.
Calhoun County	Calhoun County.
Chilton County	Chilton County.
Choctaw County	Choctaw County.
Clarke County	Clarke County.
Coffee County	Coffee County.
Colbert County	Colbert County.
Conecuh County	Conecuh County.
Cullman County	Cullman County.
Dale County	Dale County.
Dallas County	Dallas County.
De Kalb County	De Kalb County.
Escambia County	Escambia County.
Etowah County	Etowah County.
Franklin County	Franklin County.
Greene County	Greene County.
Hale County	Hale County.
Jackson County	Jackson County.
Lauderdale County	Lauderdale County.
Lawrence County	Lawrence County.
Limestone County	Limestone County.
Lowndes County	Lowndes County.
Balance of Madison County	Madison County less Huntsville City.
Marengo County	Marengo County.
Marion County	Marion County.
Marshall County	Marshall County.
Mobile County	Mobile City in Mobile County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Perry County	Perry County.
Pickens County	Pickens County.
Randolph County	Randolph County.
Russell County	Russell County.
St. Clair County	St. Clair County.
Sumter County	Sumter County.
Talladega County	Talladega County.
Tuscaloosa County	Tuscaloosa City in Tuscaloosa County.
Walker County	Walker County.
Washington County	Washington County.
Wilcox County	Wilcox County.
Winston County	Winston County.
Alaska	
Angoon Division	Angoon Division.
Bethel Division	Bethel Division.
Bristol Bay Borough Division	Bristol Bay Borough Division.
Cordova-McCharthy Division	Cordova-McCharthy Division.
Fairbanks Division	Fairbanks Division.
Haines Division	Haines Division.
Kenai-Cook Inlet Division	Kenai-Cook Inlet Division.
Ketchikan Division	Ketchikan Division.
Kobuk Division	Kobuk Division.
Kodiak Division	Kodiak Division.
Kuskokwim Division	Kuskokwim Division.
Matansuka-Susitna Division	Matanuska-Susitna Division.
Nome Division	Nome Division.
Outer Ketchikan Division	Outer Ketchikan Division.
Prince of Wales Division	Prince of Wales Division.
Seward Division	Seward Division.
Skagway-Yakutat Division	Skagway-Yakutat Division.
Southeast Fairbanks Division	Southeast Fairbanks Division.
Upper Yukon Division	Upper Yukon Division.
Valdez-Chitina Whittier	Valdez-Chitina Whittier.
Wade Hampton Division	Wade Hampton Division.
Wrangell-Petersburg Division	Wrangell-Petersburg Division.
Yukon-Koyukuk Division	Yukon-Koyukuk Division.
Arizona	
Apache County	Apache County.
Graham County	Graham County.
Navajo County	Navajo County.
Santa Cruz County	Santa Cruz County.
Yuma County	Yuma County.
Arkansas	
Ashley County	Ashley County.
Bradley County	Bradley County.
Chicot County	Chicot County.
Clay County	Clay County.
Cleburne County	Cleburne County.
Cleveland County	Cleveland County.
Crawford County	Crawford County.
Crittenden County	Crittenden County.
Cross County	Cross County.
Dallas County	Dallas County.
Desha County	Desha County.
Fort Smith City	Fort Smith City in Sebastian County.
Fulton County	Fulton County.
Grant County	Grant County.
Greene County	Greene County.
Hot Springs County	Hot Springs County.
Jackson County	Jackson County.
Balance of Jefferson County	Jefferson County less Pine Bluff City.
Lawrence County	Lawrence County.
Lee County	Lee County.
Lincoln County	Lincoln County.
Little River County	Little River County.
Logan County	Logan County.
Balance of Miller County	Miller County less Texarkana City, Ark.
Mississippi County	Mississippi County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Newton County	Newton County.
Ouachita County	Ouachita County.
Phillips County	Phillips County.
Poinsett County	Poinsett County.
Prairie County	Prarie County.
Randolph County	Randolph County.
Scott County	Scott County.
Searcy County	Searcy County.
Balance of Sebastian County	Sebastian County less Fort Smith City.
Sharp County	Sharp County.
St. Francis County	St. Francis County.
Stone County	Stone County.
Van Buren County	Van Buren County.
White County	White County.
Woodruff County	Woodruff County.
California	
Alpine County	Alpine County.
Amador County	Amador County.
Butte County	Butte County.
Calaveras County	Calveras County.
Compton City	Compton City in Los Angeles County.
Del Norte County	Del Norte County.
El Dorado County	El Dorado County.
Fresno City	Fresno City in Fresno County.
Balance of Fresno County	Fresno County less Fresno City.
Humboldt County	Humboldt County.
Imperial County	Imperial County.
Kings County	Kings County.
Lake County	Lake County.
Lassen County	Lassen County.
Madera County	Madera County.
Mariposa County	Mariposa County.
Mendocino County	Mendicino County.
Merced County	Merced County.
Modesto City	Modesto City in Stanislaus County.
Mono County	Mono County.
Balance of Monterey County	Monterey County less Salinas City.
Nevada County	Nevada County.
Ontario City	Ontario City in San Bernardino County.
Placer County	Placer County.
Plumas County	Plumas County.

Labor Surplus Areas Eligible for Federal Procurement Preference From June 1, 1982, Through May 31, 1983—Continued

Eligible labor surplus areas	Civil jurisdictions included
Salinas City	Salinas City in Monterey County.
San Benito County	San Benito County.
San Bernardino City	San Bernardino City in San Bernardino County.
Balance of San Bernardino County.	San Bernardino County less Ontario City. Rancho Cucamonga City. San Bernardino City.
Balance of San Joaquin County.	San Joaquin County less Stockton City.
Shasta County	Shasta County.
Sierra County	Sierra County.
Siskiyou County	Siskiyou County.
Balance of Solano County	Solano County less Fairfield City. Vallejo City.
Balance of Stanislaus County	Stanislaus County less Modesto City.
Stockton City	Stockton City in San Joaquin County.
Sutter County	Sutter County.
Tehama County	Tehama County.
Trinity County	Trinity County.
Tuolumne County	Tuolumne County.
Yolo County	Yolo County.
Yuba County	Yuba County.
Colorado	
Archuleta County	Archuleta County.
Conejos County	Conejos County.
Costilla County	Costilla County.
Lake County	Lake County.
Ouray County	Ouray County.
Pueblo City	Pueblo City in Pueblo County.
Saguache County	Saguache County.
Connecticut	
Ansonia Town	Ansonia Town.
Bozrah Town	Bozrah Town.
Bridgeport City	Bridgeport City.
Griswold Town	Griswold Town.
Killingly Town	Killingly Town.
Plainfield Town	Plainfield Town.
Plymouth Town	Plymouth Town.
Pomfret Town	Pomfret Town.
Putnam Town	Putnam Town.
Seymour Town	Seymour Town.
Sprague Town	Sprague Town.
Sterling Town	Sterling Town.
Thomaston Town	Thomaston Town.
Thompson Town	Thompson Town.
Torrington City	Torrington City.
Voluntown Town	Voluntown Town.
Waterbury City	Waterbury City.
Winchester Town	Winchester Town.
Delaware	
Wilmington City	Wilmington City in New Castle County.
District of Columbia	
Washington, DC	District of Columbia.
Florida	
Bay County	Bay County.
Calhoun County	Calhoun County.
Collier County	Collier County.
Franklin County	Franklin County.
Glades County	Glades County.
Gulf County	Gulf County.
Hendry County	Hendry County.
Hernando County	Hernando County.
Indian River County	Indian River County.
Lake County	Lake County.
Miami Beach City	Miami Beach City in Dade County.
Miami City	Miami City in Dade County.
Okeechobee County	Okeechobee County.
Polk County	Polk County.
Putnam County	Putnam County.
St. John County	St. John County.

Labor Surplus Areas Eligible for Federal Procurement Preference From June 1, 1982, Through May 31, 1983—Continued

Eligible labor surplus areas	Civil jurisdictions included
St. Lucie County	St. Lucie County.
Sumter County	Sumter County.
Georgia	
Atkinson County	Atkinson County.
Chattahoochee County	Chattahoochee County.
Chattooga County	Chattooga County.
Coffee County	Coffee County.
Crawford County	Crawford County.
Fannin County	Fannin County.
Floyd County	Floyd County.
Glascock County	Glascock County.
Gordon County	Gordon County.
Lincoln County	Lincoln County.
Macon County	Macon County.
McDuffie County	McDuffie County.
Murray County	Murray County.
Polk County	Polk County.
Rabun County	Rabun County.
Stephens County	Stephens County.
Stewart County	Stewart County.
Taliaferro County	Taliaferro County.
Terrell County	Terrell County.
Turner County	Turner County.
Warren County	Warren County.
Whitfield County	Whitfield County.
Wilcox County	Wilcox County.
Idaho	
Adams County	Adams County.
Benewah County	Benewah County.
Boise County	Boise County.
Bonner County	Bonner County.
Boundary County	Boundary County.
Clearwater County	Clearwater County.
Gem County	Gem County.
Idaho County	Idaho County.
Kootenai County	Kootenai County.
Lemhi County	Lemhi County.
Lewis County	Lewis County.
Valley County	Valley County.
Illinois	
Alexander County	Alexander County.
Aurora City	Aurora City in Kane County.
Bond County	Bond County.
Boone County	Boone County.
Bureau County	Bureau County.
Calhoun County	Calhoun County.
Chicago City	Chicago City in Cook County.
Cicero City	Cicero City in Cook County.
Clark County	Clark County.
Clay County	Clay County.
Clinton County	Clinton County.
Coles County	Coles County.
Cumberland County	Cumberland County.
Decatur City	Decatur City in Macon County.
East St. Louis City	East St. Louis City in St. Clair County.
Edgar County	Edgar County.
Effingham County	Effingham County.
Fayette County	Fayette County.
Franklin County	Franklin County.
Gallatin County	Gallatin County.
Greene County	Greene County.
Grundy County	Grundy County.
Hamilton County	Hamilton County.
Hardin County	Hardin County.
Jackson County	Jackson County.
Jasper County	Jasper County.
Jefferson County	Jefferson County.
Jersey County	Jersey County.
Johnson County	Johnson County.
Joliet City	Joliet City in Will County.
Kankakee County	Kankakee County.
Knox County	Knox County.
La Salle County	La Salle County.
Madison County	Madison County.
Marion County	Marion County.
Massac County	Massac County.
Montgomery County	Montgomery County.
Peoria City	Peoria City in Peoria County.
Perry County	Perry County.
Pope County	Pope County.

Labor Surplus Areas Eligible for Federal Procurement Preference From June 1, 1982, Through May 31, 1983—Continued

Eligible labor surplus areas	Civil jurisdictions included
Pulaski County	Pulaski County.
Putnam County	Putnam County.
Rock Isand County	Rock Island County.
Rockford City	Rockford City in Winnebago County.
Saline County	Saline County.
Shelby County	Shelby County.
Balance of St. Clair County	St. Clair County less East St. Louis City.
Union County	Union County.
Vermilion County	Vermilion County.
Warren County	Warren County.
Waukegan City	Waukegan City in Lake County.
Wayne County	Wayne County.
White County	White County.
Whiteside County	Whiteside County.
Williamson County	Williamson County.
Indiana	
Adams County	Adams County.
Anderson City	Anderson City in Madison County.
Bartholomew County	Bartholomew County.
Blackford County	Blackford County.
Cass County	Cass County.
Clark County	Clark County.
Crawford County	Crawford County.
Daviess County	Daviess County.
De Kalb County	De Kalb County.
Dearborn County	Dearborn County.
Balance of Delaware County	Delaware County less Muncie City.
Elkhart County	Elkhard County.
Evansville City	Evansville City in Vanderburgh County.
Fayette County	Fayette County.
Floyd County	Floyd County.
Fountain County	Fountain County.
Franklin County	Franklin County.
Fort Wayne City	Fort Wayne City in Allen County.
Fulton County	Fulton County.
Gary City	Gary City in Lake County.
Grant County	Grant County.
Greene County	Greene County.
Hammond City	Hammond City in Lake County.
Harrison County	Harrison County.
Henry County	Henry County.
Howard County	Howard County.
Jackson County	Jackson County.
Jasper County	Jasper County.
Jay County	Jay County.
Jefferson County	Jefferson County.
Jennings County	Jennings County.
Knox County	Knox County.
La Porte County	La Porte County.
Lagrande County	Lagrande County.
Balance of Lake County	Lake County less Gary City. Hammond City.
Lawrence County	Lawrence County.
Balance of Madison County	Madison County less Anderson City.
Marshall County	Marshall County.
Martin County	Martin County.
Miami County	Miami County.
Balance of Monroe County	Monroe County less Bloomington City.
Muncie City	Muncie City in Delaware County.
Noble County	Noble County.
Ohio County	Ohio County.
Orange County	Orange County.
Owen County	Owen County.
Perry County	Perry County.
Porter County	Porter County.
Putnam County	Putnam County.
Randolph County	Randolph County.
Ripley County	Ripley County.
Rush County	Rush County.
Scott County	Scott County.
Shelby County	Shelby County.
South Bend City	South Bend City in St. Joseph County.
Spencer County	Spencer County.
Starke County	Starke County.
Steuben County	Steuben County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM JUNE 1, 1982, THROUGH MAY 31, 1983—Continued

Eligible labor surplus areas	Civil jurisdictions included
Sullivan County	Sullivan County.
Switzerland County	Switzerland County.
Terre Haute City	Terre Haute City in Vigo County.
Tipton County	Tipton County.
Union County	Union County.
Vermillion County	Vermillion County.
Wabash County	Wabash County.
Washington County	Washington County.
Wayne County	Wayne County.
White County	White County.
Whitley County	Whitley County.
Iowa	
Appanoose County	Appanoose County.
Chickasaw County	Chickasaw County.
Davenport City	Davenport City in Scott County.
Dubuque City	Dubuque City in Dubuque County.
Balance of Dubuque County	Dubuque County less Dubuque City.
Floyd County	Floyd County.
Jackson County	Jackson County.
Keokuk County	Keokuk County.
Balance of Scott County	Scott County less Davenport City.
Wapello County	Wapello County.
Kentucky	
Covington City	Covington City in Kenton County.
Balance of Jefferson County	Jefferson County less Louisville City.
Louisville City	Louisville City in Jefferson County.
Louisiana	
Alexandria City	Alexandria City in Rapides Parish.
Allen Parish	Allen Parish.
Ascension County	Ascension County.
Avoyelles County	Avoyelles County.
Beauregard County	Beauregard County.
Bienville County	Bienville County.
Concordia County	Concordia County.
East Carroll County	East Carroll County.
Evangeline County	Evangeline County.
Franklin Parish	Franklin Parish.
Grant Parish	Grant Parish.
Iberville County	Iberville County.
Jackson Parish	Jackson Parish.
Livingston County	Livingston County.
Madison Parish	Madison Parish.
Morehouse County	Morehouse County.
Balance of Ouachita Parish	Ouachita Parish less Monroe City.
Balance of Rapides Parish	Rapides Parish less Alexandria City.
Richland Parish	Richland Parish.
Sabine Parish	Sabine Parish.
St. James Parish	St. James Parish.
St. John Baptist Parish	St. John Baptist Parish.
St. Landry Parish	St. Landry Parish.
Tangipahoa Parish	Tangipahoa Parish.
Tensas Parish	Tensas Parish.
Union Parish	Union Parish.
Vernon Parish	Vernon Parish.
Washington County	Washington County.
Webster Parish	Webster Parish.
West Carroll County	West Carroll County.
Winn Parish	Winn Parish.
Maine	
Aroostook County	Aroostook County.
Somerset County	Somerset County.
Waldo County	Waldo County.
Washington County	Washington County.
Maryland	
Allegany County	Allegany County.
Baltimore City	Baltimore City.
Calvert County	Calvert County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM JUNE 1, 1982, THROUGH MAY 31, 1983—Continued

Eligible labor surplus areas	Civil jurisdictions included
Caroline County	Caroline County.
Dorchester County	Dorchester County.
Garrett County	Garrett County.
Kent County	Kent County.
Queen Annes County	Queen Annes County.
Somerset County	Somerset County.
St. Marys County	St. Marys County.
Washington County	Washington County.
Wicomico County	Wicomico County.
Worcester County	Worcester County.
Massachusetts	
Alford Town	Alford Town in Berkshire County.
Blackstone Town	Blackstone Town in Worcester County.
Brookfield Town	Brookfield Town in Worcester County.
Carver Town	Carver Town in Plymouth County.
Cummington Town	Cummington Town in Hampshire County.
Dunstable Town	Dunstable Town in Middlesex County.
Edgartown Town	Edgartown Town in Dukes County.
Fall River City	Fall River City in Bristol County.
Florida Town	Florida Town in Berkshire County.
Freetown Town	Freetown Town in Bristol County.
Granville Town	Granville Town in Hampden County.
Hardwick Town	Hardwick Town in Worcester County.
Harvard Town	Harvard Town in Worcester County.
Harwich Town	Harwich Town in Barnstable County.
Holland Town	Holland Town in Hampden County.
Lakeville Town	Lakeville Town in Plymouth County.
Leyden Town	Leyden Town in Franklin County.
Mashpee Town	Mashpee Town in Barnstable County.
Mendon Town	Mendon Town in Worcester County.
Milford Town	Milford Town in Worcester County.
Millville Town	Millville Town in Worcester County.
Monroe Town	Monroe Town in Franklin County.
New Ashford Town	New Ashford Town in Berkshire County.
North Adams Town	North Adams Town in Berkshire County.
Orange Town	Orange Town in Franklin County.
Orleans Town	Orleans Town in Barnstable County.
Phillipston Town	Phillipston Town in Worcester County.
Provincetown Town	Provincetown Town in Barnstable County.
Rochester Town	Rochester Town in Plymouth County.
Rockport Town	Rockport Town in Essex County.
Royalston Town	Royalston Town in Worcester County.
Sandwich Town	Sandwich Town in Barnstable County.
Savoy Town	Savoy Town in Berkshire County.
Tolland Town	Tolland Town in Hampden County.
Tyringham Town	Tyringham Town in Berkshire County.
Upton Town	Upton Town in Worcester County.
Wareham Town	Wareham Town in Plymouth County.
Wellfleet Town	Wellfleet Town in Barnstable County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM JUNE 1, 1982, THROUGH MAY 31, 1983—Continued

Eligible labor surplus areas	Civil jurisdictions included
Worthington Town	Worthington Town in Hampshire County.
Michigan	
Alcona County	Alcona County.
Alger County	Alger County.
Allegan County	Allegan County.
Alpena County	Alpena County.
Antrim County	Antrim County.
Arenac County	Arenac County.
Baraga County	Baraga County.
Barry County	Barry County.
Bay County	Bay County.
Benzie County	Benzie County.
Berrien County	Berrien County.
Branch County	Branch County.
Calhoun County	Calhoun County.
Cass County	Cass County.
Charlevoix County	Charlevoix County.
Cheboygan County	Cheboygan County.
Chippewa County	Chippewa County.
Clare County	Clare County.
Clinton County	Clinton County.
Clinton Township	Clinton Township in Macomb County.
Crawford County	Crawford County.
Dearborn City	Dearborn City in Wayne County.
Dearborn Heights City	Dearborn Heights City in Wayne County.
Delta County	Delta County.
Detroit City	Detroit City in Wayne County.
Dickinson County	Dickinson County.
East Lansing City	East Lansing City in Ingham County.
Balance of Eaton County	Eaton County less Lansing City-Eaton.
Emmet County	Emmet County.
Flint City	Flint City in Genesee County.
Balance of Genesee County	Genesee County less Flint City.
Gladwin County	Gladwin County.
Gogebic County	Gogebic County.
Grand Rapids City	Grand Rapids City in Kent County.
Grand Traverse County	Grand Traverse County.
Gratiot County	Gratiot County.
Hillsdale County	Hillsdale County.
Houghton County	Houghton County.
Huron County	Huron County.
Balance of Ingham County	Ingham County less East Lansing City. Lansing City-Ingham.
Ionia County	Ionia County.
Iosco County	Iosco County.
Iron County	Iron County.
Isabella County	Isabella County.
Jackson County	Jackson County.
Kalamazoo City	Kalamazoo City in Kalamazoo County.
Kalkaska County	Kalkaska County.
Balance of Kent County	Kent County less Grand Rapids City. Wyoming City.
Keweenaw County	Keweenaw County.
Lake County	Lake County.
Lansing City	Lansing City in Eaton County. Ingham County.
Lapeer County	Lapeer County.
Leelanau County	Leelanau County.
Lenawee County	Lenawee County.
Livingston County	Livingston County.
Luce County	Luce County.
Mackinac County	Mackinac County.
Balance of Macomb County	Macomb County Less Clinton Township. Roseville City. St. Clair Shores City. Sterling Heights City. Warren City.
Manistee County	Manistee County.
Marquette County	Marquette County.
Mason County	Mason County.
Mecosta County	Mecosta County.
Midland County	Midland County.
Missaukee County	Missaukee County.
Monroe County	Monroe County.
Montcalm County	Montcalm County.

Labor Surplus Areas Eligible for Federal Procurement Preference From June 1, 1982, Through May 31, 1983—Continued

Eligible labor surplus areas	Civil jurisdictions included
Montmorency County	Montomorency County.
Muskegon County	Muskegon County.
Newaygo County	Newaygo County.
Balance of Oakland County	Oakland County Less Farmington Hills City.
	Pontiac City.
	Royal Oak City.
	Southfield City.
	Troy City.
	Waterford Township.
Oceana County	Oceana County.
Ogemaw County	Ogemaw County.
Ontonagon County	Ontonagon County.
Osceola County	Osceola County.
Oscoda County	Oscoda County.
Otsego County	Otsego County.
Pontiac City	Pontiac City in Oakland County.
Presque Isle County	Presque Isle County.
Reford Township	Redford Township in Wayne County.
Roscommon County	Roscommon County.
Roseville City	Roseville City in Macomb County.
Saginaw City	Saginaw City in Saginaw County.
Balance of Saginaw County	Saginaw County less Saginaw City.
Sanilac County	Sanilac County.
Schoolcraft County	Schoolcraft County.
Shiawassee County	Shiawassee County.
St. Clair Shores City	St. Clair Shores City in Macomb County.
St. Clair County	St. Clair County.
St. Joseph County	St. Joseph County.
Sterling Heights City	Sterling Heights City in Macomb County.
Taylor City	Taylor City in Wayne County.
Tuscola County	Tuscola County.
Van Buren County	Van Buren County.
Warren City	Warren City in Macomb County.
Balance of Washtenaw County	Washtenaw County less Ann Arbor City.
Waterford Township	Waterford Township in Oakland County.
Balance of Wayne County	Wayne County less Dearborn City.
	Dearborn Heights City
	Detroit City.
	Livonia City.
	Reford Township.
	Taylor City.
	Westland City.
Westland City	Westland City in Wayne County.
Wexford County	Wexford County.
Wyoming City	Wyoming City in Kent County.
Minnesota	
Aitkin County	Aitkin County.
Becker County	Becker County.
Carlton County	Carlton County.
Clearwater County	Clearwater County.
Cook County	Cook County.
Crow Wing County	Crow Wing County.
Hubbard County	Hubbard County.
Itasca County	Itasca County.
Kanabec County	Kanabec County.
Koochiching County	Koochiching County.
Mahnomen County	Mahnomen County.
Marshall County	Marshall County.
Morrison County	Morrison County.
Pennington County	Pennington County.
Pine County	Pine County.
Red Lake County	Red Lake County.
Roseau County	Roseau County.
Balance of St. Louis County	St. Louis County less Duluth City.
Mississippi	
Alcorn County	Alcorn County.
Attala County	Attala County.
Benton County	Benton County.
Bolivar County	Bolivar County.

Labor Surplus Areas Eligible for Federal Procurement Preference From June 1, 1982, Through May 31, 1983—Continued

Eligible labor surplus areas	Civil jurisdictions included
Coahoma County	Coahoma County.
George County	George County.
Greene County	Greene County.
Grenada County	Grenada County.
Holmes County	Holmes County.
Jackson County	Jackson County.
Jasper County	Jasper County.
Jefferson County	Jefferson County.
Jefferson Davis County	Jefferson Davis County.
Kemper County	Kemper County.
LeFlore County	LeFlore County.
Madison County	Madison County.
Marshall County	Marshall County.
Montgomery County	Montgomery County.
Noxubee County	Noxubee County.
Panola County	Panola County.
Perry County	Perry County.
Quitman County	Quitman County.
Sharkey County	Sharkey County.
Stone County	Stone County.
Sunflower County	Sunflower County.
Tallahatchie County	Tallahatchie County.
Tate County	Tate County.
Tishomingo County	Tishomingo County.
Tunica County	Tunica County.
Warren County	Warren County.
Washington County	Washinton County.
Winston County	Winston County.
Missouri	
Bollinger County	Bollinger County.
Butler County	Butler County.
Carter County	Carter County.
Clark County	Clark County.
Douglas County	Douglas County.
Dunklin County	Dunklin County.
Franklin County	Franklin County.
Howell County	Howell County.
Iron County	Iron County.
Jefferson County	Jefferson County.
Madison County	Madison County.
Maries County	Maries County.
Mississippi County	Mississippi County.
Moniteau County	Moniteau County.
Morgan County	Morgan County.
Oregon County	Oregon County.
Pemiscot County	Pemiscot County.
Perry County	Perry County.
Pettis County	Pettis County.
Pike County	Pike County.
Ripley County	Ripley County.
Scott County	Scott County.
Shannon County	Shannon County.
St. Louis City	St. Louis City.
St. Francois County	St. Francois County.
Ste. Genevieve County	Ste. Genevieve County.
Stoddard County	Stoddard County.
Stone County	Stone County.
Texas County	Texas County.
Washington County	Washington County.
Wayne County	Wayne County.
Webster County	Webster County.
Wright County	Wright County.
Montana	
Deer Lodge County	Deer Lodge County.
Flathead County	Flathead County.
Glacier County	Glacier County.
Lincoln County	Lincoln County.
Mineral County	Mineral County.
Ravalli County	Ravalli County.
Sanders County	Sanders County.
New Jersey	
Camden City	Camden City in Camden County.
Cape May County	Cape May County.
Balance of Cumberland County	Cumberland County less Vineland City.
Elizabeth City	Elizabeth City in Union County.
Balance of Hudson County	Hudson County less Bayonne City.
	Jersey City.
	Union City.

Labor Surplus Areas Eligible for Federal Procurement Preference From June 1, 1982, Through May 31, 1983—Continued

Eligible labor surplus areas	Civil jurisdictions included
Jersey City	Jersey City in Hudson County.
Newark City	Newark City in Essex County.
Balance of Ocean County	Ocean County less Brick Township.
	Dover Township.
Passaic City	Passaic City in Passaic County.
Paterson Ctty	Paterson City in Passaic County.
Union City	Union City in Hudson County.
Vineland City	Vineland City in Cumberland County.
New Mexico	
Catron County	Catron County.
Grant County	Grant County.
Guadalupe County	Guadalupe County.
Luna County	Luna County.
McKinley County	McKinley County.
Mora County	Mora County.
Rio Arriba County	Rio Arriba County.
Sand Miguel County	San Miguel County.
Taos County	Taos County.
Valencia County	Valencia County.
New York	
Buffalo City	Buffalo City in Erie County.
Cattaraugus County	Cattaraugus County.
Chemung County	Chemung County.
Clinton County	Clinton County.
Essex County	Essex County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Genesee County	Genesee County.
Greene County	Greene County.
Hamilton County	Hamilton County.
Herkimer County	Herkimer County.
Jefferson County	Jefferson County.
Lewis County	Lewis County.
Montgomery County	Montgomery County.
Balance of Niagara County	Niagara County less Niagara Falls City.
Niagara Falls City	Niagara Falls City in Niagara County.
Orleans County	Orleans County.
Oswego County	Oswego County.
Schoharie County	Schoharie County.
St. Lawrence County	St. Lawrence County.
Balance of Suffolk County	Suffolk County Less Babylon Town.
	Brookhaven Town.
	Huntington Town.
	Islip Town.
	Smithtown Town.
Warren County	Warren County.
Wyoming County	Wyoming County.
North Carolina	
Ashe County	Ashe County.
Bladen County	Bladen County.
Brunswick County	Brunswick County.
Cherokee County	Cherokee County.
Clay County	Clay County.
Cleveland County	Cleveland County.
Balance of Cumberland County	Cumberland County less Fayetteville City.
Edgecombe County	Edgecombe County.
Franklin County	Franklin County.
Graham County	Graham County.
Halifax County	Halifax County.
Hoke County	Hoke County.
Northampton County	Northampton County.
Person County	Person County.
Richmond County	Richmond County.
Robeson County	Robeson County.
Rockingham County	Rockingham County.
Swait County	Swait County.
Tyrrell County	Tyrrell County.
Vance County	Vance County.
Yancey County	Yancey County.
North Dakota	
Rolette County	Rolette County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM JUNE 1, 1982, THROUGH MAY 31, 1983—Continued

Eligible labor surplus areas	Civil jurisdictions included
Sioux County	Sioux County.
Ohio	
Adams County	Adams County.
Akron City	Akron City in Summit County.
Allen County	Allen County.
Ashtabula County	Ashtabula County.
Auglaize County	Auglaize County.
Belmont County	Belmont County.
Brown County	Brown County.
Canton City	Canton City in Stark County.
Carroll County	Carroll County.
Cincinnati City	Cincinnati City in Hamilton County.
Clermont County	Clermont County.
Cleveland City	Cleveland City in Cuyahoga County.
Crawford County	Crawford County.
Dayton City	Dayton City in Montgomery County.
Defiance County	Defiance County.
Elyria City	Elyria City in Lorain County.
Erie County	Erie County.
Fayette County	Fayette County.
Fulton County	Fulton County.
Guernsey County	Guernsey County.
Hamilton City	Hamilton City in Butler County.
Hardin County	Hardin County.
Harrison County	Harrison County.
Henry County	Henry County.
Highland County	Highland County.
Hocking County	Hocking County.
Huron County	Huron County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Lawrence County	Lawrence County.
Logan County	Logan County.
Lorain City	Lorain City in Lorain County.
Balance of Lorain County	Lorain County less Elyria City. Lorain City.
Balance of Mahoning County	Mahoning County less Youngstown City.
Mansfield City	Mansfield City in Richland County.
Marion County	Marion County.
Mercer County	Mercer County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Morrow County	Morrow County.
Muskingum County	Muskingum County.
Noble County	Noble County.
Ottawa County	Ottawa County.
Paulding County	Paulding County.
Perry County	Perry County.
Pike County	Pike County.
Portage County	Portage County.
Putnam County	Putnam County.
Ross County	Ross County.
Sandusky County	Sandusky County.
Scioto County	Scioto County.
Seneca County	Seneca County.
Shelby County	Shelby County.
Springfield City	Springfield City in Clark County.
Toledo City	Toledo City in Lucas County.
Balance of Trumbull County	Trumbull County less Warren City.
Tuscarawas County	Tuscarawas County.
Van Wert County	Van Wert County.
Vinton County	Vinton County.
Warren City	Warren City in Trumbull County.
Warren County	Warren County.
Washington County	Washington County.
Williams County	Williams County.
Wyandot County	Wyandot County.
Youngstown City	Youngstown City in Mahoning County.
Oklahoma	
Choctaw County	Choctaw County.
Coal County	Coal County.
Latimer County	Latimer County.
Pittsburg County	Pittsburg County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM JUNE 1, 1982, THROUGH MAY 31, 1983—Continued

Eligible labor surplus areas	Civil jurisdictions included
Pushmataha County	Pushmataha County.
Oregon	
Baker County	Baker County.
Clatsop County	Clatsop County.
Columbia County	Columbia County.
Coos County	Coos County.
Crook County	Crook County.
Curry County	Curry County.
Deschutes County	Deschutes County.
Douglas County	Douglas County.
Eugene City	Eugene City in Lane County.
Grant County	Grant County.
Harney County	Harney County.
Hood River County	Hood River County.
Jackson County	Jackson County.
Josephine County	Josephine County.
Klamath County	Klamath County.
Lake County	Lake County.
Balance of Lane County	Lane County less Eugene City.
Lincoln County	Lincoln County.
Linn County	Linn County.
Tillamook County	Tillamook County.
Union County	Union County.
Wallowa County	Wallowa County.
Wheeler County	Wheeler County.
Pennsylvania	
Altoona City	Altoona City in Blair County.
Armstrong County	Armstrong County.
Beaver County	Beaver County.
Bedford County	Bedford County.
Balance of Blair County	Blair County less Altoona City.
Bradford County	Bradford County.
Bristol Township	Bristol Township in Bucks County.
Butler County	Butler County.
Cambria County	Cambria County.
Cameron County	Cameron County.
Carbon County	Carbon County.
Clarion County	Clarion County.
Clearfield County	Clearfield County.
Clinton County	Clinton County.
Columbia County	Columbia County.
Crawford County	Crawford County.
Elk County	Elk County.
Erie City	Erie City in Erie County.
Fayette County	Fayette County.
Forest County	Forest County.
Fulton County	Fulton County.
Greene County	Greene County.
Huntingdon County	Huntingdon County.
Jefferson County	Jefferson County.
Juniata County	Juniata County.
Balance of Lackawanna County	Lackawanna County less Scranton City.
Lawrence County	Lawrence County.
Balance of Luzerne County	Luzerne County less Wilkes-Barre City.
Lycoming County	Lycoming County.
Mifflin County	Mifflin County.
Monroe County	Monroe County.
Northumberland County	Northumberland County.
Potter County	Potter County.
Reading City	Reading City in Berks County.
Schuylkill County	Schuylkill County.
Somerset County	Somerset County.
Sullivan County	Sullivan County.
Susquehanna County	Susquehanna County.
Tioga County	Tioga County.
Westmoreland County	Westmoreland County.
Wilkes-Barre City	Wilkes-Barre City in Luzerne County.
Wyoming County	Wyoming County.
Puerto Rico	
Aguadilla Municipio	Aguadilla Municipio.
Arecibo Municipio	Arecibo Municipio.
Bayamon Municipio	Bayamon Municipio.
Caguas Municipio	Caguas Municipio.
Carolina Municipio	Carolina Municipio.
Mayaguez Municipio	Mayaguez Municipio.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM JUNE 1, 1982, THROUGH MAY 31, 1983—Continued

Eligible labor surplus areas	Civil jurisdictions included
Ponce Municipio	Ponce Municipio.
Balance of Puerto Rico	Puerto Rico less Aguadilla Municipio. Arecibo Municipio. Bayamon Municipio. Caguas Municipio. Carolina Municipio. Guaynabo Municipio. Mayaguez Municipio. Ponce Municipio. San Juan Municipio. Toa Baja Municipio. Trujillo Alto Municipio.
San Juan Municipio	San Juan Municipio.
Toa Baja Municipio	Toa Baja Municipio.
Trujillo Alto Municipio	Trujillo Alto Municipio.
Rhode Island	
Bristol Town	Bristol Town.
Johnston Town	Johnston Town.
New Shoreham Town	New Shoreham Town.
South Carolina	
Abbeville County	Abbeville County.
Allendale County	Allendale County.
Barnwell County	Barnwell County.
Chester County	Chester County.
Clarendon County	Clarendon County.
Colleton County	Colleton County.
Darlington County	Darlington County.
Dillon County	Dillon County.
Georgetown County	Georgetown County.
Greenwood County	Greenwood County.
Hampton County	Hampton County.
Marion County	Marion County.
Marlboro County	Marlboro County.
McCormick County	McCormick County.
North Charleston City	North Charleston City in Charleston County.
Oconee County	Oconee County.
Orangeburg County	Orangeburg County.
Saluda County	Saluda County.
Sumter County	Sumter County.
Union County	Union County.
Williamsburg County	Williamsburg County.
Tennessee	
Bedford County	Bedford County.
Bledsoe County	Bledsoe County.
Campbell County	Campbell County.
Cannon County	Cannon County.
Carroll County	Carroll County.
Chester County	Chester County.
Claiborne County	Claiborne County.
Clarksville City	Clarksville City in Montgomery County.
Clay County	Clay County.
Cocke County	Cocke County.
Crockett County	Crockett county.
Cumberland County	Cumberland County.
De Kalb county	De Kalb County.
Decatur County	Decatur County.
Dickson County	Dickson County.
Dyer County	Dyer County.
Fayette County	Fayette County.
Fentress County	Fentress County.
Franklin County	Franklin County.
Gibson County	Gibson County.
Grainger County	Grainger County.
Greene County	Greene County.
Grundy County	Grundy County.
Hamblen County	Hamblen County.
Hancock County	Hancock County.
Hardeman County	Hardeman County.
Hardin County	Hardin County.
Haywood County	Haywood County.
Henderson County	Henderson County.
Henry County	Henry County.
Hickman County	Hickman County.
Houston County	Houston County.
Humphreys County	Humphreys County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Lake County	Lake County.
Lauderdale County	Lauderdale County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM JUNE 1, 1982, THROUGH MAY 31, 1983—Continued

Eligible labor surplus areas	Civil jurisdictions included
Lawrence County	Lawrence County.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Loudon County	Loudon County.
Macon County	Macon County.
Maury County	Maury County.
McMinn County	McMinn County.
McNairy County	McNairy County.
Meigs County	Meigs County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Obion County	Obion County.
Overton County	Overton County.
Perry County	Perry County.
Pickett County	Pickett County.
Polk County	Polk County.
Putnam County	Putnam County.
Rhea County	Rhea County.
Roane County	Roane County.
Scott County	Scott County.
Sequatchie County	Sequatchie County.
Sevier County	Sevier County.
Stewart County	Stewart County.
Unicoi County	Unicoi County.
Union County	Union County.
Van Buren County	Van Buren County.
Weakley County	Weakley County.
Warren County	Warren County.
Wayne County	Wayne County.
White County	White County.
Texas	
Brownsville City	Brownsville City in Cameron County.
Balance of Cameron County	Cameron County less Brownsville City.
Dimmit County	Dimmit County.
El Paso City	El Paso City in El Paso County.
Balance of El Paso County	El Paso County less El Paso City.
Balance of Hidalgo County	Hidalgo County less McAllen City.
Laredo City	Laredo City in Webb County.
Matagorda County	Matagorda County.
Maverick County	Maverick County.
McAllen City	McAllen City in Hidalgo County.
Newton County	Newton County.
Port Arthur City	Port Arthur City in Jefferson County.
Balance of Potter County	Potter County less Amarillo City-Potter.
San Augustine County	San Augustine County.
Starr County	Starr County.
Texarkana City, Tex	Texarkana City, Tex., in Bowie County.
Val Verde County	Val Verde County.
Willacy County	Willacy County.
Zapata County	Zapata County.
Zavala County	Zavala County.
Utah	
Piute County	Piute County.
Sanpete County	Sanpete County.
Wasatch County	Wasatch County.
Vermont	
Essex County	Essex County.
Grand Isle County	Grand Isle County.
Virginia	
Alleghany County	Alleghany County.
Bath County	Bath County.
Brunswick County	Brunswick County.
Buena Vista City	Buena Vista City.
Caroline County	Caroline County.
Covington City	Covington City.
Dickenson County	Dickenson County.
Greensville County	Greensville County.
Highland County	Highland County.
Lancaster County	Lancaster County.
Lee County	Lee County.
Northampton County	Northampton County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM JUNE 1, 1982, THROUGH MAY 31, 1983—Continued

Eligible labor surplus areas	Civil jurisdictions included
Northumberland County	Northumberland County.
Page County	Page County.
Petersburg City	Petersburg City.
Richmond County	Richmond County.
Russell County	Russell County.
Smyth County	Smyth County.
Suffolk City	Suffolk City.
Sussex County	Sussex County.
Warren County	Warren County.
Waynesboro City	Waynesboro City.
Westmoreland County	Westmoreland County.
Williamsburg City	Williamsburg City.
Washington	
Adams County	Adams County.
Chelan County	Chelan County.
Clallam County	Clallam County.
Columbia County	Columbia County.
Cowlitz County	Cowlitz County.
Douglas County	Douglas County.
Everett City	Everett City in Snohomish County.
Ferry County	Ferry County.
Franklin County	Franklin County.
Grant County	Grant County.
Grays Harbor County	Grays Harbor County.
Jefferson County	Jefferson County.
Kittitas County	Kittitas County.
Klickitat County	Klickitat County.
Lewis County	Lewis County.
Mason County	Mason County.
Okanogan County	Okanogan County.
Pacific County	Pacific County.
Pend Oreille County	Pend Oreille County.
Skagit County	Skagit County.
Skamania County	Skamania County.
Spokane City	Spokane City in Spokane County.
Stevens County	Stevens County.
Tacoma City	Tacoma City in Pierce County.
Thurston County	Thurston County.
Wahkiakum County	Wahkiakum County.
Whatcom County	Whatcom County.
Yakima County	Yakima County.
West Virginia	
Barbour County	Barbour County.
Berkeley County	Berkeley County.
Braxton County	Braxton County.
Brooke County	Brooke County.
Balance of Cabell County	Cabell County less Huntington City-Cabell.
Calhoun County	Calhoun County.
Clay County	Clay County.
Fayette County	Fayette County.
Greenbrier County	Greenbrier County.
Hancock County	Hancock County.
Huntington City	Huntington City in Cabell County.
	Wayne County.
Jackson County	Jackson County.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Logan County	Logan County.
Marion County	Marion County.
Marshall County	Marshall County.
Mason County	Mason County.
McDowell County	McDowell County.
Mercer County	Mercer County.
Mingo County	Mingo County.
Nicholas County	Nicholas County.
Pendleton County	Pendleton County.
Pleasants County	Pleasants County.
Pocahontas County	Pocahontas County.
Preston County	Preston County.
Putnam County	Putnam County.
Raleigh County	Raleigh County.
Randolph County	Randolph County.
Ritchie County	Ritchie County.
Roane County	Roane County.
Summers County	Summers County.
Taylor County	Taylor County.
Tucker County	Tucker County.
Tyler County	Tyler County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE FROM JUNE 1, 1982, THROUGH MAY 31, 1983—Continued

Eligible labor surplus areas	Civil jurisdictions included
Balance of Wayne County	Wayne County less Huntington City-Wayne.
Webster County	Webster County.
Wetzel County	Wetzel County.
Wirt County	Wirt County.
Wood County	Wood County.
Wyoming County	Wyoming County.
Wisconsin	
Ashland County	Ashland County.
Bayfield County	Bayfield County.
Balance of Calumet County	Calumet County less Appleton City-Calumet.
Clark County	Clark County.
Door County	Door County.
Forest County	Forest County.
Iron County	Iron County.
Jackson County	Jackson County.
Janesville City	Janesville City in Rock County.
Kenosha City	Kenosha City in Kenosha County.
Lincoln County	Lincoln County.
Marquette County	Marquette County.
Menominee County	Menominee County.
Oconto County	Oconto County.
Racine City	Racine City in Racine County.
Balance of Rock County	Rock County less Janesville City.
Rusk County	Rusk County.
Sauk County	Sauk County.
Sawyer County	Sawyer County.
Taylor County	Taylor County.
Trempealeau County	Trempealeau County.
Vilas County	Vilas County.
Washburn County	Washburn County.

[FR Doc. 82-15188 Filed 6-3-82; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-82-46-C]

A & E Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

A & E Coal Company, Inc., R. T. 2, Box 83, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.1710 (cabs or canopies) to its Mine No. 3 (I.D. No. 15-12049) located in Letcher 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 electric face equipment.

2. The coal seam ranges in height from 48 to 55 inches, with undulating top and bottom conditions.

3. Petitioner states that application of the standard would result in a diminution of safety for the miners affected because the equipment operator's visibility is impaired, and the cramped operator compartment causes

operator fatigue, 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 July 6, 1982. Copies of the petition are available for inspection at that address.

Dated: May 26, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-15093 Filed 6-3-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-48-C]

G.M. & W. Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

G.M. & W. Coal Company, Inc., P.O. Box 112, Jennerstown, Pennsylvania 15547 has filed a petition to modify the application of 30 CFR 75.1710 (cabs or canopies) to its Grove No. 1 Mine (I.D. No. 36-02398) located in Somerset County, Pennsylvania. 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 electric face equipment.

2. The coal seam ranges in height from 42 to 48 inches with undulating top and bottom conditions.

3. Petitioner states that the installation of cabs or canopies on the mine's electric face equipment would result in a diminution of safety for the miners affected because:

a. The canopies could strike and dislodge roof supports and suspended electrical cables;

b. The canopies cause a cramped operator compartment which limits visibility and results in operator fatigue, 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 July 6, 1982. Copies of the petition are available for inspection at that address.

Dated: May 27, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-15100 Filed 6-3-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-6-M]

Georgia-Pacific Corp.; Petition for Modification of Application of Mandatory Safety Standard

Georgia-Pacific Corporation, P.O. Box 187, Blue Rapids, Kansas 66411 has filed a petition to modify the application of 30 CFR 49.5 and 49.6 (mine rescue station; equipment and maintenance requirements) to its Blue Rapids Mine and Mill (I.D. No. 14-00309) located in Marshall County, Kansas. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that mine rescue stations provide a centralized storage location for equipment and that such stations be equipped with one oxygen pump or a cascading system.

2. Petitioner is a member of the Kansas Mine Rescue Association which is a cooperative arrangment among four companies. Each company has a mine rescue station at its mine, but petitioner proposes an alternative to the centralized location of equipment.

3. Petitioner proposes that each company keep its team's equipment at its own mine site. Petitioner will be responsible for its own equipment and its maintenance or replacement. Petitioner states that equipment assigned to individual team members normally has a better maintenance program than equipment that is shared. Advantages of this alternative are that the location of each team's equipment at its own mine site:

a. Would make it easier to inspect, test and spend the required two hours training under oxygen every two months;

b. Will keep five self-contained oxygen breathing apparatus and other rescue equipment available at each mine site at all times; and

c. Will keep the equipment available for uses other than mine rescue, such as re-entry after an electrical malfunction producing smoke, causing evacuation, or as back-up units for the local fire department during community disasters.

4. Within the Association there will be a total of twenty self-contained breathing apparatus available, as well as duplication of other mine rescue equipment.

5. Petitioner is also seeking a modification pertaining to equipment for recharging oxygen cylinders. In lieu of an oxygen pump or cascading system to recharge the breathing apparatus, petitioner states that at least two companies who supply oxygen can reach the disaster scene before the initial supply of oxygen can be exhausted. The Association will also have twenty breathing apparatus at its disposal so immediate recharging of any single unit is not extremely critical and the MSHA rescue team will have a portable oxygen pump.

6. For these reasons, petitioner requests a modification of the standards.

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 July 6, 1982. Copies of the petition are available for inspection at that address.

Dated: May 26, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-15092 Filed 6-3-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-22M]

Homestake Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754 has filed a petition to modify the application of 30 CFR 57.19-56 (automatic hoists) to its Homestake Mine (I.D. No. 39-00055) located in Lawrence County, South Dakota. 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 a competent operator for an automatic hoist be readily available at or near the hoisting device while any person is underground.

2. The mine has seven remote-control hoists that are used to move employees

and supplies from one level to another. The hoists are controlled by the activation of a lever inside the cage or from the shaft station, with the cage control overriding the station control. The control signal is carried to the hoist by means of a trailing cable, except for the Alimak hoist which has the hoist mounted on top of the cage with a trailing cable supplying the power. From the given point, the cage may be moved by activating the control lever to the position of the direction of travel desired. The cage must be stopped at the desired location by neutralizing the position of the control lever. The hoists may be changed from remote control to manual control. This change and manual operation can only be performed in the hoist room and is usually done when shaft maintenance is being performed, and there is no need for a hoist operator at any other time. A competent operator is trained and on duty in case of a hoist malfunction. In case of a hoist malfunction when people are riding on the cage, a telephone is installed in the cage to summon help.

3. Petitioner states that the procedures and methods outlined above provide the same degree of safety for the miners affected as that afforded by the standard, and for these reasons 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 July 6, 1982. Copies of the petition are available for inspection at that address.

Dated: May 27, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-15099 Filed 6-3-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-42-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575 has filed a petition to modify the application of 30 CFR 75.507-1(a) (electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements) to its Hamilton No. 2 Mine (I.D. No. 15-02706) located in Union 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 all electric equipment, other than power-connection points, used in return air outby the last open crosscut in any coal mine, be permissible.

2. Petitioner proposes the use of a 20 h.p. 460 V Franklin Electric Model 2361156010 submergible pump to drain water from the sump beneath the No. 1 return air shaft a the mine. This pump is nonpermissible; however, petitioner knows of no submergible pump of this type which is considered permissible electric equipment.

3. Petitioner states that the operating electrical parts of this pump are at all times submerged in water in the sump. If the water level in the sump drops below one inch of the intake point of the pump, the pump ceases operating; therefore, it would be impossible for the pump to lower water in the sump to a level that would expose the electrical operating parts of the pump. The electrical power supply enters the pump at a point below the water level in the sump.

4. Petitioner states that use of this pump 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 July 6, 1982. Copies of the petition are available for inspection at that address.

Dated: May 26, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-15090 Filed 6-3-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-19-M]

Morton-Norwich Products, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Morton-Norwich Products, Inc., 110 North Wacker Drive, Chicago, Illinois 60606-1555 has filed a petition to modify the application of 30 CFR 57.21-46 (crosscut intervals) to its Weeks Island New Mine (I.D. No. 16-00970) located in Iberia Parish, Louisiana. 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 crosscuts be made at intervals not in excess of 100 feet between entries and between rooms.

2. Liberation of methane gas takes place only when the in situ salt is disturbed by drilling, undercutting or blasting. Drilling and undercutting liberate only small amounts of methane, constituting a negligible concentration in the ventilating air stream.

3. The mine is single-level served by two 18-foot diameter shafts. Intake air is provided by a fan installation on the surface, capable of air reversal. Normal operation of the fan is blowing, rather than exhausting, so that the Service Shaft (No. 4) is downcast and the Production Shaft (No. 3) is upcast. Both shafts are vertical, concrete-lined in overburden and unlined in salt. They are circular, non-compartmented, and have fire-retardant guides and guide support timbers. Shaft stations are unlined, but are entirely in salt and free of combustible materials. Headframe sheathing, if any, is of non-combustible material (transite).

4. Petitioner states that application of the standard will result in a diminution of safety for the miners affected because said application would result in the existence of salt pillars which would be too narrow and unstable.

5. As an alternative method, petitioner seeks a modification of the standard to permit:

a. The making of crosscuts at such intervals that will result in centerline distances of approximately 190 feet for those crosscuts made between rooms, with such room widths and crosscut widths being approximately 70 feet;

b. The making of crosscuts at the earliest opportunity in accordance with the mine plan, without requiring that crosscuts hole through before advancing the room face 35 feet beyond the next crosscut centerline.

6. Petitioner states that the proposed alternative method will enhance the miner's safety by providing wider and more stable salt pillars and afford adequate ventilation.

7. In support of the proposed alternative method, petitioner states that the following safeguards will be assured:

a. Crosscut intervals will not exceed centerline distances of 380 feet;

b. If other than full dimension crosscuts are made, measures will be taken to assure adequate ventilation;

c. All face advance and bench blasting will be performed with no workers underground; and

d. A hand-held methanometer program will be established, with reasonable locations and frequency of monitoring.

8. 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 July 6, 1982. Copies of the petition are available for inspection at that address.

Dated: May 26, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-15089 Filed 6-3-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-16-M]

Morton-Norwich Products, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Morton-Norwich Products, Inc., 110 North Wacker Drive, Chicago, Illinois 60606-1555 has filed a petition to modify the application of 30 CFR 57.21-24(a) (fan stoppage) to its Weeks Island New Mine (I.D. No. 16-00970) located in Iberia Parish, Louisiana. 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, if the main fan stops, all persons be withdrawn from the affected active workings and that power be denergized in these workings and not restored or persons permitted reentry in these workings until a competent person determines that the methane concentration is less than 1.0 percent.

2. Liberation of methane gas takes place only when the *in situ* salt is distrubed by drilling, undercutting or blasting. Drilling and undercutting liberate only small amounts of methane, constituting a negligible concentration in the ventilating air stream.

3. The mine is single-level served by two 18-foot diameter shafts. Intake air is provided by a fan installation on the surface, capable of air reversal. Normal operation of the fan is blowing, rather than exhausting, so that the Service Shaft (No. 4) is downcast and the Production Shaft (No. 3) is upcast. Both shafts are vertical, concrete-lined in overburden and unlined in salt. They are circular, non-compartmented, and have fire-retardant guides and guide support timbers. Shaft stations are unlined, but are entirely in salt and free of combustible materials. Headframes sheathing, if any, is non-combustible material (transite).

4. As an alternate method, petitioner seeks a modification of the standard to permit, in the event of main fan stoppage, persons to remain in and power to remain energized in affected active workings under prescribed conditions for a period of time not to exceed thirty (30) minutes, provided that methane concentrations measured during such period of time are less than 1.25 percent.

5. In support of this proposed alternative, petitioner states that the following safeguards will be assured in the event of a main fan stoppage:

a. No blasting, drilling or undercutting will be performed;

b. If the main fan as not been restarted within 30 minutes after stoppage, or if methane in concentrations of 1.25 percent or greater is measured at any time in any working place, all equipment will be deenergized and all persons will be withdrawn from the mine;

c. If ventilation has been interrupted for more than 15 minutes, all active workings will be examined for methane by a competent person; and

d. When all mine equipment has been deenergized and all persons have been withdrawn from the mine, no mining equipment will be reenergized and no other persons will reenter the mine until the main fan has been restarted and methane concentrations are determined to be less than 1.25 percent by a competent person.

6. Petitioner states that the proposed alternative method and safeguards outlined above 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 July 6, 1982. Copies of the petition are available for inspection at that address.

Dated: May 26, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-15095 Filed 6-3-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-17-M]

Morton-Norwich Products, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Morton-Norwich Products, Inc., 110 North Wacker Drive, Chicago, Illinois 60606-1555 has filed a petition to modify the application of 30 CFR 57.21-25 (failure of mine ventilation) to its Weeks Island New Mine (I.D. No. 16-00970) located in Iberia Parish, Louisiana. 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 when there has been a failure of mine ventilation other than a failure of a main fan as described in 30 CFR 57.21-24, all persons be withdrawn from the affected active workings, and that power be deenergized in these workings and not restored or persons permitted reentry to the affected area until a competent person determines that the methane concentration in such active workings is less than 1.0 percent.

2. Liberation of methane gas takes place only when the *in situ* salt is disturbed by drilling, undercutting or blasting. Drilling and undercutting liberate only small amounts of methane, constituting a negligible concentration in the ventilating air stream.

3. The mine is single-level served by two 18-foot diameter shafts. Intake air is provided by a fan installation on the surface, capable of air reversal. Normal operation of the fan is blowing, rather than exhausting, so that the Service Shaft (No. 4) is downcast and the Production Shaft (No. 3) is upcast. Both shafts are vertical, concrete-lined in overburden and unlined in salt. They are circular, non-compartmented, and have fire-retardant guides and guide support timbers. Shaft stations are unlined, but are entirely in salt and free of combustible materials. Headframe sheathing, if any, is of non-combustible material (transite).

4. As an alternative method, petitioner seeks a modification of the standard to permit, in the event of a failure of ventilation other than a main fan

stoppage, persons to remain in affected active workings and power to remain energized in affected active workings for a period of time not to exceed 60 (sixty) minutes, provided that methane concentrations measured during such period of time are less than 1.25 percent.

5. In support of this proposed alternative, petitioner states that the following safeguards will be assured in the event of a failure of ventilation other than a main fan stoppage:

a. No blasting, drilling or undercutting will be performed;

b. If the ventilation failure has not been corrected within sixty minutes after stoppage, or if methane is detected in concentrations of 1.25 percent or greater at any time in any working place, all equipment will be deenergized and all persons withdrawn from the mine;

c. If ventilation has been interrupted for more than thirty minutes, all active workings will be examined for methane by a competent person; and

d. When all mine equipment has been deenergized and all persons have been withdrawn from the mine, no mining equipment will be reenergized and no other persons will reenter the mine until the failure of ventilation has been corrected and methane concentrations are determined to be less than 1.25 percent. Persons engaged in correcting the ventilation failure may remain in the mine for that purpose, as long as methane concentrations are determined to be less than 1.5 percent.

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 July 6, 1982. Copies of the petition are available for inspection at that address.

Dated: May 25, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-15096 Filed 6-3-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-18-M]

Morton-Norwich Products, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Morton-Norwich Products, Inc., 110 North Wacker Drive, Chicago, Illinois 60606-1555 has filed a petition to modify the application of 30 CFR 57.21-78 (permissible equipment) to its Weeks Island New Mine (I.D. No. 16-00970) located in Iberia Parish, Louisiana. 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 only permissible equipment maintained in permissible condition be used beyond the last open crosscut or in places where dangerous quantities of flammable gases are present or may enter the air current.

2. Liberation of methane gas takes place only when the in situ salt is disturbed by drilling, undercutting or blasting. Drilling and undercutting liberate only small amounts of methane, constituting a negligible concentration in the ventilating air stream.

3. The mine is single-level served by two 18-foot diameter shafts. Intake air is provided by a fan installation on the surface, capable of air reversal. Normal operation of the fan is blowing, rather than exhausting, so that the Service Shaft (No. 4) is downcast and the Production Shaft (No. 3) is upcast. Both shafts are vertical, concrete-lined in overburden and unlined in salt. They are circular, non-compartmented, and have fire-retardant guides and guide support timbers. Shaft stations are unlined, but are entirely in salt and free of combustible materials. Headframe sheathing, if any, is of non-combustible material (transite).

4. As an alternative method, petitioner seeks a modification of the standard to permit the use of non-permissible equipment at the mine under prescribed conditions.

5. In support of this proposed alternative, petitioner states that the following safeguards will be assured with the use of non-permissible equipment:

a. Since methane, in small but measurable amounts, may be liberated from in situ salt when disturbed by drilling or undercutting, non-permissible undercutting and drilling equipment will be fitted with methane monitors, which are either readily observable to the equipment operator, or have audible alarms designed to activate in the presence of methane concentrations of 1.25 percent, at which time all ignition sources will be deenergized;

b. Before any other non-permissible equipment is operated in the area of a working face, a responsible person will survey the area to assure that no measurable accumulation of methane exists;

c. All face advance and bench blasting will be performed with no workers underground;

d. A hand-held methanometer program will be established, with reasonable locations and frequency of monitoring; and

e. The mine communications system will be permissible, maintained in permissible condition and will extend to the surface.

6. Petitioner states that the proposed alternative method and safeguards outlined above 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 July 6, 1982. Copies of the petition are available for inspection at that address.

Dated: May 25, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-15097 Filed 6-3-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-51-C]

New River Co.; Petition for Modification of Application of Mandatory Safety Standard

The New River Company, Lock Drawer 711, Mount Hope, West Virginia 25880 has filed a petition to modify the application of 30 CFR 75.1710 (cabs or canopies) to its Skelton Mine (I.D. No. 46-01500) located in Raleigh County, West Virginia. 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 electric face equipment.

2. The coal seam ranges in height from 36 to 72 inches with undulating top and bottom conditions.

3. Petitioner states that installation of cabs or canopies on the mine's electric face equipment would result in a diminution of safety for the miners affected because:

a. The canopies hamper the equipment operator's visibility, increasing the chances of an accident;

b. The canopies could strike and dislodge the roof support system;

c. The cramped operator compartment forces the operator's head and arms to protrude from the equipment, creating the possibility of injury.

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 July 6, 1982. Copies of the petition are available for inspection at that address.

Dated: May 26, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-15091 Filed 6-3-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-47-C]

R. C. & R. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

R. C. & R. Coal Company, Box 85, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 7 Vein Slope (I.D. No. 36-07093) located in Schuylkill County, Pennsylvania. 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 cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if a "makeshift" safety device were installed it would be activated of knuckles and curves, when no emergency existed, and cause a tumbling effect on the conveyance which would increase rather than decrease the hazard to the miners.

4. As an alternative method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connection securely fastened around the gunboat and specified the hoisting rope, which have a factor of safety in excess of the design factor as determined by the formula in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will at all times provide the same degree of safety to 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 July 6, 1982. Copies of the petition are available for inspection at that address.

Dated: May 26, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-15088 Filed 6-3-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-20-M]

Union Oil Company of California; Petition for Modification of Application of Mandatory Safety Standard

Union Oil Company of California, 2777 Crossroads Boulevard, Suite 100, Grand Junction, Colorado 81501 has filed a petition to modify the application of 30 CFR 57.15-31(a) (self-rescue devices) to its Parachute Creek Mine (I.D. No. 05-03143) located in Garfield County, Colorado. 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 self-rescue devices meeting the requirements of 30 CFR 57.15-30 be worn or carried by all persons underground.

2. As an alternative method, petitioner seeks a modificaton to permit employees to enter and exit from the underground change rooms and office complex through a specially constructed and illuminated adit without carrying or wearing a self-rescuer. The adit, located on a bench about 1,000 feet above the valley floor, directly accesses the underground change rooms and office complex where employees pick up and wear their assigned self-rescuer and all other required personal protective equipment prior to going to work. The office and change rooms are located underground because of the limited space on the bench. The adit will be used exclusively for ingress and egress of mine personnel; equipment and utilities, except for lighting, will be excluded from this adit.

3. Ventilation into the manway will originate from the first split taken from the main air intake which removes the potential of carbon monoxide or other noxious fumes entering the manway. A man door will be located at the portal and the rate of flow through the manway will be controlled by the stopping containing the door.

4. 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 July 6, 1982. Copies of the petition are available for inspection at that address.

Dated: May 26, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR. Doc. 82-15087 Filed 6-3-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-21-M]

Union Oil Co. of California; Petition for Modification of Application of Mandatory Safety Standard

Union Oil Company of California, 2777 Crossroads Boulevard, Suite 100, Grand Junction, Colorado 81501 has filed a petition to modify the application of 30 CFR 57.17-10 (illumination) to its Parachute Creek Mine (I.D. No. 05-03143) located in Garfield County, Colorado. 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 individual electric lamps be carried for illumination by all persons underground.

2. As an alternative method, petitioner seeks a modification to permit employees to enter and exit from the underground change rooms and office complex through a specially constructed and illuminated adit without individual electric lamps. The adit, located on a bench about 1,000 feet above the valley floor, directly accesses the underground change rooms and office complex where employees pick up their individual electric lamps and all other required personal protective equipment prior to going to work. The office and change rooms are located underground because of the limited space on the bench. The adit will be used exclusively for ingress and egress of mine personnel; equipment and utilities, except for lighting, will be excluded from this adit.

3. Petitioner states that the adit's illumination system is much greater than the illumination given off by the individual electric cap lamps. An emergency backup system will be installed to provide power in the event of a primary system failure; the backup system will power 25 percent of the manway lights to provide enough illumination for personnel to exit.

4. Ventilation into the manway will originate from the first split taken from the main air intake which removes the potential of carbon monoxide or other noxious fumes entering the manway. A mandoor will be located at the portal and the rate of flow through the manway will be controlled by the stopping containing the door.

5. 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 July 6, 1982. Copies of the petition are available for inspection at that address.

Dated: May 27, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-15098 Filed 6-3-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-50-C]

Youghiogheny and Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Youghiogheny and Ohio Coal Company, P.O. Box 1000, St. Clairsville, Ohio 43950 has filed a petition to modify the application of 30 CFR 75.1101-8 (water sprinkler systems; arrangement of sprinklers) to its Nelms No. 2 Mine (I.D. No. 33-00968) located in Harrison County, Ohio. 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 water sprinkler systems above belt drives, belt take-ups, electrical controls and gear reducing units.

2. As an alternative method, petitioner proposes to use a single overhead pipe system with one-half inch orifice automatic sprinklers located on the foot centers, with actuation temperatures between 200 and 230 degrees Fahrenheit, and with water pressure equal to or greater than ten pounds per square inch. Also, automatic sprinklers will be located, not over ten feet apart, so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit.

3. Petitioner states that the proposed alternative method will be more reliable than that required by the standard. Specifically, the second branch line required by the standard was shown to be unnecessary by research. This second branch line is vulnerable to damage from material which may fall off the belt, thereby reducing the system's reliability and operability. This modification requested reduces the amount of piping, thereby making it practical to fully fill the system with antifreeze. Such protection is critical, since winter air temperatures can fall below freezing in most underground mines. A test to insure proper operation will be conducted during the installation of each new system and during the subsequent repair or replacement of any critical part.

4. Petitioner states that the proposed alternative method will at all times 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 July 6, 1982. Copies of the petition are available for inspection at that address.

Dated: May 26, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-15094 Filed 6-3-82; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Arizona; Approval of Plan Changes

Background

The State of Arizona has submitted two plan supplements describing changes in its Occupational Safety and Health plan. This document announces that the Arizona plan supplements are approved.

The Arizona Occupational Safety and Health Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter called the Act) and 29 CFR Part 1902 on October 29, 1974 (39 FR 39037). 29 CFR Part 1953 provides procedures for the review and approval of State change supplements by the Assistant Secretary for Occupational Safety and Health (hereinafter called the Assistant Secretary).

Description of Supplements

1. A written transmittal from the State of Arizona, dated February 5, 1981, from Larry Etchechury, Director, Arizona Division of Occupational Safety and Health, states that the State has immediately adopted the Federal Occupational Safety and Health instruction CPL 2.20 on reinspection. This instruction establishes guidelines on the reinspection of an establishment where a serious citation is withdrawn due to incomplete or erroneous inspection information or because of an administrative error.

2. A written transmittal from the State of Arizona, dated February 12, 1981, from Larry Etchechury, Director, Arizona Division of Occupational Safety and Health, describes the process to be followed by that Division in the receipt and handling of discrimination complaint cases.

Location of Plan and Its Supplements for Inspection and Copying

A copy of the supplements, along with the approved plan, may be inspected

and copied during normal business hours at the following locations:

Director, Federal Compliance and State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–3613, Washington, D.C. 20210

Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 450 Golden Gate Avenue, Room 11321, San Francisco, California 94102

Division of Occupational Safety and Health, Industrial Commission of Arizona, 1601 West Jefferson Street, Phoenix, Arizona 85005

Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause consistent with applicable law. The Assistant Secretary finds that these changes are consistent with Federal requirements and with commitments in the approved plan. Good cause is therefore found for approval of the supplement without public notice and comment.

Decision

After careful consideration, the Arizona plan change supplements described above are hereby approved under Part 1953.

This decision is effective June 4, 1982.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C., this 27th day of May, 1982.

Thorne G. Auchter,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 82–15189 Filed 6–3–82; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL COMMISSION ON SOCIAL SECURITY REFORM

National Commission on Social Security Reform; Meeting

AGENCY: National Commission on Social Security Reform.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forth-coming meeting of the National Commission on Social Security Reform. This notice also describes the functions of the Commission. 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: June 21, 1982: 2:00 p.m. to 6:00 p.m.

ADDRESS: Gold Room 2168A–B, Rayburn House Office Building, Washington, DC 20515.

FOR FURTHER INFORMATION CONTACT: Robert J. Myers, Executive Director, 736 Jackson Place, N.W., Washington, DC 20503; Telephone (202) 395–5132.

SUPPLEMENTARY INFORMATION: The National Commission on Social Security Reform is established by Executive Order No. 12335 dated December 16, 1981 to provide appropriate recommendations to the Secreatry of Health and Human Services, the President, and the Congress on long-term reforms to put Social Security back on a sound financial footing.

The meeting of the Commission is open to the public. The proposed agenda includes:

Presentation on Health and Mortality of the Aged by Dr. Robert N. Butler and Dr. Jacob Feldman

Discussion on Long-Term Financing

Such new business as the chairman or the membership may put before the Commission.

Records are kept of all Commission proceedings, and are available for public inspection at the office of the Executive Director, National Commission on Social Security Reform, 736 Jackson Place, N.W., Washington, DC 20503.

Robert J. Myers,

Executive Director.

[FR Doc. 82–15265 Filed 6–3–82; 8:45 am]

BILLING CODE 3115–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506:

Date: June 24–25, 1982
Time: 9:00 a.m. to 5:30 p.m. each day
Room: 807
Program: This meeting will review applications submitted for Program Development/Special Projects, Division of Special Programs, for projects beginning after October 1, 1982.

Date: June 28–29, 1982
Time: 9:00 a.m. to 5:30 p.m. each day
Room: 807
Program: This meeting will review applications submitted for Program Development/Special Projects, Division of Special Programs, for projects beginning after October 1, 1982.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724–0367.

Stephen J. McCleary,

Advisory Committee.

[FR Doc. 82–15696 Filed 6–3–82; 8:45 am]

BILLING CODE 7536–01–M

Media Arts Advisory Panel (Media Art Centers); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Media Art Centers) to the National Council on the Arts will be held on June 29–30, 1982, from 9:30 a.m.–5:30 p.m. on the 12th floor screening room of the Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the

determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 27, 1982.

[FR Doc. 82–15171 Filed 6–3–82; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel (Challenge); Meeting

Pursuant to section 10 (a) (2) of the Federal Advisorty Committee Act (Pub L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Challenge) to the National Council on the Arts will be held on June 25, 1982, from 9:00 a.m.–5:30 p.m. in the 14th floor Law Library of the Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 27, 1982.

[FR Doc. 82–15170 Filed 6–03–82; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

NSF Task Group; Policy Toward Involvement of Commercial and Industrial Firms With Research Facilities and Equipment Supported By NSF.

AGENCY: National Science Foundation.

ACTION: Notice of meeting.

SUMMARY: The National Science Foundation has undertaken a review of its policy toward involvement of commercial and industrial firms with research facilities and equipment that the NSF supports. Last year an internal NSF task force published two interim committee reports relating to that policy for public comment. **Federal Register**, 10 June 1981 (46 FR 30739). Many comments were received, and further work has been done to accommodate them.

The NSF is now proposing to establish the following statement of principles as NSF policy. The NSF task group will hold a public meeting to hear public comment on the proposed statement.

DATE: Tuesday, June 29, 1982, 9 a.m. to 3:00 p.m.

ADDRESS: National Science Foundation, Room 540, 1800 G Street NW., Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Charles H. Herz, General Counsel, Room 501, 1800 G Street NW., Washington, D.C. 20550, ((201) 357–9435/6).

COMMENTS: Address should be to the addressee listed above and should be received no later than June 29, 1982.

Charles H. Herz,

General Counsel, National Science Foundation.

Principles Related to NSF-Supported Research Instrumentation and Facilities

This statement of principles for the use and operation of NSF-supported equipment and facilities responds to issues raised by several groups:

- University scientists and engineers, asking whether instrumentation provided with National Science Foundation support may be used by or for the benefit of commercial firms, and—if such use is approved—under what terms and financial arrangements;
- Industrial scientists, with interest in using such instrumentation, particularly at major facilities, and in supporting or cooperating with university scientists doing research that uses the instrumentation;
- Commercial research and service laboratories, concerned that NSF-supported instrumentation has been used on occasion by university personnel to provide services that compete with commercial firms at rates that undercut the markets of private companies;
- Commercial research and service laboratories, with interest in being considered by the NSF as suppliers of instrumentation or services for NSF-supported research or as managers for NSF-supported user facilities.

Access to modern research equipment is essential to the health of the nation's science and engineering enterprise. NSF policies should promote this access. Modern research facilities can be supplied by a variety of mechanisms, including dedicated equipment at a research institution, common or shared in-house research facilities, or facilities provided by a second party on a lease or service basis. NSF should be open to all these mechanisms and choose the one likely to be most effective in each case.

At the same time, the high cost of modern research instruments and facilities demands that they be as fully utilized as is practical, consistent with the primary mission for which they are purchased. Therefore, NSF policies should also encourage sharing of instrumentation within the academic sector and, under appropriate conditions, among the academic, industrial, and public sectors.

The general policies stated below are intended to guide NSF in providing support for instrumentation and facilities and to guide NSF grantees in the use of such instruments and facilities.

1. NSF places major emphasis on support of research in the academic sector because such research serves the dual NSF mission of supporting fundamental research and providing educational opportunities for future scientists and engineers. This means, in many cases, that there are distinct advantages in supporting research equipment that is sited on the campuses and in encouraging sharing of such equipment among various academic research groups on the campus and with other academic institutions.

2. At the same time, there may be cases where the research and educational values of having such equipment in the academic environment are outweighed by cost savings or operating efficiencies that can be achieved by having such equipment provided or operated by commercial organizations. This may be particularly true for equipment that requires specialized management and maintenance personnel, or equipment for standardized testing and measurements that add little to the educational value of the research experience. Under these circumstances, NSF grantees are encouraged to use the services provided by commercial enterprises.

3. In other cases, equipment owned or operated by academic institutions or consortia may have the capacity to accommodate non-academic users while satisfying the original purposes from which it was provided. Here, NSF policy allows the use of NSF-supported equipment or facilities by the private sector under such conditions that it will not compete unfairly with privately owned equipment which may be capable of providing the same services. This means:

- When similar services are commercially available in the United States, charges for non-academic use of NSF-funded equipment facilities should in all cases significantly exceed the established commercial rate. This

rate would also apply to use by an employee of the university while serving as a private consultant or as an employee of a private commercial company.

• If the resaerch facility is unique or has unique characteristics such that no comparable commercially operated capability exists within the United States, then the facility should be made available to non-academic users at the option of the facility operator at a price to be negotiated between the operator and the proposed user. Such a price could reflect the extent to which the proposed research will contribute to the fundamental knowledge base (and possible educational benefits) which is the mission of NSF. If the research is of a proprietary nature, users should pay at least a reasonable estimate of the full cost of providing the service.

• Funds generated by these charges must be used by the institution having title to the equipment to further the purposes for which NSF support was provided.

4. NSF strongly encourages collaborative research efforts between academic and industrial scientists. If such collaborative efforts are not proprietary in nature and contribute to the research or educational purposes of each institution involved, the customary academic user policies should apply to joint use of NSF provided facilities.

5. Proposals to establish and operate NSF-supported research facilities for fundamental research and educational purposes will be considered from all sources: academic institutions, not-for-profit, and for-profit organizations. However, due weight will be given to the relative advantages of the management capabilities of each sector and to the potential differences in student access and availability for educational purposeds that each sector can provide.

[FR Doc. 82-15164 Filed 6-3-82; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-461]

Availability of Final Environmental Statement for Clinton Power Station, Unit 1

Notice is hereby given that the Final Environmental Statement (NUREG-0854) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed operation of the Clinton Power Station, Unit 1. The station is located in DeWitt County, about 10 kilometers (6 miles) East of Clinton, Illinois, and 100 kilometers (60 miles) Northeast of Springfield, Illinois.

The Final Environmental Statement (NUREG-0854) is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and in the Vespian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

The Notice of availability of the Draft Environmental Statement for the Clinton Power Station, Unit 1, and request for comments was published in the **Federal Register** on January 8, 1982 (47 FR 1063). The comments received from Federal, State and local agencies and from interested members of the public have been included in the appendices to the Final Environmental Statement.

Copies of the Final Environmental Statement (NUREG-0854) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and from the U.S. Nuclear Regulatory Commission, Sales Office, Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 28th day of May 1982.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 82-15238 Filed 6-3-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-265]

Commonwealth Edison Co. and Iowa-Illinois Gas and Electric Co.; Issuance of Amendments to Facility Operating Licenses

The Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 78 and 72 to Facility Operating License Nos. DPR-29 and DPR-30 issued to Commonwealth Edison Company and Iowa-Illinois Gas and Electric Company, which revised the Technical Specifications for operation of the Quad Cities Nuclear Power Station, Unit Nos. 1 and 2, located in Rock Island County, Illinois. The amendments are effective as of the date of issuance.

The amendments change the Technical Specifications to extend from June 1, 1982 to July 1, 1982 the time allowed for continued operation of both units prior to completion of modifications to the RHR service water system.

The application for the amendments complies with the standards and requirements of the Atomic Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated May 20, 1982, (2) Amendment No. 78 to License No. DPR-29 and Amendment No. 72 to License No. DPR-30, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Moline Public Library, 504 17th Street, Moline, Illinois. A copy of items (2) and (3) may be a⊖obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 27th day of May 1982.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 82-15235 Filed 6-3-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255-SP]

Consumers Power Co., (Palisades Nuclear Power Facility; Memorandum and Order Approving Joint Motion to Terminate Proceeding

May 28, 1982.

I. Jurisdiction and Procedural History

On March 9, 1981, the Director of Inspection and Enforcement issued an "Order Confirming Licensee Actions to Upgrade Facility Performance." This Order included restrictions on overtime work of licensed operators more restrictive than the Commission's general standards applicable to overtime work. On March 31, 1981, the Utility Workers Union of America, AFL-CIO and the Michigan State Utility Workers Council, (hereinafter "the Union"), filed a "Petition for Hearing." On May 29, 1981, the Commission issued an Order referring the "Petition for Hearing" to the Atomic Safety and Licensing Board Panel to decide whether the Union should be granted a hearing and, if so, to conduct the hearing. The Atomic Safety and Licensing Board

constituted to decided this matter denied the "Petition for Hearing" on July 31, 1981. On March 31, 1982, the Atomic Safety and Licensing Appeal Board reversed the Licensing Board, permitted the Union to intervene, and remanded the matter to the Licensing Board for further proceedings. Pursuant to motions by the NRC Staff and orders of the Commission, the time for filing a motion for the Commission to review the Appeal Board decision has been extended until June 9, 1982. On May 11, 1982, the Staff and Union filed a "Joint Motion to Terminate Proceeding."

II. Joint Motion to Terminate Proceeding

The Joint Motion states:

[O]n April 21, 1982, the Administrator of NRC Region III issued a 'Partial Rescission of Order' that adjusted the terms of the Director's Order of March 1981. The revised restrictions are consistent with the Commission's policy statement on *Nuclear Power Plant Staff Working Hours*, 47 FR 7352 (Feb. 18, 1982).

The "Partial Rescission of Order" revises the work hour or overtime restrictions to conform to the Commission's general policy on nuclear power plant staff working hours, 47 FR 7352. The "Partial Recission" also notes that the initial Order of March 9, 1981 was promulgated because "the Staff was concerned that operators at the plant, who already appeared to be working excessive amounts of overtime, would be required to work increased overtime. * * *" However, since the time this Order became effective, the Staff stated that Consumers Power Co., the licensee, improved its control over operation of the plant and the concern about excessive overtime hours "has been substantially ameliorated." In view of the "Partial Rescission," the Union withdrew its request for hearing and moved jointly with the Staff to terminate this proceeding. Consumers Power Company did not oppose the motion.

The Commission recognizes and encourages fair and reasonable settlement of contested issues. 10 CFR 2.759. We have considered all of the factors enumerated above. We conclude that the settlement and "Partial Rescission of Order" are fair and reasonable and should be approved.

Order

Wherefore, it is ordered this 28th day of May, 1982, at Bethesda, Maryland, that the Joint Motion to Terminate this proceeding is granted and this proceeding is hereby dismissed.

James A. Laurenson,
Chairman.

Peter A. Morris,
Administrative Judge.
Jerry R. Kline,
Administrative Judge.

[FR Doc. 82-15239 Filed 6-3-82; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-443 OL, 50-444 OL; (ASLBP No. 82-471-01 OL)]

Public Service Co., of New Hampshire, et al., (Seabrook Station, Units 1 and 2); Memorandum and Order Setting Second Special Prehearing Conference

May 28, 1982.

1. A Special Prehearing Conference was held on May 6 and 7, 1982 in which the intervention petitions of the Seacoast Anti-Pollution League and the State of New Hampsire as well as the positions of the Applicant and the NRC Staff on these petitions were considered. The Board will withhold ruling on the admissibility of the various contentions of these intervenors until all petitioners for intervention have been heard at the Second Special Prehearing Conference.

2. A Second Special Prehearing Conference will be held at Portsmouth District Court, 111 Parrott Avenue, Portsmouth, New Hamsphire 03801 on July 15–16, 1982, beginning at 9:30 a.m. local time. One purpose of this conference will be consideration of the contentions of the following organizations who filed intervention petitions:

Coastal Chamber of Commerce
Commonwealth of Massachusetts
New England Coalition on Nuclear Pollution
Society for the Protection of the Environment of Southeastern New Hamsphire
Sun Valley Association
Town of South Hampton

3. Supplements to Petitions to Intervene of the organizations named in paragraph 2 received by the Board no later than June 17, 1982 will be considered at this conference. Responses to Supplements to Petitions by Applicant and NRC Staff, if deemed appropriate by parties, must be received by the Board no later than July 1, 1982.

4. Participants at this conference should also be prepared to revise the previously proposed schedule for further actions in this proceeding in order that the Board issue an action schedule simultaneous with its order admitting or denying contentions of the petitioning intervenors.

5. This Special Prehearing Conference is a public conference (10 CFR 2.751). However, no public written and/or oral testimony or limited appearance will be taken at this Special Prehearing Conference.

For the Atomic Safety and Licensing Board.
Dated at Bethesda, Maryland, this 28th day of May, 1982.

Helen F. Hoyt,
Administrative Judge.

[FR Doc. 82-15240 Filed 6-3-82; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas & Electric Corp.; Availability of the Ginna Restart Safety Evaluation Report and Issuance of Amendment to Provisional Operating License

The Nuclear Regulatory Commission's staff has completed its review of the Ginna steam generator tube rupture event of January 25, 1982. This review is documented in the Ginna restart Safety Evaluation Report, NUREG–0916. In NUREG–0916, the staff has determined, based on conclusions reached in Section 10.0, that operation of the Ginna plant would be acceptable subject to the commitments contained in Section 9.0 of that report which, as summarized below, have been incorporated into the license as conditions.

The Commission has also issued Amendment No. 51 to Provisional Operating License No. DPR–18, to Rochester Gas and Electric Corporation (the licensee), which revised the license and its appended Technical Specifications for operation of the R. E. Ginna Nuclear Power Plant (facility) located in Wayne County, New York. This amendment is effective as of its date of issuance.

The amendment revises the Technical Specification requirements for reactor coolant system Iodine 131 activity, and for coolant activity sampling. The amendment also incorporates License Condition 2.C(9), imposing as license requirements commitments made by the licensee regarding additional analysis; reevaluation of aspects of operator training; new operating procedures; confirmatory testing; revision of setpoints and surveillance requirements;

modification of safety injection pump logic; and the conduct of additional inspections.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application transmitted by letter dated May 17, 1982, and supporting information transmitted by letters dated April 12 and 26, 1982, and the letters identified in section 1.0 of NUREG–0916; (2) Amendment No. 51 to License No. DPR–18; and (3) the Commission's restart Safety Evaluation Report for Ginna (NUREG–0916). All of these items are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14627.

A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Item (3), NUREG–0916 may be purchased, at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention Sales Manager, Washington, D.C. 20555. GPO deposit holders can call 301–492–9530.

Dated at Bethesda, Maryland this 22nd day of May, 1982.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 82-15237 Filed 6-3-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas & Electric Corp.; R. E. Ginna Nuclear Power Plant Issuance of Director's Decision Under 10 CFR 2.206

By petition dated March 11, 1982 (47 FR 14988, April 7, 1982) the Sierra Club requested that the Nuclear Regulatory Commission's (the Commission) Director of Nuclear Reactor Regulation order the Rochester Gas and Electric Corporation to show cause why the R. E. Ginna Nuclear Power Plant should not be suspended or, in the alternative, why permission to restart the reactor should not be withheld until such time as the license and the NRC have taken all essential actions to ensure adequate protection of public health and safety. The Ginna plant is located in Wayne County, New York. The petition has been considered under the provisions of 10 CFR 2.206 of the Commission's regulations.

The Sierra Club sets forth in its petition a number of issues which it believes should be reviewed by the NRC before the plant resumes operation. The plant was shut down in January 1982 after the rupture of a steam generator tube.

Upon review of information pertaining to the concerns at the Ginna plant and the information provided by the petitioner, the Director of Nuclear Reactor Regulation has determined that issuance of an order to show cause why the operating license should not be suspended or withholding the restart of the Ginna plant is not warranted. Accordingly, that portion of the request by the Sierra Club has been denied. However, the Director of the Nuclear Reactor Regulation has granted the petitioner's request that the review include and consider specific areas detailed in the petition prior to restart of the Ginna plant. The documentation of this review is contained in NUREG–0916.

The reasons for the denial are explained in the "Director's Decision" under 10 CFR 2.206 (DD–82–03) as supported by the safety evaluation contained in NUREG–0916, which are available for public inspection in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Local Public Document Room at the Rochester Public Library, 115 South Avenue, Rochester, New York 14604.

A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the decision will beome the final action of the Commission twenty-five (25) days after issuance unless the Commission, on its own motion, institutes review of this decision within that time.

Dated at Bethesda, Maryland, this 22nd day of May, 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-15236 Filed 6-3-82; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22516; (70–6744)]

Michigan Power Co.; Proposed Issuance and Sale of Notes to Banks

June 1, 1982.

Michigan Power Company ("Michigan"), P.O. Box 413, Three Rivers, Michigan 49093, a public-utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application with this Commission pursuant to section 6(b) of the Public Utility Holding Company Act of 1935 ("Act").

Michigan proposes to issue and sell notes to a group of banks in an aggregate amount not to exceed $5,000,000 outstanding at any one time. The notes will be issued and sold from time to time and will be renewed from time to time prior to July 1, 1983, as funds may be required, provided that none of such notes will mature later than December 31, 1983. Each note will mature not more than 270 days after the date of issuance or renewal thereof and may be prepayable by Michigan at any time without premium or penalty. Michigan's credit arrangements with the banks generally require it to maintain compensating balances of not more than 5% of the line of credit and to pay a fee that is not more than ⅜ of 1% of the size of the line of credit. Borrowings from the banks are generally at the rate of up to 108.5% of the bank's prime commercial rate then in effect. It is stated that the effective cost to Michigan under any of the arrangements, assuming full use of the line of credit, would not exceed 125% of the prime commercial rate in effect from time to time, or not more than 20.0% on the basis of a prime commercial rate of 16.0%.

The proceeds of the notes will be added to the general funds of Michigan and used to pay its general obligations, including expenses incurred in its various construction projects and for other corporate purposes. The estimated

cost of Michigan's construction program for the year 1982 is approximately $4,500,000.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 25, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-15247 Filed 6-3-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22517, (70-6051)]

Middle South Utilities, Inc.; and Middle South Energy, Inc., Proposal by Subsidiary To Issue and Sell Common Stock to Parent Holding Company

June 1, 1982.

Middle South Utilities, Inc. ("MSU"), a registered holding company, and Middle South Energy, Inc. ("MSE"), 225 Baronne Street, New Orleans, Louisiana 70112, a wholly-owned subsidiary of MSU, have filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to sections 6(a), 7, 9(a), 10 and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 43 promulgated thereunder.

MSE is authorized by its articles of incorporation to issue up to 1,000,000 shares of common stock, no par value. As of April 28, 1982, 535,100 shares had been issued and sold to MSU for an aggregate cash consideration of $535,100,000. By a Commission order dated August 14, 1981 (HCAR No. 22161), MSE was authorized to issue and sell to MSU up to 50,000 additional shares ("1982 Common Stock") from time to time through December 31, 1982, at a price of $1,000 per share. As of April 28, 1982, 41,500 shares of the 1982 Common Stock had been sold to MSU. It now appears that MSE may be required to issue and sell up to 60,000 shares at the same price, in addition to the 1982 Common Stock, through December 31, 1983. The proceeds of such sales will be applied to costs incurred by MSE in the construction of its Grand Gulf nuclear-fired generating facility in Mississippi. Sales will be timed to coincide with MSE's cash needs with respect to the Grand Gulf project.

The application-declaration and amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 28, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-15246 Filed 6-3-82; 8:45 am]

BILLING CODE 8010-01-M

[File No.: 22-11535]

Occidental Petroleum Corp.; Application and Opportunity for Hearing

May 28, 1982.

Notice is hereby given that Occidental Petroleum Corporation (the "Applicant") has filed an application (the "Application") under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Chemical Bank under an existing indenture with Hooker Chemical Corporation, a California corporation and a wholly owned subsidiary of the Applicant, with respect to which the Applicant has guaranteed the payment of principal of, premium, if any, and interest on, the debentures issuable thereunder, and under a new indenture with the Applicant, as guarantor, and Occidental International Finance N.V. ("Finance"), a Netherlands Antilles corporation and wholly owned subsidiary of the Applicant, as issuer, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chemical Bank from acting as trustee under either indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which any other securities of the same issuer are outstanding if the issuer shall have sustained the burden of proving, on application to the Securities and Exchange Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. Chemical bank currently is acting as trustee under an indenture in which the Applicant is the guarantor of debentures issued by its wholly owned subsidiary Hooker Chemical Corporation. Such indenture, dated as of January 15, 1966 (the "Debenture Indenture"), involved the issuance of $25,000,000 aggregate principal amount 4¾% Sinking Fund Debentures due January 15, 1991 (the "Debentures"). The Debentures Indenture was filed as an exhibit to a registration statement filed under the Securities Act of 1933 and has been registered under the Securities Act of 1933 and have not been qualified under the Trust Indenture Act of 1939.

2. The Applicant a Hooker Chemical Corporation are not in default in any respect under the Debenture Indenture or under any other existing indenture.

3. Chemical Bank has entered into an indenture with the Applicant and Finance dated as of March 1, 1982 (the "Note Indenture"), pursuant to which there were issued $75,000,000 aggregated principal amount 16¾ per cent

Guaranteed Notes due 1987 (the "Notes"), guaranteed as to principal and interest by the Applicant. The guarantee contained in the Note Indenture, if enforced against the Applicant, would rank on a parity with the guarantee of the Debentures described in Paragraph 1, if enforced against the Applicant. The notes have not been qualified under the Trust Indenture Act of 1939 because they are being offered and sold under circumstances reasonably designed to preclude distribution or redistribution within, or to nationals of the United States.

4. The obligations of the Applicant pursuant to the guarantee described in paragraph 1 and under the Note Indenture are wholly unsecured and, aside from differences as to amounts, interest rates, maturity dates, redemption dates and redemption powers, sinking fund, certain convenants relating to United States taxation, and differences in form between the Note Indenture and the Debenture Indenture, the terms of said Indentures are substantially similar. There are no materials differences between the provisions of the Note Guarantee and the Debenture Guarantee relating to the convenants of the Applicant which apply to the future.

Such differences as exist among the Debenture Indenture and the Note Indenture and the respective guarantees by Applicant relating thereto are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chemical Bank from acting as Trustee under either of said Indentures.

Applicant has waived (a) notice of hearing, (b) hearing on the issues raised by the Application and (c) all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said Application, which is a public document on file in the office of the Commission's Public Reference Section, 1100 L. Street, N.W., Washington, D.C.

Notice is further given that any interested person may, not later than June 23, 1982, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, that the issues of fact or law raised by said Applicant which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-15248 Filed 6-3-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TREASURY

Public Information Collection Requirements Submitted to OMB for Review

During the period May 21 through May 27, 1982, the Department of Treasury submitted the following public information collection requirements to OMB, for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be adressed to the Treasury Reports Management Officer, Information Resources Management Division, Room 309, 1625 I St. N.W., Washington, D.C. 20220; and to the OMB reviewer listed at the end of each entry.

Date Submitted: May 24, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: 1545-0322.

Form Number: Letter 90C and SC.

Type of Submission: Revision.

Title: Short Period Return Received—Explanation Requested.

Purpose: This letter is used to obtain information to determine whether the taxpayer is entitled to the benefits of short period filing and therefore to complete processing the return.

OMB Reviewer: Michael Abrahams, (202) 395-6880, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: May 21, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: 1545-0574.

Form Number: 500-5-477.

Type of Submission: Extension.

Title: Requesting Information from Vendors on Purchase Orders.

Purpose: Fiscal staff uses form 500-5-477 to request information from vendors. The information is used to associate vendor documents with our files in order to meet GAO requirements for supporting documentation used as a basis for disbursements from the Treasury.

OMB Reviewer: Michael Abrahams, (202) 395-6880, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: May 24, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: 1545-0021.

Form Number: 709-A.

Type of Submission: Revision.

Title: United States Short Form Gift Tax Return.

Purpose: Used to report gifts that would be taxable except that they are "split" between husband and wife. The form is a simplified version of Form 709, designed to relieve these gift/taxpayers of the burden of filing Form 709. IRS uses the information to assure that "gift-splitting" was properly elected.

OMB Reviewer: Michael Abrahams, (202) 395-6880, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: May 25, 1982.

Submitting Bureau: Office of the Secretary.

OMB Number: N/A (New Submission).

Form Number: TFR-625.

Type of Submission: New.

Title: Report on Tangible Property in Which Iran Has an Interest.

Purpose: Form will provide the U.S. Government information to be used in negotiations and discussions with Iran and in formulating appropriate policies with respect to Iranian tangible properties held by U.S. persons.

OMB Reviewer: Arnold Strasser, (202) 395-6880, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Joy Tucker,

Departmental Reports Management Officer.

[FR Doc. 82-15197 Filed 6-3-82; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Career Development Committee; Renewal

This is to give notice in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Career Development Committee has been renewed by the Administrator of Veterans Affairs for a two year period beginning May 18, 1982 through May 18, 1984.

Dated: May 28, 1982.

By direction of the Administrator.

Charles T. Hagel,

Deputy Administrator.

[FR Doc. 82–15195 Filed 6–3–82; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 108
Friday, June 4, 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

CIVIL AERONAUTICS BOARD

Notice of Addition of Items to the June 3, 1982 Meeting

TIME AND DATE: 10:00 a.m., June 3, 1982.

PLACE: Room 1027 (Open) 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

6a. Notice of Incorporation by Reference of Terms of Contracts of Carriage after Sunset of Domestic Tariffs (OGC)

12a. Docket 40225, Notice of Frontier Airlines to terminate service at Cody and Worland, Wyoming (MBA 1069-B, BDA OCCCA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, Secretary, (202) 673-5068.

[S-839-82 Filed 6-2-82; 3:40 pm]

BILLING CODE 6320-01-M

2

CIVIL AERONAUTICS BOARD

Short Notice and Closure of Items for June 3, 1982 Board Meeting

TIME AND DATE: 10:00 a.m., June 3, 1982.

PLACE: Room 1027 (Open) Room 1012 (Closed) 1825 Connecticut Avenue, NW, Washington, D.C. 20428.

SUBJECT:

17. Report on Israel. (BIA)

18. Report on Japan. (BIA)

19. Docket 40185, Application of Air Florida and Lineas Aereas Costarricenses, S.A. (LACSA) for approval of agreements and interlocking relationships, and for antitrust immunity. (OGC, BIA)

PERSON TO CONTACT: Phyllis T. Kaylor, Secretary, (202) 673-5068.

[S-838-82 Filed 6-2-82; 3:40 pm]

BILLING CODE 6320-01-M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 AM (Eastern Time), Tuesday, June 8, 1982.

PLACE: Commission Conference Room No. 5240 on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, DC 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED: Open to the public:

1. Ratification of Notation Vote: Freedom of Information Act Appeals.

2. Freedom of Information Act Appeal No. 82-3-FOIA-13-ME, concerning a request for contents of Title VII and Equal Pay Charges.

3. Freedom of Information Act Appeal No. 82-3-FOIA-50, concerning an employee's request for access to a merit promotion folder.

4. Modification of SCIP/SCEP Procedures.

5. State and Local Programs; Recommended Mid-Year Upward and Downward Modifications to FY'82 New Charge Resolution Contracts.

6. A report on Commission Operations by the Executive Director.

Closed to the public:

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: TREVA MCCALL, EXECUTIVE OFFICER, AT (202) 634-6748.

This Notice Issued June 1, 1982.

[S-333-82 Filed 6-1-82; 4:41 pm]

BILLING CODE 6570-06-M

4

FEDERAL ELECTION COMMISSION

Federal Register No. 832

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 10, 1982, at 10:00 a.m.

CHANGE IN MEETING:

The meeting will now be held on Wednesday, June 9, 1982, in view of the scheduled confirmation hearings before the Senate Rules Committee on Thursday, June 10, 1982.

The meeting will start at 10:00 a.m. on June 9, 1982.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer; Telephone: 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[S-836-82 Filed 6-2-82; 1:13 pm]

BILLING CODE 6715-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Monday, June 1, 1982, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,261-L-Banco Credito y Ahorro Ponceno Ponce, Puerto Rico

Memorandum re: Banking Regulatory Reform Meetings.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: June 1, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-835-82 Filed 6-2-82; 11:11 am]

BILLING CODE 6714-01-M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 9, 1982.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 2, 1982.

James McAfee,

Associate Secretary of the Board.

[S–840–82 Filed 6–2–82; 3:57 pm]

BILLING CODE 6210–01–M

7

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 31 and June 7, 1982 (Changes).

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open/Closed.

MATTERS TO BE CONSIDERED:

Wednesday, June 2

2:30 p.m.

Briefing on Efforts to Improve IAEA Safeguards (day and time change) (Closed—Exemption 1)

Thursday, June 3

9:30 a.m.

Analysis of Licensing Board Decision on San Onofre Units 2 and 3 (Emergency Planning) (day and time change) (Closed—Exemption 10)

Monday, June 7

9:30 a.m.

Briefing on Status of Zimmer Investigation (public meeting—Portions may be closed)

Note.—Other items remain as announced.

ADDITIONAL INFORMATION: By a vote of 4–0 (Commissioner Gilinsky not present) the Commission determined that the Discussion of Enforcement Action (Subpoena authority) (Closed—Exemption 5) held on Friday, May 28, 1982 at 11:55 a.m. be held on less than one week's notice to the public.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Dated: May 28, 1982.

Walter Magee,

Office of the Secretary.

[S–837–82 Filed 6–2–82; 3:10 pm]

BILLING CODE 7590–01–M

8

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the Week of June 7, 1982, in Room 825, 500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Tuesday, June 8, 1982, at 9:00 a.m. An open meeting will be held on Thursday, June 10, 1982, at 10:00 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Chairman Shad and Commissioners Loomis, Evans, Thomas and Longstreth voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 8, 1982, at 9:00 a.m., will be:

Formal order of investigation.
Access to investigative files by Federal, State, or Self-Regulatory authorities.
Institution of injunctive actions.
Administrative proceeding of an enforcement nature.
Freedom of Information Act appeals.
Opinion.

The subject matter of the open meeting scheduled for Thursday, June 10, 1982, at 10:00 a.m., will be:

1. Consideration of whether to amend the Commission's rules concerning access to investigative files, to codify the authority of the staff to grant access to such files to receivers, special counsels, and other similar persons appointed in Commission enforcement proceedings, the Securities Investor Protection Corporation ("SIPC"), SIPC trustees, and counsel for SIPC trustees. For further information, please contact Alan Rosenblat at (202) 272–2428.

2. Consideration of whether to publish for comment a proposed amendment to Rule 13d–2(b) under the Securities Exchange Act of 1934, which would eliminate the requirement to file an annual amendment to a Schedule 13G when no changes have occurred in the information contained therein. For further information, please contact Arthur H. Miller at (202) 272–2589.

3. Consideration of whether to release a staff monitoring report on the operation of the Intermarket Trading System. For further information, please contact Terry M. Chuppe at (202) 523–5623.

At times changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Richard Starr at (202) 272–2467.

June 1, 1982.

[S–834–82 Filed 6–2–82; 8:48 am]

BILLING CODE 8010–01–M

federal register

Friday
June 4, 1982

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following 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:	
CA81-5119	May 15, 1981.
CA81-5154	Sept. 25, 1981.
CA81-5132	July 7, 1981.
CA81-5129	July 7, 1981.
Iowa: IA81-4096	Nov. 27, 1981.
Idaho: ID81-5157	Oct. 9, 1981.
District of Columbia: DC81-3040	June 5, 1981.
Maryland and Virginia: DC81-3040	June 5, 1981.
Alaska: AK81-5136	July 24, 1981.
Massachusetts:	
MA81-3071	Oct. 16, 1981.
MA81-3050	Aug. 28, 1981.
MA81-3054	Sept. 4, 1981.
Oregon: OR82-5100	Mar. 12, 1982.
New Jersey: NJ82-3006	Feb. 26, 1982.
Pennsylvania:	
PA81-3027	July 17, 1981.
PA81-3066	Oct. 23, 1981.
PA81-3068	Sept. 25, 1981.
PA81-3073	Oct. 2, 1981.
PA81-3076	Oct. 9, 1981.
PA81-2072	Oct. 2, 1981.
PA81-3077	Oct. 9, 1981.
PA81-3081	Oct. 23, 1981.
PA81-3058	Aug. 28, 1981.
PA82-3011	Mar. 12, 1982.
PA82-3010	Mar. 5, 1982.
PA82-3012	Mar. 5, 1982.
Rhode Island: RI81-3042	Aug. 21, 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 in each State. Supersedeas decision numbers are in parentheses following the numbers of the decisons being superseded.

Alabama: AL80-1086 (AL82-1029)	Aug. 1, 1980.
Delaware: DE81-3028 (DE82-3015)	May 8, 1981.
Florida: FL80-1052 (FL82-1031)	Feb. 8, 1980.
Indiana: IN77-2129 (IN82-2039)	Aug. 19, 1977.

Please note that we are changing the format for **Federal Register** wage decisions to coincide with the provisions of All Agency Memorandum No. 132 dated January 29, 1980, which provides that the Department of Labor will

discontinue identifying fringe benefits separately. Rather, they will be stated as a composite figure which is the total hourly equivalent value of fringe benefits found to be prevailing. Fringe benefits which cannot be stated in monetary terms will be shown in footnotes. This procedure will be phased in gradually.

Signed at Washington, D.C., This 28th day of May 1982.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-30-M

Modification Page 1

DECISION NO. CA81-5119 - Mod. #8
(46 FR 27017 - May 15, 1981)
Alameda, Amador, Calaveras, Contra Costa, Del Norte, El Dorado, Humboldt, Marin, Mariposa, Merced, Napa, Nevada, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Tuolumne, Yolo, and Yuba Counties, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters: (Area 2):		
Merced County	$11.80	$5.225
Drywall Installers:		
Merced County	13.57	5.225
Electricians: (Area 8):		
Merced County	9.25	3%+1.15

DECISION NO. CA81-5154 - Mod. #11 - (46 FR 47384- September 25, 1981)
Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Refrigeration and Air Conditioning:		
Area 1	$15.30	$3.79
Area 2	17.40	6.40

DECISION NO. CA81-5132 - Mod. #11
(46 FR 35860 - July 7, 1981)
Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, 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 Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba Counties, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians:		
Area 1	$22.56	3%+ 5.298

DECISION NO. CA81-5129 - Mod. #9 - (46 FR 34961 - July 7, 1981)
Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispi, Santa Barbara, and Ventura Counties, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Refrigeration and Air Conditioning:		
Area 1	$15.30	$3.79
Area 2	17.40	6.40

Modification Page 2

DECISION NO. IA81-4096 - MOD. #7
(46 FR 58023 - 11/27/81)
Woodbury County, Iowa

	Basic Hourly Rates	Fringe Benefits
CHANGE: Electricians	$15.06	2.40+ 3/4%
Asbestos workers	$15.70	2.15
Cement masons	15.48	

DECISION NO. ID81-5157 - Mod #10
(46 FR 50223 - Oct. 9, 1981)
Statewide Idaho

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS: (Area 1)		
Carpenters; Lathers	$15.85	$2.26
Piledrivers; Saw Filer; Stationary Power Woodworking Tool Operator	16.00	2.26
Boom Men; Carpenters working on Burned, Charred, Creosoted or similarly treated material	16.10	2.26
Piledriver (Creosoted Material)	16.25	2.26
Millwright and Machine Erector	16.35	2.26
CARPENTERS: (Area 2)		
ZONE 1:		
Carpenters; Floor Layers; Shinglers; Drywall Applicator; Acoustical Material; Lathers	13.17	4.20
Sawfiler; Stationary Machine operator; Piledrivermen; Bridgeman and Wharf Builder, Automatic Pile Threader	13.34	4.20
Millwright and Machine Erector, Piledriverman's Boom Man	13.46	4.20
ZONE 2:		
Carpenters; Floor Layers; Shinglers; Drywall Applicator; Acoustical Material; Lathers	14.67	4.20
Sawfiler; Stationary Machine Operator; Piledrivermen; Bridgeman and Wharf Builder; Automatic Pile Threader	14.84	4.20
Millwrights and Machine Erector Piledriverman's Boom Man	14.96	4.20
ZONE 3:		
Carpenters; Floor Layers; Shinglers; Drywall Applicator; Acoustical Material; Lathers	14.92	4.20
Sawfiler; Stationary Machine Operator; Piledrivermen; Bridgeman and Wharf Builder; Automatic Pile Threader	15.09	4.20
Millwright and Machine Erector; Piledriverman's Boom Man	15.21	4.20

DECISION NO. DC81-3040
Mod. #10
(46 FR 30290 - 6/5/81)
District of Columbia, Maryland - Montgomery and Prince Georges; D.C. Training School; Virginia - Independent City of Alexandria, Arlington and Fairfax Counties

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Ironworkers:		
Reinforcing	$15.11	$2.47
Structural, Ornamental & Chain Link Fence	15.11	$2.755

DECISION NO. AK81-5136 - Mod. #4
(46 FR 38243 - July 24, 1981)
Statewide, Alaska

Omit:
Carpenters: Residential Area 3
Cement Masons: Residential (Area 3)
Electricians: Residential (Area 3)
Laborers: Residential (Area 3)
Painters: Residential (Area 3)
Sheet Metal Workers: Residential (Area 3)

DECISION NO. MA81-3071 - MOD. #3 (46 FR 51163 - October 16, 1981)	Basic Hourly Rates	Fringe Benefits
BERKSHIRE, FRANKLIN, HAMPDEN AND HAMPSHIRE COUNTIES, MASSACHUSETTS		
CHANGE:		
BOILERMAKERS	16.53	1.315+ 10%
BRICKLAYERS: CEMENT MASONS, PLASTERERS, STONE MASONS, MARBLE-TILE-TERRAZZO WORKERS, POINTERS, CLEANERS, CAULKERS: Hampden, Hampshire, Franklin Counties, Berkshire County (Twps. of Becket, Otis and Sandisfield)	13.01	2.93
CARPENTERS: SOFT FLOOR LAYERS, DRYWALL CARPENTERS: Berkshire and Franklin County (Twps. of Monroe and Monroe Bridge)	12.44	2.09
Franklin County (Remainder of County), Hampden and Hampshire Counties	13.70	2.07
ELECTRICIANS: Berkshire County, Franklin County (Twps. of Hawley, Monroe and Rowe), Hampshire County (Twps. of Middlefield, Cummington and Plainfield)	13.79	1.51+ 3%
Franklin County (Remainder of County), Hampshire County (Remainder of County), Hampden County (Twps. of Chester, Holyoke, and north portion of Chicopee) Electricial Contracts under $85,000.00	12.86	1.27+ 3%
Electrical Contracts over $85,000.00	14.86	"
GLAZIERS	11.67	2.27
IRONWORKERS: Hampshire, Hampden, and Franklin Counties, Berkshire County (Twps. of Becket, Washington, Lee, Sandisfield, New Marlboro, Hinsdale, Peru, Savoy, Monterey, Sheffield, Windsor, Otis and North and East Otis)	13.25	5.07
LINE CONSTRUCTION: Lineman	15.515	1.70+ 3%+a
Heavy Equipment Operator	13.79	"
Equipment Operator, Tractor Trailer	13.01	"
Groundman	10.34	"
Driver Groundman	11.69	"
MARBLE, TILE AND TERRAZZO FINISHERS: Berkshire and Hampden Counties	11.45	
PAINTERS: Brush and Taper	11.96	1.99
Spray and Sandblasting	15.83	1.99
Swing Stage Under 40' Steel	12.15	1.99
Swing Stage Over 40' Steel	12.46	1.99
SIGN PAINTERS	11.30	1.54
PILEDRIVERMEN	15.40	2.00
PLUMBERS AND STEAMFITTERS: Hampden County, Berkshire County (Twps. of Otis, Becket and Sandisfield), Hampshire County (Twps. of Belcherton, Granby, Huntington, Middlefield, South Hadley and Ware)	15.12	2.86
Berkshire County (Remainder of County), Franklin County (Twps. of Monroe, Towe and western part of Charlemont)	14.40	2.70

DECISION NO. MA81-3071 - (CONT'D)	Basic Hourly Rates	Fringe Benefits
Franklin County (Orange)	13.87	1.85+ 4%
Franklin County (Remainder of County), Hampshire County (Remainder of County)	15.12	2.86
SHHET METAL WORKERS	14.06	3.20
SPRINKLER FITTERS	15.80	2.43
STEAMFITTERS: Hampden County, Berkshire County (Twps. of Otis, Becket, New Boston, Sandisfield), Hampshire County	15.12	2.86
Berkshire County (Remainder of County), Franklin County (Twps. of Monroe, Towe and western part of Charlemont)	14.40	2.70
Franklin County (Orange)	13.86	1.85+ 4%
Franklin County (Remainder of County)	15.12	2.86
LABORERS (BUILDING); GROUP 1	11.05	2.25
GROUP 2	11.30	2.25
GROUP 3	11.55	2.25
GROUP 4	11.80	2.25
GROUP 5	12.05	2.25
LABORERS (HEAVY & HIGHWAY): Berkshire, Hampden and Hampshire Counties, Franklin County (except Orange and Worwick) CLASS I	11.05	2.25
CLASS II	11.30	2.25
CLASS III	11.80	2.25
CLASS IV	12.05	2.25
Franklin County (Orange and Worwicj) CLASS I	111.05	2.25
CLASS II	11.30	2.25
CLASS III	11.80	2.25
CLASS IV	12.05	2.25
POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION: CLASS I	14.63	2.30+a
CLASS II	14.43	2.30+a
CLASS III	14.23	2.30+a
CLASS IIIA	13.86	2.30+a
CLASS IV	12.39	2.30+a
CLASS V	11.71	2.30+a
CLASS VI	10.60	2.30+a
CLASS VII	15.38	2.30+a
CLASS VIII	11.78	2.30+a
CLASS IX	15.19	2.30+a
CLASS X	15.13	2.30+a
CLASS XI	15.63	2.30+a
POWER EQUIPMENT OPERATORS HEAVY AND HIGHWAY CONSTRUCTION: CLASS I	14.63	2.30+a
CLASS II	14.43	2.30+a
CLASS III	14.23	2.30+a
CLASS IIIA	13.86	2.30+a
CLASS IV	12.39	2.30+a
CLASS V	11.71	2.30+a
CLASS VI	10.60	2.30+a
CLASS VII	15.38	2.30+a
CLASS VIII	11.78	2.30+a
CLASS IX	15.19	2.30+a
CLASS X	15.63	2.30+a
CLASS XI	15.63	2.30+a
TRUCK DRIVERS: CLASS I	11.86	2.65
CLASS II	12.03	2.65
CLASS III	12.10	2.65
CLASS IV	12.22	2.65
CLASS V	12.32	2.65
CLASS VI	12.61	2.65
CLASS VII	12.90	2.65

DECISION NO. MA81-3050 - MOD. #2 (46 FR 43625 - August 28, 1981) WORCHESTER COUNTY, MASSACHUSETTS	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	14.73	2.41
BOILERMAKERS	16.53	1.315+ 10%
BRICKLAYERS, CEMENT MASONS, PLASTERERS AND STONEMASONS:		
Warren	13.01	2.91
Hopedale, Milford and Southboro	14.15	2.84
Ashburnham, Gardner, Harvard, Hubbardston, Lancaster, Leominster, Luneburg, Petersham, Phillipston, Princeton, Royalston, Sterling, Templeton, Westminister and Winchendon	14.75	2.24
Residential and Veneer Plasterers	11.80	2.24
Remainder of County	13.60	2.50
CARPENTERS AND SOFT FLOOR LAYERS:		
Hardwick, Warren and West Brookfield	13.70	2.07
Remainder of County	14.11	2.62
GLAZIERS:		
Warren and West Warren	11.67	2.27
Remainder of County	15.45	2.14
IRONWORKERS	14.55	3.50
LABORERS (BUILDING):		
Laborers, Carpenter Tenders and Wrecking Laborers	12.20	2.35
Jackhammer Operators, Pavement Breakers, Asphalt Rakers, Carbide Core Drilling Machine, Chain Saw Operators, Pipelayers, Barco-type Jumping Tampers, Laser Beam, Concrete Pump, Masons Tenders, Mortar Mixers, Ride-on Motorized Buggies, and Fence and Beam Rail Erectors	12.45	2.35
Air Track, Block Pavers, Rammers and Curb Setters	12.95	2.35
Blasters and Powdermen	13.20	2.35
Pre-Cast Floor and Roof Plank Erectors	12.70	2.35
LINE CONSTRUCTION:		
Line	15.00	1.20+3% 3/8of1%
Equipment Operators	12.75	"
Driver Groundman	12.00	"
Groundman	9.75	"
PAINTERS:		
Warren, West Warren:		
Brush and Tapers	11.96	1.99
Spray and Sandblasting	15.83	1.99
Swing and Chair Work and Steel Riding Under 40 Feet	12.15	1.99
Swing and Chair Work and Steel Riding Over 40 Feet	12.46	1.99
Holedale, Mendon, Milford, Southboro, Upton and Westboro:		
Brush	12.30	1.68
Spray, Sandblast and Epoxy	13.30	1.68
Steel	13.55	1.68
Repaint (Brush)	11.75	1.68
Remainder of County:		
Brush	14.08	2.59
Steel	16.20	2.59
Sandblasting and Spray Repaint	15.08	2.59
Residential	11.97	2.59
PILEDRIVERMEN	10.56	2.59
LABORERS (HEAVY AND HIGHWAY)	15.40	2.00
CLASS I	11.05	2.25
CLASS II	11.30	2.25
CLASS III	11.80	2.25
CLASS IV	12.05	2.25

DECISION NO. MA81-3050 - (CONT'D)	Basic Hourly Rates	Fringe Benefits
BUILDING CONSTRUCTION:		
Royalston, Phillipston, Athol, Petersham, Hardwick, New Braintree, Brookfield, E. Brookfield, N. Brookfield, Oakham, Barre, Templeton, Winchendon, Sturbridge, W. Brookfield and Warren		
POWER EQUIPMENT OPERATORS:		
CLASS I	14.63	2.30+a
CLASS II	14.43	2.30+a
CLASS III	14.23	2.30+a
CLASS IIIA	13.86	2.30+a
CLASS IV	12.39	2.30+a
CLASS V	11.71	2.30+a
CLASS VI	10.60	2.30+a
CLASS VII	15.38	2.30+a
CLASS VIII	11.78	2.30+a
CLASS IX	15.19	2.30+a
CLASS X	15.13	2.30+a
CLASS XI	15.63	2.30+a
HEAVY AND HIGHWAY CONSTRUCTION:		
Royalston, Phillipston, Athol, Petersham, Hardwick, New Braintree, Brookfield, E. Brookfield, N. Brookfield, Oakham, Barre, Templeton, Winchendon, Sturbridge, W. Brookfield and Warren		
POWER EQUIPMENT OPERATORS:		
CLASS I	14.63	2.30+a
CLASS II	14.43	2.30+a
CLASS III	14.23	2.30+a
CLASS IIIA	13.86	2.30+a
CLASS IV	12.39	2.30+a
CLASS V	11.71	2.30+a
CLASS VI	10.60	2.30+a
CLASS VII	15.38	2.30+a
CLASS VIII	11.78	2.30+a
CLASS IX	15.19	2.30+a
CLASS X	15.13	2.30+a
CLASS XI	15.63	2.30+a
BUILDING CONSTRUCTION Remainder of County		
POWER EQUIPMENT OPERATORS:		
CLASS I	17.11	2.81+a
Hourly premium for boom lengths, including jib:		
Over 150 feet + .62		
Over 185 feet + 1.11		
Over 210 feet + 1.55		
Over 250 feet + 2.35		
Over 295 feet + 3.27		
CLASS II	16.99	2.81+a
CLASS III	14.35	2.81+a
CLASS IV	15.63	2.81+a
CLASS V	12.74	2.81+a
CLASS VI	13.51	2.81+a
HEAVY AND HIGHWAY CONSTRUCTION Remainder of County		
POWER EQUIPMENT OPERATORS		
CLASS I	17.11	2.81+a
Hourly premium for boom lengths, including jib:		
Over 150 feet + .62		
Over 185 feet + 1.11		
Over 210 feet + 1.55		
Over 250 feet + 2.35		
Over 295 feet + 3.27		
CLASS II	16.99	2.81+a
CLASS III	14.35	2.81+a
CLASS IV	15.63	2.81+a
CLASS V	12.74	2.81+a
CLASS VI	13.51	2.81+a
BUILDING, HEAVY AND HIGHWAY CONSTRUCTION TRUCK DRIVERS		
CLASS I	11.86	a+b
CLASS II	12.03	a+b
CLASS III	12.10	a+b
CLASS IV	12.22	a+b
CLASS V	12.32	a+b
CLASS VI	12.61	a+b
CLASS VII	12.90	a+b

Modification Page 7

DECISION NO. MA81-3054 MOD. #3 (46 FR 44631 - September 4 1981)	Basic Hourly Rates	Fringe Benefits
BARNSTABLE, BRISTOL, DUKES, ESSEX, MIDDLESEX, NANTUCKET, NORFOLK, PLYMOUTH, AND SUFFOLK COUNTIES, MASSACHUSETTS		
CHANGE:		
BOILER MAKERS	16.53	1.315+ 10%
BRICKLAYERS		
SUFFOLK, MIDDLESEX (Arlington, Cambridge, Everett, Malden, Melford Melrose and Somerville), NORFOLK (Brookline and Milton-except plasterers)	14.45	2.57
Residential	11.56	2.57
Veneer Plastering	11.56	2.57
NORFOLK (Avon, Holbrook, Randolph and Stoughton), PLYMOUTH (Aington, Bridgewater, Brockton, Carver, Duxbury, E. Bridgewater, Halifax, Hanover, Hanson Kingston, Marshfield, Middleboro, Pembroke, Plymouth, Norwell (except plasterers), Rockland, W. Bridgewater and Whitman), BRISTOL (Easton and N. and S. Easton)	14.75	2.24
Residential	11.80	2.24
Veneer Plastering	11.80	2.24
DUKES, NANTUCKET, NORFOLK (Bellingham, Canton, Dedham, Foxboro, Franklin, Norfolk, Norwood, Plainville, Sharon, Walpole, Westwood and Wrentham), PLYMOUTH (Lakeville only) BRISTOL (Attleboro, N. Attleboro, Mansfield, Raynham, Barrowsville, Taunton, Berkley, North Dighton, Rehoboth, Seehonk)	14.40	2.59
Residential	11.52	2.59
Veneer Plastering	11.52	2.59
MIDDLESEX (Reading, N. Reading, Wakefield), ESSEX	14.70	2.29
Residential	11.76	2.29
Veneer Plastering	11.76	2.29
MIDDLESEX (Belmont, Burlington, Concore, Lexington, Lincoln, Stoneham, Sudbury, Waltham, Watertown, Wayland, Eston, Winchester and Woburn)	14.75	2.24
Residential	11.80	2.24
Veneer Plastering	11.80	2.24
MIDDLESEX (Acton, Ashby, Ayer, Bedford, Billerica, Boxboro, Carlisle, Chelmsford, Dracut, Dunstable, Ft. Devens, Groton, Littleton, Lowell, North Acton, Pepperell, Shirley, South Acton, Tewksbury, Townsend, Tyngsboro, West Acton, Westford, and Wilmington	14.75	2.24
Residential	11.80	2.24
Veneer Plastering	11.80	2.24
BARNSTABLE, PLYMOUTH (Marion, Mattapoisett, Rochester and Wareham), BRISTOL (Acushnet, Dartmouth, Fairhaven, Fall River, Freetown, New Bedford, N. and S. Dartmouth, Somerset, Swansea and Westport)	14.25	2.24
Residential	11.40	2.24
Veneer Plastering	11.40	2.24
MIDDLESEX (Ashland, Farmington, Holliston, Hopkington, Hudson, Sherborn and Stow), NORFOLK (Medfield, Medway and Millis)	14.15	2.84
Residential	11.32	2.84
Veneer Plastering	11.32	2.84
MIDDLESEX (Newton only), NORFOLK (Dover, Needham and Wellesley)	14.60	2.35
NORFOLK (Braintree, Cohaset, N. Weymouth, Quincy, S. Weymouth and		

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DECISION NO. MA81-3054 - (CONT'D)	Basic Hourly Rates	Fringe Benefits
Weymouth), Plymouth (Hingham, Hull, Scituate and the Island of Quincy	14.75	2.24
Residential	11.80	2.24
Veneer Plastering	11.80	2.24
CARPENTERS: SOFT FLOOR LAYERS:		
MIDDLESEX (Bedford, Burlington, Lowell, Billerica, Tyngsboro, Westford, Tewksbury, Acton, Littleton, Dracut, Wilmington, Dunstable, Chelmsford and Carlisle)	13.85	2.47
GLAZIERS:		
SUFFOLK, MIDDLESEX, NORFORK, ESSEX, PLYMOUTH (all except Carver, Lakeville, Middleboro, Marion, Mattapoisett, Rochester and Wareham), DUKES and NANTUCKET	15.45	2.14
IRONWORKERS		
SUFFOLK, NORFOLK (Remainder of County), ESSEX (Manchester, Beverly, Peabody, Salem, Lynn, Lynnfield, Saugus, Swampscott, Marbelhead and Nahant), PLYMOUTH (Remainder of County), BRISTOL (Easton and N. Easton), MIDDLESEX (Sherborn, Natick, Framingham, Weston, Newton, Arlington, Belmont, Cambridge, Somerville, Waltham, Medford, Madlen, Stoneham, Woburn, Winchester, Burlington, Bedford, Lincoln, Lexington, Sudbury, Maynard, Concord and Everett	15.30	3.50
MIDDLESEX (Ashby, Shirley, Ayer, Boxboro, Stow, Hudson, Marlboro, Ashland, Hopkinton and Holliston)	15.30	3.50

	Basic Hourly Rates	Fringe Benefits
MILLWRIGHTS	15.20	2.10
LABORERS (Building)		
CLASS I	12.20	2.35
CLASS II	12.45	2.35
CLASS III	12.70	2.35
CLASS IV	12.95	2.35
CLASS V	13.20	2.35
POWER EQUIPMENT OPERATORS: BUILDING CONSTRUCTION		
CLASS I	17.11	2.81
Hourly premium for boom lengths including jib:		
Over 150 ft. + .62		
Over 185 ft. + 1.11		
Over 210 ft. + 1.55		
Over 250 ft. + 2.35		
Over 295 ft. + 3.27		
CLASS II	16.99	2.81
CLASS III	14.35	2.81
CLASS IV	15.63	2.81
CLASS V	12.74	2.81
CLASS VI	13.51	2.81
POWER EQUIPMENT OPERATOR: HEAVY AND HIGHWAY CONSTRUCTION:		
CLASS I	17.11	2.81
Hourly premium for boom lengths including jib:		
Over 150 ft. + .62		
Over 185 ft. + 1.11		
Over 210 ft. + 1.55		
Over 250 ft. + 2.35		
Over 295 ft. + 3.27		
CLASS II	16.99	2.81
CLASS III	14.35	2.81
CLASS IV	15.63	2.81
CLASS V	12.74	2.81
CLASS VI	13.51	2.81
MARINE CONSTRUCTION POWER EQUIPMENT OPERATORS:		
CLASS I	17.11	2.81
Hourly premium for boom lengths including jib:		
Over 150 ft. + .62		
Over 185 ft. +1.11		
Over 210 feet + 1.55		
Over 250 ft. + 2.35		
Over 295 ft. + 3.27		

DECISION NO. MA81-3054 - (CONT'D)	Basic Hourly Rates	Fringe Benefits
CLASS II	16.99	2.81
CLASS III	14.35	2.81
CLASS IV	15.63	2.81
CLASS V	12.74	2.81
CLASS VI	13.51	2.81
TRUCK DRIVERS		
CLASS I	11.86	2.65
CLASS II	12.03	2.65
CLASS III	12.10	2.65
CLASS IV	12.22	2.65
CLASS V	12.32	2.65
CLASS VI	12.61	2.65
CLASS VII	12.90	2.65

DECISION NO. OR82-5100 - Mod. #5 (47 FR 10954 - March 12, 1982) Statewide, Oregon	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters:		
Acoustical and Dry-wall Applicator, Automatic Nailing Machine, Carpenters, Form Strippers, Manhole Builders	$16.19	$3.31
Floor Layers and Finishers, Stationary Power Saw Operators	16.34	3.32
Millwrights and Machine Erectors	16.44	3.32
Certified Welders	16.59	3.32
Piledrivermen; Bridge, Dock and Wharf Builders	16.29	3.32
Boom Men	16.39	3.32
Cement Masons:		
Cement Masons	15.49	4.02
Composition Workers, Power Machinery Operator	15.80	4.02
Laborers:		
Zone 1:		
Group 1	12.84	4.30
Group 2	13.19	4.30
Group 3	13.49	4.30
Group 4	13.74	4.30
Zone 2:		
Group 1	13.49	4.30
Group 2	13.84	4.30
Group 3	14.14	4.30
Group 4	14.39	4.30
Zone 3:		
Group 1	13.99	4.30
Group 2	14.34	4.30
Group 3	14.64	4.30
Group 4	14.89	4.30
Zone 4:		
Group 1	14.54	4.30
Group 2	14.89	4.30
Group 3	15.19	4.30
Group 4	15.44	4.30
Zone 5:		
Group 1	$15.59	$4.30
Group 2	15.94	4.30
Group 3	16.24	4.30
Group 4	16.49	4.30
Zone 6:		
Group 1	16.39	4.30
Group 2	16.74	4.30
Group 3	17.04	4.30
Group 4	17.29	4.30
Plumbers: (Area 4)	20.58	3.60
Soft Floor Layers: (Area 1)	13.786	2.38+ b
Sprinkler Fitters	17.92	2.83

DECISION NO. NJ82-3006 - MOD. #2 (47 FR 8523 - February 26, 1982) BERGEN, ESSEX, HUDSON AND PASSAIC COUNTIES, NEW JERSEY	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS, STONE MASONS, CEMENT MASONS AND PLASTERERS:		
AREA 2	15.60	1.76
AREA 3	14.87	4.48
AREA 4		
Bricklayers & Stone Masons	13.66	1.77
CEMENT MASONS & PLASTERS		
PLASTERERS	15.35	2.15
CARPENTERS, INSULATORS & MILLWRIGHTS:		
AREA 1		
Carpenters & Insulators	16.05	15-5/10%
Millwrights	16.55	"
AREA 2		
Carpenters & Insulators	16.05	"
Millwrights	16.55	"
AREA 3	14.85	3.63
AREA 4		
Carpenters & Insulators	15.38	20-5/10%
Millwrights	15.88	20-5/10%
LABORERS, BUILDING CONSTRUCTION:		
AREA 2	10.55	2.55
AREA 3		
Group 1	11.30	2.20
Group 2	11.05	2.20
AREA 7		
Unskilled Laborers	10.30	3.05

PAINTERS: Essex & Hudson (W Half of Co.) Cos.	Basic Hourly Rates	Fringe Benefits
Painters on new construction and major alterations	13.30	1.88
Painters on repaint work	12.30	1.88
Spraying or application of hazardous or dangerous materials on repaint work	12.90	1.88
Exterior work exceeding 3 stories in height for painting of open structural steel and tanks under 3 stories in height except flat tanks on the ground and on interior work which requires painting higher than 20' above the ground or floor (this shall not be applicable to machinery or equipment located therein)	13.45	1.88
Repaint work as described above	12.45	1.88
On bridges, television and radio towers, structural steel and tanks above 3 stories in height (30' or over), smoke stacks, water towers, sandblasting, steamcleaning, spraying or application of hazardous materials	13.90	1.88

DECISION NO. NJ82-3006 - (CONT'D)	Basic Hourly Rates	Fringe Benefits
OMIT:		
POWER EQUIPMENT OPERATORS:		
CLASS A		
CLASS B		
CLASS C		
CLASS D		
CLASS E		
CLASS F		
ADD:		
POWER EQUIPMENT OPERATORS:		
CLASS I	11.94	3.40+g
ADD:		
POWER EQUIPMENT OPERATORS DEFINITIONS:		

CLASS I - BACKHOE (All types including all combination hoe loaders); CRANES (All types); DRAGLINES (Gradalls); PILE DRIVERS (Trencher); FRONT END LOADERS ("A" Frame); FORK LIFTS (Side Booms); FRONT END LOADERS (Under 5 yds. and over, 2 yds. but less than 5 yds.); "A" FRAMES (Side Booms); FORKLIFTS; FRONT END LOADERS (Under 2 yds. and over 1 yd. and under 1 yd.); DOZERS (D5 and over and under D5); MAINTENANCE (Utility); MAINTENANCE MECHANIC; CONCRETE BREAKER; COMPRESSORS; PUMP OR PUMPS; ROLLER (Blacktop); ROLLER (Stone); WELDER & REPAIR MECHANIC; WELDING MACHINE (Single); WELDING MACHINE (2 or 3 in a Battery) and BORING-DRILLING MACHINES

	Basic Hourly Rates	Fringe Benefits

DECISION NO. PA81-3027 - MOD. #5 (46 FR 37212 - July 17, 1981) FRANKLIN COUNTY, PENNSYLVANIA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS	12.97	1.73
CEMENT MASONS	13.17	2.00
PAINTERS, BRUSH:		
Metal, LetterKenny, Hamilton, Green, South Hampton, Lurgan, Fanett, Chambersburg, Shipensburg Townships and Boroughs	11.42	1.10
PLASTERERS	11.40	2.01
PLUMBERS	15.30	2.14
SPRINKLER FITTERS	16.92	2.83

DECISION NO. PA81-3066 - MOD. #3 (46 FR 52082 - October 23, 1981) DAUPHIN, CUMBERLAND, PERRY, JUNIATA, NEW CUMBERLAND DEPOT, IN YORK COUNTY, PENNSYLVANIA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS & STONEMASONS	12.97	1.73
CEMENT MASONS	13.17	2.00
GLAZIERS	12.61	1.51
LABORERS:		
Group 1	9.70	1.33
Group 2	10.17	1.33
Group 3	9.10	1.33
Group 4	10.37	1.33
MARBLE SETTERS	14.60	1.72
PAINTERS		
Brush	11.42	1.10
Structural Steel	11.87	1.10
Spray	12.17	1.10
Tanks, Bridges & Stacks	12.67	1.10
PLASTERERS	11.40	2.01
PLUMBERS	15.30	2.14
POWER EQUIPMENT OPERATORS:		
Group 1	14.85	25.6%+a
Group 2	14.56	"
Group 3	13.69	"
Group 4	12.92	"
Group 5	12.45	"
Group 6	11.54	"
Group 7	15.10	"
Group 7-A	15.35	"
Group 7-B	15.59	"
SOFT FLOOR LAYERS	11.69	1.95
SPRINKLER FITTERS	16.92	2.83
STEAMFITTERS	15.30	2.14
TERRAZZO WORKERS	13.35	1.72
TILE SETTERS	13.35	1.72

DECISION NO. PA81-3068 - MOD. #5 (46 FR 47403 - September 25, 1981) LEBANON COUNTY, PENNSYLVANIA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS & STONEMASONS	12.97	1.73
GLAZIERS:		
Remainder of County	12.61	1.51
LABORERS:		
General Laborers	9.95	1.00
Operator of jackhammer, paving breaking and other pneumatic, electrical and mechanical tools, laying of all clay, terra cotta, ironstone vitrified concrete or non-metallic pipe and the making of joints for same, wagon drill operator, cofferdam (below 10') tunnel		

DECISION NO. PA81-3068 - (CONT'D)	Basic Hourly Rates	Fringe Benefits
LABORERS (CONT'D): free air, handling and using cutting or burning torches in the wrecking of buildings blasters, plasterer tenders, mason tenders scaffold builders and removal of power buggies	10.05	1.00
PAINTERS: (West of Route 72)		
Brush	11.42	1.10
Structural Steel	11.87	1.10
Spray	12.17	1.10
PLUMBERS & STEAMFITTERS West of Route 501	15.30	2.14
POWER EQUIPMENT OPERATORS:		
Group 1	14.85	25.6%+ a
Group 2	14.56	"
Group 3	13.69	"
Group 4	12.92	"
Group 5	12.45	"
Group 6	11.54	"
Group 7	15.10	"
Group 7-A	15.35	"
Group 7-B	15.59	"
SOFT FLOOR LAYERS	11.69	1.95
SPRINKLER FITTERS	16.92	2.83

DECISION NO. PA81-3073 - MOD. #2 (46 FR 48853 - October 2, 1981) NORTHUMBERLAND COUNTY, PENNSYLVANIA		
CHANGE:		
BRICKLAYERS & STONEMASONS	13.25	1.60
CEMENT MASONS	13.20	.01
ELECTRICIANS Remainder of County	14.65	1.05+ 3%

	Basic Hourly Rates	Fringe Benefits
LABORERS: North of Susquehanna River		
Unskilled laborers, scaffold builders, wrecking, window cleaners & demolition	8.75	1.40
Mason tenders, operators of jackhammers, paving breakers, vibrators & other pneumatic & mechanical tool coming under the jurisdiction of laborers, wagon drill operators excavating for caisson, under pinning & pier holes (below 12"), non-metallic pipe layers, plasterer tenders, mortar men mixed by hand), handling & using cutting or burning torches in the wrecking of building	8.90	1.40
South of Susquehanna River		
Group 1	9.70	1.33
Group 2	10.17	1.33
Group 3	9.10	1.33
Group 4	10.37	1.33
PAINTERS:		
Brush	11.85	1.80
Tapers	12.51	1.80
Hazardous	13.51	1.80
POWER EQUIPMENT OPERATORS:		
Group 1	14.85	25.6%+ a
Group 2	14.56	"
Group 3	13.69	"

DECISION NO. PA81-3073 - (CONT'D)	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Group 4	12.92	25.6%+ a
Group 5	12.45	"
Group 6	11.54	"
Group 7	15.10	"
Group 7-A	15.35	"
Group 7-B	15.59	"
PLUMBERS	15.30	2.14
ROOFERS:		
Composition Remainder of County	13.30	2.10
SHEET METAL WORKERS	14.62	1.85
STEAMFITTERS	15.30	2.14
SOFT FLOOR LAYERS	11.69	1.95
SPRINKLER FITTERS	16.92	2.83

DECISION NO. PA81-3076 - MOD. #3 (46 FR 50263 - October 9, 1981) SCHUYLKILL COUNTY, PENNSYLVANIA		
CHANGE:		
BRICKLAYERS & STONEMASONS	12.35	2.40
ELECTRICIANS: Remainder of County	14.65	1.05+ 3%
LABORERS:		
Unskilled laborers & window cleaners	8.60	1.00
Operator of jackhammer, paving breaking & other pneumatic, electric & mechanical tools, laying of all clay, terra cotta, ironstone, virtified concrete or non-metallic pipe & the making of joints for same, wagon drill operators, cofferdams (below 10'), tunnel free air handling & using cutting or burning torches in the wrecking of buildings, blasters, plasterer-tenders, mason tenders, scaffold builders and removal & power buggies	8.80	1.00
PAINTERS:		
Townships of North Union, East Union, Union, Mahonoy, West Mahonoy, Butler, Kline, Delano, Ryan, Rahn, West Penn., and City of Tamaqua:		
Brush	11.85	1.80
Tapers	12.51	1.80
Hazardous	13.51	1.80
POWER EQUIPMENT OPERATORS:		
Group 1	14.85	25.6%+ a
Group 2	14.56	"
Group 3	13.69	"
Group 4	12.92	"
Group 5	12.45	"
Group 6	11.54	"
Group 7	15.10	"
Group 7-A	15.35	"
Group 7-B	15.59	"
ROOFERS:		
Barry, Branch, Butler, Delano, East Brunswick, East Union, Eldred, Foster, Frailey, Hegins, Hubley, Kline, New Castle, North Union, Porter, Hahn, Reilly, Rush, Fremont, Union, Upper Mahantango, West Penn.:		
Composition	13.30	2.10
SHEET METAL WORKERS	14.62	1.85
SOFT FLOOR LAYERS	11.69	1.95
SPRINKLER FITTERS	16.92	2.83
TILE SETTERS	11.35	2.40

DECISION NO. PA81-2072 - MOD. #3 (46 FR 48851 - October 2, 1981) ADAMS & YORK COUNTIES, PENNSYLVANIA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS & STONEMASONS	12.35	1.20
CARPENTERS		
York County	12.79	1.68
CEMENT MASONS		
Adams County	13.17	2.00
York County	12.89	.93
GLAZIERS	12.61	1.51
LABORERS:		
General Laborers	9.25	1.37
Operator of jackhammer (etc.)	9.45	1.37
Wagon dill operator	9.55	1.37
Handling of all material (etc.)	9.50	1.37
Laborers assisting tile (etc.)	9.30	1.37
Handling & using dynamite	9.53	1.37
Caisson work (top men)	9.50	1.37
Caisson work (bottom men)	9.70	1.37
Mixer man	9.65	1.37
MARBLE, TILE & TERRAZZO WORKERS	10.99	1.20
PLASTERERS		
York County	12.38	.93
PLUMBERS	15.30	2.14
POWER EQUIPMENT OPERATORS:		
Group 1	14.85	25.6%+a
Group 2	14.56	"
Group 3	13.69	"
Group 4	12.92	"
Group 5	12.45	"
Group 6	11.54	"
Group 7	15.10	"
Group 7-A	15.35	"
Group 7-B	15.59	"
ROOFERS:		
Composition, damp and waterproof	11.75	1.61
Slate & Tile	12.35	1.61
SOFT FLOOR LAYERS:		
Adams County	11.69	1.95
York County	12.79	1.68
SPRINKLER FITTERS	16.92	2.83
STEAMFITTERS	15.30	2.14

DECISION NO. PA81-3077 - MOD. #3 (46 FR 50265 - October 9, 1981) LANCASTER COUNTY, PENNSYLVANIA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CEMENT MASONS	12.89	.93
ELECTRICIANS:		
Remainder of County	13.35	.64+3%
GLAZIERS	12.61	1.51
LABORERS:		
Genral Laborers	9.25	1.37
Operators of Jackhammers	9.45	1.37
Wagon Drill	9.55	1.37
Handling of all materials	9.50	1.37
Laborers assisting tile	9.30	1.37
Handling & using dynamite	9.58	1.37
Caisson Work (Top Men)	9.30	1.37
Caisson Work (Bottom Men	9.70	1.37
Mixer Men	9.65	1.37
PAINTERS:		
Elizabeth & Dowetal Townships		
Brush	11.42	1.10
Steel	11.87	1.10
Spray	12.17	1.10
PLASTERERS	12.38	.93
PLUMBERS	15.30	2.14
POWER EQUIPMENT OPERATORS:		
Group 1	14.85	25.6%+a
Group 2	14.56	25.6%+a
Group 3	13.69	25.6%+a
Group 4	12.92	25.6%+a
Group 5	12.45	25.6%+a
Group 6	11.54	25.6%+a
Group 7	15.10	25.6%+a
Group 7-A	15.35	25.6%+a
Group 7-B	15.59	25.6%+a
PLUMBERS	15.30	2.14
STEAMFITTERS	15.30	2.14
SOFT FLOOR LAYERS	11.69	1.95
SPRINKLER FITTERS	16.92	2.83

DECISION NO. PA81-3081 - MOD. #2 (46 FR 52080 - October 23, 1981) SULLIVAN COUNTY, PENNSYLVANIA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS:		
Benton Air Force Base	13.94	1.95
CEMENT MASONS	11.50	
LABORERS:		
Unskilled & window washers	11.87	2.25
Semi-skilled: Pneumatic, electrical & mechanical tool ops., under the jurisdiction of the laborers - 2" pumps-non-metallic pipelaying & making of joints clay, terra cotta, ironstone, vitrified concrete, handling of burning torches, asphalt or other hot materials, cement finishers & blaster helpers, power buggies, walk along hoists	12.07	2.25
Plasters tenders, blasters & wagon drill operators	12.19	2.25
PAINTERS		
Brush	11.85	1.80
Tapers	12.51	1.80
Hazardous	13.51	1.80
POWER EQUIPMENT OPERATORS:		
Group 1	14.85	25.6%+a
Group 2	14.56	"
Group 3	13.69	"
Group 4	12.92	"
Group 5	12.45	"
Group 6	11.54	"
Group 7	15.10	"
Group 7-A	15.35	"
Group 7-B	15.59	"
ROOFERS	13.30	2.10
SHEET METAL WORKERS	14.62	1.85
SOFT FLOOR LAYERS	11.69	1.95
SPRINKLER FITTERS	16.92	2.83
ADD:		
Laborers:		
Mason tenders incl. scaffold builders	12.27	2.25

DECISION NO. PA81-3058 - MOD. #9 (46 FR 43596 - August 28, 1981) ADAMS, BERKS, BRADFORD, CARBON, COLUMBIA, CUMBERLAND, DAUPHIN, JUNIATA, LACKAWANNA, LANCASTER, LEBANON, LEHIGH, LUZERNE, LYCOMING, MONROE, MONTOUR, NORTHAMPTON, NORTHUMBERLAND, PERRY, PIKE, SCHUYLKILL, SNYDER, SULLIVAN, SUSQUEHANNA, TIOGA, UNION, WAYNE, WYOMING & YORK COUNTIES, PENNSYLVANIA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LABORERS:		
Caisson-open air-below 8 feet, cofferdam open air-below 8 feet where excavations for circular caissons and cofferdams 8 feet and below level of natural grade adjacent to starting point, form setters (road) wagon drill diamond point drill, gunite nozzle operators	10.86	1.15

DECISION NO. PA82-3011 - MOD. #1 (47 FR 10963 - March 12, 1982) BRADFORD, TIOGA & UNION COUNTIES, PENNSYLVANIA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS & STONEMASONS	12.25	2.265
CEMENT MASONS	11.50	
LABORERS:		
Unskilled laborers, scaffold builders, wrecking, window cleaners & demolition	8.75	1.40
Operators of jackhammers, paving breakers, vibrators & other pneumatic & mechanical tools coming under the jurisdiction of laborers, wagon drill operators, excavating for caisson, under pinning & pier holes (below 12') nonmetallic pipe layers, plasterers tenders, mortar men (mixed by hand), handling & using cutting or burning torches in the wrecking of buildings, masons tenders	8.90	1.40
PAINTERS:		
Brush	11.85	1.80
Tapers	12.51	1.80
Hazardous	13.51	1.80
POWER EQUIPMENT OPERATORS:		
Group 1	14.85	25.6%+ a
Group 2	14.56	"
Group 3	13.69	"
Group 4	12.92	"
Group 5	12.45	"
Group 6	11.54	"
Group 7	15.10	"
Group 7-A	15.35	"
Group 7-B	15.59	"
ROOFERS:		
Composition & Kettleman	13.30	2.10
SHEET METAL WORKERS	14.62	1.85
SOFT FLOOR LAYERS	11.69	1.95
SPRINKLER FITTERS	16.92	2.83
ELECTRICIANS:		
Townships of East Buffalo, Union & Lewisburg in in Union County	14.65	1.05+ 3%

DECISION NO. PA82-3010 MOD. #1 (47 FR 9684 - March 5, 1982) Clinton, Centre, Huntingdon, Fulton & Mifflin Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayers & Stonemasons:		
Clinton County in its entirety, and the Remainder of Centre County	12.25	2.265
Mifflin County	13.25	1.60
Plumbers & Steamfitters:		
Centre, Mifflin & Fulton Counties	15.30	2.14
Roofers:		
Clinton County:		
Composition and Kettleman	13.30	2.10
Sheet metal workers:		
Clinton County	14.62	1.85
Sprinkler Fitters	16.92	2.83

DECISION NO. PA82-3012 - MOD. #2 (47 FR 9681 - March 5, 1982) COLUMBIA, MONTOUR & SNYDER COUNTIES, PENNSYLVANIA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
GLAZIERS		
Snyder County	12.61	1.51
LABORERS:		
Columbia County:		
Unskilled laborers and window washers	9.39	2.25
Mason tenders and scaffold builders	9.79	2.25
Pneumatic electrical tool op. under the jurisdiction of laborers 2' pump-nonmetallic pipe laying and making joints clay terra cotta, ironstone, vitrified concrete, handling of burning torches, asphalt or other hot material; cement finishers and blasters helpers, power buggies, and walk along hoist	9.49	2.25
Plasterers tenders, blasters and wagon drill operator	9.64	2.25
Montour County:		
Unskilled laborers, scaffold builders, wrecking, window cleaners & demolition	8.75	1.40
Operators of jackhammers, paving breakers, vibrators & other pneumatic & mechanical tools coming under the jurisdiction of laborers, wagon drill operators, excavating for caisson, under pinning & pier holes (below 12') nonmetallic pipe layers, plasterers tenders, mortar men (mixed by hand), handling & using cutting or burning torches in the wrecking of buildings, masons tenders	8.90	1.40
Snyder County:		
General Laborers: Air, fuel and electric tool operators and all other pneumatic and mechanical tools, including blow pipe and vacum cleaners. Cassion workers (top men), pipelayers for all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe & the making of joints for same. Power-buggy, precast slab placers & signal men, blaster helper, excavation of all foundation, digging of trenches, piers and manholes. Wrecking and moving of all structures. Under pinning & shoring, stripping, dismantling, oiling & moving of concrete forms, loading, and carring of reinforcing steel, handling & distribution of lumber and all other building material to stock piles, piles, unloading,carrying, distribution, and laying of precast concrete slabs and planks for flooring & roofing, general cleanup & removal of refuge, debris and all scrap material(s),		

DECISION NO. PA82-3012 - (CONT'D)

	Basic Hourly Rates	Fringe Benefits
LABORERS (CONT'D):		
vibrator operator (concrete placing - whose power is supplied by compressed air, electric gasoline & any other means	9.70	1.33
Semi-Skilled: Cassion worker (bottom men), blasters, wagon air track and diamond point drill operators, burning torches, green cutting machine (nozzle men), and steam jenny, plaster & cement mason tenders, machine mixers, plater pump and scaffold builders (excluding masonry scaffolding sand blasting nozzle men):	10.17	1.33
Nursery Workers: Window washers, floor scrubbers. tenders of propane gas burners, salamanders, smudge pots, toolroom workers. fire watch	9.10	1.33
Mason tenders, machine mixers, motorized stockers, scaffold builders (masonry), mortar pump, conveyors mechanical cleaners, and sandblasting for masonry and masonry equipment	10.37	1.33
LATHERS	12.72	1.65
LEAD BURNERS	10.75	.66+c
PAINTERS:		
Brush	11.85	1.80
Tapers	12.51	1.80
Hazardous	13.51	1.80
PLUMBERS	15.30	2.14
POWER EQUIPMENT OPERATORS:		
Group 1	14.85	25.6%+ a
Group 2	14.56	"
Group 3	13.69	"
Group 4	12.92	"
Group 5	12.45	"
Group 6	11.54	"
Group 7	15.10	"
Group 7-A	15.35	"
Group 7-B	15.59	"
PLUMBERS	15.30	2.14
SHEET METAL WORKERS	14.62	1.85
SOFT FLOOR LAYERS	11.69	1.95
SPRINKLER FITTERS	16.92	2.83
STEAMFITTERS	15.30	2.14
Bricklayers & Stonemasons: Montour & Snyder Counties:	13.25	1.60
Cement Masons: Montour & Snyder Counties:	13.20	.01
Electricians: Montour County in its entirety: Snyder County: That Portion North of U. S. Highway 522 and Selinsgrove Borough; Remainder of Columbia County	14.65	1.05+3%

DECISION NO. RI81-3042 - MOD. #7
(46 FR 42615 - Aug. 21, 1981)
STATEWIDE RHODE ISLAND

CHANGE:

HEAVY & HIGHWAY CONSTR:
LABORERS - H&W Only to $0.95

BUILDING CONSTRUCTION:
LABORERS - H&W Only to $0.95

DECISION NO. WA81-5163 - Mod. #11
(46 FR 59457 - December 4, 1981)
Statewide, Washington

Change:	Basic Hourly Rates	Fringe Benefits
Bricklayers; Marble Setters:		
Area 1	$16.58	$3.20
Area 2	17.28	1.62
Carpenters: (Area 1):		
Carpenters; Lathers	15.85	3.32
Piledriver; Saw Filer; Stationary Power Woodworking Tool Operator	16.00	3.32
Boom Men; Carpenters working on burned, charred, creosoted, or other similarly treated material	16.10	3.32
Piledriver (creosoted material)	16.25	3.32
Millwrights and Machine Erectors	16.35	3.32
Carpenters: (Area 3):		
Acoustical and Drywall Applicator, Automatic Nailing Machine, Carpenters, Form Strippers, Manhole Builders	16.19	3.32
Floor Layers and Finishers, Stationary Power Saw Operators	16.34	3.32
Millwrights and Machine Erectors	16.44	3.32
Certified Welders	16.59	3.32
Piledrivermen; Bridge Dock and Wharf Builders	16.29	3.32
Boommen	16.39	3.32
Cement Masons (Area 2):		
Cement Masons	17.86	3.55
Composition, Color, Mastic, Trowel Machine, Grinder, Power Tools, Gunnite Nozzleman	18.11	3.55
Cement Masons (Area 4):		
Cement Masons	15.49	4.02
Composition Materials and Power Machinery	15.80	4.02
PAINTERS (Area 3)		
General Painter	16.74	2.26
Drywall Taper	17.14	2.26
Industrial Painter	17.14	2.26

	Basic Hourly Rates	Fringe Benefits
Laborers: (Area 3)		
Zone 1:		
Group 1	$13.59	$3.55
Group 2	13.94	3.55
Group 3	14.24	3.55
Group 4	14.49	3.55
Zone 2:		
Group 1	14.24	3.55
Group 2	14.59	3.55
Group 3	14.89	3.55
Group 4	15.14	3.55
Zone 3:		
Group 1	14.74	3.55
Group 2	15.09	3.55
Group 3	15.39	3.55
Group 4	15.64	3.55
Zone 4:		
Group 1	15.29	3.55
Group 2	15.64	3.55
Group 3	15.94	3.55
Group 4	16.19	3.55
Zone 5:		
Group 1	16.34	3.55
Group 2	16.69	3.55
Group 3	16.99	3.55
Group 4	17.24	3.55
Zone 6:		
Group 1	17.14	3.55
Group 2	17.49	3.55
Group 3	17.79	3.55
Group 4	18.04	3.55
Painters: (Area 4):		
Striper	16.65	1.83
Plasterers: (Area 2)	17.23	3.29
Plumbers: (Area 4)	20.58	3.60
Sprinkler Fitters: (Area 2)	17.92	2.75
POWER EQUIPMENT OPERATORS		
Area 2:		
Group 1	18.73	3.66
Group 2	18.23	3.66
Group 3	17.79	3.66
Group 4	17.43	3.66
Group 5	17.13	3.66
Group 6	15.33	3.66
DREDGING (Area 2):		
Group 1	16.75	3.66
Group 2	16.85	3.66
Group 3	17.19	3.66
Group 4	17.24	3.66
Group 5	17.61	3.66

SUPERSEDEAS DECISION

STATE: ALABAMA COUNTIES; BALDWIN, ESCAMBIA, MOBILE, & WASHINGTON

DECISION NO.: AL82-1029 DATE: DATE OF PUBLICATION

Supersedes Decision No.: AL80-1086, dated August 1, 1980 in 45 FR 51387.

DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANIC	$7.50	
BRICKLAYERS	9.10	
CARPENTERS	6.28	
CEMENT MASONS	6.70	
DRYWALL FINISHERS	7.50	
DRYWALL HANGERS	5.26	
ELECTRICIANS	5.55	
INSULATORS	5.19	
LABORERS	4.98	
PAINTERS	7.00	
PLUMBERS & PIPEFITTERS	6.50	
ROOFERS	8.84	.30
SHEET METAL WORKERS	7.25	
SOFT FLOOR LAYERS	$7.29	
TILE SETTERS	8.00	
TRUCK DRIVERS	7.29	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	5.93	
Aspalt Raker	5.50	
Backhoe	7.59	
Bulldozer	7.27	
Front End Loader	7.00	
Motor Grader	6.90	
Power Box	5.55	
Roller	6.55	
WELDER - 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: Delaware COUNTIES: State of Delaware

DECISION NO.: DE82-3015 DATE: Date of Publication

Supersedes Decision NO. DE81-3028 dated May 8, 1981 in 46 FR 25909.

DESCRIPTION OF WORK: Building Construction (excluding single family houses and apartments up to and including 4 stories), Heavy & Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	16.24	1.35	2.00		.03
BOILERMAKERS:					
New Castle County	16.67	1.275	1.00		.02
Kent & Sussex Counties	16.025	1.275	1.25		.04
BRICKLAYERS	15.15	1.19	1.36		
CARPENTER - BUILDING & HEAVY					
New Castle & Kent Counties	14.55	1.29	1.40		.05
Sussex County	14.42	.80	1.50		.06
CEMENT MASONS:					
Building Construction	14.60	1.60	1.15		
Heavy	14.30	1.60	1.15		
DIVERS	12.97	3.13	1.40	a	.13
ELECTRICIANS	15.31	1.17	3%+1.00		½%
ELEVATOR CONSTRUCTORS:					
Mechanics	14.72	1.345	1.085	b+c	.035
Elevator Constructors' Helpers	10.30	1.345	1.085	b+c	.035
Elevator Constructors' Helpers (Probationary)	7.36				
GLAZIERS	13.66	.95	1.80		.02
IRONWORKERS:					
Structural Ornamental, Reinforcing, Riggers & Machinery Movers	14.95	1.49	1.46		.05
LABORERS - BUILDING CONSTRUCTION:					
New Castle County					
CLASS 1	10.80	1.10	1.10		
CLASS 2	11.05	1.10	1.10		
CLASS 3	11.30	1.10	1.10		
CLASS 4	11.80	1.10	1.10		
CLASS 5	12.05	1.10	1.10		
Kent & Sussex Counties					
CLASS 1	10.75	.90	1.10		
CLASS 2	11.00	.90	1.10		
CLASS 3	11.25	.90	1.10		
CLASS 4	11.35	.90	1.10		
CLASS 5	12.00	.90	1.10		

DECISION NO. DE82-3015

LABORERS - CLASSIFICATION DEFINITIONS
BUILDING CONSTRUCTION

CLASS 1 - Laborers, general and construction, dumpmen and truck spotters

CLASS 2 - Caulkers; operators of pneumatic and electric tools; vibrating machines; concrete saws and pumps (which shall include the hook-up of hose and/or pipe); pot tenders; and sewer pipe layers; demolition (where walls are required to be ridden down by hand tools). Driller (except Core, Diamond, or Multiple Wagon); Gunite material and rebound workers; mason and plasterer tenders; and cement workers; mobile buggy operators; operators of power saws (portable) power and sewing machines; scaffold builders, shoring; hookup men; including when working with digging and grading equipment; stripping of flat arch and form work; and cleaning and oiling thereof, and tool room attendant

CLASS 3 - Burners and welders; caisson workers, top men (when excavations for caissons are dug eight feet or more below the nature grade level adjacent to the starting point of the caisson hole, the rate shall apply at the ground level); driller (core, diamond, or multiple wagon); gunite industrial fume stack, nozzle, and rod workers; sandblaster (nozzleman): tunnelling - Underpinning excavation (when an underpinning excavation is dug eight feet or more below the natural grade, or when an excavation for a pier hole of five feet square or less and eight feet or more deep is dug, the rate shall apply only when a depth of eight feet is reached): working under compressed air

CLASS 4 - Caisson workers, bottom men

CLASS 5 - Blaster; laborers engaged in unloading, placing, and assisting in the installation of well point systems or deep well systems as long as needed on the job for such work

DECISION NO. DE82-3015

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS - HEAVY CONSTRUCTION:					
New Castle County:					
General laborers, asphalt tamper, asphalt raker, concrete pitman, landscaper, planter, puddler, railroad trackman, rubber magazine tender, seeder and arboriate, and signalman	8.55	1.10	1.10		
Pipelayers	8.70	1.10	1.10		
Blasters, caissons, and cofferdams (open air below 8 feet where excavations for circular caissons and cofferdams are 8 feet or more below level of natural grade adjacent to start point), diamond point drills, form setters, gunite nozzle operators, and wagon drills	8.85	1.10	1.10		
LABORERS - HEAVY CONSTRUCTION:					
Kent & Sussex Counties:					
Common laborers, landscapers, planters, seeders, aborists, asphalt tampers, rakers, concrete pitman, puddlers, rubber magazine tenders, railroad trackmen, signal men	7.50	.90	1.10		
Pipelayers	7.65	.90	1.10		
Wagon drill, diamond point drill, gunite nozzlemen, form setters, blasters, caissons & coffer dams (open-air, below 8')	7.80	.90	1.10		

DECISION NO. DE82-3015	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	14.55	1.29	1.40		.05
LINE CONSTRUCTION:					
Linemen, cable splicers	15.72	.60+4%	3%		3/4of1%
Winch truck operators	11.00	.60+4%	3%		3/4of1%
Truck drivers	10.22	.60+4%	3		3/4of1%
Groundmen	9.43	.60+4%	3%		3/4of1%
LINE CONSTRUCTION (RAILROAD ONLY)					
Linemen	12.34	.60	3%	d	.75%
"A" Equipment Operator	12.34	.60	3%	d	.75%
"B" Equipment Operator	10.78	.60	3%	d	.75%

CLASSIFICATION DEFINITIONS FOR LINE CONSTRUCTION (RAILROAD ONLY)

"A" Equipment Operators:

1. Hoisting equipment - when erecting complete towers, erecting framed structures, erecting steel transmission poles, erecting railroad pole extensions and crossbeams and when operating personnel lift baskets.

2. Tension pulling equipment under energized conditions - parallel with other energized circuits or above energized circuits on the same structure, not to include crossovers. Bundled conductors stringing, including static conductors on bundled conductor lines.

3. Excavating augurs 36" inches in diameter or larger, 5/8 cubic yard backhoe and larger, trencher over four feet in depth, bulldozer D-6 (caterpillar) or larger, and blade on finish grade work.

"B" Equipment Operators:
Operators of all other equipment

MARBLE SETTERS	14.88	1.19	1.36		
MILLWRIGHTS:					
Kent & New Castle Counties	15.07	1.10	2.50		.02
Sussex County	15.12	.80	1.50		.06

DECISION NO. DE82-3015	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Base rate	11.62	1.00	1.00		.01
Structural steel & suspended scaffolding (swing, chair & window belts)	11.84	1.00	1.00		.01
Machine taping	12.12	1.00	1.00		.01
Bridges (if surface to be painted is 50' or more above ground or water), and/or cabled scaffolding	14.10	1.00	1.00		.01
Tanks (if exposes to the weather and is used for storage or processing purposes with a capacity of 5,000 gallons or more using exterior dimensions and/or interior work on all tanks), sandblasting, and spray	12.17	1.00	1.00		.01
Height pay - work 75' or more from surface an additional 55¢ shall be paid above the applicable rate					
PILEDRIVERMEN, WHARF & DOCK BUILDERS	12.97	3.13	1.40	e	.13
PLASTERERS	15.37	.90			.01
PLUMBERS & STEAMFITTERS:					
New Castle & Kent (north of the southern boundary of Dover City) Counties:					
Plumbers	15.89	1.35	1.60		.15
Steamfitters	14.30	1.50	1.00	f	.05
Sussex & Kent (remainder of county) Counties	14.80	1.00	1.00	g	.05

DECISION NO. DE82-3015	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS - BUILDING & HEAVY CONSTRUCTION:					
GROUP 1	14.85	13.5%	10.3%	h	1.8%
GROUP 2	14.56	13.5%	10.3%	h	1.8%
GROUP 3	13.69	13.5%	10.3%	h	1.8%
GROUP 4	12.92	13.5%	10.3%	h	1.8%
GROUP 5	12.45	13.5%	10.3%	h	1.8%
GROUP 6	11.54	13.5%	10.3%	h	1.8%
GROUP 7					
100' & over	15.10	13.5%	10.3%	h	1.8%
150' & over	15.35	13.5%	10.3%	h	1.8%
200' & over	15.59	13.5%	10.3%	h	1.8%

CLASSIFICATIONS

GROUP 1 - Machines with booms doing hook work, any machine handling machinery, cable spinning machines, helicopter and similar machines

GROUP 2 - All types of cranes, all types of backhoes, cableway, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, hoists with 2 towers, pavers 21E and over, all types overhead cranes, building hoists (double drum), gradalls, mucking machines, in tunnel, all front end loaders 3-½ c.y., and over, tandem scrapers, pipin type backhoes, boat captains, batch plant operators (concrete), drills, self contained rotary drill, fork lifts (20' lift & over), and similar machines

GROUP 3 - Conveyors, building hoist (single drum), scrapers, tournapulls, spreaders (asphalt), high or low pressure boilers, concrete pumps, well drillers, bulldozers, tractors, asphalt plant engineers, rollers (high grade finishing), ditch witch type trenchers, all loaders under 3½ c.y., mechanic-welders, motorpatrols, core drill operator, forklift trucks under 20' lift, similar machines

GROUP 4 - Welding machines, well points, compressors, pumps, heaters, farm tractors, form line graders, fine grade machines, road finishing machines, concrete breaking machines, rollers, seaman pulverizing mixer, power boom, seeding spreader, tireman (for power equipment), and similar machines

GROUP 5 - Fireman, grease trucks

GROUP 6 - Oilers and deck hands (personnel boats), core drill helper

GROUP 7 - All machines with booms (including jibs, masts and leads)

DECISION NO. DE82-3015	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Composition, damp and waterproofing	15.67	1.40	.95	j	
Mechanic II (Handle and transport all materials tools, and equipment; clean-up debris)	7.75	1.40	.95	j	
SHEET METAL WORKERS	16.28	1.00	1.06		.09
SOFT FLOOR LAYERS:					
New Castle & Kent Cos.	14.55	1.29	1.40		.05
Sussex Co.	14.42	.80	1.50		.06
SPRINKLER FITTERS	16.67	1.15	1.60		.08
STONE MASONS	15.15	1.19	1.36		
TERRAZZO WORKERS & TILE SETTERS	14.88	1.19	1.36		
TRUCK DRIVERS - BUILDING CONSTRUCTION:					
GROUP 1	11.285	1.0675	1.225	k	
GROUP 2	11.185	1.0675	1.225	k	
GROUP 3	11.035	1.0675	1.225	k	

CLASSIFICATION DEFINITIONS
TRUCK DRIVERS

GROUP 1 - Euclid type or similar off highway equipment (where not self loaded), off highway tandem back-dump, specialized earth moving equipment, truck mechanic (first class), twin engine equipment & double-hitched equipment (where not self-loaded).

GROUP 2 - A-frames, agitators or mixers, asphalt distributors, dispatchers, low-boys, semi-trailers, tandems, batch trucks & truck mechanics (second class).

GROUP 3 - Dumps (single axle), dumpsters, escort & pilot vehicles, flat body material trucks (straight job), greasers, material checkers & receivers, panel trucks, pick-ups rubber-tired (towing & pushing vehicles), tiremen & truck mechanic helpers, truck helpers.

DECISION NO. DE82-3015

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
Heavy CONSTRUCTION:					
GROUP 1	10.435	1.0675	1.225	k	
GROUP 2	10.335	1.0675	1.225	k	
GROUP 3	10.185	1.0675	1.225	k	

CLASSIFICATION DEFINITIONS
TRUCK DRIVERS
HEAVY CONSTRUCTION

GROUP 1 - Euclid type or similar off highway equipment (where not self loaded), specialized earth moving equipment, truck mechanics (first class), twin engine equipment & double-hitched equipment (where not self-loaded.)

GROUP 2 - A-frames, agitators or mixers, asphalt distributors, dispatchers, low-boys, semi-trailers, tandems, batch trucks, truck mechanics (second class).

GROUP 3 - Dump trucks (single axle), dumpsters, escort & pilot vehicles, flat body material trucks (straight jobs), greasers, material checkers & receivers, panel trucks, pick-ups, rubber-tired (towing or pushing flat body vehicles), tiremen, truck mechanic helpers, truck helpers.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays: Good Friday, Memorial Day, Washington's Birthday, Labor Day, Presidential Election Day; Veteran's Day, Thanksgiving Day; Christmas Day.

b. Employer contribution of 8% of the basic hourly rate for 5 years or more of service and 5% of the basic hourly rate for 6 months to 5 years of service for Vacation Pay Credit.

c. Paid Holidays: A through F

d. Paid Holidays: New Year's Day; Declaration Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day and Good Friday.

DECISION NO. DE82-3015

FOOTNOTES: Cont'd

e. Paid Holidays: Washington's Birthday; Good Friday; Memorial Day; Independence Day; Presidential Election Day; Veterans Day; and Thanksgiving Day.

f. Paid Holiday: Labor Day provided the employee is currently on the payroll and would be scheduled to work the holiday also employee must work the day prior to and after the holiday.

g. Paid Holidays: A through F; provided the employee worked the scheduled work day preceeding and following the holiday.

h. Paid Holidays: A through F; plus Election Day provided the employee works the scheduled work day before and after the holiday.

j. Paid Holiday: Election Day.

k. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day provided the employee has worked the scheduled workdays preceding and following the holiday.

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))."

DECISION NO. DE82-3015

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HIGHWAY CONSTRUCTION:					
BRICKLAYERS	11.40	.95	1.10		
CARPENTERS	10.95	1.40			.03
CEMENT MASONS	10.25	1.28	.82		
ELECTRICIANS	13.00	1.07	.78+3%		1/4%
IRONWORKERS	12.95	1.34	1.36		.05
LABORERS	6.69				
POWER EQUIPMENT OPERATORS:					
Asphalt Paver	11.70	7%	10.3%	a	1.8%
Asphalt Spreader	11.70	7%	10.3%	a	1.8%
Backhoes, cranes	12.57	7%	10.3%	a	1.8%
Bulldozers	11.70	7%	10.3%	a	1.8%
Gradall	12.57	7%	10.3%	a	1.8%
Loaders	11.70	7%	10.3%	a	1.8%
Motor Patrol/Grader	11.70	7%	10.3%	a	1.8%
Rollers	10.93	7%	10.3%	a	1.8%
TRUCK DRIVERS	8.11	1.0675	1.225	b	

FOOTNOTES:

a. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day plus Election Day, provided the employee works the schedule work day before and after the holiday.

b. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day provided the employee has worked the schedule work days preceding and following the holiday.

SUPERSEDEAS DECISION

STATE: FLORIDA

COUNTIES: CITRUS, HERNANDO, HILLSBOROUGH, PASCO, PINELLAS, and SUMTER

DECISION NUMBER: FL82-1031

DATE: Date of Publication

Supersedes Decision No.: FL80-1052 dated February 8, 1980 in 45 FR 8854.

DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION Projects consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANIC	$6.00	
BRICKLAYERS	9.00	
CARPENTERS	6.00	
CEMENT MASONS	7.50	
DRYWALL FINISHERS	8.96	
DRYWALL HANGERS	8.00	
ELECTRICIANS	6.75	
GLAZIERS	6.84	
INSULATION INSTALLERS	5.00	
IRONWORKERS	6.00	
LABORERS:		
Mason Tenders	5.25	
Mortar Mixers	4.25	
Pipelayers	4.75	
Plasterer Tenders	5.52	
Unskilled	4.00	
LATHERS	4.50	
PAINTERS	5.00	
PLASTERERS	7.50	
PLUMBERS & PIPEFITTERS	7.02	
ROOFERS	$6.50	
SHEET METAL WORKERS	5.50	
SOFT FLOOR LAYERS	7.52	
TILE SETTERS	8.00	
TRUCK DRIVERS	4.75	
POWER EQUIPMENT OPERATORS:		
Backhoe	5.94	
Bulldozer	6.00	
Compactor	5.25	
Dragline & Crane	10.00	
Grader	6.65	
Loader	5.58	
Pan	4.63	
Tractor	5.68	
WELDER - 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: Indiana COUNTY: Wayne
DECISION NO. IN82-2039 DATE: Date of Publication
Supersedes Decision No. IN77-2129, dated August 19, 1977 in 42 FR 42064
DESCRIPTION OF WORK: Residential Construction Consisting of Single Family Homes and Apartments up to and including 4 Stories

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANIC	$ 7.00	
BRICKLAYERS	10.00	
CARPENTERS	6.40	
CEMENT MASONS	6.40	
DRYWALL FINISHERS/TAPERS	7.00	
DRYWALL HANGERS	7.36	
ELECTRICIANS	5.89	
HEATING MECHANICS	7.00	
LABORERS	5.53	
PAINTERS	5.97	
PLUMBERS	7.00	
ROOFERS	6.40	
SHEET METAL WORKERS	7.50	
TRUCK DRIVERS	6.40	

Basic Hourly Rates	Fringe Benefits

[FR Doc. 82-15048 Filed 6-3-82; 8:45 am]
BILLING CODE 4510-30-C

federal register

Friday
June 4, 1982

Part III

Environmental Protection Agency

Modification of Effluent Limitations Guidelines and Standards for pH Values for Point Sources That Continuously Monitor Effluent pH; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 401

[FRL 1930-1]

Modification of Effluent Limitations Guidelines and Standards for pH Values for Point Sources That Continuously Monitor Effluent pH

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today promulgates a regulation which modifies effluent limitations guidelines for pH for all industrial dischargers (1) to require compliance with pH limitations 99 percent of the time measured on a monthly basis for industrial dischargers who, pursuant to National Pollutant Discharge Elimination System (NPDES) permits, continuously monitor the pH of effluent discharge wastewaters and (2) to limit for such dischargers the duration of individual excursions from the required pH range to 60 minutes. This final rule is the Agency's response to a petition from a number of industrial companies. The petitioners requested changes in regulations governing pH levels in effluent discharge wastewater when continuous monitoring of pH is required by NPDES permit. The Agency agrees with the basis for the petition and is promulgating this regulation which is designed to relieve facilities that monitor pH continuously of the obligation to conform to categorical pH standards 100 percent of the time.

DATE: Effective date of the amendment is July 6, 1982. In accordance with 40 CFR 100.01, these regulations shall be deemed issued for purposes of judicial review at 1:00 p.m. Eastern Time on June 18, 1982.

FOR FURTHER INFORMATION CONTACT: Russell Roegner, Water Regulations and Standards (WH-586), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755-3624.

SUPPLEMENTARY INFORMATION:

I. Background

On December 9, 1980, EPA proposed a rule that would adjust effluent limitations guidelines for pH (45 FR 81180). The final rule set forth below will adjust effluent limitations guidelines for all industrial dischargers who, pursuant to National Pollutant Discharge Elimination System (NPDES) permits continuously monitor pH in discharge wastewaters. Today's rule includes changes and clarifications which reflect comments received by the Agency on the proposed rule. The official record on which this regulation is based is available for inspection at Room M2404, U.S. EPA, 401 M St., SW., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m. Monday–Friday excluding federal holidays.

The following documents are available for public inspection:

- "pH Control of Industrial Effluent", prepared by Centec Consultants, Inc. Reston, Virginia for Cleary, Gottlieb, Steen, and Hamilton, (June 1978). Volumes 1 and 2.
- "An Assessment of pH Control of Process Water in Selected Plants", prepared by JRB, Associates, Inc., McLean, Virginia for EPA, Contract No. 69-01-3881, (March 1979).
- "Analysis of Data Collected for EPA by JRB Associates Relating to the Establishment of National pH Limitations Guidelines", prepared by Centec Corporation, Reston, Virginia for Cleary, Gottlieb, Steen and Hamilton, (July 1979).
- "pH Control of Industrial Waste Waters in the Inorganic Chemicals Industry", prepared by Jacobs Engineering Group, Inc. Pasadena, California for EPA Contract No. 68-01-5167, (October, 1979).
- "Statistical and Documentation Support for pH Regulation Development", prepared by JRB Associates, Inc., McLean, Virginia, for EPA Contract No. 68-01-6048, (July, 1980).
- "Effluent pH Control Review Phosphate Fertilizer Industry". Submitted by JRB Associates, Inc., McLean, Virginia; prepared by CH2M Hill Southeast, Inc., Montgomery, Alabama for Environmental Protection Agency Region IV, Atlanta, Georgia, EPA Contract No. 68-01-5052.
- "Background Document for Modification of pH Effluent Limitations Guidelines and Standards for Point Sources Required by NPDES Permit to Monitor Continuously Effluent pH." EPA 440/2-80-083, (November, 1980).
- Two bound volumes of public comments received on the December 9, 1980 proposed regulation.
- "Technical, Analytical, and Statistical Support for Promulgation of Final pH Regulations," prepared by JRB Associates, Inc., McLean, Virginia, for EPA Contract No. 68-01-6048 (August, 1981).
- Summary of Public Comments and EPA's Responses for Final pH Regulation.

The final rule has evolved in response to a petition from a number of industrial companies which represent the following manufacturing point source categories: inorganic chemicals, fertilizer manufacturing, iron and steel manufacturing, non-ferrous metals manufacturing, phosphate manufacturing, and organic chemical manufacturing (see 45 FR 81180). The petitioners contend, and the Agency agrees, that inherent limitations in the treatment technology for pH control prevent compliance with the pH standard 100 percent of the time.

The pH standards were intended initially for use with grab and/or composite sampling procedures. However, with the introduction of requirements for continuous monitoring instrumentation in NPDES permits, a more thorough monitoring procedure was applied in assessing the pH of effluent wastewater. Today's adjustment to the pH limitations establishes a standard for use with continuous monitoring that well-maintained and well-operated plants realistically can achieve. *The regulation is designed to relieve facilities that monitor pH continuously of the obligation to conform to categorical pH standards 100 percent of the time.* EPA and permittee resources will be reserved for those instances where substantial pH control problems exist.

This rule and its underlying rationale relate solely to the control of pH values when wastewater is continuously monitored. The rule does not reflect any change in the Agency position with respect to unintentional violations of other effluent limitations guidelines, such as BOD. Of course, to the extent that pH violations occur despite the excursion allowance promulgated here, dischargers may continue to invoke the "upset" provision where appropriate.

II. Legal Authority

This regulation is issued under the authority of sections 301, 304, 306 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95-217).

III. Scope of Rulemaking

This regulation applies to all dischargers who continuously monitor pH pursuant to NPDES permits issued in accordance with EPA effluent limitations guidelines. This regulation will not immediately affect existing permit limitations. In accordance with 40 CFR 122.15, affected dischargers may petition for a modification of their permits to incorporate its provisions.

IV. Summary of Data Collection and Method Used in pH Regulation Development

On August 3, 1978, a number of industrial companies, representing a variety of manufacturing point source categories, petitioned the Environmental Protection Agency seeking relief from the requirement that the pH values of their effluent, as measured on a continuous basis, always be within a specified range. (Cleary, Gottlieb, et al., Petition to EPA regarding "pH Effluent: Limitations Guidelines and Standards of Performance for Certain Manufacturing Point Source Categories," Washington, D.C. (August 1978)). The petitioners contended that inherent limitations in the treatment technology for pH control prevented compliance with this standard 100 percent of the time and that provision for unavoidable "excursions" from the prescribed range was warranted. The petition, accompanied by technical data and analysis ("pH Control of Industrial Effluent," prepared by Centec Consultants, Inc., Reston, Virginia, for Cleary, Gottlieb, Steen and Hamilton, (June, 1978)), requested that the effluent limitations guidelines be revised to allow excursions approximately one percent of the time on a monthly basis. In addition, the petitioners suggested that a reporting requirement be established for extremely acidic or basic individual excursions, i.e., below pH 3.5 or above pH 11, that were longer than 15 minutes in duration.

In response to the petition, EPA studied the control of pH in wastewaters in selected petition industrial categories. This study confirmed the principal contention of the petitioners that a plant treating highly acidic or basic waste does not achieve on a continuous basis, 100 percent of the time, pH values within the range set forth in applicable effluent guidelines. The data indicate that a well-designed, well-operated plant using continuous monitoring would record excursions outside the prescribed range approximately one percent of the time on a monthly basis ("Assessment of pH Control of Process Waters in Selected Plants," prepared for EPA by JRB Associates, Inc., McLean, Virginia, Contract No. 68–01–3881 (March, 1979)).

A critical evaluation of the JRB report was performed for the petitioners ("Analysis of Data Collection for EPA by JRB Associates Relating to the Establishment of National pH Limitations Guidelines," prepared by Centec Corporation, Reston, Virginia for Cleary, Gottlieb, Steen and Hamilton, (July 1979)). The petitioners' evaluation did not contradict the conclusions reached in the earlier Agency-supported analysis. Centec indicated that proper analysis of the data in the JRB report would determine stringent but attainable pH limitations for the majority of plants falling in the industrial categories studied. However, Centec asserted that the JRB study plants utilized highly sophisticated pH control systems and that many plants would find it impossible or too expensive to meet performance standards based on such a select group of operating systems. Following a data editing procedure which reduced the number of plants studied from six to four, Centec analyzed the data and recommended a monthly compliance requirement of 98.57% and a daily compliance requirement of 85.4%. In addition, Centec recommended that any excursion not in the pH range 3.5 to 11.0 be limited in duration to no longer than 15 minutes.

Independently of the JRB report, the Agency commissioned another study focusing on the Inorganic Chemicals Manufacturing Point Source Category ("pH Control of Industrial Waste Waters in the Inorganic Chemicals Industry," prepared for EPA by Jacobs Engineering Group, Inc., Pasadena, California, Contract No. 68–01–5167 (October, 1979)). The results of this study support the conclusions of the first Agency study.

To examine technical and statistical issues raised by petitioners, Centec, and the Agency itself, analyses of the combined data obtained in the Agency's two previous studies were undertaken ("Statistical and Documentation Support for pH Regulations Development," prepared for EPA by JRB Associates, Inc., McLean, Virginia, Contract No. 68–01–6048 (July, 1980)). The results of this study were used in formulating the proposed pH regulation and Agency support document. ("Background Document for Modification of pH Effluent Limitations Guidelines and Standards for Point Sources Required by NPDES Permit to Monitor Continuously Effluent pH," prepared by EPA, Office of Analysis and Evaluation, Washington, D.C. (November, 1980), EPA 440/2–80–083). Re-evaluation of the outstanding issues led the Agency to propose, on December 9, 1980, that noncompliance with pH values must not exceed one percent of the time on a 30-day month basis and that the duration of individual excursions from the prescribed range must not exceed 30 minutes. In addition, the proposed regulation allowed the Director to set more stringent monthly limits in order to meet water quality standards and more stringent individual excursion limits based on consideration of treatment systems, plant configurations, or other factors. Public comments on the proposed regulations were then evaluated in formulating the final regulations ("Technical, Analytical, and Statistical Support for Promulgation of Final pH Regulations," prepared by JRB Associates, Inc., McLean, Virginia, for EPA Contract 68–01–6048 (August, 1981)).

Analysis of the Agency data bases and of public comments on the proposed rule has led the Agency to the following conclusions with respect to a final rule. No plant examined in the course of this review consistently achieved 100 percent compliance with the pH limitation on a monthly basis. Plants employing continuous monitoring can expect short term excursions outside the pH permit range during a month. In this situation, sole reliance on the upset provision (40 CFR 122.60(h)) appears unwarranted, as its use would not be reserved for a limited, exceptional class of incidents. Permittees would bear a considerable burden in establishing the occurrence of an upset and there would be a drain on administrative resources. Adjustment of the standard to require compliance 99 percent of the time during continuous monitoring will establish a standard that well-operated and well-maintained plants can realistically achieve and will reserve the resources of both EPA and permittees for those instances when substantial pH control problems exist.

EPA believes that a limit on the length of an individual excursion is necessary to: (1) Promote immediate reaction to pH excursions; (2) facilitate enforcement against intentional excessive discharges; and (3) discourage the retention ("banking") of acidic or basic wastes which are discharged by the intermittent release of wastewater outside the permissible pH range for extended periods but controlled so that the total monthly excursion duration limitation is not violated. Early Agency analyses (See Background Document, Appendix, *pH Under Continuous Monitoring*) recommended a 15 minute individual excursion limitation. The petitioners objected that 15 minutes was too short for locating and diagnosing the many causes of pH excursions. In addition, they maintained that response time varied on a site specific basis. After considering various individual limits with respect to the concerns expressed by the petitioners and various Agency offices, the Agency increased the individual excursion limitation from 15 minutes to 30 minutes for the proposed

regulation. The proposal also included discretionary authority to impose a more stringent limitation in individual cases. The Agency proposal specifically requested comment on the 30 minute individual excursion limitation.

In general, public commenters considered the proposed individual excursion duration limitation of 30 minutes excessively stringent. Many public commenters favored elimination of the individual excursion duration limitation from the final regulation, contending that the monthly limitation is sufficient to force the permittee to react in a timely fashion to correct pH excursions. The Agency continues to support the inclusion of an individual excursion duration limitation in the regulation as a means of promoting immediate action to rectify excursions and of discouraging the "banking" of acidic or alkaline wastes for discharge into receiving water. In an attempt to resolve the conflict with the commenters on this issue, the Agency performed additional analyses of the data base.

The Agency traditionally has recognized that it must take variability into account in establishing effluent limitations, and in recognition that 100 percent compliance is theoretically impossible, the Agency has generally set daily effluent limitations which would be met approximately 99 percent of the time. The analyses described below utilize this one percent exceedance criterion. Two distinct statistical methodologies were applied to estimate the probability of one or more excursions on any day exceeding a specified limitation value. The estimated probability was assessed to determine whether the associated limitation value was consistent with the Agency's one percent exceedance criterion. The methodologies were applied for the proposed individual excursion limitation of 30 minutes and for a 60 minute limitation. The 60 minute limit was considered because public commenters suggesting alternative limits usually requested at least an hour.

After re-evaluating the existing data and reviewing the public comments, the Agency has concluded that a 60 minute individual excursion duration limitation probability is consistent with Agency policy requiring approximately a one percent exceedance probability when determining daily limitations. Accordingly, the final rule has been changed to limit any individual excursion to a duration of 60 minutes. While other individual excursion limitations may also be consistent with the one percent exceedance criterion, the Agency believes, in light of environmental considerations, that 60 minutes is the most appropriate individual excursion limitation. For detailed documentation on the methodologies the reader is referred to "Summary of Public Participation and Agency Response to Public Comments on *Modification of Effluent Limitations Guidelines and Standards for pH Values for Point Sources That Continuously Monitor Effluent pH*" and "Technical, Analytical, and Statistical Support for Promulgation of Final pH Regulation", prepared for EPA by JRB Associates, Inc., McLean, Virginia, for EPA contract 68–01–6048 (August 1981).

V. Summary of Proposal and Major Changes to the Proposed Rule

The proposed rule provided that dischargers, who were required by NPDES permits to continuously monitor pH discharge, would be subject to modified effluent limitations guidelines for pH. The applicable guidelines would be modified to allow excursions from the mandated pH range for periods up to 30 minutes, subject to a total excursion time of 7 hours and 12 minutes per month.

The word "excursion" was defined as an "unintentional and temporary" incident of noncompliance with the prescribed pH range. Intentional variations from that range, regardless of duration, remained subject to EPA enforcement action.

In addition, the proposed rule authorized the Director to impose more stringent requirements in order to meet water quality standards or other requirements of Federal or state law and to impose an excursion limitation time of less than 30 minutes, if a facility's treatment system, plant configuration or other factors justified the shorter limitation.

As a result of comments and evaluation of data, the following changes have been made to the proposed regulation.

(1) In § 401.17(a)(1) of the proposed rule, the Agency defined one percent of a month as 7 hours and 12 minutes. This monthly limit was based on a 30-day month and applied equally to 28-, 29-, or 31-day months. The Agency agrees with those commenters who argued that a rule based on one percent of a calendar month or a 31-day month would be more equitable than one based on a 30-day month. Accordingly, the final proposed rule is to be based on one percent of a 31-day month, or 7 hours and 26 minutes for any month.

(2) The major change to the proposed rule is the allowance of a 60-minute individual excursion instead of 30 minutes. This change is based on the one percent exceedance criteria discussed above and the large number of public comments on the issue.

(3) As several commenters noted, the Clean Water Act and § 122.62(d) of the Consolidated Permit Regulations already authorize the imposition of more stringent requirements where necessary to meet water quality standards. Accordingly, similar language in § 401.17(b) of the proposal has been deleted.

(4) Section 401.17(b) has been changed to allow the Director to adjust the individual time in either direction to reflect technical considerations.

While the Agency believes that the vast majority of facilities will be able to limit individual pH excursions to 60 minutes, there may be some who because of plant configuration, treatment system or other technological factors, are unable to meet that limitation. Since today's rule, which relaxes currently effective pH requirements in all industrial categories regulated by effluent guidelines, does not identify a specific technology for limiting individual excursion times, the Agency recognizes that the normal variance procedure, based on the demonstration of "fundamentally different factors" from those supporting the rule (40 CFR 125.30), may not be appropriate for facilities which cannot meet the 60 minute limitation. Accordingly, today's rule will allow the Director to increase the individual excursion time in those few instances where a facility can demonstrate technological reasons which generally preclude it from limiting individual excursions to 60 minutes.

As noted above, the individual excursion limitation was included to promote immediate reaction to pH excursions, to facilitate enforcement action against intentional excessive discharges and to discourage "banking" of acidic and basic wastes for controlled extended duration release. Thus, the individual limitation is ancillary to, although more stringent than, the monthly limitation of 7 hours and 26 minutes. While discretionary adjustment is authorized for plants which cannot meet the 60-minute limitation, the primary monthly limitation requirement will remain in effect. The Agency is aware of no technological factors which make compliance with the monthly limitation unachievable.

The Director is also authorized to impose a shorter individual excursion time if he concludes that the facility's treatment system, plant configuration, or other technological factors so warrant.

(5) The rule has also been changed to apply to the discharge of any wastewater (not only process wastewater), where an NPDES permit, issued in accordance with applicable effluent limitations guidelines requires or allows the continuous monitoring of pH. Although most effluent guidelines regulate process wastewater only, if a continuously monitoring permittee's guideline applies to process and non-process wastewater, than the regulation applies to both process and non-process wastewater.

(6) Finally, the last sentence of 40 CFR 401.10 is being modified to make it clear that this regulation modifies all specific guidelines, issued under Parts 402 through 499, which regulate the pH value of discharge wastewater.

VI. Relationship to NPDES Permits

Conditions in NPDES permits are based on effluent limitations guidelines applicable to the point source category involved and on water quality standards. Discharge of pollutants except in compliance with a permit is a violation of the Clean Water Act (section 301(a)). The modification of effluent guidelines, as by today's rule, does not and cannot modify the provisions of existing permits. However, on the basis of today's action, dischargers who pursuant to NPDES permits continuously monitor the pH values of their effluent will be able, pursuant to 40 CFR 122.15(a)(3), to seek modification of their permits to incorporate the provisions of this rule. Under that section, permittees seeking modification of their permits must do so within 90 days of today's publication. As individual permits expire, new permits will be subject to the provisions of today's rule.

Since today's rule is a modification of effluent limitations guidelines, it does not apply to permits which are not governed by effluent guidelines. However, the Agency is recommending to NPDES states and regions that the policy of granting short term excursions be considered in permit issuance for non-guideline areas.

EPA emphisizes that although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by the Agency is discretionary. The Agency acknowledges that even a well-operated and well-maintained plant cannot realistically achieve 100 percent compliance with its pH standard when continuously monitoring pH. By setting monthly and individual excursion duration limits, the Agency concedes that plants required to monitor pH continuously will experience pH violations as rare events. With respect to pH violations, EPA will continue to exercise discretion in a manner which recognizes and promotes good faith compliance efforts, and conserves enforcement resources for those who fail to make good faith efforts to comply with the Act.

VII. Public Comments and Agency Responses

A summary of the public comments received on the December 9, 1980 proposal and the associated Agency responses is available for inspection at Room M2404, U.S. EPA 401 M St., SW., Wash., D.C. 20460 from 9:00 a.m. to 4:00 p.m. Monday–Friday excluding Federal holidays.

VIII. Economic and Regulatory Impact Analysis

Today's rule represents a relaxation of currently effective effluent guidelines with respect to facilities which continuously monitor pH. Affected industries which obtain permit modification will no longer have to comply with pH limitations 100 percent of the time. Hence this rule can only decrease the economic burden on industry as compared to that imposed by existing regulations. Some commenters agreed that the proposed rule was likely to decrease long run costs and cited it as an "excellent example of a cost-effective modification of an EPA guideline."

Executive Order 12291 requires EPA to judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Since today's rule serves only to relax existing regulations, it is not a "major" rule. Similarly, although this rule was proposed before January 1, 1981 and is therefore not subject to the Regulatory Flexibility Act, it will only *decrease* the regulatory economic burden on industry and therefore will not have a significant impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis would not be required even if the Regulatory Flexibility Act were applicable.

Some commenters have objected that today's rule will result in more frequent permit requirements for continuous monitoring of pH or more vigilant enforcement action. There is no basis to support either contention. Enforcement discretion will continue to be governed by the same policies as are currently in effect.

The regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M St., SW. Wash., D.C. 20460 from 9:00 a.m. to 4:00 p.m. Monday-Friday excluding Federal holidays.

List of Subjects 40 CFR Part 401

Water pollution control, Waste treatment and disposal.

Dated: May 21, 1982.

Anne M. Gorsuch,

Administrator.

Authority: Sections 301, 304, 306 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et. seq., as amended by the Clean Water Act of 1977, Pub. L. 95–217).

PART 401—GENERAL PROVISIONS

EPA amends Title 40 CFR Part 401 as follows:

1. The last sentence of 40 CFR 401.10 is amended to read as follows:

§ 401.10 Scope and purpose.

* * * * *

Except as provided in § 401.17, in the case of any conflict between regulations issued under this Part 401 and regulations issued under Part 402 through 499 of this subchapter, the latter more specific regulations shall apply.

2. A new § 401.17 is added as follows:

§ 401.17 pH Effluent limitations under continuous monitoring.

(a) Where a permittee continuously measures the pH of wastewater pursuant to a requirement or option in a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to section 402 of the Act, the permittee shall maintain the pH of such wastewater within the range set forth in the applicable effluent limitations guidelines, except excursions from the range are permitted subject to the following limitations:

(1) The total time during which the pH values are outside the required range of pH values shall not exceed 7 hours and 26 minutes in any calendar month; and

(2) No individual excursion from the range of pH values shall exceed 60 minutes.

(b) The Director, as defined in § 122.3 of this chapter, may adjust the requirements set forth in paragraph (a) of this section with respect to the length of individual excursions from the range of pH values, if a different period of time is appropriate based upon the treatment system, plant configuration or other technical factors.

(c) For purposes of this section, an "excursion" is an unintentional and temporary incident in which the pH value of discharge wastewater exceeds the range set forth in the applicable effluent limitations guidelines.

[FR Doc. 82-15177 Filed 6-3-82; 8:45 am]
BILLING CODE 6560-50-M

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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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List of Public Laws

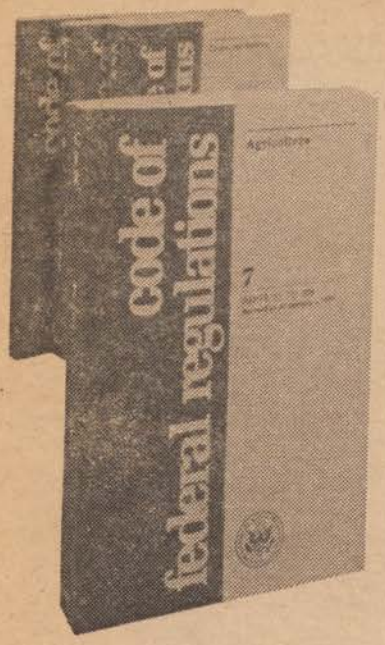
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

S. 2575 / Pub. L. 97–190 To extend the expiration date of section 252 of the Energy Policy and Conservation Act. (June 1, 1982; 96 Stat. 106) Price: $1.75.

S. 2535 / Pub. L. 97–191 To regulate the operation of foreign fish processing vessels within State waters. (June 1, 1982; 96 Stat. 107) Price: $1.75.

H.R. 4769 / Pub. L. 97–192 To recognize the organization known as the American Council of Learned Societies. (June 1, 1982; 96 Stat. 109) Price: $1.75.



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